

GSTAT
Division Bench Court No. 2

NAPA/107/PB/2025

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

.....**Appellant**

Versus

NAHAR HOMES LLP

.....**Respondent**

Counsel for Appellant

Counsel for Respondent

Hon'ble Justice Sh. Mayank Kumar Jain, Member(Judicial)
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. : ZA070010226000106H

Date of order : 20/02/2026

1.	GSTIN/Temporary ID/UIN - 27AAIFN5426B1ZH	
2.	Appeal Case Reference no. - NAPA/107/PB/2025	Date - 06/06/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. Nahar Homes LLP , accounts@xbria.com , 9654995624	
5.	Order appealed against -	

	(5.1) Order Type -
	(5.2) Ref Number -
6.	Personal Hearing - 20/02/2026 09/01/2026 02/12/2025 14/10/2025
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The balance profiteering amount of Rs. 5,80,280/- is liable to be passed to the 13 eligible buyers. Further, as per Rule 133(3(b) of CGST Tax Rules, 2017, the Respondent is liable to pay interest as applicable to the 13 eligible buyers. The DGAP's investigation report is accepted and the case is disposed of, accordingly.
Summary of Order	
9.	Type of order : Closure Report

ORDER

1. Proceedings in the present case have arisen on the basis of complaint filed by Sh. Ajay Rattan, A-1/801, F- Residences, Survey No. 44 & 45 Sopan Bagh, Balewadi, Pune (hereinafter referred to as “the Applicant”) under Rule 128 of the Central Goods and Services Tax Rules, 2017, alleging profiteering in respect of construction services supplied by M/s Nahar Homes LLP, B-1, Mahalaxmi Chambers, 22, Bhulabhai Desai Road, Mumbai – 411 026 (hereinafter referred to as “the Respondent”) for the Project “F- Residences”.

2. The Applicant alleged that the Respondent had not passed on the benefit of Input Tax Credit to him by way of commensurate reduction in the price on purchase

of Unit No. A1-801 in the Respondent's project "F- Residences" on introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

3. DGAP investigated the matter and submitted investigation report dated 10.11.2021, however, CCI vide letter F. No. M/AP/28/Meeting/2023-24Sectt./263-305 dated 20.03.2024 remanded back the case to DGAP for re-investigation in terms of Hon'ble High Court of Delhi judgement dated 29.01.2024.

4. Further, DGAP after detail investigation submitted fresh Report on 03.06.2025 wherein its findings are briefly summarised as under:

4.1 It is observed that prior to 01.07.2017, i.e. before introduction of the GST, the Respondent was eligible to avail credit of Service Tax paid on the Input Services (CENVAT credit of Central Excise duty was not available) in respect of the units for the project "F Residences" sold by them.

4.2 Since, in post-GST regime, the Respondent was eligible to avail input tax credit of GST paid on all the inputs and input services as they had not opted for new scheme, hence profiteering had to be worked out in the instant investigation up to the Occupancy Certificate i.e. up to 29.01.2020.

4.3 Thus, the profiteering, if any, needs to be determined by calculating any input tax credit under GST which has become eligible to be taken as credit and has been availed and utilised by the supplier of service to discharge its GST liability on provision of output service. Thus, any ITC will result in savings to the supplier of service only if the same has resulted in savings to the supplier in the form of decreased cost on account of availment and utilization thereof in payment of GST on output service. Any positive difference in percentage of availability from the pre-GST being deducted from

the post-GST can be multiplied with the amount spent in the post GST on the purchase of inputs and input services to calculate the savings made by the Respondent as the excess availability of ITC in the GST period to the Respondent to pay output GST leads to reduction in cost to the Respondent, which as per the provisions of Section 171 of the CGST Act needs to be passed on to the recipient of services. That amount of profiteering then needs to be attributed to the total area constructed in post GST to determine profiteering per square feet and passed on to the home buyers in proportion of the area of the flats.

4.4 The Respondent vide submission dated 24.07.2024 gave the breakup of the total 360 constructed units i.e. the count of flats and their aggregate saleable area and sold & unsold units. The total no. of units given in submission dated 24.07.2024 is 360, which is same as the no. of constructed units (360) declared in the Maharashtra RERA for the project. Therefore, the figure of 360 units in the project “F Residences” has been accepted.

The details of these 360 units are as below:

The occupancy certificate covering the project “F Residences” has been received on 29.01.2020. Out of total 360 units, 35 units are booked after receipt of Occupancy Certificate and sale of residential units after Occupancy Certificate are outside the purview of GST as per Schedule III of Section 7 of CGST Act, 2017. Hence these 35 units are out of purview of anti-profiteering investigation. The details of the remaining 325 units (360-35) are explained as under:-

4.5 The 72 (325-253) units are booked in post-GST period before Occupancy Certificate are also outside the investigation which is explained as follows:

The Respondent vide e-mail dated 10.01.2025 claimed that the benefit of ITC has already been passed to the homebuyers who booked in Post-GST period and Respondent submitted agreement copies of all the homebuyers as documentary evidence in support of his claim.

