GSTAT

Division Bench Court No. Court II

NAPA/153/PB/2025

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

Versus

EMAAR INDIA LTD. ....**Respondent**

Counsel for Appellant **Counsel for Respondent**

Hon'ble Justice Sh. Mayank Kumar Jain, Member (Judicial)
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. : ZA070010726000029H **Date of order :** 06/07/2026

1.	GSTIN/Temporary ID/UIN - 06AABCE4308B1ZC	
2.	Appeal Case Reference no. - NAPA/153/PB/2025	Date - 04/12/2024
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the Respondent - 1. Emaar India Ltd. , RohSharma@emaar.ae , 91-124-442-1155	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -

6.	Personal Hearing - 06/07/2026 10/06/2026 21/05/2026 21/04/2026 17/03/2026 05/02/2026 08/01/2026 01/12/2025 14/10/2025
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The DGAP report dated 03.12.2024 is accepted.
Summary of Order	
9.	Type of order : Return to Recipient of Amount not passed on, along with interest

ORDER

Hon'ble Justice Sh. Mayank Kumar Jain, Member (Judicial)
Hon'ble Sh. A. Venu Prasad, Member (Technical)

(Per:- Hon'ble Sh. A. Venu Prasad, Member (Technical)

1. In the real estate sector, construction services generally involve the construction and sale of residential or commercial units to buyers, where consideration is received before getting the completion certificate or first occupation or thereafter. These services require the use of various goods and services, such as construction materials, labour, technical expertise, and other ancillary inputs, which are procured during the course of execution of the project.

2. Under the GST regime, a developer providing construction services is entitled to avail Input Tax Credit (for short "ITC") on eligible inputs and input services used in the project. The introduction of GST brought about significant changes in the availability of ITC as compared to the erstwhile

indirect tax regime. The legislative intent underlying Section 171 of the CGST Act, 2017 is to ensure that any benefit arising from a reduction in the rate of tax or from the availability of additional ITC is passed on to the recipients of the supply. In the context of construction services, this provision seeks to ensure that homebuyers receive the benefit of such tax reductions/ rationalization through a commensurate reduction in the price payable by them. Accordingly, the issue for determination in the present proceedings is whether the benefit of additional ITC accrued to the Respondent on introduction of GST has been passed on to the recipients by way of commensurate reduction in prices or not?

3. The present proceedings arise from a complaint filed by Mr. Raman Kumar Kalia, 08191, ATS Advantage Phase I, Ahinsa Khand- Indirapuram, Ghaziabad- 201014 (hereinafter referred to as "the Complainant"), under the Rule 128 of the Central Goods and Services Tax Rules, 2017 (for short "the CGST Rules, 2017"), alleging profiteering in respect of construction services supplied by M/s Emaar India Ltd., Emaar Business Park, Mehrauli Gurugram Road, Sikanderpur Chowk, Sector- 28, Haryana- 122002 (hereinafter referred to as "the Respondent") in his project "Gurgaon Greens".

4. The complainant alleged that the Respondent has not passed on the benefit of ITC to him by way of commensurate reduction in the price on purchase of a Flat No. GGN-04-0602 in the Respondent's project "Gurgaon Greens" after 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")

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

6. Accordingly, the investigation in the matter was conducted and the Investigation Report dated 29.10.2020 was prepared and submitted to the erstwhile National Anti- Profiteering Authority (for short "NAA") under 129(6) of the CGST Rules, 2017.

7. The aforesaid report was pending before the erstwhile NAA, and thereafter before the Competition Commission of India (for short "CCI"). Meanwhile, in the case of ***Reckitt Benckiser India Pvt. Ltd. v. Union of India [WP(C) 7743/2019].,*** the Hon'ble High Court of Delhi vide its judgment dated 29.01.2024 gave its findings on the methodology to be adopted for determination of profiteering.

8. Subsequently, in view of the judgment in ***Reckitt Benckiser India Pvt. Ltd. (Supra)***, the CCI vide its order dated 20.03.2024 remanded back the matter to DGAP for re-investigation.

9. Accordingly, a notice was issued by the DGAP to the Respondent for initiation of re-investigation under Rule 129 of the CGST Rules, 2017, calling upon it to furnish the requisite information and the documents and to

enable determination of profiteering in terms of the directions contained in the aforesaid judgment.

10. In response to the aforesaid Notice, the Respondent submitted its replies vide letters/ emails dated 17.05.2024, 03.06.2024, 22.08.2024 and 10.09.2024, and furnished the requisite information and documents.

11. Meanwhile, the Principal Bench Goods and Services Appellate Tribunal (for short "the 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.

12. The DGAP concluded the investigation and submitted its report dated 03.12.2024 to the Principal Bench, GSTAT. The observations and conclusion are summarised as follows:

    i. The investigation was carried out for the period from 01.07.2017 to 16.07.2019, i.e., from the date of implementation of GST till the date of receipt of Occupancy Certificate (for short "the OC") for the project "Gurgaon Greens". The DGAP noted that the Respondent had obtained the OC on 16.07.2019.

    ii. The project comprises of 642 residential units. Out of these, 435 units were sold to pre-GST customers and 142 units were sold to post-GST customers prior to receipt of OC. Since 65 homebuyers booked their units after receipt of OC, therefore, only 577 homebuyers were considered for the purpose of profiteering calculation.

    iii. The DGAP observed that the ratio of credit availed to purchase value was 9.41% during the pre-GST regime, which increased to 11.85%

subsequent to the introduction of GST. In view of the judgment dated 29.01.2024 passed by the Hon'ble High Court of Delhi in ***Reckitt Benckiser India Pvt. Ltd. (supra)***, the methodology for determination of profiteering in real estate projects was required to be based upon comparison of credit availed as a percentage of purchase value in the pre-GST and post-GST periods. The methodology adopted by the DGAP to compute the aforesaid ratio is tabulated below: -

