

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

Case No. : 34/2022
Date of Institution : 26.11.2020
Date of Order : 06.07.2022

In the matter of:

1. Shri Pramod Agarwal, Ram Krishna Bhawan, 1st B Road,
Opp. Ajanta Kashida Sardarpura, Jodhpur.
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 Arihant Superstructures Limited, Ayushi Tower, 1st
Floor, Near 12th Road Circle, Pal Road, Jodhpur-342001.

Respondent

Quorum:-

Sh. Amand Shah, Technical Member & Chairman

Sh. Pramod Kumar Singh, Technical Member

Sh. Hitesh Shah, Technical Member

Present :-

1. Shri Pramod Agarwal, Applicant No. 1 in person.
2. Shri Deepak Bholusaria and Dr. Arpit Haldia, Chartered Accountants, Ravindra Parakh, Chief Accounts Officer for the Respondent.

ORDER

1. The present Report dated 26.11.2020 had been furnished by the Director General of Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case are that a reference was received from the Standing Committee on Anti-profiteering on 09.10.2019 to conduct a detailed investigation in respect of an application filed by the Applicant No. 1 under Rule 128 of the CGST Rules, 2017, alleging profiteering by the Respondent in respect of purchase of Flat No. BENECIA-4-301 in the Respondent's project "Arihant Aanchal", situated at Jaisalmer Bye Pass

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Road, Near Dali Bai Circle, Jodhpur, Rajasthan. The Applicant No. 1 had alleged that the Respondent had not passed on the commensurate benefit of ITC to him by way of commensurate reduction in price against payments due to him.

2. The DGAP has reported that the Applicant No. 1 also stated that the Respondent was charging 18% GST instead of 12% and taking full credit of Taxes, but did not pass on the benefit of the same to flat buyers under "Pradhanmantri Awas Yojna & Mukhyamantri Awas Yojna". Further, the Applicant No. 1 submitted the following documents along with his application in APAF-1:-

- a) E-mails of correspondence with Respondent requesting to pass on the benefit of ITC .
- b) Copy of Invoices, Demand Letters and receipts.
- c) Copies of e-mail dated 01.06.2017 sent to CM Rajasthan portal along with copy of call letter dated 30.05.2017 asking for an additional payment of Rs. 7,000/- on each one lakh rupees after implementation of GST.
- d) Copy of reply dated 22.02.2018 given by State GST Rajasthan.

e) Press Releases dated 06.12.2017 & 12.12.2017 issued from office of Chief Commissioner of Central Tax & Customs, Visakhapatnam on "*Clarification on Levy of GST on flats/residential complexes and buildings*".

3. The DGAP has further reported that on receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 09.10.2019, a Notice under Rule 129 of the Rules was issued on 21.10.2019, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the recipients by way of commensurate reduction in prices and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as to furnish all documents in support of his reply. Further, the Respondent was afforded an opportunity to inspect the non-confidential evidences/information which formed the basis of the said Notice, during the period 30.10.2019 or 31.10.2019. Accordingly, authorised representative of the Respondent availed the opportunity by visiting the office of the DGAP on 31.10.2019 and inspected the non-confidential documents submitted by the Applicant No. 1.

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4. It has also been stated by the DGAP that the period covered by the current investigation was from 01.07.2017 to 30.09.2019.
5. The DGAP has further reported that the statutory time limit to complete the investigation was 08.04.2020 which was extended up to 30.11.2020 by virtue of Notification No. 35/2020-Central Tax dated 03.04.2020, Notification No. 55/2020-Central Tax dated 27.06.2020 and Notification No. 65/2020-Central Tax dated 01.09.2020 issued by Central Government under Section 168A of the CGST Act, 2017 where it was provided that, *"any time limit for completion or compliance of any action, by any authority, had been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020, and where completion or compliance of such action had not been made within such time, then, the time-limit for completion or compliance of such action, shall be extended up to the 30th day of November, 2020."*

6. The DGAP has further reported that in response to the Notice dated 21.10.2019 and various reminders, the Respondent replied vide letters/emails dated 31.10.2019, 05.11.2019, 14.11.2019, 20.02.2020, 27.02.2020, 18.05.2020, 21.05.2020, 08.06.2020, 22.09.2020, 08.10.2020, 09.10.2020, 12.10.2020, 24.10.2020, 02.11.2020, 12.11.2020 and 24.11.2020. The replies of the Respondent to the DGAP have been summed up as follows wherein he has stated:

(a) That the Respondent was a real estate company with a predominant focus on the affordable housing segment. It had dominant presence in high growth regions like Mumbai MMR (Badlapur, Shil Road, Taloja – Kharghar, Vashi, Navi Mumbai, Panvel, Karjat and Khopoli) and Jodhpur. The Respondent had a history of having delivered more than 8863 homes with about 7.5 mn Sq. ft. of space constructed which came from roughly 50 projects. Currently Respondent had about 13,188 homes under construction with an area of 13.5 mn sq ft. under development and there was 16 projects under construction. The Respondent had completely integrated in-house capabilities of Land Acquisition & Procurement, Liaison, Design & Engineering, EPC and

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Marketing & Sales. It further ensured tight control and quality considerations and the Respondent never compromised on additional features like tiles and fittings etc. which were standardised across all projects. It was one of the reasons why customers preferred the Respondent as a builder as evinced by many awards that he had won to date.

(b) That the Project "Arihant Anchal" was situated on leasehold land with description Khasra No. 667, 668, 670, 671, 673 to 677, Village Choka Jodhpur, with a total area of 99599.74 sq. mt. The said land had been allotted by Jodhpur Development Authority (JDA) to the Respondent on a 99 years lease for development of housing project. Further JDA had allotted this land to the Respondent for construction of affordable housing project. Vide agreement dated 10-01-2011, the total area of land was 133061 sq. mt., out of which 33461.26 sq. mt of land was used to construct 1350 affordable housing, free of cost for JDA. Residual land of 99599.74 sq. mt. was given on lease to the Respondent. Out of Total 1350 Affordable Housing Units for JDA, as of date, 950 flats had been handed

over to the Government and rest 400 flats were under construction.

(c) That he was discharging liability in VAT regime under Composition scheme and hence was not eligible to claim any VAT ITC for the impugned project.

(d) The Respondent had following projects under the same GSTIN: 08AABCS1848L1Z2:-

Table-'A'

S.No.	Name of the Project	Remark
1	Arihant Anchal, Phase - I	Ongoing Project (Impugned project)
2	Arihant Aangan	
3	Arihant Juana	
4	Arihant Adita	Project completed in Pre- GST regime
5	Arihant Ayati	Project completed in Pre- GST regime
6	Arihant Aanchal, Phase-II	Project Closed/Shelved and amount settled for 90% Customers and amount being refunded to balance customers.
7	Anchal IAS	
8	Agrima	

(e) That the Complete project "Arihant Aanchal" consisted of total 2324 Units. The project was launched phase-wise as follows:-

i. Phase I : Consisted of 532 units (4 Towers- Adora, Benicia, Cairo & Della).

- ii. Phase II : Consisted of 252 units (2 Towers- Edric & Jonas). In this regard, it was submitted that Phase-II of the Project was Closed/Shelved and amount was settled for 90% Customers and amount being refunded to balance customers. As soon as refund to all the customers was processed, thereafter RERA Registration for Phase II would be surrendered by the Respondent.
- iii. Balance units of "Arihant Aanchal" Project were yet to be launched by the Respondent.
- (f) That the impugned project "Arihant Aanchal Phase-I" consisted of 532 units only having standard size of 900 sq. ft. per unit (Carpet Area of 563.75 sq. ft. + Attached balcony of 44.42 sq. ft + Common area of 291.83 sq. ft.) Further, the Respondent had also informed that the CENVAT/ITC credit availed for the project "Aanchal Phase-I" pertains to 532 Units (developer share) only and therefore no benefit of CENVAT/ITC was required to be passed on to JDA in respect of the same.

7. Further the DGAP stated that vide the aforementioned letters/ e-mails, the Respondent submitted the following documents/information:

- (a) Copies of GSTR-1 for the period July, 2017 to Sept, 2019.
- (b) Copies of GSTR-3B for the period July, 2017 to Sept, 2019.
- (c) Copies of ST-3 Returns for the period April, 2016 to June, 2017.
- (d) Copies of VAT Returns in form 7A, 8A and 10 for the period April, 2016 to June, 2017.
- (e) Copy of Manual Tran-1 along with copy of Hon'ble High Court of Rajasthan's Order w.r.t. Tran-1.
- (f) Tax rates - pre-GST and post-GST.
- (g) Copy of Audited Balance sheet for FY 2016-17, 2017-18 & 2018-19.
- (h) Copy of demand letters/invoices issued to the Applicant No. 1.
- (i) Copy of Electronic Credit Ledger for the period July, 2017 to Sept, 2019.
- (j) CENVAT/ITC register for the period April, 2016 to Sep, 2019.

- (k) Copy of MoU entered between the Respondent and the Jodhpur Development Authority (JDA).
- (l) Status for the project "Arihant Aanchal" as on 30.09.2019 in terms of tower wise sold and Unsold units.
- (m) Copy of Project Report submitted to RERA.
- (n) Details of Service Tax and GST turnover, output tax liability payable and ITC availed for the project "Arihant Aanchal".
- (o) List of home buyers in the project "Arihant Aanchal" reconciling with ST-3/GSGR-3B Returns.
- (p) Copies of Invoices and Credit Notes vide which Respondent passed on the benefit of ITC.
- (q) A Note on ITC accounting process of the company along with sample journal voucher for ineligible ITC.

8. The DGAP has further submitted that in the Notice dated 21.10.2019, the Respondent was informed that if any information/documents were provided on confidential basis, in terms of Rule 130 of the Rules, a non-confidential summary of such information/documents was required to be furnished. Accordingly, the Respondent had classified all the information submitted by him as "CONFIDENTIAL". Further,

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the Respondent had submitted a non-confidential summary of information/documents as per Rule 130 of CGST Rules 2017.

9. The DGAP has further stated that vide e-mail dated 04.11.2020, the Applicant No. 1 was also given an opportunity to inspect the non-confidential documents/ reply furnished by the Respondent on 10.11.2020 or 11.11.2020. However, the Applicant No. 1 did not avail of the said opportunity and vide letter dated 05.11.2020 expressed his inability to come and avail of the said opportunity to inspect the non-confidential information submitted by the Respondent. The Applicant No. 1 vide e-mail dated 09.11.2020 submitted that the reply sent vide letter dated 05.11.2020 along with complete and detailed annexures including mathematical calculations as per actual data or status as on date about recovery of GST Tax and Flat Base Price by the Respondent was confidential reply. Therefore, the complete reply has not been reproduced here but in summarised manner. The Applicant No. 1 had submitted:-

- a. That he had not received any Credit Note No. CN/19-20/46 dated 30.06.2019 amounting to Rs. 6,440/- issued by the Respondent and Applicant No. 1 enclosed a

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copy of e-mail / letter and invoice from 11.02.2016 to 24.02.2020 including invoices dated 30.08.2017 & 08.10.2017 with Payment Schedule & Brochures and Advertisements which promised facilities with Layout Plan etc., which had been received by him up to date. Further, by issuing such Credit Note, the Respondent had reduced his Output GST Liability and on the other side was not passing on the same benefit of "tax reduction" to the Flat Buyers.

- b. That Applicant No. 1 also submitted sample copies of correspondence with the Respondent, from March, 2016 to February, 2019, where Applicant No. 1 had requested several times to provide the details of reduction in the prices and pass on the benefit to him.
- c. The Applicant No. 1 had submitted that the approx. profiteering per unit was Rs. 25,600/- and the project consisted of 2324 units so total profiteering was approx. 5.95 Crores.
- d. Applicant No. 1 had also submitted that the Respondent had collected the amount in Non-RERA bank accounts and was not transferring the proper receipts into the RERA Accounts.

10. The DGAP further reported that reference received from the Standing Committee on Anti-profiteering, various replies of the Respondent, Applicant No. 1 and the documents/ evidences on record had been carefully scrutinised. The main issues for determination were:

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

Y 11. The DGAP has also reported that the Respondent had submitted payment plan (part of Builder Buyer agreement), demand letters and payment receipts for the sale of flat no. 4-301 in tower BENICIA to the Applicant No. 1, measuring 900 Sq. ft. (super area), at total basic sale price of Rs. 16,00,000/- along with other charges of Rs. 2,00,000/-. The details of payment schedule have been furnished in Table-'B' below:-

Table-'B'

(Amount in Rs.)

S.No.	Payment Stage	Basic %
1	On Booking	1.50%
2	After One Month from the date of booking	8.50%
3	On Commencement of Work	7.00%
4	On Commencement of Plinth	7.00%
5	On Commencement of 1st Slab	7.00%
6	On Commencement of 2nd Slab	7.00%
7	On Commencement of 3rd Slab	7.00%
8	On Commencement of 4th Slab	7.00%
9	On Commencement of 5th Slab	7.00%
10	On Commencement of 6th Slab	7.00%
11	On Commencement of 7th Slab	7.00%
13	On Commencement of 8th Slab	7.00%
12	On Commencement of Brick Work	4.00%
14	On Commencement of Plumbing	4.00%
15	On Commencement of Outer Plaster	3.00%
16	On Commencement of Flooring & Tiling	3.00%
17	On Commencement of Doors & Windows	3.00%
18	Possession	3.00%
	Total	100.00%

12. The DGAP has further stated that with regard to the Applicant No. 1's submission that the project "Aanchal" consist of 2324 units, it was observed that the project

"Aanchal" was being developed in phased manner and the Applicant No. 1's Flat was situated in Phase-I which had a separate RERA Registration No. 'RAJ/P/2017/322' dated 10.10.2017 consisting of 532 units only of standard size of 900 sq. ft. each. Therefore, the scope of the present investigation was limited to the extent of Construction Service supplied by the Respondent in the project "Aanchal Phase-I".

13. The DGAP has further stated that the allegation of the Applicant No. 1 with regard to collection of the amount in Non-RERA bank accounts and not transferring the proper receipts in to the RERA Accounts was outside the scope of provisions of Section 171 of the CGST Act, 2017 & the Rules made thereunder. Therefore, the grievance of the Applicant No. 1 could not be redressed through anti-profiteering provisions.

