

**GSTAT**  
**Single Bench Court No. 3**

**NAPA/51/PB/2025**

DGAP

.....Appellant

**Versus**

Ireo Pvt. Ltd. AND Ireo Residence Company Pvt. Ltd.  
"Gurgaon Hills & Grand Hyatt Gurgaon  
Residences"

.....Respondent

**Counsel for Appellant**

**Counsel for Respondent**

**Hon'ble Sh. Anil Kumar Gupta, Member (Technical)**

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

**whether remand order : No**

**Order reference no. : ZA071025000149H**

**Date of order : 28/10/2025**

|    |                                                                                                                                                                                                 |                   |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 1. | GSTIN/Temporary ID/UIN - 06AAACO6644B1ZS                                                                                                                                                        |                   |
| 2. | Appeal Case Reference no. - NAPA/51/PB/2025                                                                                                                                                     | Date - 09/01/2025 |
| 3. | Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544                                                                                                                                  |                   |
| 4. | Name of the respondent -<br>1. Ireo Pvt. Ltd. ("Gurgaon Hills" ) , gaurav.bansal@ireo.in<br>2. Ireo Residences Pvt. Ltd. ("Grand Hyatt Gurgaon Residences" ) ,<br>Drishty.Sakhuja@reinheads.com |                   |

|                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |        |
|-------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 5.                      | Order appealed against -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |        |
|                         | (5.1) Order Type -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |        |
|                         | (5.2) Ref Number -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Date - |
| 6.                      | Personal Hearing - 28/10/2025 09/10/2025 11/09/2025 28/08/2025 14/08/2025<br>08/08/2025 08/07/2025                                                                                                                                                                                                                                                                                                                                                                                                                  |        |
| 7.                      | Status of Order under Appeal - Confirmed – Order under Appeal is confirmed                                                                                                                                                                                                                                                                                                                                                                                                                                          |        |
| 8.                      | Order in brief - DGAP on the basis of investigation concluded that post- GST, no benefit of reduction in rate of tax or benefit of Input Tax Credit accrued to the Respondent in respect of the project “Gurgaon Hills” and “Grand Hyatt Gurgaon Residences”. Therefore, the tribunal finds that the provisions of Section 171 of the CGST ACT, 2017 are not attracted in the Respondent Project “Gurgaon Hills” and “Grand Hyatt Gurgaon Residences”. The proceedings in the present case are accordingly dropped. |        |
| <b>Summary of Order</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |        |
| 9.                      | Type of order : Closure Report                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |        |

Place :DELHIPB

Signature

Date : 28.10.2025

DELHIPB Sandeep

Designation : Stenographer/Law researcher

Jurisdiction :Delhi (PB)

### **Final ORDER**

1. This proceeding arises out of Investigation Order No. 14/2019 dated 21.10.2019, issued by the *National Anti-Profiteering Authority*, under the provisions of *Section 171*

of the *Central Goods and Services Tax Act, 2017* (hereinafter referred to as "the Act") read with *Rule 133(5)(a)* of the *Central Goods and Services Tax Rules, 2017* (hereinafter referred to as "the Rules"). The said order directed investigation into all projects being executed by the Respondent, M/s Ireo Grace Realtech Pvt. Ltd., for alleged violation of the Anti-Profiteering provisions of the Act.

2. Pursuant to the said direction, the *Directorate General of Anti-Profiteering (DGAP)* conducted detailed investigations into two projects of the Respondent namely "Gurgaon Hills" executed by M/s Ireo Pvt. Ltd. and "Grand Hyatt Gurgaon Residences" executed by M/s Ireo Residences Pvt. Ltd. and submitted its first report dated 31.12.2020 under *Rule 129(6)* of the CGST Rules, 2017.
3. Subsequently, upon consideration of the principles of law enunciated by the *Hon'ble High Court of Delhi* in *Writ Petition No. 7743/2019 and connected matters (Reckitt Benckiser India Pvt. Ltd. v. Union of India & Ors.)*, decided on 29.01.2024, wherein the methodology adopted by the NAA and DGAP for real estate cases was extensively reviewed, the Commission directed DGAP to carry out a re-investigation of the present matter.

