

GSTAT

Single Bench Court No. 4

NAPA/130/PB/2025

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

.....Appellant

Versus

PACIFIC DEVELOPMENT CORPORATION LTD.

.....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: ZA070010326000074H

Date of order: 20/03/2026

1.	GSTIN/Temporary ID/UIN - 05AAACN3524H3ZS	
2.	Appeal Case Reference no. - NAPA/130/PB/2025	Date - 31/12/2024
3.	Name of the appellant - DGAP, dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. Pacific Development Corporation Ltd., jkpandey@pacificindia.in , 01140903000	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 20/03/2026 10/03/2026 05/02/2026 03/02/2026 20/01/2026 15/01/2026 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 refund the profiteered amount of Rs. 11, 91,763/- along with interest at the rate of 18% per annum in terms of	

Rule 133(3)(b) of the CGST Rules, 2017, to the eligible homebuyers.

Summary of Order

9. Type of order: - Return to Recipient of Amount not passed on, along with interest

Place :DELHI PB

Date : 20.03.2026



**GOODS & SERVICES TAX APPELLATE TRIBUNAL (GSTAT)
PRINCIPAL BENCH, NEW DELHI
ANTI-PROFITEERING DIVISION**

NAPA/102/PB/2025

FINAL ORDER

In the matter of:

Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicant

Versus

M/s Pacific Development Corporation Ltd. (GSTIN: 05AAACN3524H3ZS), Pacific Mall 5th Floor, Sahibabad, Industrial Area Site 4, Ghaziabad, UP-201010.

Respondent

AND IN THE MATTER OF Proceedings under Section 171 of
Central Goods and Services Tax Act, 2017(Act 12 of 2017)

Quorum: -

1. Sh. A. Venu Prasad, Member Technical, GSTAT.

Present: -

1. Sh. Puneet Agarwal, Advocate, assisted by Ms. Purvi Sinha & Ms. Sakshi Bisht, Advocates appeared for the Respondent.
2. Ms. Nutan, Additional Assistant Director, Sh. Anurag Gupta, Inspector, for the Director General of Anti-Profiteering.
3. The Complainants Sh. Rajiv Dahiya and Mrs. Indira Devi also appeared virtually.

ORDER

1. Directorate General of Anti-Profiteering(hereinafter referred to as DGAP) vide its report dated 27.12.2024 submitted that a reference was received from the Standing Committee on Anti-profiteering to conduct a detailed investigation in respect of the applications filed under Rule 128 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “the Rules”), by (1) Ms. Ashima Sharma, WZ-93, Hari Singh Park, New Multan Nagar, New Delhi-110056 on 01.08.2019, (2) Ms. Indira Devi, E-3722, Subhash Nagar Roorkee, District Haridwar-247667; and (3) Sh. Rajiv Kumar Dahiya, 1150, Gayan Singh Bist Marg, Subhash Nagar, Dehradun alleging the charging of higher rate GST of 12% instead of 1% for Respondent’s project “PDCL-Golf Estate”.

2. The aforesaid application was examined by the Standing Committee on Anti-profiteering (hereinafter referred to as “NAA”) and the same was forwarded to DGAP conduct a detailed investigation in the matter.
3. The DGAP conducted an investigation for the period 01.07.2017 to 31.05.2020.
4. Accordingly, the investigation in the matter was concluded and the Investigation Report dated 25.02.2021 was submitted to the National Anti-Profiteering Authority, under Rule 129(6) of the Rules.
5. The report dated 31.12.2020 sent by the DGAP was pending for Orders with the erstwhile NAA (then Competition Commissions of India (CCI)). Meanwhile, in a Writ Petition No. 7743/2019 and other connected matters, the Hon’ble High Court of Delhi passed its judgment vide order dated 29.01.2024 and gave its findings on the methodology adopted by the DGAP.
6. Subsequently, taking cognizance of the above said 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 this case under Rule 129 of the CGST Rules, 2017.
7. Out of the 7 towers in the project “Golf-Estate” namely A, B, C, D, E, F & G, Tower A, E & F are out of the purview due to the facts mentioned in para 16 & 17 of the report. Further, as per email dated 24.12.2024 where details have duly been certified by the Chartered Accountant, the Towers B, C, D and G consists of total 1164 units having a Total Saleable area of 19,10,727 Sq. Ft. Out of this, the total 364 sold units were sold before Completion Certificate having an area of 5,82,773 Sq. Ft. and the remaining total 800 units sold after Completion Certificate have an area of

13,27,954 Sq. Ft. Therefore, these 800 units are out of the purview of the investigation and finally 364 units are taken for consideration in the investigation.

