BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY UNDER

THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No.	40/2020
Date of Institution	18.12.2019
Date of Order	14.07.2019

In the matter of:

1. Sh. S. Ganapathy Subramanian, 171, 8th Street, Annai Satya Nagar, Arumbakkam, Chennai- 600106.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Mahindra Lifespace Developers Ltd., Administrative Block, Mahindra World City, Chengalpet Taluk, Distt. Kancheepuram, Tamil Nadu-603002.

Respondent

Quorum:-

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

Present:-

1. None for the Applicants.
2. Sh. Manoj M. Kasture, General Manager, Sh. Akhilesh Thakur, Employee, Sh. S. S. Gupta, Chartered Accountant and Sh. Archit Agarwal, Chartered Accountant for the Respondent.

ORDER

1. In the present case the first investigation Report dated 05.11.2018 was 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. The brief facts of the case were that an application before the Standing Committee on Anti-profiteering under Rule 128 (1) of the CGST Rules, 2017, was filed by the Applicant No. 1 alleging profiteering by the Respondent in respect of purchase of a flat in the Respondent's "Avadi" Project at Chennai. He had also alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him. The

aforesaid application was considered by the Standing Committee on Anti-profiteering, in its meeting held on 25.05.2018, the minutes of which were received by the DGAP on 08.06.2018, whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter under Rule 129 (1) of the above Rules. The DGAP in his Report had stated that the Respondent did not co-operate with the investigation and tried to delay the investigation intentionally. The DGAP had also stated that the Respondent had not submitted the complete information required for the investigation. The DGAP had further stated that claim of the Respondent that the benefit of GST Input Tax Credit was already factored in the construction cost was not substantiated as the Respondent had recently communicated this information to the Applicant vide e-mail dated 01.06.2018. The DGAP had also observed that turnover of the Respondent during the period from July, 2017 to August, 2018 did not reconcile with the GST Returns filed by him and hence, the project details submitted by the Respondent could not be relied upon. It was also noticed by the DGAP that the Respondent had benefitted from the additional input tax credit to the extent of 7.57% of the taxable turnover. The DGAP had calculated the amount of profiteering in this case as Rs. 2,04,65,828/-.

2. This Authority, after perusal of the above Report of the DGAP, had decided to accord hearing to the concerned parties. During the hearing held on 13.12.18 this Authority had asked the Respondent to submit details of the project under investigation

and his other projects along with the Anti-Profiteering compliance and the details of the Completion Certificates (CC). The Respondent had submitted only the details of the project under investigation and no details of his other projects were supplied. Next hearing was held on 07.01.2019 when this Authority had again asked the Respondent to submit the current status and details of all the projects constructed by the Respondent to the DGAP. The Respondent had submitted the details of the project under investigation vide letter dated 25.01.2019 but did not submit the details of other projects. The Respondent also refused to accept the calculation of the ratios of CENVAT/ITC to the turnovers made by the DGAP in his Report dated 05.11.2018 and submitted new figures of ITC and turnovers for the pre and post GST periods as per the following table:-

Particular	Pre-GST	Post-GST	Difference
CENVAT/ITC	43,54,904	2,47,49,762	--
Turnover	8,80,21,261	48,44,94,239	--
Ratio	**4.95%**	**5.11%**	**0.16%**

3. The Respondent had claimed that the net additional ITC benefit was 0.16% which was quite different from the benefit of 7.57% as per the investigation Report of the DGAP. It was evident from the above claims of the Respondent that there were serious differences in the calculations of the above ratios made by the Respondent and the DGAP which required re-investigation.

4. The DGAP in his Report as well as in his subsequent letters had also stated that the Respondent had not submitted complete information which was required for investigation. It showed that the Investigation Report submitted by DGAP was not based on accurate information and was not complete.

5. This Authority after carefully examining the DGAP's Report, the submissions of the Respondent and all other documents placed on record had observed that :-

   (i) The DGAP's Investigation Report could not be considered as it was based on incomplete information.

   (ii) There was huge difference between the benefit of additional ITC calculated by the DGAP and the Respondent which was required to be re-investigated.

   (iii) The Respondent was reluctant in providing complete information to the investigation agency as well as to this Authority during the hearings which was required to be obtained from him and Report submitted accordingly.

6. Therefore, this Authority vide its order dated 27.02.2019 had directed the DGAP under Rule 133 (4) of the above Rules to re-investigate the matter and submit a comprehensive investigation Report. The Respondent was also directed to co-operate with the investigating agency and submit complete information to the DGAP. This Authority had also directed the DGAP to investigate other projects of the Respondent and verify their profiteering compliance.

7. The DGAP in compliance to the order dated 27.02.2019 has submitted the present investigation Report dated 18.12.2019 in which he has stated that in order to collect evidence necessary to reconcile the difference in the ratios of Input Tax Credit to the taxable turnovers calculated by him in the Report dated 05.11.2018 and to examine the submissions made by the Respondent made before this Authority in respect of the project "Avadi", a letter was issued to the Respondent on 09.04.2019, calling upon him to submit the information/ documents required to re-investigate the matter. The DGAP has also stated that vide e-mail dated 15.11.2019 the Applicant No. 1 was given an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 19.11.2019 or 20.11.2019, which the Applicant did not avail of.

8. The DGAP has further stated that the period covered by the current investigation was from 01.07.2017 to 31.10.2019.

9. The DGAP has also submitted that the Respondent had replied to the above letter vide his various letters/e-mails but did not furnish the complete and relevant documents required for investigation in spite of specific direction by this Authority. Hence, Summons under Section 70 of the CGST Act, 2017 read with Rule 132 of the above Rules, were issued on 19.11.2019 to Sh. Manoj Kasture, General Manager of the Respondent asking him to appear at the DGAP's office on 25.11.2019 and produce the relevant documents. However, the Respondent neither appeared nor furnished the complete information. In response to the Summons dated 19.11.2019, the Respondent vide

his e-mail dated 23.11.2019 had submitted partial documents and sought one week's time to submit the remaining documents.

10. The DGAP has further submitted that as all the documents were not received, another Summons dated 25.11.2019 were issued to Sh. Manoj Kasture, General Manager asking him to appear at the DGAP's office on 29.11.2019 and produce the relevant documents. In response to the above summons, the Respondent appeared on 29.11.2019 and submitted the documents vide his e-mails dated 29.11.2019 & 30.11.2019.

11. The DGAP has also intimated that in response to the DGAP's letter dated 09.04.2019 and further reminders vide letters/e-mails/summons, the Respondent had submitted his replies vide letters/e-mails dated 22.04.2019, 16.10.2019, 24.10.2019, 30.10.2019, 09.11.2019, 13.11.2019, 23.11.2019, 29.11.2019 and 30.11.2019. The submissions of the Respondent have been summed up by the DGAP as follows:-

a. That the Respondent had received Completion Certificate for Block D & F of the above project on 25.02.2019 and had reversed ITC of Rs. 23,93,212/- towards unsold units which must be reduced from the post-GST credit computation.

b. That in case there was any profiteering amount determined under Section 171 of the CGST Act, 2017 then the said amount should pertain to the customers who had booked units in the pre-GST regime and not for those customers who had booked flats post 30.06.2017.

c. That the Respondent had passed benefit of incremental ITC of Rs. 7,75,191/- under Section 171 to the flat buyers of Block D & F. This included incremental ITC benefit of Rs. 4,557/- to the Applicant No. 1 by Credit Note.

d. That he had not availed any ITC of Service Tax or VAT in the pre-GST regime with respect to Block D & F. Further for the period from 01.07.2017 to 24.01.2018, he had discharged GST @ 12% on the value of demand after one third deduction on account of land and the flat buyers had paid the same. For the period post 25.01.2018 till possession of the flat, the flat buyers had born GST @ 8% on value of demand letter after one third deduction for land.

12. The DGAP has further intimated that apart from the above, during the personal hearing held before this Authority, the Respondent had also submitted the following: -

a. Proportion of booking –Block F: - That the demand for recovery of the amount from the customers could be raised only on the premises which had been sold. No demand could be raised on the premises which were not sold. Accordingly, the tax was not paid, and the value of taxable Service was not disclosed in the Returns. Therefore, the proportion of use of credit would always depend upon the fact of proportionate quantum of sale of premises. In order to make proper comparison in Table-D, the credit to the extent of unsold area must be reduced from the post-GST period.

b. Recovery of maintenance charges: - That after completion of any building, it was required to be maintained by the builder for a period of two years and then it was handed over to the society. The Phase-1 of the project was completed in the year 2016 and the building was maintained by the Respondent till 2018. For the purpose of maintenance, the Respondent had appointed various suppliers and one of them was "M/s Cushman and Wakefield" which was a facility management company. The suppliers had maintained the building from year 2016 to 2018 for which they had charged fee plus applicable tax. Some portion of the tax charged by them had been availed as credit during the Service Tax period and balance in the GST period. The corresponding income of such expenses had been booked only in the Service Tax regime. At the time of possession, he had collected advance maintenance charges for two years which formed part of the taxable turnover appearing in the Returns. The credit of service had been taken in the post-GST period but the corresponding taxable income for the same had been taken in the pre-GST period. Therefore, for the purpose of proper comparison and computation, the turnover & credit pertaining to such maintenance charges must be reduced.

c. Transactions pertaining to Block C & G: - That during the period from July, 2017 to August, 2018, the value of credit and turnover was not much impacted from the transactions of Block C and Block G. The sales for Block C were started from November, 2018 and the construction work of the said Block began from November, 2018. Similarly, sales of Block G were started from

May, 2018 and the construction work of the said Block began from September, 2018. The Applicant No. 1 had booked flat in Block F. Block D and Block F were sold and constructed simultaneously. Accordingly, for the purpose of computation of profiteering amount, the credit and turnover details pertaining to Block D and Block F should only be considered and therefore, from the total credit and turnover figures upto December, 2018 as declared in the GST returns, the details pertaining to Block C & Clock G should be excluded.

d. The balance demand to be raised for the Block–F should be considered for the profiteering purpose:- That under the construction industry, the credit might accumulate in a particular period but the tax liability with respect to the same might arise in a different period. The construction activity went on gradually which resulted into accrual of CENVAT Credit. However, demand notices for the same were raised as per milestones mentioned in the agreement. Unless the milestone was achieved, the builder could not raise demand notice to the customer. However, CENVAT Credit would still accrue to the builder. In the present case, as on December, 2018, the construction work of Block F was about to complete and the Respondent was about to receive the CC for the said block. Thus, it had been estimated by the him that there would be very minimal ITC on account of administration and information technology expenses to be received for the said Block. Therefore, for proper computation of the benefit, the

pending turnover to be raised for the flats sold as on December, 2018, must had been added to the post-GST turnover.

e. Increase in credit on account of increase in cost of construction in GST period:- That the entire basis of computing profiteering amount was to find out the percentage of input credit increase in the post-GST period. The DGAP had ignored the fact that the cost of construction had increased drastically during the post-GST period owing to which the credit amount had also increased whereas the sale prices did not increase in the same ratio. Such increase in credit owing to inflation did not reflect in the increased benefit as specified under Section 171 of CGST Act, 2017. The increased ITC was not on account of GST but on account of increased cost of construction as one of the major contributors. The average increase in construction cost was about 21%. Correspondingly, the sale prices during the pre and post GST periods had increased by only 1.75%. The average selling price of the units during the pre-GST regime was Rs. 3,329 per sq. ft. whereas during the post GST regime, the average selling price of the units was Rs. 3,387 per sq. ft. Hence, there was an increase of only Rs. 58/- (1.75%) per sq. ft. Therefore, the net input tax availed by the company, as reflected in Table-D of the DGAP's Report, should be reduced by 19.25% (for post-GST period) to make the figures of pre and post GST comparable.

f. On the basis of above submissions, the Respondent had submitted that the Table-'D' should have been re-constructed as per the Table-A below:-

Table-A (Amount in Rs.)