14. The DGAP has further reported that a reference can be made to the 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 read as "*Sale of land and, subject to clause (b) of paragraph*

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5 of Schedule II, sale of building". Further, clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 read 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 its first occupation, whichever is earlier". Thus, the ITC pertaining to the residential units and commercial shops which was under construction but not sold was provisional ITC which might have been 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 is attributable to the said taxable supplies including zero-rated supplies".

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

Therefore, the ITC pertaining to the unsold units might not fall within the ambit of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the net benefit of additional ITC available to him post-GST.

15. The DGAP has also reported that prior to 01.07.2017, i.e., before the GST was introduced, the Respondent was eligible to avail CENVAT credit of Service Tax paid on Services but 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 April, 2016 to September, 2019,

the details of the ITC availed by him, his turnovers from the impugned project "Arihant Aanchal" the ratios of ITCs to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to September, 2019) periods have been furnished in table-'C' below:

Table-'C'

(Amount in Rs.)

S. No.	Particulars	April, 2016 to June, 2017 (Pre-GST)	July, 2017 to Sept., 2019 (Post-GST)
1	CENVAT of Service Tax Paid on Input Services Used (A)	51,79,884	-
2	ITC of VAT Paid on Purchase of Inputs (B)	-	-
3	ITC of GST Availed (C)	-	3,00,80,926
4	Total CENVAT/ITC Available (D)= (A+B) or (C)	51,79,884	3,00,80,926
5	Total Turnover as per list of Home Buyers (Net of Cancellation) (E)	23,83,03,466	30,16,15,561
6	Total Saleable Area (in Sq. ft.) (F) [532*900 sq. ft.]	4,78,800	4,78,800
7	Total Sold Area (in Sq. ft.) relevant to turnover (G)	2,80,800	3,20,400
8	Relevant ITC [(H)= (D)*(G)/(F)]	30,37,827	2,01,29,342
9	Ratio of CENVAT/ ITC [(I) = (H)/(E)]	1.27%	6.67%

16. The DGAP has further stated that from the above Table-'C', it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre- GST period (April, 2016 to June, 2017) was 1.27% and during the post- GST period (July, 2017 to September,

2019), it was 6.67%. It clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 5.40% [6.67% (-) 1.27%] 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 @ 4.50% was payable with the post-GST period (July, 2017 to September, 2019) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. Accordingly, on the basis of the figures contained in table- 'C' above, the comparative figures of the ratios of ITC availed/available to the turnover in the pre-GST and post-GST periods as well as the turnovers, the recalibrated base price and the excess realization (profiteering) during the post-GST period, has been tabulated in table-'D' below:-

Table-'D'

(Amount in Rs.)

Sr. No.	Particulars		Post- GST		
			01.07.2017 to 24.01.2018 (GST@12%)	25.01.2018 to 30.09.2019 (inc. Unadjusted Advances) (GST@8%)	Total from 01.07.2017 to 30.09.2019
1	Period	A			
2	Output GST Rate (%)	B			
3	Ratio of CENVAT credit/ ITC to Turnover as per table - 'A' above (%)	C		6.67%	
4	Increase in ITC availed post-GST (%)	D= 6.67% less 1.27%		5.40%	
5	<u>Analysis of Increase in ITC :</u>				
6	Base Price raised/collected during July, 2017 to Sept., 2019 (Rs.)	E	11,23,91,039	18,92,24,522	30,16,15,561
7	GST @ 12% or 8% over Base Price	F=E*12% or 8%	1,34,86,925	1,51,37,962	2,86,24,887
8	Total amount to be collected/raised	G=E+F	12,58,77,964	20,43,62,484	33,02,40,448
9	Recalibrated Base Price	H= (E)*(1-D) or 94.60% of(E)	10,63,21,923	17,90,06,398	28,53,28,321
10	GST @ 12% or 8% over Recalibrated Base Price	I=H*12% or 8%	1,27,58,631	1,43,20,512	2,70,79,143
11	Commensurate demand price	J=H+I	11,90,80,554	19,33,26,910	31,24,07,464
12	Excess Collection of Demand or Profiteering Amount	K=G-J	67,97,410	1,10,35,574	1,78,32,984

17. The DGAP further stated that from table-'D' above, it could be deduced that the additional ITC of 5.40% of the

turnover should have resulted in the commensurate reduction in the base prices as well as cum-tax prices. 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.

18. The DGAP also stated that from the above calculation, it was evident that on the basis of the aforesaid CENVAT/ITC availability in the pre and post-GST periods and the details of the amount raised/collected by the Respondent from the Applicant No. 1 and other home buyers during the period 01.07.2017 to 30.09.2019, the Respondent had benefited by additional amount of ITC, by an amount of Rs. 1,78,32,984/- which included GST@12% or 8% on the base profiteered amount of Rs. 1,62,87,241/-. This amount was inclusive of Rs. 34,137/- (including GST on the base amount of Rs. 31,104/-) which was the benefit of ITC required to be passed on to the Applicant No. 1.

19. The DGAP has further reported that on the basis of the details of outward supplies of the Construction Service submitted by the Respondent for the impugned project, it was observed that the said service had been supplied by the Respondent in the State of Rajasthan only.

20. The DGAP has also reported that before concluding the investigation, it was pertinent to mention that the above computation of profiteering was with respect to 356 home buyers from whom consideration had been received by the Respondent during the period 01.07.2017 to 30.09.2019, Whereas the Respondent had booked 360 flats till 30.09.2019, out of which 4 customers booked the flats in pre-GST period and also paid amounts in pre-GST period but they had not paid any consideration during the post-GST period from 01.07.2017 to 30.09.2019 (period covered by investigation). If ITC in respect of these 4 units was taken into account to calculate profiteering in respect of other units where payments had been received post-GST, the ITC as a percentage of turnover would have been distorted and erroneous. Therefore, the benefit of ITC in respect of these 4 units should have been calculated when the consideration was received from the concerned home buyers, by taking into account the proportionate ITC in respect of such units.

21. The DGAP also further submitted that the Respondent had also claimed that he had passed on the benefit of Rs. 78,39,384/- to the 309 home buyers (net of cancelled units). The Respondent had submitted copies of Credit Notes and

invoices vide his various submissions dated 08.10.2020, 12.10.2020, 24.10.2020 & 02.11.2020 vide which he had passed on the benefit of ITC . Further, the Respondent had submitted that he had e-mail IDs of 50 customers only. On examination of the documentary evidences submitted by the Respondent, the DGAP had observed *inter alia* following discrepancies:-

- a. In 30 cases out of 298, the names mentioned in the List of Home Buyers were not matching with the copies of invoices issued by the Respondent for the same units.
- b. In 36 out of 50 sample cases (where e-mail IDs were provided), the amount of benefit passed on as per copies of invoices was different from the amount as per List of Home Buyers.
- c. Further, to substantiate the claim of passing on the benefit of ITC, e-mails dated 19.11.2020 and reminder on 24.11.2020 were sent to the Applicant No. 1 and 50 other home buyers to confirm the amount of benefit received from the Respondent. The Applicant No. 1 submitted that the Respondent had given discount of Rs. 11,600/- vide invoices no. Anchal/418 dated 30.08.2017

and Anchal/949 dated 08.10.2017 but denied to receive Credit Note No. CN/19-20/46 dated 30.06.2019 amounting to Rs. 6,440/- issued by Respondent. Further, in response to other 50 e-mails (16% of 309 customers to whom benefit is passed on), only 8 customer replied and confirmed the receipt of benefit passed via Invoices issued by the Respondent.

22. Further the DGAP vide its Report concluded the benefit of additional ITC to the tune of Rs. 1,76,59,634/- (Rs. 1,78,32,984/- less Rs. 1,73,350/-), could not be verified with the Respondent's submission. Therefore, the total benefit of ITC of Rs. 1,76,59,634/- (including amount of Rs. 22,937/-) was required to be passed on to the recipients.

23. The DGAP has also concluded that the benefit of additional ITC to the tune of 5.40% of the turnover, has accrued to the Respondent post-GST and the same was required to be passed on by him to the Applicant No. 1 and other recipients. On this account, the Respondent had realized an additional amount to the tune of Rs. 22,937/- (Rs. 34,137/- less Rs. 11,200/-) from the Applicant No. 1. Further, the investigation revealed that the Respondent was required to pass on the additional benefit of ITC amounting

to Rs. 1,76,36,697/- (Rs. 1,77,98,847/- less Rs. 1,62,150/-) to 355 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 No. allotted to such recipients. Therefore, this additional amount of Rs. 1,76,36,697/- was required to be returned to such eligible recipients. As observed earlier, the Respondent had supplied Construction Services in the impugned project in the State of Rajasthan only.

24. The DGAP has also concluded that as the present investigation covered the period from 01.07.2017 to 30.09.2019. Profiteering, if any, for the period post September, 2019, had not been examined as the exact quantum of ITC that would have been available to the Respondent in future could not be determined at this stage, when the Respondent was continuing in availing ITC in respect to the present project.

25. The DGAP further submitted that Section 171(1) of the CGST Act, 2017, requiring that "any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate

reduction in prices", had been contravened by the Respondent amounting to Rs. 1,76,59,634/-.

26. The DGAP has also claimed that in these proceeding, any reference to the CGST Act, 2017 and CGST Rules, 2017 shall also include a reference to the corresponding provisions under the relevant SGST/UTGST/IGST Acts and Rules.

27. The above Report was carefully considered by this Authority and a Notice dated 04.12.2020 was issued to the Respondent to explain why the Report dated 26.11.2020 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed. The Respondent was directed to file written submissions which have been filed on 11.01.2021 and 25.01.2021 wherein the Respondent has submitted:-

- a. That Section 171 of the CGST Act, 2017 was ultra vires the constitution and thus, investigation should be either dropped or kept in abeyance till the constitutional validity was scrutinized by the Hon'ble High Court.

- b. That Article 246A of Constitution of India-Scope of levy of Tax could not be extended to enactment of Section 171 of CGST Act, 2017.
- c. That Rule 126 of CGST Rules, 2017 suffered from the vice of excessive delegation to the extent it empowered this Authority to determine methodology and procedure.
- d. That Provisions of Section 171 were violative of Article 14 of Constitution of India.
- e. That absence of Judicial Member rendered constitution of this Authority against the rule of law and thus took away the independence of this Authority.
- f. That there could not be a power to regulate prices in a tax enactment.
- g. That no Methodology has been prescribed for determination as to whether the reduction in rate of tax on the supply of goods or services or the benefit of ITC had been passed on by the registered person to the recipient by way of commensurate reduction in prices. The Respondent in this regard relied upon the following cases:-

- Palai Central Bank Ltd. vs.1984) 150 1TR 539 (SC)
- National Mineral Development Corporation vs.(2004) 65 SCC 281
- K. T. Moopil Nair vs. State of Kerala AIR 1961 SC 552;
- Rai Ramkrishna vs. State of Bihar 1963 AIR 1667, 1964 SCR (1) 897;
- State of A.P. vs. Nalla Raja Reddy 1967 AIR 1458, 1967 SCR (3) 28;
- Vishnu Dayal Mahendra Pal vs. State of U.P. 1974 AIR 1489, 1975 SCR (1) 376;
- D. G. Gose and Co. (Agents) (P) Ltd. vs. State of Kerala (1980) 2 SCC 410. R
- Larsen & Toubro v State of Bihar (2004) 134 STC 354 (Pat.) affirmed by Supreme Court in Voltas Ltd., (2007) 7 VST 317 (SC).
- State of Jharkhand v. Voltas Ltd., East Singhbhum, (2007) 9 SCC 266.

- h. That there had been no specified guideline for determination and computation of the benefit required to be passed on by the supplier to the recipient, therefore benefit had been passed by the Respondent on a provisional basis.
- i. That the DGAP itself was using different methodologies in different cases.
- j. That the entire exercise of not adopting like for like comparison and adopting of average method by the DGAP was arbitrary and in absence of specific method prescribed, was using estimates for arriving at the benefit to be passed on by the supplier to the recipient.
- k. That DGAP had done a comparison between the credit available in pre-GST and credit available in post-GST without analysing the reasons thereof.
- l. That exempted Goods in Pre-GST Regime had become taxable in GST, therefore any additional amount paid towards GST was not additional benefit accruing to assessee but avilment of credit on account of additional outflow of the tax amount.

- m. That definition of Profiteering and ignoring increase in cost of inputs while arriving at the profiteered amount was incorrect. In the Order passed in the Case No. 3/2018 dated 04.05.2018 in the matter of Kumar Gandharv v. KRBL Ltd., this Authority had accepted the contention of the assessee regarding prices increased partially due to the rise in the prices of paddy crops.
- n. That there was no matching and co-relation between costs incurred by assessee and demands raised by him.
- o. That assessee was entitled to avail credit on input services in Pre-GST Regime.
- p. That the DGAP had not considered the following certain key aspects which required to be taken into consideration:-
- Construction project Life cycle effect had been totally ignored and it had been assumed that uniform expenses were incurred throughout the lifecycle of the project was based on the formula adopted by the DGAP;
 - The turnover would vary as per the market

conditions and it was difficult to maintain the ratio of the same in proportion to procurement in a real estate sector e.g. turnover would be less in lean period while credit would still be higher due to continuous use of inputs/input services for construction;

- ITC was an absolute number which would vary as per the Govt. rate policies.

- q. That the objective behind considering the entire period of the project for computation of profiteering was that the ITC and its co-relation with turnover should be assessed at the broader periodic level rather than linking it with a particular period of the project.
- r. That the methodology to calculate benefit available to the Respondent on the basis of ITC availed was incorrect since the credit availed was a provisional credit and not the final credit and reversal of credit benefit of which had been passed on to the buyer merely on availment would be leading to double jeopardy for the Respondent.

- s. That Profiteering if at all could be determined, it could only be determined at the completion of the project.
- t. That no time limit had been prescribed for accrual of benefit for contracts entered into Pre-GST Regime.
- u. That no reference could be made by the Authority to cause any investigation in respect of profiteering vis-à-vis customers, other than the Applicant No. 1.
- v. That Profiteering amount was to be calculated on incremental amount.
- w. That provisions of Section 171 not applicable for fresh contracts entered after 01st July, 2017.
- x. That the entire exercise by the DGAP was with a pre-conceived notion that the Respondent had violated the provisions of Section 171.
- y. That the DGAP while conducting the enquiry had erred in not following the principal of natural justice.No show cause Notice to the effect was issued by the DGAP

and an inference against the Respondent was being taken with the conclusion of the enquiry.

