

GSTAT
Single Bench Court No. 3

NAPA/131/PB/2025

DGAP

.....**Appellant**

Versus

ARKADE DEVELOPERS PVT. LTD.

.....**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. : ZA070010126000115H

Date of order : 20/01/2026

1.	GSTIN/Temporary ID/UIN - 27AAACA3578Q1Z4	
2.	Appeal Case Reference no. - NAPA/131/PB/2025	Date - 20/12/2024
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. Arkade Developers Pvt. Ltd. , accounts@arkade.in , 022-28863787	
5.	Order appealed against -	
	(5.1) Order Type -	

	(5.2) Ref Number -	Date -
6.	Personal Hearing - 20/01/2026 06/01/2026 29/10/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - The Tribunal accepts the DGAP report in full and finds no contravention of Section 171 CGST Act. Arkade Developers discharged its obligation by passing on excess ITC benefits to the complainant. Proceedings against Arkade Developers Limited are closed; no further action required. Order pronounced in open court today.	
Summary of Order		
9.	Type of order : Closure Report	

Place :DELHIPB

Signature

Date : 20.01.2026

DELHIPB Sandeep

Designation : Stenographer/Law researcher

Jurisdiction :Delhi (PB)

ORDER

1. The proceeding in the present case arises out of the investigation report dated 17.12.2024 submitted by the Director General of Anti-Profiteering ("DGAP") under Section 171 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") read with Rule 129 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules"). The investigation was initiated pursuant to a complaint referred by the Standing Committee on Anti-Profiteering following an application filed by Shri Pratik Poojary, R/o E33, Himalaya Society, Asalpha, Ghatkoppar West, Mumbai –

400086 (hereinafter referred to as the "Applicant"), alleging profiteering in respect of construction services supplied by Ms Arkade Developers Pvt. Ltd., (hereinafter referred to as the "Respondent"), Arkade House, Opposite Bhoomi Arkade, Near Children's Academy, A.S. Marg, Ashok Nagar, Kandivali East, Mumbai-400101, now operating as Arkade Developers Limited, by way of not passing on the benefit of input tax credit through commensurate reduction in price in the Respondent's project "Arkade Earth – Bluebell," Mumbai, in alleged contravention of Section 171 of the CGST Act, 2017.

2. The Standing Committee on Anti-Profiteering, having examined the Applicant's complaint under Rule 128 of the CGST Rules, in its meeting, formed the opinion that a *prima facie* case of profiteering existed. Consequently, the matter was referred to the Directorate General of Anti-Profiteering for detailed investigation to collect all necessary evidence to determine whether the benefit of input tax credit had been passed on by the Respondent to its customers. The DGAP accordingly initiated investigation and furnished its initial investigation report dated 31.01.2023, *inter alia* concluding that Section 171 of the CGST Act, 2017 had been contravened by the Respondent in the present case.
3. Subsequently, upon consideration of the principles of law enunciated by the Honourable High Court of Delhi in Writ Petition (Civil) 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 Competition Commission of India, vide letter dated 20.03.2024, directed DGAP to carry out re-investigation of the present matter in light of the said

judgment. The relevant principles of law from the Honourable Delhi High Court's judgment dated 29.01.2024 in W.P. (C) No. 7743/2019 and connected matters, which bear direct relevance to the method of computation of profiteering in real estate matters, are reproduced herein:

(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 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.

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. The DGAP conducted re-investigation and issued a Notice dated 15.04.2024 under Rule 129 of the CGST Rules to the Respondent, calling upon them to reply as to whether they admitted that the benefit of input tax credit had not been passed on to its customers by way of commensurate reduction in prices, and if so, to suo-moto determine the quantum thereof and indicate the same in its reply, along with furnishing all supporting documents. A parallel notice dated 15.04.2024 was also issued to Ms Echjay Forging Industries Pvt. Ltd. (hereinafter referred to as the "Co-Respondent"), being the landowner in the Respondent's project Arkade Earth Bluebell. The Respondent was provided an opportunity to inspect the non-confidential evidence and information furnished by the Applicant during the period 01.05.2024 to 02.05.2024, though such

opportunity was not availed by the Respondent. Similarly, the Co- Respondent was provided the same opportunity, which was not availed.

5. In response to the Notice dated 15.04.2024, the Respondent, vide multiple letters and email communications dated 06.05.2024, 15.05.2024, 04.06.2024, 18.06.2024, 03.07.2024, 13.11.2024, 21.11.2024, and 02.12.2024, submitted comprehensive documentary evidence and information, including: (i) GST Registration Certificate; (ii) GSTR-1, GSTR-3B, and GSTR-9 returns for the period July 2017 to March 2024; (iii) Tran-1 return filed for transitional credit; (iv) Electronic Credit Ledger records; (v) ST-3 returns and VAT returns for the pre-GST period (April 2016 to June 2017); (vi) Certified project-specific CENVAT, VAT, and GST credit ledgers; (vii) Sale agreements for all customers in the project; (viii) Audited balance sheets and profit-and-loss accounts for the financial years 2017-18 to 2022-23; (ix) Trial balances; (x) Architect's Certificates (Form-1) dated 31.03.2018; (xi) Approved project plan; (xii) Occupancy Certificate dated 12.04.2021 issued by the Municipal Corporation of Greater Mumbai; (xiii) Form 1, Form 3, and Form 5 submitted to RERA; (xiv) Declaration made in Annexure-IV to Notification No. 03/2019-Central Tax Rate dated 29.03.2019; and (xv) Bank statements and customer acknowledgement letters evidencing passing on of ITC benefit to the Applicant. The Co- Respondent similarly furnished comprehensive documentation including GSTR returns, RERA filings, list of buyers, sample sale agreements, Architect's Certificates, and Occupancy Certificate.
6. The DGAP, in its final report dated 17.12.2024, records that upon perusal of the Maharashtra RERA website records, it ascertained that the "Arkade Earth – Bluebell" project