Further, the agreement submitted by the Respondent contains a clause vide para 22 at page no. 11, which specifically mentions the passing on of benefit to the home buyer which is reproduced below as under:

“However it is also clarified and agreed that the benefit of input tax credit of GST already considered in the above said consideration value and pass on to the said Purchaser/s and henceforth the Purchaser will not demand any separate discount/set off or claim against the GST”.

Therefore, these 72 units booked after introduction of GST are out of purview of anti-profiteering investigation.

Hence the remaining 253 units are booked in pre-GST period and were taken up for investigation by the DGAP.

4.6 Therefore, only 253 units booked in pre-GST era and their area are covered in the present investigation under Section 171 of the CGST Act, 2017.

The Respondent claimed to have passed on the benefit of ITC to the home buyers who booked in pre-GST period by way of credit notes and mentioned the quantum of refund given to the 253 buyers in the credit column of the Home Buyer Ledger. To support the authenticity of the claim made by the Respondent, they had submitted CA certificate to support it.

5. On the basis of information and documents submitted by the Respondents regarding the availability of input tax credit/ VAT, their purchase value of the project “F Residences” saleable area of the project and the sold area, the DGAP worked out a ratio of CENVAT/ input tax credit to purchase value as tabulated in table- A below:-

		Table-A	
S. No. (1)	Particulars (2)	Total (Pre-GST) (3)	Amount in Rs. Total (post-GST) (4)
1	CENVAT of Service Tax Paid on Input Services (A)	5,91,50,157	NA
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	0	NA
3	Input Tax Credit of GST Availed as per GSTR 3B returns (C)	NA	11,76,71,876
4	Total CENVAT/ITC of VAT/ITC of GST (D = A+B+C)	5,91,50,157	11,76,71,876
5	Total Purchase value of goods and services for the project during the period (E)	1,16,43,72,054	95,85,54,324
6	Percentage/ Ratio of the input tax credit to the purchase value (F = D*100/E)	5.08%	12.28%

5.1 From the above Table- ‘A’, it is clear that the input tax credit as a percentage of the purchase value of the project that was available to the Respondent during the pre-GST period was 5.08% and during the post-GST period, it was 12.28%. Hence, the ratio of input tax credit as a percentage of expenses incurred on purchase of input goods and services in the post GST period has increased by 7.20 percent from 5.08 percent in erstwhile regime to 12.28 percent in GST regime. Therefore, there is apparent savings made by the Respondent on account of introduction of GST as contemplated under the observations made by the Hon’ble High Court of Delhi in the impugned order dated 29.01.2024.

5.2 It is also observed 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 (Annex-14). The effective GST rate was 12% for flats. Accordingly, based on the figures contained in table- 'A' above, the recalibrated base price and the excess realization (profiteering) during the post-GST period, are tabulated in Table- 'B' below.

Table-B		Amount in Rs.
Particulars		Post-GST
Period (1)	A (2)	July, 2017 to March, 2020 (3)
Ratio of Credit availed to Purchase Value as per Table - A above (%)	B	5.08/12.28
Increase in input tax credit availed Post-GST (%)	C	7.20
Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	95,85,54,324
Total Savings on account of additional ITC benefit	E = D*C/100	6,89,77,270
Total Area (in Sq. Ft.) of the project	F	4,91,617
Total Saving Per Sq. Ft.	G = E/F	140.31
Total Sold Area in pre-GST period (in Sq. Ft.)	H	3,31,468
Profiteered Amount (in Rs.)	I = G * H	4,65,07,296

5.3 From the Table- 'B' above, it is clear that the additional input tax credit of 7.20 % of the purchase value should have resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of such additional input tax credit was required to be passed on to the homebuyers. From above table, it is evident that the benefit of input tax credit that needs to be passed on by the Respondent to the eligible homebuyers comes to **Rs. 4,65,07,296/- plus GST @ 12% i.e. Rs. 55,80,876/-, totalling**

to Rs. 5,20,88,172/- (Rupees Five Crore Twenty Lakhs Eighty-Eight Thousand One Hundred Seventy Two).

