

GSTAT
Single Bench Court No. 2

NAPA/128/PB/2025

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

.....Appellant

Versus

IJM RAINTREE PARK PVT. LTD. & ORS.

.....Respondent

Counsel for Appellant

Counsel for Respondent

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

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. : ZA070010426000003H

Date of order : 01/04/2026

1.	GSTIN/Temporary ID/UIN - 37AABCI4369Q1ZV	
2.	Appeal Case Reference no. - NAPA/128/PB/2025	Date - 10/01/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. IJM Raintree Park Pvt. Ltd. , balakrishnac@ijm.com , 7702200156 2. IJM (India) Infrastructure Pvt. Ltd. , kravikumar@ijm.com , 8096744455	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -

6.	Personal Hearing - 01/04/2026 13/03/2026 10/03/2026 27/02/2026 09/02/2026 19/01/2026 19/12/2025 19/11/2025 13/11/2025 13/10/2025
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The report of the DGAP dated 08.01.2025 deserves to be accepted.
Summary of Order	
9.	Type of order : Closure Report



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

HON'BLE MAYANK KUMAR JAIN, J.

1. The present proceedings arise from the complaint made by Mr. Anil Kumar Kota, Flat No. 430, Radhe Shyam Residency, Near Bonthamma Temple, Karakambadi Road, Tirupati (hereinafter referred to as '**the Complainant**') under Rule 128 of the Central Goods and Services Tax Rules, 2017 (for hereinafter referred as to '**the CGST Rules, 2017**') alleging profiteering in respect of construction services provided by M/s. IJM Raintree Park Private Limited, H. No. 3-71/NR Plot No. 71, Kavuri Hills II, Madhapur, Hyderabad (hereinafter referred as to '**the Respondent**') in their project 'Raintree Park Dwarka Krishna Phase-II'.
2. The Complainant has alleged that the Respondent did not pass on the benefit of Input Tax Credit (For short '**ITC**') to the Complainant by way of commensurate reduction in the prices on purchase of Flat No. Willows 1040 in the above referred project on the introduction of GST w.e.f.

01.07.2017, in terms of Section 171 of Central Goods & Services Act, 2017, (hereinafter referred as to ‘**CGST Act, 2017**’).

3. The complaint was examined by the Standing Committee on Anti-Profitteering and same was forwarded to Director General of Anti-Profitteering (hereinafter referred to as ‘**the DGAP**’) under Rule 129(1) of the CGST Rules, 2017 for detailed investigation.
4. The investigation was set into motion by the DGAP. Notice was issued to the Respondent calling upon to show cause whether the benefit of the ITC had been passed on to the consumers by way of commensurate reduction in prices, and if so, to *suo-moto* determine the quantum thereof.
5. Upon completion of the investigation, the DGAP submitted its report dated 23.03.2020 to the National Anti-Profitteering Authority (For short ‘**the NAA**’), the erstwhile authority. This report was challenged by the Respondent on the ground that the methodology adopted by the DGAP to compute profiteering was flawed.
6. The NAA, *vide* order dated 29.08.2022, directed the DGAP to re-investigate the matter to examine whether IJM (India) Infrastructure Limited (hereinafter referred as to ‘**IJM Infrastructure**’) had passed on the benefit of ITC to the Respondent who in turn would pass on such benefit to its homebuyers.
7. Pursuant to aforesaid directions, the DGAP re-investigated the matter and submitted its report dated 27.02.2023, affirming its earlier findings that the Respondent had indulged in profiteering and contravened provisions of Section 171 of the CGST Act. DGAP computed such profiteering amount as Rs. 2,96,93,802/- from 134 buyers. During the pendency of said report before the NAA, Hon’ble Delhi High Court pronounced its decision in *Reckitt Benckiser India Pvt. Ltd. v. Union of India (2024) 14 Centex 374 (Delhi)*.
8. Tenure of the NAA ended on 30.11.2022. Thereafter, the Competition Commission of India (‘hereinafter referred as to “**the CCI**”’) was

empowered to examine matters related to Anti-profiteering with effect from 01.12.2022 vide Notification No. 23/2022 - Central Tax dated 23.11.2022.

9. The CCI remanded the matter to the DGAP under Rule 133(4) of the CGST Rules, 2017 to re-investigate as the methodology adopted by DGAP was held to be flawed by Hon'ble High Court of Delhi in ***Reckitt Benckiser (Supra)***.
10. Pursuant thereto, a show cause notice was issued by the DGAP to the Respondent under Rule 129 of the CGST Rules, 2017 for redetermination of profiteering amount. In view of the submissions made by the Respondent and supporting documents placed on record and following the guidelines in ***Reckitt Benckiser (Supra)***, submitted its report dated 08.01.2025.
11. The DGAP concluded that the ratio of credit availed to purchase value was 6.81% in pre-GST period which declined to 3.34% in post-GST period. The difference i.e., -3.47% implies that no benefit accrued to the Respondent and hence question of passing on any benefit to the recipient would not arise. The Respondent has, therefore, not contravened the provisions of Section 171 of the CGST Act. The period covered of investigation was from 01.07.2017 to 31.03.2024. The methodology adopted by the DGAP to is tabulated hereinunder:-

