

**BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY
UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017**

Case No. 73/2019
Date of Institution 14.06.2019
Date of Order 13.12.2019

In the matter of:

1. Ms. Shruti Garg, V-1718, DLF Phase 3, Gurgaon.
2. Sh. Saurabh Gupta, B-12, Moti Nagar, New Delhi-110015.
3. Sh. Anil Bhargava, C-248, 1st Floor, Hari-Nagar Clock Tower, New Delhi-110064.
4. Sh. Narendra Prakash Varia, Flat No.-701, Jasminium Apartment, Sector-45, Gurgaon-122003.
5. The Director General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

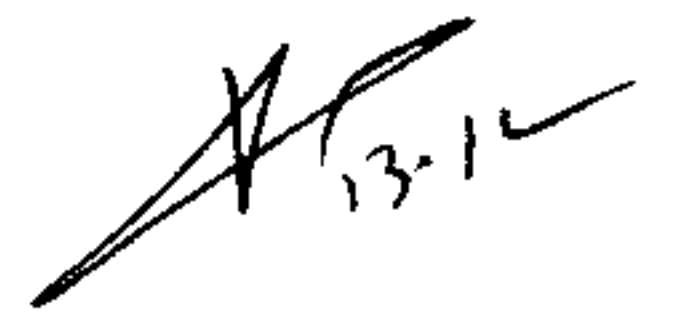
Versus

M/s Signature Builders Pvt. Ltd., 1301A-B, 13th Floor, Tower A, Signature Towers, South City-I, Gurugram-122001.

Respondent

Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member.



Present:-

1. Sh. Anil Bhargava Applicant No. 3 in person.
2. None for the Respondent.

ORDER

1. The present Report dated 14.06.2019 has been furnished by the Applicant No. 5 i.e. the Director General of Anti-Profitteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the present case are that the DGAP had received a reference from the Standing committee on Anti-Profitteering on 07.01.2019 to conduct a detailed investigation in respect of four complaints as has been shown in Table 'A' below, under Rule 128 of the CGST Rules, 2017, alleging profiteering in respect of construction services supplied by the Respondent:-

Table 'A'

S. No.	Name of the applicants	Address	Flat No. in the Respondent's project	Application Date	S.No. in Standing Committee's minutes
1	Shruti Garg	V-1718, DLF Phase 3, Gurgaon ankit20ca@gmail.com	A2(I)- 12A04	26.09.2 018	4
2	Saurabh Gupta	B-12, Moti Nagar, New Delhi- 110015 guptasaurabh444@gmail.com	A2-305	06.10.2 018	12
3	Anil Bhargava	C-248, First Floor, Hari Nagar Clock Tower, New Delhi anil.bhargava@yahoo.com	A1-404	28.08.2 018	18

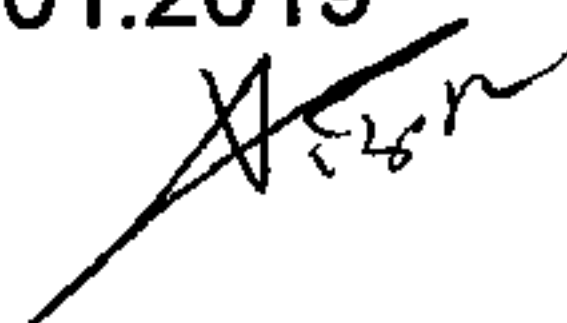
4*	Narendra Prakash Varia	Flat No.-701, Jasminium Apartment, Sector-45, Gurgaon vijenderj@hotmail.com	A3-1403	02.10.2 018	7, 10* & 53*
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* Name of the Applicant was wrongly mentioned as Sh. Vijender Jain at S. No. 10 & 53, as the applications filed by Shri Narendra Prakash Varia were received by the Standing Committee on Anti-profiteering from the e-mail account of Sh. Vijender Jain (vijenderj@hotmail.com).

2. The above Applicants submitted that they had purchased flats (as shown in Table 'A') in the Respondent's project "Solera Affordable Group Housing" situated in Sec-107, Gurugram, Haryana and alleged that the Respondent had not passed on the benefit of input tax credit (ITC) to them by way of commensurate reduction in prices.

3. The Haryana State Screening Committee on Anti-profiteering had originally examined the application mentioned at S. No. 4 in Table-A above, in its meeting held on 30.10.2018 and observed that there was lesser burden of tax in the GST regime due to availability of ITC, which the Respondent should have passed on to his customers, in terms of Section 171 of the Central Goods and Services Tax Act, 2017. The Haryana State Screening Committee had forwarded the said application with its recommendation to the Standing Committee on Anti-profiteering on 31.10.2018 for further action, in terms of Rule 128 of the Rules.

4. On receipt of the reference and supporting documents from the Standing Committee on Anti-profiteering on 07.01.2019, a Notice under Rule 129 of the Rules was issued by the DGAP on 15.01.2019

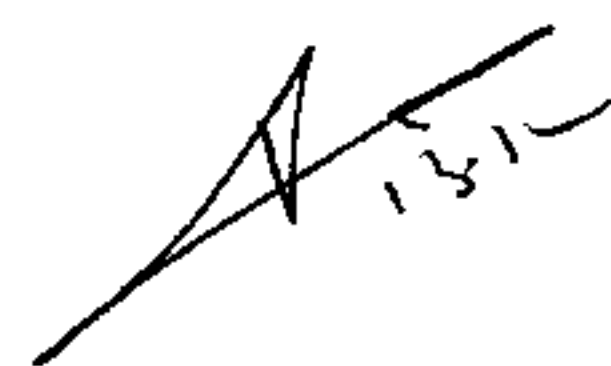


calling upon the Respondent to reply as to whether he admitted that the benefit of input tax credit had not been passed on to the Applicants by way of commensurate reduction in prices and if so, to *suo-moto* determine the quantum thereof and indicate the same in his reply to the notice as well as furnish all the supporting documents. As per the said notice dated 15.01.2019, the Respondent was afforded opportunity to inspect the non-confidential evidences/ information submitted by the above Applicants during the period from 21.01.2019 to 23.01.2019. However, the Respondent did not avail of the said opportunity. The Applicants were also given opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 03.06.2019 or 04.06.2019. However, only one Applicant mentioned at Sr. No. 04 of the Table- 'A' above availed of the said opportunity on 03.06.2019 and inspected the non-confidential documents submitted by the Respondent.

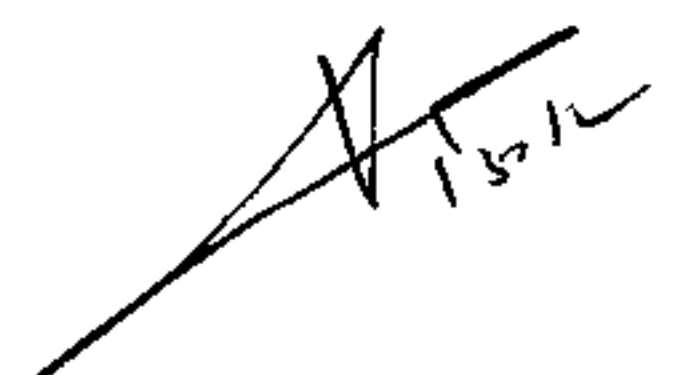
5. The period covered by the current investigation is from 01.07.2017 to 31.12.2018. The time limit to complete the investigation was extended upto 06.07.2019 in terms of Rule 129(6) of Rule by this Authority vide its order dated 19.03.2019. The service of construction was rendered in the state of Haryana.

6. The Respondent submitted his reply vide letters/e-mails dated 06.02.2019, 21.02.2019, 18.03.2019, 01.05.2019 and 14.05.2019.

The submissions of the Respondent are summed up as follows:-



- (a) The Respondent was a housing project construction company and was developing the project "Solera Affordable Group Housing" project in Sector-107, Gurugram and the "Orchard Avenue-93" project under the Affordable Housing Scheme, i.e., the Pradhan Mantri Awas Yojna.
- (b) The Respondent submitted that he was not directly engaged in any construction activity and all the work related to the project was assigned to various sub-contractors, who procured all the required raw materials on their own except steel, cement and RMC which were supplied by the Respondent on free of charge basis. However, the project was executed under the supervision of the staff employed by the Respondent.
- (c) The Respondent informed that in the pre-GST regime, "under-construction properties" were covered by the definition of works contract and attracted Haryana VAT @ 4.5% approximately with full input tax credit of VAT paid on goods involved in the execution of works contracts. Affordable housing was, however, exempted from Service Tax, vide Notification No. 9/2016-ST dated 01.03.2016. In the GST regime, construction of low cost houses upto a carpet area of 60 square meters per house in a housing project approved by any State Government, was taxable @ 12% (effectively @ 8% after 1/3rd abatement for the value of land), vide Notification No. 01/2018-Central Tax (Rate) dated 25.01.2018 (earlier the GST rate on affordable housing was 18% and the effective rate was 12% after 1/3rd abatement



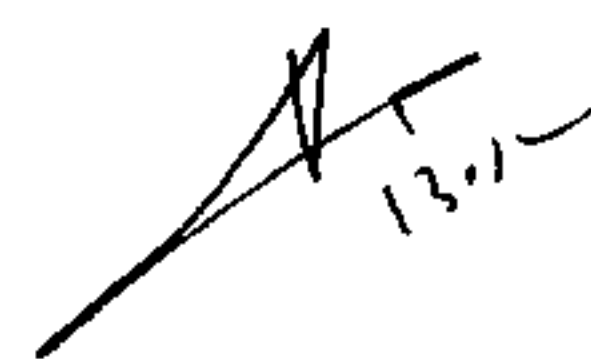
for the value of land). Therefore, the total indirect tax burden on the project had increased by 3.5% after the introduction of GST.

- (d) Under the erstwhile VAT/Service Tax regime, the Respondent was allowed ITC of all VAT/WCT paid to the vendors/Sub-contractors. The affordable housing sale price of Rs. 4,000/- per sq. ft. was fixed after considering the benefit of input tax credit of VAT/WCT. However, the Central taxes, i.e., Central Excise Duty and Service Tax levied on the goods & services used in the execution of works contract were part of the cost of the project. Now, under the GST regime, the credit of erstwhile Central Excise Duty/Service Tax was available to the Respondent and the same was required to be passed on to the recipients. The Respondent also informed that he has already passed on the benefit of input tax credit in the present project.
- (e) The Respondent further informed that Section 171 of the CGST Act, 2017 provided that it was mandatory to pass on benefit which had accrued due to reduction in the rate of tax or the input tax credit, to the consumers, by way of commensurate reduction in prices. The applicability of this statute would arise in the following two situations:
- a) If there was reduction in rate of tax on the supply of goods or services.
 - b) If additional benefit of input tax credit was available.

On perusal of the facts of this case, it could be summarised that in the GST regime, there was no reduction in the rate of tax on supply of goods and services as compared to the pre-GST

regime. Instead, there was an increase in the rate of GST by approximately 3.5%.

- (f) The Central taxes, i.e., Central Excise Duty/Service Tax levied under the pre-GST regime, on the transfer of property in goods in the execution of works contract, was now available as input tax credit in the GST regime. The Respondent had procured cement, steel and RMC on his own & all construction work was sub-contracted to the various contractors, who procured raw materials directly, after due payment of Central Excise Duty/GST. In order to comply with the provisions of Section 171 of the CGST Act, 2017, the Respondent had himself calculated the additional benefit of ITC (provisionally), now available under GST regime and the same had already been credited to the home buyers.
- (g) The Respondent had also raised three objections with the request to dispose off the same by passing a speaking order before proceeding under Section 171 of the Central Goods and Services Tax Act, 2017, in view of the methodology explained by the Supreme Court in M/s. GKN Drive shafts (India) Ltd. [2002] 1 SCC 72. These objections are as follows:
- (i) Whether on the facts & circumstances of the case, there was any reduction in rate of tax on the supply of goods & services involved in the execution of works contract in the current GST regime.

