GSTAT

Single Bench Court No. Court IV

NAPA/155/PB/2025

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

Versus

MM CONSTRUCTION ....**Respondent**

Counsel for Appellant **Counsel for Respondent**

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. : ZA070010726000142H **Date of order :** 28/07/2026

1.	GSTIN/Temporary ID/UIN - 19AAPFM5053N1ZK	
2.	Appeal Case Reference no. - NAPA/155/PB/2025	Date - 28/11/2024
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondant - 1. MM Construction , mkr_79@yahoo.com	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -

6.	Personal Hearing - 28/07/2026 14/07/2026 11/06/2026 20/05/2026 15/05/2026 28/04/2026 20/03/2026 18/02/2026 07/01/2026 28/10/2025
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The Respondent is directed to pass on the profiteered amount of Rs. 7,31,160/-, along with GST @12% amounting to Rs. 87,739/-, aggregating to Rs. 8,18,899/-, to the eligible homebuyers, as determined by the DGAP. The said amount shall be paid together with interest at the rate of 18% per annum in terms of Rule 133(3)(b) of the CGST Rules, 2017, from the date of collection of the higher amount till the date of its actual payment.
Summary of Order	
9.	Type of order : Return to Recipient of Amount not passed on, along with interest

Place :DELHI PB

Date : 28.07.2026

ORDER

1. The present proceedings arise from a complaint made by Mr. Pradyot Kumar Ghosh, Flat No. 04, 2nd Floor, 587, Lake Gardens, Kolkata- 700045 (hereinafter referred to as “the Complainant”) under Rule 128 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “the CGST Rules”) alleging profiteering in respect of construction services supplied by M/S MM Constructions, 50, Prince Rahimuddin Lane, Kolkata- 700033 (hereinafter referred to as “the Respondent”) for the project situated at 578, Lake Gardens, Kolkata- 700045.

2. The complainant alleged that the Respondent did not pass on the benefit of Input Tax Credit (hereinafter referred to as "ITC") to the complainant by way of commensurate reduction in the price on purchase of a Flat No. 04 in the Respondent's project situated at 578, Lake Gardens, Kolkata- 700045 on the introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

3. The said complaint was examined by the Standing Committee on Anti- Profiteering was forwarded to the Directorate General of Anti- Profiteering (hereinafter referred to as "the DGAP") on 24.11.2020 for a detailed investigation in respect of the application filed under Rule 129(1) of the CGST Rules, 2017.

4. Accordingly, the investigation was conducted and the Report dated 08.12.2021 was prepared and submitted to the National Anti- Profiteering Authority (or CCI) under the Rule 129(1) of the Rules.

5. The report dated 08.12.2021 sent by the DGAP was pending for Orders by the erstwhile NAA (then Competition Commission of India (CCI)). Meanwhile, in the case of ***Reckitt Benckiser India Pvt. Ltd. v. Union of India & Ors., W.P. (C) No. 7743/2019*** and other connected matters, the Hon'ble High Court of Delhi passed its judgement in order dated 29.01.2024 and gave its findings on the methodology to be adopted by the DGAP.

6. Subsequently, taking cognizance of observations of the Hon'ble High Court in order dated 29.01.2024, the CCI vide letter F. No. M/AP/28/Meeting/2023-24

Sectt. /263-305 dated 20.03.2024 directed the DGAP for re-investigation of the case under Rule 129 of the CGST Rules, 2017.

7. In the view of the above, a Notice dated 09.04.2024 was issued under Rule 129 of the CGST Rules, 2017 calling upon the Respondent to reply as to whether they admit that the benefit of ITC had not been passed on to their customers by way of commensurate reduction in prices and if so, to *suo moto* determine the quantum thereof and indicate the same in their reply to the Notice as well as furnish all supporting documents. In response, the Respondent submitted the replies and required documents vide letters and emails dated 02.09.2024, 09.09.2024 and 24.09.2024.

8. Upon completion of the investigation, the DGAP submitted its Report dated 27.11.2024 to the Principal Bench, GSTAT, the relevant findings of which are summarized below:

    8.1. The DGAP conducted the investigation for the period 01.07.2017 to 02.01.2020, i.e., till the date of receipt of the Occupancy Certificate.

    8.2. Prior to the introduction of GST, the Respondent was not eligible to avail full credit seamlessly on all the input goods and services in respect of the project. However, in the post-GST regime, the Respondent became eligible to avail ITC of GST paid on the inputs and input services used in the construction of the project. Accordingly, the benefit of additional ITC accrued to the Respondent after implementation of GST.