S. No	Particulars	Pre-GST Period (in Rs.)	GST Period (in Rs.)
1.	Purchase Value of Goods and Services (Excluding Taxes and Duties)	62,40,70,289	102,62,63,862
2.	Credit of Service Tax availed	4,25,44,214	-
3.	Credit of VAT availed	-	-
4.	Total Credit Availed in Pre-GST Period	4,25,44,214	-
5.	Net ITC of GST Availed	-	3,42,78,735
6.	Ratio of Credit Availed to Purchase Value (in%)	6.81%	3.34%
Difference		(-3.47%)	

12. The DGAP also considered that the Respondent had claimed that they had already passed on benefit of Rs. 62,53,926/- to their homebuyers through credit notes. However, since DGAP had already concluded that no benefit accrued to the Respondent (as shown in the above table), the DGAP did not verify the correctness of this claim.

Proceedings before this Tribunal:-

13. The Principal Bench of the GST Appellate Tribunal (GSTAT), constituted under sub-section (3) of section 109 of CGST Act, 2017, has been empowered to examine and to adjudicate Anti-Profiteering cases w.e.f. 01.10.2024, *vide* Notification No. 18/2024-Central Tax dated 30.09.2024.
14. A notice was issued to the Complainant calling upon his objections against the DGAP report dated 08.01.2025.
15. The Complainant submitted his objections before this Tribunal on 19.12.2025 which are summarised hereunder: -
- (i) The Complainant booked Flat No. Willows 1040 with Respondent on 22.06.2015. Two instalments were paid during pre-GST period while three instalments were paid in GST regime.
 - (ii) The DGAP in its report dated 08.01.2025 has mis-interpreted the judgement of the Hon'ble Delhi High Court in ***Reckitt Benckiser (Supra)*** to mean that if no uniform formula applies then no benefit exists.
 - (iii) The DGAP wrongly switched the comparative base from ITC/ purchase value ratio and concluded that since the post-GST percentage showed a declined, therefore, no benefit accrued to the Respondent.
 - (iv) In pre-GST regime, the Respondent was entitled to avail credit on only 40% of the value of service. No credit was available to the Respondent with regard to VAT due to composition scheme under Section 47(d) of the APVAT Act, 2005. Further, no credit of central excise duty was available to the Respondent, being sub-contractor.

Whereas, under the GST regime, the Respondent is entitled to avail ITC on 100% value. Thus, comparing CENVAT credit on 40% service value with GST on 100% value is illogical. The DGAP failed to identify and quantify this benefit separately.

- (v) As per report of the DGAP the ITC availed by the Respondent in post-GST period was Rs. 18,47,19,844/-. ITC reversal in financial year 2019-20 was Rs. 15,04,41,109/-. Net ITC of Rs. 3,42,78,735/- (Rs. 18,47,19,844 – Rs. 15,04,41,109) was wrongly considered by the DGAP. The Respondent sold 525 units after Occupancy Certificate (For short 'OC'). This supply is exempt under the GST law. Reversal of ITC should have been made only for 525 units sold after OC and not on 107 units sold before OC (which also included the Complainant's unit). ITC calculation is done on the basis of purchase value of the entire project i.e. on 632 units having 8,25,836 sq. ft. whereas, purchase value of 107 units should have been considered.
- (vi) The DGAP failed to examine EPC contractors ITC flow and structure. IJM Infrastructure raised invoices to the Respondent. ITC on these invoices were available to the contractor which has to be passed on by IJM Infrastructure to the Respondent and thereafter to homebuyers by the Respondent.
- (vii) There is inconsistency with the DGAP's own reports. In the report of 2020, it was computed that additional ITC benefit was 9.07% while in 2025 it declined to -3.47%. The DGAP did not cross check the purchase value as stated by the Respondent, rather it accepted all figures without independent verification.
- (viii) Invoices for Bill No. 3, 4 & 5 and dated 29.01.2018, 22.03.2018, 19.02.2019 respectively explicitly state '*ITC benefit not passed on*'. It reflects that the Respondent acknowledged that ITC benefit was accrued.

