

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

Case No. : 47/2019  
Date of Institution : 03.04.2019  
Date of Order : 26.09.2019

In the matter of:

1. Shri Gaurav Gulati, R/o Flat No. 744, Tower C, Gaur Grandeur, Sector-119, Noida, Uttar Pradesh-201304.
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 Paramount Propbuilt Pvt. Ltd., Regd. Office: 208, 2nd Floor, Sikka Mansion, LSC, Savita Vihar, New Delhi-110092.

Respondent

Quorum:-

- Sh. B. N. Sharma, Chairman  
Sh. J. C. Chauhan, Technical Member  
Sh. Amand Shah, Technical Member

Present:-

1. Sh. Gaurav Gulati, Applicant No. 1 in person.
2. Sh. Sachin Kodnani, Superintendent, for the Applicant No. 2.
3. Sh. Vidit Agarwal, AGM (Tax & Accounts), Sh. Vinod Dua, Chartered Accountant, Sh. Ram Bachan Singh, Chartered Accountant, Sh. Pranav Gupta, Sr. Manager (Finance) and Sh. Rahul Singhal, Sr. Manager (Accounts) for the Respondent.

**ORDER**

- M. Bhatnagar*
1. The present Report dated 02.04.2019 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Applicant No. 1 had filed a complaint on 19.06.2018 before the Uttar Pradesh State Screening Committee on Anti-profiteering, under Rule 128 of the CGST Rules, 2017 in which he had alleged that he had booked a flat, in the Respondent's project "Paramount Emotions" situated in GH-05A, Sector 1, Greater Noida and the Respondent had



not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in the price of the flat, on introduction of the Goods & Services Tax (GST) w.e.f. 01.07.2017. The Uttar Pradesh State Screening Committee on Anti-profiteering on prima facie having satisfied itself that the Respondent had not passed on the benefit of ITC had forwarded the said application with its recommendation to the Standing Committee on Anti-profiteering for further action, in terms of Rule 128 of the above Rules.

2. The above reference was examined by the Standing Committee on Anti-profiteering in its meeting held on 06.09.2018 and it had forwarded the same to the DGAP for detailed investigation. The application was sent to the DGAP along with the details submitted by the Applicant No. 1 viz. the duly filled in Form APAF-1, Copy of the demand letter issued at the time of possession, Copy of the letter of offer of possession and copy of the Voter ID card.
3. The DGAP on receipt of the application had issued notice dated 15.10.2018 to the Respondent to intimate as to whether he admitted that the benefit of ITC had not been passed on by him to the Applicant No. 1 by way of commensurate reduction in the price of the flat and if so, to suo-moto determine the quantum thereof and indicate the same in his reply to the notice as well as furnish all the supporting documents. The Respondent was also given an opportunity to inspect the non-confidential evidence/information submitted by the above Applicant which was not availed by him. The above Applicant was also given an opportunity to inspect the non-confidential documents/reply furnished by the Respondent which was availed by him.

*2/2/2019*



4. The Applicant No. 1 had submitted before the DGAP that he was in possession of receipt of payment of Rs. 8,00,000/- dated 29.03.2018 which he had paid to the Respondent for purchase of the flat. He had also informed that the Respondent had given false information and sent a mail to all the buyers in September, 2017 to pay the instalment which was due in March, 2018, in advance in October, 2017 and in case they paid it, the Respondent would charge 4.5% GST instead of 12% or 18%.
5. The DGAP had sought extension of time for completing the investigation which was extended by this Authority vide its order dated 31.12.2018 in terms of Rule 129 (6) of the CGST Rules, 2017.
6. The period of the investigation held by the DGAP in this case is from 01.07.2017 to 31.08.2018.
7. The DGAP in his report has stated that the Respondent had given his submissions vide letters/emails dated 01.11.2018, 05.11.2018, 16.11.2018, 30.11.2018, 07.12.2018, 04.01.2019, 12.02.2019, 08.03.2019, 13.03.2019, 15.03.2019 and 18.03.2019 in which the Respondent had stated that he had received the Completion Certificate of the project in February, 2018 from the Greater Noida Industrial Development Authority (GNIDA). Thereafter, he had demanded the final dues from the Applicant No. 1 by sending the letter of possession in which he had suo moto passed on the GST benefit of Rs. 30,104/- by reducing the Basic Selling Price (BSP) of the flat, which he had mentioned clearly in the letter.
8. The Respondent had also submitted that he had not filed the GSTR-1 and GSTR-3B returns for the period from April, 2018 to September, 2018 as most of his customers had defaulted on their payments which



had caused severe cash crunch to him. The Respondent had further claimed that the slowdown in the construction industry with sales going down and unwillingness of the banks to support the industry, had led to a situation where the interest and other costs had arisen and the developers were not in a position to meet their statutory and other obligations.

9. The Respondent had further informed the DGAP that the Applicant No. 1 had transferred an amount of Rs. 8,00,000/- by RTGS on 28.03.2018 but he had not informed the Respondent about this payment and in March, 2019, the Applicant No. 1 had claimed to have paid the said amount with proof of payment and thereafter it was duly accounted for by the Respondent in March, 2019 and the above amount was kept in the client suspense account during the period from March, 2018 to March, 2019.

10. The Respondent had also furnished the Copies of GSTR-1 returns for the period from July, 2017 to March, 2018, Copies of GSTR-3B returns for the period from July, 2017 to March, 2018, Tran-1 statement for the month of July, 2017, Copies of VAT & ST-3 returns for the period from April, 2016 to June, 2017, Copies of Electronic Credit Ledger for the period from July, 2017 to March, 2018, Copies of all the demand letters, receipts and sale agreement in the name of the Applicant No. 1, details of the applicable Tax rates- pre-GST and post-GST, Balance Sheet and the Cost Audit Report for the FY 2016-17, Copy of project report submitted to the RERA, CENVAT Credit Register for the FY 2016-17 and 2017-18 (upto 30.06.2017), GST ITC Register for the period from July, 2017 to March, 2018, details of VAT/Service Tax/GST for the period of April, 2016 to August, 2018,

List of home buyers in the project "Paramount Emotions" and Copy of the Completion Certificate dated 12.02.2018 before the DGAP.

11. Based on the documents filed by the Respondent, the DGAP has submitted that details of the amounts and taxes paid by the Applicant No. 1 to the Respondent were as has been shown in the Table given below:-

**Table A**

(Amount in Rs.)

S. No.	Payment Stages	Due Date	% BSP + Other Charges	Applicable Tax rate	BSP	Service Tax including SBC & KKC	GST Charge	Total
1	On Booking	28/3/2016	10%	3.62%	374,624	13,580	-	388,204
2	Within 45 days - Agreement	12/5/2016	40%	4.35%	1,498,496	65,181	-	1,563,677
3	On completion of 8th floor roof slab	12/5/2016	20%	4.35%	749,248	32,592	-	781,840
4	On Casting of Top Floor	16/5/2016	15%	4.35%	561,936	24,444	-	586,380
5	On Offer of Possession- Basic	27/2/2018	15%	12.00%	561,936	-	67,432	629,368
6	Extra Charges (GST)	27/2/2018		18.00%	192,180	-	34,592	226,772
7	Extra Charges/Refundable security (Non GST)	27/2/2018		0.00%	40,700	-	-	40,700
	Total		100%		3,979,120	135,797	102,024	4,216,941

12. The DGAP has also submitted that prior to 01.07.2017, i.e., before the GST was introduced, the Respondent was eligible to avail credit of Service Tax paid on input services. However, the CENVAT credit of Central Excise Duty paid on inputs was not admissible to him as per the CENVAT Credit Rules, 2004. The DGAP has further

*As per...*



submitted that despite sending repeated reminders, the Respondent had not submitted the GSTR-1 and GSTR-3B returns for the period from April, 2018 to August, 2018. The Respondent had informed that he had not filed the GSTR-1 and GSTR-3B returns after March, 2018.

13. The DGAP has also submitted in his Report that the ITC pertaining to the units not sold prior to the issue of Completion Certificate on 12.02.2018, was required to be reversed and the computation of the same has been furnished by him in the Table given below:-

**Table B**

Particulars	(Amount in Rs.)	
	Factor	Amount
Total Saleable Area of Flats (in sq. ft.)	A	2249965
Area Sold before Completion Certificate was obtained (in sq. ft.)	B	1945823
Area sold before Completion Certificate was obtained (in Percentage)	C=B/A	86.48%
Area remaining Unsold at the time Completion Certificate was obtained (in sq. ft.)	D=A-B	304142
Area remaining Unsold at the time Completion Certificate was obtained (in Percentage)	E=D/A	13.52%
ITC available for the period between July, 2017 till August, 2018	F	70583085
Proportionate ITC to be reversed (in Rs.)	G=F*E	9542833
ITC Availed post GST pertaining to sold Units	H=F-G	<b>61040252</b>

The DGAP has further submitted that the Respondent had not made any reversal of the ITC, as was required in terms of Section 17(2) and Section 17(3) of the CGST Act, 2017.

