

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

Case No. : 10/2022

Date of Institution : 30.12.2020

Date of Order : 12.05.2022

In the matter of:

1. Sh. Jayesh V Rathod, 303, Raman Rati Apartment, Saru Section Road, Jamnagar, Gujarat-361006
2. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Savaliya Procon, 701, Astron Tech Park, Opp. Iscon Cross Road, S.G. Road, Ahmedabad - 380015

Respondent

Quorum:-

1. Sh. Amand Shah, Technical Member and Chairman
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah, Technical Member



Present:-

1. Shri Jayesh V. Rathod, Applicant No. 1 in person.
2. Shri Manoj Singh, Assistant Commissioner for the DGAP.
3. Shri Jigar Shah, Advocate and Shri Pratik Trivedi and Ms. Jalpa Raval, Chartered Accountants for the Respondent.

ORDER

1. The present Report dated 29.12.2020 had been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. On receipt of the reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 of the Rules was issued by the DGAP on 31.07.2020, 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 Applicant No. 1 by way of commensurate reduction in price 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 supporting documents. Vide the said Notice, the Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the Applicant No. 1 during the period 10.08.2020 to 12.08.2020. However, the Respondent did not avail of this opportunity.
2. The DGAP has also stated that the period covered by the current investigation was from 01.07.2017 to 30.06.2020.

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3. Further, the DGAP has reported that the time limit to complete the investigation was 16.01.2021. However, in terms of Notification 35/2020-Central Tax dated 03.04.2020 where, any time limit for completion/furnishing of any Report, had been specified in, or prescribed or notified under the CGST Act, 2017 which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action had not been made within such time, then, the time limit for completion or compliance of such action, should be extended upto the 30.06.2020. Further, vide Notification 55/2020-Central Tax dated 27.06.2020, by Notification No. 65/2020- Central Tax dated 01.09.2020 the time limit for compliance was extended up to 30.11.2020 and by Notification No. 91/2020 dated 14.12.2020 the time limit for compliance was extended up to 31.03.2021. Accordingly, the time limit to complete the investigation was extended up to 31.03.2021.
4. The DGAP has further reported that in response to the Notice dated 31.07.2020, the Respondent submitted his reply vide letters and e-mails dated 25.08.2020, 16.10.2020 and 12.11.2020.
5. Further, the DGAP has also stated that vide the aforementioned letters, the Respondent had submitted the following documents/information:
 - (a) Copies of GSTR-1 Returns for the period July, 2017 to June, 2020.
 - (b) Copies of GSTR-3B Returns for the period July, 2017 to June, 2020.
 - (c) Electronic Credit Ledger for the period July, 2017 to June, 2020.
 - (d) Brief Profile of the Respondent.
 - (e) Copy of GSTR-9 Return for the period 2017-18.

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- (f) Copy of Relevant field of TRAN-1.
- (g) Copies of VAT Returns (including all annexures) and Service Tax Returns for the period April, 2016 to June, 2017.
- (h) Copies of all demand letters issued and sale agreement made with the Applicant No. 1.
- (i) Copy of Audit Report 2016-17, 2017-18 & 2018-19.
- (j) CENVAT / ITC Register for the FY 2016-17, 2017-18, 2018-19 and for the period April, 2019 to June, 2020.
- (k) List of home buyers in the project "Krish Elite".
- (l) Details of Applicable tax rates, Pre-GST and Post-GST.
- (m) Copy of Returns submitted to RERA.
- (n) Status of the project "Krish Elite" as on 30.06.2020.

6. The DGAP has further submitted that in the Notice dated 31.07.2020, the Respondent was informed that if any information/documents was provided on confidential basis, in terms of Rule 130 of the Rules, a non-confidential summary of such information/documents was required to be furnished. However, the Respondent did not submit any summary or declared any documents as confidential.

7. Further, the DGAP has stated that vide e-mail dated 16.12.2020 the Applicant No. 1 was afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 21.12.2020 or 22.12.2020 which the Applicant No. 1 did not avail of.

8. Further, the DGAP has also submitted that the subject application, various replies of the Respondent and the documents/evidences on record had been carefully examined. The main issues for determination were: -

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- (i) Whether there were benefit of reduction in rate of tax or ITC on the supply of Construction S
- (ii) Service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,
- (iii) Whether the Respondent passed on such benefit to the recipients by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017.

9. The DGAP has further stated para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which should 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 CGST 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 ITC pertaining to the residential units which was under construction but not sold were provisional ITC which might be required to be reversed by the Respondent. If such units remain 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 IGST 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 might 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 ITC pertaining to the unsold units might not fall within the ambit of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the proportionate benefit of additional ITC available to them post-GST.

10. The DGAP has further reported that prior to 01.07.2017, i.e, before the GST was introduced, the Respondent was eligible to avail credit of Service Tax paid on the input services (CENVAT) credit of Central Excise Duty were not available) in respect of the flats for the project “Krish Elite” sold by them. The Respondent had not availed the credit of VAT. Further, post-GST, the Respondent could avail ITC of GST paid on all the inputs and input services. From the data submitted by the Respondent covering the period April, 2016 to June, 2020, the details of the ITC availed by him, his turnover from the project “Krish Elite” and the ratio of ITC to turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to June, 2020) period, has been furnished in Table-‘A’ below:-

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Table- 'A'		(Amount in Rs.)	
Sr.No.	Particulars	Total (Pre-GST) April, 2016 to June, 2017	Turnover (July, 2017 to June, 2020)
1	CENVAT of Service Tax Paid on Input Services (A)	4,80,360	-
2	ITC of VAT Paid on Purchase of Inputs (B)		-
3	Total CENVAT/ VAT on Purchase of Inputs (C)= (A+B)	4,80,360	-
4	ITC of GST Availed (D)	-	1,10,82,436
5	Turnover for Residential Flats as per Home Buyers List (E)	4,97,09,637	29,65,75,363
6	Turnover for Commercial as per Home Buyers List (F)	12,00,000	5,47,27,824
7	Total Turnover for Flats & Commercial as per Home Buyers List for Residential Flats (G) = (E + F)	5,09,09,637	35,13,03,187
8	Total Saleable Area for Residential Flats (in SQMT) (H)	12,202	12,202
9	Total Saleable Area for Commercial (in SQMT) (I)	3,138	3,138
10	Total Saleable Area for Residential Flats & Commercial (in SQMT) (J) = (H+I)	15,340	15,340
11	Total Sold Area for Residential Flats (in SQMT) relevant to turnover (K)	3,490	10,304
12	Total Sold Area for Commercial (in SQMT) relevant to turnover (L)	116	1,388
13	Total Sold Area for Residential Flats & Commercial (in SQMT) relevant to turnover (M) = (K+L)	3,606	11,692
14	Relevant ITC [(N)= (C)*(M)/(J)]	1,12,917	84,47,070
Ratio of Input Tax Credit Post-GST [(O)=(N)/(G)*100]		0.22%	2.40%

11. The DGAP has further stated that from the above Table-'A', 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 0.22 % and during the post-GST period (July, 2017 to June, 2020), it was 2.40% in Project "Krish Elite". It clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 2.18% [2.40% (-) 0.22%] of the turnover.

12. The DGAP has further submitted that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate were 12% in view of 1/3rd abatement for land value) on Construction Service, vide Notification No. 11/2017-Central Tax (Rate)

dated 28.06.2017. The effective GST rate was 12% for flats. Accordingly, on the basis of the figures contained in Table- 'A' above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period, has been tabulated in Table-'B' below:-

Table-'B'

Sr. No.	Particulars				
1	Period	A	July, 2017 to June, 2020 (Residential)	July, 2017 to June, 2020 (Commercial)	Total
2	Output GST rate (%)	B	12	12	12
3	Ratio of CENVAT credit/ Input Tax Credit to Total Turnover as per table - 'B' above (%)	C	2.40%/0.22%	2.40%/0.22%	2.40%/0.22%
4	Increase in input tax credit availed post-GST (%)	D= 2.40% less 0.22%	2.18%	2.18%	2.18%
5	<u>Analysis of Increase in input tax credit:</u>				
6	Base Price raised during July, 2017 to June, 2020 for flats & Commercial (Rs.)	E	29,65,75,363	5,47,27,824	35,13,03,187
7	GST raised over Base Price (Rs.)	F= E*B	3,55,89,044	65,67,339	4,21,56,382
8	Total Demand raised	G=E+F	33,21,64,407	6,12,95,163	39,34,59,569
9	Recalibrated Base Price	H= E*(1-D) or 97.82% of E	29,01,10,020	5,35,34,757	34,36,44,778
10	GST @12%	I = H* B	3,48,13,202	64,24,171	4,12,37,373
11	Commensurate demand price	J = H+I	32,49,23,222	5,99,58,928	38,48,82,151
	Excess Collection of Demand or Profiteering Amount	K= G-J	72,41,184	13,36,235	85,77,419

13. The DGAP has stated that from Table-'B' above, it was clear that the additional ITC of 2.18% 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.

14. The DGAP has further reported that having established the fact of profiteering, the next step was to quantify the same. On the basis of the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected by the Respondent from the Applicant No. 1 and other home buyers during the period 01.07.2017 to 30.06.2020, the amount of benefit of ITC that needed to be passed on by the Respondent to the recipients or in other words, the profited amount came to Rs. 85,77,419/- for residential flats and commercial shops, which included 12% GST on the base profited amount of Rs. 76,58,409/-. This amount was inclusive of profited amount of Rs. 22,292/- (including GST) which was the profited amount in respect of Applicant No. 1 mentioned at serial no.93 of the DGAP's Report.

15. The DGAP has also reported that on the basis of the details of outward supplies of the Construction Service submitted by the Respondent, it was observed that the service had been supplied in the State of Gujarat only.

16. Further, the DGAP has submitted that the benefit of additional ITC of 2.18% of the taxable turnover accrued to the Respondent and the same was required to be passed on to the Applicant No. 1 and other recipients. The provision of Section 171 of the CGST Act, 2017 had been contravened by the Respondent in as much as the additional benefit of ITC @2.18% of the base price received by the Respondent

during the period 01.07.2017 to 30.06.2020, had not been passed on to the Applicant No. 1 and other recipients (222 home buyers and 34 shop buyers). On this account, it appeared that the Respondent had realized an additional amount to the tune of Rs.85,77,419/- (including GST) which was inclusive of profiteered amount of Rs.22,292/- (including GST) in respect of the Applicant No. 1. Further, the investigation revealed that the Respondent had also realized an additional amount of Rs.85,55,127/- which included both the profiteered amount @2.18% of the taxable amount (base price) and GST on the said profiteered amount from 222 home buyers and 34 shop buyers' other recipients who were not Applicants in the present proceedings. These recipients were identifiable as per the documents on record as the Respondent provided their names and addresses along with unit nos. allotted to them. As observed earlier, the Respondent had supplied Construction Services in the State of Gujarat only.

