

GSTAT

Single Bench Court No. Court II

NAPA/116/PB/2025

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

.....Appellant

Versus

ARUN EXCELLO CONSTRUCTIONS LLP

.....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. : ZA070010626000035H

Date of order : 04/06/2026

1.	GSTIN/Temporary ID/UIN - 33AAUFA2577J1Z2	
2.	Appeal Case Reference no. - NAPA/116/PB/2025	Date - 12/03/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the Respondent - 1. Arun Excello Constructions LLP , jagan.e@arunexcello.com , 9840326917	
5.	Order appealed against -	
	(5.1) Order Type -	

	(5.2) Ref Number -	Date -
6.	Personal Hearing - 04/06/2026 18/05/2026 27/04/2026 13/04/2026 27/03/2026 23/02/2026 22/01/2026 18/12/2025 19/11/2025 13/11/2025 13/10/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - The DGAP report dated 28.02.2025, deserves to be accepted	
Summary of Order		
9.	Type of order : Closure Report	

ORDER

JUSTICE MAYANK KUMAR JAIN, JUDICIAL MEMBER.

Brief facts of the case

1. M/s Arun Excello Construction LLP, having its registered office at No. 18, West Cott Road, Royapettah, Chennai – 600014 (hereinafter referred to as “**the Respondent**”), is engaged in the business of real estate development and construction. The Respondent commenced a residential project titled “**Compact Homes–Narmada**”, comprising 336 residential units with an aggregate saleable area of 2,07,720 sq. ft. It is noted that all 336 flats were booked prior to the completion of the project. The present investigation covers the period from 01.04.2017 to 31.09.2024. The Respondent opted for the old GST scheme w.e.f. 01.04.2019, under which tax was levied at 12% (post 1/3rd abatement towards land value), with the benefit of Input Tax Credit (For short “**the ITC**”) being available.
2. The present proceedings arise out of an application filed by Shri Selvakumar V, Rana Nilayam 48/934 (3), Ambalathara, Thottam, Poonthura,

Trivandrum, Kerala-695026 (hereinafter referred to as **‘the Applicant’**) alleging that the Respondent has indulged in profiteering under Section 171 of the Central Goods and Services Tax Act, 2017 (for short to as **“CGST Act, 2017”**) in respect of construction services in their Project **“Compact Homes-Narmada”**.

3. The Applicant alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the price on purchase of a Flat No. B4/4419 in the Respondent’s Project **"Compact Homes-Narmada"** on 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”**).
4. This Application was examined by the Standing Committee on Anti-profiteering. The standing committee made a reference under Rule 129 (1) of the CGST Rules, 2017 (for short **“the CGST Rules, 2017”**) to DGAP to collect necessary evidence to determine whether the benefit of input tax credit had been passed on by the Respondent to their customers in respect of construction service supplied by the Respondent.
5. The investigation was set into motion by the DGAP by issuance of a notice to the Respondent calling upon it to show cause as to whether the benefit of ITC has not 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.
6. The Respondent submitted its detailed reply along with supported documents and annexures, denying the allegation of profiteering.
7. Upon completion of the investigation, the DGAP submitted its report dated 28.02.2025. In the said report, it was observed that the ratio of credit availed to purchase value stood at 14.50% during the pre-GST regime, which

declined to 14.28% subsequent to the introduction of GST. The resultant difference i.e. **(-0.22%)** indicates that no incremental benefit accrued to the Respondent. Consequently, the question of passing on any benefit to the recipient did not arise. It was, therefore, concluded that the Respondent had not contravened the provision of Section 171 of CGST Act read with Rule 129(6) of the CGST Rules, 2017. The methodology adopted by the DGAP to compute the aforesaid ratio is tabulated herein below: -

S. No	Particulars	Pre-GST Period	Post-GST Period
1.	Purchase Value of Goods and Services (Excluding Taxes and Duties)	20,00,845/-	24,83,73,923/-
2.	Credit of Service Tax availed	2,90,122/-	-
3.	Credit of VAT availed	-	-
4.	Total Credit Availed in Pre-GST Period	2,90,122/-	
5.	Net ITC of GST Availed	-	3,54,76,619/-
6.	Ratio of Credit Availed to Purchase Value (in%)	14.50	14.28
	Difference (in%)		(-0.22)