14. The DGAP in his Report has also stated that from the information submitted by the Respondent, the details of the ITC availed by him, his turnover from the project during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to August, 2018) periods, the ratio of CENVAT/ITC to the turnover, was furnished in the Table given below. The DGAP has further stated that while calculating

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the ratio of ITC to the turnover for the post-GST period, the ITC available till the date of issue of Completion Certificate and the turnover from the flats booked till the issue of Completion Certificate on 12.02.2019, received/to be received in the post-GST period, had been taken into consideration:-

**Table C**

(Amount in Rs.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	Post-GST ITC upto date of Completion Certificate / total turnover from flats booked till Completion Certificate
(1)	(2)	(3)	(4)	(5)=(3)+(4)	(6)
1	CENVAT of Service Tax Paid on Input Services as per Project-wise breakup submitted by the Respondent (A)	17,397,275	7,181,234	24,578,509	-
2	ITC of VAT Paid on Purchase of Inputs as per VAT Returns (B)	-	-	-	-
3	Total CENVAT/ITC Available (C)= (A+B)	17,397,275	7,181,234	24,578,509	-
4	ITC of GST as per Table-B above (D)	-	-	-	6,10,40,252
5	Total Demand collected/to be collected as per Home buyers list (E)			499,832,550	1,362,417,465
6	Total Saleable Area of Flats/Commercial Shops in the project (Square Mtr.) (F)			2,249,965	
7	Area Sold relevant to Total Turnover as per returns (G)			943173	
8	Relevant CENVAT/ITC (H)= [(C)*(G)/(F)]			10,303,176	61,040,252
9	Ratio of CENVAT/ ITC to Total Turnover [(I)=(H)/(E)*100]			2.06%	4.48%

15. The DGAP has also mentioned that the Respondent had taken a single GST Registration for 5 different projects and had not filed the



GSTR-1 and GSTR-3B returns for the period from April, 2018 to August, 2018. He has further mentioned that the ITC figures used in the tables given above for the pre and post-GST periods were based on the month-wise break-up of ITC for the project under investigation, as were submitted by the Respondent. The DGAP has also averred that from the VAT Returns submitted by the Respondent, it appeared that the Respondent was neither collecting VAT from his customers, nor was discharging any output VAT liability. Therefore, the ITC of VAT and the turnover related to VAT was not taken into account. The Report has also stated that the ITC ratio to the turnover during the pre GST period (April, 2016 to June, 2017) was 2.06% as compared to the post GST period (July, 2017 to August, 2018), where it was 4.48%, which indicated that in the post-GST period, the Respondent had benefited from additional ITC to the tune of 2.42% [4.48% (-) 2.06%] of the turnover.

16. The DGAP has also submitted that the profiteering had been examined by comparing the applicable tax rate and the ITC available during the pre-GST period (i.e. April, 2016 to June, 2017) when Service Tax was leviable @ 4.5% with the post-GST period (i.e. July, 2017 to August, 2018) when the GST rate was 12%, in terms of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017. Thus, on the basis of the figures contained in the Table given above, the ratio of ITC to the turnover during the pre-GST and the post-GST periods, the turnover from the flats booked till the issue of Completion Certificate, received/ to be received in the post-GST period, the recalibrated base price on the basis of the benefit of additional ITC

post-GST and the excess collection/realization (profiteering) by the Respondent, was as has been tabulated in the Table given below:-

**Table D**

(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April,2016 to June,2017	After 01.07.2017
2	Output tax rate (%)	B	4.50%	12.00%
3	Ratio of CENVAT/ ITC to Turnover as per Table - D above (%)	C	2.06%	4.48%
4	Increase in ITC availed post-GST (%)	D= 4.48% less 2.06%	-	2.42%
5	<b>Analysis of Increase in ITC:</b>			
6	Base Price collected/to be collected during July, 2017 to August, 2018 from Customers who have made bookings before O.C.	E		1,362,417,465
7	Less: Units cancelled and amount refunded	F		
8	Net Base Price collected/to be collected during July, 2017 to August, 2018 from Customers who have made bookings before O.C.	G=E-F		1,362,417,465
9	GST Collected @ 12% over Basic Price	H= G*12%		163,490,096
10	Total Demand collected	I=G+H		1,525,907,560
11	Recalibrated Basic Price	J= G*(1-D) or 97.58% of G		1,329,446,962
12	GST @12%	K= J*12%		159,533,635
13	Commensurate demand price	L= J+K		1,488,980,597
14	Excess Collection of Demand or Profiteering Amount	M=I-L		36,926,963

17. The DGAP has further submitted that on the basis of the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected/ to be collected by the Respondent in the post-GST period, from the Applicant No. 1 and other home buyers who had



booked flats in the Respondent's project till the issue of Completion Certificate (during the period 01.07.2017 to 31.08.2018 and the amount outstanding as on 31.08.2018), the amount of benefit of ITC apparently not passed on/required to be passed on or in other words, the profiteered amount came to Rs. 3,69,26,963/-.

18. The DGAP has also claimed that the profiteering had been examined with respect to the 1557 buyers who had made bookings either during the pre-GST period or during the post-GST period but before the receipt of Completion Certificate on 12.02.2018. The Respondent had also sold 32 flats between 12.02.2018 to 31.08.2018, i.e., during the period of investigation but after receiving the Completion Certificate. The DGAP has further clarified that as these buyers would not suffer any burden of tax as GST was not applicable to the flats sold after receipt of the Completion Certificate on 12.02.2018, the Respondent would not be eligible to proportionate ITC in respect of such flats and the benefit of ITC was also not required to be passed on to the said home buyers. The Respondent would be eligible to avail proportionate ITC only in respect of the flats/ area sold prior to the issue of Completion Certificate on 12.02.2018.

19. The DGAP has also observed that the benefit of additional ITC of 2.42% of the amounts collected or to be collected by the Respondent from the Applicant No. 1 and other recipients as on 30.06.2017 and the new recipients who had made bookings post 01.07.2017 but prior to the issue of Completion Certificate on 12.02.2018, which had accrued to the Respondent was required to be passed on to the Applicant No. 1 and other flat buyers. He has also claimed that the Respondent appeared to have contravened the



provisions of Section 171 of the CGST Act, 2017 by not passing on such benefit to the Applicant No. 1 and other recipients. The DGAP has further claimed that the profiteered amount to the tune of Rs. 15,231/- pertained to the Applicant No. 1 which included both the profiteered amount @ 2.42% of the base price and 12% GST on the said profiteered amount. The DGAP has also contended that the profiteered amount to the tune of Rs. 3,69,11,732/- [Rs. 3,69,26,963/- (-) Rs. 15,231/-] was realised by the Respondent from the other recipients who were not Applicants in the instant case which included both the profiteered amount @ 2.42% of the turnover (base price) and GST on the profiteered amount. Therefore, this amount of Rs. 3,69,11,732/- was required to be returned to such other eligible recipients. The DGAP has also stated that the Respondent had supplied construction services in the State of Uttar Pradesh only.

20. The above report was considered by the Authority in its sitting held on 09.04.2019 and it was decided that the Applicants and the Respondent be asked to appear before the Authority on 25.04.2019 for personal hearing.

21. Vide emails dated 21.05.2019, 03.06.2019, 04.06.2019 and 02.07.2019, S/Sh. Maninder Singh, Manoj Chaurasia, Varun Goyal, and Rohit Gupta who are also buyers of the flats in the project had intimated to join the proceedings however, they did not join the same in spite of notice and hence they were not impleaded as parties.

22. Eight personal hearings were accorded to the parties on 25.04.2019, 08.05.2019, 20.05.2019, 29.05.2019, 11.06.2019, 25.06.2019, 09.07.2019 and 16.07.2019 wherein the Applicant No. 1 Sh. Gaurav Gulati appeared in person. The DGAP was represented by



Sh. Sachin Kodnani, Superintendent and the Respondent was represented by Sh. Vidit Agarwal, AGM (Tax & Accounts), Sh. Vinod Dua, Chartered Accountant, Sh. Ram Bachan Singh, Chartered Accountant, Sh. Pranav Gupta, Sr. Manager (Finance) and Sh. Rahul Singhal, Sr. Manager (Accounts).

23. The Respondent vide his letter/emails dated 23.04.2019, 17.05.2019, 28.05.2019, had shown his inability to attend the hearings scheduled on 25.04.2019, 20.05.2019 and 29.05.2019. The Respondent attended the hearings held on 08.05.2019, 11.06.2019, 25.06.2019, 09.07.2019 and 16.07.2019.

24. The Respondent has filed his first written submissions on 07.05.2019 vide which he stated that the assumptions made and the criteria used by the DGAP to assess the profiteered amount was incorrect. He has also stated that Section 171 of the CGST Act, 2017 required that any reduction in the rate of tax on any supply of goods or services or the benefit of ITC should be passed on to the recipients by way of commensurate reduction in the prices by an assessee, which would require an exact calculation of the tax credit available and utilizable before introduction of GST and post introduction of GST and the resultant benefit should be computed to calculate the profiteered amount. He has further stated that in case of a real estate development company, there were multiple kinds of inputs some of which were eligible for ITC in the pre-GST regime, however post-GST, while many of the indirect taxes had been subsumed and ITC was available on inputs, there were constraints/conditions on utilizing the ITC especially when any excess ITC was not available as a refund.



25. He has also submitted that it was very difficult to calculate the ITC especially in respect of the pre-GST period as in the real estate business, while inputs were used and credit of ITC was available throughout the construction/development cycle, the sale/booking, demand and collection was not directly linked or in any way pro-rated to the actual development/construction. He has further submitted that the DGAP in Table C of his Report dated 02.04.2019 had calculated the ratio of CENVAT/ITC to turnover by dividing the area of those units where some payments had been collected during the period from 01.04.2016 to 30.06.2017 by the total saleable area of the project, but, the project also had some units which were sold prior to 01.04.2016 against which no payments were collected in the given period, but the inputs used during this period would have equally contributed to the development of such units. He has also claimed that while the demands raised during the period could still have some co-relation with the development and construction being construction linked and thus could be linked to the ITC for the period, but the collections were actually not linked with inputs and development and construction and thus, the collections taken as the basis by the DGAP for calculation did not have a co-relation with the inputs for the period.

26. The Respondent has also mentioned that the Applicant No. 1's allegation that the Respondent had not passed on the benefit of lower taxes under GST regime in respect of Apartment No. 301 in 'Easy Tower' booked by him was incorrect since after his application dated 28.03.2016 along with payment of Rs. 3,88,670/- (including Service Tax), was received, allotment was made to the Applicant No. 1 vide agreement dated 04.04.2016.