S. No.	Particulars	Total (Pre-GST Period upto 30.06.2017)	Total (Post-GST period from 01.07.2017 to 16.07.2019)
1 .	CENVAT of Service Tax Paid on Input Services (A)	8,68,28,567/-	
2 .	Input Tax Credit of VAT Paid on purchase of Inputs (B)	4,00,93,533/-	
3 .	Total Tax Credit of GST availed as per GSTR-3B returns (C)		24,86,30,369/-
4 .	Total CENVAT/ ITC of VAT/ ITC of GST (D= A+B+C)	12,69,22,100/-	24,86,30,369/-
5 .	Total purchase value of goods and services for the project (E)	1,34,84,28,494/-	2,09,79,11,924/-
6 .	**Percentage/ Ratio of Input tax credit to the purchase value (F= D*100/E)**	**9.41%**	**11.85%**

Thus, the Respondent had derived an additional benefit of ITC amounting to 2.44% of the purchase value on account of introduction of GST.

iv. The DGAP further noted that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Therefore, the additional ITC benefit accruing to the Respondent was required to be passed on to the homebuyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017.

v. Based on the additional ITC benefit of 2.44%, the DGAP computed the amount required to be passed on to the homebuyers by applying the said percentage to the purchase value incurred during the post-GST period and thereafter, allocating the benefit on the basis of the saleable area of the project. The computation was worked out as under:

Particulars		**Post- GST**
Period	A	July 2017 to July 2019
Ratio of Credit availed to Purchase Value as per Table-A above (%)	B	9.41% / 11.85%
Increase in input tax credit availed Post-GST (%)	C	2.44%
Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post- GST Period	D	2,09,79,11,924/-
Total savings on account of additional ITC benefit	E= D*C/100	5,11,62,436.37/-
Total saleable area (in Sq. Ft.) as per the list of buyers	F	11,91,366/-
Total saving per Sq. Ft.	G= E/F	42.94
Total Sold Area (in Sq. Ft)	H	7,27,150
Base Profiteered Amount	I= G*H	3,12,26,983

vi. Based on the above computation, the DGAP arrived at the conclusion that the Respondent was required to pass on the benefit of Rs. 3,12,26,983/- to the eligible homebuyers. After adding GST @ 12%, amounting to Rs. 37,47,238/-, the total profiteered amount was computed as Rs. 3,49,74,221/-.

vii. The DGAP also examined the claim of the Respondent that they have already passed on the benefit of ITC to the homebuyers through credit notes and other adjustments. Upon verification of the documents furnished by the Respondent, the DGAP observed that out of 577 units the respondent has passed excess benefit of ITC to 204 home-buyers to the tune of Rs. 2,15,27,181/-. Therefore, no additional benefit is required to be passed on to these home-buyers. Further, the respondent passed on benefit to 226 home-buyers to the tune of Rs. 1,06,27,650/-. This amount was deficit to the tune of Rs. 55,85,980/- the total profiteered amount of Rs. 3,49,74,221/-, the benefit required to be passed on to the eligible recipients remained quantified at the aforesaid amount. The DGAP further observed that 436 recipients were identifiable on the basis of the records furnished by the Respondent and that the amount required to be passed on to such recipients aggregated to Rs. 67,32,464/- (including GST).

<u>Proceedings Before GSTAT</u>

13. A notice was issued to the Respondent calling upon them to file written submissions against the DGAP Report.

14. The Respondent, vide its submissions contended as follows:

i. The Respondent submitted that the object of Section 171 of the CGST Act, 2017 is to ensure that any benefit arising from reduction in the rate of tax or availability of additional ITC is passed on to recipients by way of commensurate reduction in prices. It was contended that no benefit had accrued on account of reduction in the rate of tax since the effective tax incidence on construction services had increased under the GST regime. However, the Respondent acknowledged that certain benefit had accrued on account of enhanced availability of ITC to the tune of Rs. 3,21,54,840/- and submitted that the same had already been voluntarily quantified and passed on to the homebuyers in the project even prior to commencement of the investigation and, therefore, the statutory obligation under Section 171(1) stood fully discharged. According to the Respondent, an amount of Rs. 3,21,54,840/- had already been passed on to customers. The Respondent further submitted that it had engaged an independent consultant to examine the impact of GST on the project by analysing contracts, procurement patterns, project costs, vendor negotiations, tax incidence and availability of ITC in the pre-GST and post-GST periods. Based on such analysis, the benefit arising from additional ITC was quantified and distributed amongst customers through adjustments in the balance consideration payable. It was contended that the methodology adopted by the Respondent appropriately aligned the benefit with the tax burden actually borne by each customer and avoided over-allocation of benefit to customers who had substantially completed their payments prior to implementation of GST. Reliance was placed on the decision in ***DGAP v. Gopal Teknocon (P.) Ltd. [2025] 180 taxmann.com 250 (GSTAT-New Delhi)***.

ii. The Respondent challenged the methodology adopted by the DGAP and submitted that the same was contrary to Section 171 of the CGST Act, 2017 and the principles laid down by the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)***. It was contended that the DGAP had erroneously treated the increase in the ratio of ITC to purchase value in the post-GST period as the benefit required to be passed on without examining whether there was any actual reduction in the cost of supply. According to the Respondent, the increase in ITC availability was largely attributable to higher GST rates applicable on inward supplies and input services under the GST regime and, therefore, a higher quantum of ITC did not necessarily translate into a corresponding benefit under Section 171 of the CGST Act, 2017. It was further argued that the methodology ignored factors such as increased tax incidence on procurements, project-specific cost structures, timing of receipt of inputs and services and actual savings, if any, arising from implementation of GST.