Sr. No.	Particulars	Total Pre - GST	Total Post - GST
1	CENVAT of Service Tax paid to Input Services (A)	5,204,083	-
2	Input Tax credit of VAT paid on Purchase of Inputs (B)	-	-
3	Total CENVAT/Input Tax Credit Available (c) = (A+B)	5,204,083	-
4	Input Tax credit of GST Availed (E)	-	48,980,744
	Total Credit as per DGAP Report	5,204,083	48,980,744
	Factual adjustments		
	b) Reduction of credit to the extent booking done in the period after August, 2018 –F Block (21.50%) – Reply para 1		(5,196,094)
	Reversal of Credit availed for maintenance- Reply para 2	(849,179)	(1,285,453)
	f) Credit of Block C & G – Reply para 3		(12,023,372)
	g) Estimated credit of Block F – Reply para 4		365,000
	e) Reduction of credit to the extent increase in cost of construction when compared to pre-GST regime – Reply para 3(vii)		(6,091,063)
	Total Credit as per company (A)	4,354,904	24,749,762
5	Total Taxable Turnover as per DGAP report	133,129,362	474,552,629
	Factual adjustments		
	a) Reversal of turnover pertaining to maintenance- Reply para 2	(45,108,101)	
	c) Turnover of Block C & G Reply para 3		(21,569,649)
	d) Balance demand to be raised for F Block – Reply para 4		31,511,259
	Total Taxable Turnover as per company (B)	88,021,261	484,494,239
6	Revised Input / Output Ratio (A/B)	4.95%	5.11%

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

a. Copies of GSTR-1 Returns for the period from July, 2017 to March, 2019.

b. Copies of GSTR-3B Returns for the period from July, 2017 to October, 2019.

c. Copies of VAT & ST-3 Returns for the period from April, 2016 to June, 2017.

d. Copy of Project Report submitted to RERA for Tower D along with all periodic progress reports.

e. Copy of Project Report submitted to RERA for Tower F along with all periodic progress reports.

f. Copy of Completion Certificate for Block-F & D dated 25.02.2019 issued by Chennai Metropolitan Development Authority.

g. Copy of Electronic Credit Ledger for the period from 01.07.2017 to 31.10.2019.

h. CENVAT Credit/Input Tax Credit ledgers for the period from April, 2016 to March, 2019.

i. Details of Input Credit Reversal for post CC sales.

j. Copies of Credit Notes issued by Contractor for differential tax charged from the Respondent .

k. List of home buyers in the project "Avadi Project Bock-F & D" along with customer wise details of benefit passed on.

14. The DGAP has also reported that he has carefully considered all the documents placed on record to reconcile the difference in the ratios of Input Tax Credit to the taxable turnovers calculated by him in the Report dated 05.11.2018 and by the Respondent in his submissions filed before this Authority in respect of the project "Avadi".

15. The DGAP has further reported that the Respondent had received the CC in respect of Block F & D and therefore the Respondent had

furnished absolute figures of ITC availed during the post-GST period and the amount of demands raised during the post-GST period or the balance amount to be demanded.

16. The DGAP has also contended that before enquiring into the allegation of profiteering, it was important to examine Section 171 of CGST Act, 2017 which governed the anti-profiteering provisions under the GST. Section 171 (1) reads as "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 was abundantly clear that in the event of benefit of ITC or reduction in the rate of tax, there must be a commensurate reduction in the prices of the goods or services. Such reduction could only be in money terms, so that the final price payable by a consumer got reduced. This was the legally prescribed mechanism for passing on the benefit of ITC or reduction in the rate of tax to the consumers under the GST regime. Moreover, it was also clear that the said Section 171 simply did not provide a supplier of goods or services any other means of passing on the benefit of ITC or reduction in the rate of tax to the consumers. Thus, the legal position was unambiguous and could be summed up as follows:-

    a. That a supplier of goods or services must pass on the benefit of ITC or reduction in rate of tax to the recipients by commensurate reduction in prices.

    b. That the law did not offer a supplier of goods and services any flexibility to suo moto decide on any other modality to pass on the benefit of ITC or reduction in rate of tax to the recipients.

Therefore, in terms of Section 171 of the CGST Act, 2017, the claim of increase in cost on account of various factors could not be considered and could also not be set off against the benefit of Input tax credit.

17. The DGAP has further contended that the claim of the Respondent that the credit to the extent of unsold area must be reduced from the post-GST period could not be accepted. In this regard, the DGAP has made reference to para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, clause (b) of Paragraph 5 of Schedule II of the 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 had been received after issuance of completion certificate, where required, by the competent authority or after his first occupation, whichever was earlier". Thus, the ITC pertaining to the residential units which were under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the completion certificate, in terms of Section 17 (2) & Section 17 (3) of the CGST Act, 2017, which read as under:-

Section 17 (2) "Where the goods or services or both was used by the registered person partly for effecting taxable supplies including zero-

rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempted supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as was attributable to the said taxable supplies including zero- rated supplies".

Section 17 (3) "The value of exempted supply under sub-section (2) shall be such as might be prescribed and shall include supplies on which the recipient was 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".

The DGAP has stated that in the present case the Respondent had received the CC for Block D & F on 25.02.2019 and he had reversed ITC of Rs. 23,93,212/- towards unsold units. Therefore, the ITC availed post-GST period (after reversal) pertained to the sold area only.

18. The DGAP has also claimed that the Respondent had also contended that he had received the CC of Block D & F on 25.02.2019, therefore, for the proper computation of the benefit, the pending turnover to be raised for the flats sold prior to receiving of CC must had been added to the post-GST turnover. The DGAP has stated that this contention of the Respondent held good as the ITC availed (after reversal for unsold area) pertained to the units sold before the CC was received. Further, the demand which had already been raised post-GST and which was to be raised for the sold units was also known to the Respondent.

Therefore, for the purpose of computation of ratio of ITC to taxable turnover during post-GST period, the demand pending to be raised had also been considered.

19. The DGAP, on the basis of revised information and documents submitted by the Respondent, has submitted that prior to 01.07.2017, i.e. before the GST was introduced, the Respondent had not availed any credit of Service Tax paid on input services. Further, no credit was available in respect of Central Excise Duty and VAT paid on the inputs. However, post-GST, the Respondent could avail ITC of GST paid on all the inputs and the input services including the sub-contracts. From the information submitted by the Respondent for the period from April, 2016 to October, 2019, the details of the ITC availed by him, his turnover from the impugned project "Avadi", the ratios of ITC to turnovers, during the pre-GST (April, 2016 to June, 2017) and the post-GST (July, 2017 to October, 2019) periods, have been furnished by the DGAP as per Table-'B' given below:-

Table-'B' (Amount in Rs.)

S. No.	Particulars	Total 01.04.2016 to 30.06.2017 (Pre-GST)	Balance Base price to be raised as on 30.06.2017 from Pre-GST Customers	Agreement Value of Bookings made during 01.07.2017 to 25.02.2019	Total (Post-GST)
(1)	(2)	(3)	(4)	(5)	(6)= (4)+(5)
1	CENVAT of Service Tax Paid on Input Services used (A)	-			-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-			-
3	Input Tax Credit of GST Available (C)	-			305,71,822
4	Less: ITC of GST reversed for Unsold Units on receiving of CC (D)	-			23,93,212
5	Less: ITC of GST reversed on account of Credit Notes received from Contractors (E)	-			15,80,262
6	Net CENVAT/Input Tax Credit Available (F)= (A+B) or (C-D-E)	-			265,98,348
7	Turnover for Residential Flats as per Home Buyers List for Block F (G)	140,40,126	545,66,218	1802,72,612	2348,38,83

8	Turnover for Residential Flats as per Home Buyers List for Block D (H)	28,20,710	206,85,204	1211,70,756	1418,55,96
9	Total Turnover for Residential Flats for Block F & D (I)= (G+H)	168,60,836	752,51,422	3014,43,368	3766,94,79
10	Total Saleable Area of Block F &D (in SQF) (J)	1,37,212			
11	Total Sold Area relevant to turnover as per Home Buyers List (in SQF) (K)	27,729			
12	Relevant ITC [(L)= (F)*(K)/(J)]	-			265,98,348
	Ratio of ITC Post-GST [(M)=(J)/(I)]	**0.00%**			**7.06%**

20. The DGAP has contended from the Table-'B' supra 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 0.00% and during the post-GST period (July, 2017 to October, 2019), it was 7.06% which clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 7.06% [7.06% (-) 0.00%] of the turnover. Accordingly, the profiteering had been examined by comparing the applicable tax rate and ITC available in the pre-GST period (April, 2016 to June, 2017) when Service Tax @ 6% and VAT @ 2% was payable with the post-GST period (July, 2017 to October, 2019) when the effective GST rate was 12% (GST @ 18% along with 1/3rd abatement for land value) on construction service imposed vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Accordingly, on the basis of the figures contained in Table-'B' above, the comparative figures of ratios of ITC availed/available to the turnovers 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 by the DGAP as is given in Table-'C' below:-

Table- 'C'

(Amount in Rs.)

S. No.	Particulars		Post- GST
1	Period	A	After 01.07.2017
2	Output GST Rate (%)	B	12.00%
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	7.06
4	Increase in ITC availed post-GST (%)	D= 7.06% less 0.00%	7.06%
5	**Analysis of Increase in input tax credit:**		
6	BSP amount to be collected/raised as on 30.06.2017 from Customers made bookings in Pre-GST period	E	7,52,51,422
7	BSP Amt. (Agreement Value) to be Collected/raised from Customers made bookings during 01.07.2017 to 25.02.2019 (before receiving CC)	F	30,14,43,368
8	Total Turnover Post-GST	G=E+F	37,66,94,790
9	Base price raised during 01.07.2017 to 24.01.2018	H	1,48,55,971
10	Base price to be raised post 24.01.2018	I=G-H	36,18,38,819
11	GST @ 12% over Base Price (during 01.07.2017 to 24.01.2018)	J= (H*12%)	17,82,717
12	GST @ 8% over Base Price (post 24.01.2018)	K=(I*8%)	2,89,47,106
13	Total GST	L=J+K	3,07,29,822
14	Total Demand	M=G+L	40,74,24,612
15	Recalibrated Base Price (during 01.07.2017 to 24.01.2018)	N= (H)*(1-D) or 92.94% of (H)	1,38,07,139
16	GST @12%	O=N*12%	16,56,857
17	Recalibrated Base Price (post 24.01.2018)	P= I*(1-D) or 92.94% of I	33,62,92,998
18	GST @8%	Q= P*8%	2,69,03,440
19	Commensurate Demand Price	R= N+O+P+Q	37,86,60,434
20	Excess Collection of Demand or Profiteering Amount	S= M-R	**2,87,64,178**

21. The DGAP has also stated from the Table-'C' above that the additional ITC of 7.06% of the turnover should have resulted in the commensurate reduction in the base prices as well as cum-tax prices of the flats. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on by the Respondent to the respective recipients.

22. The DGAP has further stated from the amount of additional benefit of input tax credit on the basis of the aforesaid CENVAT/input tax credit

availability pre and post-GST and the details of the amount to be collected by the Respondent from the Applicant No. 1 and other home buyers as on 30th June 2017 and the new bookings made post 01.07.2017 till CC was received that the amount of benefit of ITC that had not been passed on by the Respondent to the recipients or in other words, the profiteered amount came to Rs. 2,87,64,178/- which included GST @ 12% on the base profiteered amount of Rs. 10,48,832/- and GST @ 8% on the base profiteered amount of Rs. 2,55,45,821/-. The home buyers and unit no. wise break-up of this amount has been given in Annexure-14 of the DGAP's Report. This amount was inclusive of Rs. 1,71,830/- (including GST on the base profiteered amount of Rs. 1,58,515/-) which was the benefit of ITC required to be passed on to the Applicant No. 1, mentioned at Serial No. 31 of the above mentioned Annexure-14.

23. On the basis of the details of the outward supplies of the construction service submitted by the Respondent, it was intimated by the DGAP that the said service had been supplied by the Respondent in the State of Tamil Nadu only.

24. On the basis of Table- 'A' and 'B' above, the reconciliation of ratios of ITC to the taxable turnovers calculated by the DGAP in his Report and the Respondent's submissions dated 25.01.2019 has been furnished by the DGAP as given in the Table- 'D' below:-

Table- 'D' (Amount in Rs.)