27. He has further mentioned that he had received Completion Certificate for the project on 12.02.2018 from GNIDA and had demanded the final amount due from the Applicant No. 1 through letter of offer of Possession on 27.02.2018, in which he had suo-moto passed on GST benefit of Rs. 33,716/- (including GST of Rs. 3,612/-) on the Basic Selling Price (BSP) in proportion to the amount outstanding as on 27.02.2018. He has also stated that this was clearly mentioned in the above letter that he had passed on the GST benefit to the Applicant No. 1 prior to the filing of the complaint by him with the Uttar Pradesh State Screening Committee on Anti Profiteering, which was not taken into consideration by the DGAP. The Respondent has also furnished a copy of the letter of offer of Possession as well as the Applicant No. 1's ledger account to substantiate his claim.

28. The Respondent has also mentioned that as per the complaint, the Applicant No. 1 had demanded ITC benefit of Rs. 68,179/-, while as per the DGAP's Report, he had profited only Rs. 15,231/- (including GST on the Base amount of Rs. 13,599/-) in respect of the Applicant No. 1's unit and thus, he had passed on a much higher benefit than what the Applicant No. 1 was entitled to.

29. The Respondent has further mentioned that the construction of the project was nearing completion when the GST had come into force on 01.07.2017 and there was very little tax rate/ITC benefit which he had got as a result of the introduction of the GST. But still, he had given GST benefit of Rs. 7,97,97,359/- suo-moto to his customers including the Applicant No. 1, as a goodwill gesture before the filing of the complaint by the Applicant No. 1.

30. He has also submitted the summarized position of the GST benefit as calculated by the DGAP and what was passed on by him as under:-

GST Benefit calculated by DGAP	GST Benefit Passed on by the Respondent	Excess benefit passed on
3,69,26,963	7,97,97,359	4,28,70,396

He has also contended that he has passed on an amount of Rs 7,97,97,359/- as GST benefit to his customers, while the amount of total ITC claimed by him during the GST period was only Rs 7,05,83,085/-, thus, he had passed on an amount which was even more than the total ITC.

31. The Respondent has also mentioned that there were specific cases, which might have different parameters and hence might not fall in the standard parameters which had been applied by the DGAP while framing his Report such as:-

i) The Respondent had in August 2017 come out with an offer whereby discount was offered specifically on account of the GST benefit and the Base price of the units was reduced by the amount of the discount. Total 26 cases fell under this category summary of which was as under:-

No. of cases	Total Sale Value	Discount offered against GST benefit	GST benefit as calculated by DGAP	Excess benefit passed on to Customers
26	11,48,72,819	1,37,84,829	31,13,513	1,06,71,316

He has also stated that the DGAP had not gone into the details of such specific discounts and had not taken them into account.



- ii) In respect of the 972 cases, he had actually passed on the benefit on account of the GST which was much higher than what had been calculated by the DGAP. He has summarised this in the table given below:-

No. of cases	Total Sale Value	Instalments post GST	GST benefit by the Respondent	GST benefit as calculated by DGAP	Excess benefit passed on to Customers
972	365,44,67,283	112,23,14,720	6,51,81,470	3,06,63,506	3,45,17,964

- iii) In respect of 91 cases, which could be further divided into two categories – (i) 80 cases, where there was no demand raised post the introduction of GST and hence no GST benefit could have accrued and (ii) 11 cases, where some demand was raised post July 1, 2017 but the GST benefit was not passed on. He has summarised this in the table given below:-

No. of cases	Total sale value	Instalments post GST	GST benefit as calculated by DGAP	GST benefit re-calculated by the company on same formula*	Benefit passed on	Excess/ (short) benefit passed on to Customers
<b>Benefit Due</b>						
11	3,64,90,365	1,52,96,590	563,512	414,598	Nil	(4,14,598)
<b>Benefit not Due</b>						
80	21,32,47,473	Nil	520,192	Nil	Nil	Nil

He has also submitted that the above recalculation was done on account of the actual amount of instalments falling due post introduction of GST.

- iv) In 68 cases where benefit was passed on, in respect of – (i) 56 cases, the benefit re-calculated by the Respondent was

lower than what had been passed on already and in (ii) 12 cases the re-calculated amount was higher than the benefit passed on by Rs. 2,27,510/-. He has further summarised the same in the table given below:-

No. of cases	Total sale value	Instalments post GST	GST benefit as calculated by DGAP	GST benefit re-calculated by the company on same formula*	Benefit passed on	Excess/ (short) benefit passed on to Customers
<b>Benefit Due, Short passed</b>						
12	4,39,83,830	1,64,57,740	5,69,828	4,46,071	2,18,561	(2,27,510)
<b>Benefit Due, Excess passed</b>						
56	16,04,85,817	1,18,84,346	14,96,420	3,22,116	6,12,499	2,90,383

He has also submitted that in the above table, the recalculation was done on account of actual amount of instalments falling due post introduction of GST.

v) In 400 cases with the sale value of Rs. 102,42,13,734/-, where the DGAP had not calculated any benefit to be passed on, nor had he passed on any benefit in such cases.

32. He has also summarised his above 5 specific cases in the table

given below:-

Details	Basis	Discount on account of GST	Excess GST passed on	No benefit passed on		GST benefit passed on		No benefit due	Total (Rs.)
				Benefit due	Benefit not due	Benefit Due, Short passed	Benefit Due, Excess passed		
Total no. of units		26	972	11	80	56	12	400	1557
Sale Value of units	A	114,872,819	3654,467,283	36,490,365	213,247,473	160,485,817	43,983,830	1024,213,734	5247,761,321



Amount collected prior to GST	B	-	2523,139,747	15,699,655	194,055,100	105,275,541	22,960,103	1024,213,734	3885,343,856
Balance	C=A-B	114,872,819	1131,327,535	20,790,710	19,192,373	55,210,276	21,023,727	-	1362,417,465
GST benefit as per DGAP	D	3,113,513	30,663,502	563,511	520,190	1,496,419	569,828	-	36,926,962
GST benefit passed by Respondent	E	13,784,829	65,181,470	-	-	612,499	218,561	-	79,797,359
Excess/ (Short)	F=E-D	10,671,316	34,517,968	(563,511)	(520,190)	883,920	351,267	-	42,870,397
Recalculated due post GST	G	-	11,22,314,720	15,296,590	-	11,884,346	16,457,740	-	11,65,953,396
Recalculated GST benefit	$H = \left\{ \frac{G}{2} \times 2.42\% \right\} \times 1.1$	-	30,419,218	414,599	-	322,113	446,071	-	31,602,001
Excess/ (Short) on recalculated benefit	I=E-H	13,784,829	34,762,252	(414,599)	-	290,386	(227,510)	-	48,195,358

33. He has also contended that it was clear from the above that out of total 1557 cases, in only 23 cases he had short passed/not passed on the GST benefit that was due. He has also claimed that he had recalculated this GST benefit by the formula used by the DGAP which amounted to Rs. 6,42,109/- and in 1054 cases, he had already passed on the excess benefit of Rs. 4,57,23,954/-, whereas in the case of the balance 480 units no benefit was required to be passed on. He has further contended that out of the 23 units where GST benefit was short/not passed on, 2 units had been subsequently cancelled in January 2019. These two units accounted for a short benefit of Rs. 2,40,092/- and after adjusting this, the balance amount of GST benefit short/not passed on to the buyers of 21 units amounted to Rs. 4,02,017/- only.

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34. The Respondent has also stated that as per the DGAP's calculations, the total ITC available during July 2017 to August 2018 was Rs. 7,05,83,085/- and pro-rata to the unsold area of 3,04,142 sq. ft. an amount of Rs. 95,42,833/- should have been reversed out of the ITC. He has further stated that some of the costs against which the above ITC had accrued to him were directly related to the units sold during the period and not to all the units under construction. He has further re-computed the amount required to be reversed, which is given below:-

	(Amount in Rs.)
- ITC as per DGAP report:	7,05,83,085
- Less: ITC on services directly related to sold units:	2,089,087
- Net ITC	68,493,998
- Amount to be reversed (13.52%):	9,260,389

He has claimed that post above adjustment, an amount of Rs. 92,60,389/- was to be reversed, but, he had already passed on excess benefit on account of GST to his customers aggregating to Rs. 4,57,23,954/- thus, the reversible amount should be considered part of the excess benefit passed on and any fresh reversal of ITC should not be insisted upon. The Respondent has also furnished the list of homebuyers along with the GST benefit passed on to them.

35. During the course of hearing, the Applicant No. 1 has also filed written submissions dated 07.05.2019 vide which he has raised the following issues:-

(a) Being a composite supply/works contract, the Respondent should have charged GST @ 12% as compared to 18%.



(b) The Respondent had charged 18% GST on the labour cess which was also tax and hence no tax could be charged on the tax.

(c) The Respondent had charged Rs. 5806/- as CGST & SGST @ 18% on the annual maintenance charges which amounted to Rs. 2,688/- per month, however, the maintenance charges upto Rs. 7,500/- per month had been exempted from the GST.

36. The Respondent has also filed written submissions dated 07.06.2019 vide which he had submitted the following:-

- (i) Customer wise details of payment / credit of ITC benefit as per the calculation made by him, Copies of the relevant letters of offer of possession issued to the Applicant No. 1 and ledger account of the Applicant No. 1.
- (ii) Evidence of Service Tax paid before introduction of GST and copies of the Service Tax Returns.
- (iii) Details of his ongoing projects.