iii. Without prejudice to the aforesaid submissions, the Respondent furnished an alternative computation and contended that, for a like-to-like comparison, the post-GST credit position ought to be benchmarked against the maximum tax incidence prevailing in the pre-GST regime. On such a basis, the ratio of credit to purchase value in the post-GST period worked out to 9.87% as against 9.41% in the pre-GST period, resulting in an additional benefit of only 0.46% as opposed to 2.44% computed by the DGAP. It was further submitted that allocation of benefit on the basis of total area sold was fundamentally flawed and that any benefit ought to be determined with reference to actual post-GST receipts and taxable supplies made during the GST period. According to the Respondent, the profiteered amount, if any, would work out to Rs. 58,90,116/- only and stood fully offset by the benefit already passed on to the homebuyers.

iv. It was further submitted that Real Estate, being a "continuous supply of services" under Section 2(33) of the CGST Act, 2017 and the benefit must be linked to actual post-GST receipts, not total area. Even assuming if DGAP's methodology, the per-customer profiteering is Rs. 71,741/-, whereas the Respondent has already passed on Rs. 92,711/- to the complainant. The benefit passed on is a statutory adjustment, not a supply, and does not attract GST. Reliance was placed on the ***B.G Shirke Oil & Gas India Pvt. Ltd. Vs. Commissioner of Central Tax, Visakhapatnam- GST 2024TMI 431 (CESTAT, Hyderabad).***

v. The Respondent further contended that the benefit required to be passed on under Section 171 could not be subjected to GST. It was submitted that GST collected from customers had already been deposited with the Government and that passing on anti-profiteering benefits did not constitute an independent taxable supply. Reliance was placed upon Section 34 of the CGST Act, 2017 CBIC Circular No. 188/20/2022-GST dated 27.12.2022 to contend that the profiteered amount, if any, ought not to be enhanced by adding GST thereon.

vi. The Respondent further submitted that, where recipients were not identifiable or traceable, the amount, if any, could only be deposited in the Consumer Welfare Fund in terms of Rule 133(3)(c) of the CGST Rules, 2017. It was argued that in long-term real estate projects several allottees may have transferred their units or ceased to be traceable and, therefore, direct restitution to all recipients may not be feasible.

vii. The Respondent challenged the very initiation of the proceedings and submitted that the requirements prescribed under Rules 128 and 129 of the CGST Rules, 2017 had not been complied with. It was contended that the Standing Committee was required to examine whether the material placed before it disclosed a prima facie case of non-passing of benefit under Section 171 of the CGST Act, 2017 before referring the matter for detailed investigation. According to the Respondent, neither the application nor the accompanying material disclosed any such prima facie evidence and, therefore, the reference made to the DGAP was without jurisdiction and liable to be set aside.

viii. The Respondent further contended that the proceedings, as well as the impugned DGAP Report dated 03.12.2024, were barred by limitation. It was submitted that the timelines prescribed under Rules 129 and 133 of the CGST Rules, 2017 were mandatory in nature and that the remand proceedings could not revive or extend the statutory period. It was further argued that the delay in completion of the fresh investigation had caused substantial prejudice to the Respondent and that the Authority became *functus officio* upon expiry of the prescribed period.

~~ix.~~ The Respondent further submitted that the proceedings were vitiated on account of violation of the Principles of Natural Justice. It was contended that neither the original application filed by the Applicant nor the reference made by the Standing Committee had been furnished to the Respondent and that no opportunity had been provided to present its case before the matter was referred for investigation. It was further argued that no proper show cause notice specifying the allegations of profiteering, the basis thereof, the issues proposed to be examined or the action proposed to be taken had been issued prior to commencement of the proceedings. According to the Respondent, the DGAP's Report could not be treated as a substitute for a statutory show cause notice and, therefore, the proceedings were liable to be set aside.

x. The Respondent additionally contended that neither the CGST Act, 2017 nor the CGST Rules, 2017 prescribe any statutory methodology or formula for determination and quantification of profiteering. According to the Respondent, in the absence of a prescribed mechanism, determination of profiteering on a case-to-case basis was arbitrary, lacked transparency and rendered the methodology adopted by the DGAP unsustainable in law. The Respondent also submitted that the investigation had travelled beyond the scope of the original application filed by a single homebuyer and ought to have been confined to the grievance raised by the said Applicant. It was argued that neither the DGAP nor the Authority could enlarge the scope of investigation to cover other homebuyers or the entire project in the absence of a specific statutory direction.

xi. Lastly, the Respondent contended that no interest or penalty was imposable in the facts of the present case. It was submitted that the benefit available under Section 171 of the CGST Act, 2017 had already been passed on to the homebuyers and, therefore, the foundational requirement for levy of interest was absent. Without prejudice thereto, it was argued that any delay in conclusion of the proceedings was attributable to the authorities and no interest liability could be fastened upon the Respondent for such period. It was further submitted that, during the relevant period, there existed no statutory provision authorising imposition of penalty for violation of Section 171 and, therefore, no penalty proceedings could be sustained against the Respondent.