- z. That the impugned proceedings were violative of principles of natural justice as the DGAP had already prejudged the issue and had come to the conclusion that he had contravened the provisions of Section 171 of CGST Act. Although the Respondent had been afforded opportunity by this Authority to respond to the charges against him but in fact the said opportunity offered to the Respondent did not cure the inherent defects in the proceedings to the extent that he had been confronted with definitive charges at this show cause stage without any opportunity of hearing on merits been given till date. In this regard the Respondent relied upon:- :-

- i) the decision of Hon'ble High Court of Telangana in the matter of M/s. SBQ Steels Limited vs. The Commissioner of Customs, C.E and ST, Guntur.
- ii) the decision of Hon'ble Apex Court in the matter of Ryx Fisheries (P) Ltd v. Union Of India ((2010) 13 Supreme Court Cases 427).

iii) the decision of Hon'ble Apex Court in the matter of Siemens Ltd vs. State Of Maharashtra And Others ((2006).

aa. That DGAP had erred in concluding that non-receipt of replies from customers was equivalent to non-passing of the benefit to the customers. Lack of verification from the customers of the benefit being passed on was owing to the email communication being adopted by the DGAP and that too giving very short of possible time frames and in the last hour even though the physical addresses, contact detail of phone numbers were available with the DGAP since February 2020.

bb. That the DGAP had erred in not considering the fact that even though limited time frame was given to the customers to reply to the communication made by the DGAP, but still 8 customers replied to the communication made by the DGAP and all these communications were positive communications and none denied that benefit had not been passed upon.

cc. That relying upon the communication through email and that too within a very short span of time when all the

details of physical addresses and telephone numbers were available since February 2020 was unjustified.

dd. That the DGAP had firstly erred in treating that since email IDs of only 50 customers had been provided, thus benefit to rest of the customers had not been provided and secondly that since confirmation of only 8 customers had been received thus, no benefit had been passed on to rest of the customers. The Respondent could only submit evidence if the DGAP wished to get it confirmed from the third party, then appropriate method had to be used by the DGAP.

ee. That conduct of investigation by the DGAP did not mean that the amount had to be passed on to the customers at any cost even if it resulted in double benefit being passed on to them.

ff. That DGAP had erred in using third party confirmations against the Respondent without the opportunity of cross examination being given to the Respondent. Further, the Respondent relied upon the judgement of:-

(i) Hon'ble Bombay High Court in the matter of R. W. Promotions P. Ltd vs. ACIT.

- (ii) Hon'ble Madras High Court in the matter of Prakash Chand Nahta vs Commissioner Of Income-Tax on 20.02.2008.
- (iii) Hon'ble Apex Court in the matter of State Of Kerala vs. K.T. Shaduli Yusuff Etc. given on 15 March, 1977 equivalent citations: 1977 AIR 1627, 1977 SCR (3) 233.

gg. That DGAP vide his Report had submitted that in 30 cases out of 298, the names mentioned in the list of home buyers were not matching with the copies of invoices issued by the Respondent for the same units and in 36 out of 50 sample cases (where e-mails IDs provided), the amount of benefit passed on as per copies of invoices was different from the amount as per list of home buyers. N

hh. That lack of availability of time even after taking 13 Months to complete the enquiry could not be a reason firstly for not providing sufficient time to the Respondent to cross examine the replies received from the customers and secondly for adopting the email mode of

communication with the customers. That the inordinate time taken to complete the proceedings until 26.11.2020 was not on account of any delay on his part as he had submitted the documents when asked for even in Covid-19 Pandemic. The fact that last information was sought from the Respondent on 24.11.2020 and that also was replied by him on the same day showed that he was cooperating in the entire exercise but at the same time also reflected that proceedings had been concluded in a hasty manner without affording proper opportunity to make the third party evidences available to the Respondent.

jj. That pursuant to the evidences submitted by the Respondent for passing on the benefit of ITC by commensurate reduction in prices, verification of the same was an independent exercise conducted by the DGAP and statute nowhere casted a burden on him that it was his responsibility that customers should reply to the same nor he was bound by the reply received from the customers.

kk. That the amount arrived as additional ITC benefit suffered from the inherent defect that additional tax paid

on increased prices of goods and services had also been considered as additional benefit to the Respondent.

ii. That there was no condition provided in Section 16 that entitlement of credit was subject to section 171 of CGST Act or since a condition similar to proviso to Section 140(3) had also not been inserted in Section 16, therefore making the Respondent to pass on the benefit of something which he had earned to the exclusion of others was *ultra vires* and against the provisions of the Statute and was violative of Article 14 and Article 300A of Constitution of India.

mm. That there were many variables which were required to be made constants before arriving at the profiteered amount like price prevailing of the goods/services pre and post GST Regime, Tax Rate prevailing pre and post GST Regime, Consumption of Goods/services vis-a-vis amount collected from customers in the pre and post GST Regime, stage of construction of the township etc. to name a few, which were required to be taken into consideration by the DGAP, however only thing which had been considered was absolute figure of additional

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ITC which had resulted in distorted calculation of the profiteered amount.

nn. That the calculation of the profiteered amount had been conducted as a mathematical exercise by the DGAP ignoring the variables and the constants as narrated above and without providing the set of assumptions made by the DGAP while conducting the mathematical exercise. No assumptions had been provided in the mathematical exercise to arrive at whether the set of assumptions framed were appropriate in the given exercise or not.

oo. That the DGAP had rejected the Respondent's contention that benefit of ITC was passed on to the recipients by way of commensurate reduction in prices basis although to the extent of Rs. 78,39,384/- even though all the relevant evidences were submitted by him.

pp. Further, the Respondent requested to grant him an opportunity of being heard personally before deciding the matter so as to put forth his case.

28. The Applicant No. 1 had also made his written submissions vide emails dated 12.01.2021, 14.06.2021 and 05.04.2022 wherein he has stated/requested this Authority:-

- a. To either ask the Respondent about the Progress-cum-Status of the project or why not yet giving possession to the Applicant No. 1 when more than 50 families had already started living at "Arihant Anchal" or forward the matter about delay of the same (booking year was Feb. 2016) to Competent Authority or else advise the Applicant No. 1 to submit grievances as per the dream of "Sabka Awas Yojna" of the Government of India and Prime Minister's Vision. A Number of facilities as per the advertisement were still required to be developed; this Authority might forward the matter to the competent forum or Authority to conduct inquiry.
- b. Forward recommendation based on the Applicant No. 1's written detailed application / submissions and the valuable investigation done by the DGAP / NAA about the same to the Central Board of Direct Taxes Authorities (CBDT) to start detailed enquiries

about booking of "FARZI EXPENSES OR BILL TO ADJUST THE FAKE CREDIT NOTES OF HOME BUYERS".

- c. Forward an approval to the DGAP for detailed investigations under Rule 129(1) of the CGST Rules, 2017 about profiteering for the period after September 2019 till the project completion or up to the submission of Occupancy Certificate to ascertain the exact quantum of ITC which would be available to the Respondent which he was not passing on to the Home Buyers and as per the Applicant No. 1's mathematical methodology calculations the said figure goes up to Rs. 5.95 Crores. His application had already been considered by the Standing Committee on Anti-Profitteering in the earlier meetings and was recommended to the DGAP for detailed investigations under the GST Act.
- d. Not to allow further adjournments to the Respondent to file Rejoinder/reply as the Respondent was continuing to do the more and more manipulations of data with taxes (Proof Submitted) and also trying to create artificial

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evidence and many a times trying to force the Applicant No. 1 through the hardcore persons and had started pressure to surrender the flat and had not yet provided the possession also of the same since the year 2016 in project "Arihant Anchal", and the Applicant No. 1 the Respondent had already given possession to more than 50 families at "Arihant Anchal" then why not to the Applicant No. 1.

- e. The Applicant No. 1 had already submitted written request letter to this Authority as per his letter/submissions dated 21.12.2020 about *the "Pressurizations with Arihant Company Management and Hardcore Criminal Persons regarding surrender the same with revert back the grievance applications from all the legible central & state government authorities"*.

In support of the above contentions, Applicant No. 1 forwarded the email dated 06.01.2021 which he had received from the Respondent which provided an *"offer about buy back of the purchased flat"* and also to dilute the case with influence of investment and settle the same by offering cash

and profit benefit of Rupees Ten Lacs against the Applicant No. 1's paid considerations about purchase of joy residence at "Arihant Aanchal".

- f. It was submitted that the Applicant No. 1 would never take back the filed request cum application.
- g. That the Respondent's said project "Arihant Aanchal" was started in February, 2016. However, the period taken for calculation of profiteering was 01.07.2017 to 30.09.2019. Further, the Applicant No. 1 submitted that till March, 2021 the Respondent had collected Rs. 16,35,455/- with GST @ 18%/12%.
- h. To pass order on the basis of the similar matters already decided by this Authority as mentioned below:-
- (i) Abhishek Singh vs M/S. Aparna Constructions And Estates Pvt. Ltd., case no Dated (citation)
- (ii) Deepak Kumar Barnwal vs M/S. Manas Vihar Sahakari Awas Samiti Ltd. case no dated(citation)

- (iii) S. Ganapathy Subramanian vs Mahindra Lifespace Developers Ltd. case no dated(citation)
 - (iv) Shivam Agarwal vs M/S. Gaursons Realtech Pvt. Ltd.
 - (v) Manish Saini vs M/S. Ramaprastha Promoter & Developer Pvt. Ltd., case no dated(citation)
 - (vi) Dharmendra Gaud v JMK Holdings Pvt. Ltd., case no dated(citation)
- i. To pass order for inquiry for the period beyond the period already covered in this application for calculation of further profiteered amount, as held in the matter of Jai Prakash Garg vs M/s Adarsh Thought Works Private Limited Case No 39 date of order 10.07.2020.
- j. To pass order for proper inquiry against the Respondent in regard to cancellation of registration, etc in view of presenting incorrect details and records and claiming unnecessary adjournments.

29. Supplementary Report was sought from the DGAP on the above submissions of the Respondent. In response, the

DGAP vide his Supplementary Reports dated 12.02.2021 and 25.03.2022 has furnished the following clarifications:-

- a. For the contention raised by the Respondent regarding methodology adopted by the DGAP for calculating the profiteered amount, the DGAP has clarified that the main contours of the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and the benefit of ITC were enshrined in Section 171 (1) of the CGST Act, 2017 itself which states that "Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices."

N

Therefore, Section 171 itself provides the procedure and methodology for determination of the profiteered amount and therefore, no guidance was required to be provided. The Respondent had got benefit of ITC which he was required to pass on. It was also submitted that the facts of each case were different so quantum of profiteering was determined by taking into account the particular facts of each case. Hence, there could not be one-size-fits-all mathematical methodology. It was also submitted that the additional ITC which had

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accrued to the Respondent on account of the implementation of the GST was required to be passed on to the customers, but a straight jacketed approach was not feasible as the facts of each case vary substantially.

In one real estate project, date of start and completion of the project, price of the house/commercial unit, mode of payment of price, stage of completion of the project, timing of purchase of inputs, rates of taxes, amount of ITC availed, total saleable area, area sold and the taxable turnover realised before and after the GST implementation would always be different than those of 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 that of another project. Issuance of Occupancy Certificate/ Completion Certificate would also affect the amount of benefit of ITC as no such benefit would be available once the above certificates were issued. Therefore, no set of parameters could be fixed for determining methodology to compute the benefit of additional ITC which would be required to be passed on to the buyers of such units.

N

Further, the Parliament as well as all the State Legislature have delegated the task of framing of the Rules under the CGST Act, 2017 to the Central Government as per the provisions of Section 164 of the above Act. Accordingly, the Central Government in terms of Section 171 (3) of the CGST Act, 2017 read with Section 2 (87) of the Act, has prescribed the powers and functions of the NAA and DGAP, on the recommendation of the GST Council, which is a Constitutional federal body created under the 101st Amendment of the Constitution, as per Rule 127 and 133 of the CGST Rules, 2017. Further, the power to determine its own Methodology & Procedure has been delegated to this Authority under Rule 126 of the above Rules as per the provisions of Section 164 of the above Act as such power is generally and widely available to all the judicial, quasi-judicial and statutory authorities to carry out their functions and duties and hence no special favour has been shown to the Authority while granting such power. The Authority has only been allowed to 'determine' the methodology and not to 'prescribe it' which it has to do keeping in view the facts of individual case. Since the functions and powers to be exercised by this Authority have been approved by

competent bodies, the same are legal and binding on the Respondent.

In light of above facts, quantum of profiteering was determined by the DGAP by taking into account the particular facts of each case. Hence, there could not be one-size-fits-all mathematical methodology. It was also submitted that the DGAP had not adopted any self-derived method for computing the profiteering amount, but had compared the ITC to turnover ratio in pre & post GST periods in the present case which was rational, logical & appropriate in terms of Section 171 of the CGST Act, 2017.

Further, it was also submitted that the increase in the cost of inputs and input services might be a factor for determination of price but this factor was independent of the output GST rate. As there was no cost escalation clause in the agreement entered by the Respondent with the home buyers, the increase in cost, if any was a kind of business risk which must have been factored in by the Respondent at the time of entering into agreements.

Moreover, In order to quantify the benefit of ITC, it was necessary to quantify the credits available to the Respondent in the pre-GST regime and also the credits available in the GST regime. Further, the amount of the additional benefit of ITC required to be passed on, was the amount paid by the customers or flat buyers to the Respondent in the form of GST charged from them which was to be deposited by the Respondent to the Government exchequer. But the Respondent instead of paying this GST amount in cash to the Government exchequer utilized the ITC available to him in addition to the credit which was not available to him in pre-GST period. Therefore, the Respondent was not required to pay anything from his own pocket to pass on the benefit of additional ITC accrued to him in GST period. Hence, the methodology adopted by the DGAP was correct and justifiable.

Further, in the Report dated 26.11.2020, the increase in ITC as a percentage of total taxable turnover availed by the Respondent post-GST had been quantified. The input or input service wise availability or non-availability of ITC 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 rate of GST compared to Services Tax as the supplier of input services was now also enjoying ITC on all the purchases made by him resulting in reduction in prices of the materials purchased by him which should pass on to the Respondent.