Proceedings before GSTAT

8. The Principal Bench of the GST Appellate Tribunal (GSTAT), constituted under sub-section (3) of section 109 of CGST Act, 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.
9. A notice was issued to the Complainants calling upon his objections, if any, against the DGAP report dated 28.02.2025.
10. The Applicant filed his objections, which are summarized as under: -

- (i) The Respondent obtained registration under Tamil Nadu Real Estate Regulatory Authority (hereinafter referred to as “**TNRERA**”) declaring commencement of construction after 23.10.2017.
- (ii) Further it was declared that the project was completed on 31.02.2019 and was ready for occupation. It indicates that the entire project comprising 336 residential units across 4 blocks along with common amenities was completed within a period of about 16 months. Such timeline is highly improbable for such a large project.
- (iii) At the time of booking in 2018, it was observed that 3 blocks were already substantially completed and 4th block was approximately 50% completed. This situation establishes that substantial construction had already been started before GST period. Thus, the Respondent has mis-represented actual stage of construction before the DGAP and the GSTAT.
- (iv) The Respondent has charged GST @ 18% from the allottees. Excess GST has been charged from the allottees and benefit of ITC has not been passed on to them. Buyers have suffered significant financial loss of their hard-earned money.
- (v) Entire construction commenced under the post-GST regime. Therefore, the Respondent was legally bound to adopt the concessional GST rate applicable to affordable housing, i.e. 1% GST without ITC. However, the Respondent has charged 18% GST, which is completely illegal and arbitrary.
- (vi) According to the DGAP report the ITC shown is Rs. 3,54,76,619/- whereas as per records the Respondent has claimed ITC of Rs.

6,27,34,995/-. Thus, the Respondent has saved around 25.26% via input ITC.

11. Per contra the Respondent submitted its written submissions which are summarized as: -

- (i) That the construction for the said project is started in post-GST regime only which is evident from the fact that the building permit was received from the local Authority on 17.07.2017. During the pre-GST regime, only advertisement services and some other services were availed and no construction was done. The TNRERA certificate of project was received in post-GST regime on 23.10.2017.
- (ii) The Applicant purchased the flat on 28.05.2018, i.e., subsequent to the introduction of the GST regime. The entire consideration was paid during the GST era. The price was determined on a per square foot basis, factoring in the cost of materials, services, and applicable GST components. Having accepted the price so fixed, the Applicant executed the sale agreement without raising any objection to the inclusion of GST at the time of purchase.
- (iii) The Respondent was duly registered with RERA as well, thereby duly obtaining the approval of the said Authority. The timeline was duly approved by the said Authority. In the event, the Respondent had initiated construction prior to obtaining clearances from the local body, as alleged by the Applicant, the entire project would have been deemed as unauthorized construction by the local body by themselves. The Respondent would never have been able to complete its construction. The Applicant cannot question the timeline at this stage before GSTAT.

- (iv) Insofar as the allegation of the Applicant that the Respondent was legally bound to adopt the concessional GST rate applicable to affordable housing, i.e. 1% GST without ITC is concerned, the concept of 1% rate on affordable housing was introduced vide Notification No. 3/2019-Central Tax (Rate) dated 29.03.2019, w.e.f. 01.04.2019, therefore such notification is completely inapplicable to the Applicant.
- (v) The Applicant raised the dispute regarding non-refund of Input ITC against the Respondent before the TNRERA. The said Authority after due consideration declined to accept the claim of the Applicant for refund of ITC.
- (vi) Since the entire construction and the upfront payment is made by the Applicant during the GST regime, therefore, the matter of the Respondent is squarely covered with the paragraph 128(d) of the decision rendered by Hon'ble High Court of Delhi in **Reckitt Benckiser India Pvt. Ltd. v UOI (2024) 14 Centax 374 (Delhi)**.

