GSTAT
Special Bench Court No. Court I
NAPA/28/PB/2025

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

Versus

VASAVI AND GP INFRA LLP ....Respondent

Counsel for Appellant Counsel for Respondent

Hon'ble Justice (Retd.) Dr. Sanjaya Kumar Mishra, President
Hon'ble Sh. A. Venu Prasad, Member (Technical)

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. : ZA070010526000021H **Date of order : 07/05/2026**

1.	GSTIN/Temporary ID/UIN - 36AAMFV5347F3ZS	
2.	Appeal Case Reference no. - NAPA/28/PB/2025	Date - 10/10/2024
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondant - 1. Vasavi and GP Infra LLP , gp.finance@thevasavigroup.com , 8233339999	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 07/05/2026 16/04/2026 18/03/2026 13/02/2026 03/02/2026 13/01/2026 15/12/2025 13/10/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - The Respondent is hereby directed to pass on the profiteered amount of ₹71,37,747/- (exclusive of GST), along with GST @ 12%	

	amounting to ₹8,56,530/-, aggregating to ₹79,94,277/-, to the eligible homebuyers, as identified in the DGAP Report dated 13.03.2026. The said amount shall be passed on along with interest at the rate of 18% per annum, in terms of Rule 133(3)(b) of the Central Goods and Services Tax Rules, 2017, from the date of collection of the higher amount from the buyers till the date of its actual refund. Compliance of this Order shall be reported to the jurisdictional Commissioner within a period of three months from the date of this Order, with a copy to the DGAP.
Summary of Order	
9.	**Type of order** : Return to Recipient of Amount not passed on, along with interest

Place – New Delhi

Date – 07.05.2026

Per, Shri Arabandi Venu Prasad.

ORDER

1. The present proceedings arise from a complaint filed by Mr. Syed Ali Hussaini, resident of Plot No. 4, SCHB Colony, Akbar Road, Secunderabad, Telangana – 500009 (hereinafter referred to as the "first complainant"), under Rule 128 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the CGST Rules"), alleging profiteering in respect of construction services supplied by M/s Vasavi and GP Infra LLP (hereinafter referred to as "the Respondent") in its project "Vasavi GP Trends", situated at Anilath Maja Housing Society, 8-2-120/86/9/A/1, 12, 2 and 13, North End, Opp. Park Hyatt, Road No. 2, Banjara Hills, Telangana.

2. The first complainant alleged that the Respondent had failed to pass on the benefit of Input Tax Credit (ITC) by way of commensurate reduction in price in respect

of the purchase of a residential unit in the said project upon the introduction of GST w.e.f. 01.07.2017, in contravention of Section 171 of the CGST Act, 2017.

3. The complaint was examined by the Standing Committee on Anti-Profiteering, which, upon being satisfied, forwarded the matter to the Directorate General of Anti-Profiteering (hereinafter referred to as "the DGAP") on 30.05.2022 for detailed investigation under Rule 129(1) of the CGST Rules, 2017.

4. In the meantime, another application was filed by Sh. Vepachedu Bhargav, Flat No. 404, Vasavi GP Trends, Nanakramguda, Hyderabad (hereinafter referred to as the "second complainant"), which was examined by the Standing Committee on Anti-Profiteering in its meeting held on 12.01.2023 and thereafter forwarded to the DGAP for investigation. The said application was accordingly tagged with the ongoing investigation pertaining to the project "Vasavi GP Trends" of the Respondent.

5. The DGAP submitted its report dated 24.02.2023 after conducting a detailed investigation under Rule 129(6) of the Central Goods and Services Tax Rules, 2017. Thereafter, vide Interim Order dated 01.12.2023, the Competition Commission of India directed the DGAP to re-examine the sale deeds/sale agreements and to submit a report after conducting a thorough investigation.

6. Further, in the view of the judgment of the Hon'ble Delhi High Court, in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019*** dated 29.01.2024, the CCI, vide communication dated 07.05.2024, directed the DGAP for re-investigation under Rule 129 of the CGST Rules, 2017.

