

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

I. O. No. 04/2020  
Date of Institution 05.07.2019  
Date of Order 03.01.2020

**In the matter of:**

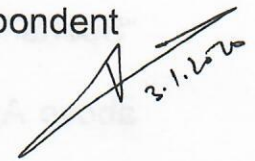
1. Sh. Bhanja Kishore Pradhan, B-416, Chhatarpur Extension,  
New Delhi-110074.
2. Director General of Anti-Profiteering, Central Board of Indirect  
Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan,  
Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s HCBS Promoters & Developers Pvt. Ltd., Unit no. 205, S/F,  
Plot No. 6 Vardhman Bakhnhof Plaza, MLU, Pkt-7 Sector-12,  
Dwarka, New Delhi-110078.

Respondent

  
3.1.2020

Quorum:-

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

Present:-

1. None for the Applicants.
2. Sh. Ramesh Yadav, Accounts Officer, for the Respondent.

**ORDER**

1. The present Report dated 02.07.2019 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Applicant No. 1 filed application, dated 19.09.2018, before the National Anti-profiteering Authority under Rule 128 (1) of the CGST Rules, 2017. The said application was forwarded by the Authority to the Standing Committee on Anti-profiteering for further necessary action. The Applicant No. 1, vide his above application, alleged profiteering by the Respondent in respect of purchase of Flats in his "Sports Ville" project located in Sector-2 & 35, Sohna, Gurgaon. The above Applicant also alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) availed by him by way of



commensurate reduction in the price of the above flats. The aforesaid application was considered by the Standing Committee on Anti-profiteering, in its meeting held on 27<sup>th</sup> December, 2018, wherein it was decided to forward the same to the DGAP to conduct detailed investigation in to the complaint according to Rule 129 (1) of the CGST Rules, 2017.

2. On receipt of the recommendation from the Standing Committee on Anti-profiteering, the DGAP had issued Notice dated 18.01.2019 under Rule 129 (3) of the above Rules, asking the Respondent to intimate as to whether he admitted that the benefit of ITC had not been passed on to the above Applicant by way of commensurate reduction in the price of the flat and in case it was so, to suo-moto compute the quantum of the same and mention it in his reply to the Notice along with the supporting documents. The Respondent was given opportunity to inspect the non-confidential evidence/information furnished by the Applicant No. 1 on either 24.01.2019 or 25.01.2019 in accordance with Rule 129 (5) of the above Rules but the Respondent did not avail of the said opportunity. Vide e-mail dated 21.06.2019, the Applicant No. 1 was also given opportunity to inspect the non-confidential documents/reply submitted by the Respondent on 24.06.2019 or 25.06.2019. However, the Applicant No.1 did not avail of the said opportunity.
3. The DGAP has covered the period from 01.07.2017 to 31.12.2018 during the current investigation. The time limit to complete the investigation was extended by this Authority, vide its order dated 19.03.2019 in terms of Rule 129 (6) of the above Rules.

4. The DGAP, vide his above mentioned Report, has stated that the Respondent had submitted replies vide his letters/emails dated 31.01.2019, 01.02.2019, 07.02.2019, 20.02.2019, 08.03.2019, 18.03.2019, 15.05.2019, 24.05.2019, 31.05.2019, 14.06.2019, 21.06.2019 and 28.06.2019. The submissions of the Respondent were summed up by the DGAP as follows:

- a) The Respondent had stated that after implementation of GST, he had informed the homebuyers regarding the benefits to be passed on, on account of the implementation of the Central Goods and Services Tax Act, 2017.
- b) The Respondent had stated that the Applicant No. 1 had already approached him and he had redressed the above Applicant's grievance.
- c) The Respondent had also submitted sample copies of letters (all dated 03.11.2019) issued to the Applicant No. 1 and other home buyers, informing them about the benefit of input tax credit as per his calculation and credited the same to them.

5. The Respondent had also submitted the following documents/information to the DGAP vide his above mentioned letters/e-mails during the course of the investigation:-

- a) Copies of GSTR-1 Returns for the period August, 2017 to December, 2018.
- b) Copies of GSTR-3B Returns for the period August, 2017 to December, 2018.