- (ix) The DGAP did not compute per sq. ft. benefit correctly in consonance with the judgment of the Hon'ble High Court of Delhi.
16. Per contra, the Respondent submitted its detailed written submission against the objections filed by the Complainant which are summarised hereunder: -
- (a) The Respondent is engaged in Real Estate business. It has developed a township project known as Raintree Park, Dwarka Krishna in Guntur. The project consisted of 632 apartments. For Phase-II of the project, OC was received on 30.03.2019. For construction and development of the building, the Respondent engaged IJM Infrastructure as an engineering, Procurement and construction contractor.
- (b) Out of 632 units in the project, 132 units were sold before issuances of OC. 400 units were booked after issuance of OC. 100 units remained unsold. Further, 25 units were cancelled by the buyers. Therefore, net 107 units with saleable area of 1,44,158 sq. ft. were sold before issuance of OC which have been considered in the present investigation.
- (c) The Complainant shifted from Willows No. 1040 to Willows No. 942 due to delay in delivery of the flat. Sale Deed dated 21.08.2020 was entered between the Respondent and the Complainant. The Respondent himself computed the benefit on account of ITC as Rs. 64,257/-. This benefit was duly passed on to him by the Respondent, as also admitted by the Complainant.
- (d) The Respondent claimed that it has passed on total benefit of Rs. 62,53,926/- to homebuyers through Credit Notes.
- (e) The Complainant has incorrectly interpreted the judgment of the Hon'ble Delhi High Court. The objection regarding ITC percentage of purchase value method is mathematically defective. The DGAP

correctly calculated the ratio of purchase value as tabulated in Table extracted above.

- (f) The objection of the Complainant that each bill issued by the Respondent in post-GST period bears a declaration '*ITC benefit not passed on*' is not substantiated by any documentary evidence, as no such bill was issued by the Respondent to the Complainant.
- (g) The methodology adopted by the DGAP is correct and in accordance with the observations made by the Hon'ble High Court of Delhi. The amount of profiteering is required to be calculated by determining total savings on account of introduction of GST for each project and then the said savings are required to be divided by total area to arrive at the per sq. ft. benefit to be passed on to each flat buyer. The Hon'ble High Court of Delhi observed that there is no direct co-relation between the turnover and the ITC availed for a particular period as the expenses in the real estate projects are not uniform throughout the life cycle of the project. The eligibility of the credit depends on the nature of the construction activity undertaken during the particular period.
- (h) The objection of the Complainant regarding validity of comparing CENVAT credit (on 40% service value only) as percentage of total purchase value with ITC on (100% value) as purchase value requires no response from the Respondent as it was under the domain of the DGAP to adopt the methodology to determine total savings on account of introduction of GST.
- (i) The objection made by the Complainant regarding the reversal of ITC is factually incorrect. The DGAP has correctly considered reversal of the ITC of Rs. 15,04,41,109/- from GSTR-9 of the financial year 2019-20 instead of ITC reversal of Rs. 16,69,36,170/- as submitted by the Respondent related to Phase-II of Raintree Park. The DGAP has followed the observations made by the Hon'ble High Court of Delhi,

that savings on account of GST is required to be calculated for the entire project.

- (j) The reversal of the ITC on account of unsold units on the date of receipt of OC is considered for determining the savings on account of introduction of GST.
- (k) Insofar as the objection made by the Complainant regarding the investigation by the DGAP at the end of IJM Infrastructure is concerned, the Respondent was itself selling units to the homebuyers and IJM Infrastructure did not have any active role on accrual of benefit of additional ITC at the end of the Respondent. It is immaterial whether IJM Infrastructure has passed on any benefit to the Respondent or not because if any profiteering was computed against Respondent, then the fact of not passing on any benefit by IJM Infrastructure to the Respondent cannot absolve the Respondent's liability.
- (l) Regarding the objections made by the Complainant that IJM Infrastructure had computed ITC benefit of Rs. 4,46,92,454/- available to the end buyer and that the DGAP did not examine the said computation, it is submitted the DGAP has examined the said computation in its report and observed that IJM Infrastructure has no active role in accrual of benefit of additional ITC due to introduction of GST, as they are neither retaining ITC to themselves nor they are selling the units to the homebuyers.
- (m) The first report of the DGAP was prepared on different methodology and for different period of time. The said report was prepared on the basis of ratio of credit to turnover while the present report dated 08.01.2025 is prepared on the basis of ration of credit to purchase value, adhering to the directions and the observations made by Hon'ble High Court of Delhi in *Reckitt Benckiser India Pvt. Ltd.*

(Supra). Therefore, the objections raised by the Complainant is baseless.

(n) The DGAP was not required to compute per Sq. Ft. benefit when it concluded that there was no overall saving on account of introduction of ITC in respect of the entire project.

17. After the pleadings of the Complainant and the Respondent, the DGAP was asked to submit its clarification in respect of its report dated 08.01.2025 in the light of the objections made by the Complainant.

18. The DGAP filed its clarification against the objections made by the Complainant as under: -

(i) The methodology adopted by the DGAP is correct and strictly in accordance with the provisions contained u/s 171 of the CGST Act and strictly in accordance with the para 129 of the judgement passed by the Hon'ble High Court of Delhi in *Reckitt Benckiser (Supra)*.