Sr. No.	Particulars	Post-GST Period		
		As per Respondents's Table-'A' above	As per DGAP's Table-'C' above	Remark
1.	Input Tax credit of GST Availed (A)	4,89,80,744	3,05,71,822	ITC pertaining to Block- F & D taken only.
2.	Less: Reduction of credit to the extent booking done in the period after August, 2018 –F Block (21.50%) (Unsold Area) (B)	51,96,094	23,93,212	Credit reversal pertaining to Unsold Area on receiving CC.
3.	Less: Reversal of Credit availed for maintenance (C)	12,85,453	-	Credit for Maintenance has already been excluded.
4.	Less: Credit of Block C & G (D)	1,20,23,372	-	ITC of C & G had already been excluded.
5.	Add: Estimated credit of Block F (E)	3,65,000	-	Actual Credit availed till Oct.' 2019 for Block- F & D had been considered, Therefore, no estimated Credit added.
6.	Less: Reduction of credit to the extent increase in cost of construction when compared to pre-GST regime (F)	60,91,063	-	Setting off of increase in cost on account of various factors with the benefit of ITC not considered as detailed in para- 15 above
7.	Less: Reversal of Credit on account of Credit Notes given by Contractors (G)	-	15,80,262	ITC reversed on account of Credit Notes given by Contractors to be reduced.
8.	**Net ITC of GST Availed (H)= (A-B-C-D+E-F-G)**	**2,47,49,762**	**2,65,98,348**	
9.	Total Taxable Turnover (H)	47,45,52,629	37,66,94,790	Turnover pertaining to Block- F & D
10.	Less: Turnover of Block C & G (I)	2,15,89,649	-	Turnover of C & G had already been excluded
11.	Add: Balance demand to be raised for F Block (J)	3,15,11,259	-	Demand to be raised had already been Considered
12.	Total Taxable Turnover (K)= (H-I+J)	**48,44,94,239**	**37,66,94,790**	
	Ratio of ITC to Taxable Turnover (L)= (H/K)	**5.11%**	**7.06%**	

25. On the basis of above reconciliation, the DGAP has stated that the difference in his calculation of additional benefit of ITC of 7.06% and the calculation of the Respondent of 0.16% [5.11% - 4.95%] as per Table- 'A' supra, was mainly on account of following three reasons:-

a. 4.95% was claimed to have been pertaining to the pre-GST period.

b. 1.26% on account of setting off of increase in cost with benefit of ITC.

c. 0.69% (approx.) on account of Units sold after August 2018 but before receiving OC.

26. The DGAP has further stated that the Respondent had submitted that he had passed on benefit of Rs. 7,71,830/- to the home buyers of Block D & F. The Respondent had submitted sample copies of Credit Notes vide his submissions dated 22.11.2019 vide which he had passed on the benefit of ITC and the same were verified by the DGAP and found to be correct. A summary of category- wise ITC benefit required to be passed on and the benefit already passed on, was furnished by the DGAP as in given in Table-'E' below:-

Table-'E' (Amount in Rs.)

S. No.	Category of Customers	No. of Units	Area (in Sq. ft.)	Amount raised/to be raised Post GST	Benefit to be passed on as per Annex-14	Benefit Passed on by the Respondent	(Excess)/ Shortage of Benefit (profiteering)	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant (Block-F)	1	677	22,45,250	1,71,830	4,557	1,67,273	Further Benefit to be passed on as per Annex-15
2	Buyers other than Applicant (Block-F)	138	76,290	23,25,93,580	1,77,51,683	4,75,442	1,72,76,241	Further Benefit to be passed on as per Annex-15
3		36	19,188	6,64,24,959	-	-	-	Units sold post receiving of Completion Certificates
4		1	514	-	-	-	-	Unsold Unit
5	Buyers other than Applicant (Block-D)	67	39580	14,18,55,960	1,08,40,665	2,91,831	1,05,48,834	Further Benefit to be passed on as per Annex-16
6		1	963	49,68,782	-	-	-	Unit sold post receiving of Completion Certificate
	Total	**244**	**1,37,212**	**44,80,88,531**	**2,87,64,178**	**7,71,830**	**2,79,92,348**	

27. From the Table 'E' supra, the DGAP has submitted that the benefit already passed on by the Respondent to the recipients was less than

what he ought to have passed on in case of 206 residential flats including the Applicant No. 1 (Sr. 1, 2 & 5 of above Table) by an amount of Rs. 2,79,92,348/-.

28. The DGAP has also submitted that the benefit of additional ITC to the tune of 7.06% of the amount collected by the Respondent from the Applicant No. 1 and the other home buyers and the new bookings made post 01.07.2017 till receiving of the CC, has accrued to the Respondent and the same was required to be passed on to the Applicant No. 1 and other recipients. Therefore, the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent inasmuch as the additional benefit of ITC @ 7.06% of the amount collected by the Respondent from the Applicant No. 1 and other home buyers and the new bookings made post 01.07.2017 till CC was received has not been passed on to the Applicant No. 1 and the other recipients. On this account, the Respondent has realized an additional amount to the tune of Rs. 1,67,273/- from the Applicant No. 1 as mentioned at Sr. No. 1 of Table- 'E'. Further, the Respondent has also realized an additional amount of Rs. 2,78,25,075/- as mentioned at Sr. No. 2 & 5 of Table- 'E', from 205 other recipients who were not Applicants in the present proceedings. These recipients were identifiable as per the documents provided by the Respondent, giving the names and addresses along with Unit Nos. allotted to such recipients. Therefore, this additional amount of Rs. 2,78,25,075/- was required to be returned to such eligible recipients. The DGAP has also argued 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 input tax credit shall be passed on to the recipient by way of commensurate reduction in prices", has been contravened by the Respondent in the present case.

29. The above Report was considered by this Authority in its meeting held on 19.12.2019 and it was decided that the Applicants and the Respondent be asked to appear before this Authority on 09.01.2020. The Respondent was issued notice on 20.12.2019 to explain why the above Report of the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the CGST Act, 2017 should not be fixed. During the course of the hearings no one appeared for the Applicants and the Respondent was represented by Sh. Manoj M. Kasture, General Manager, Sh. Akhilesh Thakur Employee, Sh. S. S. Gupta and Sh. Archit Agarwal, Chartered Accountants. The Respondent has filed written submissions dated 28.01.2020 and 27.02.2020. The issues raised by the Respondent have been mentioned in the subsequent paras.

30. The Respondent has submitted that the construction activity for Block D & F had commenced in the GST regime (i.e. in Sept 2017). All the activities related to construction of the project had been undertaken in the GST regime only. Since the project had commenced only under the GST regime, hence, the project could not be subject to the anti-profiteering proceedings at all. Further, he had also sent an e-mail dated 01.06.2018 to the Applicant No. 1 intimating that the project had been launched by the Respondent after the GST Act had been passed by the Parliament and therefore, the sale value which was

agreed upon by the above Applicant had taken in to account the benefits arising due to implementation of GST and no further benefits were to be passed on to the Applicant No. 1 on account of GST. It was also submitted that in the 9th Meeting of the GST Council held on 16.01.2017 it was decided that the GST would be rolled out from 01.07.2017 and the model GST law was also made available in the public domain. The model law already had the provision for availment of ITC by the Respondent which was not earlier available to him and also the provision of anti-profiteering. Further, the CGST Act was passed by the Parliament in March, 2017 and the builders were given sufficient time to ensure implementation of the GST law. Therefore, the Respondent had envisaged that he was supposed to pass on the additional benefit arising to him due to GST and hence, the agreement price was accordingly reduced to factor in the benefit arising due to GST. It was further submitted that the entire construction activity was undertaken in the GST regime and therefore, the impugned complaint was not sustainable at all and must be set aside.

31. The Respondent has also stated that in the present Report, the DGAP has computed pre-GST benefit as 0% and post-GST benefit as 7.06%. Accordingly, it had been concluded that the entire credit earned by the Respondent during the GST period was to be passed on under Section 171 of the GST Act. If the said Report was accepted, it would mean that the Respondent was not entitled to the input tax credit benefit at all under the pre-GST regime. However, the Respondent has claimed that he was fully entitled to CENVAT credit

of input service as per the CENVAT Credit Rules, 2004. Thus, it was submitted that the method applied by DGAP was giving absurd results and such methodology could not be adopted for computing profiteered amount under Section 171.

32. The Respondent has further stated that the total profiteered amount as calculated by DGAP was Rs. 2.87 crores (inclusive of tax) which included Rs. 1,71,830/- (inclusive of tax) to be passed on to the Applicant No. 1. The Respondent has referred to Table-'A' of the old DGAP Report dated 05.11.2018, wherein the DGAP had made calculation of tax which would have been collected from the complainant in case GST had not been introduced vis-à-vis the actual tax collected from the complainant. The Respondent has reproduced the Table as is given below:-

Particulars	BSP	Development & other Charges	ST & VAT	GST @ 12%	Total
Agreement Value (A)	20,64,850	2,31,175	1,57,279	-	24,53,304
Paid in Pre-GST era (B)	4,49,050	-	21,256	-	4,70,306
Balance to be paid post-GST (C = A-B)	16,15,800	2,31,175	1,36,023	-	19,82,998
Demanded by the Noticee (D)	16,15,800	2,31,175	-	2,22,858	20,69,833
Excess Demand by the Noticee (D – C)					86,835

The Respondent has submitted that he had collected Rs. 86,835/- as tax from the above Applicant which itself showed that there was gross error in the calculation made by the DGAP. The extra tax collected from the Applicant No. 1 was Rs. 86,835/- but benefit as per DGAP was Rs. 1,71,830/- which was to be passed on to the above Applicant.

33. The Respondent has also submitted that in case of construction industry, each project went on for 2-3 years and cost was constantly incurred by the builder / developer at each stage of development to finish the project and ITC of such cost was availed by the builder / developer. However, the revenue of the builder was earned only when each milestone as set out in the agreement was achieved by the Respondent. Therefore, the cost incurred by the developer in a particular period and the subsequent ITC availed on such cost need not synchronize with the turnover of that particular period, because if the milestone was not achieved in the particular period then demands could not be raised and therefore, there would be no revenue for the Respondent. The Respondent has further submitted that Since the work of the current project had been carried out by the Respondent only in the GST regime, entire ITC pertaining to the project had also been availed in the GST regime and therefore, the turnover pertaining to the flats booked in the pre-GST regime did not reflect the actual work done and therefore the turnover considered in the pre-GST regime should have been considered to be the turnover of the GST regime because the work in respect of the same had been done in the GST regime only.