37. In response to the Applicant No. 1's submissions, the Respondent has submitted that the claim of Applicant No. 1 that he had charged 18% GST on the services which should have been treated as composite supply and charged GST at 12%, was not correct and he had treated the following services as bundled and thus part of composite service:-

- a) Lease Rent
- b) EDC
- c) FFC
- d) Club Membership
- e) Car Parking

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Accordingly, a tax rate of 12% had been charged on these services.

38. The Respondent has also clarified that there were other services which were primarily of the nature of reimbursement of the various costs but could not be invoiced as such due to lack of one-to-one correlation, which included power back-up charges; electric meter charges; external electrification charges and legal & document charges for registration etc. These were categorised as 'Other Charges' and he had correctly charged 18% GST on these charges.
39. The Respondent has also pleaded that as per Section 15(2) of the CGST Act, 2017 any taxes, duties and cesses levied under any other statute other than GST were very much part of the value of supply on which GST was leviable. He has further pleaded that the GST law only eliminated the cascading effect of taxes subsumed in the GST and no other taxes. Since, the Labour Cess was not subsumed, thus it formed part of value of supply on which GST was correctly levied.
40. The Respondent has also cited the judgement of **Delhi Metro Rail Corporation Limited v. Simplex Infrastructures Limited**, passed in FAO (OS) 674/2010 & CM 1141/2011 on 26.08.2011, in which the Hon'ble High Court of Delhi after analysing the provisions of the Building and other Construction Workers Welfare Cess Act, 1996 had held that that the Cess could not be construed to be a tax, thus, the Labour Cess was correctly added by him to the value of supply for the purpose of levy of GST.
41. The Respondent has also stated that the Applicant No. 1's claim that the maintenance charges up to Rs. 7,500/- per month should



have been exempted from the GST was also incorrect since, as per the Notification No.12/2017 - Central Tax (Rate) dated 28.06.2018 and No. 2/2018 dated 25.01.2018 they exempted such charges only when charged by an unincorporated body or a non-profit entity registered under any law, to its own members. In the instant case, till such time the RWA was registered, he continued to provide these services to the residents which could not be categorised as services by an unincorporated body or non-profit entity. Hence, such services were covered by the GST and he had correctly charged GST on such charges.

42. The Respondent has also filed written submissions dated 24.06.2019 vide which he has submitted that during the hearing held on 11.06.2019, the Applicant No. 1 was asked to explain his claim/calculation of GST benefit of Rs. 68,179/- and it was found that his claim was primarily based on difference in the rate of Service Tax applicable prior to the introduction of the GST and the rate of GST applicable post its introduction, as was given below (extract from the Applicant No. 1's claim – Annexure 1 to the DGAP's Report):-

(Amount in Rs.)

Particulars	Basic Amount (without tax) (a)	Service Tax @4.5% (b)	GST (Rs.) @12% (c)	Tax benefit to be passed (Rs.) (c-b)
Instalments post GST (Rs.)- basic cost	561,936	25,287	67,433	42,145
Other Charges (Rs.) as per demand letter	177,180	7,973	31,892	23,919
IFMS/ONT box non taxable	32,900	-	-	-
Legal Charges	15,000	2,700	2,700	-

Total (Rs.)	787,016	35,960	102,025	66,064
Differential GST on Labour Cess				2,114
<b>Total benefit (Rs.)</b>				<b>68,178</b>

The Respondent has also contended that the Applicant No. 1 had also acknowledged that he had received GST benefit of Rs. 33,716/- (including GST of Rs. 3,612/-) on the BSP. This was against an amount of Rs. 15,231/-, (including GST on the base amount of Rs. 13,599/-) which was calculated by the DGAP in his Report dated 02.04.2019 as the profiteered amount.

43. The Respondent has further contended that he had also passed on the GST benefit to S/Sh. Varun Goyal and Sh. Manoj Chaurasia who had purchased flats from him and the same was explained by him in the table given below:-

Name of Applicant and Unit no.	GST benefit calculated by DGAP (Rs.)	GST benefit passed on by the Respondent (Rs.)	Excess benefit passed on (Rs.)
Mr. Varun Goyal (H-001)	146,699	649,494	502,795
Mr. Manoj Chaurasia (E-1203)	20,697	45,819	25,122

44. The Respondent has also submitted that he had passed on the GST benefit of Rs. 7.97 Crore to the flat buyers of the project in the present case. He has also furnished summary of the GST benefit as calculated by the DGAP and the amount passed on by him for different categories of flat buyers, in the table given below:-

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Category of flat buyers	No. of units	Amount of Instalments post GST	Profiteering amount as per DGAP	Benefit passed on by the Company	Excess benefit passed on	Short/ No benefit passed	Remarks
No consideration received post GST	400	NIL	NIL	NIL	NIL	NIL	
No consideration received post GST	80	NIL	520,192	NIL	NIL	NIL	In these 80 cases full Payment including all Instalment have fallen due pre GST
Others-A	1054	1249,071,884	35,273,439	79,578,798	45,723,954	NIL	GST benefit recalculated on actual instalments falling due post GST
Others-B	21	22,896,133	893,248	218,561	NIL	402,017	GST benefit short/not passed on
Cancelled units	2	8,858,197	240,092	NIL	NIL	NIL	Copies of cancellation documents for these units are already submitted
<b>Total</b>	<b>1557</b>		<b>36,926,971</b>	<b>79,797,359</b>	<b>45,723,954</b>	<b>402,017</b>	

45. He has also mentioned that since he had passed on the GST benefit which was more than what the DGAP had calculated, thus this Authority may pass an order confirming his above claim, so that he could immediately pass on the benefit short/not passed of Rs. 4,02,017/- to the 21 flat buyers.

46. The Applicant No. 1 has also filed written submissions dated 21.06.2019 vide which he has submitted that as per the DGAP's Report dated 02.04.2019, the ITC availed post GST pertaining to sold units had been calculated as Rs. 6,10,40,252/- and the ITC available

for the period between July 2017 till August 2018 by the Respondent was Rs. 7,05,83,085/-. Further, the DGAP had himself admitted that till March 2019 the Respondent had not submitted the GSTR-1 and GSTR-3B returns for the period from April 2018 to August 2018. He has further claimed that as the GSTR-3B returns for the period from July 2017 till March 2018 were provided to the DGAP, the ITC figures as available in the GSTR-3B returns for those 9 months could only be substantiated. The Applicant No. 1 has claimed that as per his calculation total ITC available to the Respondent was Rs. 18,48,54,490/- out of which Rs. 16,75,60,750/- was already availed by him till March 2019.

47. The Applicant No. 1 has further submitted that the DGAP had considered ITC of Rs. 7.05 crores which was based on an excel sheet provided by the Respondent. He has also contended that an unaudited and unsigned figure which could not be substantiated with the GSTR-3B returns or ECL or Cost records of the project should not have been considered. He has also stated that the Respondent had specifically mentioned in his submissions dated 07.05.2019 that "As per DGAP calculations, total ITC available during July 2017 to August 2018 was Rs. 7,05,83,085/-".

48. The Applicant No. 1 has also stated that the Respondent had cited the prevailing real estate market conditions which had resulted in default in payments thereby leading to non-filing of the GSTR-1 & GSTR-3B returns. He has further stated that the Respondent had also claimed that slowdown in the construction industry with sales going down and the unwillingness of the banks to support the industry had led to a situation where the interest and other costs were rising and



developers were not in a position to meet their commitments. He has therefore, argued that on the other hand inspite of market conditions and slow down, the Respondent had claimed passing of an amount of Rs. 7,97,97,359/- as GST benefit to his customers while the total ITC claimed by him during the GST period was only Rs. 7,05,83,085/-. He has also contended that it was surprising that the Respondent was yet to give physical possession of the flats even after the receipt of the Occupancy Certificate 15 months ago to 85% of the allottees. He has further contended that the Respondent was defaulting on statutory compliances, was not able to handover titles to 70% of the allottees and had been taken to the NCLT by his creditors on previous occasion and still he was claiming that he had paid full benefit of GST to the flat buyers.

49. The Applicant No. 1 has also submitted that the Respondent had also mentioned in his submissions dated 07.05.2019 that the discount was offered in 26 cases specifically for the GST benefit and there was a reduction in Base Price of the units sold after the implementation of GST and thus ITC benefit was not to be passed on in respect of these 26 cases. He has further submitted that the allotment letter for Flat No. A-1202 having total area of 1710 sq. ft. was issued by the Respondent whereby the total unit sale price of the flat was Rs. 48,38,750/-, thus, the per sq. ft. rate offered by the Respondent after GST implementation was Rs. 2,830/- which included one year maintenance and one covered car parking. The Applicant No. 1 has further submitted that for comparing the rates of flats offered prior to GST implementation, per sq. ft. rate was considered for his flat (Easy-301) as Rs. 3,430/- per sq. ft. without reducing the GST benefit of BSP. He



has also stated that both, the one year maintenance charges and the covered car parking were not included in the per sq. ft. rate of Rs. 3,430/-. However, as the Applicant No. 1's rate was applicable for the Subvention Plan, thus the difference was adjusted towards both the items while calculating per sq. ft. rate offered before GST and after GST implementation, he has stated. Thus, while comparing both the rates, the reduction in price was 17.49% in the previous cases whereas the Respondent had offered only a reduction of Rs. 30,104/- on a BSP of Rs. 5,61,936/- on possession, which was a meagre 5.35% of the BSP. The Applicant No. 1 has further stated that as per the ledger account of Unit A-1202 provided by the Respondent, it was specifically mentioned in the ledger that GST discount of 7.5% on total cost and not on BSP was offered by the Respondent to the buyer of the flat. Thus, considering discount on total cost and not the BSP, the GST benefit passed on to the Applicant No. 1 on the total cost (payable after GST implementation) worked out to 3.99% on total cost of Rs. 7,54,116/- which was payable on possession. The Applicant No. 1 has also contended that the 26 cases provided by Respondent where GST discount had already been passed at the time of booking of the units, the discount in each case was 12% of net sale price after discount which came to 13.64% on gross amount of sale. However, the DGAP had calculated profiteering of 2.71% only. Thus, it was clear that the reduction in rate of tax on supply of construction services which was offered in 26 cases was not passed on to rest of the allottees as well as the Applicant No. 1.