15. *Per contra*, the DGAP submitted its clarification and contended as following:

i. In response to the Respondent's contention that the benefit of ITC had already been passed on to the homebuyers, the DGAP submitted that its investigation had determined a total profiteered amount of Rs. 3,49,74,221/- (including GST), out of which benefit amounting to Rs. 3,21,54,840/- had already been passed on. According to the DGAP, a balance amount of Rs. 67,32,464/- still remained to be passed on to 232 eligible homebuyers. The DGAP further submitted that any excess benefit passed on to certain homebuyers could not be adjusted against the shortfall in benefit payable to other recipients, as each homebuyer was independently entitled to commensurate benefit under Section 171 of the CGST Act, 2017.

ii. With regard to the challenge to the methodology adopted for computation of profiteering, the DGAP submitted that the methodology applied in the impugned Report was consistent with Section 171 of the CGST Act, 2017 and the directions contained in the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)***. It was contended that, in the real estate sector, profiteering is required to be determined by comparing the ratio of eligible pre-GST credits with the ratio of ITC available in the post-GST period vis-a-vis the value of construction inputs and input services. According to the DGAP, the methodology captures the actual economic benefit arising from GST implementation and ensures that the additional ITC benefit is attributed to the total area constructed and passed on to the homebuyers in proportion to the area of the flats. Reliance was also placed upon orders passed by the GSTAT in other real estate matters wherein a similar methodology had been approved.

iii. In reply to the contention that GST could not be levied on the amount required to be passed on under Section 171, the DGAP submitted that the anti-profiteering provisions require the supplier to reduce the base price to the extent of the benefit accrued and that any excess amount collected from the recipients, including the tax charged thereon, is liable to be returned to the eligible recipients or deposited in the Consumer Welfare Funds, as the case may be. It was further submitted that the Respondent had itself issued credit notes and made adjustments in respect of tax liability and, therefore, the contention that GST could not be included while computing the amount to be passed on was misconceived.

iv. In response to the contention that any amount determined ought to be deposited in the Consumer Welfare Funds, the DGAP submitted that the recipients in the present case were identifiable homebuyers and, therefore, the benefit was required to be passed on directly to such recipients in accordance with Section 171 of the CGST Act, 2017 and Rule 133 of the CGST Rules, 2017. Accordingly, the DGAP contended that the amount determined was not liable to be transferred to the Consumer Welfare Funds.

v. As regards the challenge to the validity of the proceedings under Rules 128 and 129 of the CGST Rules, 2017, the DGAP submitted that the Standing Committee had examined the application and found prima facie evidence of non-passing of benefit before referring the matter for detailed investigation. It was contended that the investigation had thereafter been conducted in accordance with Rule 129 and, therefore, the proceedings were validly initiated.

vi. In reply to the objections regarding limitation, the DGAP submitted that the fresh investigation had been undertaken pursuant to the directions issued following the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)*** and that the impugned Report dated 03.12.2024 had been furnished within the period prescribed under Rule 129(6) of the CGST Rules, 2017 reckoned from the date of such directions. Accordingly, it was contended that neither the investigation nor the Report was barred by limitation.

vii. With regard to the allegation of violation of Principles of Natural Justice, the DGAP submitted that the Respondent had been afforded adequate opportunity to participate in the investigation. It was pointed out that the Respondent had furnished detailed replies and documents during the course of investigation and had also been given access to the non-confidential record, which was duly inspected by it. Accordingly, the DGAP denied that any prejudice had been caused to the Respondent.

viii. In response to the contention that there exists no prescribed methodology for determination of profiteering, the DGAP submitted that the methodology applied in the impugned Report was in conformity with Section 171 of the CGST Act, 2017 and the principles laid down by the Hon'ble Delhi High Court in ***Reckitt Benckiser (supra)***. It was contended that the methodology adopted in the Report appropriately measures the economic benefit arising from the additional availability of ITC and ensures that such benefit is passed on to the recipients by way of commensurate reduction in prices.

ix. In reply to the contention that the investigation could not travel beyond the application filed by the Applicant, the DGAP submitted that Section 171 of the CGST Act, 2017 contemplates examination of whether the benefit of tax reduction or additional ITC has been passed on in respect of the supply made by a registered person and is not confined to a single recipient. It was therefore contended that the investigation was rightly conducted in respect of all similarly situated recipients in the project and was not restricted to the Applicant alone.

x. As regards the contentions relating to levy of interest and penalty, the DGAP submitted that the same pertained to the Authority and did not call for any specific response in the investigation report. The DGAP accordingly reiterated the findings recorded in its Report dated 03.12.2024 and prayed that appropriate orders be passed in accordance with law.

16. Heard learned Counsel Shri Manish Gaur, Advocate, Shivam Mehta, Advocate, Shubham Vijay and Ms. Aanchal Gupta, Advocate appearing on behalf of the Respondent. Ms. Geetika Chib, Additional Assistant Director who appeared for the DGAP. None appeared on behalf of the complaint.

Issues for Determination

17. After carefully consideration of the DGAP Report dated 03.12.2024, the submissions made by the Respondent and the DGAP, the rejoinder filed by the DGAP and the material available on record, the following issues arise for determination in the present matter:

(i) Whether the DGAP Report and the methodology adopted therein for determination of the benefit of additional ITC and computation of the profiteered amount are legally sustainable and correctly applied to the facts and circumstances of the present case?

(ii) Whether the Respondent had derived any additional benefit of ITC consequent upon the implementation of GST with effect from 01.07.2017 in respect of the project "Gurgaon Greens"?

(iii) If the answer to Issue No. (i) is in the affirmative, whether the Respondent passed on such benefit to the eligible recipients by way of commensurate reduction in prices in terms of Section 171(1) of the CGST Act, 2017?

(iv) Whether, consequent upon the contravention of Section 171(1) of the CGST Act, 2017, the Respondent is liable for payment of interest and levy of penalty under the applicable provisions of the CGST Act, 2017?

Analysis and observations

Issue under point (i):

18. The Respondent has assailed the DGAP Report dated 03.12.2024 on multiple grounds. It has been contended that the methodology adopted by the DGAP is contrary to Section 171 of the CGST Act, 2017 and the principles laid down by the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)***. The Respondent has argued that the increase in the ratio of ITC to purchase value does not automatically establish any commensurate reduction in the cost of supply and that the DGAP has failed

to consider project specific factors such as, increased tax incidence on procurements, timing of receipt of inputs and services, actual savings arising on account of GST and the peculiar nature of real estate projects.