(ii) To calculate profiteering, the ratio of CENVAT and ITC on input services is required to be determined by comparing it with the construction activities which is directly related to the quantum of CENVAT or ITC becoming eligible or available. The amount spent on inputs and inputs services has a direct relation to determine the proportion of ITC. The amount of profiteering is to be attributed to the total area constructed to determine profiteering per sq. ft.

(iii) The flats sold after the issuance of OC were kept out of the scope of the investigation as per paragraph 5 of Schedule III of the CGST Act.

(iv) Insofar as the objection raised by the Complainant that the DGAP failed to examine IJM Infrastructure's ITC flow and pricing structure is concerned, it was found during the investigation that IJM Infrastructure was a contractor to the Respondent providing work contract services. It has no active role in accrual of benefit of additional ITC due to introduction of GST, as they are not retaining

ITC to themselves nor they are selling the units to the homebuyers. Therefore, the objection raised by the Complainant is incorrect.

- (v) There is no inconsistency between the report dated 23.03.2020 and 08.01.2025 submitted by the DGAP since, the latter report is prepared on the basis of the observation made by Hon'ble High Court of Delhi in the Judgment of ***Reckitt Benckiser (Supra)***.
- (vi) The DGAP prepared its report on the basis of the data supplied by the Respondent which is verified and certified by a Chartered Accountant. The certification by a Chartered Accountant is recognised under various Indian laws including the Companies Act, 2013, the Income-tax Act, 1961 and the CGST Act. Therefore, the contentions raised by the Complainant are not correct.
- (vii) The methodology adopted by the DGAP in construction projects is upheld by this Tribunal in Order No. *NAPA/73/PB/2025 dated 28.10.2025 in DGAP v. M/s Ireo Pvt. Ltd (City Central, Managed Service Apartment, Skyon)*.
19. Heard Shri Rahul Rao Gautam, Additional Assistant Director/ Authorised Representative of the DGAP. Shri Dhruv Tiwari, Advocate assisted by Shri Shivam Batra, Advocate on behalf of the Respondent.
20. Shri, Anil Kumar Kota, Complainant was accorded the opportunity of hearing through hybrid mode on two occasions. But he submitted through an email that his objections may be entertained as his arguments.
21. Perused the record.
22. Section 171 of the CGST Act reads thus:

“Section 171 Antiprofitteering measure. -

(1). Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an

existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

***Provided** that the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.*

***Explanation 1.** —For the purposes of this sub-section, “request for examination” shall mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.*

***Explanation 2.** —For the purposes of this section, the expression “Authority” shall include the “Appellate Tribunal*

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

(3A) 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.

Explanation. -For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both”.

23. The provisions contained in Section 171 of the CGST Act mandates that any reduction in the rate of tax, on any supply of goods and service or the benefit of ITC should be passed on to the consumer by way of commensurate reduction in prices.
24. The Hon’ble High Court for the state of Telangana at Hyderabad in **WP No. 4760 of 2021 and 5351 of 2021 Sudarshan Theatre 35MM vs. Union of India** observed about the spirit of the legislation behind the provision u/s 171 of CGST Act, 2017 as: -

“A plain reading of the said provision of law clearly indicates that the said provision has been introduced to ensure that the supplier of goods and services should not make profit from the reduction of the tax rate under the G.S.T. law. Rather the intention of the Government is that the moment the rate of tax under the G.S.T. is reduced, the benefit should immediately be passed on to the end-user by way of reduction in the prices commensurate with the reduction in the rate of tax. This, in other words, would mean that, the moment there is a cut in the rate of G.S.T., the price of the commodity or the services rendered has to be reduced automatically to the extent of the reduction in the rate of tax. If the supplier continues to sell the product at the same price particularly when the prices are

inclusive of G.S.T., the respondent-Department or the beneficiary is not being benefitted by the Government's decision in lowering the rate of tax.”

(Emphasis added)

25. The present proceedings have arisen pursuant to a complaint filed by the Complainant, alleging that the Respondent indulged in profiteering in respect of its project 'Raintree Park,' by failing to pass on the benefit of ITC to the Complainant by way of commensurate reduction in prices, in contravention of Section 171 of the CGST Act.
26. The core dispute in the present proceedings is that the Complainant is aggrieved with the DGAP report dated 08.01.2025 pursuant to the investigation against the Respondent, wherein it has been concluded that the no benefit accrued to the Respondent on introduction of the GST law and hence, there was no requirement to pass on any benefit in terms of Section 171 of the CGST Act.
27. The main objection of the Complainant is that the DGAP has misinterpreted the observations made by Hon'ble High Court of Delhi in the Judgment of ***Reckitt Benckiser (supra)***. The DGAP did not adopt the correct methodology and committed certain errors while arriving at the conclusion that the Respondent has not contravened Section 171 of the CGST Act, while in its earlier report dated 23.03.2020, it was concluded by the DGAP that the Respondent has indulged in the profiteering. Further, the Complainant was not satisfied with the computation of ratio of credit availed on purchase value (in percentage) during pre-GST and post-GST period. It is alleged the DGAP in the earlier report recorded additional ITC benefit of 9.7% to the Respondent and profiteered amount of 2,88,00,435/- whereas in the latest report, additional benefit of ITC reduced to -3.47% with Nil profiteered amount. The methodology of the DGAP of ITC percentage of purchase value method is defective.