34. The Respondent has also submitted that the DGAP in Table-B of the reinvestigation Report had calculated that the Respondent had benefited by 7.06% of the total turnover in the GST regime due to the introduction of GST. It was submitted that the said calculation made by the DGAP was incorrect for the following reasons:-

a. **There was an increase in ITC availed in GST regime due to increase in the cost of construction:** The Respondent has submitted that the DGAP had ignored the fact that the cost of construction had increased drastically during the post-GST period owing to which the credit amount had also increased whereas the sale prices did not increase in the same ratio. It was further submitted that the increased Input Tax Credit was not on account of GST but on account of increased cost of construction. It was also claimed that owing to increase in the construction cost, the credit availment (numerator) had also increased. However, there was no corresponding increase in the turnover (denominator) as the contracts with customers were not revised owing to increase in the cost of construction. Hence, the method of calculation adopted in Table-D was incorrect and could not be accepted. The Respondent has further claimed that in case of **M/s N. P. Foods – 2018 (9) TMI 1763 – NAA** this Authority had held that when there was an increase in the cost of inputs then profiteering could not be alleged if the price of goods had been increased.

b. **Increase in ITC was also due to increase in the rate of tax chargeable to services:** The Respondent has also contended that under the pre-GST regime, services were subject to Service Tax at the rate of 15%. Under the GST, in most of the cases, services were taxable at 18%. Therefore, there was an increase of 3% (18% – 15%) in the ITC available to the Respondent. This increase of 3% was not due to any additional benefit that the Respondent was getting due to the advent of GST but it was due

to increase in the rate of tax applicable to services which was more than what was applicable under pre-GST regime. Therefore, the Respondent had not benefitted from this increase in credit due to increase in the rate of Service Tax. Hence, in order to arrive at the correct profiteering figures, the credit figures must be revised for the services availed by the Respondent during the period from July, 2017 till August, 2018. The said calculation has been submitted by the Respondent as is given in the Table below:-

Period: July - 2017 to October – 2019

Sr. No.	Particular		Amount
1	Taxable Value of Input Services (pure service contracts)	A	50,31,600
2	ITC availed on these services (18%)	B	9,07,542
3	Service Tax if leviable – 15%	C = A * 15%	7,54,740
4	**Additional input tax credit**	**D = (B – C)**	**1,52,802**

It was further contended that this amount of Rs. 1,52,802/- was not an additional benefit which has accrued to the Respondent due to advent of GST but this credit was available to the Respondent even under the pre-GST regime. Thus, the same must be reduced from the post-GST period calculation in Table-C of the DGAP's report. The Respondent has further computed the impact of his above contention as is given in the Table below:-

Particulars	Total Post GST
Total Credit As per DGAP	**2,65,98,348**
Factual adjustments	
a) Increase in credit due to increase in rate of tax applicable on services - Reply paragraph 5.2	(1,52,802)
b) Increase in ITC due to increase in cost of construction (19.75% of balance ITC) - Reply paragraph 5.1	(52,22,995)
Balance Credit	**2,12,22,551**

He further submitted that in view of the above, the final amount of profiteering should be calculated as is given in the Table below:-

Particulars	Pre-GST	GST
Total ITC	-	2,12,22,551
Turnover (as per DGAP Report)	1,68,60,836	37,66,94,790
Ratio	-	5.63%

Based on the above working, the ratio has been re-calculated by the Respondent as 5.63% (5.63% - 0%).

35. The Respondent has also pleaded that the calculation made by the DGAP in the reinvestigation Report should have considered only those flat buyers who had purchased flats before the introduction of GST. It was further pleaded that in case of flats sold after 01.07.2017, the total sale value agreed between the Respondent and the flat buyer was fixed after considering the benefit arising to the Respondent due to advent of GST and the said benefit had already been considered in the final amount charged to the customer. The Respondent has also submitted that the profiteering amount should have been restricted to only those flats which were booked in the pre-GST regime and the same should have been calculated as follows:-

Particulars	Amount
Base Price demanded from 01.07.2017 to 24.01.2018	-
GST @ 12%	-
Base Price demanded from 25.01.2018 onwards	7,52,51,421
GST @ 8%	60,20,114
Total Demand (inclusive of tax)	8,12,71,535
Re-Calibrated Base Price for demand from 01.07.2017 to 24.01.2018	-
GST @ 12%	-
Re-Calibrated Base Price for demand from 25.01.2018 onwards	6,99,38,671
GST @ 8%	55,95,094
Total Revise Demand (inclusive of Tax)	7,55,33,764
Profiteering Amount	**57,37,770**

In view of the above, it was further submitted that the profiteering amount should have been restricted to Rs. 57.37 Lakhs only.

36. The Respondent has also argued that Rule 129 of CGST Rules prescribed the methodology for conduct of investigation to be carried out by the DGAP. In the present case, minutes of the meeting of the Standing Committee in which reference for investigation to the DGAP was made, had been received by the DGAP on 08.06.2018. As mentioned in Rule 129 (6), the investigation was supposed to be finished within 6 months from date of receipt of reference from the Standing Committee. Permission had been obtained by the DGAP from this Authority, as has been mentioned in Paragraph 8 of the DGAP's Report dated 05.11.2018, to extend the period of investigation. This permission was availed by the DGAP to complete the investigation by 06.11.2018, however, the investigation had finally been concluded by the DGAP on 18.12.2019 i.e. 407 days beyond the due date for completing the investigation. Hence, the Report of DGAP was beyond the prescribed time limit given under rule 129 (6) and accordingly the demand raised on the basis of said Report could not be sustained. It was also argued that even if it was assumed without admitting that the re-investigation under rule 133 (4) pursuant to the Order No. 1/2019 dated 27.02.2019 of this Authority was a fresh investigation (as per rule 133 (5) (b)), even then the DGAP must have filed his Report within 6 months from the date of order passed on 26.08.2019. However, the reinvestigation Report by the DGAP had been filed on 18.12.2019 and no evidence of any extension being approved by this Authority had been given in the Report. Even if the

extension was allowed, then the period of nine months (six months regular period + three months extended period) had expired on 26.11.2019 whereas the Report had been furnished by the DGAP on 18.12.2019. Therefore, the reinvestigation Report submitted by the DGAP was time barred and therefore, it must be set aside.

37. The Respondent has also averred that the Report of the DGAP was beyond the scope of this Authority's above Order. The DGAP in his re-investigation Report dated 18.12.2019 had computed the benefit of Rs. 2.79 Crore which had been profiteered by the Respondent, whereas, this Authority in its Order dated 27.02.2019 had directed the DGAP to re-investigate the matter and submit comprehensive Report specifically on the issue of large difference in the ratio of ITC on the total taxable turnover calculated by him as well as the Respondent. The Respondent has further averred that the directions were to reconcile the difference between the Respondent's submissions and DGAP's observations, however, the DGAP had gone beyond the direction given by this Authority and had enhanced the investigation period from August, 2018 to October, 2019. The Respondent has relied upon the following orders of the Hon'ble Tribunal and claimed that it had been consistently held that whenever the matter had been remanded back to the lower authority on a limited issue, such authority could not travel beyond the scope of such remand order:-

a. M/s Seshasayee Paper & Boards Ltd. 2011-TIOL-193-CESTAT-MAD

b. M/s Semac Ltd. 2011-TIOL-522-CESTAT-BANG

It was also submitted that the Report furnished by the DGAP was beyond the scope of directions issued by this Authority in its order dated 27.02.2019 and therefore, the impugned Report needed to be set aside.

38. The Respondent has also claimed that no mechanism had been prescribed in Section 171 of the CGST Act and the Rules prescribed under the said Section to calculate the 'profiteered' amount. It was further claimed that the law in respect of the mechanism to be followed to determine the 'profiteered' amount was unclear and ambiguous. Therefore, it was open to the Respondent to follow a logical and viable mechanism based on the nature of the business and the volatile nature of the industry. It was also submitted that the mechanism considered by the DGAP was arbitrary in nature. Section 171 referred to input tax credit under the CGST Act and there was no provision or Section to compare the pre-GST credits without taking into account the difference in law in the relevant periods; difference in the credit systems; nature of construction business and inability to raise bills in the absence of milestones being achieved. It was further submitted that the concept of 'benefit of input tax credit' was not defined anywhere in the Act or Rules made thereunder.

39. The Respondent has also contended that the DGAP had computed the total benefit to be passed on to the buyers of the flats by the Respondent as Rs. 2.87 Crore (inclusive of tax) which included Rs. 1,71,830/- (inclusive of tax) to be passed on to the Applicant No. 1. The Respondent has further contended that the GST amount should not have been considered as a benefit to the Respondent. It was also

submitted that the term 'profiteering' had been described in various dictionaries as follows:-

- **Black's Law Dictionary** - Taking advantage of unusual or exceptional circumstances to make excessive profits
- **Law Lexicon** - To seek or obtain excessive profits, one who is given to making excessive profits
- **Shorter Oxford English Dictionary** - Make or seek to make an excessive profit
- **Mount vs Welsh** - Any conduct or practice involving the acquisition of excessive profit
- **Islamic Academy of Education vs State of Karnataka** - Profiteering would mean taking advantage of unusual or exceptional circumstances to make excessive profits.

It was further submitted from the above definitions that only those amounts which had been collected and kept by the Respondent could be termed as "profiteering" on the part of the Respondent. The amount which had been paid by the Respondent to the Government could not be considered as 'profiteering' since the same was not retained by the Respondent. Therefore amount of Rs. 21,69,525/- should not form part of the profiteered amount.

40. The Respondent has also stated that the allegation by the DGAP that he had not provided complete data as and when asked for by the DGAP were not correct. The Respondent has submitted a list of the chronological events as per the Table given below to support his claim:-

DGAP Letter / email Dated	Particulars/Requirement of DGAP	Date of Reply by the Respondent	Particulars/Submission made by the Respondent	Annexure of the Report
09.04.2019 (received on 15.04.19)	1. GSTR-1 and GSTR-3B; 2. Electronic Credit ledger; 3. VAT and ST returns; 4. CENVAT and ITC Register; 5. Copy of Project Report submitted under RERA; 6. Summary of Outward liability and ITC under VAT, ST and GST	22.04.2019	All the documents which were asked were duly submitted	4
16.10.2019 & 24.10.2019	List of Home Buyers for the 'Avadi Project'	30.10.2019	List of Home Buyers for the 'Avadi Project' was duly submitted	5, 6 and 7
05.11.2019	1. Copy of Completion certificate in respect of Block D & F. 2. Details of reversal of ITC/Cenvat for unsold units in respect of Block D & F. 3. List of units sold post receiving of completion certificate and GST charges, if any. 4. List of Home buyers for Block D. 5. Block wise Bifurcation of Cenvat credit and GST ITC credit bifurcated block wise and for maintenance services. 6. Soft copies of submission Email dated 22.04.2019.	09.11.2019	All details from Point 1 – 4 were duly submitted.	8
13.11.2019	1.Details of reversal of ITC/Cenvat for unsold units in respect of Block D & F on receiving of OC. 2. Date upto which ITC in respect of Block D & F has been availed. 3. Block wise Bifurcation of Cenvat credit and GST ITC credit bifurcated block wise and for maintenance services. 4. Soft copies of submission Email dated 22.04.2019. 5. Account Statements of selected customers.	22.11.2019	All the documents which were asked were duly submitted.	10
25.11.2019	1. Summons issued for submission of Data under Section 70. 2. Bifurcation of post-GST turnover in 8% and 12% demands. 3. Details of balance demands to be raised on 30.06.2017.	29.11.2019	Summons was attended by Mr. Manoj Kasture and all the information was submitted and duly explained.	11

From the above chronology, the Respondent has further stated that whenever the DGAP had asked for the data it was provided by the Respondent promptly.

41. The submissions of the Respondent dated 28.01.2019 were forwarded to the DGAP for his Report. The DGAP vide his supplementary Report dated 10.02.2020 has replied on the issues raised by the Respondent as follows:-

a. **On the claim of the Respondent that construction activity commenced in the GST regime, therefore, Anti-profiteering proceeding cannot be initiated against the company:-** The DGAP has stated that the submissions made by the Respondent on this issue had already been dealt in his Report dated 05.11.2018 vide para 15 and 16. The DGAP has further stated that the Respondent had himself admitted in his submissions dated 25.01.2019 made before this Authority that the profiteering should be computed for Tower D and F rather than for the whole project. Apart from the above, the Respondent had also submitted during the course of the investigation that he had already passed benefit of incremental ITC of Rs. 7,75,191/- under Section 171 to the flat buyers which had been duly considered in his Report dated 18.12.2019. Had Anti-profiteering provisions not been attracted in the present proceedings then for what reason the Respondent had passed on such benefit to his home buyers. Therefore, the submissions made by the Respondent were baseless and had no merit.

b. **<u>On the claim of the Respondent that the computation method applied by DGAP has been giving absurd results:-</u>** The DGAP has stated that the contention of the Respondent was incorrect. The DGAP has further elaborated that he had prepared his Report dated 18.12.2019 on the basis of the information and documents submitted by the Respondent himself and in accordance with the relevant provisions of the CGST Act and Rules as discussed in detail in his Report dated 18.12.2019.

c. **<u>On the claim of the Respondent that benefit computed was more than the excess demand raised on flat buyers:-</u>** The DGAP has stated that, vide his Report dated 18.12.2019, the amount of benefit of input tax credit that needed to be passed on by the Respondent to the recipients or in other words, the profiteered amount was given as is shown in the Table below:-

Particulars	Period from 01.07.2017 to 24.01.2018 (GST @ 12%)	Period from 25.01.2018 to 31.10.2019 (GST @ 8%)	Total
Base profiteered amount	10,48,832	2,55,45,821	2,65,94,653
Amount of GST at applicable rate	1,25,860	20,43,665	21,69,525
	11,74,692	2,75,89,486	2,87,64,179