19. The Respondent has further submitted that real estate projects constitute a continuous supply of services and, therefore, any determination of benefit ought to be linked with actual consideration received during the GST period rather than total area sold. It has also been argued that the DGAP's methodology of allocating benefit on the basis of total saleable area is fundamentally flawed and that, on a like-to-like comparison, the additional benefit available to the Respondent works out only to 0.46% and not 2.44% as determined by the DGAP. Reliance has been placed upon the decision of the GSTAT in ***DGAP v. Gopal Teknocon (P.) Ltd. (supra)*** in support of the contention that no further profiteering survives where the entire benefit has already been passed on.

20. We do not find merit in the aforesaid submissions. The Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd (supra)*** has categorically held that no fixed or uniform methodology can be prescribed for determination of profiteering and that the methodology has to be evolved having regard to the peculiar facts and circumstances of each case. The relevant paragraphs of the judgment is reproduced herein:

> *124. This Court is of the view that no fixed/uniform method or mathematical formula can be laid down for determining profiteering as the facts of each case and each industry may be different. The determination of the profiteered amount has to be computed by*

taking into account the relevant and peculiar facts of each case. There is 'no one size that fits all 'formula or method that can be prescribed in the present batch of matters. Consequently, NAA has to determine the appropriate methodology on a case to case basis keeping in view the peculiar facts and circumstances of each case.

125. It is also well-established that where a power exists to prescribe a procedure and such power has not been exercised, the implementing authorities are at liberty to determine and adopt such procedure as they may deem fit subject to the same being fair and reasonable. In Dhanjibhai Ramjibhai v. State of Gujarat (1985) 2 SCC 5/[1985] (22) E.L.T. 640, the Supreme Court has held, "...Merely because procedural rules have not been framed does not imply a negation of the power. In the absence of such rules, it is sufficient that the power is exercised fairly and reasonably, having regard to the context in which the power has been granted". In Chairman & MD, BPL Ltd. v. S.P. Gururaja, (2003) 8 SCC 567, the Supreme Court has held, "....Under the Act or the Regulations framed thereunder, no procedure for holding such consultations had been laid down. In that situation it was open to the competent authorities to evolve their own procedure. Such a procedure of taking a decision upon deliberations does not fall foul of Article 14 of the Constitution of India."

126. Consequently, Rule 126 of the Rules, 2017 to the extent it grants flexibility to NAA to determine the methodology and procedure to *decide whether reduction in rate of tax or benefit of Input Tax Credit has been passed on or not to the recipient is reasonable and legal. Moreover, as per Rule 126 NAA 'may determine' the methodology and not 'prescribe' it. The substantive provision i.e. Section 171 of the Act, 2017 itself provides sufficient guidance to NAA to determine the methodology on a case by case basis depending upon peculiar facts of each case and the nature of the industry and its peculiarities. Consequently, so long as the methodology determined by NAA is fair and reasonable, the petitioners cannot raise the objection that the specifics of the methodology adopted are not prescribed.*

127. Since considerable emphasis was laid by learned counsel for the Petitioners on the methodology adopted by NAA to determine commensurate reduction qua real estate industry, this Court deems it appropriate to deal with the same at some length. With the introduction of the Goods and Services Tax scheme/regime, the availability of Input Tax Credit against various goods and services used in construction has increased or Input Tax Credit was available against more goods and services then before this resulted in a decrease in the cost of the builders as they now had more Input Tax Credit available to be set off against Goods and Services Tax paid by them in the Goods and Services Tax regime as compared to before and the same was not required to be collected from the consumers.

128. There is no 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 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 Services Tax.

129. However, this Court finds that the methodology adopted by NAA and DGAP to arrive at the profiteering amount of the real estate industry was generally based on the difference between the ratio of Input Tax Credit to turnover under the pre-Goods and Services and Tax and post- Goods and Services and Tax period. This Court is in agreement with the contention of the learned counsel for the petitioners representing the real estate companies that the methodology adopted by NAA is flawed as in the real estate sector, there is no direct correlation between the turnover and the Input Tax Credit availed for a particular period. The expenses in a real estate project are not uniform throughout the life cycle of the project and the eligibility of credit depends on the nature of the construction activity undertaken during the particular period. As it is an admitted position that neither the advances received nor the construction activity is uniform throughout the life cycle of the project, the *accrual of Input Tax Credit is not related to the amount collected from the buyers. This Court is in agreement with learned counsel of the petitioners that one needs to calculate the total savings on account of introduction of Goods and Services and Tax for each project and then divide the same by total area to arrive at the per square feet benefit to be passed on to each flat buyer. This would ensure that flat-buyers with equal square feet area received equal benefit. The Court, while hearing the present batch of matters on merits, shall take the aforesaid direction/interpretation into account.*

(Emphasis Added)

21. A plain reading of the aforesaid judgment shows that while the Hon'ble High Court recognized the flexibility available under Rule 126 of the CGST Rules, 2017 for determining an appropriate methodology, it simultaneously held that in the real estate sector the methodology based solely upon comparison of ITC to turnover was flawed. The Hon'ble High Court directed that the total savings arising on account of GST should be determined project-wise and thereafter; apportioned over the total area to arrive at the per square foot benefit required to be passed on to individual homebuyers.

22. The DGAP has departed from the earlier turnover based methodology and adopted a methodology based upon comparison of the ratio of eligible/ available credits to construction cost/purchase value in the Pre-GST and Post-GST periods, determination of the total savings arising on account of GST and subsequent allocation of such savings over the total saleable area of the project. The revised methodology therefore directly addresses the

concerns identified by the Hon'ble High Court and is in consonance with the principles laid down therein.