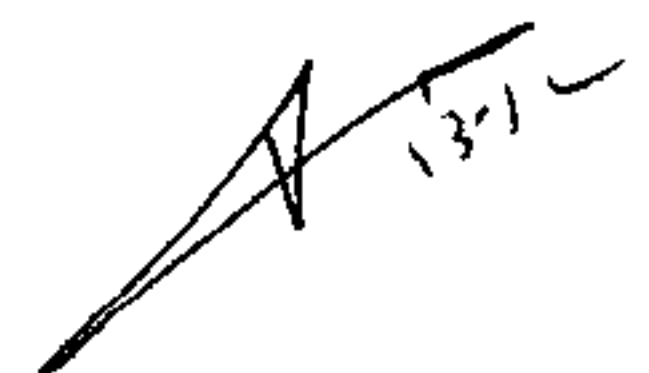


(ii) Whether on the facts & circumstances of the case, the benefit already credited/passed on to the buyers before initiation of the present proceeding, should not be treated as compliance with the provisions of Section 171 of the Central Goods and Services Tax Act, 2017.

(iii) Whether on the facts & circumstances of the case, the Co-applicants have misled this investigation by not providing complete facts about the receipt of benefit of input tax credit, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

7. Vide the aforementioned letters and e-mails, the Respondent submitted the following documents/information:-

- a) Copies of GSTR-1 Returns for the period July, 2017 to December, 2018.
- b) Copies of GSTR-3B Returns for the period July, 2017 to December, 2018.
- c) Copy of Tran-1 Returns for transitional credit.
- d) Copies of VAT & ST-3 Returns for the period April, 2016 to June, 2017.
- e) Copies of all demand letters and sale agreement/contract issued in the name of the Applicants.
- f) Details of applicable tax rates, pre-GST and post-GST.
- g) Copy of Balance Sheet (including all annexures and profit & loss account) for FY 2016-17 & 2017-18.
- h) Copy of Electronic Credit Ledger for the period 01.07.2017 to 31.12.2018.



- i) CENVAT Credit/Input Tax Credit register for the period April, 2016 to December, 2018.
- j) Details of turnover, output tax liability, GST payable and input tax credit availed.
- k) List of home buyers and commercial shop buyers in the project "Solera Affordable Group Housing", along with the details of benefit passed on to them.
- l) Reconciliation of turnover reported in the GSTR-3B returns with that in the list of home buyers.
- m) Copies of sample ledger showing the benefit of input tax credit passed on.

8. The Respondent also requested to treat all the data/information furnished by him as confidential, in terms of Rule 130 of the above Rules.

9. The Respondent, vide letter dated 06.02.2019, submitted a copy of flat buyer's agreement dated 03.10.2016, entered with Ms. Shruti Garg (Applicant mentioned at S. No. 1 of Table- 'A') and the demand letters for the sale of flat no. A2 (I)-12A04, measuring 489 square feet, at the basic sale price of Rs. 4,000/- per square feet and 65 square feet balcony area at the basic sale price of Rs. 500/- per square feet. The details of amounts and taxes paid by the said Applicant No. 1 to the Respondent are furnished in Table-'B' below:-

Table - 'B'

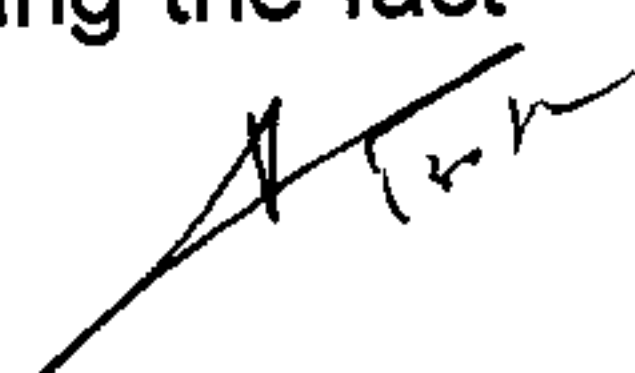
(Amount in Rs.)

S. No.	Payment Stage	Due Date	Basic %	BSP	VAT	GST	Total
1	At the time of Application	13.07.2016	5%	99,425	4,475	-	1,03,900
2	Within 15 days from the date of Allotment	15.07.2016	20%	3,97,700	17,897	-	4,15,597
3	Within 6 months from the date of Allotment	15.07.2016	12.50%	2,48,562	11,186	-	2,59,748

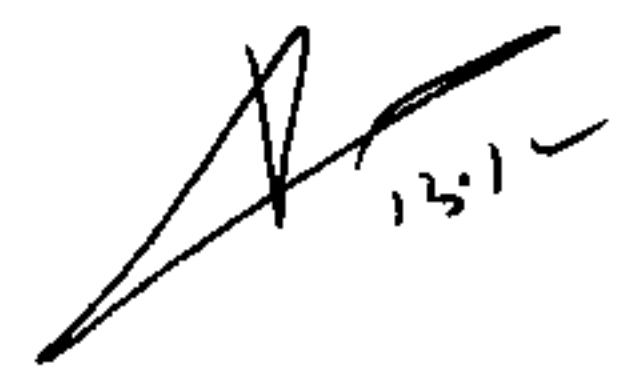
4	Within 12 months from the date of Allotment	01.10.2016	12.50%	2,48,562	11,186	-	2,59,748
5	Within 18 months from the date of Allotment	01.10.2016	12.50%	2,48,562	11,186	-	2,59,748
6	Within 24 months from the date of Allotment	01.04.2017	12.50%	2,48,562	11,186	-	2,59,748
7	Within 30 months from the date of Allotment	01.10.2017	12.50%	2,48,562	-	29,827	2,78,389
8	Within 36 months from the date of Allotment	06.04.2018	12.50%	2,48,562	-	19,885	2,68,447
9	Change in size	06.04.2018	-	(8,088)	-	(647)	(8,735)
10	GST input benefit	31.05.2018	-	(12,143)		(971)	(13,114)
Total			100.00%	19,68,266	67,116	48,094	20,83,476

10. The DGAP observed in his Report that the Respondent had claimed that the benefit already credited/passed on to the buyers before initiation of proceedings, should be treated as compliance with the provisions of Section 171 of the CGST Act, 2017. He has also observed that It could be seen from the copy of the ledger furnished by the Respondent as a part of his letter dated 14.05.2019, that he had passed on benefit amounting to Rs. 52,459/- (including 8% GST on the base amount of Rs. 48,573/-) to the above Applicants on 31.05.2018 which worked out to Rs. 25/- per sq. ft. of the carpet area. However, the correctness of the amount of benefit so passed on by the Respondent had to be determined in terms of Rule 129 (6) of the Rules. Therefore, the ITC available to the Respondent and the turnover received by him from the Applicants and other recipients post implementation of GST had to be taken into account for determining the benefit of input tax credit that was required to be passed on by the Respondent to his recipients.

11. The Respondent also submitted to the DGAP that the Applicants had misled the investigation by not disclosing the fact



of getting benefit of the ITC, in terms of Section 171 of the CGST Act, 2017, as he had passed on provisional benefit on 31.05.2018 which was prior to filing of the applications by the above Applicants during the period 28.08.2018 to 06.10.2018. On examination of submissions, it was observed by the DGAP that filing of an application after obtaining the benefit of ITC was not a legally valid ground to discontinue the proceedings. He also quoted Para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as *"Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building"*. Further, clause (b) of Paragraph 5 of Schedule II of the Central Goods and Services Tax Act, 2017 reads as *"(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier"*. Thus, the DGAP has stated that the ITC pertaining to the residential units which were under construction but not sold was provisional ITC which may be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the completion certificate, in terms of Section 17 (2) & Section 17 (3) of the CGST Act, 2017, which read as under:-

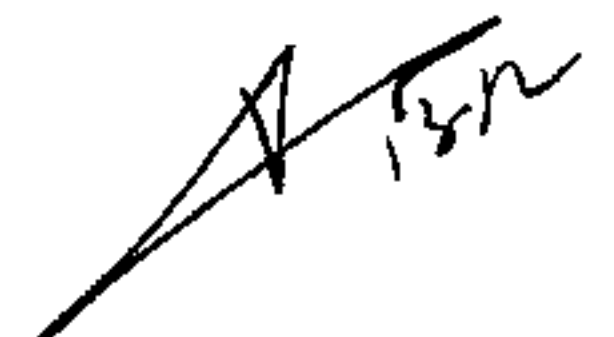


“Section 17 (2) “Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.”

Section 17 (3) “The value of exempt supply under sub-section (2) shall be such as may be prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”

Therefore, the DGAP has contended that the input tax credit pertaining to the unsold units may not fall within the ambit of this investigation and the Respondent would be required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the proportionate benefit of additional input tax credit available to them post-GST.

12. Further, the DGAP observed that prior to 01.07.2017, i.e., before the GST was introduced, as the service of construction of affordable housing provided by the Respondent, was exempt from Service Tax, vide Notification No. 25/2012-ST dated 20.06.2012, as amended by Notification No. 9/2016-ST dated 01.03.2016, the Respondent was not eligible to avail CENVAT



credit of Central Excise duty paid on inputs or Service Tax paid on the input services, as per the CENVAT Credit Rules, 2004, which were in force at the material time. However, the Respondent was eligible to avail credit of Service Tax paid on the input services (CENVAT credit of Central Excise duty was not available) for the commercial shops sold by him. The Respondent was also eligible to avail ITC of VAT paid on the inputs and also claim deduction from the taxable turnover under VAT (WCT), of the payments made to the registered contractors or sub-contractors for the execution of the project. Post-GST, the Respondent could avail ITC of GST paid on inputs and input services including the sub-contracts. From the information submitted by the Respondent for the period April, 2016 to December, 2018, the details of the input tax credit availed by him, his turnover from the project "Solera Affordable Group Housing" and the ratio of input tax credit to the turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to December, 2018) periods, are furnished in Table-'C' below:-

Table-'C'

(Amount in Rs.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	01.07.2017 to 24.01.2018 (GST @ 12%)	25.01.2018 to 31.12.2018 (GST @ 8%)	Total (Post-GST)
(1)	(2)	(3)	(4)	(5) = (3)+(4)	(6)	(7)	(8) = (6)+(7)
1	Credit of Service Tax Paid on Input Services used for Commercial Shops (A)	37,31,445	6,96,568	44,28,013	-	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	1,18,74,428	19,15,674	1,37,90,102	-	-	-
3	Rebate of VAT(WCT) Paid to sub-contractors (C)	2,43,95,572	45,85,189	2,89,80,761	-	-	-
4	Total CENVAT/Input Tax Credit Available (D)= (A+B+C)	4,00,01,445	71,97,431	4,71,98,876	-	-	-
5	Input Tax Credit of GST Availed (E)	-	-	-	259,58,300	313,59,186	573,17,486
6	Turnover from Commercial Shops as per ST-3 return (F)	4,14,67,307	36,68,228	4,51,35,535	-	8,95,53,361	-
7	Turnover from residential flats as per VAT Returns (G)	55,55,75,827	10,80,51,746	66,36,27,573	-	29,82,60,039	-
8	Total Turnover (H)	59,70,43,134	11,17,19,974	70,87,63,108	38,26,82,744	38,78,13,400	77,04,96,144

9	Total Saleable Carpet Area (Excluding Balcony Area) (in SQF) (I)	4,62,932 (Residential)	26,470 (Commercial)	4,89,402	4,62,932 (Residential)	26,470 (Commercial)	4,89,402
10	Total Sold Carpet Area (Excluding Balcony Area) (in SQF) relevant to turnover (J)	4,02,726 (Residential)	12,566 (Commercial)	4,15,292	4,61,642 (Residential)	18,987 (Commercial)	4,80,629
11	Relevant ITC [(K)= (D)*(J)/(I)] or [(K)= (E)*(J)/(I)]			4,00,51,564			5,62,90,015
	Ratio of Input Tax Credit to Turnover [(L)=(K)/(H)*100]			5.65%			7.30%

13. The DGAP has also submitted that as seen from the Table 'B' it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 5.65% and during the post-GST period (July, 2017 to December, 2018), it was 7.30%. This clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 1.65% [7.30% (-) 5.65%] of the turnover.