17. Further, the DGAP has concluded that the present investigation covered the period from 01.07.2017 to 30.06.2020. Profiteering, if any, for the period post June, 2020, had not been examined as the exact quantum of ITC that would be available to the Respondent in future could not be determined at this stage, when the construction of the project was yet to be completed.

 18. The DGAP has also concluded that in view of the aforementioned findings, it appeared that Section 171(1) of the CGST Act, 2017, requiring that *"any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices"*, had been contravened in the present case.

19. The above Report was carefully considered by this Authority and a Notice dated 05.01.2021 was issued to the Respondent to explain why the Report dated 29.12.2020 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed. The Respondent was directed to file his written submissions which had been filed on 27.02.2021 wherein the Respondent has submitted:-

i. That the Standing Committee had erred in referring the matter to the DGAP for further investigation:-

a. As per Rule 128(1) of the CGST Rules, 2017 on receipt of an application, the Standing Committee should examine the accuracy and adequacy of the evidence provided in the application to determine whether there was *prima facie* evidence to support the claim of the Applicant No. 1 that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of ITC had not been passed on to the recipient by way of commensurate reduction in prices.

b. In the present case, the Standing Committee had erred in referring the matter to the DGAP for further investigation. This was for the reason that the application filed by the Applicant No. 1 was only on basis of one ground that the Respondent had not passed on the benefit on account of increased eligibility of ITC in GST regime. Accordingly, it was submitted that the said fact could not be considered as a *prima facie* for evidence to say that the Respondent had profiteered post GST regime.

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- c. As per Section 171 of CGST Act, the benefits were required to be passed on in respect of any reduction in rate of tax on any outward supply of goods or services or the benefit of additional ITC. However, under GST regime, all the inputs and input services were creditable to the Respondent (developer) and accordingly, the GST component on procurement did not, any ways form part of cost of construction. However, the costs of procurement had increased substantially after introduction of GST and therefore calculation of alleged profiteering amount ignoring the costs of procurement were not legally correct.
- d. The Applicant No. 1 had booked his unit on 24.03.2017 and after introduction of GST since the costs of procurements have increased substantially the prices charged by the Respondent was already having adjustment of increase in costs and also commensurate ITC eligibility and therefore, the allegation that the benefit of ITC were not passed on was devoid of any merits.
- e. The Standing Committee erred in referring the matter to the DGAP in absence of any accurate or adequate evidence. Therefore, the entire proceedings based on such erroneous *prima facie* conclusion were bad in law and were liable to be set aside.
- ii. That the DGAP's Report could not go beyond the application submitted by the Applicant no. 1 vide letter dated 27.01.2012:-
- a. The Report of the DGAP had gone beyond the application submitted by the Applicant No. 1 and was liable to be rejected on this ground alone.

- b. Section 171 of the CGST Act provides for anti-profiteering.

The extract of the section were provided below for quick reference:

“(1) Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower on existing Authority constituted under any law for the time being in force to examine whether ITC availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3) The Authority referred to in sub-section (2) should exercise such powers and discharge such functions as may be prescribed.”

- c. Chapter XV of the CGST Rules contains Rules regarding anti-profiteering. Rule 128 of the CGST Rules contains provisions regarding the examination of application by the Standing Committee and Screening Committee. The extract of the Rule has been provided below for quick reference:

“128. Examination of application by the Standing Committee and Screening Committee:-

(1) The Standing Committee shall, within a period of two months from the date of the receipt of a written application, in such form and manner as may be specified by him from an interested party or from a Commissioner or any other

person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima facie evidence to support the claim of the Applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of ITC have not been passed on to the recipient by way of commensurate reduction in prices.

(2) All applications from interested parties on issues of local nature shall first be examined by the State level Screening Committee and the Screening Committee shall, upon being satisfied that the supplier has contravened the provisions of section 171 forward the application with its recommendations to the Standing Committee for further action."

d. An anti-profiteering investigation could be initiated only on receipt of a written application from an interested party, Commissioner or any other person, in the instant case, the proceedings were initiated on the basis of an application received from the Applicant No. 1. It was pertinent to mention that the said application was only in respect of one Flat purchased by the Applicant No. 1 in the 'Savalia Procon - Krish Elite' project. Hence, the investigation could not go beyond the application and covered other customers also who had not questioned the benefit passed on to them.

e. Reliance was placed on the following orders of the Authority, wherein investigation, Report and final Order of the Authority

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were only on the product for which complaint were filed in the respective cases:

1. *M/s U. P. Sales & Services vs. M/s Vrandavaneshwree Automotive Private Limited reported at 2018-VII-01-N44:* In this case, the Applicant filed an application alleging that the supplier did not pass on the benefit of reduced rate of tax on Honda Car having Model No. WR-V 1.2 VX MT (i-VTEC) purchased by the Applicant. The Authority in this case while holding that the supplier had not contravened the provisions of Section 171 of the CGST Act, 2017 limited its enquiry and Order, only to the particular model of car.

2. *Shri Rishi Gupta vs. M/s Flipkart Internet Pvt Ltd. reported at 2018 VIL-04-NAA:* In this case, the Applicant filed an application stating that he paid extra amount for Godrej Interio Slimline Metal Almirah to the supplier and by not refunding the same; the supplier was resorting to profiteering in contravention to Section 171. The Authority while holding that the supplier had not contravened the provisions of Section 171 limited its Order only to the particular model of Almirah.

f. The application in an anti-profiteering case acts as foundation and base of an investigation. In the present case, the application was received merely by Applicant No. 1 for the Flat bearing No. D-701, Krish Elite at Nikol Ahmedabad. Hence, the investigation could not go beyond the application and should not cover other customers also who had not questioned the benefit passed on to them.

- g. The DGAP could not *suo motu* assume jurisdiction with regard to other customers of the Respondent, on receipt of reference from the Standing Committee to conduct a detailed Investigation in the matter of Applicant No. 1. It was also submitted that the DGAP could not exceed his Jurisdiction by submitting its findings for other unit buyers and recipients who had not filed any application without any reference from the Authority in this regard.
- h. An application filed by a dissatisfied Applicant No. 1 might be compared to a Show Cause Notice for a tax proceedings wherein the assessee were required to show cause as to why tax, interest, penalty, etc. should not be levied and collected from him. It was settled principle of law that an Order adjudicating a Show Cause Notice could not travel beyond the scope of a Show Cause Notice. In this regard reliance was placed on the case of Toyo Engineering India Limited vs. CC, Mumbai reported at 2006 (201) E.L.T. 513 (S.C.) wherein the Hon'ble Supreme Court held that the department could not travel beyond the Show Cause Notice.
- i. In the case of Reckitt & Colman of India Ltd. vs. CCE, reported at 1996 (88) ELT. 641 (S.C.) it was held by the Hon'ble Supreme Court that the Revenue Authorities could not make an Order against an assessee that was based on allegations and grounds that was not raised in the Notice of Show-Cause.
- j. Like an order could not travel beyond a Show Cause Notice, the investigation and Report of the DGAP, could not go

beyond the application which acts as a basis of the investigation.

k. Further reliance was placed on the case of Fx Enterprise Solutions India Pvt. Ltd. and Ors. Vs. Hyundai Motor India Limited, reported at 2017 Comp 586 (CCI), wherein the Commission had asked the officer to conduct investigation regarding the contravention of Section 3(4) read with Section (1) of the Competition Act. However, the officer also investigated whether the party had abused its dominant position in contravention of Section 4 of the Act. In this case, Commission held that the officer's investigation of contravention of Section 4 of the Act by the part was *dehors* the directions given and was *ultra vires* the scope of investigation.

l. The Report should be restricted to the Applicant No. 1 who had filed the application to concerned committee. Accordingly, the investigation in respect of customers other than mentioned in the application deserved to be rejected.

iii. That in the absence of prescribed method of calculation of profiteering in the act or the rules or the procedure, the proceedings were arbitrary and liable to be set aside:-

a. The CGST Act read with the CGST Rules did not provide the procedure and mechanism of determination and calculation of profiteering. In absence of the same, the calculation and methodology used in the Report were arbitrary and were in violation of principles of natural justice.

- b. The Central Government vide Notification No. 10/2017-Central Tax dated 28.06.2017 (amending Notification No. 3/2017-Central Tax) notified the Anti-profiteering Rules which provide for constitution of authority, standing committee and steering committee, power to determine the methodology and procedure, duties of authority, examination of application, order of the authority, compliance by the registered person etc.
- c. Rule 126 of the CGST Rules contains provisions regarding the power to determine methodology and procedure. The extract of the relevant portion of the rule has been provided below for quick reference:

“Rule 126- power to determine the methodology and procedure:-

The Authority may determine the methodology and procedure for determination as to 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.”

- d. As per Rule 126, the Authority had the power to determine the methodology and procedure for determination as to whether the reduction in rate of tax on the supply of goods or services or the benefit of ITC had been passed on by the registered person to the recipient by way of commensurate reduction in prices. It was pertinent to note that as on date,



CGST Rules had not prescribed any procedure methodology formula/modalities for determining/calculating profiteering.

e. This Authority under the Goods and Service Tax Methodology and Procedures, 2018 issued on 19.07.2018 by the Authority only provides the procedure pertaining to investigation and hearing. However, no method/formula had been notified/prescribed pertaining to calculation of profiteering amount.

f. The Rule 127 of the CGST Rules, provides for the duties of the Authority whereby it could order reduction in prices, return to the recipient of an amount equivalent to the amount not passed as benefit, imposition of penalty and cancellation of registration under the CGST Act. The duties of the Authority as enumerated in Rule 127 include determination whether benefits consequent to reduction in rate of tax or allowance of ITC are being passed on to the recipient identification of registered persons who have not passed on the benefits to the recipient and passing of orders effecting reduction in prices.

g. Under CGST Act or Rules made thereunder, there was no indication, let alone description as to how to conclude that there were profiteering due to change in rate of tax. Whether such computation had to be done invoice-wise, product-wise, business vertical-wise or entity-wise, etc. Thus, in absence of the same, there were lack of transparency and the results could vary from case to case resulting in arbitrariness and violation of Article 14 of the Constitution of

India. In other words, it would be impossible for the Respondent to defend its case and explain how the observations and findings of the Applicant No. 1 were incorrect, thus, violating the principles of natural justice.

- h. Absence of such mechanism or framework within which the Authority/the DGAP must discharge its duties, would also lead to arbitrariness.
- i. In this regard reference was made to other countries where GST was in place. In order to control rise in inflation on account of implementation of GST. The Malaysian Government introduced the Price Control and Anti-Profitteering (Mechanism to Determine Unreasonably High Profit) (Net Profit Margin) Regulations 2014, which provided for the mechanism to calculate whether any company had profiteered on account of GST or not. The anti-profitteering measures in Australia revolved around the Net Dollar Margin Rule" serving as the fundamental principle for its guidelines. That was, if the new tax scheme - GST in this case-caused taxes and costs to fall by \$1, then prices should fall by at least \$1. At the same time if the cost of the business rose by \$1 under the new tax scheme, then prices might rise by not more than \$1. These regulations have been set as barometers for calculating profiteering.
- j. No such procedure for calculation of profiteering had been provided under the CGST Act and CGST Rules. Absence of the same violates the principles of natural justice and thus, the investigation was liable to be set aside.