In the erstwhile pre-GST regime, various taxes and Cess were being levied by the Central Government and the State Governments, which got subsumed in the GST. Out of these taxes, the ITC of some taxes was not being allowed in the erstwhile tax regime. For example, the ITC of Central Sales Tax, which was being collected and appropriated by the States, was not admissible. Similarly, in case of construction service, while the ITC of Service Tax was available, the ITC of Central Excise Duty paid on inputs was not available to the service provider. Such input taxes, the credit of which was not allowed in the erstwhile tax regime, used to get embedded in the cost of the goods or services supplied, resulting in increased price. With the introduction of GST with effect from 01.07.2017, all these taxes got subsumed in the GST and the ITC of GST was available in respect of all goods and

services, unless specifically denied. This additional benefit of ITC in the GST regime was required to be passed on by the suppliers to the recipients by way of commensurate reduction in price, in terms of Section 171 of GST Act, 2017.

- b. For the contention raised by the Respondent that there were many variables which are required to be made constants before arriving at the profiteered amount like price prevailing of the goods/services pre and post GST Regime, Tax Rate prevailing pre and post GST Regime, Consumption of Goods/services vis-a-vis amount collected from customers in the pre and post GST Regime, stage of construction of the township etc. to name a few, which were required to be taken into consideration, the DGAP has clarified that in terms of provisions of Section 171 of CGST Act, 2017, profiteering was determined with regard to supplies made in GST regime only. However, a comparison between pre-GST actual taxes and the rate of GST had to be made in order to determine whether there was any reduction in rate of tax or the benefit of ITC or not on introduction of GST.

c. For the averment made by the Respondent that calculation of the profiteered amount had been conducted as a mathematical exercise by the DGAP ignoring the variable and the constants and without providing the set of assumptions made by the DGAP while conducting the mathematical exercise. The DGAP has clarified that Section 171 of the CGST Act, 2017 obliges the supplier to pass on the benefit of reduction in rate of tax or the benefit of ITC availed by supplier to the recipients by way of commensurate reduction in prices. The investigation by the DGAP was conducted under the provisions of Section 171 of the Act read with Rule 129 of the CGST Rules, 2017, on the recommendation of the Standing Committee on Anti-profiteering and the Investigation Report was submitted to this Authority under Rule 129(6) of the Rules. The report has been divided into following five parts:

- (i) Brief facts of the case (Para-1 & 2),
 - (ii) Procedure followed (Para-3 to 6),
 - (iii) Replies of the Respondent (Para-7 to 9),
 - (iv) Investigation & Findings (Para-10 to 21)
- and

(v) Conclusion (Para-22 to 26).

- d. The contention of the Respondent that no set of assumptions was proved by the DGAP at the end of mathematical exercise was incorrect as there was no assumption made by the DGAP rather it had done a thorough investigation based on the documents and information submitted by the Respondent and the Report clearly mentioned the procedure followed by the DGAP and the basis of computation made for determining the amount of profiteering.
- e. Further, the submission of the Respondent that there was no opportunity of hearing given to him and the conclusion had been arrived *suo-moto* was incorrect and hence denied. In this regard, it was submitted that on receipt of reference from the Standing Committee on Anti-profiteering on 09.10.2019, a Notice of Initiation under Rule 129 of the CGST Rules, 2017 was issued by the DGAP on 21.10.2019, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the recipients by way of commensurate reduction in prices and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as to furnish all documents

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in support of his reply. Further, the Respondent was afforded an opportunity to inspect the non-confidential evidences/information which formed the basis of the said Notice, during the period 30.10.2019 or 31.10.2019. Accordingly, authorised representative of the Respondent availed the opportunity by visiting the DGAP's office on 31.10.2019 and inspected the non-confidential documents submitted by the Applicant No. 1. The above facts were duly mentioned in para-3 of the Report dated 26.11.2020.

- f. For the contention raised by the Respondent that impugned proceedings were violative of principles of natural justice as the DGAP had already prejudged the issue and had come to the conclusion that he had contravened the provisions of Section 171 of CGST Act, the DGAP has referred to the case law of the Hon'ble Supreme Court in the case of SEBI v. Akshya Infrastructure (P) Ltd., (2014) 11 SCC 112 in which it was held that *"It is by now settled proposition of law that mere breach of rules of natural justice is not sufficient. Such breach of rules of natural justice must also entail avoidable prejudice to the respondent."*

In the light of the same, it was submitted that there was no violation of principle of Natural Justice or any prejudice had been caused to the Respondent.

- g. For the Respondent's contention that the DGAP had rejected his contention that benefit of ITC was passed on to the recipients by way of commensurate reduction in prices basis although to the extent of Rs. 78,39,384/- even though all the relevant evidences were submitted by him the DGAP has stated that the concern raised by the Respondent had been addressed in para-21 of the DGAP's Report dated 26.11.2020.

It was further submitted that post submission of the Report, 5 more replies were received out of which 3 confirmed to have received the benefit passed on by the Respondent whereas 2 buyers denied to receive any such benefit. Since, the Respondent had submitted that he did not have e-mail IDs of all the home buyers to whom benefit was passed on, the Jurisdictional Authority might be asked to verify the Respondent's claim of passing on the benefit of ITC to his home buyers.

- h. For the averment made by the Respondent that It had been mentioned in the report that in 30 out of the 298 cases the names mentioned in the home buyers list were not matching with the copies of invoices issued by him the DGAP has clarified that the Respondent had submitted that out of 30 cases, 23 flats were cancelled by the original buyers and then re-allotted to new buyers. However, during the course of investigation, the Respondent submitted copies of invoices issued to the original buyers to substantiate the claim of passing on the benefit to present customers (who bought the flats in subsequent period) which could not be accepted. Further, as stated above, the DGAP could not verify the Respondent's claim of passing on the benefit to his customers, hence jurisdictional Authority might be asked to do so.
- i. For the averment made by the Respondent that it has been mentioned in the report that in 36 out of the 50 cases, the amount of benefit passed on as per copies of invoices was different from the amount as per List of Home Buyers, the DGAP has stated that the Respondent had submitted scanned copies of approximately 2000 invoices vide various submissions in piecemeal manner to substantiate the claim of passing on the benefit to his customers.

Further, the invoices mentioned in Annex-7 of his submission dated 25.01.2021 were also received vide his e-mail dated 12.11.2020 which form part of Annex-23 of the DGAP's Report dated 26.11.2020 which were inadvertently overlooked by the DGAP while examining the Respondent's claim. However, as stated above, the DGAP could not verify the Respondent's claim of passing on the benefit to his customers in absence of e-mail IDs, hence jurisdictional authority might be asked to do so.

- j. For the contention raised by the Respondent that there cannot be power to regulate prices in a tax enactment it was clarified by the DGAP that it had not acted in any way as price controller or regulator as it didn't have the mandate to regulate the same. The Respondent was absolutely free to exercise his right to practice any profession, or to carry on any occupation, trade or business, as per the provisions of Article 19 (1) (g) of the Constitution. The Respondent could also fix his prices and profit margins in respect of the supplies made by him. Under Section 171 of the CGST Act, 2017, this Authority has only been mandated to ensure that both the benefits of tax reduction and ITC which are the sacrifice of precious indirect tax revenue made from the

kitty of the Central and the State Governments are passed on to the end consumers who bear the burden of indirect tax. The intent of this provision is the welfare of the consumers who are voiceless, unorganized and vulnerable. This Authority is charged with the responsibility of ensuring that the both the above benefits are passed on to the general public as per the provisions of Section 171 read with Rule 127 and 133 of the CGST Rules, 2017.

- k. For the various contentions raised by the Respondent that there had been no specified guidelines for determination and computation of the benefit required to be passed on by the supplier to the recipient, therefore benefit had been passed by the Respondent on a provisional basis, it was clarified by the DGAP that it had not adopted any self-derived method for computing the profiteering amount, but had compared the Pre-rate reduction average base price (after discount) with the post-rate reduction actual invoice-wise base price (after discount) of the same item sold through same channel in the present case which was rational, logical & appropriate in terms of Section 171 and the same had been approved by this Authority in similarly placed cases.

1. For the averment made by the Respondent that the exempted Goods in Pre-GST Regime had become taxable in GST, therefore any additional amount paid towards GST was not additional benefit accruing to assessee, the DGAP has clarified that the amount of the additional benefit of ITC which was now available to the Respondent, can may in turn be utilized to pay the GST. It was therefore to be passed on to the customers by the Respondent in terms of Section 171 of the CGST Act, 2017. The Respondent has utilized the additional ITC available to him in post-GST period.

Therefore, in the report dated 26.11.2020, the increase in ITC as a percentage of total taxable turnover availed by the Respondent post-GST had been quantified. The input or input service wise availability or non-availability of ITC 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 rate in GST compared to Services Tax as the suppliers of input services were now also enjoying ITC on all the purchases made by them resulting in reduction in prices of the materials purchased by them which

should pass on to the Respondent.

m. For the contention raised by the Respondent regarding the definition of profiteering and ignoring increase in cost of inputs while calculating profited amount, the DGAP has submitted that 'Profiteering' has been defined in the CGST Act as an Explanation to Section 171 which was inserted in the Statute vide Section 112 of the Finance Act, 2019 (No. 2) which came into force only w.e.f. 01.01.2020. Further, the Respondent had cited the definitions of 'Profiteering' from the Black's Law Dictionary in his support. However, it would be worthwhile to mention here that Section 171 of the CGST Act is very much clear, according to which the benefit commensurate to the amount of reduction in rate of tax or benefit of ITC has to be passed on to the recipients by way of reduction in prices. The insertion of definition of the term "profiteered" in Section 171 of the CGST Act, 2017 made vide the Finance (No. 2) Act, 2019 was only clarificatory in nature.

n. The contention raised by the Respondent regarding ignoring increase in cost of inputs in the para was wrong

and hence denied. In this regard, it was submitted that the increase in the cost of inputs and input services may be a factor for determination of price but this factor was independent of the output GST rate. As there was no cost escalation clause in the agreement entered by the Respondent with the home buyers, the increase in cost, if any was a kind of business risk which must have been factored in by the Respondent at the time of entering into agreements. The Respondent could not claim to set off such increase in his cost with the benefit of ITC which is the sacrifice of precious tax revenue made from the kitty of the Central and the State Governments and required to be passed on to the end consumers who bear the burden of tax.

- o. For the averment made by the Respondent that the Respondent was entitled to avail credit on input services in pre-GST regime, the DGAP has clarified that in the erstwhile pre-GST regime, various taxes and Cesses were being levied by the Central Government and the State Governments, which got subsumed in the GST. Out of these taxes, the ITC of some taxes was not being allowed in the erstwhile tax regime. For example, the ITC of

Central Sales Tax, which was being collected and appropriated by the States, was not admissible. Similarly, in case of construction service, while the ITC of Service Tax was available, the ITC of Central Excise Duty paid on inputs was not available to the service provider. Such input taxes, the credit of which was not allowed in the erstwhile tax regime got embedded in the cost of the goods or services supplied, resulting in increased prices. With the introduction of GST with effect from 01.07.2017, all these taxes got subsumed in the GST and the ITC of GST was available in respect of all goods and services, unless specifically denied. Broadly, the additional benefit of ITC in the GST regime would be limited to those input taxes, the credit of which was not allowed in the pre-GST regime but was allowed in the GST regime. This additional benefit of ITC in the GST regime was required to be passed on by the suppliers to the recipients by way of commensurate reduction in prices, in terms of Section 171 of GST Act, 2017.

- p. For the contention raised by the Respondent that the DGAP had not considered certain key aspects which were required to be taken into consideration, the DGAP

has stated that Section 171(1) of CGST Act, 2017 mandates passing on of the benefit of additional ITC which had accrued to the Respondent during the entire life of the project before occupancy certificate was issued. Further, the Respondent availed ITC every month by filing GSTR-3B returns inspite consisting a long gestation period in a housing project. The Respondent could not enrich himself at the expense of the flat buyers by denying them the benefit of ITC till completion of the project while he used the same in his business for discharging his output tax liability every month. Therefore, the Respondent had to make periodical assessment of the ITC benefit and pass it on to the eligible flat buyers on each and every demand raised by him. The Respondent could always make adjustments in case more or less benefit was passed on at the final computation and payment of the benefit. Therefore, these contentions of the Respondent could not be accepted.

- q. For the contention raised by the Respondent that no reference was made out for other customers, the DGAP has stated that under Rule 129 (2) of the above Rules,

the DGAP is required to investigate whether a registered person has passed on the benefit of tax reduction or ITC to the recipients or not and hence during the course of investigation if it comes to the notice that the above two benefits have not been passed on to those recipients who had not filed complaint against the registered person, DGAP is legally bound to investigate the same and bring the facts before the NAA for determination of those benefits to the eligible recipients. It is also clear that the above benefit has accrued to the Noticee due to the concession given by the Central as well as the State Government out of the public exchequer, therefore, the DGAP is bound to investigate to ascertain whether the Noticee has misappropriated the amount of ITC which he was required to pass on to the buyers. The DGAP cannot overlook commission of an offence which has occurred under Section 171 (1) of the above Act once it has come to its notice during the course of the investigation and hence the above contentions of the Noticee are not correct.

- r. For the contention raised by the Respondent that the provisions of Section 171 were not applicable for fresh

contracts entered after 01.07.2017, the DGAP has submitted that the prices offered to the customers booking flats post July, 2017 were after adjusting/giving benefit of ITC consequent to introduction of GST had been passed on, [during the course of investigation by the DGAP and also for the confirmation of the same from the homebuyers who booked their flats post GST.] Thus the contention of Petitioner that the booking made after introduction of GST needed to be excluded from computation of profiteering was wrong and hence denied.

- s. Further, for the submissions made by the Applicant No. 1 against the report of the DGAP, the DGAP has clarified that as stated in para-23 of the Report dated 26.11.2020, the present investigation covered the period from 01.07.2017 to 30.09.2019. Profiteering, if any, for the period post September, 2019, had not been examined as the exact quantum of ITC that would be available to the Respondent in future could not be determined at this stage, when the Respondent was continuing to avail ITC in respect to the present project.