    8.3. The calculation of the profiteered amount, based on the data submitted by the Respondent, has been worked out as tabulated in Table-A below:

Table- A

Particulars		**Value**
Purchase Value of the project during the pre-GST period	A	Rs. 29,07,495
CENVAT/Service Tax Credit paid on Input Services	B	-
ITC of VAT paid on purchase of Inputs	C	-
Total CENVAT/ITC	**D= B+C**	-
Percentage of Total Credit to Construction Cost during pre-GST	**E= D/A**	**0.00%**
Purchase Value of the project during the post-GST period	F	Rs. 95,71,143
Commensurate ITC	G= E*F	-
ITC of GST actually availed	H	Rs. 10,83,190
Total savings on account of additional ITC benefit	**I= H-G**	**Rs. 10,83,190**
Total Saleable Area (in sq.ft.)	J	8,154 Sq. Ft.
Total Sold Area upto issue of Occupancy Certificate (in sq.ft)	K	5,504 Sq. Ft.
Amount Profiteered per sq. ft.	**L= I/J**	**Rs. 132.84**
Total Amount Profiteered from the Total Sold Area of the Project situated at 578, Lake Gardens, Kolkata-700045	M= L*K	**Rs. 7,31,160**

8.4. From Table-A above, it is evident that the Respondent was not eligible to avail any ITC in the pre-GST period, whereas it became eligible to avail ITC of GST paid on the inputs and input services in the post-GST period. Therefore, the ITC available in the post-GST regime constituted an additional benefit to the Respondent, which 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.

8.5. As regards the allegation of profiteering, the DGAP observed that the Respondent had benefited from the additional ITC amounting to Rs.

7,31,160/-, on which GST @12%, amounting to Rs. 87,739/-, was also leviable. Accordingly, the total profiteered amount was computed at Rs. 8,18,899/-, which was required to be passed on to the eligible homebuyers. Since the Occupancy Certificate was received on 02.01.2020, the investigation was concluded upto the date of receipt of the Occupancy Certificate.

9. With effect from 01.10.2024, the Government of India, on the recommendations of the GST Council, empowered the Principal Bench of the GST Appellate Tribunal (GSTAT), constituted under sub-section (3) of Section 109 of the CGST Act, 2017, to adjudicate anti-profiteering cases in terms of Notification No. 18/2024–Central Tax dated 30.09.2024.

10. The above Report was initially received by the Principal Bench, GSTAT, on 20.12.2024 for adjudication under Section 171 of the CGST Act, 2017. A Notice dated 28.10.2025 was issued to the Respondent directing it to file written submissions on the DGAP Report.

11. The Respondent vide submissions and affidavits dated 15.05.2026 contended as follows:

    11.1. The Respondent submitted that the allegation of profiteering of Rs. 8,18,899/- was factually incorrect as it had passed on the benefit of ITC to the flat purchasers, not by way of reduction in the agreement value, but by undertaking substantial structural upgrades and fitting works in the individual flats free of cost. It was submitted that the monetary value of such additional works was commensurate with, and exceeded, the alleged profiteering amount.

11.2. It was further submitted that contractor invoices, material purchase bills and project accounts evidencing such expenditure were available.

11.3. The Respondent submitted that Section 171(1) of the CGST Act, 2017 mandates passing on the benefit of ITC by way of commensurate reduction in prices and does not prescribe an exclusive mode or mechanism for passing such benefit. It was contended that the purchasers had received a commensurate economic benefit through the additional structural upgrades and fittings.

11.4. The Respondent submitted that the observations of the Hon'ble Delhi High Court in its judgment dated 29.01.2024 regarding substitution of price reduction by free supply were distinguishable and did not apply to the facts of the present case. It was contended that the additional structural works and fittings were specific, identifiable, completed and delivered to the purchasers, supported by contractor invoices and project accounts, and were capable of being precise quantification. It was further submitted that the said observations are the subject matter of Special Leave Petitions before the Hon'ble Supreme Court.

11.5. The Respondent submitted that the Hon'ble Delhi High Court had acknowledged that no fixed formula could be laid down for determination of profiteering and that the real estate sector requires a different approach. It was contended that reduction in the agreement value after execution of sale agreements may lead to legal and commercial complications and that delivering additional works constituted a commercially reasonable mode of passing on the benefit.