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

d) Copies of all demand letters and sale agreement/contract issued to the Applicant No. 1.

e) Copy of Audited Balance Sheet for FY 2016-17 & FY 2017-18.

f) Copy of Electronic Credit Ledger for the period 01.07.2017 to 31.12.2018.

g) CENVAT/Input Tax Credit register for 2016-17 and 2017-18 and April, 2018 to December, 2018.

h) Details of VAT, Service Tax, ITC of VAT, CENVAT Credit for the period April, 2016 to June, 2017,

i) List of home buyers in the project "Sports Ville".

j) Copies of RERA documents.

k) Copy of Tran-1 filed in December, 2017.

6. The DGAP has also stated that all the documents placed on record were carefully examined by him and he had found that the main issues for determination were whether there was reduction in the rate of tax or benefit of ITC on the supply of construction service by the Respondent after implementation of the GST w.e.f. 01.07.2017 and in case it was so, whether the Respondent had passed on the above benefits to the home buyers as per the provisions of Section 171 of the CGST Act, 2017 or not.



7. The Respondent, vide letter dated 20.02.2018, had submitted the copy of RERA documents of the project "Sports Ville" wherein the basic sale prices of Rs. 3,600/- per square feet for carpet area and Rs. 500/-per square feet for balcony area, were mentioned. The details of payment schedule in respect of the flat purchased by the Applicant No. 1 were furnished by the DGAP as given in Table-'A' below:-

**Table-'A'**

(Amount in Rs.)

S. No.	Payment Stage	Demand Date	% of BSP	Installment	GST	Total Amount payable
1	Booking Amount	01.08.2017	5%	95,821	---	95,821
2	Allotment Amount	01.08.2017	70%	13,41,490	1,72,478	15,13,968
3	1 <sup>st</sup> Instalment	11.12.2017	12.50%	2,39,552	28,746	2,68,298
4	llnd Instalment	14.06.2018	12.50%	2,39,552	19,164	2,58,716
Total			100.00%	19,16,415	2,20,118	21,36,533

8. The Respondent had submitted before the DGAP that the benefit already credited/passed onto the buyers by him should be treated as compliance with the provisions of Section 171 of the Central Goods and Services Tax Act, 2017. In support of his claim, the Respondent had submitted sample copies of individual buyer ledger maintained by him and his letters (all dated 03.11.2018) issued to the home buyers, informing them about passing on the benefit of input tax credit @ Rs.40/- per sq.ft. However, the correctness of the amount so passed on by the Respondent to the home buyers had to be determined by the DGAP in terms of Rule 129(6) of the Rules.

9. The DGAP has further stated that the para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017, defining activities of



transactions which shall be treated neither as a supply of goods nor a supply of services, reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, Clause (b) of para 5 of Schedule II of the Central Goods and Services Tax Act, 2017 reads as "(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier". In the light of these provisions, the DGAP has contended that the ITC pertaining to the units which were under construction but not sold was provisional ITC that may be required to be reversed by the Respondent, if such units would remain unsold at the time of issue of CC, in terms of Section 17 (2) & Section 17 (3) of the Central Goods and Services Tax Act, 2017 which read as under:-

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

17 (3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis.



transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Therefore, the DGAP has stated that the ITC pertaining to the unsold units was outside the scope of his 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.

10. The DGAP has also observed that prior to 01.07.2017, i.e., before the GST was introduced, as the service of construction of affordable housing provided by the Respondent, was exempt from Service Tax vide Notification No. 25/2012-ST dated 20.06.2012 (as amended by Notification No. 9/2016-ST dated 01.03.2016) and thus the Respondent was not eligible to avail CENVAT credit of Central Excise duty paid on the inputs or Service Tax paid on the input services, as per the CENVAT Credit Rules, 2004, which were in force at the material time. However, the Respondent was eligible to avail input tax credit of VAT paid on the inputs and also claim deduction from his taxable turnover under VAT (WCT), of the payments made to his registered contractors. Further, post-GST, the Respondent could avail input tax credit of GST paid on all the inputs and the input services including the sub-contracts. From the data submitted by the Respondent for the period April, 2016 to December, 2018, the details of the input tax credit availed by him, his turnover from the project "Sports Ville" and the ratio of input tax credit to the turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to



December, 2018) periods was furnished by the DGAP as per given in the Table-'B' below:-

**Table-'B'**

(Amount in Rs.)