14. The DGAP further observed that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction service, fixed vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction service in respect of affordable and low-cost houses upto a carpet area of 60 square metres per house was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. In view of the change in the GST rate after 01.07.2017, the DGAP has examined the whole issue of profiteering in two parts, i.e., by comparing the applicable tax rate and ITC available in the pre-GST period (April, 2016 to June, 2017) when only VAT@ 4.50% was payable with (1) the post-GST period from 01.07.2017 to 24.01.2018, when the effective

GST rate was 12% and (2) with the GST period from 25.01.2018 to 31.12.2018, when the effective GST rate was 8%. Accordingly, based on the figures contained in Table-'C' above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post-GST periods, the recalibrated base price and the excess realization (profiteered amount) during the post-GST period, are tabulated in Table-'D' below:-

Table-'D'

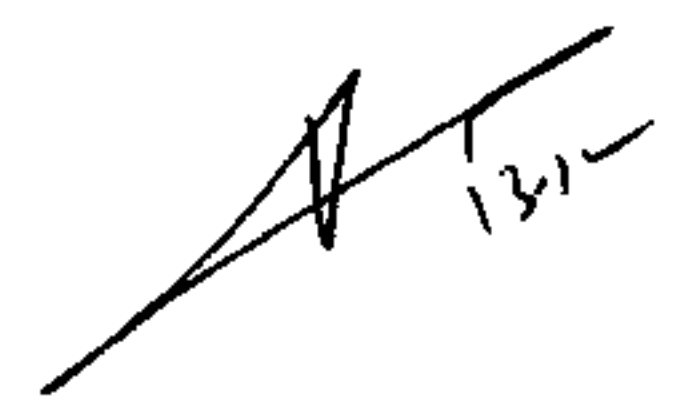
(Amount in Rs.)

S. No.	Particulars	A	Post- GST Period			Total
			01.07.2017 to 24.01.2018 (Flats & Shops)	25.01.2018 to 31.12.2018 (Shops)	25.01.2018 to 31.12.2018 (Flats)	
1	Period	A				
2	Output GST rate (%)	B	12	12	8	
3	Ratio of CENVAT credit/ Input Tax Credit to Total Turnover as per table - 'C' above (%)	C	7.30	7.30	7.30	7.30
4	Increase in input tax credit availed post-GST (%)	D= 7.30% less 5.65%	1.65	1.65	1.65	1.65
5	Analysis of Increase in input tax credit:					
6	Base Price raised during July, 2017 to December, 2018 (Rs.)	E	38,26,82,744	8,95,53,361	29,82,60,039	77,04,96,144
7	GST raised over Base Price @12% or 8% (Rs.)	F= E*B	4,59,21,929	1,07,46,403	2,38,60,803	8,05,29,136
8	Total Demand raised	G=E+F	42,86,04,674	10,02,99,764	32,21,20,842	85,10,25,280
9	Recalibrated Base Price	H= E*(1-D) or 98.35% of E	37,63,68,479	8,80,75,730	29,33,38,748	75,77,82,958
10	GST @12% or 8%	I = H* B	4,51,64,217	1,05,69,088	2,34,67,100	7,92,00,405
11	Commensurate demand price	J = H+I	42,15,32,697	9,86,44,818	31,68,05,848	83,69,83,363
12	Excess Collection of Demand or Profiteering Amount	K= G-J	70,71,977	16,54,946	53,14,994	1,40,41,917

15. The DGAP further stated that from Table-'C' above, it was clear that the additional ITC of 1.65% of the turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST

Act, 2017, the benefit of such additional ITC was required to be passed on to the recipients.

16. The DGAP has also Submitted that on the basis of the aforesaid CENVAT/input tax credit availability in the pre and post-GST periods and the details of the amount collected by the Respondent from the Applicants and other home buyers during the period 01.07.2017 to 24.01.2018, the amount of benefit of ITC that needed to be passed on by the Respondent to the recipients, came to Rs. 70,71,977/- for residential flats and commercial shops, which included 12% GST on the base profiteered amount of Rs. 63,14,265/-. Further, the amount of benefit of ITC that needed to be passed on by the Respondent to the recipients during the period 25.01.2018 to 31.12.2018, came to Rs. 69,69,940/- which includes 12% GST on commercial shops and 8% GST on residential flats, on the base profiteered amount of Rs.63,98,921/- Therefore, the total benefit of input tax credit to be passed on during the period 01.07.2017 to 31.12.2018, came to **Rs. 1,40,41,917/-** which includes GST (@ 12% or 8%) on the base amount of Rs. 1,27,13,186/-. The home buyer and unit no. wise break-up of this amount was given in Annexure-14 of the Report. This amount was inclusive of Rs. 35,944/- (including GST on the base amount of Rs. 32,677/-) which was the benefit of ITC required to be passed on to the Applicants, mentioned at serial no. 170, 283, 384 and 510 of Annexure-14.



17. The DGAP also stated that the Respondent had claimed to have passed on the benefit of Rs. 1,29,29,849/- to the home buyers. A summary of category-wise ITC benefit required to be passed on and the benefit claimed to have been passed on by the Respondent, is furnished in Table-'E' below:-

Table-'E'

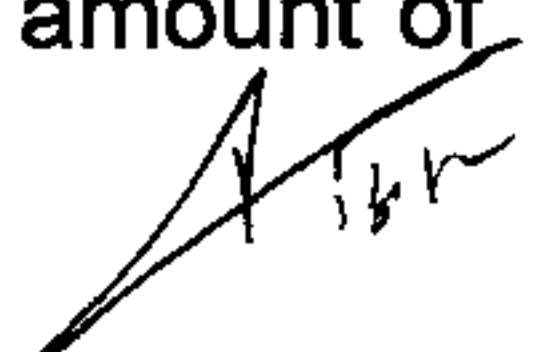
(Amount in Rs.)

S. No.	Category of Customers	No. of Units	Area (in Sqf)	Amount Received Post GST	Benefit to be passed on as per Annex-14	Benefit claimed to have been Passed on by the Respondent	Difference (profiteering)	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicants (Residential)	4	1,951	19,80,413	35,944	52,459	-16,515	Excess Benefit Passed on as per Annex-15
2	Other Buyers (Residential)	862	4,00,775	40,68,36,770	73,84,087	1,07,77,656	-33,93,569	Excess Benefit passed on. List Attached as Annex-15
3	Other Buyers (Residential)	132	58,916	23,92,84,262	43,60,031	15,84,366	27,75,665	Further Benefit to be passed on. List Attached as Annex-16
4	Unsold Flats	2	1,290	-	-	-	-	Unsold Units
	Total Residential (A)	1,000	4,62,932	64,81,01,445	1,17,80,062	1,24,14,481		
5	Commercial Shop Buyers	81	17,891	12,15,94,699	22,47,070	4,45,474	18,01,596	Further Benefit to be passed on. List Attached as Annex-17
6	Commercial Shop Buyers	4	1,096	8,00,000	14,784	27,299	-12,515	Excess Benefit passed on. List Attached as Annex-18
7	Commercial Shop Buyers	6	1,711	-	-	42,595	-42,595	No Consideration Paid Post-GST, However, Respondent passed on benefit. List Attached as Annex-18
8	Unsold Shop	21	5,772	-	-	-	-	Unsold Units.
	Total Commercial (B)	112	26,470	12,23,94,699	22,61,854	5,15,368		
	Grand Total (C)=(A)+(B)	1,112	4,89,402	77,04,96,144	1,40,41,916	1,29,29,849		

18. The DGAP observed From the Table "E" above that the benefit claimed to have been passed on by the Respondent to the recipients was less than what he ought to have passed on in case of 132 residential flats (Sr. 3 of Table 'E') by an amount of Rs. 27,75,665/- and by Rs. 18,01,596/-, in case of 81 commercial shops (Sr. 5 of Table 'E'). The details of these amounts are given

in Annexure- 16 & 17 of the DGAP's Report. Further, the Report stated that the benefit claimed to have been passed on by the Respondent was in excess in respect of 866 residential flats including the Applicants (Sr. 1 & 2 of table 'E') by an amount of Rs. 34,10,084/- and by Rs. 55,110/-, in case of 10 commercial shops (Sr. 6 & 7 of table 'E') which was shown in Annexure-15 & 18 of DGAP's Report. But the DGAP has stated that this excess benefit claimed to have been passed on to some recipients, couldn't be set off against the additional benefit required to be passed on to some other recipients as per Annexure-16 & 17 and it could only be adjusted against any future benefit that might accrue to such recipients.

19. The DGAP conclusively submitted that the benefit of additional ITC to the tune of 1.65% of the turnover, which had accrued to the Respondent post-GST, was required to be passed on by the Respondent to the above Applicants and the other recipients. He has also claimed that the provisions of Section 171 of the CGST Act, 2017 appeared to have been contravened by the Respondent, in as much as the additional benefit of ITC @1.65% of the base price received by the Respondent during the period 01.07.2017 to 31.12.2018, had not been passed on by the Respondent to 213 recipients (132 buyers of residential flats plus 81 buyers of commercial shops). Although the Respondent claimed to have passed on excess amount of Rs. 16,515/- to the Applicants as mentioned at Sr. No. 1 of table- 'E', the investigation reveals that the Respondent has realized an additional amount of



Rs. 45,77,261/- as mentioned in Sr. No. 3 & 5 of Table- 'E', from 213 other recipients (132 home buyers and 81 shop buyers) who were not Applicants in the present proceedings. These recipients were identifiable as per the documents provided by the Respondent, giving the names and addresses along with unit nos. allotted to such recipients. Therefore, this additional amount of **Rs. 45,77,261/-** was required to be returned to these eligible recipients. Profiteering, if any, for the period post December, 2018, had not been examined by the DGAP as the exact quantum of ITC that would be available to the Respondent in future couldn't be determined at this stage, when the construction of the project was yet to be completed.