Therefore, the total profiteered amount during the period from 01.07.2017 to 31.10.2019 came to Rs. 2,87,64,179/- which included GST (@12 % or 8%) of Rs. 21,69,525/- on the base profiteered amount of Rs. 2,65,94,653/-. Hence, the DGAP has

stated that the base amount of profiteering was less than the actual input tax credit of Rs. 2,65,98,348/- availed by the Respondent.

d. **On the claim of the Respondent that turnover of the company did not synchronize with the actual work done by the company, therefore the turnover considered in the pre-GST regime should have been considered to be the turnover of the GST regime:-** The DGAP has stated that the above submission made by the Respondent did not hold good as the Respondent had discharged Service Tax liability on the amount raised/collected in pre-GST regime in accordance with the provisions of Finance Act, 1994 and no GST was discharged on such turnover therefore, DGAP had correctly considered the turnover in the pre-GST regime.

e. **On the claim of the Respondent that increase in ITC availed in GST regime due to increase in the cost of construction:-** The DGAP has stated that the increase in cost was a business risk which had already been taken care of while entering into an agreement with the home buyers as there was no cost escalation clause in the agreement entered into with the home buyers.

f. **On the claim of the Respondent that increase in ITC due to increase in the rate of tax chargeable to services:-** The DGAP has stated that Section 171 (1) of the CGST Act, 2017, reads as *"Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices"*. Therefore, in terms of

the above provisions, the input tax credit availed by the Respondent needed to be quantified and passed on to the recipients (the benefit of input tax credit post introduction of GST would be available only on the amount which bore higher tax incidence, i.e. the amount paid/raised post introduction of GST), which had been quantified in DGAP's Report dated 18.12.2019. Further, in the Report dated 18.12.2019, the increase in input tax credit as a percentage of total turnover availed by the Respondent post-GST had been quantified. The input or input service-wise availability or non-availability of input tax credit prior and post implementation of GST had not been examined. Further, there should be no extra liability on the Respondent on account of increase in the rate in the GST as the supplier of input services could avail input tax credit on all the purchases made by them resulting in reduction in prices of the materials purchased by them which they would pass on to the Respondent. Further, Section 171 of the CGST Tax Act, 2017 obliged the suppliers to pass on the benefit of reduction in the rate of tax or the benefit of input tax credit availed by them to the recipients by way of commensurate reduction in prices. Therefore, the approach and methodology adopted by the DGAP was in consonance with the provisions of Section 171 of the above Act.

g. **<u>On the claim of the Respondent that only flats sold before the introduction of GST should have been considered for passing on the benefit under Section 171:-</u>** The DGAP has stated that the Respondent had submitted that the total sale value for

agreement entered into between the Respondent and home buyers had already considered the benefit arising to the Respondent due to the advent of GST and the said benefit had already been considered in the final amount charged to the customers. However, no documentary evidence was available which could substantiate this claim of the Respondent and therefore, the flats sold in post-GST period had also been considered for the purposes of computation of profiteering amount.

h. **On the claim of the Respondent that reinvestigation Report of the DGAP had been issued beyond the time limit given in Rule 129 of CGST Rules, therefore, the same was time barred:-** The DGAP has stated that Rule 129 (6) of the Central Goods and Services Tax Rules, 2017 reads as *"Director General of Anti-profiteering shall complete the investigation within a period of six months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as may be allowed by the Authority and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records".*

In the instant case, the DGAP had received the reference from the Standing Committee on 08.06.2018 to initiate an investigation against the Respondent and he had submitted his Report on 05.11.2018 which was well within the prescribed time frame of 06.11.2018 after obtaining due sanction of this Authority vide

Order dated 07.09.2018, to extend the period of investigation by two months till 06.11.2018. Further, vide Order No. 01/2019 dated 27.02.2019, this Authority had referred the matter back to the DGAP under Rule 133 (4) of CGST Rules, 2017. The DGAP has stated that it was amply clear that the second reference was not received from the Standing Committee constituted for the purpose, thus the time frame of Rule 129 (6) was not applicable on the impugned Report as the DGAP had not initiated any fresh or new investigation. Rather, in order to comply with the directions given by this Authority, the DGAP had examined the concerns raised by the Respondent and submitted his Report to this Authority. Though there was a time frame for investigation and submission of Report in case of a reference received from the Standing Committee (which was duly adhered to in the initial investigation), there was no such time line for the examination of claims as per the directions of this Authority and for the first time, vide Rule 133 (5) of the CGST Rules, 2017, introduced w.e.f. 28.06.2019 it had been stated that *"any investigation or enquiry carried out on the direction of the NAA shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry."* Since Rule 133 (5) of the Central Goods and Services Tax Rules, 2017 was introduced with prospective effect from 28.06.2019, it had no bearing on the existing investigation or claims. Therefore, there was no limitation on the impugned Report and it was well within

jurisdiction. Thus, the contention of the Respondent that the Report dated 18.12.2019 was hit by limitation, did not hold good.

i. **On the claim of the Respondent that Re-investigation was beyond the scope of NAA order:-** The DGAP has stated that the Respondent had himself requested this Authority to extend the time period vide his submission dated 25.01.2019 as he was about to receive the CC by March, 2019 and requested to include the balance demand to be raised along with Input Tax Credit for the profiteering purposes. Therefore, the DGAP had extended the period of investigation for the reason that the CC was received by the Respondent on 25.02.2019.

j. **On the claim of the Respondent that GST amount should not have been considered as a benefit to the company:-** The DGAP has submitted that Section 171 of the CGST Act, 2017 and Chapter XV of the CGST Rules, 2017, required the supplier of goods or services to pass on the benefit of tax rate reduction to the recipients by way of commensurate reduction in price. Price included both, the base price and the tax paid on it. If any supplier had charged more tax from the recipients, the aforesaid statutory provisions would require that such amount should be refunded to the eligible recipients or alternatively deposited in the Consumer Welfare Fund, regardless of whether such extra tax collected from the recipient had been deposited in the Government account or not. Besides, any extra tax returned to the recipients by the supplier by issuing credit notes could be declared in the returns filed by such supplier and his tax liability should stand adjusted to

that extent in terms of Section 34 of the CGST Act, 2017. Therefore, the option was always open to the Respondent to return the tax amount to the recipients by issuing credit notes and adjusting his tax liability for the subsequent period to that extent.

k. **On the claim of the Respondent that all the documents had been timely provided by the company:-** The DGAP has stated that as already mentioned in his Report dated 18.12.2019, in spite of the specific directions given by this Authority in its order to the Respondent to promptly supply the information which the DGAP might require to conduct a comprehensive and thorough investigation, the Respondent had not co-operated during the course of investigation. Therefore, the DGAP had to issue two Summons to the Respondent.

42. The DGAP's Report dated 10.02.2020 in reply to the submissions of the Respondent dated 28.01.2020 was supplied to the Respondent for filing rejoinder, if any, before 21.02.2020 vide order dated 11.02.2020. The Respondent has filed re-joinder dated 27.02.2020 in response to the DGAP's Report dated 10.02.2020. The main contentions of the Respondent have been discussed in the subsequent paras.

43. The Respondent has submitted that the entire construction activity for the towers under investigation commenced in the GST regime and hence there was no additional benefit of input credit which the Respondent had received. It was further submitted that merely because the Respondent had passed on certain input tax credit, did not mean that the liability could be fastened upon the Respondent.

The Respondent has further submitted that it was a well settled principle that estoppels did not apply to taxation laws. The Respondent has relied upon the following judgements where it has been held that principle of estoppel did not apply to a taxation matter:-

a. ***Dunlop India Ltd. 1983 (13) ELT 1566 (SC)***
b. ***Bosch Chasis System India Ltd. 2008 (232) E.L.T. 622 (Tri.-LB),***
c. ***Mico Ltd. 2001 (136) E.L.T. 649 (T-Bang)***
d. ***Dodsal Pvt. Ltd. 2006 (193) E.L.T. 518 (Tri-Mumbai)***

44. The Respondent has also submitted that the method applied by the DGAP for computing the profiteered amount was not correct as the credit of Service Tax on input services was admissible to the Respondent under Rule 2 (l) of Cenvat Credit Rules 2004 which was utilised to pay Service Tax. Further, sub-contractor deduction from the gross turnover and credit of TN VAT was also available as per the provisions of Section 19 read with Section 5 of the Tamil Nadu Value Added Tax Act, 2006 read with Rule 8 of the Tamil Nadu Value Added Tax Rules, 2007. Only the credit of the Excise Duty levied on the goods was not admissible to the Respondent in the pre-GST regime. On the advent of GST, the entire credit on purchases was available to the Respondent. Thus, the additional benefit on introduction of GST was only the component of Excise Duty with respect to the materials used in the execution of the project during the GST period. The Respondent has further submitted that he had never

procured any material wherein Excise Duty was levied. Thus, the entire credit of taxes levied in the pre-GST regime was available to the Respondent. Hence no benefit was derived by the Respondent on implementation of the GST. However, the Respondent has submitted the benefit which has accrued to him on account of Excise Duty as follows:-

Row Labels	Material Name	Sum of TOTAL GST	Sum of Excise Duty @ 12.50%
Material	ACC Blocks	3,94,043	9,85,109
	CLC Blocks	28,423	71,058
	Door	1,96,281	1,36,306
	door accessories	89,088	61,867
	door frame	1,02,699	71,319
	Dustbin	32,74	22,740
	Gypsum	1,09,930	2,74,825
	Lock	1,19	833
	Plaster Fiber	21,139	14,680
	Reinforcement Steel	35,44,688	24,61,589
	Tiles	12,63,181	8,77,209
	waterproofing chem	59,724	41,475
Pure Service		9,07,542	
Works Contract		2,38,21,139	
Grand Total		3,05,71,822	50,19,008

It was further submitted that the total excise benefit accruing to the Respondent was Rs. 50,19,008/-, thus, the total benefit to be passed on under Section 171 could be maximum of Rs. 50,19,008/-.

45. The Respondent has also claimed that only the flats sold before the introduction of GST should have been considered for passing on the benefit under Section 171 of the CGST Act. In this regard it was further claimed that the new prices determined for the flats sold post GST regime were as per the market forces which captured the effect of benefit of ITC and the customers were also aware of this benefit while negotiating the prices. It was further submitted that the observations of DGAP made in his Report were in violation of Article 19 (1) (g) of the Constitution of India. The Hon'ble Supreme Court had held time and again that the word "business" contained in Article 19 (1) (g) of the Constitution of India was to protect all activities done for profit and not for pleasure or charity. Reliance in this regard was placed on the judgment passed in the case of ***Sodan Singh & Ors. v. New Delhi Municipal Committee & Ors. (1989) 4 SCC 155.***

46. The Respondent has also contended that the total profiteered amount as calculated by the DGAP was Rs. 2.87 Crore (inclusive of tax) which included Rs. 1,71,830/- (inclusive of tax) to be passed on to the complainant. The amount which had been paid by the Respondent to the Government could not be considered as 'profiteering' since the same was not retained by him. The DGAP had observed that the reduction in price as per Section 171 of CGST Act, 2017 included both base price and the tax paid on it, however, the term 'Price' was not defined in the CGST Act. Further, Section 15 of the CGST Act, 2017 provided for determination of value of supply for levy of GST. The basic provision of the said Section provided that value of supply was the price actually paid or payable for the supply. It was submitted

from the above provision that "price" of the goods was the value of supply but additionally value shall include taxes but not the GST. Thus, it was submitted that if the term price had already included tax on the same, then the interpretation of Section 15 would lead to vague meaning. Therefore, it was submitted that the observation of the DGAP that the price included GST was incorrect.