7. Pursuant thereto, the DGAP conducted investigation and submitted its report dated 09.10.2024, wherein it was concluded that the Respondent had derived additional benefit of Input Tax Credit in the post-GST regime and had failed to pass on the same to the recipients by way of commensurate reduction in prices, thereby determining the profiteered amount at Rs. 6,02,89,656/- (exclusive of GST). However, the DGAP further observed that the Respondent had already passed on ITC benefit amounting to Rs. 3,48,69,481/- to the homebuyers, though the same was found to be deficient vis-à-vis the benefit required to be passed on. Accordingly, the balance profiteered amount was determined at Rs. 2,54,20,175/- along with applicable GST @ 12%. The details of the said computation were furnished in Annexure-9 of the DGAP's Report.
8. The above report was considered by this Tribunal and the Registry was directed to issue notice to the Respondent under intimation to the Applicants.
9. In response thereto, the Respondent filed written submissions dated 10.12.2025 and raised various objections, inter alia, with regard to the methodology adopted, treatment of Input Tax Credit and computation of the profiteered amount.
10. Hearings in the matter were held on 15.12.2025, 13.01.2026, 03.02.2026 and 13.02.2026. Upon consideration of the submissions advanced by the parties, the Hon'ble GSTAT (Principal Bench), vide Order dated 13.02.2026, observed that certain issues raised by the Respondent warranted further examination and verification by the DGAP, particularly in relation to factual aspects and the methodology adopted for computation of profiteering. Accordingly, the DGAP was directed to reconsider the matter on the following issues:

(i) Whether the Respondent is liable to pay the alleged profiteered amount of Rs.2,54,20,175/- along with GST @12% (total Rs.2,84,70,596/-), as against Rs.6,02,89,656/- determined in the original DGAP report?

(ii) Whether the notional service tax credit computed by the DGAP at 1.7978% of the cost of construction in the post-GST period is to be adopted, or whether the actual Input Tax Credit on services is to be considered while computing the profiteered amount?

(iii) Whether the benefit of Rs.46,40,136/- claimed to have been passed on to 13 customers was rightly excluded by the DGAP on the basis of denial by such customers through email?

(iv) Whether, in cases where comparable pre-GST sale prices are not available for similar units sold in the post-GST period, an inference of profiteering can be drawn?

(v) Whether the Respondent had already cony factored the benefit of Input Tax Credit in the sale price fixed for the post-GST period customers, and if so, whether any profiteering can be said to have arisen to that extent?

(vi) Whether the Respondent is liable to pay GST @12% on the alleged profiteered amount, when such tax has already been deposited with the Government.

11. The Hon'ble GSTAT further clarified that the remand was limited in scope to the aforesaid issues and did not entail a de novo investigation of the entire matter.

Accordingly, the DGAP was directed to re-examine the matter in respect of the above issues and submit a report within the stipulated time.

12. Upon completion of the investigation, the DGAP submitted its Report dated 13.03.2026 to the Hon'ble GSTAT, which has been summarized as follows:

    12.1. The DGAP stated that the present Report has been furnished in compliance with the directions of the Hon'ble GSTAT vide Order dated 13.02.2026, whereby the matter was remanded for reconsideration only with respect to Question Nos. 1 to 5, and not by way of an open remand for re-examination of the entire case.

    12.2. It was submitted that, pursuant to the said directions, the Respondent furnished written submissions along with supporting documents, including books of accounts, customer ledgers and credit notes, which were examined and verified in light of the provisions of Section 171 of the CGST Act, 2017, the relevant Rules, and the methodology adopted in the original investigation.

    12.3. With regard to the methodology for determination of profiteering, the DGAP reiterated that the same is rooted in Section 171(1) of the CGST Act, 2017, which mandates that any reduction in the rate of tax or benefit of input tax credit must be passed on to the recipients by way of commensurate reduction in prices. It was observed that the proportion of ITC to the value of inputs and input services bears a direct correlation with the cost of construction, and therefore, comparison of such ratios

in the pre-GST and post-GST periods provides a reasonable basis to determine whether any additional benefit has accrued.

12.4. The DGAP further observed that the earlier methodology based solely on turnover was flawed and that the correct approach is to compare the ratio of CENVAT/ITC to the amount spent on inputs and input services during the pre-GST and post-GST periods, so as to ascertain the incremental benefit arising from the implementation of GST. Any positive difference in such ratios represents additional benefit, which is required to be passed on to the recipients proportionately.

