GSTAT

Single Bench Court No. Court II

NAPA/163/PB/2025

DGAP, DG ANTI PROFITEERING, DIRECTOR GENERAL OF ANTI-PROFITEERING **.............Appellant**

Versus

SHREEJI INFRA **.............Respondent**

Counsel for Appellant **Counsel for Respondent**

Hon'ble Justice Sh. Mayank Kumar Jain, Member(Judicial)

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZA070010926000165H **Date of order :** 19/09/2026

1.	GSTIN/Temporary ID/UIN - 24ADSFS6312C1Z5	
2.	Appeal Case Reference no. - NAPA/163/PB/2025	Date - 25/10/2024
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondant - 1. Shreeji Infra , shreejiinfra01@gmail.com , 9909928736	
5.	Order appealed against -	
	(5.1) Order Type -	

	(5.2) Ref Number -	Date -
6.	Personal Hearing - 19/09/2026 07/09/2026 31/08/2026 24/08/2026 14/08/2026 30/07/2026 16/07/2026 01/07/2026 03/06/2026 14/05/2026 13/04/2026 20/03/2026 13/02/2026 22/01/2026 18/12/2025 18/11/2025 13/10/2025	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	
8.	Order in brief - The DGAP report dated 24.10.2024 is accordingly rejected.	
Summary of Order		
9.	Type of order : Dismissal of Report	

Judgment Reserved on 07.09.2026
Judgment pronounced on 19.09.2026
REPORTABLE

ORDER

JUSTICE MAYANK KUMAR JAIN, JUDICIAL MEMBER.

FACTUAL MATRIX

1. M/s Shree Ji Infra, Shree Ji House, Plot No.-1-I, Sterling City, Bopal, Ahmedabad-380058 (hereinafter referred to as '**the Respondent'**) has developed a residential estate project in the name and style **"Shree Two",** for construction of a residential apartment project in the city of Vadodara.
2. The Respondent initiated the project on 07.01.2019. A Copy of the commencement permission (Raj-chitthi) was issued on 07.01.2019 by the competent Authority. The Respondent had started its real estate project subsequent to 01.07.2017; therefore, there was no question of VAT registration and transmission of credit (TRANS-II). On 01.04.2019, the project status was ongoing.

3. The Respondent had not opted for any optional scheme in March, 2019, which was effective from 01.04.2019. There were a total 84 units in the Respondent's project. Out of 84 flats total number of 65 flats have been booked and 19 flats remained unbooked. The first booking amount was received on 21.02.2019, i.e. after the introduction of GST.

4. Shri Kundan Singh, R/O B-304, Staff quarters, GMERS Hospital, Gotri, Vadodara-390021 (hereinafter referred to as '**the Applicant**') booked a flat as unit no. C-403 in Block-C in GST regime.

Commencement of proceedings and Investigation

5. The present proceedings arise out of an application filed by the Applicant under Rule 128 of Central Goods and Services Tax Rules, 2017 (for short the **"CGST Rules, 2017")** alleging profiteering in respect of Construction Services supplied by the Respondent in their project **"Shree Two"**. It was alleged that the Respondent failed to pass on the benefit of the Input Tax Credit (for short the ***"ITC"***) to the Complainant by way of commensurate reduction in prices on purchase of Flat No. C-402 in the above referred project on the introduction of GST w.e.f. 01.07.2017 in terms of Section 171 of the Central Goods and Services Tax Act, 2017 (for short '**The CGST Act, 2017**').

6. This application was examined by the Standing Committee on Anti Profiteering. Upon being prima facie satisfied that the Respondent was indulged in profiteering and had not passed on the benefit of ITC to the Applicant. The Standing Committee referred the matter to the Director General of Anti-Profiteering (for short '**the DGAP**') under Rule 129 (1) of the CGST Rules, 2017 for detailed investigation.

7. The investigation was set into motion by the DGAP by issuance of a notice dated 15.04.2024 under Rule 129 of the CGST Rules, 2017, to the Respondent calling upon it to show cause as to whether the benefit of ITC has been passed on to their home buyers by way of commensurate reduction

in prices, and further directed the Respondent to *suo-moto* compute the quantum of such benefit, if any.

