GSTAT

Division Bench Court No. Court II

NAPA/127/PB/2025

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

Versus

NANDI INFRATECH PVT. LTD. **.....Respondent**

Counsel for Appellant **Counsel for Respondent**

Hon'ble Justice Sh. Mayank Kumar Jain, Member(Judicial)
Hon'ble Sh. Anil Kumar Gupta, 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. : ZA070010526000041H **Date of order :** 12/05/2026

1.	GSTIN/Temporary ID/UIN - 09AADCN5432D1ZO	
2.	Appeal Case Reference no. - NAPA/127/PB/2025	Date - 10/01/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the Respondent - 1. Nandi Infratech Pvt. Ltd. , raj@cclaw.in , 8130099168	
5.	Order appealed against -	
	(5.1) Order Type -	

	(5.2) Ref Number -	Date -
6.	Personal Hearing - 12/05/2026 29/04/2026 16/04/2026 19/03/2026 11/02/2026 09/01/2026 02/12/2025 14/10/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - The DGAP report dated 09.01.2025 is accepted. The Respondent is liable to pay interest on the profiteered amount @ of 18% from the date of collection of the higher amount till the date of the return of such amount as provided under Rule 133(3)(b) of CGST Rules, 2017.	
	Summary of Order	
9.	Type of order: Closure Report	

ORDER

Justice Mayank Kumar Jain, Judicial Member
Shri Anil Kumar Gupta, Technical Member

1. The facts giving rise to present proceeding are that Shri Vijay Pal Singh, 22-Swaroop Park, Sahibabad, Ghaziabad-201005 (UP) (hereinafter referred to as **'the Applicant'**) made a complaint to the Uttar Pradesh State Screening Committee on profiteering, under Rule 128 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred as to **'the CGST Rules, 2017'**) alleging profiteering by M/s Nandi Infratech Pvt. Ltd., GH-02C, Sector-10, Greater Noida West, UP-201308 (hereinafter referred to as '**the Respondent**') in respect of purchase of flat No. J-503 by him in their project "AMAATRA HOMES".

www.taxcode.in

2. The Applicant booked a flat on 01.02.2016 and the allotment was made on 16.08.2016. The Applicant has alleged that the Respondent was not ready to pass on the benefit of Input Tax Credit (For short **'the ITC'**) by reducing the instalment amount.
3. The matter was examined by the Uttar Pradesh State Screening Committee on profiteering. It referred the matter under Rule 128 of the CGST Rules, 2017, to the Director General Anti-profiteering (for short "**the DGAP**") to collect the evidence and examine it thoroughly.
4. The DGAP investigated the project "AMAATRA HOMES" executed by the Respondent and submitted its report under Rule 129(6) of the CGST Rules, 2017 on 27.10.2021 before the National Anti-Profiteering Authority (For short "**the NAA**"), the erstwhile Authority. The NAA passed Final order No. 64/2022 dated 31.08.2022 and held that the Respondent was indulged in profiteering and has contravened the provision under section 171 of Central Goods and Services Act, 2017 (for short "the CGST Act,2017)
5. In the meanwhile, the Hon'ble High Court of Delhi pronounced Judgment in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India (2024) 14 Centex 374 (Delhi),*** laying down a new methodology for real estate sector.
6. Tenure of the National Anti-Profiteering Authority (for short **'the NAA'**) ended on 30.11.2022. Thereafter, the Competition Commission of India (for short **"the CCI"**) was empowered to

examine matters related to Anti-profiteering with effect from 01.12.2022 vide Notification No. 23/2022-Central Tax dated 23.11.2022.

7. The CCI remanded the matter to the DGAP under Rule 133(4) of the CGST Rules, 2017 to re-investigate the matter in view of the decision given by the Hon'ble High Court of Delhi in ***Reckitt Benckiser (supra).***

8. Pursuant thereto, a notice was issued by the DGAP to the Respondent under Rule 129 of the CGST Rules, 2017, **for re-determination of profiteering amount.** Considering the submissions made by the Respondent with supporting documents and following the guidelines in ***Reckitt Benckiser (supra),*** the DGAP submitted its report dated 09.01.2025 on the basis of the following conclusions: -

   (i) The Respondent was executing several towers A, B, C, D, E, F, G, H, I & J in their project "AMAATRA HOMES. The Occupancy Certificate (for short "**the OC**") for the towers F, G, H & I was issued on 16.01.2020, for the towers B, C & E it was issued on 12.11.2020, for the Tower D it was issued on 18.08.2021 and for the Tower A & J, it was issued on 06.01.2023.