28. The Hon'ble High Court of Delhi in **Reckitt Benckiser (Supra)** observed that no fixed/uniform method or mathematical formula can be laid down for determining profiteering. The Hon'ble Court observed that: -

“124. 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.

126. Consequently, Rule 126 of the Rules, 2017 to the extent it grants flexibility to NAA to determine the methodology and procedure to decide whether reduction in rate of tax or benefit of Input Tax Credit has been passed on or not to the recipient is reasonable and legal. Moreover, as per Rule 126 NAA ‘may determine’ the methodology and not ‘prescribe’ it. The substantive provision i.e. Section 171 of the Act, 2017 itself provides sufficient guidance to NAA to determine the methodology on a case-by-case basis depending upon peculiar facts of each case and the nature of the industry and its peculiarities. Consequently, so long as the methodology determined by NAA is fair and reasonable, the petitioners cannot raise the objection that the specifics of the methodology adopted are not prescribed.

127. Since considerable emphasis was laid by learned counsel for the Petitioners on the methodology adopted by NAA to determine commensurate reduction qua real estate industry, this Court deems it appropriate to deal with the same at some length. With the introduction of the Goods and Services Tax scheme/regime, the availability of Input Tax Credit against various goods and services

used in construction has increased or Input Tax Credit was available against more goods and services then before this resulted in a decrease in the cost of the builders as they now had more Input Tax Credit available to be set off against Goods and Services Tax paid by them in the Goods and Service Tax regime as compared to before and the same was not required to be collected from the consumers.

128. There is not 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 the

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 Service Tax.

129. However, this Court finds that the methodology adopted by NAA and DGAP to arrive at the 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-Goods and Services and Tax and post-Goods and Services and Tax period. This Court is in agreement with the contention of the learned counsel for 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 Input Tax Credit 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 learned counsel of the petitioners that one needs to calculate the total savings on account of introduction of Goods and Services and 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 the aforesaid direction/interpretation into account.”

(Emphasis added)

29. On the basis of the above findings, it is apparent that there is no direct correlation between the turnover and the ITC availed for a particular period as the expenses in a real estate project are not uniform throughout the life cycle of the project. The eligibility of credit depends on the nature of the construction activity undertaking during the particular period. For the purpose of computation of profiteering, one has to calculate the total saving on account of GST and divide such savings by total area to arrive at the per square feet benefit to be passed on to the recipient i.e. the homebuyers.
30. The learned counsel for the Respondent, through the written submission filed on behalf of the Respondent, elaborated the findings recorded by Hon’ble High Court of Delhi which are tabulated hereunder. It specifies the categories which are entitled to receive the benefit of profiteering in terms of Section 171 of the CGST Act.

Clause of Para 128	Construction of the flat	Payment of consideration by the buyers	Whether entitled to the benefit of ITC
a.	Pre-GST period	Pre-GST period	No

b.	Started in pre-GST and completed in GST period	GST period	Yes, entitled to the benefit of ITC on the material purchased in GST period, in respect of which benefit of ITC has been availed by the builder.
c.	Started in pre-GST and completed in GST period	Pre-GST period	Yes, entitled to the benefit of ITC on the material purchased in GST period, in respect of which benefit of ITC has been availed by the builder, which was not available in pre-GST period.
d.	GST period	GST period, after construction is completed	No

31. Initially, the DGAP conducted the investigation on the basis of the reference received from the Standing Committee. After investigation the DGAP submitted its report dated 23.03.2020 in terms of Rule 129(6) of the CGST Rules, concluding that the Respondent profited an amount of Rs. 2,96,93,802/-, including the GST. As the benefit of Rs. 27,29,748 was passed on by the Respondent to 132 homebuyers, the profited amount was reduced to Rs. 2,69,64,054/-. The profited amount to be passed on to the Complainant was computed as Rs. 2,88,435/-.
32. In the latest investigation, the DGAP followed the methodology prescribed by Hon'ble High Court of Delhi in ***Reckitt Benckiser (Supra)*** in Para 129 of the Judgement, as reproduced here: -

“129. However, this Court finds that the methodology adopted by NAA and DGAP to arrive at the 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-Goods and Services and Tax and post-Goods and Services and Tax period. This Court is in agreement with the contention of the learned counsel for

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 Input Tax Credit 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 learned counsel of the petitioners that one needs to calculate the total savings on account of introduction of Goods and Services and 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 the aforesaid direction/interpretation into account.”