8. The Respondent vide letter/Email dated 18.12.2024, submitted duly filled and CA certificate containing the data of CENVAT of Service Tax and VAT ITC availed by the Respondent which are Rs. 7,31,17,955/- and 'Nil' respectively, in respect of the Towers B, C, D and G of project "Golf-Estate" in pre-GST period and the same has been considered for calculations.
9. The Respondent vide letter/Email dated 18.12.2024, submitted duly filled and CA Certificate, containing the data of total purchase value of Goods and Services during the pre-GST period which is Rs. 234,38,71,562 in respect of Towers B, C, D, G for the Project "Golf Estate" and the same has been considered for calculations.
10. The Respondent vide letter/Email dated 18.12.2024, submitted duly filled and CA Certificate, containing the details of the Input Tax Credit of GST availed by the Respondent which is Rs. 5,06,28,263/- (Net) in respect of the Towers B, C, D and G of the project "Golf-Estate" and the same has been considered for calculations.
11. The Respondent vide letter/Email dated 18.12.2024, similarly provided the details of the total purchase value of Goods and Services during the post-GST period which is Rs. 151,68,51,948/- in respect of the Towers B, C, D, G of the Project "Golf Estate" and the same has been considered for calculations.
12. From the information submitted by the Respondent regarding the details of the input tax credits availed by them and purchase value of the inputs and services in respect of the Towers B, C, D, G of the Project "Golf Estate", the ratio of input tax credit to the purchase value, during the pre-GST and

post-GST periods were calculated and are furnished in Table-‘A’ below:

Table-A		Amount in Rs.		
S. No	Particulars	Data Source	Total (Pre-GST)	Total (post-GST)
1	CENVAT of Service Tax Paid on Input Services (A)	CA Certified Annexure I Submitted by the Noticee vide letter dated 18.12.2024	7,31,17,955	NA
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	CA Certified Annexure I Submitted by the Noticee vide letter dated 18.12.2024	0	NA
3	Input Tax Credit of GST Availed as per GSTR3B returns (C)	CA Certified Annexure II Submitted by the Noticee vide letter dated 18.12.2024	NA	5,06,28,263
4	Total CENVAT/ITC of VAT/ITC of GST (D = A+B+C)	As calculated	7,31,17,955	5,06,28,263
5	Total Purchase value of goods and services for the project during the period (E)	CA Certified Annexure I and II submitted by the Noticee vide letter dated 18.12.2024	234,38,71,562	151,68,51,948
6	Percentage/ Ratio of the input tax credit to the	As Calculated	3.11%	3.34%

	purchase value (F = D*100/E)			
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13. 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 used by the Respondent during the pre-GST period was 3.11 % and during the post-GST period, it was 3.34 %. 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 from 3.11 % percent in erstwhile regime to 3.34 % in GST regime by 0.23%. 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.
14. 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. The effective GST rate was 12% for flats. Accordingly, based on the figures contained in table- 'B' above, the recalibrated base price and the excess realization (profiteering) during the post-GST period, are tabulated in the "table- B" below

		<u>Table-B</u>		Amount in Rs.
		Particulars		Post-GST
S. No .	Period	A		
1	Ratio of Credit availed to Purchase Value as per Table - A	B		3.11/3.34

	above (%)		
2	Increase in input tax credit availed post-GST (%)	C	0.23%
3	Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	151,68,51,948
4	Total Savings on account of additional ITC benefit	$E = D * C / 100$	34,88,760
5	Total Area (in Sq. Ft.) of the project (As per CA Certified details submitted by the Noticee Vide Email dated 24.12.2024)	F	19,10,727
6	Total Saving Per Sq. Ft.	$G = E / F$	1.825
7	Total Sold Area before OC (in Sq. Ft.) (As per CA Certified details submitted by the Noticee Vide Email dated 24.12.2024)	H	5,82,773
8	Base Profiteered Amount (in Rs.)	$I = G * H$	10,64,074

15. From the Table- 'B' above, it is clear that the additional input tax credit of 0.23% 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. As mentioned in the table 'B' above the DGAP concluded that the Respondent has profiteered an amount of Rs.