S. No.	Particulars	(Pre-GST) 01.04.2016 to 30.06.2017	(Post-GST) 01.07.2017 to 24.01.2018	(Post-GST) 25.01.2018 to 31.12.2018	Total (Post- GST) 01.07.2017 to 31.12.2018
(1)	(2)	(3)	(6)	(7)	(8) = (6)+(7)
1	Cenvat Credit of Service Tax and Central Excise Duty (A)	0	-	-	-
2	Input Tax Credit of VAT Paid on Inputs (B)	33,56,739	-	-	-
3	Rebate of VAT(WCT) on payment to contractors (C)	86,66,051	-	-	-
4	Total CENVAT/VAT Credit Availed (D)= (A+B+C)	1,20,22,790	-	-	-
5	Input Tax Credit of GST Availed (E)	-	98,21,229	2,08,27,543	3,06,48,772
7	Total Turnover from residential flats (F)	34,91,26,212	18,12,49,356	21,05,42,265	39,17,91,621
9	Total Saleable Area (in SQF) (G)	4,96,779			4,96,779
10	Area sold (in SQF) relevant to Turnover (H)	3,37,782			3,58,936
11	ITC relevant to Area Sold (I)= (D) or (E) *H/G	81,74,842			2,21,44,569
	<b>Ratio of Input Tax Credit of Turnover (J)=(I)/(F)*100</b>	<b>2.34%</b>			<b>5.65%</b>

11. The DGAP has also submitted from the above Table-'B' that the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 2.34% and during the post-GST period (July, 2017 to December, 2018), it was 5.65% which clearly confirmed that, post-GST, the Respondent has been benefited from additional ITC to the tune of 3.31% [5.65% (-) 2.34%] of the turnover.

12. The DGAP has further submitted that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction service in



respect of affordable and low-cost houses up to a carpet area of 60 square metres per house was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. In view of the change in the GST rate after 01.07.2017, the issue of profiteering has been examined by the DGAP in two parts, i.e., by comparing the applicable tax rate and input tax credit available in the pre-GST period (April, 2016 to June, 2017) when only VAT @ 4.50% was payable with (1) the post-GST period from 01.07.2017 to 24.01.2018, when the effective GST rate was 12% for both residential flats and commercial shops and (2) with the GST period from 25.01.2018 to 31.12.2018, when the effective GST rate was 12% for commercial shops and 8% for residential flats. Accordingly, on the basis the figures contained in table- 'B' above, the comparative figures of the ratio of input tax credit availed/available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) during the post-GST period, were tabulated by the DGAP as has been given in Table-C below:-

**Table-'C'**

(Amount in Rs.)

Sr. No.	Particulars	A	Post-GST		
			01.07.2017 to 24.01.2018	25.01.2018 to 31.12.2018	Total
1	Period	B	12	8	
2	Output GST rate (%)	B	12	8	
3	Ratio of Input Tax Credit of GST to Total Turnover (%)	C	5.65	5.65	5.65
4	Increase in Input Tax Credit of GST availed post-GST (%)	D= 5.65% less 2.34%	3.31	3.31	3.31
5	<b><u>Analysis of Increase in input tax credit:</u></b>				
6	Base Price raised during July, 2017 to December, 2018 (Rs.)	E	18,12,49,356	21,05,42,265	39,17,91,621
7	GST @12% or 8% (Rs.)	F= E*B	2,17,49,923	1,68,43,381	3,85,93,304



8	Total Demand raised	$G=E+F$	20,29,99,279	22,73,85,646	43,03,84,925
9	Recalibrated Base Price	$H= E*(1-D)$ or 96.69% of E	17,52,50,002	20,35,73,316	37,88,23,318
10	GST @12% or 8%	$I = H* B$	2,10,30,000	1,62,85,865	3,73,15,866
11	Commensurate demand price	$J = H+I$	19,62,80,003	21,98,59,181	41,61,39,184
12	<b>Excess Collection of Demand or Profiteered Amount</b>	<b><math>K= G-J</math></b>	<b>67,19,276</b>	<b>75,26,465</b>	<b>1,42,45,741</b>

13. The DGAP has also observed from Table-'C' that the additional ITC of 3.31% of the turnover should have resulted in commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of the additional ITC was required to be passed on to the recipients.