- k. In this regard, reliance was placed on the case of *Eternit Everest Ltd. vs. UOI*, reported at 1997 (89) E.L.T. 28 (Mad), where the Hon'ble Madras High Court held that in absence of machinery provisions pertaining to determination and adjudication upon a claim or objection, the statutory provision would not be applicable.
- l. In the case of *Commissioner of Income Tax, Bangalore vs. B.C. Srinivasa Setty*, reported at (1981) 2 SCC 460, the Hon'ble Supreme Court held that charging section were not attracted where corresponding computation provision were inapplicable. It was submitted that relying on the case of *BC Srinivas Shetty, Allahabad HC* in the case of *Samsung (India) Electronics Pvt. Ltd. vs. Commissioner of Commercial Taxes U.P. Lucknow*, reported at 2018 [11] G.S.T.L. 367 observed that in the absence of any procedure or provision in the UP VAT Act, 2008 Act conferring such Authority, in the case of a sale of composite packages bearing a singular MRP, the authorities under the Act could not possibly assess the components of such a composite package separately. Such an exercise, if undertaken, would also fall foul of the principles enunciated by the hon'ble Supreme Court. In this regard, reliance was also placed on the case of *Union of India vs Suresh Kumar Bansal* reported at 2017 (4) G.S.T.L. J128 (S.C.). wherein it was confirmed by the Hon'ble SC that explanation added to Section 63(105)(zzzh) of the Finance Act, 1994 vide the Finance Act, 2010 expanding scope of taxability of Construction of Complex intended for sale by

builders, was ultra vires as there was no statutory mechanism to ascertain value of service component of subject levy.

- m. This Authority in itself was using different methodology to ascertain 'profiteering' in the cases before it. In some cases, the Authority had restricted itself to the goods mentioned in the application, while in some it had considered business as a whole. Thus, this shows that there was not defined procedure being adopted by the Authority leading to arbitrariness.
- n. In absence of prescribed method formula for calculation of profiteering, following a method on case-to-case basis was arbitrary and thus, the Report of the DGAP was liable to be rejected.

iv. That comparison of ratio of ITC to turnover for pre GST period and GST period was not the correct mechanism for calculation of profiteering amount:-

a) The DGAP had arrived at the figures of alleged profiteering on the basis of the difference between the ratio of ITC to turnover under the pre-GST and GST period. It was submitted that using this formula for calculating the benefit of additional ITC accrued to the Respondent should never yield the correct quantum of profiteering.

b) The comparison of above ratio was not appropriate for the reason that under the real estate sector, there was no correlation of turnover with the cost of construction or development of a project. The turnover reflected the amount

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collected as per payment or booking plans issued by the developer which was dependent upon market driven strategy. On the contrary, the ITC was accrued to a developer on the basis of actual cost incurred by it while undertaking the development of a project. Thus, accrual of ITC was not dependent on the amount collected from the buyers. As mentioned earlier, in this industry, advance was received by the suppliers/dealers even before the commencement of the projects. Likewise, units were sold after the completion of the project as well. Thus, receiving of inputs/input services and taking credit of the same did not have an immediate and direct relation with the turnover. Accordingly, calculating profiteering on the basis of turnover could not reflect the correct outcome for the Respondent.

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- c) To understand the above submission through an illustration, a case was cited as an example wherein the developer floats 25/75 scheme for one of its projects which was launched under the pre-GST regime. As per the scheme, the unit buyers/applicants were required to pay 25 per cent of the apartment's cost at the time of booking and the rest after possession. The possession was to be provided in the GST regime. In such a case, the quantum of ITC would be proportionately higher in the initial period when the construction was in full swing, as compared to the turnover which would be limited to the 25 per cent of total price as per the scheme. Accordingly, the ratio of ITC to turnover would not reflect the correct position of benefit accrued to the developer,

when calculated for a limited period of time, instead of the duration of the project.

d) In essence, the following points were totally ignored by the DGAP while calculating alleged profiteering based on comparison of ratio of ITC to turnover for pre-GST period and GST period-

- (i) Construction Project Life cycle effect had been totally ignored and it had been assumed that uniform expenses were incurred throughout the lifecycle of the project based on the formula adopted by the DGAP.
- (ii) The basis of calculation of the profiteering benefit as the difference of the ratio of ITC/Taxable Turnover in the GST and the pre-GST regime did not seem to be appropriate for following reasons:-

(1) Taxable Turnover would vary as per the market conditions and it was difficult to maintain the ratio of the same in proportion to procurement in a real estate sector,

(2) ITC was an absolute number which would vary as per the Govt. rate policies. A lot of goods had been moved from 28% to 18% slabs. This had not resulted into any benefit to the registered buyers as it was entitled to credit in both scenarios. However, this would significantly vary the ratio as calculated by the DGAP to assess the anti-profiteering benefit.

- (iii) Reversal of ITC in future due to receipt of Completion Certificate might also have a bearing on ITC availed by



the supplier/developer. Such a critical factor needs to be given appropriate weight while making the final computation. The DGAP while undertaking the calculation had proceed with the assumption that all the expenses incurred in the GST period was towards the taxable turnover, as all the credit had been attributed towards the same. No regard had been given to the fact that ITC would also get accumulated on account of construction of unsold units.

e) The additional ITC in the hands of the Respondent in terms of Section 171 of the CGST Act should reflect such ITC on goods or services which was not available earlier to the Respondent. However, the approach adopted by the DGAP for calculating the additional benefit accrued to the Respondent was based on the change in rate of tax on input goods and services in the GST regime itself. It was pertinent to mention that credit with respect to such inputs/input services was available to the Respondent earlier as well before the change in the rate. Further, the DGAP had not considered the tax cost which was earlier blocked in the hands of the Respondent. Hence, the above approach of comparison of ITC to turnover ratio for pre-GST and post GST period for a limited period of project duration was not a correct approach and profiteering computed on basis of the same was liable to be set aside on this count itself.

v. That the calculation made by the DGAP of the alleged profiteering was incorrect. On application of correct calculation the alleged

profiteering figures were less than costs incurred by the respondent:-

- a) Applying the methodology adopted by the DGAP in his Report, it was submitted that the calculations made by the DGAP of the alleged profiteering were incorrect.
- b) Attention was invited to the calculations made by the DGAP of the alleged profiteering percentage in his Report.
- c) That the comparison of ratio of ITC to turnover for pre GST period and GST period was not the correct methodology for computing profiteering under Section 171 of CGST Act as it suffered from various inconsistencies and assumptions discussed therein. That this methodology assumed that uniform expenses were incurred throughout the project lifecycle and that taxable turnover would also be uniform, which practically varied a lot given the market conditions and was objectively, an incorrect assumption to make. Presuming the same to be true and applying the same to the present case, the assumption of uniformity of expenses and turnover was *qua* the pre-GST period and the GST period, as a whole and it could not be restricted to any specific period at the whims and fancies of the DGAP.
- d) The objective behind considering the entire period of the project (be it pre-GST or GST period) was that, the ITC and its co-relation with taxable turnover should be assessed at the broader periodic level rather than linking it with a particular period of the project. It was submitted that no period of a



project should be excluded for purpose of computing the profiteering as doing same would lead to incorrect results.

e) In this regard, reference was made to Rule 5 of Cenvat Credit Rules, 2004 (hereinafter referred to as 'CCR Rules') wherein refund was allowed of Cenvat credit in the ratio of export turnover to the total turnover for that particular relevant period. In this regard, it was held in a catena of case laws that 'Cenvat credit' means credit which was lying unutilized at the end of relevant period and not just pertaining to the relevant period. Thus, even if the turnover considered was for a particular month, the 'Cenvat credit' considered for computing refund was the balance lying at the end of said particular relevant period.

20. Supplementary Report was sought from the DGAP on the above submissions of the Respondent. In response, the DGAP vide his Report dated 11.03.2021 has furnished, inter-alia, the following clarification:-

a) The duties of the Standing Committee on Anti-profiteering are clearly defined under Rule 128 and 129 of the CGST Rules, 2017. The Standing Committee was neither an investigating agency nor an adjudicating Authority. The Standing Committee examines the accuracy and adequacy of the evidence provided in the application to determine whether there was prima-facie evidence to support the claim of the Applicant No. 1 that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of ITC had not been passed on to the recipient by way of commensurate reduction in prices. Further in the matters, where the Standing

Committee was satisfied that was a prima-facie evidence to show that the supplier had not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices, the matter was referred to the DGAP for a detailed investigation.

- b) For the averment made by the Respondent that the Report could not go beyond the application submitted by the Applicant No. 1 vide letter dated 27.01.2019, the DGAP has clarified that as per Section 171 (1) of the CGST Act, 2017 which itself states that "*Any reduction in rate of tax on any supply of goods or services or the benefit of ITC should be passed on to the recipient by way of commensurate reduction in prices*" Thus, the legal requirement was abundantly clear that in the event of a benefit of ITC or reduction in rate of tax, there must be a commensurate reduction in prices of any supply of goods or services.

It might be noted that Rule 129 (2) authorizes the DGAP to conduct investigation on any supply of goods or services. Similarly, Section 171 (2) empowers this authority to examine whether the ITC availed or reduction in tax rate had actually resulted in commensurate reduction in the prices of the goods or services or both supplied by him. Hence, the investigation was not limited to complained product/service only and was being done for all the impacted goods/services.

Therefore, law prescribe that benefit of reduction in rate of tax or benefit of increase in ITC should result in commensurate reduction in prices of any Supply and accordingly, the DGAP was justified in

examining all the supplies made by the Respondent beyond the application filed by the Applicant No. 1.

- c) The "Methodology and Procedure" had been notified by this Authority vide its Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017. The main contours of under the "Procedure and Methodology" for passing on the benefits of reduction in the rate of tax and the benefit of ITC is enshrined in Section 171 (1) of the CGST Act, 2017 itself which states that *"Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit should be passed on to the recipient by way of commensurate reduction in prices"*. It is clear from the perusal of the above provision that it mentions *"reduction in the rate of tax on any supply of good or services"* which does not mean that the reduction in the rate of tax is not required to be passed on to each recipient. Further, the above section mention *"any supply"* i.e. each taxable supply made to each recipient was entitled to receive the benefit of tax reduction on each invoice raised to him. The word "commensurate" mentioned in the above Section gives the extent of benefit to be passed on by way of reduction in the prices which had to be computed in respect of each supply based on the benefit of ITC as well as the existing base price (price without GST) of the supply. To give further clarifications and to elaborate upon the legislative intent behind the law, the Authority had been empowered to determine/expand the procedure and methodology in detail. However, one formula which fits all could not be set while determining such a "Methodology and Procedure" as the facts of each case were different. In one real

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estate project, date of start and completion of the project, price of the house/commercial unit, mode of payment of price, stage of completion of the project timing of purchase on inputs, rates of taxes, amount of ITC availed, total saleable area, area sold and the taxable turnover realized before and after the GST implementation would always be different than the other project and hence the amount of benefit of additional ITC to be passed on in respect of one project would not be similar to another project. Issuance of Occupancy Certificate/Completion Certificate would also affect the amount of benefit of ITC as no such benefit would be available once the above certificates were issued. Therefore, no set parameters could be fixed for determining methodology to compute the benefit of additional ITC which would be required to be passed on to the buyers of such units.