30. The Respondent vide his email dated 15.04.2022 filed rejoinder on the DGAP's clarifications dated 12.02.2021 and 25.03.2022 wherein he has re-iterated and relied upon his earlier written submissions dated 11.01.2021 and 25.01.2021.
31. The proceedings in the matter could not be completed by the Authority due to lack of required quorum of Members in the Authority during the period 29.04.2021 till 23.02.2022, and that the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for proceedings vide Order dated 23.02.2022 and hearing in the matter through Video Conferencing was scheduled to be held on 05.04.2022. However, the Respondent vide his email dated 04.04.2022 requested for adjournment.
32. Further, the next date of hearing in the case was granted to the Respondent and the Applicant No. 1 on 02.05.2022. Accordingly, hearing in the matter was held on 02.05.2022, which was attended by Shri Pramod Agarwal, Applicant No. 1 and Shri Deepak Bholusaria and Shri Arpit Haldia, Chartered Accountants for the Respondent. During the personal hearing the Respondent has re-iterated his arguments

based on his written submissions dated 11.04.2021, 25.01.2021 and 15.04.2022. The Applicant No. 1 has also re-iterated his written submissions dated 11.01.2021, 14.06.2021 and 05.04.2022. Further, the Respondent and the Applicant No. 1 further requested time till 06.05.2022 to file their consolidated written submissions. Same has been filed by the Respondent vide his email dated 11.05.2022. Vide above submissions, the Respondent has submitted :-

- (i) That Applicant No. 1 could never be an applicant in the present case as neither any flat had been booked in his name nor had a flat been registered in his name and nor any booking of any sort had been made in his name till now. That the Applicant No. 1 did not have a locus-standi in any manner in the present case to be the Applicant and thus the application shall be treated as null and void.
- (ii) That "Arihant Anchal Phase-I" consists of 4 Blocks wherein there are total 19 Towers having 532 units/flats.
- (iii) The copy of RERA Registration for 'Anchal Phase I' was enclosed with the submissions.

(iv) That the benefit of profiteering has been duly passed by the Respondent and the DGAP has erred in not considering the same while preparing his report. Out of the total Profiteering amount the Respondent has passed on benefit of Rs. 65,83,998/- through invoices and benefit of Rs. 12,55,386- had been passed through Credit Notes till 30.09.2019. About 84% of the benefit of anti-profiteering till 30.09.2019 had been passed through invoices and rest of 16% had only been passed through credit notes. That details of the all the Credit Notes and invoices were made available to the DGAP at the time of investigation as per the details required and had also been made available to recipients.

That accounting entry regarding Profiteering benefit passed on whether by way of Invoice or by way of credit note has been duly passed in the Accounts and was an integral part of his accounts. The Respondent was a Listed Entity and accounts were being regularly audited as part of internal audit and Statutory audit under different statutes, therefore there arised no question that any evidence provided

as invoice or Credit Note had not been accounted for by the Respondent.

(v) That the account of the flat buyer in the books of accounts not only considered the demand raised and interest payable for delayed payments and other charges and payments thereon but also considered the Anti-Profiteering benefit passed on by the Respondent whether by way of invoices or Credit Notes. Out of 532 flats, about 220 flats had been registered till date with all due communications. In addition to the submissions made and the fact that some of them had been registered and details of Credit Notes and invoices had been provided earlier to the DGAP as per details required fortified two facts as follows-

a) Firstly, all Credit Notes/invoices relating to Profiteering benefit had been duly passed in the books of accounts. Once such credit/note or invoice had been entered in the books of accounts, it should be deemed that benefit had been passed on.

b) Secondly, Registry or possession was done only when entire amount due from customers including

the delayed payment charges and other charges in the books of accounts were settled, therefore that itself was a proof of the fact that amount had been collected from the flat purchaser after taking into account the anti-profiteering benefit.

- (vi) That in cases wherein customer canceled the booked flat and the flat was then thereafter booked by the Respondent in the name of new customer, then in such case price was negotiated with the new customer again on the basis of prevailing market considerations and applicable statutory laws therein and it had no link with the price with which the agreement was entered earlier with the customer .
- (vii) That during the course of proceedings, it was highlighted by the Applicant No. 1 that the Respondent was refusing to collect the amount from him. No amount was to be collected by the Respondent from the Applicant No. 1 and in fact he should not be an applicant in the matter as he had not booked a flat from the Respondent.

The alleged flat had been booked in the name of Smt. Laxmi Devi wherein the liability to pay was outstanding and it was the obligation of Smt. Laxmi

Devi towards the company to pay the amount. In the statement, it could be observed that mostly the due amount had been paid regularly till December 2020 and thereafter, Smt. Laxmi Devi had intentionally avoided to pay the due amount. That all the invoices were duly sent to her by the Respondent and the allegation that the Respondent had refused from taking the amount was false. when the Respondent had duly sent the invoices, the payment could have been made through RTGS/NEFT as the Applicant No. 1 had the bank details available and there arised no situation of refusal to accept the payment. If a person intended to make the payment through NEFT, the Respondent could not refuse it as the amount was directly credited to his bank account.

(viii) The Respondent further requested for opportunity of being heard.

33. The Applicant No. 1 vide his submissions dated 18.06.2022 submitted that:-

(i) Respondent in its submissions had failed to contradict the facts mentioned in the report submitted by DGAP.

- (ii) By way of asking for different dates in the name of natural justice the respondent was delaying the matter.
- (iii) It was therefore requested you to kindly consider the details submitted to NAA by him on various dates on 21.12.2020, 11.01.2021, 21.01.2021 and 04.04.2022 and decide the matter.

34. As the Respondent requested personal hearing in his submissions dated 11.05.2022, therefore, next hearing in the case was granted to the Respondent and the Applicant No. 1 on 20.06.2022. Therefore, hearing in the matter was held on 20.06.2022, which was attended by Shri Arpit Haldia, Chartered Accountant for the Respondent. During the personal hearing the Respondent requested to conclude the hearing on the basis of his earlier written submissions dated 11.01.2022, 25.01.2022, 15.04.2022 and 11.05.2022.

35. The Authority has carefully considered the Reports filed by the DGAP, all the submissions and the documents placed on record, and the arguments advanced by the Respondent.

36. The Authority finds that, Section 171 (1) of the CGST Act, 2017 deals with two situations:- one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period; hence the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST.

37. On this issue it has been reported by the DGAP as tabulated above 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 1.27% and during the post-GST period (July-2017 to September-2019), it was 6.67%. Hence, according to the DGAP, post-GST, the Respondent has been benefited from additional ITC to the tune of 5.40% (6.67%-1.27%) of his turnover and the same was required to be passed on to the Applicant No. 1 and the other flat buyers. Therefore, the amount of ITC benefit to be passed on to all the flat/shop buyers is Rs. 1,78,32,984/-.

38. The Respondent has raised several contentions in his support and the findings of the Authority are as under:-

38.1 The Respondent has raised the contention that provisions of Section 171 were violative of Article 14 of Constitution of India and that absence of Judicial Member rendered constitution of this Authority against the rule of law and thus took away the independence of this Authority. The above contention of the Respondent is incorrect as this Authority has been constituted under Section 171 (2) of the CGST Act, 2017. The Parliament, the State Legislatures, the Central and the State Governments and the GST Council in their wisdom have not thought it fit to provide for a judicial member in this Authority. Such a member has also not been provided in the other such Authorities like the TRAI or the Authorities on Advance Rulings on the Income Tax, Authorities on Advance Rulings on the Central Excise and the Goods and Services Tax. Hence, the contention of the Respondent regarding the unconstitutionality of the Authority is not tenable.

38.2 The Respondent has contended that the DGAP while conducting the enquiry had erred in not following the principles of natural justice. The Authority finds that, the Report of the DGAP has been prepared on the basis of the documents/data provided by the Respondent and as per the provisions of Section 171 of the CGST Act, 2017. The findings of the DGAP has not violated any of the rights of the Respondent and the said Report was submitted to this Authority, which has provided ample opportunities to the Respondent to submit his position and also offered personal hearing. As such, principles of natural justice have been followed. Therefore, the above submission of the Respondent is not acceptable.

38.3 The Respondent has contended that there could not be a power to regulate prices in a tax enactment. The Respondent has also contended that no Methodology has been prescribed for determination as to whether, the reduction in rate of tax on the supply of goods or services or the benefit of ITC had been passed on by the registered person to the recipient by way of commensurate reduction in prices.

In this regard, the Authority finds that, neither this Authority nor the DGAP have acted in any way as price controller or regulator as they do not have the mandate to regulate the same. The Respondent is absolutely free to exercise his right to practice any profession, or to carry on any occupation, trade or business, as per the provisions of Article 19 (1) (g) of the Constitution. The Respondent can also fix his prices and profit margins in respect of the supplies made by him. Under Section 171 of the CGST Act, 2017, this Authority has only been mandated to ensure that both the benefits of tax reduction and ITC which are the sacrifice of precious indirect tax revenue made from the kitty of the Central and the State Governments are passed on to the end consumers who bear the burden of indirect tax. The intent of this provision is the welfare of the consumers who are voiceless, unorganized and vulnerable. This Authority is charged with the responsibility of ensuring that both of the above benefits are passed on to the general public as per the provisions of Section 171 of the CGST Act, 2017 read with Rule 127 and Rule 133 of the CGST Rules, 2017.

38.4 The Respondent has contended that Rule 126 of CGST Rules, 2017 suffered from the vice of excessive delegation to the extent that it empowered the National Anti-Profiteering Authority to determine methodology and procedure. The Respondent has also claimed that the methodology adopted for computing profiteering amount by the DGAP was arbitrary and same was evident from the DGAP's Report itself. In this regard, the Authority finds that, the main contours of the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and the benefit of ITC are enshrined in Section 171 (1) of the CGST Act, 2017 itself which states that "*Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.*" It is clear from the perusal of the above provision that it mentions "reduction in the rate of tax on any supply of goods or services" which does not mean that the reduction in the rate of tax is to be taken at the level of an entity/group/company for the entire supplies made by it. Therefore, the benefit of tax reduction has to be

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

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

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

38.5 The Respondent also contended that the entire exercise of not adopting like for like comparison and adopting of average method by the DGAP was arbitrary and in absence of specific method prescribed, used estimates for arriving at the benefit to be passed on by the supplier to the recipient; that the DGAP had done a comparison between the credit available in pre-GST

and credit available in post-GST without analysing the reasons thereof. In the context of this claim, the Authority finds that, the amount of CENVAT during the pre-GST period is required to be compared with the amount of ITC available during the GST period to arrive at the quantum of ITC benefit, as it is only the additional ITC available during the GST period which is required to be passed on as per the provisions of Section 171 (1). This benefit is to be passed only w.e.f. 01.07.2017 when the provisions of Section 171 (1) have come in to force.

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The whole purpose of taking period of 15 months is to cover a reasonable period just before the GST so that a proper assessment of percentage of ITC available to the Respondent could be arrived at. Further, during this period there was no variation in rate of tax on services and prior to that there were several changes in the rate of service tax as well as changes in the conditions for eligibility of availment of CENVAT Credit of Service Tax and Excise Duty including rate of abatement etc. which would result in distorted picture of CENVAT. Thus, this period

was taken to find out the average ratio of ITC availability with turnover. The ratio of ITC and turnover in Pre-GST is compared with ratio of ITC in post GST. The period during the GST period may be one month or one year, depending upon the period of investigation. It does not mean that if the period is larger than the availability of ITC would increase or decrease but it only gives a ratio which represents the period for comparison. It is a standard practice by the DGAP to take pre-GST period from 01.04.2016 to 30.06.2017 which has been followed in all cases. These cases have been upheld by this Authority.

38.6 The Respondent also avered that the exempted Goods in Pre-GST Regime had become taxable in GST, therefore any additional amount paid towards GST was not additional benefit accruing to assessee but availment of credit on account of additional outflow of the tax amount. In this regard, as discussed in para supra for passing on the benefits of reduction in the rate of tax and the benefit of ITC the provisions are enshrined in

Section 171 (1) of the CGST Act, 2017 itself which states that "Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices." It is clear from the perusal of the above provision that passing of the additional benefit of ITC to the recipients of service which is accruing to the Respondent does not mean additional amount paid towards GST.

38.7 The Respondent also contended that the definition of Profiteering and ignoring increase in cost of inputs while arriving at the profiteered amount was incorrect. In this regard it is to mention that 'Profiteering' has been defined in the CGST Act as an Explanation to Section 171 which was inserted in the Statute vide Section 112 of the Finance Act, 2019 (No. 2) which came into force only w.e.f. 01.01.2020. Further, the Respondent has cited the definitions of 'Profiteering' from the Black's Law Dictionary in his support. However, it would be worthwhile to mention here that Section 171 of the CGST Act is very much clear, according to which the benefit commensurate to the

amount of reduction in rate of tax or benefit of ITC has to be passed on to the recipients by way of reduction in prices. The insertion of definition of the term "profiteered" in Section 171 of the CGST Act, 2017 vide the Finance (No. 2) Act, 2019 was only clarificatory in nature.

The contention raised by the Respondent regarding ignoring increase in cost of inputs in the para is misplaced. The Authority finds that the increase in the cost of inputs and input services may be a factor for determination of price but this factor is independent of the output GST rate. As there is no cost escalation clause in the agreement entered by the Respondent with the home buyers, the increase in cost, if any is a kind of business risk which must have been factored in by the Respondent at the time of entering into agreements. The Respondent cannot claim to set off such increase in his cost with the benefit of ITC which is the sacrifice of precious tax revenue made from the kitty of the Central and the State Governments and required to be passed on to the end consumers who bear the burden of tax.

38.8 One of the contentions of the Respondent is that assessee was entitled to avail credit on input services in Pre-GST Regime. The Authority finds that, in the erstwhile pre-GST regime, various taxes and Cess iswere being levied by the Central Government and the State Governments, which got subsumed in the GST. Out of these taxes, the ITC of some taxes was not being allowed in the erstwhile tax regime. For example, the ITC of Central Sales Tax, which was being collected and appropriated by the States, was not admissible. Similarly, in case of construction service, while the ITC of Service Tax was available, the input tax credit of Central Excise duty paid on inputs was not available to the service provider. Such input taxes, the credit of which was not allowed in the erstwhile tax regime got embedded in the cost of the goods or services supplied, resulting in increased price. With the introduction of GST with effect from 01.07.2017, all these taxes got subsumed in the GST and the ITC of GST is available in respect of all goods and services, unless specifically denied. Broadly, the additional benefit of ITC in the GST regime would be limited to those input taxes, the credit of which was not allowed

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in the pre-GST regime but is allowed in the GST regime. This additional benefit of ITC in the GST regime is required to be passed on by the suppliers to the recipients by way of commensurate reduction in prices, in terms of Section 171 of GST Act, 2017.