   (ii) There were 20 commercial units wherein 19 units were sold and 01 unit remained unsold as on 31.03.2024. There was total 926 residential units, wherein 918 units were sold and 8 units remained as unsold.

(iii) Out of total 937 units, 588 units were booked in pre-GST period. Therefore, they were considered for investigation. Since, remaining 349 units were booked in GST regime therefore, they were kept out of the purview of the Investigation.

(iv) For 349 units booked in GST era, the Respondent has passed on the benefit by reducing base price which was evident from the builder buyer agreement. The Respondent sold units in GST regime at the rate less than what was charged for those same area flats in pre-GST regime. Insofar as 588 units booked in pre-GST period was concerned, it was claimed by the Respondent, that the benefit of the ITC has been passed on by way of "Credit Notes", "no due certificate" and "no objection certificate" obtained from the respective home-buyers.

(v) Owing the pre-GST period, the Respondent was eligible to avail CENVAT credit of service tax paid on the input services. However, CENVAT credit of Central Excise Duty paid on the inputs was not admissible as per the CENVAT Credit Rules, 2004. The Respondent has also claimed VAT for the Pre-GST period from April, 2014 to June, 2017.

9. The DGAP computed the ratio of credit availed to purchase value "in percentage" as under: -

(Amount in Rs.)

Sr. No.	Particulars	Pre-GST Period	Post-GST Period
1	Purchase Value of Goods and Services (Excluding Taxes and Duties)	82,33,94,051	99,18,58,928
2	Credit of Central Excise Duty and Service Tax availed	7,15,01,652	-
3	Credit of VAT availed	2,46,35,772	-
4	Total Credit Availed in Pre-GST Period	9,61,37,424	-
5	ICT of GST Availed		14,44,00,864
6	**Ratio of Credit Availed to Purchase Value (in %)**	**11.68**	**14.56**

10. The Central Government, on the recommendations of the GST Council, had levied 18% GST (effective Rate was 12% in view of the 1/3rd abatement for land value) on construction service, vide notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

11. On the basis of the prevailing rates of GST and considering the difference of the ratio of credit availed to purchase value, the DGAP computed the profiteered amount as under: -

(Amount in Rs.)

Sr. No.	Particulars		Pre-GST Period
1.	Period	A	July, 2017 to April, 2024
2.	Ratio of Credit availed to Purchase Value as per Table-A above (%)	B	1168/14.56
3.	Increase in input tax credit availed post-GST (%)	C	2.88
4.	Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	99,18,58,928
5.	Total Savings on account of additional ITC benefit	E=D*C/100	2,85,65,537

6.	Total saleable Area/Carpet Area (in Sq. Ft)	F	10,35,082.50
7.	Total Saving Per Sq. Ft.	G=E/F	27.60
8.	Total Sold Area (in Sq. Ft) in pre-GST period	H	6,23,323
9.	Profiteered Amount	I=G*H	1,72,03,701

12. The DGAP has considered this fact that the Respondent did pass on the benefit of ITC of Rs. 5,89,32,169/- to 588 home-buyers. This figure was based on documentary evidence of the credit notes issued to respective home buyers along with "no due certificates" and "no objection certificates" obtained from them. The passing of such benefit is tabulated as such: -

Project:- Amaatra Homes							**(Amount in Rs.)**
Sr. No.	**Category of Customers**	**No. of Units**	**Area (in Sq ft)**	**Profiteering Amt. as per Annex- (incl. GST)**	**Benefit passed on by the Noticee**	**Difference (Rs.)**	**Remarks**
A	B	C	D	F	G	H=F-G	I
1	Buyers to whom benefit claimed to have been passed on is less than required to be passed on	11	12,329	3,81,114.05	2,56,221	1,24,893.05	Profiteering amount still required to be passed on by the Noticee
2	Buyers to whom benefit claimed to have been passed on is more than required to be passed on	527	5,67,184.50	1,75,32,807.26	5,86,75,948	4,11,43,140	Excess benefit passed by the Noticee
3	Buyers to whom no	50	43,809	13,54,223.81	0	13,54,223.81	Profiteering amount still required to

www.taxcode.in

	benefit of ITC have been passed on by the Noticee						be passed on by the Noticee
4	Post-GST units	349	3,99,879	0	0	0	Out of purview of Anti-Profiteering investigation
5	Unsold Units	9	11,881	0	0	0	Unsold Unites
Total		946	10,35,082.50	1,92,68,145	5,86,75,948	**14,79,116.86**	