Further the facts of the cases relating to the Fast-Moving Consumer Goods (FMCGs), restaurants, construction and cinema houses was completely different and therefore, the mathematical methodology employed in the case of one sector could not be applied in the other sector otherwise it would result in denial of the benefit to the eligible recipients. Further applying the same mathematical methodology of FMCG Sector to a supplier of a cinema sector would in fact lead to erosion of justice in the name of uniformity.

- d) The contentions of the Respondent regarding inappropriate mechanism of ratio of ITC to turnover are that there was a direct relation of ITC availed with that of output tax to be paid, as the use of ITC were only towards making payment of its output liability and

no refund of unutilized ITC should be allowed under Section 54 (3) of the CGST Act, 2017. Further in the case of the Respondent, it was observed from the schedule of payment for a homebuyer that the payment to be made by them was directly linked with the construction of the project. The contention of the Respondent made in this para was incorrect as Section 171 envisages that any additional benefit accrued to him on account of GST implementation was to be passed on to the eligible buyers as per their payment made. ITC benefit, if any, had to be passed on to each customer. Therefore, comparing ITC to turnover ratio in pre-GST & post-GST period to arrive at a figure on individual level which was proportionate to their payment made to the Respondent was correct in terms of Section 171. The costing of the project was also not seen as the issue pertained to extending the additional benefit on account of rate reduction or increase in ITC.

21. The Respondent submitted his supplementary submissions dated 05.04.2021 in continuation to his earlier submission dated 27.02.2021 wherein inter-alia, he has stated:-

- a) That Cost Of Construction in GST Era had increased many folds thereby neutralizing the ITC gained during GST era:-
 - i. The DGAP had arrived at the figures of alleged profiteering on the basis of ratio of ITC to turnover under the Pre GST & GST period which was absolutely incorrect and illogical.
 - ii. The fundamental objective behind introduction of the Anti-profiteering provision under the GST law was to see that no businesses should profit due to ITC admissibility during GST

period and thereby pocketing the increased ITC gain instead of transferring the same to the ultimate consumer.

- iii. In those cases where businesses had gained due to the ITC should pass on the benefits to the ultimate consumer by commensurate reduction in their prices.
- iv. The term profit implied the comparison of income vs. expenses. The Respondent submitted that in order to arrive at the value of profit during GST period one needed to make the comparison with increased income/gain vs. consequent increase in cost/loss. The Respondent submitted that by considering the increased income/gain as absolute factor to arrive at the profit amount would tantamount to envisaging factious profit which were grossly incorrect and mis-leading.
- v. In order to arrive at the actual profiteering amount during GST period the increased income i.e. the ITC gained during GST period and the increase in cost of goods/ services supplied during GST period should be compared and thereby arrived at the actual profit value.
- vi. The DGAP in his Report had not only ignored the factual details of the escalation in cost of constructions supplied by the Respondent but also proceeded with assumptions and presumptions to arrive at the illusionary profiteering amount.
- vii. The Respondent submitted that cost of construction was a composition of many variables like Raw materials, labor services, borrowing costs etc.
- viii. It was not possible for the Respondent to provide the absolute comparison of each such variable during pre-GST period and

GST period. However the Respondent had worked out the cost escalations comprising the tangible variables which was apparent from the record and could be easily apprehended. Cost escalation was not limited to such tangible variables only but it would consist of many intangible variables also. However due to the constraints in time it was not possible for the Respondent to quantify all such variables and put it before this Authority.

b) That the DGAP Report was based on presumptive facts & figures thereby ignoring the actual facts evident from the written agreement (i.e. binding contract):-

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- i. The DGAP had proceeded to arrive at the value of alleged profiteering by pre supposing the facts, figures, terms of contract etc. for all the buyers in same line as of the Applicant No. 1.
 - ii. The Applicant No. 1 had booked flat Pre-GST period whereas there were many flats and shops which were sold during the GST period and for which the price, terms of sale etc. had been negotiated at the then time.
 - iii. The price of flats/shops underwent change with the lapse of time considering the new market conditions and demand - supply position in market.
 - iv. That flats and shops which were sold during GST period were negotiated and arrived at the price factoring the GST impact on business and market. The price agreed between buyers and the Respondent was after providing for the GST ITC impact.
 - v. There were written contract / agreement between buyers and the Respondent wherein the considerations had been agreed

upon at relevant time with consensus of the buyers and the Respondent which could not be rebutted with the presumptions or artificial beliefs of the DGAP that same had not provided the consensus on account of GST ITC.

- vi. GST Law, Contract Act as well as the Transfer of Property Act, were passed by the Parliament and unless and otherwise either of them was having specific overriding impact to other legislations due respect to their independent provisions and jurisdiction should be provided.
- vii. Section 171 of the CGST Act, 2017 was not non obstante clause thereby overriding its impact over all the other legislation. The harmonious construction of Section 171 of CGST Act, 2017 when read with the Contract Act & Transfer of Properties Act would mean that in respect of those contracts which was executed prior to introduction of GST and wherein consideration for such contract was already determined could be re adjusted to provide for profiteering impact if any due to introduction of GST.
- viii. Those Contracts / agreements executed during GST period have already factored in profiteering impact due to introduction of GST at the time of arriving at the value of consideration by respecting the provisions of Section 171 of CGST Act, 2017.
- ix. The presumption of the DGAP that no concession had been considered at the time of executing the sale of flats / shops during GST period was arbitrary, ultra-virus to Contract Act &

Transfer of property Act and in abundant violation of Rule of *Caveat Emperor*.

- x. There was no implication of Section 171 of CGST Act, 2017 in respect of the Flats / Shops sold during GST period and hence the profiteering amount as worked out by the DGAP on all such Flats / Shops in his Report was grossly incorrect.
- c) That Methodology adopted for computing profiteering amount by the DGAP was arbitrary and same was evident from his Report itself:-
- i. Figures of alleged profiteering on the basis of ratio of ITC to turnover under the Pre GST & GST period which were absolutely incorrect and illogical.
 - ii. The construction business was peculiar business wherein the project were spread over different cycles falling among couple of years and during all such cycle of project the different activities were carried out which could not be put on a same page wherein different years could be compared with each other.
 - iii. The DGAP had taken the base of Turnover and ITC as two main pillars to determine the quantum of alleged profiteering. However, while considering the same as fundamental pillars the DGAP had not considered the cyclical nature of the business and its impact on the methodology devised by them to work out the alleged profiteering amount.
 - iv. In construction business the major component of the cost consists of the land which was incurred at the inception of the project cycle. The land was neither falling within purview

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of erstwhile Excise/ Service Tax/ VAT legislation and nor in GST legislation.

- v. At the time of launching of construction project, the main activity level after the procurement of land was towards the excavation and site formation etc. which in most of cases did not involve procurement of inputs and input services from outsiders and accordingly there were very small amount of ITC involved in inception stage,
- vi. As soon as the project progressed, the cost of inputs and input services increased and hence the ratio of ITC to turnover could not be equalized and compared during different cyclical years of the construction projects.
- vii. The computation of the alleged profiteering amount as worked out by the DGAP in his report itself was evident that the methodology was illogical and faulty.
- viii. At Sr. No. 14 of Table-A of the DGAP's Report dated 29.12.2020, the "Relevant ITC for period Jul-17 to Jun-20" was worked out by the DGAP as Rs. 84,47,070/- (Emphasis supplied....). It meant that according to the DGAP the Respondent had gained ITC of Rs. 84,47,070/- after introduction of GST.
- ix. At Sr. No. 12 of Table-B of the DGAP's report dated 29.12.2020, the "Excess Collection of Demand or Profiteering Amount" for period Jul-17 to Jun-20 were worked out by the Ld. DG as Rs. 85,77,419/- (Emphasis supplied.....). It meant that according to the DGAP the Respondent had profited / collected excess amount from the

customers to the tune of Rs. 85,77,419/- after introduction of GST and thereby not reducing the price of the flats / shops sold by him.

- x. The Respondent failed to understand as to how the DGAP's report had indicated gain ITC of Rs. 84,47,070/- during GST period and against which they should have reduced the price to the extent of Rs. 85,77,419/-.

d) That Profiteering if any should be limited to flats / shops sold before the receipt of Building Use (BU) permission:-

- i. Assuming but without admitting to the fact that the methodology adopted by the DGAP was correct then also the benefit on account of alleged profiteering should be limited to those units of flats and shops, which was said before the receipt of BU permission and on which tax was payable.
- ii. The ITC under GST legislation was admissible when the outward supply was taxable. Under the GST legislation as per Schedule III Sale of building along with sale of land in case wherein completion certificate was not received and full or part of consideration was received was taxable. However sale of building, wherein entire consideration received after obtaining completion certificate would not be regarded as supply and accordingly would not be taxable.
- iii. Some Flats and Shops under investigations were sold after the receipt of the completion certificate and on which there was no liability of GST. It is undisputed fact that ITC proportionate to turnover representing such Flats / Shops

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which was sold after the receipt of completion certificate would not be admissible.

- iv. In respect of those sale of flats and shops, where the ITC was not admissible, how come the question of the passing of the GST profiteering arose? Assuming without admitting the method of ratio inputs turnover adopted by the DGAP was correct then also the benefits if any to be passed would be limited to only those sale of units of and shops which were sold before receipt of completion certificate and on which the tax outward supply was liable accordingly for which ITC was admissible.
- v. In view of above alleged profiteering amount, if any, would not be more than 42,67,044/- as detailed here under:-

(Amount in Rs.)

Sr. No.	Particulars				
1	Period	A	July, 2017 to June, 2020 (Residential)	July, 2017 to June, 2020 (Commercial)	Total
2	Output GST rate %	B	12	12	12
3	Ratio of CENVAT credit/ Input Tax Credit to Total Turnover as per table – 'B' above (%)	C	2.40%/0.22%	2.40/0.22%	2.40/0.22%
4	Increase in input tax credit availed post-GST (%)	D=2.40% less 0.22%	2.18%	2.18%	2.18%
5	<u>Analysis of Increase in input tax credit:</u>				

6	Base Price raised during July, 2017 to June, 2020 for flats and Commercial (Rs.) – [Units sold before the receipt of completion certificate & on which GST were payable and for which ITC were admissible]	E	12,92,86,363	4,54,77,824	17,47,64,187
7	GST raised over Base Price (Rs.)	$F=E*B$	1,55,14,364	54,57,339	2,09,71,703
8	Total Demand raised	$G=E+F$	14,48,00,727	5,09,35,163	19,57,35,890
9	Recalibrated Base Price	$H=E*(1-D)$ or 97.82 % of E	12,64,67,920	4,44,86,407	17,09,54,327
10	GST @12%	$I=H*B$	1,51,76,150	53,38,369	2,05,14,519
11	Commensurate demand Price	$J=H+I$	14,16,44,070	4,98,24,776	19,14,68,846
12	Excess Collection of Demand or Profiteering Amount	$K=G-J$	31,56,657	11,10,387	42,67,044

vi. In any case the alleged profiteering amount of Rs. 85,77,420/- was not sustainable and deserved to be quashed.

e) That the DGAP's Report was vague:-

- The Report submitted by the DGAP was basic foundation of proceedings which might give rise to different consequences of law. Composite Report of findings issued by the DGAP left the matter in dark.
- Impugned Report presupposed the facts and figures as submitted hereinabove regarding the non- consideration and/or factoring of the GST ITC impact at the time of sale of new flats and shops during GST period. The Respondent submitted that the scientific and logical reasons behind the

adoption of the methodology to work out the alleged profiteering amount was not discussed or explained.