The relevant part of the Hon'ble Delhi High Court's judgment dated 29.01.2024 in *W.P. (C) No. 7743/2019* and connected matters, which have a direct bearing on the method of computation of profiteering in real estate matters is reproduced here:

*(i) Para 124. NO FIXED/UNIFORM METHOD OR MATHEMATICAL FORMULA CAN BE LAID DOWN FOR DETERMINING PROFITEERING*

*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.*

*(ii) Para 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 01<sup>st</sup> 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.*

Further, the Hon'ble Delhi High Court, vide Para 129 of its Order 29.01.2024 observed that:

*"However, this Court finds that methodology adopted by NAA and DGAP to arrive at 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-GST and post-GST period. This Court is in agreement with the contention of the learned counsel of 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 ITC 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 the Learned Counsel Petitioners that one needs to calculate the total savings on account of introduction of Goods & Services 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 aforesaid directions/interpretations into account."*

4. Accordingly, for re-investigation a notice under Rule 129 of the CGST Rules was issued by DGAP to the Respondent on 10.04.2024, followed by multiple communications calling for relevant records, accounts, and explanations. The Respondent furnished detailed responses vide letters and emails dated 29.04.2024 to 29.07.2025, along with statutory returns (GSTR-1, GSTR-3B, GSTR-9), input tax records, balance sheets, and project-specific CENVAT and GST ledgers.

5. DGAP, in accordance with the High Court's directions, adopted a revised project-wise approach focusing on the *ratio of Input Tax Credit (ITC) to total purchase value* rather than comparing turnover. The resultant findings show a reduction, rather than enhancement, in the proportion of ITC after the

introduction of GST.

**6. Project Name- "Gurgaon Hills"**

**6.1** The project "Gurgaon Hills" consists of 287 units having an aggregate saleable area of 15,48,523 sq. ft.. The project received its Occupation Certificate (OC) on 29.06.2022, issued by the Director, Town and Country Planning, Government of Haryana. Out of the total 287 units, 182 units were sold only after the issuance of the OC.

**6.2** It is significant to note that under Schedule III read with Paragraph 5(b) of Schedule II to the Act, "sale of building" after the issuance of a completion certificate ceases to be a taxable supply. Consequently, sales made post-OC are deemed transactions in immovable property and hence, lie outside the purview of GST.

**6.3** Therefore, in accordance with Sections 17(2) and 17(3) of the Act, the input tax credit attributable to these unsold units stands mandatorily reversed. As such, only those units sold prior to the OC date form part of the computation for the present investigation.

**6.4** The period under investigation thus extends from 01.07.2017 to 29.06.2022, covering GST-related



transactions undertaken by the Noticee prior to the OC. The DGAP also noted that before GST implementation, the Noticee was eligible only for CENVAT credit on services. The Noticee was also enrolled under the *Haryana VAT Amnesty Scheme @1.05%*, under which VAT input credits were not admissible.

**6.5** From the information submitted by the Noticee for the period April, 2012 to June, 2022, the details of the input tax credit availed by them and their purchase value of goods and services for the project "Gurgaon Hills", the ratio of input tax credit to the purchase value of Goods and Services, during the pre-GST (April, 2012 to June, 2017) and post-GST (July, 2017 to 29 June, 2022) periods are calculated and furnished in table- 'A' below:

**Table-‘A’**                      **(Amount in Rs)**

| Sl. No. | Particulars                               | Pre-GST Period            | Post-GST Period             |
|---------|-------------------------------------------|---------------------------|-----------------------------|
|         |                                           | (April 2012 to June 2017) | (July 2017 to 29 June 2022) |
| 1       | Credit of Central Excise Duty and Service | 14,36,08,290              | -                           |

|   |                                                                       |                |              |
|---|-----------------------------------------------------------------------|----------------|--------------|
|   | Tax availed (A)                                                       |                |              |
| 2 | Credit of VAT availed (B)                                             | -              | -            |
| 3 | ITC of GST Availed (C)                                                | -              | 1,70,11,835  |
| 4 | Total Credit Availed (D = A+B+C)                                      | 14,36,08,290   | 1,70,11,835  |
| 6 | Purchase Value of Goods and Services (Excluding Taxes and Duties) (E) | 4,85,67,63,482 | 87,33,34,360 |
|   | Ratio of Credit Availed to Purchase Value in %                        | 2.96           | 1.95         |

**6.6** The Noticee has availed CENVAT Credit of Rs.14,36,08,290/- in respect of the project "Gurgaon Hills" from April 2012 to June 2017. Noticee has availed ITC Credit of Rs. 9,45,23,757/- in respect of the project "Gurgaon Hills" from July 2017 to 29 June 2022 in post-GST period. Further, the Noticee has submitted that

ITC of Rs. 4,91,91,841/- was reversed in year 2018-2019 on account of ineligible credit and the Noticee has not taken re-credit of the same at any later date. Also, the Noticee has submitted the copy of DRC-03 form dated 12.12.2022 for reversal of ITC of Rs. 3,86,06,652/- on account of receipt of Occupancy Certificate. In addition to this, the noticee has availed the amount of Rs. 1,02,86,571/- as transitional credit in respect of the inputs lying in stock needs to be added to determine the amount of total ITC availed as attributed to the introduction of GST. Therefore, total ITC availed in post-GST period amounts to Rs. 1,70,11,835/- (Rs. 9,45,23,757 + Rs. 1,02,86,571 - Rs. 4,91,91,841 - Rs. 3,86,06,652) and the same has been considered for the computation of profiteered amount.