23. We are unable to accept the Respondent's contention that the benefit should be linked solely to actual receipts during the GST period. The anti-profiteering provisions seek to ensure that the benefit arising on account of additional ITC accrues uniformly to all eligible recipients. The methodology approved by the Hon'ble High Court itself proceeds on the basis of determination of project-wise savings and allocation thereof over the total area of the project so as to ensure that similarly situated homebuyers receive proportionate benefit.

24. We do not find any merit in the submission that the absence of a statutorily prescribed formula renders the proceedings unsustainable. Paragraphs 124 to 126 of the judgment in ***Reckitt Benckiser (supra)*** clearly recognise that no uniform formula can be prescribed for all industries and that Rule 126 confers sufficient flexibility upon the Authority to determine an appropriate methodology on a case-to-case basis. So long as the methodology adopted is fair, reasonable, transparent and consistent with Section 171 of the CGST Act, 2017, the same cannot be invalidated merely because no fixed formula has been prescribed.

25. The Respondent has further challenged the validity of the proceedings on the ground that the Standing Committee failed to examine the existence of a prima facie case before making a reference under Rules 128 and 129 of the CGST Rules, 2017. We do not find any substance in the said contention. The record shows that the complaint was examined by the Standing Committee

and, upon being satisfied that sufficient material existed warranting detailed investigation, the matter was referred to the DGAP in accordance with the statutory scheme. The subsequent investigation was conducted after issuance of notice and consideration of the information furnished by the Respondent. Accordingly, the initiation of proceedings cannot be faulted.

26. The Respondent has further contended that the proceedings stand vitiated on account of violation of the principles of natural justice, alleging that neither the original application nor the reference made by the Standing Committee was furnished to it and that no proper show cause notice was issued prior to commencement of the investigation.

27. We do not find merit in the said contention. The record demonstrates that the Respondent was issued notice during the course of investigation and was afforded adequate opportunity to participate in the proceedings. The Respondent furnished detailed replies, produced documentary evidence in support of its contentions and was granted access to the non-confidential record. No specific prejudice has been demonstrated to have been caused to the Respondent on account of the alleged procedural irregularities. It is well settled that a plea of violation of natural justice cannot be sustained in the absence of prejudice. Accordingly, the proceedings cannot be said to be vitiated on this ground.

28. Equally untenable is the contention that the proceedings have travelled beyond the scope of the original complaint filed by a single homebuyer. Section 171 of the CGST Act, 2017 casts an obligation upon every registered person to pass on the benefit of tax reduction or additional ITC to the

recipients of the supply. The statutory enquiry is therefore directed towards examining whether such benefit has been passed on in respect of the relevant supply and is not confined solely to the individual complainant. Consequently, once an investigation is validly initiated, the DGAP is empowered to examine the position of all similarly situated recipients in the project. The investigation therefore, cannot be said to have exceeded its lawful scope.

29. The Respondent has also contended that the proceedings and the impugned Report are barred by limitation. We find no merit in the said objection. The re-investigation was undertaken pursuant to the directions issued following the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)*** and culminated in submission of the Report dated 03.12.2024. The issue relating to timelines prescribed under the anti-profiteering framework has been specifically considered by the Hon'ble Delhi High Court in the aforesaid judgment, wherein it has been held that the timelines prescribed under the Rules are directory in nature and lapse thereof does not automatically render the proceedings invalid. Accordingly, the proceedings cannot be held to be barred by limitation. In this regard, reference may be made to the judgment as under:

> *158. In some cases, the Petitioners have pointed out that the timelines as provided in the Rules, 2017 have not been followed. They further contended that as a result, the proceedings are vitiated. However, it is important to note that the Rules, 2017 do not provide any consequences in case the time limits provided thereunder lapse.*

As held earlier, the anti-profiteering provisions in the Act, 2017 and the Rules, 2017 are in the nature of a beneficial legislation as they promote consumer welfare. The Courts have consistently held that beneficial legislation must receive liberal construction that favors the consumer and promotes the intent and objective of the Act. That being the scenario, it cannot be said that the proceedings as a whole abate on lapse of time limit of furnishing of report by DGAP. The Supreme Court in P.T. Rajan v. T.P.M. Sahir (2003) 8 SCC 498 has held that "It is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefore, the same would be directory and not mandatory. "and that" a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused." Consequently, the time limit provided for furnishing of report by DGAP is directory in nature and not mandatory.

(Emphasis Added)

30. We further, do not find any violation of the Principles of Natural Justice. The record reveals that the Respondent was issued notice by the DGAP, furnished multiple written submissions, supplied voluminous documents and was granted access to the non-confidential record. The Respondent has participated extensively throughout the investigation as well as the adjudicatory proceedings before this Tribunal. In such circumstances, the

contention that no reasonable opportunity of hearing was afforded is wholly devoid of merit.

31. In view of the foregoing discussion, we find that the methodology adopted by the DGAP in the Report dated 03.12.2024 is consistent with the directions of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)*** is fair, reasonable and based upon objective material available on record. The objections raised by the Respondent concerning methodology, jurisdiction, limitation, natural justice and scope of investigation are accordingly rejected. Issue No. (i) is answered in favour of the Revenue and against the Respondent

Determination of Profiteering and passing on of the ITC benefit

32. Insofar as the issue Nos. (ii) and (iii) are concerned, this Tribunal finds that upon the implementation of GST with effect from 01.07.2017, the Respondent became entitled to avail ITC on both goods and input services used in the construction of the project "Gurgaon Greens", unlike the pre-GST regime where the availability of credit was comparatively restricted. The DGAP, in its Report dated 03.12.2024, examined the extent of credit available to the Respondent during the pre-GST and post-GST periods and concluded that an additional benefit of ITC had accrued to the Respondent consequent upon the implementation of GST. In terms of Section 171(1) of the CGST Act, 2017, such benefit was required to be passed on to the homebuyers by way of commensurate reduction in prices.