8. The Respondent submitted its detailed reply along with supported documents and annexures, denying the allegation of profiteering.

9. The period covered by the current investigation is from 01.07.2017 to 31.03.2024.

10. Upon completion of the investigation, the DGAP submitted its report dated 24.10.2024 with the following findings and conclusions:

    (i) The Respondent has not opted for any optional scheme in March 2019, which was effective from 01.04.2019.

    (ii) There was no sale or booking of any flat in pre-GST regime. The project "Shree-Two" was launched after introduction of GST. No evidence was furnished by the applicant to prove it otherwise.

    (iii) As no unit was sold in per-GST era therefore it was not possible to compare with the post GST base price. The RERA registration shows approval of the project commencing from 2019. The first booking amount was received on 21.02.2019, i.e. after introduction of GST.

    (iv) Since credit of CENVAT was not available to the Respondent it was not possible to compare it with the ITC, which was available to him in post-GST era, therefore, the base price in pre-GST era could not be compared with the price change in the post -GST period.

    (v) Out of total 84 flats, 10 flats which were booked by the home buyers which falls under the definition of "Affordable Apartment". The details of these 10 flats are quoted by the DGAP in its report in the following manner: -

S. No.	Name of the Buyer	Email ID of Buyer	Flat No. & Tower	Carpet Area (in Sq Mt.)	Affordable	Total payment received from

						Buyer (Inclusive of GST) (In Rs.)
			A	B	C	D
1	Mr. PATEL NIRAV SNEHALBHAI	niravpatel1989@gmail.com	C- 202	84.91	Yes	4117050/-
2	Mr. KAUSHAL H. DESAI / Ms. KHYATI KAUSHAL DESAI	kaushalhdesai@yahoo.com	C- 302	84.91	Yes	4095000/-
3	Ms. KRUPABEN ARVINDKUMAR PATEL	Not Available	C- 402	84.91	Yes	3485250/-
4	Ms. PRAGNA DHARMESHKUMAR PATEL / Mr. DHARMESHKUMAR NARENDRAKUMAR PATEL	Dharmeshdhyey@yahoo.com	C- 502	84.91	Yes	3685500/-
5	Ms. MANISHA ANILBHAI PATEL / Mr. PATEL ANIL LABHUBHAI	dr.anilp30@gmail.com	C- 602	84.91	Yes	3685500/-
6	Ms. INDIRABEN ASHOKKUMAR PADALIA	poojapadalia28@gmail.com	C- 702	84.91	Yes	3685500/-
7	Ms. ILABEN MEHTA	Not Available	D-301	84.91	Yes	3685500/-

8	Mr. PARMAR BHARATKUMAR JAYANTILAL / Mrs. PARMAR ROSHNIBEN BHARATKUMAR	Not Available	D-401	84.91	Yes	4009687/-
9	Mr. SOORAJ M. PANICKER / Ms. ESHA SOORAJ PANICKER	Not Available	D-501	84.91	Yes	4095000/-
10	Mrs. BHAVINI NITIN DUSANE / Mr. NITIN N. DUSANE	Not Available	D-601	84.91	Yes	4222969/-

(vi) The Respondent has collected GST @ 5% from the Applicant; however, as per law, he had to collect 1% GST from the flat buyers. It shows that the Respondent had excessively collected the GST @ 4% from the Applicant and other similarly placed affordable flat buyers.