12.5. The contention of the Respondent that ITC on input services ought to be excluded from the computation was examined and rejected. The DGAP held that the reliance placed on the ***Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019*** was misplaced, as the said judgment does not prescribe exclusion of service-related ITC. It was observed that the incremental benefit arising from GST is not confined to goods alone and includes ITC on both goods and services, and therefore no component of ITC can be excluded from the profiteering computation.

12.6. With respect to Question No. 3, the DGAP examined whether denial of receipt of ITC benefit of Rs. 46,40,136/- by 13 customers through email responses could be treated as conclusive evidence. It was observed that such responses, by themselves, cannot override documentary financial records. The determination under Section 171

must be based on objective evidence such as books of accounts, customer ledgers and credit notes. Upon examination of such records, it was found that the Respondent had adjusted the ITC benefit against the amounts payable by the customers, thereby reducing the effective consideration and passing on the benefit through price adjustment.

12.7. It was further observed that passing on of benefit does not necessarily require a separate cash refund, and that where the demand raised on customers stands reduced and the payments received reflect such reduction, the benefit stands effectively passed on. The DGAP emphasised that email responses from customers denying receipt of benefit must be viewed with caution and cannot override contemporaneous financial records maintained in the ordinary course of business.

12.8. Furthermore, it was observed that the substantive test under Section 171 is whether the effective price charged from the customer was reduced commensurately, and the records produced by the Respondent demonstrate that such reduction was indeed provided. Accordingly, the benefit amount against the demands of the said customers ought to be recognised as benefit already passed on, and the same should not be disregarded solely on the basis of email responses denying the receipt of benefit.

12.9. In respect of post-GST transactions (Question Nos. 4 & 5), the DGAP observed that the Respondent had, at the time of introduction of GST,

consciously factored the expected ITC benefit into the pricing of flats. Reliance was placed on contemporaneous documents, including Minutes of Meeting dated 10.07.2017 and internal circulars issued to the sales team, which clearly recorded that ITC benefit was to be passed on to customers while determining the sale price.

12.10. The DGAP noted that such contemporaneous evidence demonstrates that the Respondent had adopted a deliberate pricing policy post implementation of GST, whereby the benefit of ITC was embedded in the base price itself. Consequently, the buyers received the benefit through a lower effective price at the time of purchase.

12.11. In view of the above, the DGAP concluded that, insofar as post-GST sales are concerned, the Respondent cannot be said to have profiteered to the extent of ITC benefit, as the same stood passed on through price determination itself and not by way of ex-post reduction.

12.12. The DGAP observed that, as per the original investigation report dated 09.10.2024, the total profiteering amount was determined at Rs. 6,02,89,656/-, out of which an amount of Rs. 3,48,69,781/- was found to have already been passed on to the recipients. Accordingly, the balance profiteering amount was computed at Rs. 2,54,20,175/-.

12.13. Upon re-working, the DGAP recorded that, as per the original determination, the total profiteering amount stood at Rs. 6,02,89,656/-, out of which Rs. 3,48,69,781/- had already been passed on to the recipients, leaving a balance profiteering of Rs. 2,54,20,175/-.

However, upon detailed examination of additional documents and recalculations furnished by the Respondent, the profiteering was reworked. In this regard, the DGAP, as reflected in Table-A of the Report, determined the revised profiteering amount at Rs. 1,51,87,625/-, out of which the balance profiteering to be passed on was computed at Rs. 71,37,747/-.