- iii. The hypothetical, unrealistic and arbitrary model adopted by the DGAP to work out the illusory and fictitious profiteering amount was full of ambiguity. The Respondent submitted that his contentions regarding the vagueness of the methodology and the Report of the DGAP also substantiated by the illogical conclusion drawn by him as discussed hereinabove at Para 27(C).
- iv. The impugned Report of the DGAP proceeded with pre-determined mindset to demand the alleged profiteering amount without offering any logical interference with the law and common parlance.
- v. In support of his contention, the Respondent relied upon the decision in the matter of erstwhile Service Tax & Central Excise Law, wherein the SCN which could be equated with the DGAP's Report had been vaguely issued and consequently same had been quashed by various *judicial fora*.
 - a) SBQ Steels Ltd. vs. Commissioner of Cus., C.Ex., & ST., Guntur 2014 (300) ELT 185 (AP).
 - b) CCE vs. Shemco India Transport 2011 (24) STR 409 (Tri Del.).
 - c) Amrit Food vs. CC 2005 (190) ELT 433 (SC).
- vi. Since the impugned Report of the DGAP itself was vague, cryptic and untenable in law and hence the proceeding against him deserved to be quashed *in toto*.

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f) There was violation of principle of natural justice:-

i. As per Section 75 of the CGST Act, 2017 which reads as under:-

"Section 75 General provisions relating to determination of tax

(1).....

(2).....

(3).....

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing.

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision".

Agreed

ii. The law itself provided for adherence to the principle of natural justice in following the adjudication proceedings and any adjudication in violation of the same would defeat the purpose of the law and the same should be set aside. The Respondent submitted that the investigation initiated by the DGAP and the Report submitted by him was in gross violation of principle of natural justice. The Respondent had never been called upon before determining the alleged profiteering amount. He had not been given an opportunity to explain his submissions, documents inspite of the fact that

the Respondent had always requested in writing in all his submission before the DGAP.

- iii. In case of D.P Mahesh vs. Assistant Commissioner (CT) (Addl.), Thiruvannamiyur Assessment Circle, Chennai [2013] 58 VST 434 (Mad.) wherein the Respondent i.e. Assistant Commissioner had passed the impugned order which amounted to violation of the principles of natural justice Considering the facts and circumstances of the case and in the interest of justice. The impugned assessment order dated 18.05.2012 was quashed with a direction to the Respondent i.e. Assistant Commissioner to consider the matter afresh after giving opportunity to the petitioner.
- iv. In case of Palaniappa Sago Factory vs. DCTO Attur Assessment Circle (2009) 24 VST 248) wherein reasonable opportunity was not given to the petitioner since Notice itself had not been served on the petitioner, it was held that the Order in question was liable to set aside and the assessing Authority was to proceed and finalise the assessment in accordance with law after giving the petitioner reasonable opportunity of being heard.
- v. The Hon'ble Supreme Court's decision in case of Mohinder Singh Gill v. Chief Election Commissioner, AIR 1978 SC 851, had discussed the importance of the canon of "Natural Justice".
- vi. The Respondent referred and relied on the Hon'ble Supreme Court's decision in case of Canara Bank v. V.K. Awasthy AIR 2005 SC 2090.

vii. The impugned Report submitted by the DGAP without adhering to and honoring the doctrine of natural justice deserved to be set aside.

g) That the impugned Report was non-speaking:-

i. Impugned Report of the DGAP was issued without applying to the provisions, Rules and all the submissions made by the Respondent. The Respondent submitted that the DGAP was in possession of all the documents and submissions made by him however the relevant submissions and explanations which were offered by the Respondent regarding the escalation of the cost of construction had been purposefully ignored.

ii. The impugned Report discusses about the alleged profiteering however while working out the alleged profiteering the cost escalation and the sale of flats / shops to the customers who had booked after the receipt of the Completion Certificate had been conveniently ignored by the DGAP and didn't make an attempt to work out the alleged profiteering amount as per the provisions and rules discussed hereinabove.

iii. Even while adjudicating the DGAP had proceeded to submit the Report without offering an opportunity to the Respondent to produce the additional written reply, relevant documents and an opportunity of personal hearing. The Respondent submitted that it was technically an ex-parte Report without giving due consideration to the submissions of the Respondent. The DGAP had not given any cogent findings

and attended to the contentions and submissions of the Respondent. The Respondent submitted that the impugned Report issued by the DGAP was in gross violation of principles of natural justice.

- iv. In the case of Cyril Lasardo (Dead) V/s Juliana Maria Lasarado 2004 (7) SCC 431 and Assistant Commissioner, Commercial Tax Department Vs. Shukla & Brothers reported at 2010 (254) ELT 6 (SC)=2011 (22) STR 105 (SC), importance of principle of natural justice and its strict adherence has been upheld.
- v. The impugned Report of DGAP being a non-speaking had been passed in gross violation of principles of equity fair play and natural justice. Therefore, the impugned Report was liable to be set aside on this ground alone.

22. The above supplementary written submissions of the Respondent dated 05.04.2021 were sent to the DGAP for reply/clarifications under Rule 133(2A) of the CGST Rules. A Supplementary Report dated 14.03.2022 was received from the DGAP wherein he has, inter-alia, clarified:-

- a. That for the contention raised by the Respondent that cost of construction in GST era had increased many folds thereby neutralizing the ITC gained during GST era it was stated that the mandate of Section 171 is limited to the extent of protecting the interest of consumers by ensuring that both the benefits of tax reduction and ITC which are sacrificed by the Central and State Governments from precious tax revenue, need to be passed on to the end consumers who bear the burden of tax. The Anti-

Profiteering provisions had nothing to do with fixing prices, profit margins and expenses in respect of the supplies made by the Respondent.

b. That in respect of the Respondent's contention that the DGAP's Report was based on presumptive facts & figures thereby ignoring the actual facts evident from the Written Agreement, it was submitted that the manner and method of working profiteering was settled on the guidance of the National Anti-profiteering Authority and which was followed in the DGAP's Report. The Respondent had not pointed out any mistake in facts and figures. However, he questioned the methodology taken for working out profiteering. Therefore, the methodology adopted in the Report was in accordance with the supplies of real-estate services and NAA had accepted the same in similar cases previously.

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c. That for the contention raised by the Respondent that Methodology adopted for computing profiteering amount by the DGAP was arbitrary and same was evident from their Report itself it was submitted that the "Methodology and Procedure" has been prescribed under Section 171(1) itself. The word "commensurate" mentioned in the above section gives the extent of benefit to be passed on by way of reduction in the prices which has to be computed in respect of each product. The computation of commensurate reduction in prices is purely a mathematical exercise which is based upon the above parameters and hence it would vary from product to product and hence no fixed methodology can be prescribed to determine the amount of benefit which a supplier is required to pass on to a recipient or the

profiteered amount. However, to give further clarifications and to elaborate upon this legislative intent behind the law, the Authority has been empowered to determine/expand the Procedure and Methodology in detail as per Rule 126 of the CGST Rules, 2017 which it has notified on 28.03.2018. In light of above facts, quantum of profiteering is determined by the DGAP by taking into account the particular facts of each case. Hence, there cannot be one-size-fits-all mathematical methodology. Moreover, there was no need to define the word "commensurate" as its literal meaning carries the essence of the law, as has been given in Section 171 of the CGST Act, 2017.

d. That the Respondent raised the contention that profiteering if any should be limited to flats/shops sold before the receipt of Building Usage (BU) permission. In this connection it was stated that the Respondent had not submitted the detail of Occupancy Certificate during investigation. The Report had been prepared on the basis of the data/Details submitted by the Respondent from July 2017 to June 2020. Even in his own calculation in Table-B at para D-5 of written submissions dated 05.04.2021, the Respondent had not mentioned the date of Occupancy Certificate. Therefore, this allegation was not sustainable.

e. That for the contention raised by the Respondent that the DGAP's Report was vague it is submitted that the allegation of the Respondent was not sustainable, as the Report of the DGAP was prepared after due consideration of all the factors and on the basis of Procedure and Methodology prescribed by this Authority. The case law quoted by the Respondent SBQ Steels Ltd. Vs.



Commissioner of Customs, C.Ex., & ST., Guntur 2014(300) ELT 185(AP), CCE vs. Shemeo India Transport 2011 (24) STR 409 (tri-del) and Amrit Food vs. CC 2005 (190) ELT 433 (SC) were not relevant to the present case.

f. That the Respondent raised the contention that impugned Report was a non-speaking. In this regard it was submitted by the DGAP that the Report was prepared on the basis of data/details and submissions submitted by the Respondent at the time of investigation. All the submissions of the Respondent were examined during preparation of the Report. Therefore this contention of the Respondent was not sustainable.

23. The quasi-judicial proceedings in the matter could not be completed by the Authority due to lack of required quorum of members in the Authority during the period 29.04.2021 till 23.02.2022, and that the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for quasi-judicial proceedings vide Order dated 23.03.2022 and hearing in the matter through Video Conferencing was scheduled to be held on 31.03.2022.

24. Therefore, hearing in the matter was held on 31.03.2022. It was attended by Shri Jayesh V Rathod, Applicant No. 1, Shri Manoj Singh, Assistant Commissioner for the DGAP and Shri Sanjay Sharma and Shri Tarun Arora, Chartered Accountant, Shri Jigar Shah, Advocate and Shri Pratik Trivedi and Ms. Jalpa Raval, Chartered Accountants for the Respondent. During the personal hearing, the Respondent has re-iterated his arguments based on his written submissions dated 27.02.2021 and 05.04.2021. The Respondent

during the hearing further requested time till 04.04.2022 to file his consolidated written submissions against the Report of the DGAP.