(vii) The DGAP on the basis of the above factual matrix and after examination of the material evidence submitted by the Respondent and the Applicant, computed the profiteering amount as shown in the Table hereinbelow: -

S. No	**Name of the Buyer**	**Email ID of Buyer**	**Flat No. & Tower**	**Carpet Area (In Sq Mt.)**	**Affordable**	**Total payment received from Buyer (Inclusive of GST) (In Rs.)**	**GST Charged and Collected from Buyer (In Rs.)**	**GST to be collected i.e. 1% as per law (In Rs.)**	**Total Savings (In Rs.)**

			A	B	C	D	E=(D/105*100)*5%	F=(D/105*100)*1%	G=E-F
1	Mr. PATEL NIRAV SNEHALBHAI	niravpatel1989@gmail.com	C-202	84.91	Yes	4117050/-	196050/-	39210/-	156840/-
2	Mr. KAUSHAL H. DESAI / Ms. KHYATI KAUSHAL DESAI	kaushalhdesai@yahoo.com	C-302	84.91	Yes	4095000/-	195000/-	39000/-	156000/-
3	Ms. KRUPABEN ARVINDKUMAR PATEL	Not Available	C-402	84.91	Yes	3485250/-	165964/-	33192/-	132771/-
4	Ms. PRAGNA DHARMESHKUMAR PATEL / Mr. DHARMESHKUMAR NARENDRAKUMAR PATEL	Dharmesh dhyey@yahoo.com	C-502	84.91	Yes	3685500/-	175500/-	35100/-	140400/-
5	Ms. MANISHA ANILBHAI PATEL / Mr. PATEL ANIL LABHUBHAI	dr.anilp30@gmail.com	C-602	84.91	Yes	3685500/-	175500/-	35100/-	140400/-

6	Ms. INDIRA BEN ASHOK KUMAR PADALIA	poojapadalia28@gmail.com	C-702	84.91	Yes	3685500/-	175500/-	35100/-	140400/-
7	Ms. ILABEN MEHTA	Not Available	D-301	84.91	Yes	3685500/-	175500/-	35100/-	140400/-
8	Mr. PARMAR BHARATKUMAR JAYANTILAL / Mrs. PARMAR ROSHNIBEN BHARATKUMAR	Not Available	D-401	84.91	Yes	4009687/-	190937/-	38187/-	152749/-
9	Mr. SOORAJ M. PANICKER / Ms. ESHA SOORAJ PANICKER	Not Available	D-501	84.91	Yes	4095000/-	195000/-	39000/-	156000/-
10	Mrs. BHAVINI NITIN DUSANE / Mr. NITIN N. DUSANE	Not Available	D-601	84.91	Yes	4222969/-	201093/-	40218/-	160875/-
	Total Savings (profiteering) (In. Rs.)								**1476836/-**
	Profiteering (Add GST @12%) (In. Rs.)								**1654056/-**

11. The DGAP concluded that the Respondent has saved a sum of Rs. 14,76,836/- from aforesaid 10 affordable flat buyers in his project and thus

has profiteered an amount of Rs. 16,54,056/- (including 12% GST). The Respondent has contravened the provision under Section 171 of the CGST Act, 2017.

12. The Principal Bench of the GST Appellate Tribunal (GSTAT), constituted under sub-section (3) of section 109 of the CGST Act, 2017 has been empowered to examine Anti-Profiteering cases w.e.f. 01.10.2024, vide Notification No. 18/2024-Central Tax dated 30.09.2024. the DGAP submitted its investigation report dated 24.10.2024 before the GSTAT.

Proceedings before the GSTAT:-

13. A notice was issued to the Respondent and the Applicant calling upon their written submissions/objections, if any, against the DGAP report dated 24.10.2024.

Submissions on behalf of the Applicant: -

14. The unit booked by the Applicant falls under the category of "Affordable Residential Apartment", therefore 1% GST without ITC should have been collected by the Respondent on the total consideration after deducting the land value. 5% GST without ITC is applicable to another residential apartment. These rates are applicable to the projects commencing on or after 01.04.2019 and ongoing project where the promoter has opted for the new tax regime.

15. Ongoing projects were eligible for opting old GST rates by submission of one-time option form to the Authority concerned on or before 10.05.2019. if such option is not applied, it shall be deemed that the builder has opted for new GST rates of 1%/5% without ITC.

16. The builder also liable to pay interest on the profiteering amount as per notification dated 28.06.2019 under Rule 133(3)(c) of the CGST Rules, 2017.