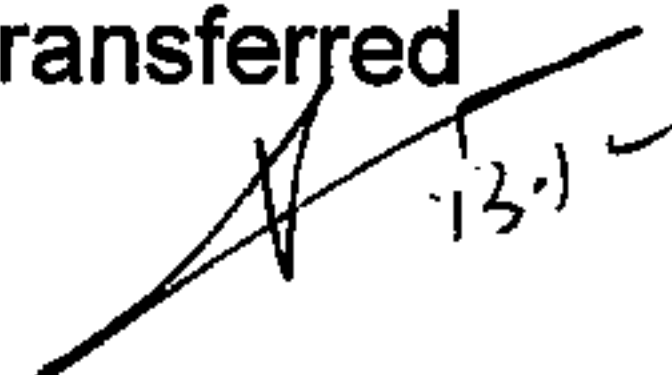
20. The Respondent was issued show cause notice dated 18.06.2019 to explain why the Report dated 14.06.2019 submitted by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed. He was also asked to state why penalty should also not be imposed upon him under Section 29 and 122-127 of the CGST Act, 2017 read with Rule 21 and 133 of the CGST Rules, 2017. During the course of the proceedings the Applicant No. 1, 2, 4 and the Respondent did not appear while the Applicant No. 3 was present in person. The first hearing was fixed on 03.07.2019 however, the Respondent had sought adjournment and the next hearing was scheduled on 16.07.2019 which was also not attended by the Respondent. Further hearings were fixed on 17.07.2019, 31.07.2019, 08.08.2019 and 19.08.2019 however; none of the above hearings were attended



by the Respondent due to which he was proceeded ex-parte on 19.08.2019. Further hearing opportunity on 30.08.2019, 16.09.2019 and 01.10.2019 was given to the above Applicant.

21. The Applicant No. 3 had filed his submissions on 02.08.2019, 21.08.2019, 03.10.2019 and 20.12.2019 which may be summed up as follows:-

- I. Vide his submissions dated 10.07.2019 he claimed that he has not been provided any of the documents on which the DGAP's Report was based and he requested to provide the said documents to file his objections on the Report.
- II. He has also claimed that the calculation pertaining to "rebate of VAT (WCT) paid to sub-contractors" in Table: "C" at sr. no.3 of the Report was actually TDS and its calculations was completely incorrect. The above Applicant has also stated that when the Respondent has declared VAT output tax liability at the rate of 4.5% then the ITC calculated could not be 5.65% (Ratio of Input Tax Credit to Turnover as per Table C prepared by the DGAP). It meant that the ITC calculated has more than VAT output tax liability which itself showed that the entire calculation was deliberately made to give relief to The Respondent in terms of ITC which was incorrect. Higher ITC compared to VAT output tax liability meant that less material was transferred

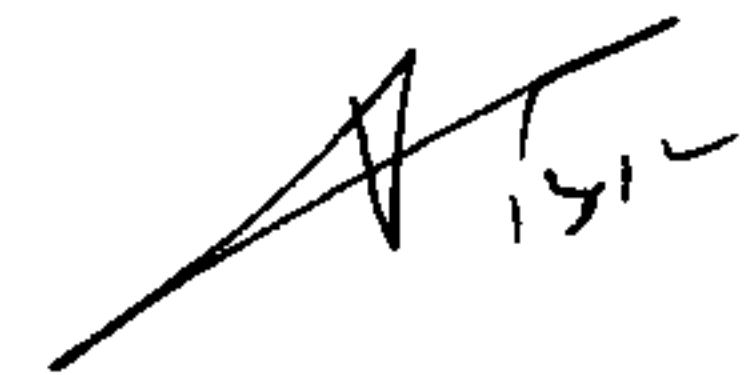


as compared to the material that was purchased which was also incorrect.

- III. He has further stated that as per DGAP's supplementary Report dated: 01.11.2019, he had reviewed Form LS-11 and Column 2B (9.1) of VAT-R1 of the Respondent which formed part of Annexure-8 and the following information could be derived from the 5 PDF documents:-

	Deduction claimed by a works contractor as regular dealer
I QT 2016-17	486,56,425
II QT 2016-17	1323,86,143
III QT 2016-17	1344,34,175
IV QT 2016-17	2186,18,558
TOTAL	5340,95,301
I QT 2017-18	923,59,961
TOTAL	6264,55,262

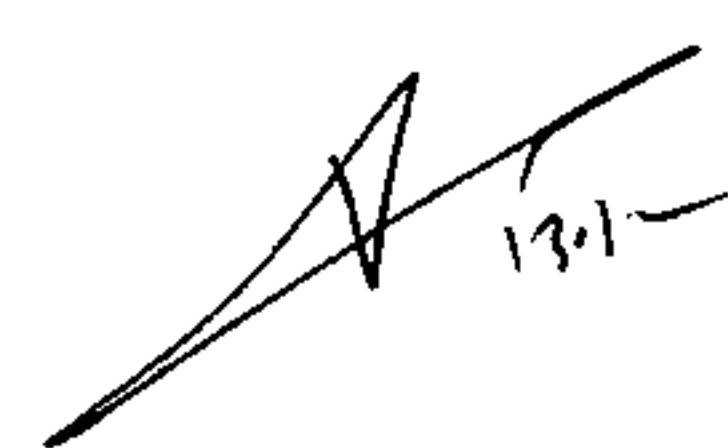
However, in order to get complete understanding of how much deduction from the taxable turnover under VAT (WCT) could the Respondent claim he needed to dive deeper into the above-mentioned numbers. therefore, the breakup of summary as per the file named (VAT return summary) lying in *Signature Documents\Annex-8\VAT return Folder Path* was as follows:-



Sale Summary 2016-2017

		DCM	Sale price received/receivable in respect of goods sold	Deduction U/r 25 on account of land @ 25% commercial	Deduction U/r 25 on account of Land @ 40% on Retail	Deduction U/s 42 on account of payment to sub-contractor	Deduction U/r 25 on account of Labour & Services	Total deduction claimed by works contractors as regular dealer
30-06-2016								
Sector 107	729,06,109	62,56,932	791,63,041	182,26,527	25,02,773	177,58,253	101,68,872	486,56,425
Sector 93	-	-	-	-	-	-	-	-
Total	729,06,109	62,56,932	791,63,041	182,26,527	25,02,773	177,58,253	101,68,872	486,56,425
30-09-2016								
Sector 107	1239,39,431	65,11,261	1304,50,692	309,84,858	26,04,504	968,61,330	-	1304,50,692
Sector 93	18,74,776	60,675	19,35,451	4,68,694	24,270	14,42,487	-	19,35,451
Total	1258,14,207	65,71,936	1323,86,143	314,53,552	26,28,774	983,03,817	-	1323,86,143
31-12-2016								
Sector 107	1153,00,808	89,05,503	1242,06,311	190,12,361	35,62,201	414,90,523	436,44,588	1077,09,673
Sector 93	534,76,960	27,76,791	562,53,751	133,69,240	11,10,716	24,01,464	98,43,082	267,24,502
Total	1687,77,768	116,82,294	1804,60,062	323,81,601	46,72,917	438,91,987	534,87,670	1344,84,175
31-03-2017								
Sector 107	2434,29,479	198,07,306	2632,36,786	608,57,370	79,22,922	476,95,843	366,90,163	1531,66,298
Sector 93	1185,67,430	51,55,025	1237,22,455	296,41,857	20,62,010	143,24,994	194,23,398	654,52,260
Total	3619,96,909	249,62,331	3869,59,240	904,99,227	99,84,933	620,20,837	561,13,561	2186,18,558
30-06-2017								
Sector 107	1080,51,746	93,58,559	1174,10,305	270,12,936	37,43,423	383,05,673	120,87,068	811,49,101
Sector 93	193,86,385	9,43,542	203,29,927	48,46,596	3,77,417	29,47,158	30,39,689	112,10,860
Scrap Sale	3,21,230	-	3,21,230	-	-	-	-	-
Total	1277,59,361	103,02,100	1380,61,461	318,59,533	41,20,840	412,52,830	151,26,757	923,59,960

IV. He has also submitted that the deductions claimed by a works contractors as regular dealer had numbers of all the projects of the builder and not just Solera – I, Sector – 107 as mentioned above. From the above Table for Sector – 107 Project Solera – I, the Table should be as mentioned below:-



Quarter	Construction (Residential)	Construction (Retail)	Sale price received/receivable in respect of goods sold	Deduction U/r 25 on account of Land @ 25% commercial	Deduction U/r 25 on account of Land @ 40% on Retail	Deduction U/s 42 on account of payment to sub-contractor	Deduction U/r 25 on account of Labour & Services	Total deduction claimed by works contractor as regular dealer
30-06-2016								
Sector 107	729,06,109	62,56,932	791,63,041	182,26,527	25,02,773	177,58,253	101,68,872	486,56,425
30-09-2016								
Sector 107	1239,39,431	65,11,261	1304,50,692	309,84,858	26,04,504	968,61,330	-	1304,50,692
31-12-2016								
Sector 107	1153,00,808	89,05,503	1242,06,311	190,12,361	35,62,201	414,90,523	436,44,588	1077,09,673
31-03-2017								
Sector 107	2434,29,479	198,07,306	2632,36,786	608,57,370	79,22,922	476,95,843	366,90,163	1531,66,298
30-06-2017								
Sector 107	1080,51,746	93,58,559	1174,10,305	270,12,936	37,43,423	383,05,673	120,87,068	811,49,101

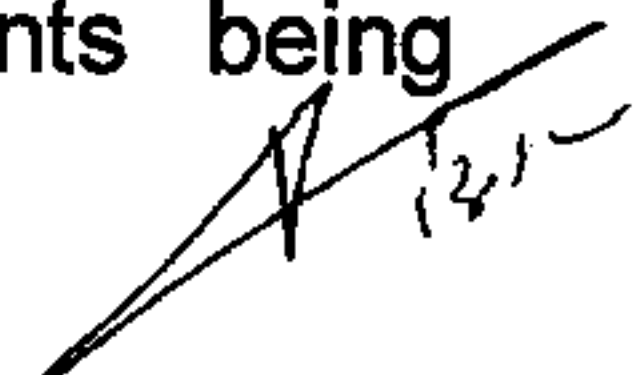
- V. He has further submitted that for deductions under clause 25 on account of land (residential or commercial) and labour & services there was no VAT tax liability and hence no ITC was available. On deduction under clause 25 on account of payment to sub-contractors, it was to be estimated how much of material or labour services got transferred between the builder and sub-contractors by checking the actual bills and the ITC would be available only on the material transferred and not on labour services.
- VI. The above Applicant has also contended the DGAP wrongly computed ITC of ₹2,89,80,761 as per Sr. No. 3 of Table C as per his reply dated 18.06.2019 and the DGAP must explain the breakup of the same.
- VII. He also requested to provide bills/invoices raised by sub-contractors to the Respondent for the period 01.04.2016 to 30.06.2017 to ascertain exact value under "Rebate of VAT (WCT) paid to sub-contractors.
- VIII. He also submitted that the ITC claimed by the Respondent as Transitional Cenvat Credit/VAT Credit was related to Excise Duty paid. The Excise Duty paid was part of cost in

pre-GST era for residential projects. The Respondent had claimed ITC in Trans-1 for the stock available on 01.07.2017 including residential flats and commercial shops for the inputs used for residential project which was "incremental benefit" for him which was required to be passed to home buyers in terms of Section 140 of the CGST Act, 2017. He further submitted that the total credit belonging to the Solera-I, residential project was required to be passed on by the Respondent.

IX. He also submitted that although the Respondent has claimed that excess benefit has been passed on to him but he has not received any ITC Benefit so far.

22. The Respondent has further made submissions on 31.07.2019 which are as follows:-

- I. The four complaints made against him were false, mischievous and against the facts. The fact that these complaints were admitted for adjudication for determining the issue of alleged profiteering reflected the bias that the adjudicating authority has against him.
- II. The complaints were lodged with Screening Committee on 28.08.2018 by the above Applicants. These complaints were mischievous as he had already compensated the flat owners on his own accord as per his calculations on 31.05.2018, 03 months prior to the complaints being



lodged. The DGAP despite having knowledge of the complaints being against the facts, had proceeded to investigate the same.