12. The DGAP submitted their clarification which are summarised as: -

- (i) An explanation was sought from the Respondent regarding mismatch in the GST ITC as claimed by the Applicant. It was observed that the Respondent was executing multiple projects. On the basis of the scrutiny balance sheet and statutory Returns filed by the Respondent of the whole project it was found to be difficult to bifurcate the data pertaining to the project **“Compact Homes-Narmada”**. Therefore, the DGAP relied upon the certificate issued by the Chartered Accountant of the Respondent.
- (ii) It is verified that the building permit of the project **“Compact Homes-Narmada”** was received on 17.07.2017 and TNRERA certificate received on 23.10.2017. No construction was raised by

the Respondent during the pre-GST regime. They utilized ITC benefit of services only for advertisements and other services.

(iii) The DGAP stands by its investigation report dated 28.02.2025.

13. Shri Selvakumar. V., the Applicant, who argued in person, submitted that the Respondent was legally bound to adopt the concessional GST rate applicable to affordable housing, i.e. 1% GST without ITC. However, the Respondent has charged 18% GST, which is completely illegal and arbitrary. He further submitted that the calculation of ITC claimed by the Respondent as Rs. 3,54,76,619/- which is shown in the DGAP report is wrong while it was already informed that the Respondent has claimed ITC of Rs. 6,27,34,995/- . The Respondent has saved around 25.26% via input ITC.
14. On the other hand, learned Counsel for the Respondent submitted that the entire activity pertaining to the Project “**Compact Homes–Narmada**” was undertaken during the GST regime. The claim of input service tax was confined only to advertisement and incidental expenses, as no construction activity was carried out prior to the implementation of GST. The Applicant booked the flat after the commencement of GST, and both the construction agreement and the Sale Deed were executed in his favor on 28.05.2018. The entire consideration was paid by the Applicant subsequent to the enforcement of the CGST Act, 2017. The Applicant had agreed to the per square foot rate, which included GST components, and executed the agreement without raising any objection to the price of the flat.
15. It is further submitted that the Respondent obtained all the approvals from the competent Authority before commencing the construction of the project. Therefore, entire construction was raised under the aforesaid approvals.
16. The learned Counsel for the Respondent vehemently argued that earlier the Applicant filed complaint against the Respondent before TNRERA. An issue was framed by the said Authority to the effect that “whether the

Complainant is entitled for refund of GST amount paid by her to the Respondent.” The said Authority adjudicated the issue against the Applicant.

17. Heard the Authorized Representatives on behalf of the DGAP, Applicant Shri Selvakumar. V., and Ms. Sharanya Vijay. K, learned Counsel on behalf of the Respondent.
18. Perused the record.
19. Section 171 of the CGST Act, 2017 reads thus:

“Section 171 Anti-profiteering measure-

(1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Provided *that the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.*

Explanation 1 —For the purposes of this sub-section, “request for examination” shall mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Explanation 2 —For the purposes of this section, the expression “Authority” shall include the “Appellate Tribunal

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

(3A) 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.

Explanation-For the purposes of this section, the expression "profiteered" shall 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”.

20. The provisions contained in Section 171 of the CGST Act mandates that any reduction in the rate of tax, on any supply of goods and service, the benefit of ITC should be passed on to the consumer by way of commensurate reduction in prices.

21. The Hon'ble High Court, for the state of Telangana at Hyderabad in **WP No. 4760 of 2021 and 5351 of 2021 Sudarshan Theatre 35MM vs. Union of India** observed about the spirit of the legislation behind the provision for Anti- Profiteering as provided u/s 171 of CGST Act, 2017. It reads thus: -

“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.”

(Emphasis added)

22. Ms. Sharanya Vijay. K, learned Counsel for the Respondent placed heavy reliance on the paragraph 128(d) of the decision of Hon'ble High Court of Delhi in Reckitt Benckiser (Supra), which is reproduced here: -

“128. There is not dispute with regard to the methodology to be adopted in the following four scenarios; -

(a) If the flat was completely constructed in the Pre- Goods and Services Tax period i.e. before 01st July, 2017 and if it was purchased by making upfront payment of the whole price in the pre-Goods and Services Tax period no benefit of Input Tax Credit would be required to be passed on as the price will include the cost of taxes on which

Input Tax Credit was not available in the pre-Goods and Services Tax period viz. Central Excise Duty, Entry Tax etc.