14. On the basis of the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected by the Respondent from the Applicant No. 1 and other home buyers during the period from 01.07.2017 to 24.01.2018, the amount of benefit of ITC not passed on or in other words, the profiteered amount has been quantified by the DGAP as Rs. 67,19,276/- which included GST @ 12%, on the base profiteered amount of Rs. 59,99,354/-. Further, the amount of benefit of input tax credit that needed to be passed on by the Respondent to the home buyers during the period 25.01.2018 to 31.12.2018 has been computed as Rs. 75,26,465/- which included 8% GST on the base amount of Rs. 69,68,949/-. Therefore, the total benefit of input tax credit that the Respondent was required to pass on during the period 01.07.2017 to 31.12.2018 in respect of both residential flats as well as commercial shops, came to Rs. 1,42,45,741/- which included GST (@



as applicable) on the base amount of Rs. 1,29,68,303/-. The home-buyer and unit no. wise break-up of this amount was given in Annexure-19 of the DGAP Report. It was also observed that the Respondent had supplied the construction services in the State of Haryana only.

15. The Respondent had submitted before the DGAP that he had passed on the benefit of Rs. 1,42,56,347/- to the home buyers. A summary of category-wise input tax credit benefit required to be passed on and the benefit claimed to have been passed on by the Respondent, was furnished by the DGAP as is given in Table- 'D' below:-

**Table-D**

(Amount in Rs)

S. No.	Category of Customers	No. of Units	Area (in Sq.ft)	Amount Received Post GST	Benefit needed to be passed on as per Annex-19	Benefit claimed to have been Passed on by the Respondent	Difference	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant	1	519	19,16,415	70,728	20,766	49,963	Further Benefit has to be passed on as per Annex-20
2	Other Buyers	51	24,720	8,21,76,357	29,71,638	8,87,706	20,83,931	Further Benefit has to be passed on as per Annex-20
3	Other Buyers	716	3,33,697	30,76,88,847	1,12,03,375	1,33,47,875	(-21,44,500)	Excess Benefit has been passed on. List attached as Annex-21
4	Other Buyers	24	10,109	0	0	0	0	No Consideration Paid Post-GST, Further, the Respondent have-not passed on any benefit.
5	Other Buyers	304	1,27,734	0	0	0	0	Unsold Unit
	<b>Total</b>	<b>1096</b>	<b>4,96,779</b>	<b>39,17,81,619</b>	<b>1,42,45,741</b>	<b>1,42,56,347</b>		

16. The DGAP has observed from the above Table – 'D' that the benefit claimed to have been passed on by the Respondent was less than what he should have passed on in case of 52 residential flats including that of the Applicant No. 1 (Sr. No. 1 & 2 of table 'D'), by an amount of



Rs. 21,33,894/-. The details of these amounts were given in Annexure-20 of the DGAP Report. Further, the benefit claimed to have been passed on by the Respondent appeared to be higher than what he should have passed on, in respect of 716 other home-buyers (Sr. No. 3 of table 'D'), by an amount of Rs. 21,44,500/-. The details of this excess benefit claimed to have been passed on were given in Annexure-21 of the DGAP Report. However, this excess benefit, claimed to have been passed on to some recipients, could not be set off against the additional benefit required to be passed on to some other recipients and it could only be adjusted against any future benefit that might accrue to such recipients who had received excess benefit.

17. The DGAP has further mentioned that the above computation of profiteering was with respect to 768 home buyers. Whereas the Respondent had booked 792 residential units till 31.12.2018, in respect of 24 flats, though the booking amount was received in the pre-GST period, no consideration had been received during the post-GST period of 01.07.2017 to 31.12.2018 (period covered by the investigation). Therefore, if the input tax credit in respect of these 24 residential units was considered to calculate the profiteering in respect of 768 units where payments had been received in the post-GST period, the input tax credit as a percentage of turnover may have been incorrect. Therefore, the benefit of input tax credit in respect of these 24 flats may be calculated when the consideration thereof would be received in the post-GST period by taking into account the proportionate input tax credit in respect of such units.



18. The DGAP has also claimed that the benefit of additional ITC of 3.31% of the turnover has, in fact, accrued to the Respondent and the same was required to be passed on to the Applicant No. 1 and other recipients. Thus, the Respondent has contravened the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 inasmuch as the additional benefit of ITC @ 3.31% of the turnover (base price) received by the Respondent during the period from 01.07.2017 to 31.12.2018, had not been passed on by the Respondent to the Applicant No. 1 and 767 other recipients. On this account, the Respondent had realized an additional amount to the tune of Rs. 49,963/- as mentioned at Sr. No. 1 of the Table- 'D', which included both the profiteered amount @ 3.31% of the base price and GST on the said profiteered amount, from the Applicant No. 1. The investigation has also revealed that the Respondent had realized an additional amount to the tune of Rs. 20,83,931/- as mentioned at Sr. No. 2 of the Table- 'D', which included both the profiteered amount @ 3.31% of the base price and GST on the said profiteered amount, from 51 other recipients. These recipients were identifiable as per the documents provided by the Respondent, giving the names and addresses along with unit no. of the flats allotted to such recipients. Therefore, this additional amount of Rs. 20,83,931/- was required to be returned to such eligible recipients.