Table- A (Revised profiteering)

S. No.	Name of the buyer	Flat No. Of the buyer	Area of the flat of the buyer in Sq. Ft	Date of booking of the flat	Benefit of ITC passed on to the buyer of the flat during the post GST period, if any (in Rs.)	Amount profiteered (excluding GST)	Additional benefit required to be passed on (excluding GST)
1 .	C V Channamma	106	1380	06-08-2016	512490	406882.46	-105607.54
	M V S Guptha	303	1765	05-08-2016	197715	520396.77	322681.77
	Haritha Kompally	409	1565	10-05-2016	277736	461428.30	183692.30
	Tata Uma Sri Bala	504	2005	02-04-2017	273433	591158.93	317725.93
	Harshandra Gati	603	1765	10-05-2017	386076	520396.77	134320.77
	Ch Sudharahn Raju	609	1565	25-03-2017	220015	461428.30	241413.30
	Sailesh Gadlay	702	1760	05-06-2017	178145	518922.58	340777.58

	Satish Gadlay	703	1765	05-06-2017	375462	520396.77	144934.77
	Mukesh Gadlay	801	1890	05-05-2017	269030	557252.06	288222.06
	G.Kishna Gadlay	802	1760	05-06-2017	384940	518922.56	133982.56
	Sai Kamesh Venkata Chirala	804	1860	05-08-2016	176097	548406.79	372309.79
	K Parthasarathi Rao	1002	1760	12-07-2016	199384	518922.56	335308.56
	Y Karteeka	1101	1904	25-03-2016	193852	561379.86	367522.86
	Dr Khurshid Ahmed	1601	1904	25-12-2016	286227	561379.86	275152.86
	Bharat Ladda	1604	1878	25-01-2017	126906	553713.95	426807.63
	S V K Divakar Perrella	1606	1380	08-05-2017	132227	406882.46	274655.46
	Simran N Sachanandani	1702	1765	08-05-2017	216840	518922.56	274655.46
	Divya Sachanandani	1703	1765	08-05-2017	330080	520396.77	274655.46
	Reema M Sachanandani	1706	1380	01-12-2016	385263	406882.46	21619.46
	B Aruna	2006	1380	01-06-2017	213844	406882.46	193038.46
	Noomula Swapna	2304	3810	13-08-2016	450114	673535.40	223434.40

	R V K Narasimha Rao	2306	2810	25-10-2016	347689	522096.11	180148.11
	Ramachandra Reddy Gajjala	2307	3590	22-11-2016	380605	1058484.08	677878.83
	Antha Reddy Satush Reddy	2313	3340	29-05-2017	1830029	984773.49	-845255.51
	Sridhar	2314	3630	12-08-2016	654642	1070277.77	415635.63
	Total					**1,51,87,625**	**71,37,747**

On the basis of the foregoing analysis, the DGAP concluded that the Respondent gained an additional Input Tax Credit (ITC) benefit of ₹294.84 per sq.ft. The total ITC benefit came to ₹1,51,87,625. However, the Respondent did not fully pass on this benefit to homebuyers, as required under Section 171 of the CGST Act, which mandates that any reduction in tax rate or availability of ITC must be proportionately passed on to consumers. Upon revised computation, the DGAP determined that the builder profiteered a total of ₹71,37,747 (excluding GST). This amount represents the excess collected from homebuyers, and it must be passed on to the eligible recipients listed in “Table A” of the report.

13. Hearings in the matter were held on 18.03.2026 and 16.04.2026. Shri J. Shankar Raman, Learned Advocate, Shri Md. Meraj Alam, Finance Manager of the Company, Shri M. Sarvanan and Shri Gurubatham, Chartered Accountants, appeared on behalf of the Respondent. Shri Ajay Kumar Tehlan, AAD, along with

Shri Ravi Passi, Inspector, appeared on behalf of the DGAP. None appeared on behalf of the Complainant.

14. The Respondent accepted the DGAP's report dated 13.03.2026 with the contention that ITC on input services should be excluded and the remaining amount to be passed on be Rs. 51,73,776/- (exclusive of GST).

14.1. The Respondent further submitted that it has already discharged GST on the amounts collected from the buyers and has not retained any portion thereof. Accordingly, it was contended that levy of GST @ 12% on the alleged profiteered amount would be unjustified and amount to double recovery.

15. The DGAP, vide clarification dated 13.04.2026, stated as follows: -

1. The DGAP submitted that the issues relating to computation of profiteering and the methodology adopted are matters of fact, and therefore no further comments are required beyond what has already been stated in the Report dated 13.03.2026.