38.9 The Respondent also contended that Profiteering if at all could be determined, it could only be determined at the completion of the project and co-relation with turnover should be referred on a broader periodic level and considering only part of the period might result in skewed results. In this connection, the Authority finds that, the main contours of for passing on the benefits of reduction in the rate of tax and the benefit of ITC are enshrined in Section 171 (1) of the CGST Act, 2017 itself which states that *"Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."* The Respondent has got benefit of ITC which he was required to pass on. The details of the ITC accrued, GST payable and the project wise Cenvat / Input tax accounts

were required to be maintained by the Respondent under the extant Rules pre / post GST. The Respondent should passed on the benefit of ITC on provisional basis as he was availing ITC every month which he has not done. The Respondent can simply not ask his homebuyers to wait for the benefit until the project is completed which could take several years. Therefore, the above submission of the Respondent is not sustainable.

38.10 The Authority finds that, the Respondent has also contended that no reference could be made by this Authority to cause any investigation in respect of profiteering vis-à-vis any customer other than Applicant No. 1. It is also contended that as no flat/unit has been booked in the name of Applicant no.1 himself, the latter has no locus standi as a complainant. The Authority holds that it has been entrusted with the task of ensuring that the benefit of reduction in rate of tax or availability of ITC must be passed on by a registered supplier to his recipients. The Authority

finds that, under Rule 129 (2) of the above Rules, the DGAP is required to investigate on a complaint filed by an interested party/person whether a registered person has passed on the benefit of tax reduction or ITC to the recipients or not and hence during the course of investigation if it comes to the notice that the above two benefits have not been passed on to any recipient, including those who had not filed complaint against the registered person, the DGAP is legally bound to investigate the same and bring the facts before this Authority for determination of those benefits to the eligible recipients. It is also clear that the above benefit has accrued to the Respondent due to the concession given by the Central as well as the State Government out of the public exchequer, therefore, the DGAP is bound to investigate to ascertain whether the Respondent has misappropriated the amount of ITC which he was required to pass on to the buyers. The DGAP cannot overlook commission of an offence which has occurred under Section 171 (1) of the above Act once it has come to its

notice during the course of the investigation and hence the above contentions of the Respondent are not correct.

38.11 The Authority finds that the Applicant no. 1 is an interested party and has complained regarding non passing on of benefit of ITC in relation to a specific Unit i.e. Flat no. 4-301 in Tower Benicia. This Authority holds that, the said Applicant no. 1 has locus standi in terms of the law and hence, the State Screening Committee and Standing Committee have taken due cognizance of the matter and the DGAP has investigated the case and submitted its Report in terms of the mandate of Section 171 of the CGST Act, 2017.

38.12 The Respondent has contended that provisions of Section 171 are not applicable for fresh contracts entered after 01st July 2017. In this regard the Authority finds that the Respondent did not submit any documentary evidence to substantiate that the prices offered to the customers booking flats post July, 2017 were after adjusting/giving benefit of ITC consequent to introduction of GST. During the course of investigation by the DGAP and also during confirmation of the same

from the homebuyers who booked their flats post GST. The above claim has not been established. Thus the contention of Respondent that the booking made after introduction of GST needs to be excluded from computation of profiteering is not sustainable.

38.13 The Respondent has claimed that that he has indeed passed on the benefit of ITC to his customers. He has found fault with the methodology of verification adopted by the DGAP. The Authority finds that, 42 customers out of 50 customers to whom verification email were sent did not reply to the said emails; and in 30 cases out of 298, the name mentioned in the List of Home Buyers were not matching with the copies of invoices issued by the Respondent for the same units and in 36 out of 50 sample cases (where e-mail IDs were provided by the Respondent), the amount of benefit passed on as per copies of invoices was different from the amount as per List of Home Buyers. The Respondent had submitted scanned copies of approx. 2000 invoices to the DGAP vide his various submissions to substantiate the claim of passing on the benefit to his customers which were checked by

the DGAP but could not be verified in absence of E-mail IDs. The Respondent had submitted that in 23 out of 30 cases, the flats were cancelled by the original buyers and then re-allotted to new buyers. However, during the course of investigation, the Respondent submitted copies of invoices issued to the original buyers to substantiate the claim of passing on the benefit to present customers. Hence, it is clear to this Authority that the claim made by the Respondent is unverifiable and unsubstantiated. The Respondent has not submitted any reliable and sufficient information, evidence or documents to cause conclusive verification of their claim.

39. The Authority finds that, the Applicant no.1 has made various allegations in relation to:-

- (a) Non completion of the Project by the Respondent
- (b) Diversion of funds from RERA Account by the Respondent
- (c) Booking of fake expenses by the Respondent

(d) Pressure from Respondent to buy back the Flat Unit

(e) Issue of fake credit notes by the Respondent

The Authority finds that, in terms of Section 171 of the CGST Act, 2017 and the relevant Rules, this Authority has been empowered to determine the profiteered amount, if any, on account of reduction in rate of tax or availability of ITC.

The Authority has done such determination based upon the investigation conducted and Reports of the DGAP. Investigation into the other allegations made by the Applicant no. 1 are not within the ambit of this Authority and the said Applicant may pursue such matter with the appropriate authorities.

40. For the reasons mentioned herein above, the Authority finds no reason to differ from the above detailed computation of profiteering in the DGAP's Report or the methodology adopted. Hence, the Authority holds 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 1.27% and during the post-GST period (July-2017 to September-2019), it was 6.67%. This confirms that, post-GST, the Respondent has been benefited from additional ITC to the tune of 5.40% (6.67%-1.27%) of his turnover and the same was required to be passed on to the Applicant No. 1 and the other homebuyers/shop buyers/customers. The Authority determines the amount profiteered by the Respondent for the Project Arihant Anchal Phase I, during the period 1.07.2017 to 30.09.2019 as Rs. 1,78,32,984/-. Therefore, the amount of ITC benefit to be passed on by the Respondent to all the homebuyers/shop buyers/customers is Rs. 1,78,32,984/-. This amount is inclusive of Rs. 34,137/- (including GST on the base amount of Rs. 31,104/-) which is the benefit of ITC required to be passed on with respect to Flat no. 4-301 in Tower Benicia which has been agitated by the Applicant No. 1.

41. The above amount of Rs. 1,78,32,984/- (including 12% GST) that has been profiteered by the Respondent from his homebuyers/shop buyers/customers, including Applicant No. 1, shall be refunded by him, along with

interest @18% thereon, from the date when the above amount was profiteered by him till the date of such payment, in accordance with the provisions of Rule 133 (3) (b) of the GCST Rules 2017.

42. 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 homebuyers/shop buyers/customers commensurate with the benefit of ITC received by him as has been detailed in the above paras.

43. The Respondent is also liable to pay interest as applicable on the entire amount profiteered, i.e. Rs. 1,78,32,984/-. Hence the Respondent is directed to also pass on interest @18% to the homebuyers/shop buyers/customers, including Applicant No. 1 on the entire amount profiteered, starting from the date from which the above amount was profiteered till the date of passing on/ payment, as per provisions of Rule 133 (3) (b) of the CGST Rules 2017.

44. It is evident from the above narration of facts that Respondent has denied the benefit of tax reduction to his

buyers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section. However, since the provisions of Section 171 (3A) have come into force w.e.f. 01.01.2020 whereas the period during which violation has occurred is w.e.f. 01.07.2017 to 30.09.2019, hence the penalty prescribed under the above Section cannot be imposed on Respondent retrospectively for the impugned period.

45. The Authority also order that the profiteering amount of Rs. 1,78,32,984/- along with the interest @ 18% from the date of receiving of the profiteered amount from the homebuyers/shop buyers/customers till the date of passing the benefit of ITC shall be paid/passed on by the Respondent within a period of 3 months from the date of this Order. The amounts to be refunded to each individual homebuyers/shopbuyers/customers is as per Annexure 'A' to this order.

46. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC is

passed on to each homebuyer/shop buyer/customers as per this Order along with interest @18% as prescribed. In this regard an advertisement may also be published in minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of builder (Respondent) – M/s Arihant Superstructures Limited, Project- "Arihant Aanchal Phase I", Location- Jaisalmer Bypass Road, Near Dali Bai Circle, Jodhpur, Rajasthan and amount of profiteering Rs. 1,78,32,984/-, so that the Applicant No. 1 along with Non-Applicant homebuyers/shop buyers/customers can claim the benefit of ITC which is not passed on to them. Homebuyers/shop buyers/customers may also be informed that the detailed NAA Order is available on Authority's website www.naa.gov.in. Contact details of Jurisdictional Commissioner CGST/SGST who is responsible for compliance of the NAA's order may also be advertised through the said advertisement.

47. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding compliance of this order to the Authority and the DGAP

within a period of 4 months from the date of receipt of this order.

48. Further, the DGAP is also directed to monitor the compliance of the order by the concerned jurisdictional CGST/SGST Commissioner.

49. The present investigation has been conducted up to 30.09.2019 only. However, the Respondent is liable to pass on the benefit of ITC which would become available to him till the date of issue of Completion Certificate. Accordingly, the concerned jurisdictional Commissioner CGST/SGST is directed to ensure that the Respondent passes on the benefit of ITC to the eligible home buyers/shopbuyers/customers 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 interested party/person shall also be at liberty to file complaint against the Respondent before the Rajasthan State Screening Committee in case the remaining benefit of ITC is not passed on to them.

50. It appears from the DGAP's Report as well as Table 'A' above that the Respondent has undertaken other construction projects. Hence, the Authority, in terms of Rule 133(5) of the CGST Rules, 2017 also directs the DGAP to investigate profiteering in relation to all other Projects executed by the Respondent if such Projects attract the provisions of Section 171 of the CGST Act, 2017.

51. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Writ Petition (C) no. 3/2020, while taking *suo moto* cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitation prescribed under general law of limitation or any other special laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

"A period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till

further order/s to be passed by this Court in present proceedings.”

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

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

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

52. A copy of this order be sent to the Applicant No. 1, the Respondent, Commissioners CGST/SGST Rajasthan, the Principal Secretary (Town and Country

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Pramod Agarwal vs. M/s. Arihant Superstructures Ltd.

Planning), Government of Rajasthan as well as Rajasthan RERA free of cost for necessary action. File of the case be consigned after completion.

S/d
(Amand Shah)
Technical Member &
Chairman

S/d
(Pramod Kumar Singh)
Technical Member

S/d
(Hitesh Shah)
Technical Member


(Dinesh Meena)
NAA, Secretary

Annexed : Annexure 'A' in Pages 1 to 8

File No. 22011/NAA/228/Arihant/2020

Date:-11.07.2022

Copy To:-

1. M/s Arihant Superstructure Limited, Ayushi Tower, 1st Floor, Near 12th Road Circle, Pal Road, Jodhpur-342001.
2. Shri Pramod Agarwal, Ram Krishna Bhawan, 1st B Road, Opp. Ajanta Kashida Sardarpura, Jodhpur.
3. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Commissioner of Commercial Taxes, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur, Rajasthan-302005.
5. Office of the Chief Commissioner, Central Goods & Service Tax, Jaipur Zone, New Central Revenue Bulding, Statue Circle, "C" Scheme, Jaipur-302005.
6. Office of the Chief Town Planner, Jawaharlal Nehru Marg, Near JDA Bulding, Opposite Birla Mndir, Jaipur-302004.
7. Rajasthan Real Estate Regulatory Authority(RERA), 3rd Floor, RSIC Bulding, Udyog Bhavan, Tilak Marg, C-Scheme, Jaipur-302005.
8. Guard File.

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Pramod Agarwal vs. M/s. Arihant Superstructures Ltd.

Annexure - 'A'
Pramod Agarwal vs M/s. Arihant Superstructures Limited

S.No.	Name of Customer	Unit No.	Further Profiteering Amount to be pass on (in Rs.)
1	Mr. Sampatlal Mewara (Ph-2)	A1-101	69397.17
2	Mr. Rajesh Sharma S/o Mr. Shree Kishan Sharma	A1-103	39507.96
3	Mrs. Kavita Sharma W/o Mr. Rajesh Sharma	A1-104	39160.72
4	Mrs. Deepika Gehlot W/o Mr. Ram Kishore Gehlot(ph-2)	A1-201	31866.05
5	Mrs. Pinky Bohra W/o Mr. Dhanraj Bohra	A1-203	35893.07
6	Mrs. Sukhi Devi Patel	A1-303	31069.40
7	Ganpat Soni	A1-402	64528.75
8	Mr. Shyam Sunder Soni S/o Mr. Bhanwar Lal Soni	A1-501	30481.92
9	Mr. Ramesh Kumar S/o Mr. Dhira Ram	A1-502	35240.00
10	Mrs. Jaya Dwivedi W/o Vinay Kumar (Ph-2)	A1-503	65679.47
11	Mrs. Anita Isharani	A1-603	35138.88
12	Mr. Suresh Kumar Dosi	A1-702	30481.92
13	Mrs. Geeta Panwar	A2-102	44969.02
14	Mrs. Savita Singhal & Mr. Ram Prakash Singhal	A2-103	30209.76
15	Mrs. Princy Singhal & Ankit Singhal	A2-104	30209.76
16	Mrs. Anjani kumar Mishra S/o Late Ramdarsh Mishra	A2-203	61935.84
17	Mrs. Mitika Jain W/o Mr. Jitendra Jain	A2-303	65325.40
18	Mrs. Laxmi Bhojwani W/o Mr. Bhagwan Das Bhojwani	A2-401	31866.05
19	Mrs. Amrita Choudhary W/o Mr. Arvind Choudhary	A2-403	30209.76
20	Mrs. Pankaj W/o Mr. Umesh Choudhary	A2-404	30209.76
21	Mrs. Asha Jhanwar W/o Mr. Kamal Jhanwar	A2-503	29937.60
22	Mrs. Asha Jhanwar W/o Mr. Kamal Jhanwar	A2-504	29937.60
23	Mr. Rajendra saran	A2-604	35244.72
24	Dr. Poonam Choudhary W/o Mr. Jagdish Choudhary	A2-702	31888.08
25	Mrs. Gouri Puri W/o Mr. Yogesh Puri	A2-703	31888.08
26	Mrs. Sumitra sharma W/o Mr. Lalit Sharma	A2-704	31888.08
27	Mr. Kamal Kumar Khatri	A3-101	22861.44
28	Mr. Deepak Choudhary	A3-102	22861.44
29	Mr. Pankaj Kumar Chittara	A3-103	22861.44
30	Mr. Bharat Kumar Chittara	A3-104	22861.44
31	Mr. Prem Prakash Mishra S/o Mr. Layak Prasad Mishra	A3-203	22861.44
32	Mrs. Sharda Mishra D/o Mr. Om Prakash Jha	A3-204	22861.44
33	Dr. Sanjay Sharma & Smita Sharma	A3-303	25401.60
34	Mr. Suresh Singhvi (mail)	A3-304	22861.44
35	Mr. Vinod Kumar S/o Mr. Madan Lal	A3-503	22861.44
36	Mrs. Leela Joshi S/o Mr. Parmeshwar Joshi	A3-504	24190.90
37	Mr. Shubham Sharma	A3-603	25401.60
38	Mr. Pradeep Mohnot	A3-604	25106.78
39	Mr. Gaurav Rajpurohit (ph-2)	A4-102	65679.47
40	Mr. Pravin Kumar Parmar	A4-103	15240.96
41	Mrs. Madhu Tiwari (Ph-2)	A4-104	53287.11
42	Mrs. Madhu Jain	A4-202	22082.77
43	Mr. Pradeep Nagori	A4-203	15240.96
44	Mr. Amrit Lal Ji	A4-204	15240.96
45	Dainik Navjyoti	A4-302	17962.56
46	Mrs. Trapti Mathur W/o Mr. Ashish Mathur	A4-303	15240.96
47	Mrs. Rita mathur W/o Mr. Rahul Mathur	A4-304	15240.96