17. Any excess GST collected is illegal and attracts the provision of anti-profiteering under Section 171 of the CGST Act, 2017 and is liable to be refunded to the Applicant along with 18% interest.

Written Submissions on behalf of the Respondent: -

18. The Respondent filed its detailed replies denying the allegations of profiteering.
19. The Respondent submitted that there is no change in the rate of GST and no additional or extra ITC available to it. Thus, the provisions of Section 171 of the CGST Act, 2017 do not apply to the facts of the case.
20. The Respondent has paid GST @ 12% on the consideration of service throughout the scheme. For ongoing projects, builders could opt for the 12% rate with input tax credit. The Respondent consciously continued with the GST rate of 12% while claiming input tax credit.
21. The application was founded on a wrong presumption of the customer that he is liable for 1% (One Percentage) GST after 01.04.2019. Since the customer is a layman and does not understand the complex revenue enactment.
22. The entire case is standing on a misunderstanding that there is a reduction in the rate of GST from 8% to 1% from 01.04.2019. The averment made by the Applicant is based upon misunderstanding. The standing committee has erroneously accepted the rate of 8% and 1%. The Respondent has paid Tax on Supply of Services at the rate of 12% (from January 2019 till date). The GST annual return figures are set out hereunder:

Year	Taxable Value	CGST @ 6%	SGST @ 6%
31.03.2020	75,580,154	4,534,809	4,534,809
31.03.2021	74,950,345	4,497,021	4,497,021
31.03.2022	56,926,519	3,415,591	3,415,591
31.03.2023	19,682,477	1,180,949	1,180,949

31.03.2023	2,850,000	171,000	171,000
Total	22,532,477	1,351,949	1,351,949

23. The Respondent has collected less GST from the customer though the Respondent has paid GST @ 12%. The statement of GST recovered from the customer from 25.02.2019 to till date is as below:

Period	**Part Payment Received till date (in Rs./-)**	**GST @ 12%**	**GST Charged and Recovered from Customer**
25.02.2019	150,000	18,000	12,000
1.04.2019	100,000	12,000	5,000
8.05.2019	350,000	42,000	17,500
4.06.2019	200,000	24,000	10,000
26.09.2019	550,000	66,000	27,500
11.12.2019	600,000	72,000	30,000
13.02.2020	585,000	70,200	29,250
08.07.2020	390,000	46,800	19,500
27.10.2020	390,000	46,800	19,500
Total	**3,315,000**	**397,800**	**170,250**

24. The summary statement of GST charged and short recovered from the customer is as under:

Particulars	**Rs.**
The Respondent Paid towards Construction Service	3,315,000/-
The Respondent Paid GST @ 12% on Construction Service	397,800/-
The Respondent Paid GST @ 12% on Construction Service	397,800/-
The Respondent Recovered GST from the Customer	170,250/-
Balance is paid by the Respondent (Not Charged to Customer)	227,550/-

The Respondent has paid GST @ 12% i.e. Rs. 3,97,800/- to the Government Treasury. The Respondent has Recovered/Charged Rs. 1,70,250/- only from the customers. The balance amount of GST Rs. 2,27,550/- is paid by the Respondent.

Clarification by the DGAP: -

25. The DGAP submitted its clarification and has supported the findings and conclusions recorded in their report dated 24.10.2024.

26. The Respondent was not eligible to avail/utilise the ITC in respect of above 14 flats. The investigation of such ineligible ITC availed/utilised by the Respondent is not under mandate of the DGAP, therefore the said issue may be referred to the jurisdictional CGST Zone (Ahmedabad) for further investigation.