2. It was further submitted that the methodology for the determination of profiteering is clearly enshrined in Section 171(1) of the CGST Act, 2017, which mandates that any reduction in rate of tax or benefit of input tax credit shall be passed on to the recipients by way of commensurate reduction in prices.

3. With regard to the contention that GST should not be levied on the profiteered amount, the DGAP relied upon the judgment of the Hon'ble Delhi High Court dated 29.01.2024, wherein it has been held that GST

collected on the additional realisation forms part of the profiteered amount.

4. The DGAP reiterated that the findings recorded in the Report dated 12.03.2026 are correct and in accordance with law. It was submitted that the Respondent has profiteered an amount of Rs.1,51,87,625/- and, after taking into account the benefit already passed on, a balance amount of Rs.71,37,747/- along with applicable GST @ 12% remains to be passed on to the eligible recipients.

Issues for determination

16. In view of the DGAP Reports dated 09.10.2024 and 13.03.2026 and the submissions made by the parties, the following issues arise for determination:

(i) Whether the Respondent had derived any additional benefit of Input Tax Credit consequent to the introduction of GST?

(ii) If yes, whether such benefit has been passed on to the homebuyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017?

(iii) Whether the Respondent is liable to return the profiteered amount along with applicable interest, and if so, what is the quantum of such refund?

(iv) Whether penalty under Section 171(3A) of the CGST Act, 2017 is attracted in the facts and circumstances of the present case, and if so, the quantum of penalty?

Determination of Profiteering and Passing of ITC Benefit

17. With regard to Issue Nos. (i) and (ii), this tribunal finds that upon the introduction of GST, the Respondent became entitled to avail Input Tax Credit on both goods and input services, unlike the pre-GST regime where credit was restricted. The comparison of ITC in the pre-GST and post-GST periods shows that an additional benefit accrued to the Respondent. In terms of Section 171 of the CGST Act 2017, such benefit is required to be passed on to the homebuyers by way of commensurate reduction in prices.

18. It is further held that, pursuant to the directions of the Hon'ble GSTAT, the DGAP re-examined the matter in its report dated 13.03.2026 and adopted the methodology based on comparison of ITC to construction cost in the pre-GST and post-GST periods. This methodology is in line with the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019*** and is found to be appropriate.

19. The Respondent's contention that ITC on input services should be excluded is devoid of merit and is rejected. The benefit under GST includes ITC on both goods and services, and cannot be restricted only to material inputs. Accordingly, no exclusion of service-related ITC is warranted.

20. The statutory position is further clarified by the following clarification issued by the Central Board of Excise and Customs (CBEC) dated 15.06.2017, titled: "Reduced Liability of Tax on complex, building, flat etc. under GST", is reproduced hereinbelow verbatim:

The CBEC and States have received several complaints that in view of the works contract service tax rate under GST at 12% in respect of under construction flats, complex etc, the people who have booked flats and made part payment are being asked to make entire payment before 1st July 2017 or to face higher tax incidence for payment made after 1st July 2017. This is against the GST law. The issue is clarified as below: -

1. *Construction of flats, complex, buildings will have a lower incidence of GST as compared to a plethora of central and state indirect taxes suffered by them under the existing regime.*

2. *Central Excise duty is payable on most construction material @12.5%. It is higher in case of cement. In addition, VAT is also payable on construction material @12.5% to 14.5% in most of the States. In addition, construction material also presently suffer Entry Tax levied by the States. Input Tax Credit of the above taxes is not currently allowed for payment of Service Tax. Credit of these taxes is also not available for payment of VAT on construction of flats etc. under composition scheme. Thus, there is cascading of input taxes on constructed flats, etc.*

3. *As a result, incidence of Central Excise duty, VAT, Entry Tax, etc. on construction material is also currently borne by the builders, which they pass on to the customers as part of the price charged*

from them. This is not visible to the customer as it forms a part of the cost of the flat.