13. On the basis of the above calculation, the DGAP concluded that although the Respondent had already passed on the benefit of ITC of Rs. 5,89,32,169/- to respective home-buyers however, excess benefit cannot be off-set against the benefit of ITC required to be passed on to the home-buyers, who did not receive the commensurate benefit since each home-buyer is entitled for commensurate benefit. The benefit of ITC required to be passed on by the Respondent to the eligible home-buyer computed to Rs. 14,79,117/-.

14. The Principal Bench of the GST Appellate Tribunal (GSTAT), constituted under sub-section (3) of section 109 of CGST Act, 2017, has been empowered to examine and to adjudicate Anti-Profiteering cases w.e.f. 01.10.2024, *vide* Notification No. 18/2024-Central Tax dated 30.09.2024.

15. Notice was issued to the Applicant and the Respondent calling upon their objections/ written submissions against the DGAP report dated 09.01.2025.

16. The Respondent submitted written submission against the DGAP report which are summarized as under; -.

(i) The DGAP's methodology is flawed and economically unsound.

(ii) Treating Input Tax Credit as a measure of profit/gain is wrong. ITC is merely a statutory set-off that neutralizes past taxes, not a commercial benefit.

(iii) Higher post- GST rates on services create a mechanical ITC increase with zero economic benefit. During the erstwhile service tax era, major services including architectural and planning etc., were chargeable at 15%. However, same services are now chargeable at 18% rate of tax under GST.

(iv) The DGAP completely ignored inflation and cost escalation. Comparing nominal figures across 11 years (April 2013-April 2024) without constant-price adjustments violates accounting principles.

(v) The DGAP completely ignored stage-wise construction. Over 55% of material-intensive procurement occurred pre-GST, so the developer received no ITC benefit for those inputs.

(vi) ITC accrual, procurement, construction progress, and customer collections are not aligned, making the ratio unreliable.

(vii) The DGAP incorrectly included transitional credit. Pre-GST credit (TRAN-1) was included in post-GST ITC without adjustment.

(viii) The DGAP did not make any verification of ITC reversals. No verification of reversals under Rules 42/43 for exempt supplies or unsold units.

(ix) The comparison made by the DGAP is unequal. Comparing 50 vs. 81 months without normalization violates statistical methods.

17. During the course of the hearing, several persons filed their affidavit including the Applicant, Shri Vijal Pal Singh. One Mrs. Anshul Tyagi also participated in the hearing and her prayer was allowed by us to file objections against the DGAP report. Mrs. Anshul Tyagi did not file any objection and abstained herself from the subsequent hearing.

18. The Respondent with their written submissions filed the details about their status of those persons who have filed affidavits. It is submitted that Mrs. Anshul Tyagi as well as other home-buyers, who have filed their affidavit were neither original Applicant nor interested parties in the present proceedings.

19. Shri Vijay Pal Singh, Applicant booked a unit No. J-503 in tower J of the project with the Respondent. A demand of Rs. 7,48,433/- was raised against her but in spite of repeated reminders, he did not deposit the same. The Respondent accordingly cancelled his allotment. Shri Vijay Pal Singh, Applicant feeling aggrieved with

the cancellation of his flat by the Respondent, filed a complaint before UP, RERA. The said Authority decided the matter against the Applicant conclusively upholding the cancellation.

20. Shri Vijal Pal Singh, Applicant, filed his rejoinder against the reply submitted by the Respondent to the effect that: -

(i) The contention of the Respondent that the Applicant is not a buyer in the project, which is incorrect. In fact, the Respondent threatened the Applicant to cancel his allotment, if he does not withdraw his complaint and they will charge GST at the rate of 5% instead of 12%.

(ii) The Respondent retained Rs. 40,64,072/-, 90% of total sales consideration for a long period of 10 years.