33. The DGAP has reported that during the pre-GST period, i.e., from April, 2012 to June, 2017, the Respondent availed CENVAT credit and VAT credit

aggregating to Rs. 12,69,22,100/- on a total purchase value of Rs. 1,34,84,28,494/-, resulting in a credit ratio of 9.41%. During the post-GST period, i.e., from 01.07.2017 to 16.07.2019, the Respondent availed ITC amounting to Rs. 24,86,30,369/- on a total purchase value of Rs. 2,09,79,11,924/-, resulting in a credit ratio of 11.85%. Thus, the ratio of ITC to purchase value increased by 2.44% in the post-GST regime. Based upon the said increase, the DGAP concluded that the Respondent had derived additional ITC benefit and was required to pass on the same to the eligible homebuyers.

34. The Respondent has contested the aforesaid conclusion and submitted that no real benefit accrued merely because the ratio of ITC increased in the GST regime. It has been argued that the increase in ITC was attributable to the higher incidence of GST on inward supplies and input services and, therefore, did not represent any actual economic benefit. The Respondent has further submitted that it had, on its own, identified the benefit arising on account of GST and had passed on the same to the homebuyers through credit notes and price adjustments much before initiation of the investigation. It has also been contended that the benefit already passed on, exceeded the amount legally required to be passed on and that no further determination of profiteering was warranted.

35. We have carefully considered the aforesaid submissions. We find that Section 171(1) of the CGST Act, 2017 mandates that any benefit of ITC shall be passed on to the recipients by way of commensurate reduction in prices. The object of the provision is to ensure that the benefit arising from

implementation of GST reaches the ultimate consumers and is not retained by the supplier. Therefore, once additional ITC becomes available to a registered person in the GST regime, the corresponding benefit is required to be passed on to the recipients.

36. The statutory position is further clarified by the 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"*, which is reproduced below:

> *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 (and 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 installments 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."*

37. From the above clarification, we find that under the GST regime, the benefit of ITC is intended to reduce the overall tax burden on construction services and, consequently, lower the effective cost to the buyers. It is understood by the clarification 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.

38. We further find that the Respondent's contention is about increment in ITC merely reflects higher GST incidence on inward supplies and therefore cannot be regarded as a benefit is devoid of merit. The material available on record clearly establishes that the Respondent became entitled to avail and utilise a higher quantum of credit in the GST regime than what was available in the pre-GST regime. Such credit was available for discharge of the Respondent's output tax liability and therefore constituted a benefit within the meaning of Section 171 of the CGST Act, 2017.

39. We do not find any merit in the contention that the benefit should be confined only to material inputs or that credit relatable to input services ought to be excluded from consideration. The benefit under GST includes ITC on both goods and input services and cannot be restricted only to material inputs. Accordingly, no exclusion of service-related ITC is warranted.

40. As regards the Respondent's contention that it had already passed on the benefit to the homebuyers, we note that the DGAP has duly examined all the documentary evidence furnished by the Respondent such as the books of accounts, customer ledgers, credit notes and other. The DGAP has given due credit wherever the passing on of benefit was substantiated by documentary evidence. However, it has been revealed from the investigation that the benefit required to be passed on under Section 171 exceeded the benefit actually passed on to the eligible recipients. We concur with the finding of the DGAP that excess benefit passed on to certain homebuyers cannot be adjusted against the shortfall in benefit payable to other homebuyers, since each recipient is independently entitled to receive commensurate benefit.

41. We also note that the project comprised 642 residential units, out of which 577 homebuyers were found eligible for determination of benefit. The findings recorded in the DGAP Report are therefore, founded upon objective and verifiable material available on record as the computation undertaken by the DGAP is based upon project specific records, statutory returns, electronic credit ledgers and other contemporaneous documents furnished by the Respondent itself.

42. In view of the foregoing discussion, we find that the Respondent had derived additional ITC benefit consequent upon the implementation of GST in respect of the project "Gurgaon Greens". We further find that such benefit was required to be passed on to the eligible homebuyers by way of commensurate reduction in prices in terms of Section 171(1) of the CGST Act, 2017. Accordingly, Issue Nos. (i) and (ii) are answered in the affirmative.

43. It is further observed from the DGAP's findings that, in respect of 226 homebuyers, the benefit actually passed on by the Respondent was lower than the commensurate benefit required to be passed on, resulting in a shortfall of Rs. 55,85,980/-. Conversely, in respect of 204 homebuyers, the Respondent had passed on benefit in excess of the commensurate amount by Rs. 69,38,986/-. However, such excess benefit passed on to certain recipients cannot be adjusted or set off against the shortfall in benefit payable to other recipients. The obligation under Section 171(1) of the CGST Act, 2017 is recipient specific and each homebuyer is independently entitled to receive the commensurate benefit accruing on account of additional ITC. Any excess amount passed on to a particular recipient can be adjusted only with that recipient and cannot extinguish or reduce the Respondent's liability towards other recipients who have not received the benefit due to them. Accordingly, the contention of the Respondent seeking consideration of excess benefit passed on to certain homebuyers against the shortfall in respect of others is not sustainable.

44. In view of the above, we conclude that the Respondent had derived additional benefit of ITC amounting to Rs. 3,49,74,221/- (inclusive of GST) consequent upon the implementation of GST in respect of the project "Gurgaon Greens". The Tribunal further finds that although the Respondent had passed on benefit amounting to Rs. 3,21,54,840/- to certain homebuyers, the same was not sufficient to discharge its statutory obligation under Section 171(1) of the CGST Act, 2017. The computation undertaken by the DGAP is found to be correct, reasonable and based on the records furnished by the Respondent. Accordingly, the balance profiteered amount of Rs. 67,32,464/- (inclusive of GST) remains liable to be passed on to the 232 eligible homebuyers who have not received the commensurate benefit in full, in terms of Section 171 of the CGST Act, 2017.