4. *The current headline rate of service tax on construction of flats, residences, offices etc. is 4.5%. Over and above this, VAT @1% under composition scheme is also charged. The buyer only looks at the headline rate of 5.5%. In other cities/states, where VAT is levied under the composition scheme @2% or above, the headline rate visible to the customer is above 6.5%. What the customer does not see is the embedded taxes on account of cascading and sticking of input taxes in the cost of the flat, etc.*

5. *This will change under GST. Under GST, full input credit would be available for offsetting the headline rate of 12%. As a result, the input taxes embedded in the flat will not (& should not) form a part of the cost of the flat. The input credits should take care of the headline rate of 12% and it is for this reason that refund of overflow of input tax credits to the builder has been disallowed.*

6. *The builders are expected to pass on the benefits of lower tax burden under the GST regime to the buyers of property by way of reduced prices/ installments. It is, therefore, advised to all builders / construction companies that in the flats under construction, they should not ask customers to pay higher tax rate on instalments to be received after imposition of GST.*

> 7. *Despite this clarity on law position, if any builder resorts to such practice, the same can be deemed to be profiteering under section 171 of GST law.*

21. From the above clarification, this Tribunal finds that under the GST regime, the benefit of Input Tax Credit is intended to reduce the overall tax burden on construction services and consequently reduce the effective cost to the buyers. The aforesaid circular clearly mandates that such benefit is required to be passed on to the recipients by way of commensurate reduction in prices, failing which the same may amount to profiteering under Section 171 of the CGST Act, 2017.

22. With regard to the issue of certain buyers denying receipt of benefit, it is observed that such denial through email responses cannot override documentary evidence maintained in the regular course of business. The DGAP has examined the books of accounts, customer ledgers and credit notes furnished by the Respondent and found that the ITC benefit had been adjusted against the amounts payable by the concerned buyers. Passing on of benefit through price adjustment is a valid mode of compliance under Section 171 of the CGST Act, 2017 and does not necessarily require a separate cash refund. Accordingly, this Tribunal is of the considered view that the commensurate benefit of ₹46,40,136/- stood passed on to the said 13 customers.

23. It is further observed that the Respondent had, at the time of implementation of GST, factored the anticipated ITC benefit into the pricing of flats, as evidenced from contemporaneous records including internal circulars and meeting minutes

placed on record. Therefore, to that extent, the benefit stood passed on through the pricing mechanism itself.

24. On quantification, it is observed that the original DGAP Report dated 09.10.2024 determined the profiteered amount at ₹6,02,89,656/-, out of which ₹3,48,69,781/- was found to have already been passed on, leaving a balance amount of ₹2,54,20,175/-. However, upon reconsideration and verification of additional documents furnished by the Respondent, the DGAP revised the profiteered amount to ₹1,51,87,625/-, with a balance amount of ₹71,37,747/- remaining to be passed on to the eligible recipients. It has also been correctly clarified that excess benefit passed on to certain buyers cannot be adjusted against the shortfall pertaining to other buyers, since each recipient is independently entitled to commensurate benefit under Section 171 of the CGST Act, 2017.

25. In view of the foregoing discussion, this Tribunal holds that the Respondent had derived additional ITC benefit amounting to ₹1,51,87,625/- and the same had not been fully passed on to the homebuyers. The revised computation carried out by the DGAP is found to be reasonable, evidence-based and in consonance with the provisions of Section 171 of the CGST Act, 2017. Accordingly, the balance profiteered amount of ₹71,37,747/- (exclusive of GST) is liable to be passed on to the eligible recipients.

26. It is also relevant to note that, as per the DGAP Report dated 13.03.2026, the average sale price charged by the Respondent for the residential units ranged approximately between ₹3,980/- to ₹4,000/- per sq. ft. On the basis of the revised

computation carried out by the DGAP, the profiteering works out to approximately ₹138/- per sq. ft., computed on the basis of the total profiteered amount vis-à-vis the total saleable area considered for the purpose of computation.

Levy of GST on the Profiteered Amount

27. With regard to levy of GST on the profiteered amount, this Tribunal finds that the balance profiteered amount of ₹71,37,747/- determined by the DGAP is exclusive of GST, whereas the consideration collected by the Respondent from the homebuyers is inclusive of GST. Consequently, the excess amount realised by the Respondent on account of non-passing of ITC benefit inherently includes the corresponding GST component collected from the buyers. Therefore, the profiteered amount cannot be segregated from the tax component and is required to be returned along with applicable GST @ 12%, which works out to ₹8,56,530/- , which comes to the total of ₹79,94,277/-. The contention of the Respondent that GST has already been deposited with the Government is not tenable, as the issue pertains to restitution of the entire excess realisation, including the GST component, collected from the recipients.