comprises a total of 86 residential units, of which 27 units are attributable to the Co- Respondent and 59 units are attributable to the Respondent (RERA registration number P51800011586). Critically, the DGAP further determined that out of the Respondent's 59 units, only 1 unit (the Applicant's unit) was booked in the pre-GST period, while 58 units were booked in the post-GST regime. The Occupancy Certificate for the project was obtained on 12.04.2021 from the Municipal Corporation of Greater Mumbai. The DGAP's examination further revealed that 2 units of the Respondent's share and all 27 units of the Co- Respondent's share were sold post-Occupancy Certificate, and thus fall outside the scope of investigation as exempt supplies.

7. In accordance with Para 128(a) of the High Court's judgment and the provisions of Schedule III read with Sections 172-173 of the CGST Act, which pertain to reversal of input tax credit on exempt supplies, units sold after the Occupancy Certificate and units that remained unsold as on 12.04.2021 are outside the scope of Section 171 of the CGST Act, as no ITC benefit would accrue in respect of such units. Further, as detailed in Paras 22 and 23 of the DGAP report, the sale agreements for the 56 post-GST buyers who booked units prior to the Occupancy Certificate contain Clause 5, wherein the parties explicitly agreed that the total consideration was negotiated after accounting for the benefit of input tax credit under Section 171 of the CGST Act, 2017, and that no separate or further benefit was due, thereby confirming that the ITC benefit had already been passed on through commensurate price adjustments duly acknowledged by the buyers. Consequently, the investigation has been confined to the Applicant's unit and these 56 other post-GST buyers solely for computation purposes, though no contravention arises

for the latter due to the aforesaid contractual passing-on of benefits. The investigation period has been determined to span from 01.07.2017 to 12.04.2021, being the date of issue of the Occupancy Certificate.

8. The DGAP, in strict compliance with Para 129 of the High Court's ruling, which explicitly rejects the ITC-to-turnover ratio methodology and mandates an area-based computation approach, has adopted a project-wise methodology focusing on the ratio of Input Tax Credit to total purchase value, rather than turnover. Based on Chartered Accountant-certified project-specific financial data submitted by the Respondent, the DGAP has extracted and verified the following figures:

8.1 Pre-GST Period (April 2016 to June 2017)

- CENVAT credit availed by the Respondent: Rs. 11,71,694/-
- VAT input tax credit availed: Nil (Respondent was registered under VAT Composition Scheme under which input credit was not admissible)
- Total credit availed during pre-GST period: Rs. 11,71,694/-
- Purchase value of goods and services excluding taxes and duties: Rs. 1,02,43,842/-
- Ratio of Credit Availed to Purchase Value: 11.44%

8.2 Post-GST Period (01.07.2017 to 12.04.2021)

- ITC of GST availed by the Respondent: Rs. 3,51,20,448/-
- Transitional credit availed on goods lying in stock: Rs. 41,968/-

- Total ITC credit availed during post-GST period: Rs. 3,51,62,416/-
- Purchase value of goods and services excluding taxes and duties: Rs. 21,48,66,772/-
- Ratio of Credit Availed to Purchase Value: 16.36%.

8.3 The differential incremental input tax credit benefit accruing to the Respondent in the post-GST period, as compared to the pre-GST period, is thus **4.92 percentage points** (i.e., **16.36% minus 11.44% = 4.92%**). These certified figures have been verified by the DGAP and stand uncontested and undisputed by the Respondent.

8.4 Applying the area-based methodology endorsed by the High Court in Para 129, the DGAP has calculated the total monetary savings accruing to the Respondent from the introduction of GST in the post-GST period as follows:

- **Increase in ITC ratio: 4.92%**
- Total purchase value in the post-GST period: Rs. 21,48,66,772/-
- Total project-level savings: Rs. 1,05,71,445/- [Computation: 4.92% of Rs. 21,48,66,772/-]

8.5 The total constructed area of the "Arkade Earth – Bluebell" project is 40,076 square feet, as per certified architectural documentation. Dividing the total project-level savings by the total constructed area yields the per-square-foot benefit accruing uniformly to all eligible buyers:

- Per-square-foot benefit: Rs. **263.78 per square foot** [Computation: Rs. 1,05,71,445/- ÷ 40,076 sq. ft.]