11.6. The Respondent further submitted that the Hon'ble Delhi High Court had recognised that suppliers may raise prices based on commercial factors. It was contended that the expenditure incurred on additional structural fittings and upgrade works directly offset the ITC benefit and that the ITC savings had been utilised for the benefit of the purchasers.

11.7. The Respondent submitted that it had not retained the ITC benefit and, therefore, there was no unjust enrichment, as the benefit had been translated into additional construction works for the flat purchasers.

11.8. The Respondent further submitted that in earlier FMCG anti-profiteering cases, passing on the benefit by way of additional grammage had been accepted and contended that the same principle of passing on the benefit should also apply to the real estate sector.

12. On the hearing held on 20.05.2026 in the matter, the learned Departmental Representative submitted that, after considering the additional works carried out by the Respondent, the profiteered amount remained payable only in respect of two homebuyers. It was further submitted that no amount was payable in respect of one apartment as it was owned by the Respondent, whereas, in respect of the complainant's apartment, the profiteered amount reflected in the latest DGAP Report did not account for the commensurate works carried out by the Respondent. Accordingly, the Respondent was directed to file a consolidated and updated

affidavit in tabular form indicating the profiteered amount computed by the DGAP, the value of the additional works carried out, and the balance amount, if any, payable to each homebuyer.

13. The Respondent, in response, vide submissions dated 29.06.2026 submitted the following:

    13.1. The Respondent filed an affidavit pursuant to the directions of this Tribunal in connection with the anti-profiteering proceedings relating to the project "Baidyanath" situated at 578, Lake Gardens, Kolkata. It was submitted that the project comprised 8 flats, out of which 2 flats were allotted to the landowner, 5 flats were sold/allotted to homebuyers (Flat Nos. 3 to 7) and 1 flat (Flat No. 8) was retained by the Respondent.

    13.2. It was submitted that, as per the computation made during the investigation, the DGAP had determined the total profiteering/ITC benefit attributable to the project at Rs. 7,31,160/-. The Respondent further submitted that it had passed on the benefit of ITC by carrying out additional works for the homebuyers without charging any additional amount and that the aggregate amount attributable to such additional works was Rs. 10,14,826/-.

    13.3. The Respondent submitted that, after comparing the proportionate ITC benefit attributable to each homebuyer with the value of the additional works carried out, the following position emerged:

S. No.	Flat Owner	Flat No.	Proportionate ITC Benefit (Rs.)	Benefit passed through Additional Works (Rs.)	Excess (+)/Shortfall (-) (Rs.)
1 .	Shyonee Roy	3	1,73,621.88	1,81,840.00	(+) 8,218.12
2 .	Mr. Pradyot Kumar Ghosh	4	1,08,928.80	4,75,000.00	(+) 3,66,071.20
3 .	Dr. Goutam Dutta & Brita Dutta	5	1,73,621.88	-	(-) 1,73,621.88
4 .	Mr. Amit Kumar Singh	6	1,08,928.80	1,93,000.00	(+) 84,071.20
5 .	Mrs. Manika Chatterjee	7	1,66,050.00	1,64,986.00	(-) 1,064.00
	Total		**7,31,151.36**	**10,14,826.00**	**(+) 2,83,674.64**

13.4. On the basis of the above computation, the Respondent submitted that no further amount remained payable to the homebuyers as the benefit computed by the DGAP had already been passed on through the additional works carried out for the homebuyers.

14. Hearings in the matter were held on 28.10.2025, 07.01.2026, 18.02.2026, 20.03.2026, 28.04.2026, 15.05.2026, 20.05.2026, 11.06.2026 and 14.07.2026. Shri Rahul Rao Gautam, Additional Assistant Director, Authorised Representative appeared on behalf of the DGAP. Shri Arup Das Gupta, learned Advocate appeared on behalf of the Respondent.

15. It is also pertinent to note that despite being duly notified of the proceedings, the Complainant did not appear before this Tribunal on any of the dates fixed for

hearing. The matter has, therefore, been considered and decided on the basis of the material available on record, including the reports of the DGAP and the submissions made by the Respondent.