28. In view of the above, it is held that the GST component has been rightly included to the profiteered amount. Reference in this regard may be made to the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019***, wherein the Hon'ble Court has dealt with this issue in paragraph 157 of the judgment. The relevant extract is reproduced below for the sake of brevity:

157. Both the Central as well as the State Government had no intent of collecting additional Goods and Services Tax on the higher price as they had sacrificed their revenue in favour of the buyer. By compelling the buyers to pay the additional Goods and Services Tax on a higher price, the supplier has not only defeated the intent of the Governments but has also acted against the interest of the consumer and therefore, the Goods and Services Tax collected by him on the additional realization has rightly been included in the profiteered amount.

Interest:

29. The next issue for determination is whether interest is payable on the profiteered amount and, if so, the period for which such interest is to be computed. Section 171 of the CGST Act, 2017 casts a statutory obligation on the Respondent to pass on the benefit of reduction in tax rate or availability of additional Input Tax Credit to the recipients by way of commensurate reduction in prices at the time of supply. Further, Rule 133(3)(b) of the Central Goods and Services Tax Rules, 2017 provides that the amount not so passed on shall be returned to the recipients along with interest at the rate of 18% per annum, calculated from the date of collection of the higher amount till the date of its actual return. The said provision is mandatory in nature and leaves no discretion in its application.

30. With regard to the issue of interest, reference may be made to the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019***, wherein the Hon'ble Court has dealt with this issue in

paragraph 153 of the judgment. The relevant extract is reproduced below:

153. This court is of the view that Section 171 of the Act, 2017 is broad enough to empower the Central Government to prescribe penalty and interest to ensure that the suppliers are deterred from pocketing the benefits meant for the consumers when taxes amounts so pocketed by the supplier /registered person would not have a sufficient deterrent effect on deviant behavior unless interest and penalty are levied to prevent such actions from taking place in the first place. The width and amplitude of Section 171 by which the authority is empowered to ensure that a reduction in tax rate or the Input Tax Credit availed results in a commensurate reduction in the price of goods or services clearly encompasses within it the power to ensure that such conduct which leads to profiteering does not take."

31. The Provisions with respect to interest are as follows: -

Rule 133(3)(b) – *return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with the interest at the rate of eighteen percent from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be.*

32. Interest in such cases is compensatory in nature and is intended to ensure restitution of the time value of money that rightfully belongs to the recipients. Accordingly, the Respondent is liable to pay interest at the rate of 18% per annum from the respective dates of collection of the excess amount until the date of refund.

Penalty:

33. Further, insofar as penalty under Section 171(3A) of the CGST Act, 2017 is concerned, the said provision came into force w.e.f. 01.01.2020, and since the period of contravention in the present case extends from 01.07.2017 to 30.09.2024, including the period subsequent to its coming into force of the said provision, penalty under Section 171(3A) of the CGST Act, 2017 is attracted. The relevant provision reads as under:

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

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

Conclusion:

34. The Respondent is hereby directed to pass on the profiteered amount of ₹71,37,747/- (exclusive of GST), along with GST @ 12% amounting to ₹8,56,530/-, aggregating to ₹79,94,277/-, to the eligible homebuyers, as identified in the DGAP Report dated 13.03.2026. The said amount shall be passed on along with interest at the rate of 18% per annum, in terms of Rule 133(3)(b) of the Central Goods and Services Tax Rules, 2017, from the date of collection of the

higher amount from the buyers till the date of its actual refund. Compliance of this Order shall be reported to the jurisdictional Commissioner within a period of three months from the date of this Order, with a copy to the DGAP.

35. A copy of this Order be forwarded to the Respondent, the Applicants, the Directorate General of Anti-Profiteering, and the jurisdictional CGST/SGST Commissioner(s) for necessary action.

36. The matter stands disposed of accordingly.

37. Order pronounced in the open court.

Dr. S. K. Mishra,

Sh. A. Venu Prasad,

Date- 07.05.2026