Determination of Interest

45. The next issue for determination is whether interest is payable on the profiteered amount determined in the present proceedings and, if so, the period and manner in which such interest is liable to be computed. The Respondent has contended that no interest is leviable on the grounds that substantial benefit had already been passed on to the homebuyers, that the delay in conclusion of the proceedings was attributable to the authorities, and that the statutory provisions do not contemplate levy of interest in the manner proposed. It has further been submitted that interest, being compensatory in nature, cannot be imposed in the absence of any wrongful retention of benefit.

46. We are unable to accept the aforesaid contentions. Rule 133(3)(b) of the CGST Rules, 2017, as applicable during the relevant period, specifically empowered the authority to direct return of the amount not passed on by way of commensurate reduction in prices together with interest. For ease of reference, the relevant portion of Rule 133(3)(b) is reproduced below:

> *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.*

Accordingly, in view of the aforesaid provisions. we hold that the Respondent is liable to pay interest at the rate of 18% per annum on the profiteered amount from the respective dates of collection of the excess amount from the recipients till the date on which the benefit is actually passed on or refunded, in accordance with Rule 133(3)(b) of the CGST Rules, 2017.

47. Reference may also be made to the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)***, wherein the Hon'ble Court, while considering the scope and ambit of Section 171 of the CGST Act,2017 and observed:-

> *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."

(Emphasis Added)

48. We have concluded on the basis of foregoing discussion that the Respondent failed to pass on the entire benefit of additional ITC accrued on account of implementation of GST to the eligible recipients by way of commensurate reduction in prices and thereby contravened the provisions of Section 171(1) of the CGST Act, 2017. Consequently, the profiteered amount determined herein is liable to be returned to the eligible recipients together with interest in terms of Rule 133(3)(b) of the CGST Rules, 2017.

49. The contention of the Respondent that delay in conclusion of the proceedings was attributable to the authorities and, therefore, no interest should be levied, is also without merit. The liability to pay interest under Rule 133(3)(b) arises on account of retention of the benefit which ought to have been passed on to the recipients at the relevant time. Such liability is

statutory in nature and is not extinguished merely because the proceedings culminated at a later date.

50. Interest in anti-profiteering proceedings is compensatory in nature and is intended to restore to the recipients the time value of money representing the benefit withheld from them. Accordingly, this Tribunal holds that the Respondent is liable to pay interest at the rate of 18% per annum on the profiteered amount from the respective dates of collection of the excess amount from the recipients till the date on which the benefit is actually passed on or refunded, in accordance with Rule 133(3)(b) of the CGST Rules, 2017.

Penalty

51. The next question is whether penalty is imposable upon the Respondent under the provisions of the CGST Act, 2017. The Respondent has contended that penalty cannot be imposed as the alleged contravention pertains to a period prior to the insertion of Section 171(3A) of the CGST Act, 2017 and that the said provision cannot be applied retrospectively.

52. We find merit in the aforesaid contention. It is observed that the investigation in the present matter covers the period from 01.07.2017 to 16.07.2019, and Section 171(3A) of the CGST Act, 2017, was inserted by the Finance (No. 2) Act, 2019 that came into force w.e.f. 01.01.2020 that provides the imposition of a penalty in cases where a registered person is found to have profiteered any amount or the benefit of ITC shall not be passed on to the recipient by way of commensurate reduction in prices.

53. Since the entire period involved in the present proceedings precedes the existence of Section 171(3A), the penal provision cannot be applied retrospectively to the Respondent. It is a settled principle of law that a provision imposing penalty creates a substantive liability and, in the absence of express legislative intent, cannot be given retrospective operation.

54. Accordingly, while the Respondent is liable to pass on the profiteered amount together with applicable interest in terms of Section 171 of the CGST Act, 2017 read with Rule 133 of the CGST Rules, 2017, penalty under Section 171(3A) of the CGST Act, 2017cannot be levied upon the Respondent under the facts and circumstances of the present case.

Conclusion

55. We conclude that the Respondent has contravened the provisions of Section 171(1) of the CGST Act, 2017 by not passing on the entire benefit of additional ITC accrued upon implementation of GST to the eligible homebuyers. of the project "Gurgaon Greens". The DGAP has rightly concluded that the ratio of credit availed to purchase value was 9.41% in the pre-GST era which increased to 11.85% in post GST period. The increment of 2.44% implies that the benefit of ITC accrued to the Respondent. The Respondent has failed to pass on the benefit of the ITC to the concerned home-buyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017.

56. The profiteered amount determined in the present case is of Rs. 3,49,74,221/- (inclusive of GST). It is further noted that the Respondent has already passed on an amount of Rs. 3,21,54,840/- to the homebuyers.

Accordingly, the balance profiteered amount of Rs. 67,32,464/-, as identified in the DGAP Report dated 03.12.2024, remains liable to be passed on to the 232 eligible homebuyers. Therefore, The DGAP report dated 03.12.2024 deserves to be accepted.

Order

57. Accordingly, The DGAP report dated 03.12.2024 is accepted.
58. The Respondent is directed to deposit the profiteered amount of Rs. 67,32,464/- along with interest at the rate of 18% from the date of collection of the higher amount till the date of return of such amount to the eligible homebuyers.
59. The copy of the Judgment and the order be sent to concerned CGST/SGST Jurisdictional Commissioner for necessary action, at their end. A copy may also be provided to the Applicant.
60. Judgment pronounced in open court today.

(Justice Mayank Kumar Jain)

(Sh. A. Venu Prasad)

Dated: 06.07.2026