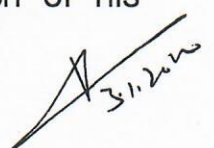
19. The DGAP has also stated that the present investigation has covered the period from 01.07.2017 to 31.12.2018. Profiteering, if any, for the period post December, 2018, has not been examined by him, as the



exact quantum of ITC that would be available to the Respondent in future could not be determined at the stage, when the construction of the project was yet to be completed. He has further stated that the provisions of Section 171 (1) of the Central Goods and Services Tax Act, 2017 requiring that “a 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”, have been contravened by the Respondent in the present case.

20. The above Report was considered by the Authority in its meeting held on 09.07.2019 and it was decided that the Applicant No. 1 and the Respondent be asked to appear before the Authority on 02.08.2019. The Respondent was issued notice on 09.07.2019 to explain why the above Report of the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the CGST Act, 2017 should not be fixed. During the course of the hearings no one appeared for the Applicant No. 1 and the Respondent was represented by Sh. Ramesh Yadav, Accounts Officer.
21. Vide order dated 19.08.2019, The Authority directed the Respondent to submit the following documents:-

- a) Statement showing project-wise ITC/CENVAT Credit availed and Turnover as per the statutory Returns (GST, ST, VAT Returns) for the period from 01.04.2016 to 31.12.2018.
- b) Project-wise list of all payments received from each of his buyers.

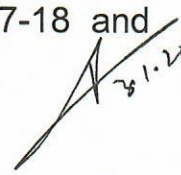
  
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- c) Balance Sheet for the years 2016-17, 2017-18 & 2018-19 along with the project wise Trial Balance for the same period.
- d) Ledger for the period from 01.04.2016 to 31.12.2018.
- e) Details of the total number of apartments/flats/commercial units/residential units in the project with total area of each flat.
- f) Tran-2 Returns.
- g) Details of Credit Reversal, if any.
- h) Agreement/Registry between the land owner and the builder for the subject project.
- i) Present status of the project in terms of sold and unsold units and ITC benefit passed on to his consumers.
- j) Details of payment of ITC benefit as claimed by the Respondent.

22. The Respondent has filed written submissions dated 06.09.2019. The Respondent has submitted following documents vide his above submissions:-

- a) Statement of ITC / Cenvat Credit availed and Turnover for the period from 01.04.2016 to 31.12.2018.
- b) Details of Payments received from Buyers up to 31.08.2019.
- c) Balance Sheet for the financial year 2016-17, 2017-18 and 2018-19.

  
31.12.2019



- d) Copy of ledger accounts of some buyers with letter of benefit attached.
  - e) Summary of the Total number of apartment/flats/ commercial units/ residential units in the Project with total area of each flat.
  - f) Copy of Tran Return.
  - g) Collaboration Agreement with M/s Randhawa Construction.
  - h) Current status of the Project in terms of sold and unsold units.
  - i) Details of ITC Benefit claimed by the Respondent form 01/07/2017 to 31/12/2018.
23. The Respondent has stated that he had not reversed any credit till the time of submissions of these documents.
24. The Respondent vide his submissions dated 14.11.2019 has submitted that the Report furnished by the DGAP dated 02.07.2019, was acceptable to him.
25. The Respondent vide his submissions dated 05.11.2019 has submitted the list of home buyers along with credit notes and undertakings from the buyers on sample basis showing the amount of ITC benefit which the Respondent has claimed to have passed on. Further, he has also submitted Ledgers in respect of all the home buyers vide his submissions dated 25.11.2019 to prove his claim.
26. We have carefully considered all the submissions filed by the Applicants, the Respondent and the other material placed on record.