25. Further, the Respondent vide his email dated 04.04.2022 has filed his consolidated Written Submissions against the Report of the DGAP wherein he has re-iterated his earlier written submissions dated 27.02.2021 and 05.04.2021.
26. We have carefully considered the Reports filed by the DGAP, all the submissions and the documents placed on record, and the arguments advanced by the Respondent. It is clear from the plain reading of Section 171(1) that it deals with two situations:- one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period; hence the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. It is observed 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 0.22%, whereas, during the post-GST period (July-2017 to June, 2020), it was 2.40%.
27. The Respondent vide his various written submissions has contended that the Standing Committee had erred in referring the matter to the DGAP for further Investigation. The Authority finds that as per Rule 123 of the CGST Rules, 2017, the Standing Committee and the Screening Committees at the State level are mandated to carry out only prima facie examination of the allegations of



profiteering and, if found true, which are to be investigated by the DGAP in detail under Rule 129 (1) of the Rules. Hence, the contention raised by the Respondent is not correct in as much as prima facie the above Committees have found evidence to the effect that the ITC benefit has not been passed on by the Respondent.

28. The Respondent has contended that the Report of the DGAP could not go beyond the application submitted by the Applicant No. 1. The Authority notes that, in terms of Section 171(1) of the CGST Act, 2017, it is mandated that, *"Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices"*. Thus the legal requirement is abundantly clear that in the event of a benefit of ITC or reduction in rate of tax, there must be a commensurate reduction in prices of the any supply of goods or services. The said provision provides for 'any supply', which extend the scope to cover all supplies; where tax reduction or ITC benefit has not been passed on.

Therefore, the law prescribes that benefit of reduction in rate of tax or benefit of increase in ITC, in relation to any supply of goods or services should result in commensurate reduction in prices of such supply and accordingly, the DGAP was justified in examining all the supply made by the Respondent beyond the Application filed by the Respondent.

29. The Respondent has contended that the comparison of ratio of ITC to turnover for pre-GST period and GST period was not the correct mechanism for calculation of profiteering amount and that the alleged profiteering was incorrect. The Respondent has also averred that profiteering as per methodology of comparison or ratio of ITC to



turnover for pre-GST period and GST period was incorrect as the costs of the Respondent had increased compared to eligible claim of ITC. In the context of this claim, the Authority finds that, the amount of CENVAT or ITC earned on VAT during the pre-GST period is required to be compared with the amount of ITC available during the GST period to arrive at the quantum of ITC benefit, as it is only the additional ITC available during the GST period which is required to be passed on as per the provisions of Section 171 (1). This benefit is to be passed only w.e.f. 01.07.2017 when the provisions of Section 171 (1) have come in to force. Further, to substantiate his claim the Respondent has not submitted any documentary evidence during the course of investigation by the DGAP that the price offered to the customers booking flats post July, 2017 have been arrived after adjusting/giving benefit of additional ITC which accrued on account of GST. Therefore, the contention raised by the Respondent is not acceptable.

30. The Respondent has submitted that the report of the DGAP was based on presumptive facts and figures thereby ignoring the actual facts evident from the Written Agreement. The Respondent has stated that the ITC value adopted in the DGAP's Report was incorrect and erroneous. In this regard, the Authority finds that, the Report of the DGAP was prepared after due consideration of all the factors and data submitted by the Respondent in accordance with the 'Procedure and Methodology' prescribed by this Authority. The 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and the benefit of ITC are enshrined in Section 171 (1) of the CGST Act, 2017 itself which states 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". As the benefit of ITC has not been passed on by the Respondent to his home/shop buyers, therefore, he has violated the provisions of Section 171 of the CGST Rules, 2017 and therefore in the light of the above, the contention of the Respondent is not sustainable. The case laws quoted by the Respondent i.e. SBQ Steels Ltd. Vs. Commissioner of Customs, C.Ex., & ST., Guntur 2014(300) ELT 185(AP), CCE vs. Shemeo India Transport 2011 (24) STR 409 (Tri-Del) and Amrit Food vs. CC 2005 (190) ELT 433 (SC) are not relevant to the present case.

31. The Respondent has submitted that, in the absence of prescribed method of calculation of profiteering in the Act or the Rules or the procedure, the proceedings were arbitrary and liable to be set aside. The Respondent has also claimed that methodology adopted for computing profiteering amount by the DGAP was arbitrary and same was evident from the DGAP's Report itself. In this regard, it is to mention that as elaborated in para 30 supra the main contours of the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and the benefit of ITC are enshrined in Section 171 (1) of the CGST Act, 2017 itself which states 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.*" It is clear from the perusal of the above provision that it mentions "reduction in the rate of tax on any supply of goods or services" which does not mean that the reduction in the rate of tax is to be taken at the level of an entity/group/company for the entire supplies

made by it. Therefore, the benefit of tax reduction has to be passed on at the level of each supply of each unit to each buyer of such unit and in case it is not passed on the profiteered amount has to be calculated on each unit. Further, the above Section mentions “any supply” i.e. each taxable supply made to each recipient thereby clearly indicating that netting off of the benefit of tax reduction by any supplier is not allowed. Each customer is entitled to receive the benefit of tax reduction on each product purchased by him. The word “commensurate” mentioned in the above Section gives the extent of benefit to be passed on by way of reduction in the prices which has to be computed in respect of each product based on the tax reduction or availability of additional ITC as well as the existing base price (price without GST) of the product. The computation of commensurate reduction in prices is purely a mathematical exercise which is based upon the above parameters and hence it would vary from product to product and hence no fixed mathematical methodology can be prescribed to determine the amount of benefit which a supplier is required to pass on to a recipient or the profiteered amount.

One formula which fits all cannot be set while determining such a “Methodology and Procedure” as the facts of each case are different. In one real estate project, date of start and completion of the project, price of the house/commercial unit, mode of payment of price, stage of completion of the project, timing of purchase of inputs, rates of taxes, amount of ITC availed, total saleable area, area sold and the taxable turnover realized before and after the GST implementation would always be different than the other project and hence the amount of benefit of additional ITC to be passed on in respect of one project



would not be similar to another project. Issuance of Occupancy Certificate/ Completion Certificate would also affect the amount of benefit of ITC as no such benefit would be available once the above certificates are issued. Therefore, no set parameters can be fixed for determining methodology to compute the benefit of additional ITC which would be required to be passed on to the buyers of such units.

Further, the facts of the cases relating to the Fast Moving Consumer Goods (FMCGs), restaurants, construction and cinema houses are completely different and therefore, the mathematical methodology employed in the case of one sector cannot be applied in the other sector otherwise it would result in denial of the benefit to the eligible recipients. Moreover, both the above benefits have been granted by the Central as well as the State Governments by sacrificing their tax revenue in the public interest and hence the suppliers are not required to pay even a single penny from their own pocket and hence they have to pass on the above benefits as per the provisions of Section 171 (1). Hence, the Authority finds that, the above contention of the Respondent cannot be admitted.

32. The Respondent has also stated that the profiteering if any should be limited to Flats/Shops sold before the receipt of Building Usage (BU) permission. In this connection, it is to mention that the Respondent vide his submissions has stated that he has received Occupancy Certificate. The Respondent has not submitted any proof of receipt of any Occupancy Certificate before the Authority in his submissions. Therefore, the above contention of the Respondent is not tenable.



33. The Respondent has also submitted that the impugned Report was non-speaking and principle of natural justice has not been followed. It is further claimed that the DGAP has issued the report without providing them with any hearing. The Authority finds that, the Report of the DGAP is prepared on the basis of the Documents/data provided by the Respondent and as per the provisions enshrined under Section 171 of the CGST Act, 2017 which the Respondent has violated by not passing on the benefit of ITC to his home/flat buyers. The findings of the DGAP has not violated any of the rights of the Respondent and the said report was submitted to this Authority, which has provided ample opportunities to the Respondent to submit his position and also offered personal hearing. As such, principle of natural justice is followed in true sense and spirit. Various judgments quoted by the Respondent have been followed by the Authority before passing this Order. Therefore, the above submission of the Respondent is not acceptable.

34. In view of the above discussions, it is clear that the Respondent has profiteered by an amount of Rs. 85,77,419/- during the period of investigation i.e. 01.07.2017 to 30.06.2020. The Authority determined amount of Rs. 85,77,419/- (including 12% GST) under section 133(1) that has been profiteered by the Respondent from his home buyers (as per the list mentioned below), including Applicant No. 1, and shall be refunded by him along with interest @18% thereon, from the date when the above amount was profiteered by him till the date of such payment, in accordance with the provisions of Rule 133 (3) (b) of the GCST Rules 2017.



35. We find no reason to differ from the above-detailed computation of profiteering by the DGAP. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats/shops commensurate with the benefit of ITC received by him as has been detailed above.

36. We also order that the profiteering amount of Rs. 85,77,419/- shall be passed on along with the interest @ 18% to be passed on to the home/shop buyer from the date when the above amount was profiteered by him till the date of such payment by the Respondent within a period of 3 months from the date receipt of this order. The amounts to be refunded to each individual home/shop buyers is as per Annexure 'A' to this order. Such amount shall be refunded with appropriate interest @ 18% as ordered above.

37. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC has been passed on to each homebuyer as per this Order along with interest @18%. In this regard an advertisement of appropriate size to be visible to public at large may also be published in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of builder (Respondent) – M/s Savaliya Procon, Project- "Krish Elite", Location- Ahmedabad, Gujarat and amount of profiteering Rs. 85,77,419/- so that the concerned home/shop buyers can claim the benefit of ITC if not passed on. Home/shop buyers may also be informed that the detailed NAA

Order is available on Authority's website www.naa.gov.in.

Contact details of concerned Jurisdictional CGST/SGST who are nodal officer for compliance of the NAA's order may also be advertised through the said advertisement.

38. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding compliance of this Order to the Authority and the DGAP within a period of 4 months from the date of receipt of this order.
39. Further, the DGAP is also directed to monitor the compliance of the order by the concerned jurisdictional CGST/SGST Commissioner.
40. A copy of this order be sent to both the Applicants, the Respondent, Commissioners CGST/SGST Gujarat, the Principal Secretary (Town and Country Planning), Government of Gujarat as well as Gujarat RERA free of cost for necessary action.
41. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in *Suo Moto* Writ Petition (C) no. 3/2020, while taking *suo moto* cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitations prescribed under general law of limitation or any other specified laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

"A period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f.

15th March 2020 till further order/s to be passed by this Court in present proceedings."

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

"The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."

Accordingly this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

42. A copy of this order be supplied to the Applicants and the Respondent. File of the case be consigned after completion.

S/d
(Amand Shah)
Technical Member &
Chairman

S/d
(Pramod Kumar Singh)
Technical Member

S/d
(Hitesh Shah)
Technical Member

Certified copy


(Dinesh Meena)
NAA, Secretary
Enclosed: Annexure 'A' (page 1 to 10)



File No. 22011/NAA/10/SavaliyaProcon/2021

Date:-12.05.2022

Copy To:-

1. M/s Savaliya Procon Dharmik Patel, 701, Astron Tech Park, Opp. Iscon Cross Road, S.G. Road, Ahmedabad-380015.

2. Sh. Jayesh V Rathod, 303, Raman Rati Apartment, Saru Section Road, Jamnagar, Gujarat-361006.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Commissioner of Commercial Taxes, C-5, Rajya Kar Bhavan, Near Times of India, Ashram Road, Ahmedabad.
5. Chief Commissioner of Central Goods & Services Tax, Ahmedabad Zone, 7th Floor, CGST Bhavan, Revenue Marg, Opp. Poly., Ambawadi, Ahmedabad-380015.
6. The Chairman, Gujarat Real Estate Regulatory Authority, 4th Floor, Sahyog Sankul, Sector-11, Gandhinagar, Gujarat-382010.
7. The Office of the Chief Town Planner, Opp. St. Xavier's School, Road No. 3, Sector-10/A, Gandhinagar, Gujarat-382010.
8. Guard File.