Issues for Determination

16. Upon consideration of the DGAP Reports, the submissions of the Respondent, the directions issued by this Tribunal during the course of proceedings, and the material available on record, the following issues arise for determination:

i. Whether the Respondent became entitled to the benefit of additional ITC after the introduction of GST and whether such benefit was required to be passed on to the homebuyers in terms of Section 171 of the CGST Act, 2017?

ii. Whether the Respondent has passed on the benefit of such additional ITC to the eligible homebuyers by way of commensurate reduction in prices, or whether the additional structural works and fittings carried out by the Respondent amount to passing on such benefit?

iii. If the benefit has not been passed on in accordance with Section 171 of the CGST Act, 2017, whether any amount is still payable by the Respondent to the eligible homebuyers?

iv. Whether the Respondent is liable to pay interest on the profiteered amount and, if so, from which date and at what rate?

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

Determination of Issue (i)

17. Before adverting to the facts of the present case, it would be apposite to refer to Section 171(1) of the CGST Act, 2017, which embodies the statutory obligation to pass on the benefit of reduction in tax or availability of ITC to the recipients. For ready reference, Section 171(1) of the CGST Act, 2017 is reproduced below:

> *Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices."*

18. A plain reading of the above provision makes it evident that where a supplier becomes entitled to the benefit of ITC on account of the implementation of GST, such benefit is required to be passed on to the recipients by way of commensurate reduction in prices. Thus, Section 171 casts a statutory obligation upon every registered supplier to ensure that the benefit arising from the availability of additional ITC is not retained by the supplier but is passed on to the recipients.

19. In the present case, it is not in dispute that prior to the implementation of GST, the Respondent was not eligible to avail CENVAT credit of Central Excise Duty or VAT credit in respect of the project under consideration. Upon the introduction of GST with effect from 01.07.2017, the Respondent became eligible to avail ITC of

GST paid on the inputs and input services used in the construction of the project. The DGAP has also computed the additional ITC accruing to the Respondent after implementation of GST.

20. It is pertinent to note that the Respondent has not disputed either its entitlement to the additional ITC or the computation of such benefit by the DGAP. The Respondent's case is not that no additional ITC accrued to it; rather, its contention is that the benefit of such ITC has already been passed on to the homebuyers by carrying out additional structural works and fittings without charging any additional consideration. The said contention pertains to the mode and manner of passing on the benefit and shall be examined while dealing with Issue No. (ii).

21. In view of the foregoing discussion, we hold that the Respondent became entitled to the benefit of additional ITC upon the implementation of GST, and such benefit was required to be passed on to the eligible homebuyers in accordance with Section 171(1) of the CGST Act, 2017. Accordingly, Issue No. (i) is answered in the affirmative.

<u>Determination of Issue No. (ii)</u>

22. The principal contention of the Respondent is that although it did not reduce the prices charged from the homebuyers, it had nevertheless passed on the benefit of the additional ITC by carrying out structural upgrades and additional fitting works in the flats without charging any additional consideration. According to the Respondent, the value of such additional works exceeded the profiteered amount

computed by the DGAP and, therefore, the requirement of Section 171 of the CGST Act, 2017 stood complied with.

23. The scope and import of the aforesaid statutory requirement has been authoritatively explained by the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)***. Since both the Respondent and the DGAP have placed reliance upon the said judgment, the relevant observations contained in paragraphs 131 to 135 thereof are reproduced below:

131. In the present instance, the legislative mandate is that reduction of the tax rate or the benefit of Input Tax Credit must not only be reflected in reduction of prices but it must also reach the recipient of the goods or services. Such a mandate cannot be tampered with by the supplier by substituting the benefit in the form of reduction of actual price with any other form such as increase in volume or weight or by supply of additional or free material or festival discount like Diwali Dhamaka or cross-subsidisation.

132. Further, the requirement that the benefit of the rate reduction and Input Tax Credit reach the final consumer by way of cash in hand through commensurate reduction in prices, cannot be said to be manifestly arbitrary. No fundamental or other rights of any of the petitioners are being affected in any manner by requiring that the benefit in reduction of tax rate or ITCs, be passed on to the recipients by way of commensurate reduction in prices.