10,64,074/- plus GST @ 12% i.e., Rs. 1,27,689/-, totalling to Rs. 11,91,763/-, which needs to be passed on to the 364 eligible buyers.

16. W.e.f. 01.10.2024, the Central Government, on the recommendations of the GST Council has empowered the Principal Bench of the GST Appellate Tribunal (GSTAT), constituted under sub-section (3) of section 109 of CGST Act, 2017, to examine anti-profiteering cases in terms of Notification No. 18/2024-Central Tax dated 30.09.2024.
17. The above report was received in the Pr. Bench, GSTAT on 31.12.2024. Vide order sheet dated 28.10.2025, it was directed to issue Notice to the Respondent directing him to file his written submissions on the report of the DGAP. Accordingly, a Notice dated 29.10.2025 was issued to the Respondent.
18. The Respondent vide its written submissions dated 07.01.2026 filed his written submissions stated that in good faith and without prejudice to any of its rights and contentions and without admitting its liability and obligation, the Respondent herein is agreeable to comply with the DGAP report dated 27.12.2024 to end the protracted litigation and to give a quietus to the matter.
19. Hearing in the matter was held on 07.01.2026 & 20.01.2026. On 07.01.2026, Sh. Puneet Agarwal, Advocate, assisted by Ms. Purvi Sinha & Ms. Sakshi Bisht, Advocates appeared for the Respondent. Ms. Nutan, Additional Assistant Director, Sh. Anurag Gupta, Inspector, for the Director General of Anti-Profiteering. The Tribunal heard both parties. The Respondent agreed with the report of the DGAP regarding profiteering and expressed his willingness to pay the calculated amount to all the concerned parties (homebuyers). However, he requested for waiving off the interest to be paid to the homebuyers. The Complainant

Sh. Rajiv Dahiya appeared and agreed with the contentions of the Respondent.

20. The Respondent vide its letter dated 08.01.2026, filed its submissions on the issue of imposition of interest and relied upon para 129 of *“Reckitt Benckiser India Private Limited V. Union of India and Ors. and other connected matters in W.P. (C) 7743 of 2019 being the lead matter inter alia held that one needs to calculate the total savings on account of introduction of Goods and Services Tax for each project and then divide the same by total area to arrive at per square feet benefit to be passed on to each flat buyer”*.

It was further submitted that total savings can only be calculated after completion of the project. Therefore, if at all interest is directed to be payable, the same be ordered to be applicable from date of completion i.e. 24.05.2021.

It was also submitted that Rule 133(3)(c) of the CGST Rules, 2017 contains provision for levy of interest. The said provision has come into force effective from 28.06.2019 vide Notification No. 31/2019-CT dated 28.06.2019. Therefore, no interest is chargeable.

21. Further hearing in the matter was held on 20.01.2026, the Ld. Counsel appeared in person for the Respondent and relied upon his written submissions dated 08.01.2026. Mrs. Indira Devi, one of the original complainants appeared virtually through on Video Call and placed her submissions before the Tribunal stating that as per previous report of the DGAP dated 25.02.2021, profiteered amount of Rs. 58,140/- was calculated by the DGAP. However, in this regard the Departmental Representative of the DGAP submitted that this calculation was taken in a previous report prior to the judgment dated 29.01.2024 in W.P. (Civil)

No. 774/2019 Reckitt Benckiser &Ors. in NAA connected matters. However, as per Para 129 of the said order, the DGAP has calculated the profiteered amount as Rs. 1186.09/- in respect of Complainant also sent an email dated 09.01.2026 wherein she submitted that the Tribunal shall direct the Respondent for payment of profiteered amount along with applicable interest from the date of profiteering till the date of actual payment.