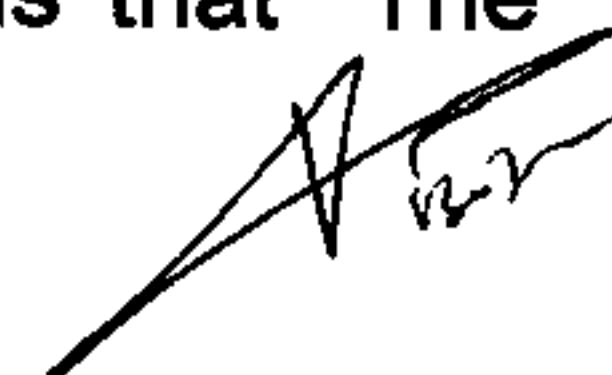
- III. While the complaint was against not passing on the benefit of tax reduction in the post GST period, the DGAP had proceeded to quantify the alleged profiteering on average basis which in itself was arbitrary. This was not the ground of complaint made against him which made the proceedings illegal and therefore null and void.
- IV. As per findings of the DGAP in Table E, the above Applicants had been paid in excess by Rs. 16,515/- which further established that their complaints were frivolous.
- V. The complainants were in know of having received Rs. 52,459/- as benefit of lower tax rates in May 2018, i.e. approx. 3 months prior to filing of the complaint.
- VI. Provisions of Section 171 of the CGST Act and Rules 122 to 137 of the CGST Rules got attracted on the ground of the Respondent not having passed on the benefit of tax in the post GST period in comparison to the tax in the pre GST period however, in the present case, it has been established that the Respondent has in aggregate, passed the tax benefit to the flat buyers, amounting to Rs. 1,29,29,849/-
- VII. The DGAP, in his report has given a finding that in aggregate the payment made to the various flat buyers was Rs. 1,29,29,849 as against Rs. 1,40,41,916/- as computed



by him on average basis which was being disputed on the following grounds :-

- (a) It was not the case that the Respondent has not passed on the benefit to his patrons / flat owners as was envisaged for triggering the provisions of section 171 of the CGST Act.
- (b) It was a case of there being a difference in the computation of the profiteered amount by him and the DGAP, who had completed the same on average basis, instead of controverting the calculation made by the Respondent.
- (c) It has not been established in the DGAP Report how the provisions of Section 171 were attracted in the present case since the Respondent on his own volition has computed and passed on the benefit of ITC in the GST period to the flat owners.

VIII. He has also informed the DGAP that the applicants who had applied for residential / commercial space in his project included 132 Residential and 20 commercial new buyers. Since the allotment of the flats/shop and receipt of first consideration was made in the GST period, the works contract with such buyers came into existence thereafter and not in the pre GST period. He also quoted the decision of the Hon'ble Apex Court in the case of Larsen & Toubro Ltd. and Others vs. State of Karnataka & Others (2013) UST 1 (SC) / 2014 | SCC 708 in which it was that "The



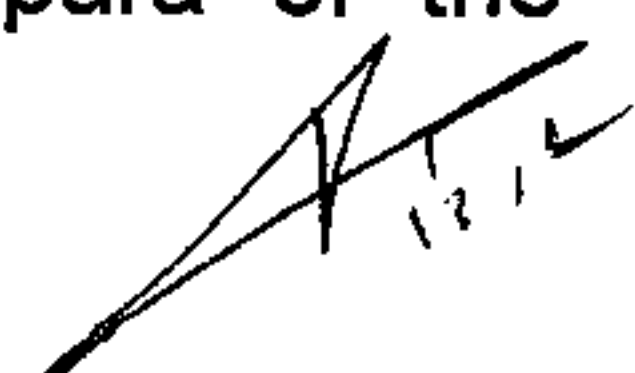
activity of construction undertaken by the developer etc. would be work contract only from the stage he entered into a contract with the flat owner". He therefore contended that the contracts entered into by him with the new flat/commercial space buyers came in to force after July 2017 in the GST period and hence the provisions of Section 171 of the CGST Act did not get attracted.

IX. While the details were with the DGAP, having been furnished vide Annexure 16 & 17 for the residential and commercial space buyers, the DGAP chose to ignore these details while computing the alleged profiteering on the arbitrary average basis. The excess amount so computed by the DGAP in his report was as follows:-

- i. Residential flat owners 132: Rs. 43,60,031/-
- ii. Commercial shops 20 : Rs. 10,04,982/-

After factoring the Applicants who had applied in the post GST period, he had paid Rs. 42,52,946/- in excess to the flat / shop owners as per the arbitrary calculation given in the DGAP's report (Table E).

X. He had requested the DGAP to pass a speaking order before finalizing investigation proceedings, which has not been done, hence the Order was defective. He also contended that this inference was also supported by the apex court of India in the case of Ms GKN Drives hafts (India) Ltd. [2002] 1 SCC 72 the relevant para of the judgment is reproduced below:-

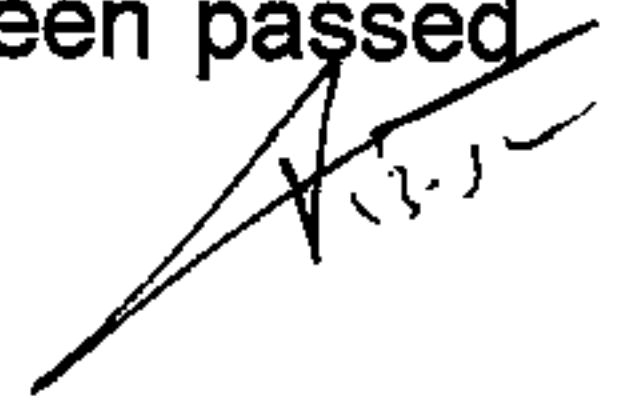


"He also clarified that when under Section 148 of the Income Tax Act notice is issued the proper course of action for the noticee is to return and if he so desires to seek return for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the Instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed by passing a speaking order before proceeding with the assessment in respect of the above-sold five assessment years."

In view of above, the investigation concluded by the DGAP without disposal of the objection filed by him, by passing a speaking order was illegal and vitiated the entire investigation proceeding.

XI. Further he has raised the following objections on the Report of DGAP:-

- a. He has not been given any opportunity to either controvert or respond to the DGAP adopting the average basis for determining the alleged profiteering.
- b. Rule 126 required this Authority to prescribe the Methodology and Procedure for determining whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed



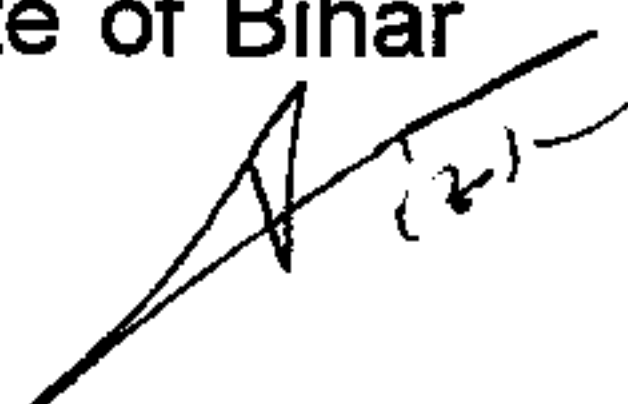
on by the registered person to the recipient by way of commensurate reduction in prices.

The Authority has accordingly drafted the Procedure & Methodology comprising of 41 paras. However it did not provide in any paragraph the basis, method and reasoning for computing any alleged contravention of the provisions of Section 171 of the CGST Act. It was also not explained why the average method has been adopted for computing alleged benefit of additional input tax credit.

XII. He further submitted that it was necessary for the taxing statutes, to provide a mechanism for computation of value on which tax is to be paid. It has been held by several Courts including the Apex Court that in the absence of any computational machinery the charging provisions would be construed to have never included the transaction within its fold and no tax could be levied on such transactions. Reliance in this regard was placed on the cases of:-

- **B. C. Srinivasa Setty 1981128 ITR 294 (SC)**
- **Palai Central Bank Ltd. 1984150 ITR 539 (SC)**
- **National Mineral Development Corporation (2004) 65 SCC 281**

XIII. Further, in respect of works contracts, the Patna High Court has held in the case of Larsen & Toubro vs State of Bihar

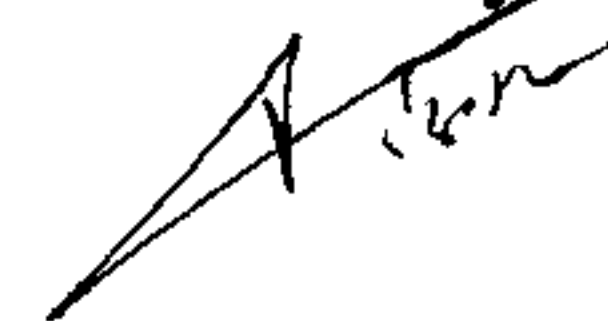


2004 134 STC 354 (Pat.) affirmed by the hon'able Supreme Court in Voltas Ltd. (2007) 7 VST 317 (SC), that in the absence of all exclusions which were to be prescribed for computation of tax, no tax was payable. The recent Larsen & Toubro judgment, 2015 SCC Online SC 738, supra, has also quoted with approval the decisions of the Patna, Madras and Orissa High Courts relating to machinery provisions in following terms:-

"We find that the Patna, Madras and Orissa High Courts have, in fact, either struck down machinery provisions or held machinery provisions to bring indivisible works contracts into the service tax net, as inadequate."

The said judgment also quoted the judgment of Hon'ble Supreme Court in the case of State of Jharkhand v. Voltas Ltd., East Singhbhum. (2007) 9 SCC 266.

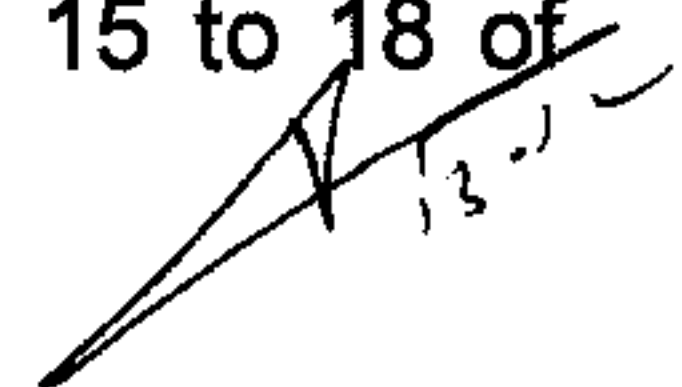
- XIV. In the instant case, he was engaged in the development of Affordable Group Housing residential flats. The project was commenced on 08.05.2015 and successfully completed on 03.10.2018. He had himself calculated the profiteering much before the completion of the project and credited the benefit to the buyers of the project including the complainants on 31.05.2018. This act reflected his responsibility to comply with the statute and his sincerity



towards the flat owners in ensuring that though the project was nearing completion, the benefit was passed on albeit on ad hoc basis.