(b) If the construction of the flat had started in the pre-Goods and Services Tax period and continued/completed in the post-Goods and Services Tax period and a buyer purchased the flat by making full upfront payment in the post- Goods and Services Tax period he is entitled to the benefit of Input Tax Credit on the material which has been purchased in respect of this flat during the post-Goods and Services Tax period and on which benefit of Input Tax Credit has been availed by the builder. The builder has to reduce the price commensurately and pass on the benefit.

(c) If the construction of the flat is started in the pre-Goods and Services Tax period and its construction was continued in the post Goods and Services Tax period and it was purchased by the consumer by paying the full amount of price upfront in the pre-Goods and Services Tax period, the buyer is entitled to claim the benefit of Input Tax Credit on the taxes paid on the construction material purchased by the builder in the post-Goods and Services Tax period during which he has been given benefit of Input Tax Credit on the taxes on which Input Tax Credit was not available in the pre-Goods and Services Tax and cost of such taxes has been built in the price of the flat by the builder.

(d) If the flat is constructed in the post-Goods and Services Tax period and it is purchased after construction being complete by making upfront payment of the full price, no benefit of Input Tax Credit would be available as the price of the flat would have been fixed after taking into account the Input Tax Credit which has become available to the builder in the post-Goods and Services Tax

period and which was not available to him in the pre-Goods and Service Tax.” (Emphasis supplied)

23. It is an admitted fact that the Applicant booked flat in the project constructed by the Respondent on 28.05.2018. The Construction Agreement was executed on 28.05.2018. The aforesaid document contains the details of the flat, its area and the agreed rates per Sq. Ft. between the Applicant and the Respondent. The entire payment was made by the Applicant to the Respondent in accordance with the agreement during GST era.
24. As apparent from the material available on record, these facts are not controverted by the Applicant that the Construction Agreement was executed between the Applicant and the Respondent on 28.05.2018. The Sale Deed of the flat, booked by the Applicant was executed on 28.05.2018. the entire construction activity had been undertaken by the Respondent only after the execution of the agreement. The price of the unit was determined after factoring the benefit of ITC which became available to the Respondent in post-GST regime and was not admissible under pre-GST regime and on the basis of prevailing during the GST regime. The Applicants' have accepted the price so fixed and proceeded thereafter. The aforesaid document contains the details of the flat, its area and the agreed rates per Sq. Ft. between the Applicant and the Respondent. The entire payment was made by the Applicant to the Respondent in accordance with the agreement during GST era.
25. Another aspect which is pertinent to be taken into consideration is that the Respondent received building permit on 17.07.2017 and TNRERA Registration Certificate was received on 23.10.2017. Relevant documents are brought on record by the Respondent. These facts also indicate that the Respondent received approval from the competent Authority to raise construction of the project in GST regime.

26. This Tribunal in ***DGAP vs. Sobha Limited (2026) 185 taxman.com 198 (GSTAT-New Delhi)***, on the basis of identical facts and circumstances, observed that: -

“23. The foundation of the arguments on behalf of the Respondent is based upon the Judgement of the Hon’ble High Court of Delhi in Reckitt Benckiser (Supra). In Paragraph 128 of that decision, the Hon’ble Court has explicitly expressed that there is no dispute with regard to the methodology to be adopted for computation of profiteering in construction services. Clause (d) of said paragraph addresses the situation when flat is constructed in the post-GST period and purchased after construction being completed by making upfront payment of the full price. Thus, the methodology for computation of profiteering in accordance with clause (d) of this paragraph may be adopted when the following two conditions are satisfied:

- (i) That the flat is constructed in post-GST period, and*
- (ii) That the flat is purchased after construction being completed after making upfront payment of the full price.*