5.4 DGAP further observed that the Respondent have passed on total amount of Rs. 6,63,41,543/- as the benefit of Input Tax Credit to 253 buyers in the project. Respondent have also submitted copies of customers' account ledgers and CA Certificate. On the basis of verification done by DGAP, summary of category wise profiteering and the ITC benefit passed on to the home buyers is furnished in the Table C below:-

Table-'C' **(Amount in Rs)**

1	2	3	4	5	6	7	8
S. No.	Category of Customers	No. of Units	Area (Sq. ft.)	Profiteering Amount	Amount of ITC benefit passed on	Difference (Benefit to be passed on)	Remark
A	B	C	D	F	G	H=(F-G)	I
1	Applicant (Pre-GST)	1	1,704	2,67,773	3,30,155	-62,382	Excess benefit already passed on. Applicant has already withdrawn his complaint
2	Pre-GST buyers other than Applicant	239	3,12,171	4,90,55,683	6,38,26,951	-1,47,71,269	Excess benefit already passed on.
3	Pre-GST buyers other than Applicant	13	17,593	27,64,716	21,84,437	5,80,280	Benefit required to be passed on (Annex – 15)
4	Total	253	3,31,468	5,20,88,172	6,63,41,543	5,80,280	

5.5 In view of above findings, DGAP concluded that the Respondent has already passed more than the required benefit to 240 eligible home buyers. However, the Respondent has not commensurately passed on the benefit of input tax credit to 13 eligible buyers as they have passed on an amount of Rs.

21,84,437/- whereas they have made a profiteering amount of Rs. 27,64,716/- . Thus, ITC benefit of Rs 5,80,280/- is still required to be passed on to these 13 home buyers.

6. The copy of DGAP report was sent to the Respondent and Applicant to file the written submissions and the case was listed for hearing on 14.10.2025. Neither any reply was received from the Respondent and the Applicant nor they appeared on 14.10.2025. The Respondent and Applicant were given another opportunities to file the written submissions and the hearing was fixed for 02.12.2025.

7. On 02.12.2025, the case was heard, however, none was present on behalf of the Respondent and the Applicant. Since, both Respondents and Applicant have not filed any written submissions, another opportunity was given to both Respondent and Applicant to submit their written submissions and the case was listed for hearing on 09.01.2026.

8. On 09.01.2026 neither Respondent nor Applicant appeared. Further no reply was received from them. Keeping in view the Principles of Natural Justice, the Respondent and Applicant were given another opportunity to file their written submission and the case was listed for hearing on 20.02.2026.

9. The case was heard on 20.02.2026, Shri Devesh Navsalkar, Chartered Accountant, was present on behalf of the Respondent and no one appeared on behalf of the Applicant. Learned Chartered Accountant informed that they had submitted a written reply dated 22.01.2026 wherein they have submitted that:

- a) They have carefully perused and reviewed the findings and computations detailed in the aforementioned investigation report.
- b) In the interest of expeditious resolution and to avoid protracted litigations, the Respondent hereby unconditionally accepts the findings of the investigation report submitted by the DGAP.

c) The Respondent confirms its readiness and willingness to pay the entire amount as determined to be payable in the said report, along with any applicable interest.

10. In view of the above findings, the Tribunal is of the view that the Respondent has profiteered by an amount of Rs. 4,65,07,296/- plus GST @ 12% i.e., Rs. 55,80,876/-, totalling to Rs. 5,20,88,172/- and ITC benefit of Rs. 6,63,41,543/- has already been passed on by the Respondent to the 240 eligible recipients in the project “F Residences”. Hence, the ITC benefit passed on to such 240 buyers is greater than the profiteering amount calculated in respect of these buyers. Moreover, it is also observed that as mentioned in Table ‘C’ of the Report, out of profiteering amount of Rs. 27,64,716/- (inclusive of GST), the Respondent has passed on an amount of Rs. 21,84,437/- to 13 eligible buyers (S. No. 3 of Table – ‘C’). Hence, ITC benefit of Rs. 5,80,280/- is still required to be passed on to these 13 buyers. The Respondent has accepted DGAP investigation report and has promised to refund the balance profiteered amount along with interest to eligible 13 home buyers. Thus, in view of the promise of the Respondent to refund the balance profiteered amount along with interest, the Respondent has agreed to comply with the provisions of Section 171 of the CGST Act.

11. Accordingly, we hold that the balance profiteering amount of Rs. 5,80,280/- is liable to be passed to the 13 eligible buyers. Further as per Rule 133(3)(b) of the Central Goods and Services Tax Rules, 2017, the Respondent is liable to pay interest as applicable to the 13 buyers. The Respondent shall pay the remaining profiteered amount of Rs. 5,80,280/- to the 13 eligible buyers along with applicable interest within 30 days and submit compliance report to the jurisdictional CGST/SGST Commissioner with intimation to the DGAP within 2 months.

12. Further, insofar as penalty under Section 171(3A) of the CGST Act is concerned, the said provision came into force w.e.f. 01.01.2020, and as the period of contravention in the present case is from 01.07.2017 to 29.01.2020. therefore,

penalty is leviable as per Section 171(3A) of the CGST Act. The said provision is as :

“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”.

13. The DGAP's investigation report is accepted and the case is disposed of, accordingly.

14. A copy of this order be supplied to the Respondent, the Applicant and to the concerned Commissioners CGST/SGST for necessary action.

15. Order is pronounced in the open court today.

Sd/-
(Justice Mayank Kumar Jain)

Sd/-
(Sh. Anil Kumar Gupta)

Dated: 20.02.2026