22. In light of the DGAP report and submissions of the parties, the following issues arise for determination:

- i. Whether the Respondent derived the benefit of additional input tax credit after the introduction of GST?
- ii. Whether such benefit was passed on to the homebuyers in terms of Section 171 of the CGST Act?
- iii. Whether the Respondent is liable to refund the profiteered amount along with interest?
- iv. Whether penalty under Section 171(3A) of the CGST Act is attracted?

23. With regard to the issue number i and ii of above para, it is clear from the DGAP report that the Respondent derived the benefit of additional Input Tax Credit after the introduction of GST. As per the DGAP Report, percentage / ratio of Input Tax Credit to purchase value has been increased by 0.23 %. This amount needs to be passed on to the home buyers. The revised report is based on the observations made by the Hon'ble High Court of Delhi, in the impugned order dated 29.01.2024, however, this benefit was not passed on to the home buyers in terms of Section 171 of the CGST Act.

In view of the foregoing, the Tribunal concludes that respondent derived benefit of additional input tax credit as per findings of DGAP after the introduction of GST and such benefit has to be passed on to the homebuyers in terms of Section 171 of the CGST Act. Respondent has also agreed with the report of the DGAP and expressed willingness to refund the profiteered amount of Rs. 10,64,074/- plus GST @ 12% i.e., Rs. 1,27,689/-, totalling to Rs. 11,91,763/-.

24. FINDING ON INTEREST: - The issue for determination is whether interest is payable on the profiteered amount and, if so, from which date. The Respondent has contended that interest should not be payable or should be payable only from the date of completion certificate.
25. Section 171 of the CGST ACT creates a statutory obligation to pass on the benefit of tax reduction or additional input tax credit at the time of supply itself. Rule 133(3)(b) of the Central Goods and Services Tax Rules, 2017 expressly empowers the Authority to order return of 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 its return. The provision is mandatory in nature.
26. The Respondent's reliance on Rule 133(3)(c) is misplaced, as the said provision applies only where recipients are not identifiable or do not claim the amount. In the present case, all homebuyers are identifiable, as detailed in Annexure-14 to the DGAP report. The contention that interest should apply only from the date of receipt of completion certificate is rejected. Section 171 mandates passing on of benefits at the time of supply itself. Retention of such benefit constitutes collection of excess amounts, attracting interest from the date of such collection. The reliance on paragraph 129 of Reckitt Benckiser India Private Limited Vs. Union of

India pertains to methodology of computation and does not dilute the statutory mandate under Rule 133(3)(b).

27. The judgment of the Hon'ble Delhi High Court in the matter of Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019, wherein the Hon'ble Court has dealt with the said aspect in Para No. 153 of the judgment. The relevant extract is reproduced below for the sake of brevity.

“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 amount so pocketed by the supplier /registered person would not have a sufficient deterrent effect on deviant behaviour 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 Input Tax Credit 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.”

The Provisions with respect to interest are as follows: -

Rule 133 (3)(b) – 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 percent. 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.

28. Where the supplier retains such a benefit instead of passing it on to the recipient, the amount so retained assumes the character of excess consideration collected from the buyers. Accordingly, the Respondent is liable to pay interest at the rate of eighteen per cent per annum from the respective dates of collection of the excess amount till the date of actual refund. Interest in such cases is compensatory in nature and ensures restitution of the time value of money that rightfully belongs to the recipients. Accordingly, the Respondent is liable to pay interest at the rate of 18% annum from the respective dates of collection of the excess amount until the date of refund.
29. DIRECTIONS: - The Respondent is directed to refund the profiteered amount of Rs. 11, 91,763/- along with interest at the rate of 18% per annum in terms of Rule 133(3)(b) of the CGST Rules, 2017, to the eligible homebuyers as mentioned in Annexure-14 of the report. Compliance shall be reported to the jurisdictional Commissioner with intimation to the DGAP within three months from the date of this Order.
30. 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 31.05.2020. 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”.

31. A copy of this order shall be forwarded to the Respondent, Applicants Director General of Anti-Profiteering, and jurisdictional CGST/SGST Commissioner(s) for necessary action and record.
32. The matter is disposed of accordingly.
33. Order pronounced in the open court today.

Sh. A.Venu Prasad,

Date- 20.03.2026