50. The Applicant No. 1 has further contended that the Respondent has also requested this Authority to pass an order to enable him to



recover the excess benefit amounting to Rs. 4,57,23,954/- passed on to his customers after adjusting the amount of ITC reversal, but since it was a goodwill gesture done suo moto by the Respondent and without any consideration, thus it could not be claimed back from the allottees.

51. The Applicant No. 1 has also argued that as per Annexure- 18 of the DGAP's Report dated 02.04.2019, the details of 1554 flats sold prior to the implementation of the GST were provided by the Respondent according to which an amount of Rs. 136,24,17,465/- was payable by the allottees of the project after implementation of the GST. The last instalment for the said project was raised on 27.02.2018 with the condition to make the payment within 30 days. However, as per the audited Cost Audit Report and the GSTR-3B returns, value of the outward taxable supplies from all the running projects was only Rs. 95,98,64,556/-, thus, there seemed to be a mismatch between the figures available in the above Report/GSTR-3B returns and Annexure- 18 of the DGAP's Report. He has further argued that Rs. 136.24 Crores had been considered by the DGAP for calculating ITC to total turnover ratio in his report. The Applicant No. 1 has also submitted that no demand was due from majority of the customers during the period from 01.07.2017 till 20.02.2018 i.e. after the implementation of the GST till the receipt of Completion Certificate under any of the payment terms i.e. Down Payment, Subvention Scheme and Construction Linked Scheme. Thus, only the final payment at the time of offer of possession was due after the implementation of the GST from 1521 units out of the 1557 units as had been shown in Annexure- 18 of the DGAP's Report. He has also mentioned that while checking



the balance base price recoverable after GST implementation, there were 351 categories of payment terms (ranging from 1.63%- 98.44%) offered to buyers, which were applicable at the time of possession and as per payment terms prevalent in Real Estate Sector, final instalments of 5%, 10%, 15%, 25% or 90% were payable at the time of possession. However, as per the data provided by the Respondent, different payment terms were offered to each 4th booking done by the Respondent which was incorrect. He had thus contended that instead of relying on figures of turnover/amount receivable (after GST implementation) by the Respondent, the DGAP should have relied more on the taxable output supply mentioned in GSTR-3B returns filed till March 2019.

52. The Applicant No. 1 has also stated that the outward taxable supplies as per the GSTR-3B returns for the period came to Rs. 95,98,64,556/- which matched with "Reconciliation of Indirect Taxes" of Cost Audit Report for the FY 2017-18. He has further stated that as per the Electronic Credit Ledger and the GSTR-3B returns for the period from July 2017 till March 2018, total ITC available to the Respondent was Rs. 18,48,54,490/- (including Trans-1 balance of Rs. 3,31,60,892/-) and the profiteering came out to be as has been shown in the table give below:-

Particulars	Amount (in Rs.)
ITC of GST available as per GSTR-3B	18,48,54,490
Less: ITC agreed to be reversed by the Respondent in its letter dated 07.05.2019	92,60,389

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ITC available post GST pertaining to units sold	17,55,94,101
Base price to be recovered from the buyers after implementation of GST (Outwards Taxable Supply as per GSTR3B and Cost Audit Report)	95,98,64,556
<b>Ratio of ITC to Total Turnover/Post GST ITC upto date of completion /total turnover from flats booked till Completion Certificate)</b>	<b>18.29%</b>
Ratio of CENVAT to Total Turnover (as calculated by DGAP in its investigation report)	2.06%
<b>Benefit from additional ITC</b>	<b>16.23%</b>

53. The Applicant No. 1 has also contended that the effect of reduction in prices of material consumed in the construction industry could also be ascertained from the abridged cost statement of the Respondent which showed that per unit rate of material consumed had come down from Rs. 36.01 per sq. ft. to Rs. 17.16 per sq. ft. in comparison to the year before implementation of the GST. Thus, as compared with the Cost Audit Report duly signed by the Respondent, there had been a reduction of around 10% in the Cement prices alone in comparison to the Pre-GST regime. He has further stated that w.e.f. 01.04.2019 a new scheme had been introduced whereby option had been given to the builders to either charge GST @ 12% on real estate projects (other than affordable housing) and take ITC or else charge 5% GST under composition scheme without any ITC benefit. The above Applicant has also claimed that the Respondent had informed during the proceedings that he had not opted for composition scheme which by the rule of estoppel implied that the ITC benefit available to

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the Respondent was more than 7% (12% - 5%). The Applicant No. 1 has also intimated that the Respondent had never paid his GST liability (except reverse charge) in cash but had only utilized ITC to discharge the same which meant that the Respondent had sufficient ITC from the inward supplies which was more than the tax liability which has arisen from the sale of flats and thus, post-GST, the Respondent had benefitted from additional ITC to the tune of 16.23% of the turnover on the base price of Rs. 95.98 Crores and therefore, the profiteered amount should be Rs. 15.58 Crores.

54. The Applicant No. 1 has also furnished the allotment letter and copy of the ledger of unit A-1202 provided by the Respondent and stated that all these services (claimed to be in the nature of reimbursement) were considered as part of basic cost and GST @ 12% had been charged by the Respondent, which being a case of overcharging of GST from the Applicant No. 1 may be referred to the appropriate authority for taking action against the Respondent.

55. The Applicant No. 1 has also contended that the levy of GST had been specified in Section 9 of the CGST Act, 2017 and the GST was to be levied on every supply of goods and/or services as per Section 7 read with Section 9 of the CGST Act, 2017. Thus, a transaction would come under the purview of GST law if it qualified to be a supply. He has also stated that supply had been defined in Section 7 of the CGST Act, 2017 as an inclusive definition which also included 'the activities that are treated to be supply of services or supply of goods as referred to in Schedule II.' Real estate transactions were specified in Schedule II of the CGST Act. He has also claimed



that Clause (b) of paragraph 5 and clause (a) of paragraph 6 of Schedule II read as follows:-

**Paragraph 5: Supply of Services**

(b) Construction of a complex, building, civil structure, or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

**Paragraph 6: Composite Supply**

The following composite supply shall be treated as supply of services, namely:

(a) works contract as defined in clause (119) of Section 2; and

(b) **Works Contract:** Section 2(119) defines it as “ Works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration, or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some form) is involved in the execution of such contract.

56. The Applicant No. 1 has accordingly contended that it was decided in Advanced Ruling in the case of **Bengal Peerless Housing Development Company Limited (GST AAR West Bengal)** that all incidental services/facilities provided along with the principal supply

should be treated as composite supply, construction service being the principal supply. He has therefore, pleaded that entire value of the composite supply was, therefore, to be treated, for the purpose of taxation, as supply of construction service, taxable under SI No. 3 (i) read with Paragraph 2 of Notification No 11/2017 – CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1135-FT dated 28/06/2017), as amended from time to time. Thus, the rate applicable on the composite contract would be the rate applicable to the principal supply.

57. The Applicant No. 1 has further claimed that he had stated in his complaint that the Respondent had charged GST on the Labour Cess which was already in the nature of a tax and thus charging tax on tax was a gross violation of the provisions of the CGST Act, 2017. The Respondent had quoted the definition given in Section 15 (2) of the Act mentioning that the Value of Supply shall include:-

- a) *Any taxes, duties, cesses, fees and charges levied under any statute, other than GST*
- b) .....

The Applicant No. 1 has also reproduced clause 22 of the General Terms and Conditions of the Allotment Letter as under:-

*“ THAT all taxes or charges be it, House Tax/Property tax, Water Tax, Sewer tax, Wealth Tax, Service Tax, Cesses, Levies, Sales tax, Trade Tax, Metro Cess, VAT and taxes of all and any kind by whatever name called and development charges of the land of the Residential*



*complex and any other charges whether levied or leviable now or in future imposed by GNOIDA or any other Local Authorities, State Government, Central Government or Court as the case may be shall be payable and be paid by the Allottee(s)."*

Accordingly, as per the conditions mentioned in clause 22 of the Allotment letter, the Respondent had charged Labour Cess from the Applicant, which the above Applicant has challenged on the following grounds:-

- 1) Whether the Cess as claimed by the Respondent was part of value of supply as mentioned in definition given in Section 15 (2) of the CGST Act, 2017, or
- 2) The Cess was in the nature of reimbursement like power back up charges or electric meter charges as claimed by the Respondent in his submissions dated 07.06.2019.

58. The Applicant No. 1 has further contended that the Charging Section, i.e. Section 9 of the Act laid down that GST shall be levied on the value determined under Section 15 of the said Act and Section 15 of the CGST Act laid down the manner in which the taxable value of a supply of goods or services or both should be determined. The provision employed a 'means' as well as an 'includes' clause. The 'means' clause of the definition stated that the value of supply of goods or service i.e. the transaction value should be the price actually paid or payable for the "said supply" of goods or services. He has also claimed that the price was not defined under the CGST Act, 2017. He

has further submitted various definitions of "Price" given by the Oxford Dictionary and the Webster's Encyclopaedic Unabridged Dictionary and stated that only such money consideration which was paid in return for the supply of the goods or services by the recipient would be includable in the transaction value. He has also cited the judgement of the Hon'ble Supreme Court passed in the case of **Union of India v. Intercontinental Consultants & Technocrats (P) Ltd** passed in Civil Appeal No. 2013 of 2014 and other connected matters on 07.03.2018 and stated that in this case it was held that in valuation of taxable service, the value should be the gross amount charged by the service provider 'for such service' and the valuation could not be anything more or less than the consideration paid as quid pro quo for rendering such a service. Expenditure or cost incurred by the service provider while providing the taxable service was not includible in the gross amount charged and therefore, not liable to service tax. He has also contended that the "includes" clause of Section 15 specified various amounts that would be includable in the transaction value which included "Cess" also. Thus, where additional expenditure including Cess on which GST rate @ 18% was charged by Respondent and which was claimed as "Reimbursement" did not fall under the "said supply" category and was not chargeable to tax at all. Thus, as "Reimbursable Expenses including Cess" were not charges for the "said service", these expenses should not have been includable for calculating the "Transactional Value".