Observations and Conclusions: -

27. The Hon'ble High Court, for the State of Telangana at Hyderabad in WP No. 4760 of 2021 and 5351 of 2021, ***Sudarshan Theatre v. Union of India (2024) 20 Centax 303 (Telangana)***, observed about the spirit of the legislation for enactment of the provision for Anti-Profiteering as provided under Section 171 of the CGST Act, 2017. It reads thus:

> *"17. A plain reading of the said provision of law clearly indicates that the said provision has been introduced to ensure that the supplier of goods and services should not make profit from the reduction of the tax rate under the G.S.T. law. Rather the intention of the Government is that the moment the rate of tax under the G.S.T. is reduced, the benefit should immediately be passed on to the end-user by way of reduction in the prices commensurate with the reduction in the rate of tax. This, in other words, would mean that, the moment there is a*

cut in the rate of G.S.T., the price of the commodity or the services rendered has to be reduced automatically to the extent of the reduction in the rate of tax. If the supplier continues to sell the product at the same price particularly when the prices are inclusive of G.S.T., the respondent-Department or the beneficiary is not being benefitted by the Government's decision in lowering the rate of tax. A reading of Sections 171 & 172 of the G.S.T. Act does not show any exception carved out in the event non-reduction in the price of the tickets, nor is the authority empowered to relax the conditions so enumerated under Section 171 (1). This, in other words, also mean that the provision of Sections 171 (1) has to be strictly adhered to.."

(Emphasis added)

28.The Hon'ble High Court of Delhi in ***Reckitt Benckiser India Pvt. Ltd. Vs. Union of India (2024 SCC Online Del 588)***, *has defined the mandate of legislation behind the enactment of Section 171 of the CGST Act, 2017. It is observed: -*

97. *Section 171 of the Act, 2017 mandates that the suppliers shall pass on the benefit of reduction of the rate of Goods and Services Tax or Input Tax Credits by way of commensurate reduction in prices to the recipient. Section 171 deals with amounts that the Central and State Governments have foregone from the public exchequer in favour of the consumers. This Court is of the view that the amounts foregone from the public exchequer in favour of the consumers cannot be appropriated by the manufacturers, traders, distributors etc. To allow them to* *do so would amount to unjust enrichment. Consequently, when the Goods and Services Tax rate gets reduced or the benefit of input tax credit, becomes available as a necessary consequence the final price paid by the recipient obviously requires to be reduced. In the absence of such anti-profiteering provisions, there would be no legal obligation to pass on the benefit of the Goods and Services Tax regime and, consequently, the intended objective of reducing overall tax rates and mitigating the cascading effect would not be achieved.*

98. *The expression 'profiteered' has been defined in the Explanation to Section 171 of the Act, 2017 to mean 'the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both '. According to Collins English Dictionary - Complete and Unabridged, 12th Edition 2014, the word 'commensurate' means "1. having the same extent or duration; 2. corresponding in degree, amount, or size; proportionate; 3. able to be measured by a common standard; commensurable." The word 'commensurate' has been used in several judgments of the Supreme Court for laying down yardsticks in different contexts, from determining the rightfulness of the posting of a public servant, to assessing the correctness of criminal sentencing and calculating maintenance amounts indicating that the Courts too have a clear and definite understanding of this word.*

***99** The obligation of effecting/making a "commensurate" reduction in prices, as mentioned hereinabove, is relevant to the underlying objective of the Goods and Services Tax regime which is to ensure that suppliers pass on the benefits of reduction in the rate of tax and Input Tax Credit to the consumers, especially since the Goods and Services Tax is a consumption-based tax (as adopted in India) and the recipient (consumer) practically pays the taxes which are included in the final price. Section 171 of the Act, 2017, therefore, is not to be looked at as a price control measure but is to be seen to be directly connected with the objectives of the Goods and Services Tax regime. Consequently, the word 'commensurate' in Section 171 of the Act, 2017 means that whatever actual saving arises due to the reduction in rates of tax or the benefit of the Input Tax Credit, in rupee and paisa terms, must be reflected as equal or near about reduction in price. In other words, tax foregone by the authorities has to be passed on to the consumer as commensurate reduction in prices.*

***100.** Accordingly, Section 171 of the Act, 2017 has been enacted, in public interest, with the consumer welfare objective of ensuring that suppliers pass on the benefit of Input Tax Credits and reduction of rate of Goods and Services Tax to the consumers. The Section does this by firstly creating a substantive obligation under sub-section (1) requiring manufacturers/suppliers to pass on benefits of Input Tax Credits and/or reduction in rate of tax by way of commensurate reduction in prices to the*