(Emphasis added)

33. As per the above methodology, the DGAP considered the data supplied by the Respondent which was duly certified and verified by the Chartered Accountant. On the basis of the comparative purchase value of goods and services during pre-GST and post-GST period, the credit of Service Tax and the net ITC of GST availed during pre and post GST era, the DGAP calculated the difference of ratio of credit availed to purchase value. The DGAP found that during pre-GST period, ratio of purchase value in (in %) was 6.81% and that during the post-GST period, it declined to 3.34%. Since the benefit available to the Respondent post introduction of GST declined by 3.47%, the DGAP concluded that the Respondent did not

contravene provisions of Section 171 of the CGST Act. The claim of the Respondent that it had passed on the benefit of Rs. 62,53,926/- to its homebuyers was not accounted for, since it was observed that the Respondent was not indulged in profiteering. The aforesaid comparison is tabulated by the DGAP in its report as under: -

S. No.	Particulars	Pre-GST Period (in Rs.)	GST Period (in Rs.)
1.	Purchase Value of Goods and Services (Excluding Taxes and Duties)	62,40,70,289	102,62,63,862
2.	Credit of Service Tax availed	4,25,44,214	-
3.	Credit of VAT availed	-	-
4.	Total Credit Availed in Pre-GST Period	4,25,44,214	-
5.	Net ITC of GST Availed	-	3,42,78,735
6.	Ratio of Credit Availed to Purchase Value (in%)	6.81%	3.34%
Difference		(-3.47%)	

34. With respect to the objection raised by the Complainant that the DGAP misinterpreted the judgment in *Reckitt Benckiser (supra)* by erroneously substituting the comparative base of ITC/turnover ratio with ITC/purchase value ratio, thereby adopting a defective methodology, we are of the considered view that the DGAP has correctly applied the methodology in accordance with the findings of the Hon'ble High Court of Delhi in paragraph 129 of the said judgment (as reproduced above). Accordingly, we hold that the objections raised by the Complainant are misconceived and untenable.
35. The Complainant has agitated that no benefit of ITC has been passed on to him or to other homebuyers by the Respondent. In rebuttal, the

Respondent has submitted that a sum of Rs. 64,257/- was passed on to the Complainant by way of book adjustment. The said amount was duly adjusted against the total outstanding dues payable by the Complainant, which adjustment was accepted by him.

36. The Respondent has further filed, along with his written submissions, a copy of the relevant portion of the ledger account of the Complainant, evidencing that the ITC benefit of Rs. 64,257/- was passed on to him. The said amount was adjusted against the outstanding dues in respect of his flat. Receipt of such benefit has been confirmed by the Complainant through an email addressed to the Respondent.
37. The relevant entry of the account of the Complainant with the Respondent reads thus; -

IJM Lingamaneni Township Pvt Ltd-Phase II

Kota Lakshmi Kumari & Anil Kumar (Shiftd Fm 1040) Ledger Account: 1-Apr-2015 to 30-Jan-2021

Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward			53,01,522.00	51,30,537.00
19-8-2020	To Advance Maintenance Advance Maintenance for the unit Willows0942 Being the entry for Advance Maintenance for the unit Willows0942	Journal	JV 08/20-09	27,166.00	
	By Interest on Overdue Int waiver for the unit Willows0942 Being entry for Int waiver for the unit Willows0942	Journal	JV 08/20-10		26,139.00

	To Interest on Overdue Int charged for the unit Willows0942 Being entry for Int charged for the unit Willows0942	Journal	JV 08/20-11	26,139.00	
	To Vat Payable VAT Chgs for the unit Willows0942 Being entry for VAT Chgs for the unit Willows0942	Journal	JV 08/20-12	20,704.00	
	By GST Anti-Profitteering GST Anti-Profitteering Ration Portion Transfer to customer A/C for Willows0942 Being the entry for GST Anti Profitteering Ration Portion Transfer to customer A/C for Willows0942	Journal	JV 08/20-13		64,257.00

38. During the course of investigation, in order to verify the Respondent's claim of having passed on ITC benefit amounting to Rs. 61,08,682/- to 90 homebuyers, the DGAP had addressed confirmation emails to all such homebuyers. Out of these, 8 homebuyers, including the Complainant, confirmed receipt of the ITC benefit. This has not been controverted by the Complainant.