XV. Further, he pointed out following errors in the computation of alleged profiteering on average basis by the DGAP:-

- a. While computing the alleged profiteering (Table-B), certain inputs used in construction including bricks, stone, stone dust aggregate etc, were exempted from VAT in pre GST period. In post GST period, these inputs has suffered GST @ 5%. Thus, while computing input GST, the amount of GST on such tax free items has also been considered by the DGAP which was to the detriment of the Respondent. In fact, the GST on such items which earlier were tax free has to be eliminated while computing possible profiteering.
- b. Even while adopting average basis for alleging profiteering, the DGAP has erred in not doing a like comparison adopting similar set of circumstances in pre and post GST period.
- c. Attention was also drawn to Table 'E' of the Report of DGAP and it was claimed that as per Column F of the Report the total benefit which was required to be passed on to the flat owners has been computed as Rs. 1,40,41,916/-. However, as per Column G of Table E, the DGAP has noted that the total benefit claimed to have been passed on by the Respondent aggregated to Rs. 1,29,29,849/- The details have been computed as per Annexure 15 to 18 of




the Report. Thus, as per the DGAP's Report he has during the interim period, passed on excess benefit under the provisions of Section 171 by Rs. 34,65,194 to 876 buyers including Rs. 16,315.00/- to the above Applicants.

d. Based on the finding given in the above Table, the issue of his not passing on the benefit did not exist when he had already passed benefit of Rs 16,515/- to the Applicants. Once the allegation of the above Applicants of profiteering by the Respondent has been found to be incorrect, can the proceedings against him couldn't continue suo-moto. Paragraph 9 read with paragraph 12, 13 and 14 of the Procedure & Methodology did not mention circumstances for continuing with the proceedings on own motion once it has been observed that there has been no undue profiteering in the case of the above Applicants.

XVI. He conclude by submitting that the DGAP has erred on several grounds in concluding in his report that there has been benefit of additional input tax credit of 1.65% of the GST turnover including the turnover from the buyers of the project who had made payments in the GST regime which would result in consequent reduction in the basic price as well as cum-tax price, the benefit of which should be passed by him to the recipients.

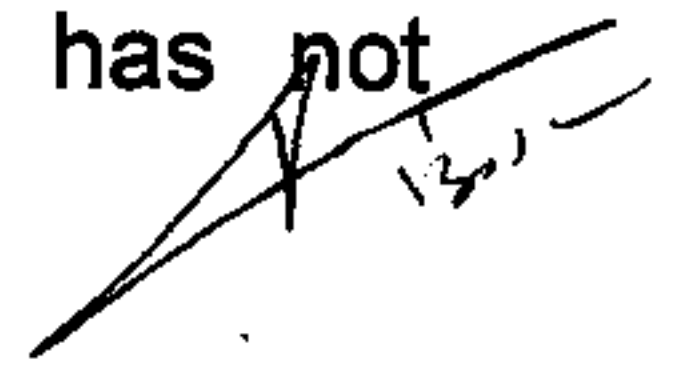
23. The Respondent has also submitted details of credit notes vide which he has claimed to have passed on the benefit of ITC in



the ledger account of the flat buyers vide his submissions dated 09.12.2019.

24. The DGAP has made his submissions vide his Reports dated 01.08.2019, 06.09.2019, 01.11.2019 which may be summed up as follows:-

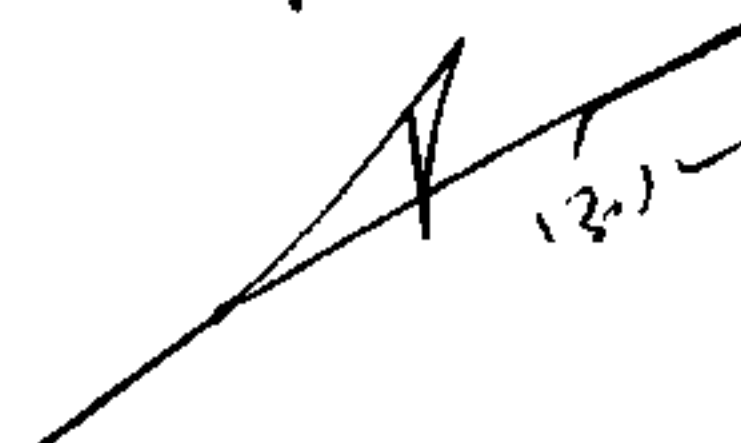
- I. The Applicant No. 3 has raised objection with respect to Rebate of VAT (WCT) and has considered it as TDS and applied provisions of Section 24 of the Haryana Value Added Tax Act, 2003. In this regard, the DGAP has observed that this has already been discussed in para-16 of his Report dated 14.06.2019 stating that the Respondent was eligible to claim deduction from the taxable turnover under VAT (WCT), of the payments made to the registered contractors or sub-contractors for the execution of the project which was in accordance with the provisions of Section 42 of Haryana Value Added Tax Act, 2003. It appeared that the above Applicant had misunderstood the VAT (WCT) concept and inadvertently considered the same as TDS which was not in accordance with the provisions of Haryana Value Added Tax Act, 2003. Further he submitted that the same could also be verified from form VAT-R-1.
- II. With regard to the objections raised by the Applicant No. 3 pertaining to the availment of transitional credit on account of Excise Duty, it was observed that Respondent has not



availed any transitional credit on account of Excise Duty or VAT and therefore provisions of proviso to Section 140 (3) of the Central Goods and Services Tax Act, 2017 were not attracted in the present case.

III. The Applicant No. 3 had raised objection regarding receiving benefit of ITC amounting to Rs. 13,115/-. In this regard, the DGAP has stated that it could be observed from Annex- 11 of the Report dated 14.06.2019 that the Respondent had submitted copy of Credit Note No. CRS1/02077/18-19 dated 31.05.2018 towards passing on benefit of input tax credit amounting to Rs. 13,115/- (Rs. 12,143 basic price and Rs. 972/- as GST). From the Applicants Ledger, it could also be observed that the Respondent has raised last instalment on 06.04.2018 which was timely paid by him. Thereafter Credit Note was issued on 31.05.2018 which was adjusted against the other dues raised in final statement of account on 26.10.2018. Therefore, the objection of the Applicant did not seem to be correct.

IV. Regarding the objections raised by the Respondent the DGAP submitted that all the objections had also been raised earlier and properly replied in his Report dated 14.06.2019. Further regarding the excess benefit claimed to have been passed on he submitted that the excess benefit to some recipients, couldn't be set off against the additional benefit that was required to be passed on to some other recipients.



25. We have carefully considered the Report of the DGAP, submissions made by the Respondent and based on the record it is revealed that the Respondent is in the Real Estate business and the DGAP's Report is with regard to construction of flats and shops by the Respondent. On examining the various submissions we find that the following issues need to be addressed:-

- a. Whether there was reduction in the rate of tax on the services in question supplied by the Respondent w.e.f. 01.07.2017?
- b. Whether there was any net additional benefit of ITC which has accrued to the Respondent?
- c. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017, by not passing on the benefits by the Respondent?

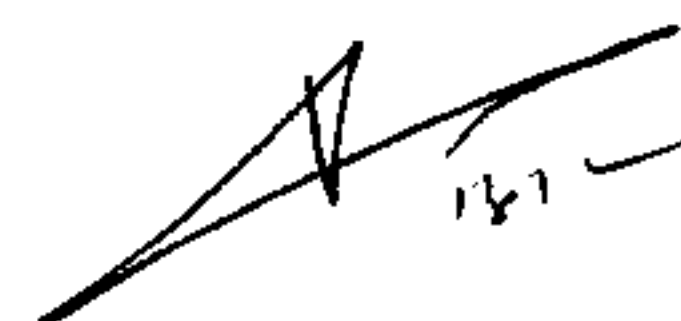
26. In the present case we find that the Respondent has started construction of the project 'Solera' for constructing 1000 Residential and 112 Commercial units. The Residential units are known as "Solera-107" and the commercial units were called by the name of "Signum-107". It is also revealed that the Applicants No. 1, 2, 3 and 4 had complained to the Haryana State Screening Committee on Anti-Profiteering that the above Respondent was not passing on the benefit of ITC to them on the flats which they have purchased from him and was also charging GST from them on the pre-GST base price of Rs. 4,000/- per sq. ft. The above complaint was examined by the Screening Committee under Rule 128 (1) and was forwarded to the Standing Committee on Anti-profiteering which had in turn sent it to the DGAP for detailed investigation as per the provisions of Rule 129 (1) of the CGST



Rules, 2017. The DGAP has conducted investigation in the above allegations levelled by the above Applicants and vide his Report dated 14.06.2019 has stated that the Respondent has violated the provisions of Section 171 of the above Act by resorting to profiteering of 1.65% of the turnover of an amount of Rs. 1,40,41,917/-.

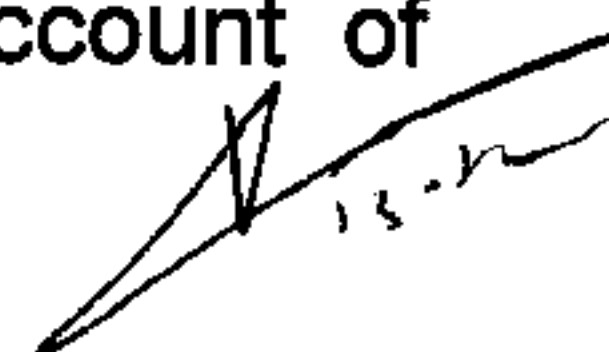
27. The Applicant No. 3 has claimed that all the documents on which the DGAP's Report dated 14.12.2019 was based were not supplied to him however, this Authority vide its order dated 16.07.2019 has provided him the required documents after giving due notice to the Respondent.

28. The Applicant No. 3 has also contended that the calculations of the rebate of VAT (WCT) paid to the sub-contractors in the DGAP's Report were incorrect and the rebate of VAT (WCT) was TDS. However, this contention of the Applicant No. 3 is not correct as the Respondent was eligible to claim deduction of VAT (WCT) from his turnover on the payments made to the registered contractors or sub-contractors for the execution of the project which is in accordance with the provisions of Section 42 of Haryana Value Added Tax Act, 2003. It appears that the above Applicant has misunderstood the VAT (WCT) as TDS. The contention of the above Applicant that the ratio of pre GST ITC cannot be 5.65% when the rate of VAT was 4.5% is also not correct as the above ratio has been computed on the basis of the actual amount of ITC availed by the Respondent which has further been taken from the Returns filed by the Respondent.



29. The above Applicant has also stated that the amount of deduction claimed by the Respondent on account of VAT (WCT) did not match with the Returns filed by him. However, the DGAP has claimed that the above amount was taken by him from the Returns filed by the Respondent. It is also apparent from the Chart prepared by the Respondent that he has taken in account the amount claimed by the Respondent in respect of two projects viz. Sector-107 and 93 whereas the present case pertains to the project which is being executed in Sector-107. Therefore, there is bound to be mismatch in the figures taken by the DGAP and considered by the above Applicant. The above Applicant has also claimed that the ITC was not available on the value of land and the cost incurred on labour and services however, there is no evidence that the above items have been taken by the Respondent in to account while claiming ITC in the pre GST period. Therefore, the Chart submitted by the Respondent in this behalf cannot be relied upon. It is also apparent from Table C prepared by the DGAP that he has taken the amount of rebate of VAT (WCT) paid by the sub-contractors in the pre GST period as Rs. 2,89,80,761/- as per the Form LS-11 and column 2B (9.1) of Form VAT-R1 and hence the above contention of the Respondent is incorrect.