8.6 The Applicant's residential unit comprises a covered/built-up area of 466 square feet, as per the booked

area specified in the sale agreement. Applying the uniform per-square-foot benefit to the Applicant's unit:

- Base profiteering amount for the Applicant: **Rs. 1,22,921/-** [Computation: 466 sq. ft. \times Rs. 263.78 per sq. ft.]
- GST @ 12% (effective rate on construction service applicable at the relevant time as per Notification No. 11/2017-Central Tax Rate dated 28.06.2017): **Rs. 14,751/-**
- Total profiteered amount: **Rs. 1,37,672/- (Rupees One Lakh Thirty-Seven Thousand Six Hundred Seventy-Two only)**

This computation stands mathematically unassailed and has been fully accepted by the Respondent in its written reply dated 03.12.2025.

9. Significantly, it stands recorded at Para 26 of the DGAP's report that, before concluding the investigation, the Respondent categorically informed the DGAP that it had already passed on the computed ITC benefit to the Applicant. In support of this assertion, the Respondent submitted:

- (i) Cheque No. **611785** dated **06.08.2021** drawn on Union Bank of India for a sum of **Rs. 1,40,732/-**, transferred as the benefit of GST Input Tax Credit to the Applicant;
- (ii) Copy of the Respondent's bank statement (entry dated 19.10.2021) reflecting and confirming the credit entry and fund transfer; and
- (iii) Signed acknowledgement letter from the Applicant evidencing receipt and encashment of the said cheque. The DGAP has verified and authenticated all these documentary proofs in the presence of the Respondent.

10. Notably, the amount passed on by the Respondent to the Applicant (Rs. 1,40,732/-) exceeds the DGAP-computed

profiteering amount of Rs. 1,37,672/- by a margin of Rs. 3,060/-. This demonstrates the Respondent's prudent intent to ensure that the Applicant received no less than the statutory entitlement under Section 171, and in fact, received marginally more than the computed benefit. This overpayment reflects the Respondent's commitment to full and fair discharge of its statutory obligations. The DGAP has verified and authenticated all these documentary proofs.

11. On the basis of the foregoing analysis, the DGAP concluded, at Para 28 of its report, that Section 171 of the CGST Act, 2017 has not been contravened by the Respondent. While the Respondent did initially realize a profiteering benefit of Rs. 1,22,921/- plus GST of Rs. 14,751/-, totalling Rs. 1,37,672/-, the Respondent has voluntarily and fully discharged its statutory obligation by passing on Rs. 1,40,732/- to the Applicant, thereby extinguishing any liability to pass on additional benefit or deposit any amount in any consumer welfare fund.

12. Shri Arpit Jain, Director of Arkade Developers Limited (formerly Arkade Developers Pvt. Ltd.), has submitted an unambiguous and unqualified acceptance of the DGAP's report Vide written reply dated 03.12.2025 to this Tribunal. The text of the said written reply reads with unmistakable clarity as follows:

"We have reviewed the DGAP report enclosed with the notice, and we accept the findings and conclusions stated in the report. We do not wish to contest or dispute any part of the report. The report is considered as final by us."

12.1 This categorical acceptance by the Respondent of the DGAP's findings and conclusions constitutes substantial evidence of the Respondent's acknowledgement of the profiteering computation and its voluntary discharge

thereof.

13. I have carefully considered the entire investigation report submitted by the DGAP dated 17.12.2024, the Respondent's unqualified acceptance thereof, the comprehensive documentary evidence on record, the verified bank statements, the acknowledgement letter from the Applicant, and the mathematical computations which remain uncontested by the Respondent and the Applicant.

13.1 This Tribunal finds that while profiteering to the quantified extent of Rs. 1,37,672/- (comprising base amount Rs. 1,22,921/- plus GST Rs. 14,751/-) did initially arise from the Respondent's pricing structure but the Respondent has voluntarily and fully discharged its obligation under Section 171 of the CGST Act, 2017 by passing on Rs. 1,40,732/- to the Applicant, which is more than the commensurate benefit accrued of the Respondent.

14. Accordingly, the investigation report dated 17.12.2024 submitted by the Director General of Anti-Profiteering is hereby accepted in its entirety. The proceedings relating to the complaint of Shri Pratik Poojary (Applicant) against Ms Arkade Developers Limited (formerly Arkade Developers Pvt. Ltd.) (Respondent) are hereby closed, with a finding that the Respondent has satisfied and discharged the statutory mandate of Section 171 of the Central Goods and Services Tax Act, 2017 in respect of the sale of the residential unit in the "Arkade Earth – Bluebell" project, Mumbai, and that no further action or remedial measure is warranted as no contravention of Section 171 of the CGST Act has been established.

15. A copy of this order shall be forwarded to all concerned parties including the Respondent, Co-Respondent,

Applicant, Director General of Anti-Profiteering and concerned jurisdictional CGST/SGST Commissioners (Maharashtra), for necessary action and records.

16. Order is pronounced in the Open Court.

Sd/-
(Sh. Anil Kumar Gupta)

Dated: 20.01.2026