47. We have carefully considered all the submissions filed by the Applicants, the Respondent and the other material placed on record and find that the Applicant No. 1, vide his complaint dated 24.01.2018 had alleged that the Respondent was not passing on the benefit of ITC to him on the purchase of a flat in the "Avadi" Project being executed by the Respondent in Chennai, in spite of the fact that he was availing ITC on the purchase of the inputs at the higher rates of GST which had resulted in benefit of additional ITC to him and was also charging GST from him @12%. This complaint was examined by the Tamil Nadu State Screening Committee on Anti-Profiteering in its meeting held on 09.05.2018 and was referred to the Standing Committee on Anti-Profiteering. The Standing Committee on Anti-Profiteering had examined the above application in its meeting held on 25.05.2018 and forwarded it to the DGAP for investigation, who vide his investigation Report dated 05.11.2018 furnished to this Authority had stated that the Respondent had obtained additional benefit of ITC to the extent of 7.57% of the taxable turnover which he had not passed on to his buyers and he had thus profiteered an amount of Rs. 2,04,65,828/- in violation of the provisions of Section 171 of the CGST Act, 2017. However, due to the objections raised by

the Respondent on the above Report of the Respondent as well as the discrepancies found in the Report the DGAP was directed to re-investigate the above complaint under Rule 133 (4) of the above Rules vide Order dated 27.02.2019.

48. Accordingly, the DGAP has re-investigated the allegations levelled by the Applicant No. 1 and vide his Report dated 18.12.2019 has found that the ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period was 0.00% and during the post-GST period this ratio was 7.06%, as per the Table-B mentioned above and therefore, the Respondent has benefited from the additional ITC to the tune of 7.06% (7.06% - 0.00%) of the total turnover which he was required to pass on to the flat buyers of this Project. The DGAP has also found that the Respondent has not reduced the basic prices of his flats by 7.06% due to additional benefit of ITC and by charging GST at the increased rate of 12% on the pre-GST basic prices, he has contravened the provisions of Section 171 of the CGST Act, 2017. The DGAP has also submitted that the amount of benefit of ITC which has not been passed on by the Respondent or the profiteered amount came to Rs. 2,87,64,178/- which included 12% GST as is evident from Table-C supra. The DGAP has also intimated that this amount also included the profiteered amount of Rs. 1,71,830/- including 12% GST in respect of the Applicant No. 1 and Rs. 2,78,25,075/- including 12% GST in respect of 205 other flat buyers. He has also supplied the details of all the buyers who have purchased flats from the Respondent along with

their unit numbers and the profiteered amount in respect of each buyer vide Annexure-14, 15 & 16 attached with the Report.

49. It is clear from the record that the DGAP has computed the ratio of CENVAT as a percentage of the turnover for the pre GST period and compared it with the ratio of ITC to the turnover for the post GST period and then computed the percentage of benefit of additional ITC which the Respondent is required to pass on to the flat buyers. The above ratios have been computed by the DGAP on the basis of the Service Tax and GST Returns filed by the Respondent during the both the above periods and the ITC Registers maintained for the above periods by him and hence, the ratios calculated by the DGAP are based on the factual record submitted by the Respondent and hence they can be relied upon while computing the profiteered amount. The above methodology has also been approved by this Authority in all the cases where benefit of ITC is required to be passed on. Therefore, the above methodology is appropriate, logical, reasonable and in consonance with the provisions of Section 171 of the CGST Act, 2017.

50. The Respondent has submitted that the construction activity for Block D & F had commenced in the GST regime i.e. in Sept 2017 and hence, the above project could not be subjected to the anti-profiteering proceedings. However, perusal of Home Buyers list submitted by the Respondent himself vide Annexure-10 of the Report dated 18.12.2019 submitted by the DGAP shows that the first flat of the above project bearing No. FB-341 was booked by the Respondent on 19.09.2015 in the name of Ms. Rukmani M. which establishes that

the Respondent had firmed up estimates of construction of the project including the per sq. ft. prices of the flats well before the above date. In fact, on examination of the above list it is revealed that the Respondent had booked 40 flats in the pre-GST regime out of the total 108 flats booked till 31.08.2018. Only after fixing the prices of the flats the Respondent could have offered them for sale. It is also an established fact that the GST rates on various goods and services were fixed by the Central and the State Governments vide Notifications dated 28.06.2017 and therefore, the Respondent had no basis to estimate what would be the GST rates or the benefit of ITC available to him post GST implementation which he could have built in the estimate of cost of the flats prepared before the month of September, 2015. Since, the prices of the flats were fixed by the Respondent before coming in to force of the GST he was bound to pass on the benefit of ITC which has become available to him post GST implementation and reduce his prices commensurately to pass on the above benefit. Therefore, the above project of the Respondent is duly covered under the anti-profiteering provisions framed under Section 171 of the CGST Act, 2017 and hence the above claim of the Respondent is farfetched and hence it cannot be accepted.

51. The Respondent has also submitted that he had sent an e-mail dated 01.06.2018 to the Applicant No. 1 stating that the project had been launched after the GST Act had been passed and therefore, the sale value which was agreed upon by him included the benefit of ITC. The above contention of the Respondent is not established from the record as he had communicated this information to the Applicant No.

1 on 01.06.2018 only whereas the Respondent had executed the agreements for sale and construction with the above Applicant on 20.06.2017 much prior to implementation of the GST. The above agreements also do not mention that the benefit of ITC would not be passed on to the above Applicant as it was included in the price to be paid by the Applicant No. 1. Another claim made by the Respondent is that when the flat was sold to the applicant in June, 2017 and 20% advance received, the GST laws were already enacted by the Parliament and the GST implementation date of 01.07 2017 was also well known. However, as has been discussed supra there is no mention of not passing on the benefit of ITC in the agreements executed by the Respondent with the above Applicant. Moreover, the Respondent had started booking of the flats in the month of September, 2015 and he had no occasion to build in the benefit of ITC which was to be available w.e.f. 01.07.2017, at that stage. The Respondent has also admitted in his submissions dated 25.01.2019 that benefit of ITC should be computed in respect of Block D & F instead of the whole project. The Respondent could not have made the above submission in case he did not consider him liable under the anti-profiteering provisions. It is further evident from Table-E of the Report of the DGAP that the Respondent has submitted evidence before the DGAP to the effect that he has passed on an amount of Rs. 7,71,830/- on account of benefit of ITC to the flat buyers of the above Blocks of the project which has been duly confirmed by the DGAP. In case he was not liable to pass on the above benefit there was no reason for him to pass on the above amount. Therefore, all

the above contentions of the Respondent are frivolous and hence, they are not maintainable.

52. The Respondent has also stated that in the present Report, the DGAP has computed the pre-GST benefit as 0% and the post-GST benefit as 7.06% which would mean that the Respondent was not entitled to the ITC benefit at all under the pre-GST regime. However, the Respondent has claimed that he was fully entitled to the CENVAT credit of input services as per the Cenvat Credit Rules, 2004. However, perusal of the Service Tax Returns filed by the Respondent from April, 2016 to June, 2017 shows that he has not claimed any ITC on account of the Service Tax. In case he was eligible to claim ITC on CENVAT he should have claimed it. Since, the Respondent has himself not claimed ITC there was no ground for the DGAP to include it while calculating the ratio of CENVAT to turnover for the above period and therefore, the above ratio has rightly been computed as 0% by the DGAP vide Table-B of his Report. Hence, the above claim of the Respondent is untenable.

53. The Respondent has further stated that the total profiteered amount was Rs. 2.87 Crore which included Rs. 1,71,830/- to be passed on to the above Applicant. However, as per Table-A of the Report dated 05.11.2018, the extra tax collected from the Applicant was Rs. 86,835/- which showed that there was gross error in the calculation made by DGAP. In this regard it would be relevant to mention that the entitlement for benefit of ITC to the above Applicant is not dependent on the amount of tax to be paid by him but is to be computed @ 7.06% on the amount of consideration paid by him post-GST

implementation. Since, the CC has been obtained by the Respondent now the DGAP has calculated the exact amount of benefit which is required to be passed on to the Applicant No. 1 on the basis of the actual ITC availed by him. Hence, the above amount of Rs. 1,71,830/- computed by the DGAP is correct and therefore, the above contention of the Respondent is not maintainable.

54. The Respondent has also stated that there was no correlation between the ITC and the turnover in case of the construction industry and hence the computation of the profiteered amount was incorrect. In this connection it would be pertinent to mention that as per the provisions of Section 171 the Respondent is liable to pass on the benefit of additional ITC which has become available to him after coming in to force of the GST w.e.f. 01.07.2017. Therefore, comparison has to be made between the ITC which was available to the Respondent during the pre GST period with the ITC which has become available to him in the post GST period. Further the above benefit is required to be passed on the basis of the price which a buyer has paid post GST. Therefore, the ratio of ITC to turnover is required to be computed for both the above periods so that the additional benefit of ITC to the turnover could be computed and passed on, as is evident from the calculations made vide Table-B of the Report. Therefore, there is correlation between the ITC and the turnover as the benefit is directly linked to both. The Respondent has also adopted the same methodology by calculating the above ratios to arrive at the profiteered amount and has not suggested any alternate superior and justifiable methodology to compute the benefit of ITC.

Since, the benefit of ITC is required to be passed on every month as the Respondent is availing the ITC every month to discharge his GST liability and nothing is to be paid out of his own pocket as the above benefit flows from the scarce tax revenues of the Central and the State Government, the Respondent should have no objection on passing on the same. Therefore, the computation of the profiteered amount made by the DGAP by comparing the pre and post GST ratios of ITC to turnovers is correct and hence the above contention of the Respondent cannot be accepted.

55. The Respondent has further stated that since the work had been carried out in the GST regime and the entire ITC had also been availed in the GST regime therefore, the turnover pertaining to the flats booked in the pre-GST regime should have been considered to be the turnover of the GST regime. In this connection it would be appropriate to mention that the Respondent has discharged Service Tax liability on the amount realised by him from the buyers during the pre-GST period and no GST was paid on this turnover. There is also no legal provisions to consider the pre-GST turnover as the post-GST turnover on the ground that the construction of the project has been started during the post-GST period. It is also apparent from the home buyers list that the Respondent had started booking of the flats from September, 2015 therefore, the amount so collected in the pre-GST period cannot be shown to have been received in the post-GST period. The Respondent has further reflected the above amount as his turnover in the Service Tax Returns filed by him in the pre-GST period. Therefore, for calculating the ratio of ITC to turnover for the

pre-GST period, the turnover of the pre-GST period is required to be considered during the above period only otherwise the benefit of ITC can be computed correctly for passing on to the buyers. Hence, the above contention of the Respondent is not correct.

56. The Respondent has also submitted that the DGAP in Table-B of his Report has calculated that the Respondent has benefited by 7.06% of the total turnover in the GST regime due to the introduction of GST. However, the DGAP while calculating the above ratio has not considered that there was increase in the cost of construction due to which there was increase in the ITC and there was no increase in the prices of the flats. The above claim of the Respondent is not borne out from the provisions of the CGST Act, 2017 as the rates of GST are similar to the rate of taxes which were prevalent during the pre-GST regime and hence, the rates of GST have no impact on the cost of construction. It is also evident that the benefit of ITC has also been extended on the goods and services which are used in the construction service which has further reduced the cost of construction. The Respondent was himself not eligible to avail benefit of ITC on Service Tax, VAT, Central Excise Duty and other local taxes during the pre GST period to which he has become entitled during the post-GST period which has also reduced his costs. Since, the suppliers of the Respondent have also become entitled to ITC post-GST they have passed on the benefit of ITC to the Respondent which has resulted in cost reduction. There is also no escalation clause in the agreements executed by the Respondents with the buyers which shows that the Respondent had taken in to account the

rise in the construction cost while offering flats for sale. Therefore, there is no question of increase in the cost of construction and hence, the above contention of the Respondent in not sustainable.

57. The Respondent has also argued that in the case of **M/s N. P. Foods 2018 (9) TMI 1763–NAA** this Authority had held that when there was an increase in the cost of inputs then profiteering could not be alleged if the price of goods had been increased. However, in the above case there was denial of ITC after rate of tax was reduced due to which the above party was eligible to raise its prices to the extent of recouping the loss of denial of ITC which is not the issue in the present case. Therefore, the above case is of no help to the Respondent.