133. This Court is in agreement with the submission of Mr. Zoheb Hossain, learned counsel for the Respondents, that the benefit of tax reduction has to be *passed on at the level of each supply of SKU to each buyer and in case it is not passed on, the profiteered amount has to be calculated on each SKU.*

134. The contention of the learned counsel for the Petitioners that it is legally impossible to pass on the benefits by reducing the price of goods in cases of low priced products is untenable in law. As pointed out by Mr. Zoheb Hossain, learned counsel for the Respondents, the provisions of the Legal Metrology (Packaged Commodities) Rules, 2011 are applicable. In cases for period prior to 31st December, 2017, the erstwhile Rule 2(m) of the Legal Metrology (Packaged Commodities) Rules, 2011 which provided detailed instructions for rounding off of the MRP would be applicable. Similarly, Rule 6(1)(e) of the above Rules as amended in 2017 with effect from 01st January, 2018 to 31st March, 2022 provides that the retail price of the package shall clearly indicate that it is the MRP inclusive of all taxes and the price in rupees and paise be rounded off to the nearest rupee or 50 paise would be applicable. Consequently, there would be no legal impossibility in reducing the MRP even in such cases. There is nothing inconsistent in Section 171 with such rounding off.

135. This Court is in agreement with the submissions of the respondents and the learned Amicus Curiae that bearing in mind the very nature of the Act, 2017, it is not proper or feasible to contemplate any specific period of time for application of the reduced price, as the same has to take effect so long as the direct relation between the reduction of tax rate or the benefit of Input Tax Credit exists and there is no other factor effecting/countering the same. If, conceptually, the reduction of tax rate has taken place on a specified date and there are no *justified variations in the cost price or other factors for offsetting such reduction in the prices for a particular period of time, clearly for that period a reduced price must govern the transaction. This Court is of the view that providing for a particular period of time for operation of the provisions would be not be in conformity with the scheme and intent of the Act, 2017 itself.*

24. The above observations leave no manner of doubt that Section 171(1) requires the benefit of ITC to be passed on by way of commensurate reduction in prices. The Hon'ble High Court has categorically held that the supplier cannot substitute such reduction in prices by extending the benefit in any other form, such as increase in quantity, supply of free material or any other collateral benefit. The Court has further held that the requirement of passing on the benefit through commensurate reduction in prices is neither arbitrary nor impracticable and has expressly rejected the contention that such benefit may be passed on through any alternate mechanism.

25. The principal defence raised by the Respondent is that the additional structural works and fittings carried out in the flats constitute sufficient compliance with Section 171 of the CGST Act, 2017. However, in view of the categorical pronouncement of the Hon'ble Delhi High Court extracted above, such contention cannot be accepted. The statute specifically requires that the benefit of ITC shall reach the recipient by way of commensurate reduction in prices, and the supplier is not at liberty to substitute the prescribed mode by providing additional works or other benefits, irrespective of the value thereof.

26. The Respondent has also sought to distinguish the observations of the Hon'ble Delhi High Court by contending that the judgment dealt with FMCG products, whereas the present case relates to a real estate project. We are unable to accept the said submission. The observations contained in paragraphs 131 to 135 of the judgment are an interpretation of Section 171(1) of the CGST Act, 2017, and are not confined to any particular sector. The statutory mandate remains the same irrespective of the nature of supply. Once the legislature has prescribed the manner in which the benefit is to be passed on, the same cannot be substituted by any alternate mode devised by the supplier.

27. We are, therefore, of the considered view that the additional structural works and fittings carried out by the Respondent, even if actually executed and even if their value exceeds the amount of additional ITC, cannot be treated as passing on the benefit in the manner contemplated under Section 171(1) of the CGST Act, 2017. Consequently, the Respondent's contention that the benefit stood passed on through such additional works cannot be accepted.

28. Accordingly, Issue No. (ii) is answered against the Respondent. We hold that the additional structural works and fittings carried out by the Respondent do not amount to passing on the benefit of ITC by way of commensurate reduction in prices as mandated under Section 171(1) of the CGST Act, 2017.

<u>Determination of Issue (iii)</u>

29. Having held that the additional structural works and fittings carried out by the Respondent do not amount to passing on the benefit of ITC in the manner contemplated under Section 171(1) of the CGST Act, 2017, the next question that arises is whether the Respondent has discharged its statutory obligation under the said provision.

30. The DGAP, in its Investigation Report dated 27.11.2024, has determined the profiteered amount on the basis of the methodology adopted pursuant to the judgment of the Hon'ble Delhi High Court. The Respondent has not disputed the computation of the additional ITC or the methodology adopted by the DGAP. Its defence is confined to the contention that the benefit stood passed on by carrying out additional structural works and fittings for the homebuyers.

31. Since we have already held while deciding Issue No. (ii) that the additional structural works and fittings cannot be treated as passing on the benefit in the manner prescribed under Section 171(1) of the CGST Act, 2017, the Respondent cannot be said to have discharged its statutory obligation under the said provision.