Annexure 'A'

Sr. No.	Name of Homebuyer	Unit No.	Residential
			Amount of profiteering
1	GEETABEN PURUSHOTTAM BHAI MEWADA	B-103	23195.2
2	ANITA DINESHCHANDRA AMAERLIA	B-201	21119.84
3	MANISHABEN KAM LESHBHAI MISTRI	B-203	53715.2
4	NARENDRA VINODBHAI PANCHAL	B-204	62260.8
5	BHARTI MANUPRASAD RAVAL	B-301	48075.104
6	INDUBEN ISHWARLAL VYAS	B-302	39065.6
7	LALITABEN LALITKUMAR LUHAR	B-303	55839.392
8	JYOTSHNABEN & VUAY CHIMANLAL PANCHAL	B-304	18312
9	ARVIND DURGESH PUROHIT	B-401	53934.944
10	NILABEN VIKASHBHAI PARIKH	B-402	*
11	PRIT RAMESHBHAI PANCHAL	B-403	46390.4
12	ANITA BHARATBHAI PATEL	B-501	40286.4
13	FORAM JIGARBHAI MEVADA	B-502	39773.664
14	Prunesh Gunvant bhai Panchal	B-503	42728
15	PUSHPA VUAYKUMAR PANCHAL	B-504	59086.72
16	MAHENDRABHAI PATEL	B-601	57817.088
17	JUKEEBEN SHAILESH SHRIMALI	B-602	14234.528
18	HIREN RAMCHANDRA PUROHIT	B-603	46390.4
19	NILIMA BEN & KIRANBHAI M. PANCHAL	B-604	58476.32
20	RENUKA MAHENDRABHAI PANCHAL	B-701	56156.8
21	RACHANA PANCHAL	B-702	52982.72
22	MEGHA AMITKUMAR PATEL	B-703	49271.488
23	ZANKHNA BHAVIK8HAI KHATRI	C-102	49320.32
24	GITAKUMARI RAMANLAL	C-103	51273.6
25	NITALBEN RAJESHBHAI RAVAL	C-202	32961.6
26	NIKITABEN PATEL	C-203	59868.032
27	Oeeplka J Panchal	C-204	57279.936

28	SUTHAR ANKITBHAI BHARATBHAI	C-301	31032.736
29	KAMLESH KHEMCHANDBHAI PANCHAL	C-302	55302.24
30	PRABHABEN JAGDISHBHAI PANCHAL	C-303	45169.6
31	KAJALBEN MANSUKHBHAI UNJIYA	C-304	37844.8
32	PAYALSEN LOMESHKUMAR PANCHAL	C-401	40286.4
33	RAMILABEN PRAVINBHAI PANCHAL	C-402	50174.88
34	JAYSHREEBEN JAYESHKUMAR PARMAR	C-404	24416
35	SHARMILA NARPATSING GEHLOT	C-501	19703.712
36	NIRMALABEN PRAVINBHAI PANCHAL	C-502	46390.4
37	TEJASKUMAR PATEL	C-503	35403.2
38	NITABEN RAJENORAKUMAR PATEL	C-504	46390.4
39	SUSHILABEN MANOJBHAI PATEL	C-601	42972.16
40	RENISH KANTIBHAI 51TAPURA	C-602	48832
41	ARUNA & KALPESH GORDHANBHAI PATEL	C-603	244.16
42	FALGUNIBEN MITALBHAI BHAVSAR	C-604	28053.984
43	JAYSHRIBEN MAHENORBHAI G BHAVSAR	C-701	46390.4
44	VIPULBHAI R MAKWANA	C-702	48832
45	BHUMIKABEN SANDIP PANCHAL	C-703	58598.4
46	AMITAASH PATEL	C-704	51273.6
47	ANIL VALLABBHAI PANCHAL	D-101	20753.6
48	KAJALBEN ASHISHBHAI HARSORA	D-102	45389.344
49	PRATIMABEN RAMAN51NH PARMAR	D-103	34182.4
50	CHANDRIKABEN KANIYALAL PATEL	D-104	42117.6
51	LILABEN PARMAR	D-105	41775.776
52	Iajanti Mukesh Panchal	D-202	35476.448
53	HARDIKABEN HARDIKKUMAR MEVAOA	D-203	39065.6
54	Vandnaben Kaniyalal Panchal	D-204	40286.4
55	VINABEN VINODKUMAR PATEL	D-205	43069.824

56	KAILASHBEN RAMESHBHAI PATEL	D-206	31496.64
57	Rekhaben Brijeshbhai Prajapati	D-301	12208
58	PALLAVIBEN KAMLESHBHAI CHOUHAN	D-302	36624
59	NAYANABEN AND HARDIK ANO HANJA BABUBHAI PRAJ	D-303	41849.024
60	ROHIT SHANTILAL PRAJAPTI	D-304	39993.408
61	USHABEN AMBALAL VALAND	D-305	45657.92
62	PINKY HARSHADKUMAR PANCHAL	D-306	7130.399808
63	MEGHA PRIYANKBHAI PANCHAL	D-401	26857.6
64	HINABEN PRATIKBHAI BHAVSAR	D-402	37844.8
65	TEJAS BHARATBHAI PANCHAL	D-403	42605.92
66	Anandikuar Karansingh Rao	D-404	38333.12
67	ARTIBEN PRASHANTKUMAR PANDYA	D-405	42996.576
68	RA51LABEN GONOALIYA	D-406	26857.6
69	RUPALJIGNESH KALARIYA	D-501	20265.28
70	PINAL MEHUL NAYAK	D-502	40677.056
71	ARUNOHTIBEN PRAVINBHAI DAVE	D-503	41507.2
72	NIKITABEN NIKUNJKUMAR VANZA	D-504	8933.204
73	USHABEN CHATURBHAI OONGA	D-505	30520
74	BHAGVATI JAGDISHBHAI PANCHAL	D-506	13184.64
75	BHANUPRIYA KAILASHSINH RAJPUROHIT	D-601	18653.824
76	HARSHABEN BHARATBHAI GOHEL	D-602	41018.88
77	RITABEN MUKESH D LUHAR	D-603	34182.4
78	MADHUBEN PIYUSHBHAI PATEL	D-604	40359.648
79	DIPTIBEN NIKHILKUMAR PRAJAPTI	D-605	5944.0752
80	TARABEN CHIMANLAL LALKIYA	D-606	20692.56
81	SHAKUTALABEN VUAYBHAI RATHOD	D-701	22291.808
82	DIPAKKUMAR BHOLABHAI PATEL	D-702	5493.6

83	SHRAOBHAI VIERALKUMAR PANCHAL	D-703	34182.4
84	RUPALBEN GHANSHAM GONDALIYA	D-704	31862.88
85	OHARMISHTHABEN DILIPKUMAR MEHTA	D-705	42728
86	GRISHMA BHRUGESH PARMAR	D-706	5884.256
87	SHANTIBEN & JAYESHBHAI PIROTAR	E-101	43973.216
88	NISHANT KUMAR & PINAKIN J BHAVSAR	E-102	44901.024
89	RUBISINGH VIRENORASINGH RAJPUT	E-103	29299.2
90	ARVINDBHAI RANCHOD BHAI DABHI	E-104	41507.2
91	BHAGYASHRI SANDIP KATOLE	E-201	40750.304
92	SHILPBEN SUNIL DHOBI	E-202	29299.2
93	PRIYANKAKUMARI PANKAJ KUMAR SAHU	E-203	11719.68
94	Bhamari Devi Kah Ram	E-204	43460.48
95	DHAVALBHAIASHOKBHAIVEDEKAR	E-301	43948.8
96	DIPTI NARESH KADAM	E-302	41897.856
97	HARSHADA HARISHCHANDRA TALEKAR	E-303	21974.4
98	KALAAARVINDKUMAR PANCHAL	E-304	43094.24
99	MANISHABEN SURESHBHAI PATEL	E-401	39065.6
100	BEAUTY BANSIBADAN MALIK	E-402	32131.456
101	RENU AJAYTIWARI	E-403	41263.04
102	MAYA HIRABHAI PANCHAL	E-404	43973.216
103	BUAL & ASHOKKUMAR BABUBHAI PANCHAL	E-501	42947.744
104	KOKILABEN MANOHAR KOHIKAR	E-502	41311.872
105	BHANVARI BABULAL VIRDHRAM	E-503	34182.4
106	MANOJ SABAN TANDLUKAR	E-504	41409.536
107	KANKUBEN & AJMALBHAI Panchal	E-601	3662.4
108	RAMGOPAL MAKULAL KEVAT	E-602	47000.8
109	REKHABEN SUKHDEV KOSHTI	E-603	42972.16
110	JAYMALABEN RAMPRITTANTI	E-604	43436.064

111	SUMARIDEVI BRUNATH PRAJAPTI	E-701	40286.4
112	ART!BEN MANOJ VISHWAKARMA	E-702	14649.6
113	SURESHBHAU ATMARAM BHAGAT	E-703	10987.2
114	SHIVANI KAMLESHBHAI BHANDRI	E-704	21974.4
115	JAYSHREEBEN JIVIN CHAUHAN	F-101	31618.72
116	KOKILABEN VINODBHAI PATEL	F-102	28005.152
117	HETALBEN SAMIRBHAI PATEL	F-103	26979.68
118	NAYANABEN PANCHAL	F-104	35183.456
119	SHAILKUMARI DIGVIJAYSINH THAKUR	F-105	27638.912
120	RAGHUNATH RAMCHANDRA BHOSALE	F-106	8228.192
121	VIMALKUMAR PURANSINGH	F-201	35647.36
122	GAJRAJ SURESH YADAV	F-202	3369.408
123	VARSHABEN K SHAH	F-203	29299.2
124	VIMALKUMAR K PANCHAL	I-502	*
125	KINJALBEN CHETANKUMAR PANCHAL	F-205	25636.8
126	JAGJEETA VEERENDRAKUMAR RAJPUT	F-206	23195.2
127	DIMPALBEN KAIVALBHAI PATEL	F-301	3418.24
128	SHARDABEN RAMESHBHAI PANCHAL	F-302	28371.392
129	NITABEN JAGDISHBHAI PANCHAL	F-303	33449.92
130	RANI SAT!SHKUMAR SONI	F-304	32668.608
131	SITABEN ANILBHAI PANCHAL	F-305	25636.8
132	DHARMISHTHABEN PRADIPBHAI MODI	F-306	28005.152
133	KAILAASH BHARATBHAI PATEL	F-401	26857.6
134	HETALBEN ANILKUMAR PATEL	F-402	28566.72
135	RAMESHBHAI G PATEL	F-403	28078.4
136	VAISHALIBEN KIRAN PANCHAL	F-404	26857.6
137	PIYUSHKUMAR NATVARLAL PANCHAL	F-405	28078.4
138	PANKAJBHAI NATVARBHAI PATEL	F-406	30520