We find that the Applicant No. 1, vide his complaints dated 19.09.2018, had alleged that the Respondent was not passing on the benefit of ITC to him in spite of the fact that he was availing ITC on the purchase of the inputs at the higher rates of GST which had resulted in benefit of ITC to him and that the Respondent was also charging GST from them @12%. This complaint was examined by the Standing Committee in its meetings held on 27.12.2018 and forwarded to the DGAP for investigation. The DGAP, vide his Report dated 02.07.2019 has found that the ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period was 2.34% and during the post-GST period this ratio was 5.65% details of which are given in Table-'B' of the DGAP Report. Therefore the DGAP has reported that the Respondent has benefited from ITC to the tune of 3.31% (5.65% - 2.34%) of his total turnover during the post-GST period which he was required to pass on to the flat buyers of his project. The DGAP has also found that the Respondent had not reduced the basic prices of his flats by 3.31% on the account of benefit from ITC although he had been charging his home buyers, GST at the increased rate of 12% on the pre-GST basic price. The DGAP has also reported that the Respondent has thus contravened the provisions of Section 171 of the CGST Act, 2017. The DGAP has also reported that the amount of benefit of ITC which has not been passed on by the Respondent, i.e. the aggregate profiteered amount, came to Rs. 1,42,45,741/- including the GST applicable on the basic profiteered amount of Rs. 1,29,68,303/-. The DGAP has also reported that the above aggregate amount of profiteering also included the profiteered



amount of Rs. 70,728/- (inclusive of GST as applicable) in respect of Applicant No. 1.

27. It is clear to us from the perusal of the above facts that the Respondent has indeed benefited on account of ITC to the extent of 3.31% of his turnover during the post-GST period, i.e. from July, 2017 to December, 2018 and hence the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent since he has not passed on the above benefit to his home buyers. Further he has profiteered to the extent of Rs. 1,42,45,741/-, inclusive of GST @ as applicable, on the base profiteered amount of Rs. 1,29,68,303/-. Further, it is clear to us that the Respondent has realized additional amounts of Rs. 70,728/- from the Applicant No. 1, inclusive of GST. The Respondent has also realized an additional amount of Rs. 1,41,75,013/- (inclusive of GST as applicable) from all other home buyers than the Applicant No. 1. The total amount of profiteering on part of the Respondent works out to be Rs. 1,42,45,741/- (Rs. 1,41,75,013 + Rs. 70,728/-) and the same is tabulated in Annexure- 19 of the Report of the DGAP dated 02.07.2019.

28. Further, we observe that the DGAP, vide Table-'D' of his Report dated 02.07.2019, has reported that the Respondent had claimed to have already passed on benefit of Rs. 1,42,56,347/- to his home buyers during the period from 01.07.2017 to 31.08.2019. As evidence, he has submitted list of all his home buyers mentioning the amount of ITC benefit passed on to each of them, Customer-wise ledgers in respect of some of the home buyers which mention entries indicating "being GST input benefit transfer to customer" and has also submitted sample



letters sent to his home buyers in support of his having passed on the benefit of ITC to them in terms of Section 171 of CGST Act. Further, perusal of Table-'D' of the DGAP Report dated 02.07.2019 suggests to us that an amount of Rs. 1,42,56,347/- is claimed to have been passed on by the Respondent to his home buyers on account of ITC benefit. However, it is also clear from Table-'D' of the above DGAP Report that claim of the Respondent of having passed on the benefit of Rs. 1,42,56,347/-, has not been verified at any stage by the DGAP. Accordingly the DGAP is directed to further verify the amount of ITC benefit claimed to have been passed on to his home buyers by the Respondent as per the provisions of Rule 133 (4) of the above Rules and submit his Report clearly mentioning the verified amount of benefit passed on by the Respondent to his home buyers and the balance amount still to be passed on to each of the home buyers.


29. A copy each of this order be supplied to both the Applicants, the Respondent for necessary action. File be consigned after completion.

Sd/-  
(B. N. Sharma)  
Chairman

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

Sd/-  
(Amand Shah)  
Technical Member

Certified Copy

  
(A. K. Goel)  
Secretary, NAA

F. No. 22011/NAA/59/HCBS/2019 /94  
Copy To:-

Date: 03.01.2020

1. M/s HCBS Promoters & Developers Pvt. Ltd., Unit no. 205, S/F, Plot No. 6 Vardhman Bhahnhof Plaza, MLU, Pkt-7 Sector-12, Dwarka, New Delhi-1100782.
2. Sh. Bhanja Kishore Pradhan, B-416, Chhatarpur Extension, New Delhi-110074.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Guard File.