48	Mrs. Shanti Devi Jain	A4-403	15240.96
49	Mr. Kamal Jhawar	A4-503	15240.96
50	Mr. Kamal Jhawar	A4-504	15240.96
51	Mrs. Santosh Soni W/o Mr. Mahevir Soni	A4-602	19474.56
52	Mr. Deepak Kumar Hassani	A4-603	15240.96
53	Mr. Deepak Kumar Hassani	A4-604	15240.96
54	Mrs. Pramila Purohit(Ph-2)	A4-703	65679.47
55	Mr. Sunil Kumar Jangid	B1-101	23844.24
56	Mr. Manoj Bhati	B1-102	22589.28
57	Mr. Amit	B1-103	22589.28
58	Mr. Tara Shankar Sharma S/o Mr. Bahrang Lal Sharma	B1-201	23844.24
59	Mr. Tarun Satyani S/o Mr. Bhagwan Satyani	B1-302	23844.24
60	Mr. Vikesh Satyani S/o Mr. Bhagwan Satyani	B1-304	23844.24
61	Mr. Bhupesh Tak S/o Mr. Brijmohan Tak	B1-401	47799.07
62	Mr. Mohammed Aslam S/o Mr. Mohd. Ashfaqe	B1-403	22589.28
63	Mr. Abhinav Vyas	B1-404	23844.24
64	Mr. Arun kumar Agarwal	B1-501	22589.28
65	Mr. Vishal Chhajer S/o Mr. Madan Lal Chhajer	B1-502	22589.28
66	Mr. Virdhichand Suthar S/o Mr. Nathu Ram Suthar	B1-503	26354.16
67	Mr. Kailash Ramdeo	B1-601	22589.28
68	Mr. Shubham Ramveo	B1-602	22589.28
69	Mr. Randheer Vyas	B1-603	22589.28
70	Mrs. Swati Purohit	B1-604	22317.12
71	Mrs. Seeta Devi Sharda	B1-702	61305.98
72	Mrs. Afroza Bano W/o Mr. Abdul Munaf	B2-101	31888.08
73	Mr. Padam Singh Parihar	B2-102	30209.76
74	Mr. Pramod Kumar Verma	B2-103	29937.60
75	Mrs. Manju Jawara (Ph-2)	B2-104	57291.65
76	Mr. Sandeep Rao Kamble S/o Mr. Rao Sahab Kamble	B2-204	30209.76
77	Mrs. Usha Kankaria W/o Mr. Shiv Kumar Jain	B2-303	30209.76
78	Mr. Vinod Kumar Rathi (Ph-2)	B2-402	57314.57
79	Mr. Mohammed. Ismail Baig	B2-403	30209.76
80	Mr. Imtiyaz Baig	B2-404	30209.76
81	Mrs. Rimple Qureshi W/o Mr. Rafat Qureshi	B2-503	31888.08
82	Mrs. Rimple Qureshi W/o Mr. Rafat Qureshi	B2-504	31888.08
83	Mr. Sakir Ali	B2-603	31888.08
84	Mr. Sakir Ali	B2-604	31888.08
85	Mrs. Manju Golechha & Mr. Satish Golechha	B3-101	41484.96
86	Dr. Bharti Solanki W/o Mr. Yogesh Solanki	B3-102	41484.96
87	Mr. Yogesh Solanki	B3-103	41484.96
88	Mr. Rajendra Singh Solanki	B3-104	41484.96
89	Mrs. Bharati Magnani & Mr. bharat Manganal	B3-201	50703.84
90	Mr. Surya kamal	B3-203	41484.96
91	Mr. Rajendra Pal Singh & Apeksha Rajpurohit	B3-204	109122.55
92	Mr. Sunil Kumar Jain S/o Shri Karti Prashad	B3-301	41484.96
93	Mr. Pawan Balani S/o Mr. D. Balani	B3-303	41484.96
94	Mrs. Naina Balani W/o M. Pawan Balani	B3-304	41484.96
95	Mr. Dinesh Agarwal	B3-401	41484.96
96	Mr. Rajesh Agarwal	B3-402	29393.28
97	Mrs. Sushila Mehta C/o Mr. Vimal Chand Mehta	B3-403	41484.96
98	Mrs. Narmada Devi Lunia W/o Mr. Madan	B3-404	41484.96

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99	Mr. Banshidhar S/o Mr. Keshnimal	B3-501	41825.14
100	Mr. Saurabh Chhajer S/o Mr. Vimal Kumar chhajer	B3-502	41484.96
101	Mr. Pawan Kumar S/o Mr Bansidhar	B3-503	41845.67
102	Mrs. Leela Devi Chhajer W/o Mr. Vimal Kumar Chhajer	B3-504	41484.96
103	Mr. Rajesh Agarwal	B3-601	37285.92
104	Mr. Rajesh Agarwal	B3-602	22044.96
105	Mr. Mahip Bhatia	B3-603	89623.26
106	Mr. Dilip Kumar Saini	B3-604	103284.72
107	Mrs. Jamuna Devi	B3-702	41484.96
108	Mr. Chetan Bhatia	B3-703	95598.14
109	Mr. Ankur Bhatia	B3-704	68113.68
110	Mrs. Nilam Bhati	B4-101	89623.26
111	Mrs. Parvati Sharma	B4-102	34136.64
112	Mrs. Anita Yadav	B4-103	34136.64
113	Mrs. Anil Yadav	B4-104	34136.64
114	Mr. Manoj Bohra	B4-201	34136.64
115	Mrs. Pushpa Sancheti w/o S.M.Sancheti	B4-202	34136.64
116	Mrs. Ratna Bissa W/o Sachitanand	B4-203	91173.70
117	Mrs. Pinky Jain W/o Mr. Nikhil Kumar Jain	B4-204	34136.64
118	Mrs. Laxmi Devi	B4-301	34136.64
119	MR. Alok Jalani	B4-302	34136.64
120	Mrs. Nirmal Rajpurohit W/o Mr. V.C.Rajpurohit	B4-303	119795.52
121	Mrs. Neelam Purohit & Mr. Kamlesh Purohit	B4-304	34136.64
122	Miss Farzana Tabassum D/o Late Mr. M Hussain	B4-401	38521.44
123	Mr. Umesh Raichandani (Ph-2)	B4-402	90773.98
124	Mis. Santosh Vyas D/o Mr. Shiv Prasad Purohit	B4-403	34136.64
125	Mr. Natwar Vyas	B4-404	33864.48
126	Mr. Kailash Chandra Garg S/o Mr. Mr. Shyam Lal Garg	B4-501	34136.64
127	Mrs. Sheela Gupta W/o Mr. Kailash Chandra Garg	B4-502	34136.64
128	Mrs. Bharti Thawani (Ph-2)	B4-503	90773.98
129	Mr. Rohit Vyas S/o Rajesh Vyas & Mrs. Neha Joshi W/o Mr. Rohit Vyas	B4-504	34136.64
130	Ruchika Marwaha	B4-601	89623.26
131	Mrs. Aarti Bissa W/o Mr. Dhanraj Bissa	B4-602	89623.26
132	Mrs. Vijeta Tatiya W/o Mr. Sumit Tatiya	B4-603	34136.64
133	Mr. Praveen Prakash Mathur s/o Mr. Chagan Pal Mathur	B4-604	34136.64
134	Mr. Prem Kumar Mathur	B4-701	89623.26
135	Mr. Atul Vashishtha	B4-702	89623.26
136	Mr. Madhawarn Vyas S/o Mr. Rameshwer Nath Vyas	B4-703	34136.64
137	Mr. Abhishek Bohra	B4-704	33864.48
138	Mrs. Deepesh Bhatnagar S/o Late Shri Roop Chandra Bhatnagar	B5-102	34136.64
139	Mrs. Rajni Singhal W/o Mr. Pramod Singhal	B5-103	99824.40
140	Mrs. Sushila Kumari W/o Mr. Sukhdev Nagar	B5-201	109000.08
141	Mrs. Manita Mathur	B5-202	34136.64
142	Mr. Anil B. Mathur S/o Mr. Bhawanilal B Mathur	B5-203	34136.64
143	Mrs. Manisha Mathur W/o Mr. Kaipesh Mathur	B5-204	34136.64
144	Mrs. Nazneen Quazi	B5-302	34136.64
145	Mr. Heera Lal Solanki	B5-303	34136.64
146	Mr. Amit Singh Rao S/o Mr. Jagdish Singh	B5-304	66484.80

	Rao		
147	Mr. Hemant Purohit s/o Mr. Anant Purohit	B5-401	102060.00
148	Mr. Vinay Bhansali	B5-402	34136.64
149	Mr. Prateek Chhajer S/o Mr. Sampat Raj Chhajer	B5-403	34136.64
150	Mrs. Anita Chhajer W/o Mr. Rakesh Kumar CHHAJER	B5-404	34136.64
151	Mr. Bharat Asnani	B5-501	34136.64
152	Mr. Kalu agarwal (Ph-2)	B5-502	99138.82
153	Mr. Ratanlal Sethia	B5-503	*
154	Mr. Pawan Kumar Bothra	B5-504	*
155	Mrs. Shamim Kausar (Ph-2)	B5-601	99138.82
156	Mr. Mukesh Jain	B5-602	34136.64
157	Mrs. Girija Sharma W/o Mr. Pramod Kumar	B5-603	106920.00
158	Mrs. Madhulika Mishra & Mr. Amit Mishra	B5-604	106920.00
159	Mr. Dilip Laddha & Mrs. Purnima Laddha	B5-703	89035.20
160	Mr. Vikash Purohit S/o Mr. Girdhar Lal Purohit	B6-101	44906.40
161	Mr. Vinay Dutt Harsh S/o Mr. Guru Dutt Harsh	B6-102	44906.40
162	Mr. Pankaj Pareek S/o Mr. Sanjeev Pareek	B6-104	131569.92
163	Mr. Sanjay Rankawat S/o Mr. Suresh Chandra Rankawat	B6-201	44906.40
164	Mr. Deepak Rankawat Mr. Suresh Chandra Rankawat	B6-202	44906.40
165	Mrs. Rupal Agarwal	B6-203	51116.37
166	Mr. Bhuvaneshwar raj Mehta	B6-204	137052.00
167	Mr. Gajraj Jain	B6-301	73483.20
168	Mr. Jitendra Saxena	B6-302	112237.36
169	Mrs. Vishwa Shah W/o Mr. Priyesh Mohnot	B6-303	131569.92
170	Mr. Raja Babu Sharma s/o Mr. Shambhoo Lal Shama	B6-401	44906.40
171	Mrs. Rekha Bhandari W/o Mr. Sanjay Bhandari & Mr. Sanjay Bhandari S/o Mr. P.R. Bhandari	B6-402	49593.60
172	Mrs. Shalini Shrivastava w/o Mr. Santosh Srivastava	B6-403	46539.36
173	Mr. Ajay K Purohit	B6-404	44906.40
174	Mrs. Monika Sankhla W/o Mr. Ajit Singh Sankhla	B6-501	44906.40
175	Mr. Rohit Soni S/o Thakur Das Soni	B6-502	44906.40
176	Mr. Jagdish Chhajer S/o Mr. Nemichand Chhajer	B6-503	44906.40
177	Mr. Sampat Raj chhajer	B6-504	44906.40
178	Mr. Bhawana Vadera	B6-603	36741.60
179	Mr. Chaturbhuj Vadera	B6-604	36741.60
180	Mr. Hanish Verma	B6-703	49506.90
181	Mr. Gajendra Singh	B6-704	44634.24
182	Mr. Goverdhan Joshi S/o Mr. Deo Raj Joshi	B7-101	37558.08
183	Mr. Govind Kishan Bohra S/o Mr. Moti Kishan Bohra	B7-102	37558.08
184	Mr. Vikram Singh S/o Madan Singh	B7-103	37558.08
185	Mr. Kartik Mathur S/o Mr. Pramod Mathur	B7-104	37558.08
186	Mrs. Ashish Gupta S/o Mr. Ved Prakash Gupta	B7-201	37622.76
187	Mrs. Meenakshi Gaur W/o Mr. Shantanu Gaur	B7-202	110341.44
188	Mrs. Kritika Mathur W/o Mr. Saurabh Mathur	B7-203	44368.69
189	Mr. Sumit Mathur	B7-204	44375.05
190	Mr. Sanjay ramawat	B7-301	37285.92
191	Mr. Subrata Roy & Madhumita roy	B7-302	34408.80
192	Mr. Rajesh Bohra S/o Sh. Amar Lal Bohra	B7-303	37558.08
193	Mrs. Nisha Bohra W/o Mr. Rajosh Bohra	B7-304	37558.08