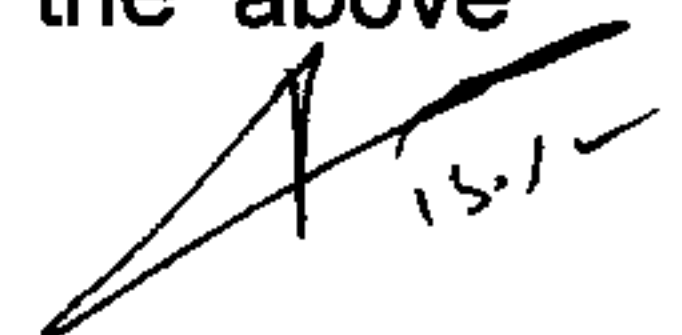
30. The Applicant No. 3 has further contended that the transitional credit belonging to the residential units of the project must be passed on to the buyers in terms of Section 140 of the CGST Act, 2017 however, it is clear from the Report submitted by the DGAP that the Respondent has not availed any transitional credit on account of



Excise Duty or VAT and therefore provisions of provisions of Section 140 of the CGST Act, 2017 are not applicable. Thus, the above contention of the Applicant No. 3 is not tenable.

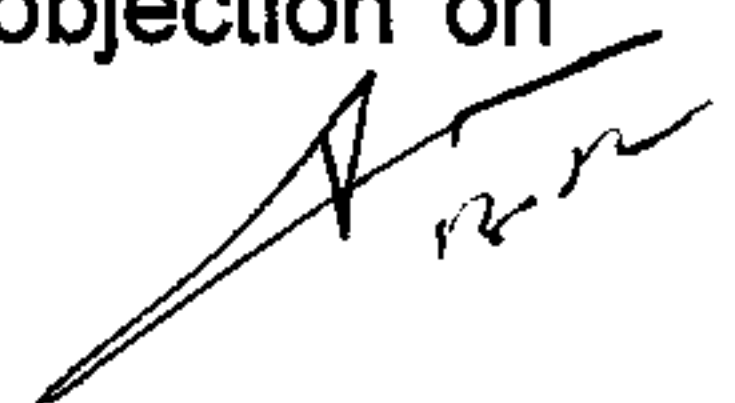
31. The Respondent in his written submissions filed on 31.07.2019 has claimed that the DGAP's Report dated 14.06.2019 had recorded incorrect finding by stating that he had benefited from additional ITC of 1.65% of the turnover, which was based on the average method applied by the DGAP on his own accord. However, perusal of Table B of the above Report shows that the ratio of ITC to turnover for the period from April, 2016 to June, 2017 has been calculated on the basis of the Returns filed by the Respondent himself. Similarly, the computation of ratio of ITC to turnover for the period from July, 2017 to December, 2019 is based on the information supplied by him. The figures of turnover for both the above periods have also been taken from the documents submitted by the Respondent him. The Respondent has further supplied the details of the total saleable carpet area and the total sold area relevant to the turnover for both the above periods. Hence, both the above ratios are based on actual mathematical computations and not on averages as has been claimed by the Respondent and hence, the above claim of the Respondent is incorrect.

32. The Respondent has further contended that once it was established that he had passed on excess benefit of Rs. 16,515/- to the above Applicants the present proceedings were not maintainable. However, the above contention of the Respondent is not maintainable as he has been found to have not passed on the benefit to the above



Applicants and other residential and commercial buyers and therefore, the present proceedings are very much maintainable against him as any information obtained by the DGAP during the course of the investigation of the complaint which discloses commission of an offence under Section 171 of the above Act has to be investigated and brought before the Authority for determination whether the Respondent has passed on the benefit of additional ITC or not. Regarding the excess benefit claimed to have been passed on to some recipients, the same cannot be set off against the additional benefit that is required to be passed on to some other recipients.

33. He has further claimed that the DGAP has neither passed a speaking order before finalisation of the Report nor he has given opportunity either to controvert or respond to the DGAP's adoption of the average method for determining the alleged profiteering. In this connection it would be appropriate to mention that as per the provisions of Rule 129 (1) of the CGST Rules, 2017 the DGAP has been entrusted with the responsibility of carrying out detailed investigation in the allegations of profiteering and collect necessary evidence and therefore, he is not required to afford opportunity of hearing to the Respondent being an investigating agency. As per the provisions of Rule 129 (3) the DGAP is required to serve notice on the Respondent which he has done on 15.01.2019 and hence he has complied with the due process. Proper opportunity of being heard has been provided to the Respondent by this Authority in which the Respondent has controverted the computations of the DGAP through his written submissions and hence he should have no objection on



this ground. However, he has not cared to attend any of the personal hearings which were afforded to him by this Authority which shows that the above contention of the Respondent is frivolous..

34. The Respondent has also contended that the Authority has not provided any basis, method and reasoning for computing profiteering in respect of violation of the provisions of Section 171 of the CGST Act, 2016 under Rule 126 of the above Rules. In this connection it is mentioned that this Authority has already determined the Methodology and Procedure under the powers vested in it under Rule 126 vide its Notification dated 28.03.2018 which is available on its website. It would also be relevant to mention here that the basis for computing profiteering has been mentioned in Section 171 (1) of the above Act which requires that "any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices." Therefore, it is quite clear that both the above benefits are required to be passed on by reduction in the prices and in case they are not passed on profiteered amount has to be computed as per the provisions of Section 171 (3A) of the above Act. In view of the above facts this contention of the Respondent is not correct.

35. He has further contended that it was settled that in the taxing statutes that mechanism for computation of value should be provided. However, this contention of the Respondent is fallacious as no tax has been imposed under Section 171 of the above Act. It would also be appropriate to mention here that under Section 171 (2) this Authority has been constituted to ensure that the provisions of

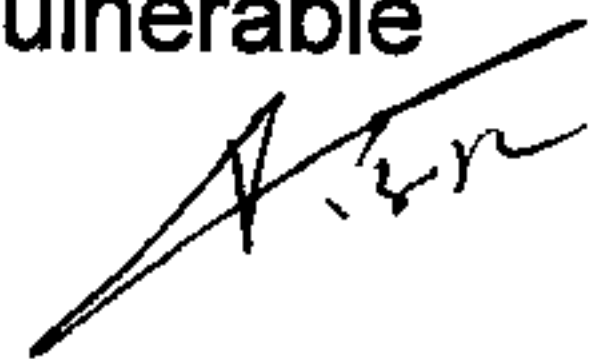
Section 171 (1) are implanted. Rule 123 of the CGST Rules, 2017 provides constitution of Standing Committee at the Central level and Screening Committees at the State level to prima facie examine the allegations of profiteering which are investigated by the DGAP in detail under Rule 129 (1). This Authority can also seek assistance of the State and Central tax authorities to monitor its orders as per the provisions of Rule 136. Therefore, there is adequate machinery to enforce the anti-profiteering provisions.

36. He has also quoted the case of **Commissioner of Income Tax v. B. C. Srinivasa Setty (1981) 128 ITR 294 (SC)** to support his claim. Perusal of the above judgement shows that it pertained to the valuation of goodwill for levying of income tax which is not the issue in the present proceedings. Hence, it is respectfully submitted that the above case is of no help to the Respondent. The Respondent has also cited the case of **Commissioner of Income Tax v. The Official Liquidator Palai Central Bank Ltd. (1984) 150 ITR 539 (SC)** in which the main issue related to the charging of super profit tax however, this issue is not relevant in the facts of the present case, hence the above case does not help the Respondent. The Respondent has also quoted the judgement passed in the case of **National Mineral Development Corporation v. State of M. P. and another (2004) 65 SCC 281** which pertained to the levy of royalty on 'slimes' hence, the above case is does not help the Respondent as no such issue is involved in these proceedings. He has also cited the case of **Larsen & Toubro v. State of Bihar and others 2004 (134) STC 354 (Pat.)** which was affirmed by the Hon'ble Supreme Court in



the case of ***State of Jharkhand and others v. Voltas Ltd. (2007) 7 VST 317 (SC)***, in which it was held that in the absence of all exclusions which were to be prescribed for computation of tax, no tax was payable. Perusal of the facts of the above cases shows that they pertained to the levy of tax on the works contracts and hence the facts of these case are not similar to the facts of the present case and hence they are not being followed. The Respondent has also mentioned the case of ***Commissioner Central Excise & Customs Kerala & others v. Larsen & Toubro 2015 SCC Online SC 738*** which pertained to the issue of imposition of Service Tax on the indivisible works contracts which is not the issue in the present case and hence the above case is not relevant in the facts of the present case.

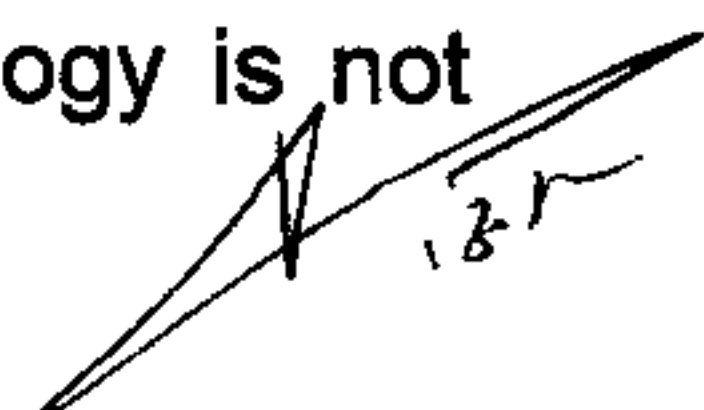
37. The Respondent has also stated that the Anti-Profiteering provision under the CGST Act and the Procedure & Methodology drafted under Rule 126 was silent on the timing of passing on of the benefit. However, there can be no doubt that the above benefit has to be passed on as soon as the Respondent avails the benefit for discharging his output tax liability by utilising the ITC. Since, the Respondent is utilising the benefit of ITC every month through his GSTR-3B Returns he should also pass on the benefit by commensurate reduction in the prices every month. The Respondent cannot use two yardsticks while passing the above benefit by himself using the ITC every month and by claiming that his buyers would be entitled to get the same when the project would be completed. The Respondent cannot enrich himself at the expense of vulnerable



house buyers by denying them the benefit for more than 4 and half year and use the additional ITC in his business. In case he wants to do so he should also claim the ITC at the time of completion of the project. There is also no provision in the anti-profiteering measures which mentions that the benefit of ITC would be passed on when the flats would be delivered to the buyers. The execution of the project under the works contract arrangement also does not entitle him to pass on the above benefit when the project would be nearing completion. Hence, all the above claims of the Respondent are wrong and hence they cannot be accepted.

38. The Respondent has also submitted that while computing the above benefit the DGAP has not taken in account the rate of tax on those materials which were tax free in the pre-GST period. This argument of the Respondent is untenable since the DGAP has computed the benefit of additional ITC by comparing the ratios of ITC which was available to him in the pre and the post-GST period and it is clear from his computation that the Respondent has got additional benefit of 2.61% of the turnover. As discussed supra the DGAP has also not calculated the profiteered amount by using averages. Hence, the above arguments of the Respondent are incorrect.