(iii) The Respondent cancelled the allotment on 26.11.2023 before receiving the OC/CC on 06.01.2023. Therefore, the cancellation is illegal. The Respondent created 3rd party in the property, which is against the spirit of the Provision under Section 152 of the Transfer of Property Act.

(iv) The Respondent has charged 12% GST from all the buyers instead of 5% in pre-GST and post-GST period.

(v) The Respondent did not pay any amount to any home-buyer. The claim of the Respondent that he has passed on is Rs. 5,89,32,169/- to 538 home-buyers, which is not verified by the DGAP.

(vi) The DGAP did not investigate the matter in respect of 349 post-GST buyers, though they were charged GST at the rate of 12% instead of 5%. Thus, the Respondent has collected 7% more GST from the buyers.

21. Mrs. Anshul Tyagi, one of the deponents, despite giving opportunity to file her objections, did not file any objection and never appeared thereafter.

22. It would be pertinent to reproduce our orders passed during the course of hearing, thus: -

(i) 02.12.2025

……..

"Respondent submitted that he already passed the benefit of Rs. 5,86,75,946/- to its home-buyers while the disputed amount Rs. 14,79,119.86. the DGAP in its report had already conceded this fact.

The office has placed the signed excel sheet before us stating herein that some home-buyers came forward to claim the benefit has not commensurately passed by the Respondent to them.

The Learned Counsel Sandeep Chillan submitted that a copy of such email be provided to him to examine the matter exhaustively.

Let a copy be provided to the Learned Counsel as well the DGAP, who in turn shall thoroughly examine the matrix made by such home-buyers".

(ii) 09.01.2026

1……

2…..

3.Shri Sandeep Chilana, Advocate, Shri Priyojeet Chatterjee, Advocate, appeared on behalf of the Respondent.

4. Present Shri Vijay Pal Singh who claims himself to be a homebuyer and Ms. Abhipriya, Advocate appeared on behalf of Mrs. Anshul Tyagi who claims himself to be homebuyer and submitted that the benefit of reduction of tax has not been passed commensurately by the Respondent to them.

5. At the outset, the Learned Counsel for the Respondent Shri Sandeep Chilana vehemently argued that so far as the case of Shri Vijay Pal Singh and Mrs. Anshul Tyagi is concerned, the Respondent has cancelled the allotment of Shri Vijay Pal Singh in the year 2022, therefore, he is no more a homebuyer and Mrs. Anshul Tyagi was not homebuyer in the list of the Respondent and he was not an Applicant in the investigation conducted by the DGAP. He further submitted that on behalf of above contentions these two so-called applicants have no locus-standie to contest with the matter.

6. On the other hand, Shri Vijay Pal Singh and Ms. Abhipriya, Learned Advocate prayed that they may be given some time to brought their objections on record.

7. In view of the above, Shri Vijay Pal Singh and Learned Counsel Ms. Abhipriya are directed to file their objections within two weeks from today. Copies of the objections be provided to Learned Counsel for the Respondent as well the DGAP."

(iii) 11.02.2026

1……

2…..

3. Shri Vijay Pal Singh, Applicant appeared in person along with his Learned Counsel Shri Mukesh Sachdeva.

4. Shri Sandeep Chilana, Advocate assisted by Shri Karan Vyas, Advocate appeared on behalf of the Respondent.

5.On earlier occasion, Shri Vijay Pal Singh, Applicant and Mrs. Anshul Tyagi, one of the home-buyers in the project with the Respondent had appeared in person/through their Counsel.

6. Today, none appeared on behalf of the Mrs. Anshul Tyagi. However, the Learned Counsel had sought time to file their objection but no objection is filed so far.

7. Shri Vijay Pal Singh, Applicant has filed his objection which is taken on record.

8. The Registry has informed us that total number of 25 affidavits have been received so far from the persons claiming themselves to be home buyers with the Respondent.

9. The Learned Counsel for the Respondent submitted that out of the list of these persons, who have submitted their affidavits, S/s Sanjeev Malik, Vikas Kumar and Sanjeev Kumar Sinha are the genuine home buyers who purchased the flats during pre-GST period. Rest of the persons including Shri Vijay Pal Singh, Applicant and Mrs. Anshul Tyagi, have booked their flats during post-GST period, therefore, their matter may be dealt separately.