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194	Mr. Ajay Purohit S/O Rajesh Kumar	B7-401	37558.08
195	Mr. Payal & Kapil dev karwa	B7-402	37558.08
196	Mr. Chandresh Mathur	B7-403	42252.84
197	Mr. Roshan Rankawat	B7-404	137052.00
198	Mr. Sumit S/o sunil kumar	B7-501	37558.08
199	Mr. Ashish Awasthi S/o Mr. Vinod Awasthi	B7-502	37558.08
200	Mrs. Usha Parakh	B7-503	43817.76
201	Mrs. Usha Parakh	B7-504	43817.76
202	Mr. Kunal Mathur	B7-601	120415.68
203	Mr. Kamal Singh Meena (Ph-2)	B7-602	109893.61
204	Mr. Gitesh Shroff	B7-603	37558.08
205	Mrs. Usha Vadera	B7-604	37558.08
206	Mr. Prashant Shukla & Mrs. Sangeeta Shukla	B7-701	37558.08
207	Mr. Vishal Shukla S/o R.K Shukla	B7-702	37558.08
208	Mr. Mahendra Panwar S/o Mr. Paras Ram Panwar	B7-703	37558.08
209	Mr. M M Vadera	B7-704	*
210	Mrs. Sarita Puniya S/o Mr. Hanuman Ram	C1-101	36741.60
211	Mrs. Jyoti Bafna W/o Mr. Atul Bafna	C1-102	15240.96
212	Mr. Bhiya Ram Patel	C1-104	52344.36
213	Mr. Narendra Purohit S/o Mr. Sukhdev Purohit	C1-201	15240.96
214	Mrs. Pushpa sharma W/o Mr. Satyveer Sharma	C1-203	15785.28
215	Mrs. Rekha Taparia w/o Sandeep Taparia	C1-401	15240.96
216	Mrs. Surekha Taparia W/o Mr. Sudhir Taparia	C1-403	15240.96
217	Mrs. Rajkumari Taparia W/o Mr. Jugal Taparia	C1-404	15240.96
218	Mr. Jiten Hassani	C1-501	15240.96
219	Mrs. Vanita Hassani	C1-502	15240.96
220	Mrs. Shikha Hassani	C1-504	15240.96
221	Mrs. Shobha Mohnot W/o Mr. Narendra Singh Mohnot	C1-601	15240.96
222	Mr. Rajesh Chand Mehta S/o Mr. Govind Chand Mehta	C1-602	15240.96
223	Rakesh joshi	C1-604	48755.52
224	Mr. Abdul Munaf S/o Mr. Abdul Salam	C2-101	22861.44
225	Mrs. Kalpi Mathur W/o Mr. Abhinav Mathur	C2-102	28039.91
226	Mr. Bhanwar Lal Paliwal S/o Mr. Prabhudayal Paliwal	C2-103	22861.44
227	Mr. Ravindra Bhati	C2-104	22861.44
228	Mrs. Rajani Mathur W/o Mr. Ramesh Mathur	C2-202	22861.44
229	Mrs. Shashi Choudhary W/o Mr. R.K.Jain	C2-203	22861.44
230	Mr. Dillp kumar Soni	C2-302	26671.68
231	Mr. Ramsingh Sisodiya	C2-303	22861.44
232	Mr. Mehboob	C2-401	5539.70
233	Mr. Anil Mathur	C2-404	63685.44
234	Mr. Yogesh Mathur S/o Mr. Govind Prakash Mathur	C2-501	22861.44
235	Mrs. Ritu Mathur W/o Mr. Yogesh Mathur	C2-502	22861.44
236	Mr. Deepak Maal	C2-601	63641.70
237	Mrs. Shambnam Soni	C2-602	22861.44
238	Mrs. Geeta Bharat Asnani	C2-703	22861.44
239	Mrs. Snehlata Mathur W/o Mr. Rajesh Mathur	C3-103	*
240	Mr. Khushal Chand Soni S/o Mr. Bhagwan Das Soni	C3-304	66718.08
241	Mrs. Sua Devi w/o Shankar Lal Dhariwal	D1-101	33242.40
242	Mrs. Shakuntala w/o Ramesh Kumar Dhariwal	D1-102	33086.88
243	Mrs. Urmila Singhvi	D1-201	78965.28

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244	Mrs. Garima Singhvi W/o Snehdeep Singhvi	D1-202	78965.28
245	Mrs. Rasmi Kanojia W/o Mr. Hitesh Kanojia	D1-203	14580.00
246	Mrs. Madhu Mathur & Mr. Saurabh Mathur	D1-204	33242.40
247	Mrs. Alka Bharadwaj W/o Mr. Surendra Bhardwaj	D1-301	35089.20
248	Mr. Dheeraj Khatri	D1-302	33242.40
249	Mr. Rajesh Kumar Sinha S/o Mr. Ramakrishna Prasad & Mrs. Swati Rani Sinha W/o Mr. Rajesh Kumar Sinha	D1-303	115140.96
250	Mr. Amritlal Purohit S/o Nand Kishore	D1-304	114161.40
251	Mr. Mahaveer Kumar Bothra	D1-401	33086.88
252	Mr. Harsh Bothra S/o Ashok Kumar	D1-402	33242.40
253	Mrs. Jayshree Bohra W/o Mr. Shree Vallabh Bohra	D1-403	135768.96
254	Mrs. Rani Sharma W/o Mr. Radheyshyam Sharma	D1-404	37859.40
255	Mr. Rishabh Kumar Bothra	D1-501	33242.40
256	Mr. Aman Kumar Bothra	D1-502	33242.40
257	Mrs. Guddi Jain	D1-503	136956.94
258	Mr. Yogesh Kumar Panchal	D1-601	76632.48
259	Mrs. Anjuman Pathan	D1-602	54587.52
260	Mrs. Leela Devi	D1-603	33242.40
261	Mr. Krishna Sharma W/o Mr. Sushil Sharma	D1-604	135768.96
262	Mrs. Navya Vyas	D1-702	112479.84
263	Mr. Babita Sharma	D1-703	65085.12
264	Mrs. Seema Devi w/o Mr. Anil Kumar Dharwal	D2-101	33242.40
265	Mr. Vinod Kumar Sinha	D2-102	141426.00
266	Mr. Vandana Rawoot	D2-103	138597.48
267	Mr. Sandeep Sharma S/o Late Shri Gopal Sharma & Mr. Gaurav Sharma S/o Late Shri Gopal Sharma	D2-104	33242.40
268	Dr. Ashok Kumar Bohra S/o Mr. Amar Dutta Bohra	D2-201	33242.40
269	Mr. Krishna Kumar Bohra S/o Mr. Ashok Kumar Bohra	D2-202	33242.40
270	Mrs. Premlata Purohit	D2-203	33242.40
271	Mrs. Vijaylaxmi W/o Mr. Govind Raj	D2-204	33242.40
272	Mrs. Preeti devi W/o Suresh Bothra	D2-301	33242.40
273	Mrs. Manju Devi W/o Ramesh Kumar	D2-302	33242.40
274	Mrs. Nandani Doshi W/o Mr. Vikas Doshi	D2-303	33786.72
275	Mrs. Kalpana Dosi W/o Mr. Rakesh Dosi	D2-304	33786.72
276	Mr. Mohit Loonkaran Bothra	D2-401	33242.40
277	Mrs. Nikita Bothra	D2-402	33242.40
278	Mr. Anu Daga	D2-403	35384.58
279	Mrs. Monika Raneja W/o Mr. Arjun Raneja	D2-404	33242.40
280	Mr. Vijay Kumar	D2-501	33242.40
281	Mr. Amit Jain	D2-502	37859.40
282	Mrs. Meena Suthar W/o Mr. Khivraj Suthar	D2-503	127008.01
283	Mr. Ajay Madhan	D2-504	80889.84
284	Mrs. Sweta Solanki W/o Mr. Arvind Bhati	D2-601	80889.84
285	Mr. Babulal Dosi S/o Mr. Asu Lal Dosi	D2-602	33242.40
286	Mrs. Neetu Bothra W/o Rakesh Bothra	D2-603	33242.40
287	Mr. Pukhraj Devichand Mehta	D2-604	33242.40
288	Mr. Madhubela Purohit	D2-704	38642.37
289	Mr. Vimal Kumar Jain & Mrs. Nirmaia Jain	D3-101	39644.64
290	Mr. Shanti Lal Tak	D3-102	37285.92
291	Mr. Santosh Kumar Dubey	D3-103	39644.64
292	Mrs. Lata Purohit W/o Mr. Naval Kishore Vyas	D3-104	39644.64

Annexure -'A'
Pramod Agarwal vs M/s. Arihant Superstructures Limited

293	Mr. Sunil Didel S/o Mr. Magni Ram Didel	D3-201	14580.00
294	Dr. J.C. Tiwari	D3-202	39644.64
295	Mr. Chandresh Upachyaya	D3-203	128231.10
296	Mr. Sampat Raj Chouhan s/o Mr. Chhela Ram Chouhan	D3-204	45904.32
297	Mrs. Madhu Rehan W/o Mr. Sanjeev Rehan	D3-301	39644.64
298	Mrs. Sunita Bariwa W/o Mr. Laxmi Narayan Bairwa	D3-302	39644.64
299	Mrs. Anjana Singh W/o Mr. Dharamveer Singh	D3-303	46294.75
300	Mrs. Anjana Singh W/o Mr. Dharmendra Singh	D3-304	46294.75
301	Mr. Rohit Sharma	D3-401	123346.80
302	Mr. Gopal Narayan Tiwari S/o Mr. Gaya Charan Tewari & Mr. Deepak Tewari S/o Mr. Gopal Narayan Tewari	D3-402	42823.13
303	Mr. Ramashree Daga	D3-403	126087.84
304	Mr. Nitin Vijayraj Jain S/o Mr. Vijayraj Jain	D3-404	39644.64
305	Mr. Pradeep Kumar	D3-501	131569.92
306	Mr. Saroj Kumar Pati & Mrs. Sasmita Pati	D3-502	124329.60
307	Mrs. Pooja Vaishnav	D3-503	40119.83
308	Mr. Jitendra kachhawah	D3-504	37558.08
309	Mr. Anil Gupta	D3-601	39644.64
310	Mr. S.K. Kamboj	D3-602	40687.92
311	Mrs. Anju Kanwar W/o Mr. Rakesh Charan & Mr. Rakesh Charan S/o Prabhu Dayal Charan	D3-603	104615.28
312	Mrs. Parul Chopra W/o Mr. Mumuksh Chopra	D3-604	131569.92
313	Mr. Manoj Vyas	D3-703	73483.20
314	Mr. Sataya Narayan Prajapat s/O Mr. Pira ram Prajapat	D3-704	126087.84
315	Mr. Hemant Kumar Chapre	D4-101	139320.01
316	Mr. Vandana Chapre	D4-102	137052.00
317	Mr. Rajendra Prasad Mathur	D4-103	123930.00
318	Mrs. Madhu Kothari	D4-104	129599.99
319	Mrs. Prem Bishnoi W/o Gangaram Manjoo	D4-201	39357.36
320	Mrs. Meena Naresh Jain	D4-202	39357.36
321	Mr. Sanjay Kumar Gupta S/o Mr. Rajendra Kumar Gupta & Mrs. Shivani Gupta D/o Mr. Sanjay Kumar Gupta	D4-203	56498.53
322	Sanyukta Gupta D/o Mr. Prem Kumar Gupta	D4-204	48333.50
323	Mrs. Pallavi Sethi W/o Mr. Manjeet Sethi	D4-301	138422.52
324	Mrs. Kusum Bhandari & Mrs. Leena Bhandari	D4-302	39357.36
325	Mr. Pankaj Jain	D4-303	39357.36
326	Mr. Gautam Jain S/o Late Gyan Chand Jain	D4-304	39070.08
327	Mr. Hitesh Karmanchandani S/o Mr. Devananad Karamchandani	D4-401	39357.36
328	Mr. Rohit Arora s/O Mr. Nand Kishore Arora	D4-402	39357.36
329	Mrs. Saraswati Rankawat W/o Mr. Virendra Sharma & Mr. Virendra Sharma S/o Late C.D.Sharma	D4-403	39357.36
330	Mrs. Priti Vyas W/o Mr. Manish Vyas	D4-404	43500.24
331	Ms. Divya Kabra D/o Mr. Mahendra Kabra	D4-501	39357.36
332	Mrs. Renu Kabra	D4-502	39357.36
333	Mrs. Manila Arora & Mr. Deepak Arora	D4-503	43500.24
334	Mr. Sandeep Dosi c/o Vishal Dosi	D4-504	41178.24
335	Mr. Rameshwar Sharma	D4-601	31069.40
336	Mr. Deepak Mehta	D4-603	39357.36
337	Mr. Mahendra Khaivsara	D4-604	39357.36
338	Mrs. Alka Surana W/o Mr. Sanjay Surana	D4-702	37285.92
339	Mr. Prashant Shukla & Mrs. Priyanka Shukla	D4-703	42968.88

340	Miss Khushboo singh & Mr. Jagmohan Singh S/o Mr. Pritam Singh	D5-101	52390.80
341	Mr. S.P.Chanda	D5-102	115123.68
342	Mrs. Pooja Vaishnav W/o Mr. Harish Kumar Vaishnav	D5-103	137052.00
343	Mrs. Sheetal Kumari W/o Mr. Anand Kumar Arya	D5-104	137052.00
344	Mrs. Janis Josef W/o Mr. Ashish Lal	D5-203	50492.16
345	Mr. Mangilal Purohit S/o Mr. Ram Gopal Purohit	D5-204	118434.96
346	Bhandari Medicals Pvt. Ltd.	D5-301	47401.20
347	Bhandari Medicals Pvt. Ltd.	D5-302	47401.20
348	Mrs. Ritu Bhandari w/O Mr. Sumer Mal Jain	D5-303	51143.40
349	Bhandari Medicals Pvt. Ltd.	D5-304	51143.40
350	Mr. Ronak Nahata S/o Pushp Chandji Nahata	D5-401	137052.00
351	Mrs. Sunita Sahani W/O Mr. Rajesh Sahani	D5-402	54552.96
352	Miss. Kritika Purohit	D5-403	141966.00
353	Mr. Ram kishore Sankhla S/o Mr. Kanwra Ram	D5-404	44906.40
354	Mrs. Vandana Sankhala W/o Mr. Rameshwar Sankhala & Mr. Rameshwar Sankhala s/O Mr. Paras Ram Sankhala	D5-502	49896.00
355	Mrs. Veena Mathur	D5-503	108749.19
356	Mrs. Suman Choudhary	D5-504	128132.93
357	Mrs. Arpita Mathur	D5-601	108742.89
358	Mrs. Madhu Bala Sharma W/o Mr. Suresh Kumar Sharma	D5-602	50028.04
359	Mr. Vikas Rathi S/o Mr. N.K.Rathi	D5-603	51143.40
360	Mr. Abhishek Rathi S/o Mr. N.K.Rathi	D5-604	48648.60
	Grand Total		17832984.13

* :- No amount indicated in the DGAP's report dated 26.11.2020 (Annexure-27)