59. The Applicant No. 1 has further contended that if the reimbursements were allowed to be charged at higher rate then even those builders who had opted for composition scheme would resort to



charging GST@ 18% on such reimbursements. He has also submitted that the allotment conditions framed by the Respondent were one-sided and favoured only the Respondent. He has further submitted that the Wealth Tax liability of the Respondent was also to be borne by the allottees of the residential units, similarly, the Respondent was also authorized to charge taxes of all and any kind by whatever name called e.g. income tax on the income earned from the project in the present case, Health and Education Cess on such income from the allottees. He has also stated that in the absence of any specific provision in the CGST Act, 2017 it was not possible to ascertain whether value of supply also included Wealth Tax, Income Tax and Cess like Health and Education cess on Income tax etc. or not.

60. The Applicant No. 1 has also mentioned that the Respondent had charged GST on Monthly Maintenance Charges, though as per the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 and No. 2/2018 dated 25.01.2018 these charges upto Rs. 7,500/- per month were exempted from GST. The Respondent had pleaded that the said exemption notifications were applicable for unincorporated bodies and non-profit entities. He has also stated that as per the provisions of Section 14 (2) of the UP Apartments Act, 2010 it was the responsibility of the promoter to get the Association registered when a certain number of apartments or 33% of the apartments, whichever was more, had been handed over by way of sale, transfer or possession, provided the building had been completed along with all infrastructure services and Completion Certificate obtained from the local authority. In the present project, Completion Certificate had been issued to the Respondent on 12.02.2018 i.e. almost more than 15



months back and the Respondent was not able to handover the possession to even 20% of the owners though the RWA should have been formed almost a year back. Vide email dated 04.07.2019, the Applicant No. 1 has also alleged harassment from the Respondent stating that he was not giving him physical possession of the flat.

61. The Respondent has filed written submissions dated 08.07.2019 vide which he has replied the Applicant No. 1's submissions dated 21.06.2019 in which he has stated that he had taken a single GST registration for his 5 projects in Noida which was duly intimated to the DGAP during the investigation and was also mentioned at Serial No. 19 at page 6 of the DGAP's Report. He has therefore, claimed that the GST returns, thus would have consolidated numbers and not the break-up for each of the projects whereas the ITC amount of Rs. 7,05,83,085/- pertained to the project pertaining to the present case. The Respondent has also claimed that the Applicant No. 1 had attached a statement which showed data from his GST returns, but it had no relevance as this data was for the Respondent's company as a whole. He has also added that to substantiate the actual ITC Credit of Rs. 7,05,83,085/- pertaining to the present project for the period from July 2017 to August 2018, he had provided a month wise break up of the ITC, project wise to the DGAP which was also placed at Annexure-14 of the DGAP's Report dated 02.04.2019 and the amount of ITC credit for the present project was also easily verifiable from the bills/invoices. The Respondent has further stated that the fact that he had passed on GST benefit of Rs. 7,97,97,359/- was fully supported by verifiable documents and records and the GST benefit was an adjustment against input credits, not a cash benefit and while a



significant portion of this benefit was a statutory obligation to pass on the additional ITC available to him the rest was result of the market conditions and an attempt to revive and urge customers to pay their dues/instalments in time.

62. The Respondent has also mentioned that he had come out with an offer in August 2017, under which discount was offered on account of GST benefit and the base price of the units was reduced by the amount of the discount in an effort to sell unsold inventory. 26 bookings were received under this offer where the aggregate GST benefit / discount was Rs. 31,12,513/-. The Respondent has also intimated that the Applicant No. 1, in his original application had claimed GST benefit on account of difference in the rate of Service Tax before introduction of GST and the rate of GST post July 1, 2017 but the Applicant No. 1 had raised an un-related issue of his calculation of profiteered amount of Rs. 68,179/-. He has also claimed that the price of units (on per sq. ft. basis) in a real estate project could be different at different points of time, keeping in view the market conditions and while a portion of the difference could be on account of the GST benefit the rest might be on account of other factors like market conditions and payment terms etc. Thus, comparing the per sq. ft. rate offered to the customers at different points in time had no rationale to arrive at GST benefit available to the developer. Thus, the Applicant No. 1's claim that the discount offered to the 26 buyers (booked under the special scheme) should have been offered to all other buyers also had no legal or commercial basis. The Respondent has further contended that the Applicant No. 1, on the one hand had referred to the amount of Rs. 136,24,17,465/- being the demand to be



collected from the home buyers post the implementation of GST, as calculated and mentioned by the DGAP and on the other hand he had referred to an amount of Rs. 95,98,64,556/-, which was the value of the taxable supplies for all the projects of the Respondent for the period from April 1, 2017 to March 31, 2018. On this issue, the Respondent has also stated that one figure was for one project while the other was for his company as a whole i.e. for all the 5 projects and also the first figure was the balance value of 1557 flats sold prior to implementation of GST, while the second was the value of his taxable turnover for the period from April 1, 2017 to March 31, 2018. Thus, the two figures were completely different. He has also reiterated his previous submission that the amount of Rs. 136.24 Crores included an amount of Rs. 8.15 Crores also in respect of the instalments already raised/demanded before June 30, 2017 on which Service Tax was duly paid and hence the correct balance amount due against the 1557 flats as on July 1, 2017 was Rs. 128.09 Crores.

63. The Respondent has also stated that the Applicant No. 1 had also raised the issue of 351 categories of payment plans by assuming that no flats were booked during the period from July 1, 2017 to Feb 20, 2018 and also no demand was raised on existing bookings during this period, whereas actually demands aggregating Rs. 94.22 Crores were raised during this period on existing/fresh bookings, which would completely change the above Applicant's calculations. The Respondent has also claimed that the Applicant No. 1 had stated that data as per the GST returns of the Respondent should have been relied upon and he had later on confirmed that the outward taxable supplies of the Respondent for the period from July 1, 2017 to March



31, 2018 matched with GSTR- 3B returns for the same period. Thus, Applicant No. 1's above claim was incorrect as there was no mismatch and the data provided by the Respondent to the DGAP and relied upon by him was authentic. He has also submitted that as per the Applicant No. 1's claim that the base price to be recovered from the buyers after implementation of the GST (Outwards Taxable Supply as per GSTR-3B and Cost Audit Report) should have been Rs. 95,98,64,556/-, was incorrect since the Applicant No. 1 had wrongly taken the outward taxable supply amount of all the ongoing projects. This amount for the project for the same period was Rs. 69.46 Crores. The Respondent has further submitted that the ratio of 18.29% computed by the Applicant No. 1 as the ratio of ITC to the total turnover Post-GST and ITC upto date of completion/total turnover from flats booked till completion certificate was also incorrect since the ratio calculated by dividing the ITC with the value of supply for the present project only would not give a correct ratio as the ITC available had to be spread over the total balance value receivable for the relevant flats and not what had been received/invoiced in this period. The Respondent has also stated that the Applicant No. 1 had also referred to the Cost Audit Report where he had referred to the cost calculated per unit. This statement was a calculation of cost over various heads per unit, which in this case was per sq. ft. and thus, various cost items were divided over the total area constructed in the year in sq. ft. and per sq. ft. cost was arrived at for various heads. The Respondent has claimed that in the present case, the stage of the project was very important as the costs and the respective proportions kept changing with the stage of construction. He has claimed that in the initial stage,

*Adhikari*

Steel might be a big component while at the finishing stage, there would probably be negligible portion of Steel but finishing items would be in large quantity. He has also claimed that this statement was for all the projects of the Respondent and the fact that material cost per sq. ft. had dropped from the previous year was a reflection of the stage of various projects and not the cost saving on account of GST or ITC, as had been wrongly alleged by the Applicant No. 1. The Respondent has also contended that the Applicant No. 1 has also referred to the Respondent's decision to opt for charging GST @ 12% with benefit of ITC with effect from April 1, 2019, which had no bearing on the past as that decision was based on the Respondent's calculations for future projects. The Respondent has claimed that the present project was in advanced stage of completion on June 30, 2017 and the relative benefit of ITC had been correctly calculated by the DGAP, based on all the associated facts.

64. The Applicant No. 1 had also alleged that the Respondent had discharged his total GST liabilities through the ITC but, the Respondent has claimed that this allegation was also not correct and the details of payment of GST liability from July 2017 to August 2018 have been given by him as under:-

Period	GST Liability (Rs. in cr.)	RCM Liability (Rs. in cr.)	Paid through ITC/Cenvat (Rs. in cr.)	Paid through Cash (Rs. in cr.)
July-17 to August-18	23.21	1.38	20.85	3.74



The Respondent has also enclosed the copies of the Letter of Allotment / Letter of Offer of Possession and the buyer's Ledgers in five cases, as a representative sample to show evidence of passing on the GST benefit to his customers.

