

**GSTAT**

**Court No. 1**

**NAPA/28/PB/2025**

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

.....Appellant

**Versus**

VASAVI AND GP INFRA LLP

.....Respondent

**Counsel for Appellant**

**Counsel for Respondent**

**Hon'ble Justice (Retd.) Dr. Sanjaya Kumar Mishra, President**

**Hon'ble Sh. A. Venu Prasad, Member (Technical)**

**ORDER**

The matter is taken up in virtual mode. Shri Ajay Kumar Tehlan, Learned AAD - Departmental Representative assisted by Shri Awanindra Kumar, Inspector appears on behalf of DGAP.

Shri J. Shankar Raman- Learned Advocate, appears before us virtually on behalf of the Respondent.

On the last hearing dated 03.02.2026, the matter was heard and the Learned Counsel for the Respondent raised certain points regarding a calculation of the alleged profiteered amount as per the latest DGAP Report dated 09.10.2024. In the said DGAP Report, it was submitted that there has been a profiteering by the Respondent to the Tune of Rs. 06,08,89,626/- and it is also liable to 12 % GST.

In view of the contentions raised by the learned Counsel Shri J. Shankar Raman We observed certain clarifications which are required from the DGAP before concluding the matter. Accordingly, the Respondent was directed to file a list of issues raised before this Authority, with an advance copy to the DGAP. Thereafter, DGAP was to file the clarifications by 12.02.2026.

On 05.02.2026, the learned Counsel for the Respondent submitted six the issues / questions that Respondent has raised with respect of the calculation made by DGAP in the case while saddling approximately Rs. 6 Crores as profiteered on it. The said 6 questions / issues as follows: -

1. Whether respondent is liable to pay the alleged profiteered amount of Rs.2,54,20,175/- along with 12% GST of Rs.30,50,421/- [Total Rs.2,84,70,596], amount confirmed by the DGAP in their rejoinder report (page 5 of the report).
2. Whether notional service tax credit of Rs.2,51,82,279/-, calculated by DGAP @ 1.7978% of the cost of construction of the project during post GST period is to be deducted or the actual ITC availed on services Rs.5,22,17,411/- during the post GST period is to be deducted while calculating the profiteered amount?
3. Whether ITC benefit of Rs.46,40,136/- passed on to 13 customers can be denied for the only reason that these customers have denied by mail, when they have paid the amount deducting the passed-on benefit.
4. In cases where pre-GST sale Price is not available for same size flats sold in post GST period, whether one can come to the conclusion that Respondent have profiteered in such cases also?
5. When Respondent have factored the ITC element in the sale price fixed for the sale to post GST customers, whether one can say it has profiteered to the extent of ITC benefit?
6. Whether Respondent are liable to pay 12% GST on the alleged profiteered amount also? When it has paid the GST on the said amount also to the Government?

The Respondent in the aforesaid letter 05.02.2026 also summarised the submissions on all the questions raised which are as follows: -

**As far as question no. 1 is concerned** it is contended by the Respondent that it not liable to pay this amount as they have already passed on the ITC benefit to the customers and they not profiteered on account of ITC benefit extended on materials in GST.

**As far as question no. 2 is concerned** the Respondent further submitted that actual service tax credit of Rs.5.22 crores is to be deducted as it is not a benefit extended to the builders on introduction of GST. It is further submitted that in pre-GST period also, credit was allowed on service elements. Only ITC on goods alone is the additional benefit extended to the builder on introduction of GST.

DGAP in their rejoinder dated 26-12-2025 referred to the order of the Delhi High Court in the case of Reckitt Benckiser India Private Limited to substantiate their claim of notional IT? on services is to be taken. The Hon'ble High court in para 129 only laid down the principles as to how to calculate the profiteered amount. It has not said anything about what is to be added and deducted. the matter left to the regular bench to decide the matter after taking into this direction. At Para 128 of the order, it is specifically stated that additional benefit to be

passed on is only with regard to ITC on material. Therefore, actual ITC on services Rs.5.22 Cr. has to be deducted in full.

**As far as question no. 3 is concerned** the DGAP have submitted that these certain customers have paid the amount after deducting the ITC benefit passed on to them and copy of Ledgers were filled by the Respondent. DGAP vide their rejoinder dated 26-12-2025 in response to Respondent's reply that the customers were denied the benefit of Rs. 46,40,136/-.

**As far as question no. 4 is concerned**, DGAP has arrived to a conclusion that respondent has profiteered by comparing at the Pre-GST price and post-GST price of same size of flats. In cases where the Post GST period flats sale price is less than the pre-GST period sale price, it is excluded from the profiteering computation. However, it is submitted by the Respondent that in 11 cases as per S.No 8, 26 to 35 of the Table at page 11 and 12 of DGAP report dated 9.10.24. The prices of the Pre-GST era these kinds of Apartments are not available. However, Respondent alleged that DGAP has taken these cases also as profiteered cases.

**As far as question no. 5 is concerned**, it is apparent from the Report and Clarifications of the DGAP, in case of sale to Post GST period customers, have been factored the ITC benefits extended in GST in the sale price.

**As far as question no. 6 concerned** it is stated that respondent has paid GST on the amount collected from the Customers. As the DGAP, has alleged that the Respondent have profiteered by not passing on the benefit of ITC extended in GST to the customers, which it needs to repay. If it is liable to repay to the customer, then the tax paid to the Government on the said amount is to be refunded by the Government and not by to the Respondent.

In Response to document dated 05.02.2026, the DGAP has produced a written note / parawise reply which is as follows

**As far as question no. 1-5 is concerned**, it is submitted by the DGAP that the Respondent in its aforesaid submissions has raised issue of non-consideration of post-GST actual Services ITC benefit amounting to Rs. 5,22,17,411/-. The examination of the said contention would necessitate detailed scrutiny and verification of relevant records and supporting documents. Accordingly, the DGAP further submit that DGAP would further examine the contention of the Respondent, if so, directed by the GSTAT.

**As far as issue no. 6 is concerned**, it is submitted by the DGAP that Delhi High Court vide its judgment dated 29.01.2024 in the matter of Reckitt Benckiser India Pvt. Ltd. & others Vs. Union of India has upheld the validity of applicability of GST (at para 157) on profiteered amount.

Thus, it is clear that, the DGAP is inclined to re-investigate, however, we are not inclined grant an open remand, instead, by virtue of this Interim Order, we direct the DGAP to reconsider Question 1 to 5 within a period of one month. The timeline of one month to re-

investigate the matter is suggested by Shri Ajay Kumar Tehlan, learned AAD appearing for the DGAP. We hope and trust the DGAP will adhere the timelines.

As far as question no. 6 is concerned, it is question of law and no further investigation is required. We will answer the question at the appropriate the time.

Order pronounced in the open court.

List the matter on 18.03.2026, awaiting further report of the DGAP.

**Dated: 13.02.2026**



Sd/-  
(S.K. Mishra, President GSTAT, PB.)

Sd/-  
(Sh. A. Venu Prasad)