58. The Respondent has further submitted that due to increase in the rate of tax chargeable on services from 15% to 18% there was no benefit of additional ITC to the extent of Rs. 1,52,802/- which should be reduced from the total ITC post GST. He has also contended that the amount of profiteering should be calculated as 5.63% after excluding the increase in the ITC due to cost and tax on services. In this connection it would be appropriate to mention that the Respondent cannot appropriate the additional ITC to the extent of 3% due to increase in the rate of GST on services as his profit as the same has been given by the Central and the State Government out of the public exchequer. The Respondent is legally bound to pass on the above amount of ITC to his buyers as per the provisions of Section 171 of the above Act. The Respondent has also paid less on his purchase of services as the benefit of ITC is also available to his suppliers post GST which they ought to have passed on to him. Therefore, there is

no ground to exclude the above amount of Rs. 1,52,802/- and the ITC of Rs. 52,22,995/- on account of increase in the cost and consider the ratio of additional ITC as 5.63% instead of 7.06%. Hence, the above claim of the Respondent cannot be accepted.

59. The Respondent has also pleaded that the calculation of benefit should be made only in respect of those flat buyers who had purchased them before the introduction of GST as all the flat buyers who had purchased them post GST have already got the benefit due to reduction in the sale prices. Accordingly, the profiteering amount should be restricted to Rs. 57.37 Lakhs only. As has been discussed in para supra the Respondent had started booking of the flats on 19.09.2015 when he was not aware what would be the benefit of ITC post GST and hence, he had not built it in his prices. There is also no mention in the sale agreements executed by the Respondent with the post-GST buyers that the prices to be paid by them included the benefit of ITC and hence, they would not be entitled to the benefit of ITC. In case the post-GST buyers were not entitled to the ITC benefit there was no ground to pass on the benefit of ITC of Rs. 7,71,830/- by the Respondent to the post GST flat buyers including the above Applicant. Therefore, the Respondent is bound to pass on the benefit of ITC to those flat buyers who have purchased them post GST as there is no evidence on record to suggest that the benefit of ITC has been passed on to them. The Respondent has also admitted that he has passed on benefit of ITC of Rs. 7,71,830/- including the post GST flat buyers and hence, he cannot refuse to pass on the benefit to the post GST buyers. Hence, the above claim of the Respondent is

incorrect and therefore, the profiteered amount cannot be restricted to Rs. 57.37 Lakhs.

60. The Respondent has also argued that Rule 129 (6) of CGST Rules required that the DGAP should furnish his Report within a period of six months however, it has been submitted by the DGAP on 18.12.2019 after 407 days beyond the due date for completing the investigation. Perusal of the record shows that the Standing Committee on Anti-Profiteering had forwarded the complaint of the Applicant No. 1 to the DGAP on 25.05.2018 which was received by him on 08.06.2018. The DGAP was required to furnish the Report within 6 months which he had complied with by submitting the Report on 05.11.2018 after extension for completing the investigation was granted by this Authority by 2 months till 07.11.2018 under Rule 129 (6), vide its order dated 07.09.2018. However, this Authority vide its order dated 27.02.2019 had directed the DGAP to re-investigate the matter under Rule 133 (4) and furnish his Report. Perusal of the above Rule shows that no period has been prescribed for furnishing the Report under the above Rule as has been prescribed under Rule 133 (5). Further, the Report under Rule 133 (4) has to be submitted by the DGAP as per the period fixed by this Authority as per and an amount of Rs. 1,67,273/- and an amount of Rs. 1,67,273/- and an amount of Rs. 1,67,273/- and an amount of Rs. 1,67,273/- and an amount of Rs. 1,67,273/- Para 9 of the Detailed Guidelines issued by this Authority under the powers conferred on it vide Rule 126 of the above Rules vide its directions dated 04.10.2019 which can be extended as deemed fit by this Authority. Perusal of the order dated

27.02.2019 passed by this Authority under Rule 133 (4) shows that no time limit was fixed for completing the investigation. Therefore, no time frame had been fixed for submitting the Report by the DGAP either under Rule 133 (4) or the Detailed Guidelines dated 04.10.2019 issued by this Authority and hence, the above Report cannot be termed to have been furnished beyond the period on limitation. Moreover, the period fixed under Rule 129 (6) as well as Rule 133 (5) of the above Rules is only directory and not mandatory as no consequence have been provided in case the time limit prescribed under the above Rules is not followed. The Respondent cannot enrich himself at the expense of the flat buyers and misappropriate the public money under the above claim as he is not required to pass on the benefit of ITC from his own pocket. Therefore, the above argument of the Respondent is not maintainable.

61. The Respondent has also averred that the order of the DGAP was beyond the scope of this Authority's order dated 27.02.2019 as the DGAP was directed to reconcile the large difference in the ratios of ITC to the total taxable turnovers only whereas he has extended the investigation period from August, 2018 to October, 2019. Perusal of the earlier Report dated 05.11.2018 submitted by the DGAP shows that the period of investigation was from 01.07.2017 to 30.06.2018 whereas the period of investigation in the present Report is from 01.07.2017 to 31.10.2019. In this connection perusal of the submissions dated 25.01.2019 filed by the Respondent shows that he had requested for computation of the profiteered amount till the date of issue of CC. Since, the final CC has not been issued during the

period of the investigation conducted by the DGAP, he has rightly conducted the investigation till 31.10.2019, as the Respondent is liable to pass on the benefit of ITC till the CC is issued. This Authority vide its order dated 27.02.2019 had also not fixed any period for investigation. The reconciliation of the ratios of the ITC to the turnovers was only required to be made for computing the benefit of ITC which is to be passed on to the buyers by the Respondent which has been duly done by the DGAP vide Table-D supra. Perusal of this Table shows that the Respondent has wrongly taken the net ITC of GST availed as Rs. 2,47,49,762/- whereas this amount is Rs. 2,65,98,348/-. He has also incorrectly mentioned the amount of total taxable turnover as Rs. 48,44,94,239/- whereas actually this amount is Rs. 37,66,94,790/-. Therefore, the Respondent has wrongly computed the ratio of ITC to turnover as 5.11% post-GST whereas the correct ratio is 7.06%. Hence, the DGAP has not gone beyond the order dated 27.02.2019 passed by this Authority and therefore, the above claim of the Respondent is untenable.

62. The Respondent has also relied upon the following judgments to support his claim that whenever the matter had been remanded back to the lower authority on a limited issue, such authority could not travel beyond the scope of such remand order:-

a. M/s Seshasayee Paper & Boards Ltd. 2011-TIOL-193-CESTAT-MAD

b. M/s Semac Ltd. 2011-TIOL-522-CESTAT-BANG

Since, the DGAP has not gone beyond the order dated 27.02.2019 therefore, the law settled in the above cases is not being relied upon.

63. The Respondent has also claimed that no mechanism has been prescribed in Section 171 of the CGST act and the Rules prescribed under the said Section to calculate the 'profiteered' amount. The above contention of the Respondent is frivolous as the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and ITC has been outlined in Section 171 (1) of the CGST Act, 2017 itself which provides 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 plain reading of the above provision that it mentions "reduction in the rate of tax or benefit of ITC" which means that if any reduction in the rate of tax is ordered by the Central or the State Governments or a registered supplier avails benefit of additional ITC as a result of coming in to force of the GST the same have to be passed on by him to his recipients since both the above benefits are being given by the above Governments out of their tax revenue. It also provides that the above benefits are to be passed on any supply i.e. on each Stock Keeping Unit (SKU) of a product or unit of construction or service to every buyer and in case they are not passed on, the quantum of denial of these benefit or the profiteered amount has to be computed for which investigation has to be conducted in respect of all such SKUs/units/services by the DGAP. What would be the 'profiteered amount' has been clearly mentioned in Sub-Section 171 (3A) and the explanation attached to

Section 171 of the CGST Act, 2017. These benefits can also not be passed on at the entity/ organisation/ branch/ invoice/ product/ business vertical level as they have to be passed on to each and every buyer at each SKU/unit/service level by treating them equally. The above provision also mentions "any supply" which connotes each taxable supply made to each recipient thereby making it evident that a supplier cannot claim that he has passed on more benefit to one customer on a particular product therefore he would pass less benefit or no benefit to another customer than what is actually due to that customer, on another SKU/unit/service. Each customer is entitled to receive the benefit of tax reduction or ITC on each SKU or unit or service purchased by him subject to his eligibility. The term "commensurate" mentioned in the above Sub-Section provides the extent of benefit to be passed on by way of reduction in the price which has to be computed in respect of each SKU or unit or service based on the price and the rate of tax reduction or the additional ITC which has become available to a registered person. The legislature has deliberately not used the word 'equal' or 'equivalent' in this Section and used the word 'Commensurate' as it had no intention that it should be used to denote proportionality and adequacy. The benefit of additional ITC would depend on the comparison of the ITC/CENVAT which was available to a builder in the pre-GST period with the ITC available to him in the post-GST period w.e.f. 01.07.2017. Similarly, the benefit of tax reduction would depend upon the price and quantum of reduction in the rate of tax from the date of its notification.

Computation of commensurate reduction in prices is purely a mathematical exercise which is based upon the above parameters and hence it would vary from SKU to SKU or unit to unit or service to service and hence no fixed mathematical methodology can be prescribed to determine the amount of benefit which a supplier is required to pass on to every buyer. Similarly, computation of the profiteered amount is also a mathematical exercise which can be done by any person who has elementary knowledge of accounts and mathematics. However, to further explain the legislative intent behind the above provision, this Authority has been authorised to determine the 'Procedure and Methodology' which has been done by it vide its Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017. However, no fixed formula, in respect of all the Sectors or the SKUs or the units or the services, can be set for passing on the above benefits or for computation of the profiteered amount, as the facts of each case are different. In the case of one real estate project, date of start and completion of the project, price of the flat/shop, mode of payment of price or instalments, stage of completion of the project, rates of taxes pre and post GST implementation, amount of CENVAT and ITC availed/available, total saleable area, area sold and the taxable turnover received before and after the GST implementation would always be different from 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 the other project. Therefore, no set procedure /methodology /guidelines/ principles/modalities/formula can be framed for determining the

benefit of additional ITC which has to be passed on to the buyers of the units. Moreover, this Authority under Rule 126 has been empowered to 'determine' Methodology & Procedure and not to 'prescribe' it. Similarly, the facts of the cases relating to the sectors of Fast Moving Consumer Goods (FMCG), restaurant service, construction service and cinema service are completely different from each other and therefore, the mathematical methodology adopted in the case of one sector cannot be applied in the other sector. Moreover, both the above benefits have been given by the Central as well as the State Governments as a special concession out of 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 therefore, they are bound to pass on the above benefits as per the provisions of Section 171 (1) which are abundantly clear, unambiguous, mandatory and legally enforceable. The above provisions also reflect that the true intent behind the above provisions, made by the Central and the State legislatures in their respective GST Acts is to pass on the above benefits to the common buyers who bear the burden of tax and who are unorganised, voiceless and vulnerable. The Respondent is trying to deliberately mislead by claiming that he was required to carry out highly complex and exhaustive mathematical computations for passing on the benefit of tax reduction which he could not do in the absence of the mechanism under the above Act and the Rules. However, his claim is absolutely wrong as he was only required to compute the benefit of additional ITC which he had obtained after coming in to force of

the GST and pass it on to his buyers according to the amount of price received from them during the post GST period. Hence, no mechanism or elaborate mathematical calculations are required to be prescribed separately for passing on the benefit of ITC as such a mechanism has already been provided under Section 171 itself. The Respondent cannot deny the benefit of ITC to his buyers on the above ground and enrich himself at the expense of his buyers as Section 171 provides clear cut methodology and procedure to compute the benefit of tax reduction. Therefore, the above plea of the Respondent cannot be accepted.