**6.7** The DGAP also independently verified that the Noticee, being engaged in multiple projects, accurately apportioned construction-related costs to "Gurgaon Hills" based on project-area ratio. The ratio adopted (project area of 15,48,523 sq. ft. vis-à-vis total portfolio area of 64,81,603 sq. ft.) was 23.891% as per DGAP's proportional method.

6.8 From the above computation, it is observed that the effective ITC ratio dropped from 2.96% in pre-GST to 1.95% post-GST. Therefore, *no additional benefit accrued to the Noticee* on account of GST implementation which could trigger any obligation under Section 171 of the CGST Act.

7. Project Name- "Grand Hyatt Gurgaon Residences"

7.1 The Co-Noticee, M/s Ireo Residences Pvt. Ltd., in response to the Notice dated 10.04.2024, submitted detailed replies vide several letters/emails dated from 29.04.2024 to 10.12.2024. According to these submissions, the development of the project "Grand Hyatt Gurgaon Residences," situated at Village Ghata, Tehsil Sohna, Sector 58, Gurugram, was scrapped. Subsequently, the Co-Noticee entered into a legally registered Sale Agreement dated 17 November 2023, conveying the Project Land and associated development rights to M/s Oberoi Realty Limited, who is to undertake and complete the development of a new project on the said lands.

7.2 Further, the Co-Noticee has produced evidence of due consent from existing buyers,

documented via duly signed Consent Letters authorizing the transfer of rights and continued delivery of premises under the new project initiated by Oberoi Realty Limited. The sample Consent Letter clarifies that the Co-Noticee was unable to complete the original development and, following consultations with the buyers, identified Oberoi Realty as a competent developer to take over the project land (registered under Serial No. 15771 at the Sub-Registrar's office).

**7.3** As per correspondence dated 10.12.2024, it is confirmed by the Co-Noticee that development of the new project (in lieu of the scrapped "Grand Hyatt Gurgaon Residences") has not yet commenced.

**7.4** Pursuant to the Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, applicable from 01.04.2019, the GST rate for construction of residential apartments (excluding ongoing projects) is stipulated as follows:

| <b>Description</b>                                      | <b>Effective rate of GST<br/>(after deduction of<br/>value of land)</b> |
|---------------------------------------------------------|-------------------------------------------------------------------------|
| Construction of<br>affordable residential<br>apartments | 1% without ITC on total<br>consideration                                |

|                                                                                     |                                       |
|-------------------------------------------------------------------------------------|---------------------------------------|
| Construction of residential apartments other than affordable residential apartments | 5% without ITC on total consideration |
|-------------------------------------------------------------------------------------|---------------------------------------|

**7.5** Accordingly, residential projects commenced post 31.03.2019, such as the envisaged development by Oberoi Realty Limited, are not eligible for input tax credit on inputs and input services relating to the project.

**7.6** Consequently, the new project intended to replace the scrapped "Grand Hyatt Gurgaon Residences" project lies entirely outside the purview of Section 171 of the CGST Act, 2017, as no ITC benefit can accrue or be passed on in such projects.

**8.** The tribunal has considered the DGAP's Report dated 19.08.2025 in its hearing on 09.10.2025. During the hearing, the DGAP's representative submitted that the investigation on these projects was ordered by CCI and there was no direct complaint received against these projects. The tribunal needs to determine as to whether there was any reduction in the GST rate or benefit of ITC and whether the benefit of rate

reduction or ITC was passed on or not to the recipients as provided under section 171 of the CGST Act, 2017.

9. The tribunal find that the DGAP has verified the documents submitted by the Repspondent as well as statutory returns filled by him, the methodology applied by DGAP for calculating the ratio of ITC to total construction cost, in line with the Hon'ble High Court's ruling, appropriately captures the economic effect of GST implementation on the project's cost structure and ensures that profiteering analysis remains contextual.

10. In view of the above, it can be concluded that post- GST, no benefit of reduction in rate of tax or benefit of Input Tax Credit accrued to the Respondent in respect of the project "Gurgaon Hills" and "Grand Hyatt Gurgaon Residences". Therefore, the tribunal finds that the provisions of Section 171 of the CGST ACT, 2017 are not attracted in the Respondent Project "Gurgaon Hills" and "Grand Hyatt Gurgaon Residences". The proceedings in the present case are accordingly dropped.

11. A copy of this order be supplied to the respondent and the concerned Commissioner

CGST/SGST for necessary action.

12. Final order signed, dated and pronounced in the open court today.

Sd/-  
(Sh. Anil Kumar Gupta)

**Dated: 28.10.2025**