39. In view of the above, the objection of the Complainant that the benefit of ITC had not been passed on to him is baseless.
40. Further, it is also one of the grievances of the Complainant that the DGAP failed to examine IJM Infrastructure's (EPC Contractor) ITC flow and pricing structure. The EPC Contractor raised invoices to the Respondent. On these invoices, ITC was initially available to the Contractor who then reimbursed the Respondent at cost plus markup.
41. Perusal of DGAP report dated 08.01.2025 reflects that the DGAP had examined the status and relevant documents related to IJM Infrastructure. It was providing work contract services to the Respondent and was issuing invoice accordingly. It is undisputed fact that all the units were sold to the homebuyers by the Respondent himself. Therefore, IJM infrastructure had no active role in the accrual of benefit of additional ITC due to introduction of GST. IJM infrastructure was not keeping ITC at their end since they were not selling units to the consumers.
42. Sri Dhruv Tiwari, learned counsel, has vehemently contended that insofar as accrual of ITC to IJM Infrastructure is concerned, the same formed part of its cost structure and was not available to the Respondent. He further submitted that all relevant documents were produced before the DGAP during the course of investigation, which were duly examined and verified. The liability of the Respondent is independent from that of IJM Infrastructure, and it is immaterial whether IJM has computed any amount to be passed on to the Respondent.
43. Considering the observations made by the DGAP in its report and on the basis of the submissions advanced by learned counsel for the Respondent, we arrive at the conclusion that the DGAP conducted proper investigation by examining relevant documents relating to the EPC contractor. All the units were sold to the home buyers by the Respondent himself and IJM infrastructure had no active role in the accrual of benefit of additional ITC due to introduction of GST.

44. In view of the above, we find no force in the objection of the Complainant that the DGAP did not examine the flow of ITC from the EPC contractor.
45. The objection of the Complainant regarding narrowing of the scope of investigation by the DGAP by confining it to only 107 units out of 632 units is found to be unjustifiable and erroneous. This fact is not controverted by the Complainant that out of total 632 units in Phase II, 132 units were sold before the issuance of OC. 400 units were booked after the issuance of OC. 100 units remain unsold. Out of 132 units 25 units were cancelled by respective homebuyers. Thus, 525 units (400 after OC + 100 unsold + 25 cancelled) were kept out of the purview of the investigation by the DGAP.
46. The DGAP had taken into consideration the saleable area of 1,44,158 Sq. Ft. relating to 107 units which were sold before issuance of OC. The Learned Representative of the DGAP submitted that the calculation of the difference of the ratio of credit availed to purchase value (in %) has been computed only for these 107 units.
47. The learned representative of the DGAP submitted ITC pertaining to the residential units which were unsold on the date of issuance of OC (i.e. 525 units) is required to be reversed by the Respondent as per Para 5 of Schedule III of the CGST Act read with Para 5(b) of Schedule II of the CGST Act, which is reproduced here; -

Paragraph 5 of schedule III of the CGST Act

“5. Sale of land and, subject to clause (b) of paragraph 5 of schedule II, sale of building.

Paragraph 5 (b) of schedule II of the CGST Act is;-

(b) Construction of the complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.”

48. Having considered the aforesaid factual matrix and the provision we are of the view that the DGAP correctly considered 107 units for investigation and excluded those units which were unsold on the date of issuance of OC. Therefore, the objection raised by the complainant cannot be accepted.
49. The next objection by the Complainant is that some of the invoices raised against the Complainant bore explicit declaration "*Input Tax Credit benefit not passed on*". It reflects that the Respondent acknowledged that ITC benefit was due.
50. The learned counsel for the Respondent vehemently opposed such objection and submitted that the Respondent had issued a total number of six bills to the Complainant. None of the bills so raised has any declaration as stated by the Complainant and this objection is uncorroborated by any documentary evidence.
51. The Respondent, in its written submissions, has produced a copy of invoice no. PB-II/PB201718-0109 dated 29.01.2018. Perusal of the said invoice reflects that no such declaration exists therein. Conversely, the Complainant has failed to substantiate his objection with any cogent evidence. It thus appears that the Complainant has raised this objection without any basis, merely for the sake of raising an objection, and has not come before us with clean hands.
52. Another objection raised by the Complainant is that the reversal of ITC due to unsold units distorts the comparison as the reversal was not necessitated for 107 units sold before issuance of OC. For units sold post OC, ITC must be reversed as the supply becomes exempt supply. The DGAP incorrectly used net ITC figure (after reversal) as if it applies uniformly across all units. The DGAP used blended reduced figure by unfairly reducing it to Rs. 3,42,78,735/-.
53. The DGAP examined the relevant documents along with the certificate given by the Chartered Accountant (CA) and the GSTR-9 of the

Respondent for FY 2019-20. According to CA certificate, the Respondent had availed ITC of Rs.18,47,19,844 during July 2017 to FY 2019-20. As per the letter dated 13.09.2024, ITC reversed during this period is Rs. 16,69,36,170/- whereas as per GSTR-9, it was Rs. 15,04,41,109/-. The DGAP had considered reversal figure as Rs 3,42,78,735/- for the entire project for FY 2019-20 as the OC of the project was received in FY 2019-20.