32. Accordingly, Issue No. (iii) is answered against the Respondent. The Respondent remains liable to pass on the benefit of the additional ITC to the eligible homebuyers in accordance with Section 171 of the CGST Act, 2017. The quantum payable and the consequential directions shall be dealt with in the succeeding paragraphs.

33. Having held that the Respondent has failed to pass on the benefit of ITC by way of commensurate reduction in prices, the next issue for consideration is whether GST is liable to be included in the profiteered amount. The DGAP has computed the profiteered amount by applying the ratio of additional ITC to the purchase value of goods and services, which is exclusive of GST. However, the consideration collected by the Respondent from the homebuyers was inclusive of GST. Consequently, the amount recovered by the Respondent from the homebuyers necessarily included the GST component. Therefore, the profiteered amount, being part of the consideration realised from the homebuyers, is liable to be returned along with the corresponding GST component.

34. In this regard, reference may be made to the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)***, wherein the Hon'ble High Court, while dealing with the inclusion of GST in the profiteered amount, observed in paragraph 157 as under:

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

35. In view of the above, we hold that the Respondent is liable to pass on the profiteered amount of Rs. 7,31,160/-, together with GST @12% amounting to Rs. 87,739/-, aggregating to Rs. 8,18,899/-, to the eligible homebuyers.

Determination of Issue No (iv): Interest

36. The next issue for consideration is whether interest is payable on the profiteered amount. Rule 133(3)(b) of the CGST Rules, 2017 provides that where the benefit of reduction in tax or ITC has not been passed on by way of commensurate reduction in prices, the registered person shall return the amount not passed on together with interest at the prescribed rate from the date of collection of the higher amount till the date of its return.

37. In this regard, 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 High Court, while considering the levy of interest, observed in paragraph 153 as under:

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 ITC 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.*"

38. Rule 133(3)(b) of the CGST Rules, 2017 provides as under:

Return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent 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."

39. In view of the above statutory provision and the law laid down by the Hon'ble Delhi High Court, the Respondent is liable to pay interest at the rate of 18% per annum on the profiteered amount from the date of collection of the higher amount from the homebuyers till the date of its actual payment.

Determination of Issue No. (v): Penalty

40. With regard to the imposition of penalty under Section 171(3A) of the CGST Act, 2017, the said provision was inserted by the Finance (No. 2) Act, 2019 and came into force with effect from 01.01.2020, which reads as under:

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

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

41. In the present case, the period of investigation extends from 01.07.2017 to 02.01.2020. The material available on record shows that the construction of the project had been completed prior to the coming into force of Section 171(3A) on 01.01.2020 and the Respondent has also applied for the Occupation prior to this date.Thus, the profiteering determined in the present proceedings substantially pertains to a period prior to the enforcement of the penalty provision.

42. Although the proceedings have culminated just one day after the insertion of Section 171(3A), the conduct constituting the alleged contravention had already concluded prior to the coming into force of the said provision. In the peculiar facts and circumstances of the present case, where the project had been completed and the Respondent had already applied for the Occupancy Certificate before 01.01.2020, we are of the considered view that imposition of penalty under Section 171(3A) would not be warranted. Accordingly, no penalty under Section 171(3A) of the CGST Act, 2017 is leviable in the facts of the present case.

ORDER

43. For the reasons recorded hereinabove, we are satisfied that the Respondent failed to pass on the benefit of additional ITC in the manner mandated under Section 171(1) of the CGST Act, 2017.

44. Accordingly, the Respondent is directed to pass on the profiteered amount of Rs. 7,31,160/-, along with GST @12% amounting to Rs. 87,739/-, aggregating to Rs.

8,18,899/-, to the eligible homebuyers, as determined by the DGAP. The said amount shall be paid together with interest at the rate of 18% per annum in terms of Rule 133(3)(b) of the CGST Rules, 2017, from the date of collection of the higher amount till the date of its actual payment.

45. Compliance with this Order shall be reported to this Tribunal within such period as prescribed under the applicable statutory provisions.

46. The Registry is directed to supply a copy of this Order to the parties as well as the jurisdictional CGST/SGST Commissioner concerned for information and necessary action in accordance with law.

47. The matter is disposed of accordingly.

48. Order pronounced in the open court.

(Sh. A. Venu Prasad)

Dated: 28.07.2026