65. The Applicant No. 1 has also filed written submissions on 09.07.2019 vide which he has reiterated his previous submissions

66. Clarification was also sought from the DGAP on the Respondent's and Applicant No. 1's submissions. The DGAP vide his Report dated 09.07.2019 has submitted that the calculation of the profiteered amount made by the Applicant No. 1 was based on the figures contained in the GSTR-3B returns filed by the Respondent for the period from July, 2017 to March, 2018. However, the period covered by the DGAP during the investigation was from July, 2017 to August, 2018. He has further submitted that as the turnover and the ITC pertaining to more than one project was figuring in the GST returns filed by the Respondent, the figures contained in the project-wise break-up submitted by the Respondent were considered for computing the profiteered amount. The DGAP has also submitted that this fact was also mentioned in Para 19 of his Report dated 02.04.2019 and it appeared that the Applicant No. 1 had taken the combined (for all the projects) figures of ITC for the purpose of his calculation.

67. The Respondent has also filed written submissions dated 15.07.2019 vide which he has referred to the DGAP's Report dated 09.07.2019 and stated that the DGAP had confirmed his submissions made during the hearing on 09.07.2019 as under:-



- a) That the Applicant No. 1 was referring to the data from GSTR-3B returns of his company for the period from July 2017 to March 2018 while the DGAP's investigation covered the period of July, 2017 to August, 2018.
- b) That the turnover and ITC appearing in the returns was for more than one project, while the data considered by the DGAP was for the present project.

The Respondent has thus submitted that the data provided by him to the DGAP was authentic and by no means frivolous. During the hearing held on 09.07.2019, the Applicant No. 1 had made another submission where he had tried to link the delay in his getting possession of flat to the application filed by him, however the Respondent has claimed that these two issues were not linked and there was a genuine delay in completing some small works in the flat and the physical possession of the flat had been handed over to the Applicant No. 1 on 11.07.2019 to his satisfaction. The Respondent has also furnished a copy of the Applicant No. 1's letter dated 11.07.2019 regarding receipt of physical possession of the flat.

68. We have carefully considered the DGAP's Reports, submissions of the Respondent and the Applicant No. 1 and all other material placed on record and find that the Applicant No. 1 had booked a flat with the Respondent in his project "Paramount Emotions" situated in GH-05A, Sector 1, Greater Noida and was allotted Apartment No. E-301 in the Easy Tower of the project by the Respondent. It is also revealed that the Applicant No. 1 had filed a complaint on 19.06.2018 with the Uttar Pradesh State Screening Committee on Anti-Profiteering alleging that the Respondent had not passed on the benefit of ITC to



him as per the provisions of Section 171 (1) of the CGST Act, 2017 and accordingly action should be taken against him. This complaint was forwarded by the above Committee to the Standing Committee on Anti-Profiteering which had examined it on 06.09.2018 and sent it to the DGAP for detailed investigation. It is further revealed that the DGAP after collecting necessary information/documents from the Respondent vide his Report dated 02.04.2019 has stated that the Applicant No. 1 had booked a flat with the Respondent on 28.03.2016 for a total consideration of Rs. 42,16,941/- which was to be paid in instalments as has been shown in Table A of his Report. It is also apparent from the Report that the Respondent had availed CENVAT credit of Rs. 2,45,78,509/- during the Pre-GST period from April 2016 to June 2017 and ITC benefit of Rs. 6,10,40,252/- during the Post-GST period from July 2017 till the date of issue of the Completion Certificate of the project which was received by the Respondent on 12.02.2018 from the GNIDA. The DGAP as per Table C has also calculated the ratio of the CENVAT credit by taking in to account the turnover of the Respondent during the Pre-GST period from April 2016 to June, 2017 as Rs. 49,98,32,550/- and ratio of ITC to the Post-GST turnover of Rs. 136,24,17,465/- from July, 2017 to 12.02.2018 and reported that the Pre-GST ratio came to 2.06% and the Post-GST ratio was 4.48% and hence the Respondent had availed additional benefit of ITC after coming in to force of the GST w.e.f. 01.07.2017 of 2.42% (4.48%-2.06%) which he was required to pass on to his buyers as per the provisions of Section 171 (1) of the above Act. The Post-GST ratio was computed by the DGAP after deducting an amount of Rs. 95,42,833/- from the total ITC of Rs. 7,05,83,085/- which the

*Admission*



Respondent had availed Post-GST, on account of the reversal of ITC on the unsold area of 3,04,142/- Sq. ft. at the time of issue of Completion Certificate, which has been mentioned by him in Table B and thus he has taken an amount of Rs. 6,10,40,252/- as the additional ITC benefit during the Post-GST period.

69. The DGAP as per Table D has further reported that the Respondent had not passed on the benefit of additional ITC of 2.42% and has in excess collected/profiteered an amount of Rs. 3,69,26,963/- from the house buyers which he was required to pass on to them. The DGAP has also intimated that the Respondent had profiteered an amount of Rs. 15,231/- from the Applicant No. 1 including the GST and an amount of Rs. 3,69,11,732/- (Total 3,69,26,963/-) from the rest of the house buyers which was required to be paid to both of them. The DGAP has further intimated that the Respondent had supplied the construction service in the State of Uttar Pradesh only.

70. The Respondent has claimed in his submissions that it was not possible to calculate the ITC in the real estate business as the benefit of ITC was available during the entire period of the construction however, the sale of the houses was not linked to it. However, this contention of the Respondent is not maintainable as he has completed construction of the project and has also obtained the Completion Certificate on 12.02.2018 and hence the complete details of the ITC availed as well as the turnover realised by him from the sale of the houses is available which have been duly taken in to account by the DGAP. The Respondent has not submitted any details of the units which he had sold prior to 01.04.2016 and hence the ITC availed by

*MSM*



him before the above period on this project cannot be rightly assessed.

71. The Respondent has also claimed that he had passed an amount of Rs. 33,176/- as benefit of ITC to the Applicant No. 1 at the time of demand of the final instalment on 27.02.2018. However, perusal of the ledger account of the above Applicant shows that an entry has been made on 01.04.2018 in his account as "Receipt Ref: CNEM/00003/18-19 (30,104.00+Tax 3,612.00) which does not mention that this amount has been credited on account of benefit of ITC. The Respondent has also not explained how this amount has been calculated and produced any evidence to prove that this amount was released on account of the ITC benefit and hence the same cannot be construed to have been passed on account of the ITC benefit and therefore, this contention of the Respondent cannot be accepted.

72. The Respondent has further claimed that he has passed on Rs. 7,97,97,359/- as GST benefit to his customers, while the amount of total ITC claimed by him during the GST period was only Rs. 7,05,83,085/- and thus, he had passed on an amount which was even more than the total ITC. He has also stated that the DGAP had calculated the profiteered amount as Rs. 3,69,26,963/- whereas he had passed the above amount which was more by Rs. 4,28,70,396/-. He has also furnished the list of homebuyers along with the GST benefit passed on to them. However, perusal of the record shows that in respect of the 26 home buyers he had given discount of Rs. 1,37,84,829/- in August, 2017 when he had not even received the ITC post implementation of the GST. Therefore, this discount cannot be



considered to have been passed on due to the benefit of ITC as it has been given by him out of his profit margin due to slow down in the market, which has also been accepted by him. There is also no evidence to suggest the he had passed on the benefit of Rs. 6,51,81,470/- to the 972 house buyers on account of ITC as there is no such entry in the ledger accounts of these buyers. A typical entry of Rs. 1,10,561.00 made in the ledger account on 12.05.2018 of one Mr. Mohammad Najmuzzaman, who has been allotted unit No. A-005 in the above project by the Respondent, reads as "Receipt Ref. CNEM/00257/18-18) (98,715.00+Tax 11,846.00)" shows that nowhere it has been mentioned that this amount has been transferred on account of ITC benefit. Perusal of the copies of the ledger accounts of the other house buyers to whom the Respondent has claimed to have passed on the benefit of ITC shows that the same entry has been made in all such cases during the months of March to May 2018. By no stretch of imagination this entry can be construed to have been made on account of passing on the benefit of ITC. Apparently this entry has been made on account of the discount which the Respondent had offered to the buyers due to slump in the market. Therefore, the above amount cannot be taken to have been passed on account of the ITC benefit. The Respondent has also claimed that no profiteering had been calculated by the DGAP in respect of 400 buyers which is also not correct. Perusal of Annexure-18 attached with the Report of the DGAP shows that profiteering has not been computed in respect of 404 buyers only where in respect of 1153 recipients profiteering has been duly calculated. Therefore, the

*ABR*



contention of the Respondent that he had passed on the full benefit of ITC is not correct and hence the same cannot be accepted.

73. The Respondent has repeatedly admitted in his pleadings that he had reduced the prices of the houses several times keeping in view the market conditions as well as the terms of payment and hence there is no ground to believe that he had given the benefit on account of the additional ITC which had accrued to him after introduction of the GST. There is also evidence on record which suggests that he had given different discounts to different set of buyers which also leads to the conclusion that these discounts did not pertain to the benefit of ITC as this benefit was required to be distributed by taking in to account the value of the instalments which were due from the individual house buyer post 01.07.2017.

74. The Respondent has also submitted that an amount of Rs. 92,60,389/- was required to be reversed on account of unsold area instead of Rs. 95,42,833/- calculated by the DGAP as an amount of Rs. 20,89,087/- was directly related to services on the sold units. However, no evidence has been produced by the Respondent to substantiate his claim and hence the same cannot be admitted and the amount calculated by the DGAP has to be accepted to be correct. The reversed amount can also not be considered as the excess benefit and adjusted against the ITC benefit as it has to be credited to the Central as well as the concerned State Govt.

75. The Respondent has also claimed that he had taken single registration for all his five projects due to which the ITC and the turnover shown in his GSTR-3B returns could not be taken for calculation of the profiteered amount as had been done by the above



Applicant. He has further claimed that he had supplied correct figures pertaining to his present project which had been taken in to account by the DGAP correctly. The claim made by the Respondent appears to be correct which has also been supported by the DGAP vide his Report dated 09.07.2019.