54. Sri Dhruv Tiwari, learned counsel who is assisted by Sri Shivam Batra, Advocate, impressed upon the findings given by Hon'ble High Court of Delhi in para 129 of its judgement passed in ***Reckitt Benckiser (Supra)***. It is submitted that Hon'ble High Court of Delhi has held that savings on account of GST is required to be calculated for the entire project.
55. We are in agreement with the submissions made by the learned counsel for the Respondent. The findings of the Hon'ble High Court make it clear that the value of total ITC available to the builder has to be computed after excluding the reversal amount in respect of the entire project. ITC reversed on account of units sold after issuance of OC is required to be excluded as units sold after issuance of OC is excluded from the scope of supply under GST Act in terms of Section 7 of the CGST Act read with para 5 of Schedule III of the CGST Act, 2017
56. Further, ITC on account of unsold units till the issuance of OC requires reversal. Since this amount is not retained by the Respondent, it cannot be considered as amount of ITC available to the Respondent.
57. The DGAP has rightly considered the purchase value for the entire project while computing the total savings for the entire project. Net cost of purchase of inputs/input services is required to be compared with net ITC availed by the Respondent on such purchase. Thereafter, net savings can be calculated. The DGAP correctly followed the findings given by Hon'ble High Court of Delhi in ***Reckitt Benckiser (Supra)***.

58. In view of the above discussions, we are of the view that objections raised by the Complainant that the reversal of ITC due to unsold units distorts the comparison are not sustainable and deserves to be dismissed.
59. The Complainant has further contended that there exists inconsistency between the DGAP's earlier report dated 23.03.2020 and the present report. It has been urged that while the same project, parties, and homebuyers were reflected as having derived an additional ITC benefit of 9.07% in 2020, the present report indicates a decline of 3.47% in ITC benefit in 2025. According to the Complainant, the DGAP has failed to explain this apparent contradiction and has mechanically applied a different formula without reconciling the underlying tax positions.
60. The learned counsel for the Respondent has submitted that the first report was prepared on the basis of ratio of credit/turnover. This methodology was thereafter found as flawed by Hon'ble High Court of Delhi. The report under consideration was therefore, prepared on the basis of comparison of ratio of credit/purchase value.
61. The Hon'ble High Court of Delhi in *Reckitt Benckiser (Supra)* held 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.
62. Having considered the above submissions and in view of the findings of the Hon'ble High Court of Delhi, we are of the view that the outcome of the DGAP's earlier report dated 23.03.2020 and present report was bound to be different and inconsistent due to adoption of different methodology altogether. However, we are of also of the view that such inconsistency does not adversely affect the conclusion of the DGAP that there has been no contravention of Section 171 of the CGST Act by the Respondent. The objection of the Complainant on this count cannot be accepted.
63. The Complainant has further contended that the DGAP prepared its report on the basis of selective and incomplete data supplied by the Respondent,

and that the figures furnished by the Respondent were accepted without independent verification.

64. The learned representative of the DGAP has strongly refuted this contention. He submitted that the report was prepared on the basis of data provided by the Respondent, which was duly verified and certified by a Chartered Accountant. In addition, the GSTR-9 returns filed by the Respondent were also taken into consideration.
65. Per contra, learned counsel for the Respondent submitted that the report of the DGAP is not without verification and is merely in the nature of a caveat.
66. Perusal of the DGAP's report dated 08.01.2025 demonstrates that independent verification was indeed carried out. In paragraph 20 of the report, the DGAP considered the CENVAT credit of Rs. 4,25,44,214/- and rejected the lower figure of Rs. 3,75,80,345/- certified by the Respondent's Chartered Accountant. Similarly, in paragraph 22, the DGAP took into account the ITC reversal of Rs. 15,04,41,109/- as disclosed in the Respondent's GSTR-9 for FY 2019-20, as against Rs. 18,47,19,844/- certified by the Chartered Accountant, and Rs. 16,69,36,170/- disclosed in the Respondent's letter dated 13.09.2024 for FY 2018-19 to FY 2020-21.
67. In light of the above discussion, we are of the considered view that the objection raised by the Complainant, alleging that the DGAP prepared its report on the basis of selective and unverified data, is devoid of substance. Such objection is misconceived and liable to be rejected.
68. Having examined in detail the objections raised by the Complainant against the DGAP's report dated 08.01.2025, the written submissions, and the arguments advanced by the learned counsel for the Respondent as well as the authorized representative of the DGAP, we conclude that the objections are misconceived, baseless, and contrary to the findings of the Hon'ble High Court of Delhi in *Reckitt Benckiser (Supra)*. Consequently,

the report of the DGAP dated 08.01.2025 deserves to be accepted, and the objections raised by the Complainant deserve to be rejected.

ORDER

69. The objections raised by the Complainant against the DGAP report dated 08.01.2025 are hereby rejected.
70. Accordingly, the DGAP report dated 08.01.2025 is accepted.
71. A copy of Judgment be sent to the SGST/CGST Jurisdictional Commissioner for information and necessary action, if any.
72. Judgment pronounced in open court today.

(Justice Mayank Kumar Jain)

Dated: 01.04.2026