24. In our opinion, the expression “the flat is constructed in the post-Goods and Service Tax period” by no means implies that the flat was already constructed or it was yet to be constructed. Similarly, the term “after making upfront payment of the full price” cannot be interpreted to mean that the entire payment should have been made in one go (in a single lumpsum). Ordinarily, when a new project is launched by a builder, the proposed buyer opts for “construction-linked plan” to facilitate ease of payment and to maintain their financial equilibrium. In ordinary course financing facilities are availed from the different banks or other financial institutions

providing housing loan to the buyers. As the construction of the flat progresses, in accordance with the plan and BBA, the builder raises demands for subsequent installment. Such installments are paid by the buyer from the loan amount sanctioned by the said financial institution. The buyer continues to repay the housing loan amount by way of monthly installments.

25. Suffice to say that the expressions used in clause (d) of paragraph 128 of the Judgement do not mean that it would be applicable only if the construction of the flat has been completed at the time of agreement. The fact that the “construction of flat was yet to be raised” or the property was not “fully constructed” is of no consequences to attract the conditions as laid down in paragraph 128(d) of the said Judgement. What is crucial is that the entire spectrum of activities from inception to completion must have taken place during the post-GST period.”

(Emphasis added)

27. The coordinate Bench of this Tribunal in **DGAP v Pyramid Infratech Pvt. Ltd (2026) 39 Centax 113 (Tri. GST-Delhi)** observed that:

“10. It is observed that section 171 of the CGST Act, 2017 applies only in cases involving reduction in tax rate or increase in ITC, particularly in projects spanning pre-GST and post-GST periods. Since the impugned project commenced wholly in the post-GST regime there is no comparative ITC benefit arising for passing on.

11. Reliance placed on Paragraph 128(d) of the Judgment dated 29.01.2024 of the Hon’ble Delhi High Court wherein it had been held that no benefit of ITC is required to be passed on where both construction and supply take place entirely post-GST period.”

28. On the basis of the aforesaid discussion, we are of the considered view that the case of the Respondent is fully covered with the findings of paragraph 128(d) of the decision of Hon'ble High Court of Delhi in Reckitt Benckiser (Supra).
29. Insofar as the objections raised by the Applicant that the Respondent was legally bound to adopt the concessional GST rate applicable to affordable housing, i.e. 1% GST without ITC however, the Respondent has charged 18% GST is concerned, it is to be noted that the concept of 1% rate on affordable housing was introduced vide Notification No. 3/2019-Central Tax (Rate) dated 29.03.2019, w.e.f. 01.04.2019, therefore such notification is not applicable or beneficial to the Applicant. The objections raised by the Applicant in this regard is completely unfounded and not acceptable.
30. Furthermore, it is observed that the Respondent has not approached this Tribunal with clean hands. The issue of refund of Input Tax Credit (ITC) had already been raised by the Applicant in proceedings before TNRERA, where the matter was decided against him. However, in the present proceedings, the Applicant did not mention anything about such proceedings and its outcome. Thus, the applicant has deliberately concealed this material fact from this Tribunal.
31. Having considered the DGAP report, objections raised by the Applicant and rival contentions of the party, we arrived at the conclusion that the objections raised by the Applicant has no substance.
32. The DGAP has rightly concluded that the ratio of credit availed to purchase value (in percentage) during in pre-GST period was 14.50%, whereas it has reduced to 14.28 % in GST regime (making a difference of -0.22%). As a result of it, it was opined by the DGAP that the Respondent has not contravened the Section 171 of the CGST Act, 2017 and was not indulged in profiteering.

33. In view of the above discussion, the DGAP report dated 28.02.2025, deserves to be accepted.

Order

34. The objection raised by the Applicant against the DGAP report dated 28.02.2025 are hereby, rejected.
35. Accordingly, the DGAP report dated 28.02.2025 is accepted.
36. The copy of the Judgment and the order be sent to concerned CGST/SGST Jurisdictional Commissioner for necessary action, if any, at their end.
37. Judgment pronounced in open court today.

(Justice Mayank Kumar Jain)

Dated: 04.06.2026