76. The Applicant No. 1 in his submissions has claimed that the Respondent should not have charged 18% GST on the services which could be treated as composite supply as per the provisions of section 2 (30) of the above Act and should have charged GST @12% only. He has also claimed that the Respondent had charged GST on the maintenance charges as well the Labour Cess which he could not have charged as the maintenance charges up to the extent of Rs. 7500/- were exempt from the payment of GST as per the Notifications No. 12/2017-Central Tax (Rate) dated 28.06.2017 read with Notification No. 2/2018-Central Tax (Rate) dated 25.01.2018. In this connection it would be pertinent to mention that this Authority as per the provisions of Section 171 (1) of the CGST Act, 2017 has mandate to ensure that the benefit of tax reduction as well as of additional ITC is passed on to the recipients and has no jurisdiction to decide which rate of tax should be charged on a particular good or service or which of them should be construed to be part of the composite supply or what should be treated to be value of their taxable supply as per the provisions of section 15 of the above Act or which reimbursements did not fall under the term supply. If required the above Applicant may approach the appropriate assessing authority or the Authority on the Advance Rulings constituted under Chapter XVII of the CGST Act, 2017 to settle the above issues. He may also cite the judgements

*Aditya*



passed in the cases of **Union of India v. Intercontinental Consultants & Technocrats Private Limited** and the **Bengal Peerless Housing Development Company Limited** supra before the above authorities.

77. The above Applicant has also claimed that the terms of allotment were highly favourable to the Respondent due to which he was charging all other taxes like wealth Tax and Income Tax from the allottees and there were a number of different terms of allotment for different house buyers. This claim of the above Applicant is not tenable as the Respondent is entitled to charge the above taxes in case they form part of the agreement which had been duly executed by the allottees voluntarily. There is no evidence on record that the Respondent had framed different terms of allotment for different allottees and hence, the contention of the above Applicant made in this regard cannot be accepted. The above Applicant had also complained that the Respondent had not given him possession of the flat which has been done now and hence his grievance has been settled.

78. The above Applicant has also submitted that the total ITC available to the Respondent was Rs. 18,48,54,490/- during the Post-GST period out of which he had utilised an amount of Rs. 16,75,60,750/- till March, 2019 whereas the DGAP had calculated it to be Rs. 6,10,40,252/- only. A Report was called from the DGAP on this claim and the DGAP vide his Report dated 09.07.2019 has submitted that the above Applicant had taken in to account the ITC pertaining to all the five projects which were registered against the single registration obtained by the Respondent. He has also clarified that he



had taken the ITC in respect of the present project only and hence there was bound to be difference in the amount of ITC. The explanation given by the DGAP in this connection appears to be correct and accordingly, the claim made by the above Applicant cannot be accepted. Any doubt raised by the above Applicant on the quantum of ITC taken to be correct by the DGAP on the basis of the statement furnished by the Respondent can also not be admitted due to the reason that there is no evidence produced by the above Applicant not to rely on it.

79. The above Applicant has also stated that he should also be given the same discount which had been given to the other house buyers including the 26 buyers mentioned above as well as the buyer of house No. A-1202. However, this contention of the above Applicant is not admissible since he can get benefit only on the basis of the additional ITC which had become available to the Respondent. Any discount/benefit given by the Respondent out of his profit margin or due to cost reduction or on account of market conditions does not fall within the ambit of section 171 (1) of the above Act and the Respondent cannot be compelled to pay the same discount to the above Applicant.

80. The above Applicant has also raised objection on the value of the taxable supply claiming that there was mismatch in the figures mentioned in the Audited Cost Reports as well as the GSTR-3B returns and Annexure-18 of the Report. Perusal of the Report of the DGAP dated 09.07.2019 shows that the above Applicant had taken in to account the figures pertaining to the period from July, 2017 to March, 2018 whereas the DGAP had considered the data pertaining to



the period from July, 2017 to August 2018. Therefore, there is bound to be mismatch in the figures taken in to consideration by the above Applicant and the above three statements and the objection raised on this ground in not maintainable.

81. The Applicant No. 1 has also calculated benefit accruing to the Respondent on account of ITC to be 16.23%. However, perusal of the Table prepared by him shows that he has considered the entire amount of GST which was availed by the Respondent for all the five projects and hence the ratio calculated by him is wrong and cannot be taken to be correct.

82. The above Applicant has also claimed that there has been reduction in the per unit rate of material consumed from Rs. 36.01/- per sq. ft. to Rs. 17.16% due to price reduction of the inputs and the Respondent was also availing benefit of 7% of GST rate as the same was increased from 5% to 12% and therefore, he was discharging his entire output tax liability from the ITC as he had benefit to the extent of 16.23% from the additional ITC. However, this argument of the Applicant cannot be relied upon in the absence of any cogent calculation of the effect of the price reduction due to implementation of the GST. The record also shows that the Respondent had paid an amount of Rs. 3.74 Crore in cash on account of his output liability of GST. Therefore, the contentions made by the above Applicant in this para are irrelevant.

83. The Applicant No. 1's contention is that the Respondent had benefitted from additional ITC to the tune of 16.23% of the turnover and on the base price of Rs. 95.98 Crores and thus, the profiteered amount should be Rs. 15.58 Crores. But this contention is incorrect



since the DGAP vide his Report dated 09.07.2019 has clearly stated that the profiteered amount computed by the Applicant No. 1 was based on the figures contained in the GSTR-3B returns filed by the Respondent for the period from July, 2017 to March, 2018. However, the DGAP has covered the period from July, 2017 to August, 2018 only and the turnover and the ITC pertaining to more than one project had been mentioned in the GST returns filed by the Respondent, whereas the figures contained in the project-wise break-up submitted by the Respondent, were considered by the DGAP. The Applicant No. 1 has taken the combined (for all the projects) figures of the ITC for the purpose of his calculation and hence the above contention of the above Applicant cannot be considered.

84. The Applicant No. 1 has also claimed that he was entitled to ITC benefit Rs. 68,178.60/- as per the statement attached as Annexure-1 to the DGAP's Report. However, perusal of the same shows that it includes extra charges realised from him by the Respondent on account of Labour Cess, non-taxable items, legal expenses and differential GST on Labour Cess. As mentioned supra determination of the all the additional charges does not lie within the jurisdiction of this Authority and hence the claim made by the above Applicant in this regard is not tenable. An amount of Rs. 33,716.00 which has been credited to his account by the Respondent on 01.04.2018 can also not be termed as the benefit of ITC as no such entry has been made in the ledger. Accordingly, the above Applicant is entitled to ITC benefit of Rs. 15,231/- including the GST as has been rightly calculated by the DGAP at Sr. No. 96 of Annexure-18 of his Report.



85. Based on the above narration it can be concluded that the DGAP has correctly assessed the additional ITC ratio as 2.42% and by applying this ratio to the payments made on or after 01.07.2017, has also correctly computed the profiteered amount as Rs. 3,69,26,963/- as has been mentioned in Annexure-18 of the Report . This amount also includes profiteered amount of Rs. 15,231/- to be paid to the Applicant No. 1 and Rs. 3,69,11,732/- to all the other 1152 buyers.
86. Accordingly, this Authority hereby determines the profiteered amount as Rs. 3,69,26,963/- in terms of Rule 133 (1) of the CGST Rules, 2017 and directs the Respondent to pass on the benefit of Rs. 15,231/- to the Applicant No. 1 and Rs. 3,69,11,732/- to the rest 1152 buyers as given in Annexure-18 of the DGAP Report, along with interest @18% per annum to all the 1153 recipients from the dates from which the above amount was collected by him from the buyers till the payment is made, in terms of Rule 133 (3) (b) of the above Rules. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 further orders that the Respondent shall reduce the prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above.
87. It is also evident from the above discussion that the Respondent has denied benefit of ITC to the buyers of the flats being constructed by him in his present project and resorted to profiteering in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus he has apparently committed an offence under section 171(3 A) of the CGST Act, 2017 and therefore, he is 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 as to why the penalty prescribed under Section 171(3 A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.

88. The Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Uttar Pradesh 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 Uttar Pradesh through the DGAP within a period of 4 months from the date of receipt of this order.

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



Certified copy

*B. Batar*

(Bhupinder Batar)

Assistant Commissioner, NAA

File No. 22011/NAA/27/Paramount/2019/5391-5397 Dated: 26.09.2019

Copy to:-

1. M/s. Paramount Propbuilt Pvt. Ltd., Regd. Office: 208, 2nd Floor, Sikka Mansion, LSC, Savita Vihar, New Delhi-110092.

Sd/-  
(B. N. Sharma)  
Chairman

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

Sd/-  
(Amand Shah)  
Technical Member



2. Shri Gaurav Gulati, R/o Flat No. 744, Tower C, Gaur Grandeur, Sector-119, Noida, Uttar Pradesh-201304.
3. Commissioner of Commercial Taxes, Office of the Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow, Uttar Pradesh- 226010.
4. Chief Commissioner of Central Goods & Services Tax, Meerut Zone Opp. CCS University, Mangal Pandey Nagar, Meerut, Uttar Pradesh- 250004.
5. Principal Secretary (Town & Planning), Government of Uttar Pradesh, TCG / 1-A-V/5, Vibhuti Khand, Gomti Nagar, Lucknow- 226010.
6. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
7. ✓ NAA Website/Guard File.



BHUPINDER BATAR  
ASSISTANT COMMISSIONER  
NATIONAL ANTI-PROFITEERING AUTHORITY (GST)  
MINISTRY OF FINANCE, DOR, NEW DELHI