139	LABHUBEN DAHYABHAI PATEL	F-501	28078.4
140	MUKESHKUMAR K PATEL	F-502	29299.2
141	Gitaben A Panchal	F-503	34182.4
142	RIPAL HARDIK KACHHADIYA	F-504	35403.2
143	FORAMBEN BIPINBHAI PATEL	F-505	28078.4
144	GITA NATWARLAI PATEL	F-506	26857.6
145	REKHABEN NARENDRABHAI PANCHAL	F-601	34450.976
146	PRIYANKA A Gupta	F-602	*
147	PARUL CHANDRAKANTBHAI PATEL	F-603	33767.328
148	Trupti D Gohel	F-604	35281.12
149	MEENABEN PRAVINSINH RATHOD	F-605	26491.36
150	PUSHAPABEN MUKE5HBHAI PATIL	F-606	20875.68
151	HANSHABEN BHARATBHAI PANCHAL	F-702	23195.2
152	NILESH MANOHAR RAHUL	F-703	*
153	UMIYADEVI D PRAIAPTI	F-704	32082.624
154	OAKSHABEN MUKESH PITHDIYA	F-705	26857.6
155	VIMLADEVI DINESHKUMAR GHANCHI	F-706	34182.4
156	BINAL HITESHKUMAR TRIVEDI	G-102	25636.8
157	OIKSHITABEN JIGER PANCHAL	G-104	29299.2
158	ALPABAHEN DHARMENDRA PATEL	G-202	26857.6
159	GOMTIBEN RAMABHAI PATEL	G-203	15870.4
160	ANKIT MANSUKHBHAI SATASIYA	G-204	*
161	NILESHKUMAR P PANCHAL	G-301	*
162	GITABEN M VANAND	G-302	35671.776
163	KEVALBHAI P Rathod	G-303	*
164	SHEETALBEN NILESHBHAI MEWAOA	G-304	*
165	SAVITABEN NAVINI!HAI PATEL	G-401	29299.2
166	GITABEN N PANCHAL	G-402	34182.4
167	Jyotsnaben N Panchal	G-403	32668.608
168	Jayshriben Vijay Panchal	G-404	32595.36
169	SHOBHANABEN AMRATBHAI PATEL	I-505	21974.4

170	BALCHANO MOHANLAL PANCHAL	G-502	34841.632
171	REKHABEN MAHESHBHAI RATHOD	G-603	*
172	Shardaben V Desai	H-102	4028.64
173	MENABEN YOGESHKUMAR BHAVSAR	G-601	33132.512
174	HITENORA BHAICHANDBHAI PANCHAL	G-602	34450.976
175	MAMTA VUAYBHAI MALAVIYA	I-705	23195.2
176	NIKITABEN SANDIPKUMAR Shah	G-604	23195.2
177	NIRMAIA SATISH TUVAR	G-701	32424.448
178	SHILPABEN SHAILESHBHAI PANCHAL	G-702	32961.6
179	Mitalben Jitendrabhai Sitapara	G-703	30129.344
180	RADHIKABEN TUSHARKUMAR PATEL	G-501	21974.4
181	DHAVAL NARENDRABHAI PATEL	G-504	*
182	LILABEN ANNAJI MARWADI	H-103	25880.96
183	BINABEN KALPESHBHAI PANCHAL	I-601	*
184	HASUMATI D PATEL	H-201	32961.6
185	JAMUBEN JIVANBHAI PATEL	H-202	32961.6
186	MOULESH J DARJI	H-203	*
187	DARSHNABEN OIPAK RAMI	H-204	29299.2
188	OILIPKUMAR LALUBHAI KALAL	H-301	*
189	Archana M Panchal	H-302	34182.4
190	PRAVINCHANDRA VASANTLAL TRIVEDI	H-303	29299.2
191	KHUSHABU RAJAN TRIVEDI	H-304	29299.2
192	NIRMALABEN BHARATBHAI PRAJAPTI	H-401	34182.4
193	MEENABEN J PANCHAL	H-402	*
194	TARABEN JAYANTIBHAI PANCHAL	G-503	27028.512
195	REKHABEN RAMESHBHAI PANCHAL	H-404	25636.8
196	CHANORIKABEN HASMUKHBHAI BKALAL	H-501	25636.8
197	MEENABEN DIPAKKUMAR PAIEL	H-502	*
198	NARANBHAIMAICWANA	H-503	*

199	ANKITABEN VISHALBHAI H SLITHAR	H-504	25636.8
200	KINJALBEN SUNILKUMAR PATEL	H-601	31691.968
201	DAKSHABEN PRAKASHBHAI MISTRY	H-602	23073.12
202	PARESHKUMAR M VADHAVANA	H-603	*
203	MANJULA DHURALAL PANCHAL	H-604	31765.216
204	HEMAXIHARSHADBHAIPATEL	H-701	3479.28
205	URMILABEN VIPULBHAI PANCHAL	H-702	30544.416
206	MUKTABEN B BARVADIYA	H-703	29299.2
207	LABHUBEN RATHOD	H-704	30886.24
208	PARULBEN KALPESH KUMAR PANCHAL	I-101	32668.608
209	GITABEN SURESHBHAI PRAJAPRTI	I-103	29665.44
210	RIKETABEN MUKESHBHAI RAVAL	I-104	34866.048
211	JAGRUTIBEN HARSHADBHAI PANCHAL	I-105	21974.4
212	SONALBEN & HIMANSHUKUMAR S. PATEL	I-201	32253.536
213	ARUNABEN BHARATBHAI PATEL	I-203	14649.6
214	VUAYASEN PRAVINBHAI PATEL	I-204	35622.944
215	ARUNADEVI SANJAY LOHER	I-205	20021.12
216	PRIYANKABEN DEEPAKKUMAR PANCHAL	I-206	36526.336
217	SHILPABEN J KOLADIYA	I-301	*
218	BHARATKUMARJIVANBHAI PATEL	I-302	27687.744
219	SONALBEN RAVIKUMAR PATEL	I-303	25636.8
220	SHILPABEN P PANCHAL	I-304	34084.736
221	BHARTIBEN Teindra Patel	I-305	*
222	SHITAI MITESH PANCHAL	I-306	33132.512
223	JAIMINI VIPUL PANCHAL	I-401	27712.16
224	ASHABEN BHAVESHKUMAR PATEL	I-402	27516.832
225	NEHALBEN AJAVBHAI PATEL	I-403	34524.224
226	PRIYANKA ASHISHKUMAR PANCHAL	I-404	31179.232
227	Rekhaben A Rajput	I-405	30251.424

228	DISHABEN PARESHBHAI PATEL	I-406	29299.2
229	KALPANA YOGESH VAGHELA	G-704	30812.992
230	SUSHILABEN LAUTKUMAR MALVIYA	I-501	*
231	DHARABEN JAVESHKUMAR PANCHAL	I-503	27956.32
232	HEENA M TRIVEDI	I-504	34743.968
233	UM ESH ASHOKKUMAR CHHAPPARCHARI	F-204	*
234	Geetaben Vipulbhai Patel	I-506	24416
235	SWATI8EN YOGESH SHARMA	H-403	28542.304
236	KIRITBHAI N PRAJAPATI	I-602	*
237	MANJULABEN H GUJJAR	I-603	33083.68
238	DHAPUDEVI SHARVANSUTHAR	I-604	32668.608
239	Prabhaben C Panchal	I-605	21608.16
240	ALKABEN A BAROT	I-606	*
241	SHARMISHTABEN DIUPBHAI GOHIL	I-701	25343.808
242	SHITALBEN ARUNKUMAR BHATT	I-702	25710.048
243	YOGITABEN R PATEL	I-703	25636.8
244	ARPITA SATI5HKUMAR PATEL	I-704	26857.6
245	VAISHAU SANDIPKUMAR NAVAK	H-104	32204.704
246	AMITABEN RAJESHBHAI BORICHA	I-706	25636.8
Total			72,41,184

* :- No amount indicated in the DGAP's report dated 29.12.2020 (Annexure-11)

Sr. No.	Name of Shop buyer	Unit No.	Commercial
			Amount of profiting
1	SHAILESH R PRAJAPATI	A-1	85456.00
2	VISHALKUMAR RAMESHBHAI PATEL	A-101	58598.40
3	KETNABEN N DESAI	A-102	33816.16
4	VINTABEN P MOGHARIYA	A-103	33816.16
5	BHAVNA BEN R MOGHARIYA	A-104	33816.16
6	SHREYAS RAJABHAI SHAH	A-105	19044.48
7	AAKASH MOHANBHAI MALAVIYA	A-107	46390.40
8	MITESH KUMAR RAJPUT	A-2	73248.00
9	HIMANSHU A SATHAWARA	A-207	31740.80
10	BHAVINKUMAR GANPATBHAI PARATE	A-209	41507.20
11	ANIBHAI R TIMADIYA	A-210	53715.20
12	RAJENDRabhai j patel	A-3	62260.80
13	ANKITA RAVI PANCHAC	A-301	17091.20

14	ZARNA PRAGNESBHAI JOSHI	A-305	17091.20
15	BHARAT SHYAMSUNDAR SHARMA	A-306	15870.40
16	GAURAV JITENDRASINGH THAKUR	A-307	12208.00
17	RAGHVENORASING A THAKUR	A-308	12208.00
18	DASHRATHLAL SHIRAM PATEL	A-309	13428.80
19	MAHENDRA KUMAR H PRAJAPATI	A-310	16847.04
20	RUCHITA & KETKI TARUNKUMAR JAIN	A-313	17091.20
21	HAKSINGH MANGALSINGH RAJPUT	A-315	14649.60
22	PRASHANTIBEN M SAHUGIYA	A-316	10987.20
23	CHANDRIKA CHABILDAS DEVMURARI	A-317	15870.40
24	CHIRAG BABUBHAI PATEL	A-321	17091.20
25	JAYESH BHIKHABHAI PATEL	A-4	53715.20
26	AJAY R PATEL	A-401- A-421	256368.00
27	SANJAY RAJUBHAI PATEL	A-5	58598.40
28	DKIT RAJENDRA MISTRY	A-501	20753.60
29	ASHISH MANSUKHBHAI KATHIRIYA	A-506	17213.28
30	ROHIT M KATHIRIYA	A-507	17213.28
31	HIRENKUMAR KISHOBHAI DESAI	A-516	18067.84
32	SHRESH R SHAH	A-6	78131.20
33	YASH ENGINEERS	A-7	57865.92
34	SURENDRA KUMAR M VALAND	A-8	4463.83
	Total		13,36,235