64. The Respondent has also contended that the DGAP had computed the total benefit to be passed on to the buyers as Rs. 2.87 Crore inclusive of GST which included Rs. 1,71,830/- inclusive of GST to be passed on to the Applicant No. 1 whereas the GST amount should not have been considered as benefit to the Respondent. In this connection it would be relevant to state that the Respondent has not only collected excess prices from his flat buyers which they were not required to pay due to the benefit of additional ITC but he has also compelled them to pay additional GST on these excess prices which they should not have paid. The Respondent has thus defeated the objective of both the Central and the State Government to provide the benefit of ITC by sacrificing their tax revenue. The Respondent was legally not required to collect the excess GST and therefore, he has not only violated the provisions of the CGST Act, 2017 but has also acted in contravention of the provisions of Section 171 (1) of the above Act as he has denied the benefit of ITC to the

ordinary buyers by charging excess GST. Had he not charged the excess GST the buyers would have paid less price while purchasing flats from the Respondent and hence the above amount has rightly been included in the profiteered amount as it denotes the amount of benefit denied by the above Respondent. It would also be appropriate to state here that price includes GST also. Therefore, an amount of Rs. 21,69,525/- collected as GST by the Respondent cannot be reduced from the profiteered amount. Hence, the above contention of the Respondent is untenable and it cannot be accepted.

65. It has also been pleaded that the term 'profiteering' has been described in various dictionaries such as **Black's Law Dictionary, Law Lexicon, Shorter Oxford English Dictionary** and **in the cases of Mount v. Welsh and Islamic Academy of Education v. State of Karnataka** as advantage of unusual or exceptional circumstances to make excessive profits. However, the above contention of the Respondent is wrong as what would constitute the 'profiteered' amount has been elaborately defined in Section 171 of the CGST Act, 2017 itself as under:-

> *"(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 in prices."*
>
> *(2). The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time*

being in force, to examine whether Input Tax Credits 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) shall exercise such powers and discharge such functions as may be prescribed.

(3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has ***profiteered*** *under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:*

PROVIDED that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

Explanation:- For the purpose of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services of both."

(Emphasis supplied)

66. Therefore, it is evident from the above Section and the Explanation attached to it that profiteering pertains to the amount of benefit which has been denied to the recipients by a registered person by not reducing the prices of his products commensurately on which the rate of tax has been reduced or the benefit of ITC has been availed. Hence, the definitions quoted by the Respondent from various dictionaries and cases are not applicable. Similarly, his contention that the above term refers to excessive, exorbitant and unjustifiable profits arising due to supply of essential goods is also not correct.

67. The Respondent has also stated that the allegation of the DGAP that he had not provided complete data as and when asked for by the DGAP were not correct as he had promptly supplied the required information as was shown in the chart prepared by him. In this connection perusal of the Report dated 05.11.2018 shows that the Respondent had not supplied the required information to the DGAP and repeated reminders and summons under Section 70 of the above Act read with Rule 132 of the Rules had to be issued to the Respondent. Therefore, the above contention of the Respondent is incorrect and hence, the same cannot be accepted.

68. The Respondent has further stated that merely because he had passed on benefit of input tax credit, it did not mean that the liability could be fastened upon him. In this regard perusal of the record shows that the Respondent has availed benefit of ITC to the extent of 7.06% of the turnover which he is bound to pass on to the buyers of his flats. The Respondent cannot wriggle out of his legal liability on the above ground once he has admitted to pass on the benefit of ITC

and misappropriate the tax revenue of the Central and the State Government which they have sacrificed in favour of the buyers. The above contention speaks of his illegal and non bonafide intention with a view to deny the benefit of ITC to his buyers and hence the same in untenable as no estoppel can be pleaded by him in aid of his illegal act.

69. The Respondent has also submitted that it was a well settled principle that estoppels did not apply to the taxation laws. He has also relied upon the following judgements to support his case:-

a. ***Dunlop India Ltd. 1983 (13) ELT 1566 (SC)***

b. ***Bosch Chasis System India Ltd. 2008 (232) E.L.T. 622 (Tri.-LB),***

c. ***Mico Ltd. 2001 (136) E.L.T. 649 (T-Bang)***

d. ***Dodsal Pvt. Ltd. 2006 (193) E.L.T. 518 (Tri-Mumbai)***

In this context it would be pertinent to mention that it is quite apparent from the facts mentioned above that the Respondent has availed benefit of ITC which he is bound to pass on to his buyers as per the provisions of Section 171 of the above Act. Therefore, there is no question of estoppel in the above case. Hence, the above cases do not support the cause of the Respondent.

70. The Respondent has also submitted that he was entitled to avail the benefit of CENVAT and VAT and only the credit of the Excise Duty was not admissible to him in the pre-GST regime. The Respondent

has further submitted that he had never procured any material wherein Excise Duty was levied. The total excise benefit accruing to him was Rs. 50,19,008/-, thus, the total benefit to be passed on under Section 171 could be maximum of Rs. 50,19,008/-. In this regard it would be relevant to state that the Excise Duty used to form part of the price during the pre GST period and hence there is no question of its non payment by the Respondent. It is also evident from his Returns that the Respondent has not availed benefit of CENVAT or ITC during the pre-GST period. Moreover, the Respondent has become eligible to avail the benefit of ITC on all the goods and services purchased by the Respondent during the post GST period and not the Excise Duty only, the exact amount of which has been reflected by him in his GST Returns and which he has also utilised while discharging his tax liability. Therefore, the amount of additional ITC available to the Respondent has been correctly computed by the DGAP on the basis of the information supplied by the Respondent himself which cannot be based on the amount of Excise Duty paid by the Respondent. Therefore, the profiteered amount cannot be restricted to Rs. 50,19,008/- as has been contended by the Respondent. Hence, the above claim of the Respondent is not tenable.

71. The Respondent has further submitted that the new prices determined for the flats sold post GST regime were as per the market forces which included the benefit of ITC and the customers were also aware of this benefit while negotiating the prices. As has been discussed above the Respondent has not passed on the benefit of

ITC as he has not reduced his prices commensurate with the benefit of GST which he has charged to the buyers who had purchased them during the post GST period. There is no evidence or provision in the sale agreements executed by the Respondent with his buyers that the buyers would not be eligible to the benefit of ITC or the impact of benefit has been included in the prices charged by him. Therefore, the above argument of the Respondent is not maintainable.

72. It has also been contended that the observations of DGAP were in violation of Article 19 (1) (g) of the Constitution of India. The Hon'ble Supreme Court had held that the word "business" contained in the above Article was meant to protect all activities done for profit and not for pleasure or charity. He has also placed reliance in this regard on the judgment passed in the case of ***Sodan Singh & Ors. v. New Delhi Municipal Committee & Ors. (1989) 4 SCC 155.*** In this regard it is mentioned that the provisions of Section 171 do not mandate fixing of prices or the profit margins of the suppliers. Therefore, the Respondent is free to fix the both. However, under the pretext of Article 19 (1) (g) he cannot deny the benefit of ITC to his buyers. The observations of the DGAP made in his Report dated 18.12.2019 nowhere direct the Respondent to fix his prices or profit margins as per the direction passed by the DGAP. His observations are only restricted to the computation of the benefit of ITC and of the profiteered amount. Therefore, the above observations of the DGAP do not violate the provisions of the above Article. Accordingly, the law settled in the case of ***Sodan Singh & Ors. Supra*** does not help the Respondent

73. The Respondent has further contended that the DGAP has observed that the reduction in price as per Section 171 of CGST Act, 2017 included both the base price and the tax paid on it. It was also submitted that the term 'Price' was not defined in the CGST Act and Section 15 of the above Act, provides for determination of value of supply for levy of GST. The basic provision of the said Section provides that value of supply was the price actually paid or payable for the supply. It was also submitted from the above provision that "price" of the goods was the value of supply but additionally value shall include taxes but not the GST. Thus, if the term price had already included tax on the same, then the interpretation of Section 15 would lead to vague meaning. In this connection it would be relevant to mention that Section 15 (1) & (2) (a) of the CGST Act, 2017 clearly state that the value of supply includes the tax also and hence, the price of the flat which is nothing but transaction value of supply of the flat includes the GST also which is a tax. The Respondent is unnecessarily trying to misinterpret the provisions of Section 15 therefore, the above contention of the Respondent is wrong and hence it cannot be accepted.

74. It is established from the perusal of the above facts that the Respondent has benefited from the additional ITC to the extent of 7.06% of the turnover during the period from 01.07.2017 to 31.10.2019 and hence the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent as he has not passed on the above benefit to his customers and thus he has profiteered an amount of **Rs. 2,87,64,178/-** inclusive of GST @ 12%

as is evident from the above Report dated 18.12.2019. Further, the Respondent has realized an additional amount of **Rs. 1,71,830/-** which includes both the profiteered amount @ 7.06% of the taxable amount (base price) and 12% GST on the said profiteered amount from the **Applicant No. 1**. He has further realized an additional amount of Rs. 2,85,92,348/- which includes both the profiteered amount @ 7.06% of the taxable amount (base price) and 12% GST on the said profiteered amount from the 205 flat buyers other than the Applicant No. 1. The DGAP has also confirmed that the Respondent has passed on an amount of Rs. 7,71,830/- as ITC benefit to the 206 flat buyers including the Applicant No. 1. The details of the amount of benefit of ITC passed on, the benefit to be passed on and the details of the buyers have been mentioned by the DGAP in Table-E and **Annexure-15 & 16** of his Report dated 18.12.2019 after adjusting the above amount of Rs. 7,71,830/-. These buyers are identifiable as per the documents placed on record and therefore, the Respondent is directed to pass on an amount of Rs. 1,67,273/- to the Applicant No. 1 and Rs. 2,78,25,075/- to the other 205 flat buyers respectively along with the interest @ 18% per annum from the dates from which the above amount was collected by him from them till the payment is made, within a period of 3 months from the date of passing of this order as per the details mentioned in Annexure-15 & 16 attached with the Report dated 18.12.2019.

75. Accordingly, 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 of the above Project

commensurate with the benefit of ITC received by him as has been detailed above.

76. The present investigation has been conducted up to 31.10.2019 only however, the Respondent has not obtained the CC yet. Therefore, he is liable to pass on the benefit of ITC which would become available to him till the date of issue of CC. Accordingly, the concerned commissioner CGST/SGST is directed to ensure that the Respondent passes on the benefit of ITC to the eligible flat buyers as per the methodology approved by this Authority in the present case and submit report to this Authority through the DGAP. The Applicant No.1 or any other flat buyer shall also be at liberty to file complaint against the Respondent before the Tamil Nadu State Screening Committee in case the remaining benefit of ITC is not passed on to them.

77. It is also evident from the above narration of the facts that the Respondent has denied benefit of ITC to the buyers of the flats being constructed by him in his above project in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus resorted to profiteering. Hence, he has committed an offence under Section 171 (3A) of the CGST Act, 2017 and therefore, he is apparently liable for imposition of penalty under the provisions of the above Section. Accordingly, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.

78. This Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Tamil Nadu to monitor this order

under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by the Authority is passed on to all the eligible buyers. A report in compliance of this order shall be submitted to this Authority by the Commissioners CGST /SGST within a period of 4 months from the date of receipt of this order.

79. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since, the present Report has been received by this Authority on 18.12.2019 the order was to be passed on or before 17.06.2020. However, due to prevalent pandemic of COVID-19 in the Country this order could not be passed on or before the above date due to *force majeure*. Accordingly, this order is being passed today in terms of the Notification No. 55/2020-Central Tax dated 27.06.2020 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes & Customs under Section 168 A of the CGST Act, 2017.

80. A copy each of this order be supplied to both the Applicants, the Respondent, Commissioners CGST/SGST, Tamil Nadu for necessary action. File be consigned after completion.

Sd/-
(Dr. B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Member(Technical)

Certified Copy

14.7.2020

(A. K. Goel)
Secretary, NAA

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F. No. 22011/NAA/104/Mahindra/2018 / Date: .07.2020

Copy To:-

1. M/s Mahindra Lifespace developers Limited, 5th floor, Mahindra Towers, Worli, Mumbai – 400018, Maharashtra.
2. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Sh. S. Ganapathy Subramanian, 171, 8th Street, Annai Satya Nagar, Arumbakkam, Chennai- 600 106.
4. Chief Commissioner, CGST, Mumbai Zone, GST Building, 115 M.K. Road, OPP, Churchgate Station, Mumbai- 400020.
5. Commissioner, Commercial Taxes, Office of the Commissioner of State Taxes, 8th floor, Goods and Services Tax (GST) Bhavan, Mazgaon, Mumbai - 400010.
6. NAA Website / Guard File.

14.7.2020

(A. K. Goel)
Secretary, NAA