10. We are aware of the fact that some more affidavits may be filed in the future.

11. in view of the above, as a measure of last opportunity 10 days time is granted to other person who intends to file their affidavit. However. It is made clear that the affidavits received after the stipulated time shall not be entertained."

(iv) 19.03.2026

1…..

2…..

3. Shri Sandeep Chilana, Advocate appeared on behalf of the Respondent.

4.Shri Vijay Pal Singh, Applicant appeared himself.

5. Ms. Seema Khatri, Advocate appeared on behalf of Mrs. Anshul Tyagi, Applicant.

6.At the outset, learned Counsel for the Respondent submitted that the total number of 52 affidavits have been filed so far, out of these 52 affidavits, 32 persons purchased their flats during GST regime. Shri Vijay Pal Singh, Applicant, purchased the flat during pre GST regime. Further, it is submitted that the Respondent will make earnest efforts to resolve the issue with the home-buyers, who have filed their affidavits on one or another ground. He further submitted that these grounds are out of the domain of this Tribunal. The Respondent is ready to pay the amount after negotiation to the concerned home-buyers.

7. It is also submitted that in so far as the Mrs. Anshul Tyagi, Applicant is concerned, he has approached the Consumer Forum for his redressal and has filed an application under 156(3) Cr.P.C. against the Respondent.

8. Shri Vijay Pal Singh, Applicant, submitted that the offer of the Respondent to pay the interest from the date of cancellation is not accepted to him since the Respondent is retaining his money for a long period of 10 years.

9. The learned Counsel for the Respondent submitted that Shri Vijay Pal Singh, Applicant has approached the RERA authority, Lucknow against the order passed by the RERA Authority, Noida.

10. in view of the above, we are of the view that in so far as the payment of interest after cancellation of flat of Shri Vijay Pal Singh, Applicant is concerned, this issue does not fall under purview of the Section 171 of the CGST Act, 2017. The Applicant may approach the proper forum to address his grievance."

23. The perusal of the aforesaid orders passed during the course of hearing indicates that the allotment made to Shri Vijay Pal Singh, was cancelled by the Respondent on account of committing default by him. The Applicant approached RERA Authority, Noida against the cancellation made by the Respondent. This fact is not disputed by the Applicant that the RERA Authority, Noida has dismissed his application against which he has approached the RERA Appellate Authority, Lucknow.

24. The sole argument of the Applicant before us that the Respondent retained his money for a longer period of more than 10 years. Therefore, he is entitled to Interest on his deposited money from the Respondent.

25. We observed that the prayer of the Applicant does not fall under the purview of Section 171 of the CGST Act, 2017. The applicant can approach proper forum to address his grievance.

26. It is important to be noted here that after our aforesaid observations the Applicant did not participate in further hearings. None of the person(s), who filed their affidavits during the proceedings did not appear virtually or in person at any stage of hearings.

27. Suffice to say that the contentions of the Applicant and the other persons were dealt with us following the Principle of Natural Justice.

28. After conclusion of the argument, the Respondent submitted a short synopsis denying all the allegations made by the DGAP in its report. However, the Respondent admitted about the computation of profiteered amount made by the DGAP by stating as under: -

> *"Without prejudice to the Applicant No. 2 locus before this Hon'ble forum, it is humbly submitted that Respondent without prejudice to its right and without acquiescence, purely with a view to bringing a quietus to the lis which has remained pending for nearly seven years is willing to accept the Impugned Report"*

29. Since, the Respondent has voluntarily accepted the DGAP report dated 09.01.2025 vide its submissions dated 20.04.2026, therefore, we conclude that Respondent has contravened the provision under Section 171 of the CGST Act, 2017 and has indulged in profiteering. Therefore, the DGAP report deserve to be accepted.

ORDER

30. Accordingly, the DGAP report dated 09.01.2025 is accepted.

31. The Respondent is liable to pay interest on the profiteered amount @ of 18% from the date of collection of the higher amount till the date of the return of such amount as provided under Rule 133(3)(b) of CGST Rules, 2017.
32. The copy of the Judgement be sent to the Jurisdictional Commissioner CGST/SGST for information and necessary action there to.
33. The Judgement is pronounced in open court today.

(Justice Mayank Kumar Jain)

(Sh. Anil Kumar Gupta)

Dated: 12.05.2026