39. The Respondent has further argued that no mechanism for computing profiteering has been provided in the Act, Rules or in the Procedure & Methodology formulated by this Authority in terms of Rule 126 of the CGST Rules and hence his own calculation should be accepted as method of passing on the ITC benefit. But it is apparent from the record that the mathematical methodology is not

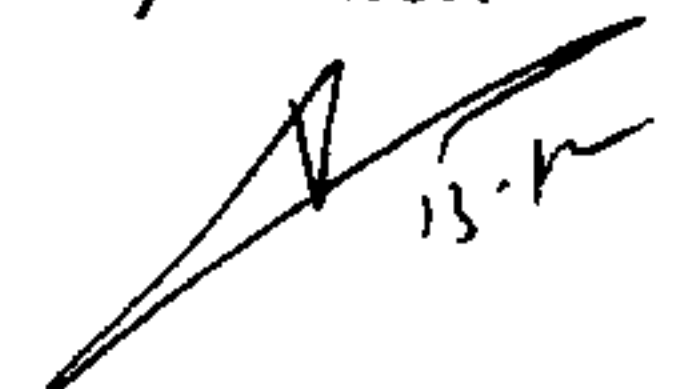


required to be prescribed as it would vary from case to case. In the present case the DGAP has computed the ratio of ITC to turnover after taking into account the benefit of credit available during the pre GST period (April 2016 to June 2017) to the taxable turnover received during the said period and compared it with the post GST period (01.07.2017 to 31.12.2018). Based on the above analysis the DGAP as has been shown in the Table-C above, has correctly calculated the ratio of the ITC of 5.65% to the turnover in pre GST period when compared to ratio of 7.30% in the post GST period and has calculated the net benefit of ITC of 1.65% of the total turnover. The methodology adopted by the Respondent has not been explained by him in his submissions filed before this Authority and hence the same cannot be considered and accepted. The mathematical methodology adopted by the DGAP is correct and the same can be relied upon as it follows the prescription laid in Section 171 of the above Act.

40. It is also revealed from Table-E supra that the DGAP has stated that the Respondent has passed less benefit than what he should have passed on in case of 132 residential flats (Sr. 3 of Table 'E') by an amount of Rs. 27,75,665/- and by Rs. 18,01,596/-, in case of 81 commercial shops (Sr. 5 of Table-E) as per the details given in Annexure-16 & 17 of his Report. He has further stated that the benefit claimed to have been passed on by the Respondent was higher than what he should have passed on, in respect of 866 residential flats including the above Applicants (Sr. 1 & 2 of Table-E) by an amount of Rs. 34,10,084/- and by Rs. 55,110/-, and in case of 10 commercial

shops (Sr. 6 & 7 of Table 'E') as per the details given in Annexure-15 & 18 of his Report. Thus, the DGAP has submitted that the Respondent has claimed to have passed on the benefit of Rs. 1,29,29,849/- against the profiteered amount of Rs. 1,40,41,916/-. However, the DGAP has not verified and clearly mentioned in his Report that the above amount has been passed on by the Respondent on account of ITC benefit to the buyers. Hence, the above claim of the Respondent cannot be accepted on his mere assertion. Accordingly, the above amount will not be adjusted against the benefit of ITC as has been done by the DGAP vide Table-E supra.

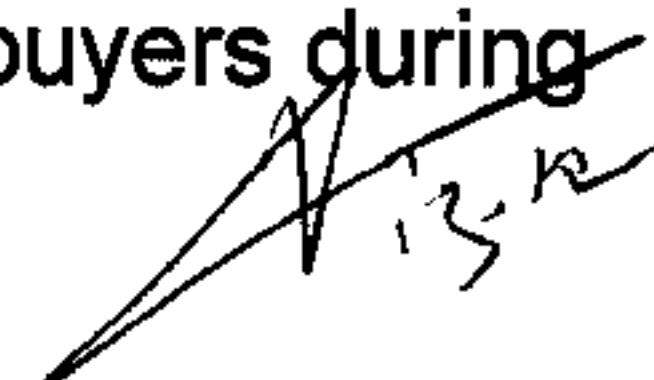
41. The Respondent has also contended that the DGAP has calculated the profiteered amount as Rs. 1,40,41,916/- whereas he has passed on an amount of Rs. 1,29,29,849/- to the 998 home and 91 commercial shop buyers as benefit of ITC. He has also submitted letters addressed to the above Applicants claiming that he is "*giving benefit under ITC u/s 171 of the applicable GST law*" along with ledger accounts of the buyers in support of his claim. However, perusal of the ledger accounts of the buyers shows that there is no evidence to suggest that he has passed on the benefit of Rs. 1,29,29,849/- to the 998 home and 91 commercial shop buyers on account of ITC as there is no such entry in the ledger accounts of these buyers. A typical entry of Rs. 13,115/- made in the ledger account on 31.05.2018 of one M/s Ritika Chhabra, who has been allotted unit No. A-203 in the above project by the Respondent, reads as "Receipt Ref. CRS1/02174/18-19 (12,143.00+ Tax 972.00)" which



shows that no where it has been mentioned that this amount has been transferred on account of ITC benefit. Perusal of the copies of the ledger accounts of the other house buyers to whom the Respondent has claimed to have passed on the benefit of ITC also shows that the same entry has been made in all such cases on 31.05.2018. By no stretch of imagination this entry can be construed to have been made on account of passing on of the benefit of ITC, therefore, the above amount cannot be taken to have been passed on account of the ITC benefit. Moreover, the DGAP in his Report dated 14.06.2019 has not verified the above claim of the Respondent. The Applicant No. 3 has specifically stated in his submissions that the Respondent has not passed on the ITC benefit to him. Hence, the above contention of the Respondent that he has passed on the full benefit of ITC is not correct and therefore, the same cannot be accepted.

42. Vide his submissions dated 09.12.2019 the Respondent has also supplied the details of the credit notes through which he has claimed to have passed on the benefit of ITC. However, the above credit notes have neither been verified by the DGAP nor any reliable and irrefutable evidence has been produced by the Respondent to establish the genuineness of these credit notes. Hence, the above credit notes cannot be relied upon on his mere assertion.

43. The Respondent has also claimed that 132 residential flats and 20 commercial shops were booked after coming in to force of the GST in respect of which the buyers were not entitled to get benefit of ITC. However, he has not submitted the details of the above buyers during



his submissions. Hence, the above contention of the Respondent is untenable due to lack of evidence.

44. Therefore taking into account the 1.65% net benefit of additional ITC this Authority is in agreement with the DGAP's calculation, as has been mentioned in Annexure-14 of his Report that the profiteered amount is Rs. Rs. 1,40,41,916/-. Thus, this Authority determines the profiteered amount as Rs. 1,40,41,916/- which includes GST @12% for the period w.e.f. 01.07.2017 to 31.12.2018.

45. It is established from the perusal of the above facts of the case that the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondents as he has profiteered an amount of Rs. 1,40,41,916/- which includes both the profiteered amount @1.65% of the base price and GST on the said profiteered amount from the above Applicants and the other recipients as well who are not Applicants in the present proceedings. Accordingly, the above amounts shall be paid to the Applicant No.1 to 4 and the other eligible house buyers by the Respondents along with interest @18% PA from the date from which these amounts were realised from them till they are paid as per the provisions of Rule 133 (3) (b) of the CGST Rules, 2017, failing which they shall be recovered by the concerned Commissioner CGST / SGST and paid to the eligible house buyers.

46. From the above discussion it is clear that the Respondent has profiteered by an amount of Rs. 1,40,41,916/- during the period of investigation. Therefore, this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce/refund the price to be realized from the buyers commensurate with the

benefit of ITC received by him as has been detailed above. The present investigation is only up to 31.12.2018 therefore, any additional benefit of ITC which shall accrue subsequently shall also be passed on to the buyers by the Respondent. In case this additional benefit is not passed on to the Applicant No. 1 to 4 or any other buyer they shall be at liberty to approach the State Screening Committee Haryana for initiating fresh proceedings under Section 171 of the above Act against the Respondents. The concerned CGST or SGST Commissioner shall take necessary action to ensure that the benefit of additional ITC is passed on to the eligible house buyers in future.

47. It is evident from the above that the Respondent has denied the benefit of ITC to the buyers of the flats/shops being constructed by him and has profiteered in contravention of the provisions of Section 171(1) of the CGST Act, 2017. Therefore he is liable for imposition of penalty under Section 171(3A) of the CGST Act, 2017. Therefore, Show Cause Notice be issued to him directing him to explain as to why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him. Accordingly, the notice dated 18.06.2019 vide which it was proposed to impose penalty under Section 29, 122-127 of the above Act read with Rule 21 and 133 of the CGST Rules, 2017 is withdrawn to that extent.

48. Further the Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Haryana to monitor this order under the supervision of the DGAP by ensuring that the amount profiteered by

the Respondent as ordered by the Authority is passed on to all the buyers. A report in compliance of this order shall be submitted to this Authority by the DGAP within a period of 4 months from the date of receipt of this order.

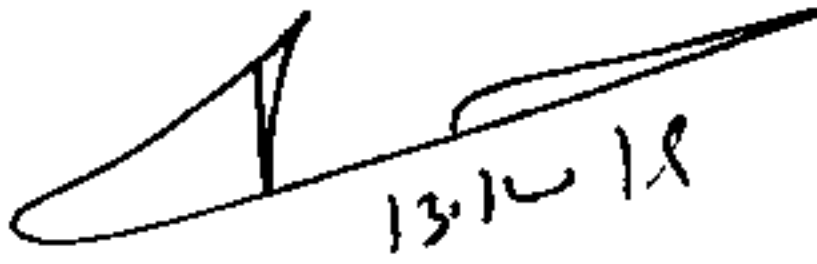
49. A copy each of this order be supplied to the Applicants, the Respondent, Commissioners CGST /SGST as well as Principal Secretary (Town & Planning) Government of Haryana for necessary action. File be consigned after completion.

Sd/-
(B. N. Sharma)
Chairman

Sd/-
(J.C. Chauhan)
Technical Member

Sd/-
(Amand Shah)
Technical Member

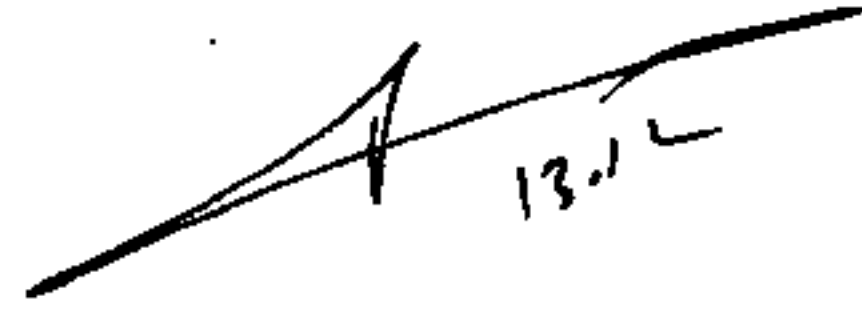
Certified Copy

OLC

13.12.19
(A.K Goel)
(Secretary, NAA)

File No. 22011/NAA/189/Signature/2019 /7192-7201 Dated: 13.12.2019
Copy to:-

1. M/s Signature Builders Pvt. Ltd., 1301A-B, 13th Floor, Tower A, Signature Towers, South City-I, Gurugram-122001.
2. Ms. Shruti Garg, V-1718, DLF Phase 3, Gurgaon.
3. Sh. Saurabh Gupta, B-12, Moti Nagar, New Delhi-110015.
4. Sh. Anil Bhargava, C-248, 1st Floor, Hari-Nagar Clock Tower, New Delhi-110064.

5. Sh. Narendra Prakash Varia, Flat No.-701, Jasminium Apartment, Sector-45, Gurgaon-122003.
6. The Director General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
7. The Commissioner of State Tax, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula, Haryana-134151.
8. The Commissioner, CGST Gurugram, Plot No. 36 & 37, Sector-32, Gurugram, Haryana-122001.
9. Principal Secretary to Govt. of Haryana, Town and Planning Department, Plot No. 3, Sec-18A, Madhya Marg, Chandigarh-160018.
10. NAA Website/Guard File.

A handwritten signature in black ink, followed by the date '13.11' written in a similar style.