> *recipients. The said Section further enables the establishment of an Authority to determine whether Suppliers have passed on the benefits of Input Tax Credits and reduction of the tax rates, and to exercise such other powers and functions as may be prescribed.*
>
> *(Emphasis added)*

29. In view of the observations made by the Hon'ble High Court of Delhi, it is apparent that the provision of anti-profiteering contained under Section 171 of the CGST Act, 2017 are in the interest of public at large. It is a welfare legislation objected to ensure that the recipient should receive the benefit of reduction in rate of tax or ITC by way of commensurate reduction in prices.

30. The DGAP has concluded that the Respondent had collected excessive GST from the Applicant and other similar home-buyers of affordable apartment as the Respondent realised GST @ 1% without GST while it had charged 5% without GST thus, the Respondent had saved 4% of the GST without ITC and treated it as profiteering amount.

31. The facts stand admitted by the DGAP as well as the Applicant that the Respondent did not opt for any optional scheme effective from 01.04.2019. The project commenced in the post-GST regime, and the Applicant purchased Unit No. C-402 therein under the GST regime. Consequently, the price agreed between the Respondent and the Applicant inherently factored with the benefit of reduction in GST rates. Since no CENVAT credit was available to the Respondent in the pre-GST regime, the DGAP could not undertake a comparison of credit on purchase value in the pre-GST period vis-à-vis the ITC availed on purchase value post-GST regime. This methodology is regularly being adopted by the DGAP pursuant to findings given by Hon'ble High Court of Delhi in ***Reckitt Benckiser (Supra)*** to determine Anti- profiteering

32. We are of the considered opinion that the DGAP erred in treating the alleged excessive realization of GST to the extent of 4% from the Applicant as attributable to the Respondent. The Respondent has categorically asserted that GST was deposited at the rate of 12%, whereas the home-buyers were charged a lesser amount.
33. In view of the foregoing facts and circumstances of the matter, we are of the view that excessive realisation of the GST cannot be treated as savings and thus the Respondent was indulged in profiteering. The computation of profiteered amount of Rs. 16,54,056/- is baseless and devoid of merit which cannot be permitted to be sustained.
34. It is surprising that on one hand the DGAP is computing profiteered amount of Rs. 16,54,056/- on the basis of the alleged excessive realisation of GST by the Respondent while on the other hand, it is suggested that since the Respondent was not eligible of availment/utilisation of ITC in respect of above 14 flats and the investigation of such ineligible ITC availed/utilised by the Respondent not under mandate of the DGAP, therefore the said issue may be referred to the jurisdictional CGST Zone (Ahmedabad) for further investigation.
35. Insofar as the aforesaid suggestions is concerned, we are of the view that the issue of excess realisation of GST has no prevalence for computation of profiteering under section 171 of the CGST Act, 2017. Therefore, the matter is not within the jurisdiction of this Tribunal.
36. In view of the foregoing discussion and observations under the facts and the circumstances of the matter, we are of the view that the computation of Rs, 16,54,056/- as profiteering amount against the Respondent cannot be accepted as the excess realisation of the GST has no relevance from the perspective of the Section 171 of the CGST Act, 2017 and therefore the DGAP report deserves to be rejected.

37. We appreciate the invaluable assistance rendered by our law researchers Ms. Tanya Saraswat & Ms. Garima Jindal and our Court Officer Ms. Roopa.

ORDER

38. The DGAP report dated 24.10.2024 is accordingly rejected.
39. Let a copy of the Judgement be communicated to concerned CGST/SGST Commissionerate for record and necessary action at their end.
40. The concerned Principal Chief Commissioner of the Zone is directed to refund the excessive realised amount of the GST to the Applicant in accordance with the law under intimation to this Tribunal.
41. Judgement pronounced in open Court today.
42. The Judgement and Order be uploaded on the official portal of GSTAT by today itself.

(Justice Mayank Kumar Jain)

Dated: 19.09.2026