

GSTAT

Single Bench Court No. Court IV

NAPA/114/PB/2025

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

.....Appellant

Versus

BENGAL SHAPOORJI HOUSING DEVELOPMENT PVT. 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.: ZA070010426000131H

Date of order: 27/04/2026

1.	GSTIN/Temporary ID/UIN - 19AACCM1595P1ZS	
2.	Appeal Case Reference no. - NAPA/114/PB/2025	Date - 28/03/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. Bengal Shapoorji Housing Development Pvt. Ltd. , santanu.laskar@shapoorji.com	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -

6.	Personal Hearing - 27/04/2026 16/04/2026 08/04/2026 10/03/2026 08/01/2026 29/10/2025
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - 24. The Respondent is directed to refund the profiteered amount of Rs.1,33,32,208/-, along with GST @ 12% amounting to Rs.15,99,865/-, aggregating to Rs.1,49,32,073/-, to the eligible homebuyers as detailed in Annexure-11 of the DGAP Report. The said amount shall be refunded along with interest at the rate of 18% per annum, in terms of Rule 133(3)(b) of the Central Goods and Services Tax Rules, 2017, from the date of collection of such higher amount from the buyers till the date of its actual refund
Summary of Order	
9.	Type of order: Return to Recipient of Amount not passed on, along with interest

Place: DELHIPB

Signature

Date: 27.04.2026

DELHIPB Shri Manmohan Sharma

Designation: Stenographer/Law researcher

Jurisdiction: Delhi (PB)

ORDER

1. The present proceedings arise from a complaint made by Shri Vinod Kumar Jain, F-53/7, Karunamoyee Estate, Salt Lake, Kolkata- 700091 (hereinafter referred to as “the Complainant”) under Rule 128 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “the CGST Rules”) alleging profiteering in respect of construction services provided by M/s Bengal Shapoorji Housing Development Private Limited, P.S. Srijan Corporate Park, Unit #0903, Tower-I, Plot No. G2, Block-GP, Sector-V, Salt Lake City, Kolkata- 700091 (hereinafter referred to as “the Respondent”) in the Project “Shukhobrishti - Spriha Phase 5 & 6”.
2. The Complainant alleged that the Respondent did not pass on the benefit of Input Tax Credit (hereinafter referred to as “ITC”) to the Complainant by way of commensurate reduction in the prices in respect of the purchase of Flat - K/28/1005 in the aforesaid

project upon the introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, (hereinafter referred to as “CGST Act, 2017”).

3. The said complaint was examined by the Standing Committee on Anti-Profiteering in its meeting held on 08.05.2024, and the minutes of the said meeting were forwarded to the Directorate General of Anti-Profiteering (hereinafter referred to as “the DGAP”) for a detailed investigation in respect of the application filed under Rule 129(1) of the CGST Rules, 2017.
4. Upon completion of the investigation, the DGAP submitted its Report dated 25.03.2025 to the Principal Bench, GSTAT, which has been summarized as follows:
 - a. The DGAP conducted investigation for the period 01.04.2017 to 30.09.2024, as the Respondent had not opted for the scheme of payment of GST @ 5% without ITC w.e.f. 01.04.2019.
 - b. The Respondent had opted for old scheme for discharging GST @ 12% (after 1/3 abatement towards land in terms of notification 3/2019 - Central Tax (Rate) dated 29.03.2019). Accordingly, the Respondent was liable to pay GST @ 12% with ITC, and therefore, the profiteering in the present case has been computed up to 30.09.2024.
 - c. Prior to the introduction of GST, the Respondent was eligible to avail credit of Service Tax paid on input services (CENVAT credit of Central Excise duty was not available) in respect of the units for the project “Shukhobrishti – Spriha Phase 5 & 6” sold by the Respondent. Similarly, VAT and other State taxes paid by the builders get adjusted against the output VAT liability on property sold by them. In the pre-GST regime, Input Tax Credit was generally restricted and could be utilised only against the same category of taxes. As a result, the incidence of Central Excise duty, VAT,

Entry Tax, etc., on construction materials formed part of the cost, which was ultimately passed on to the customers as part of the price.

- d. In the post-GST regime, the Respondent became eligible to avail Input Tax Credit of GST paid on all inputs and input services used in the construction of the project. Therefore, the benefit of additional ITC accrued to the Respondent after the implementation of GST.
- e. The calculation of the profiteered amount, based on the data submitted by the Respondent, has been worked out as tabulated in Table–A below:

Table - A

S. No.	Particulars	Pre - GST period	Post - GST Period
1 .	Purchase Value of Goods & Services (excluding taxes)	85,76,15,936/-	24,18,91,674/-
2 .	Credit of Service Tax availed	7,07,53,315/-	-
3 .	Credit of VAT availed	-	
4 .	Total Credit availed in Pre- GST Period	7,07,53,315/-	-
5 .	Net ITC of GST Availed	-	3,38,64,834
6 .	Ratio of Credit availed to Purchase Value (in %)	8.25	14.00
	Difference		5.75%

From the above Table–A, it is evident that the input tax credit as a percentage of purchase value has increased from 8.25% in the pre-GST period to 14.00% in the post-GST period, resulting in an additional benefit of 5.75% to the Respondent. Accordingly, there is a clear benefit on account of additional Input Tax Credit.

- f. It is further observed that the Central Government, on the recommendation of the GST Council, had levied GST @ 18% (effective rate 12% after 1/3rd abatement

towards land value) on construction services vide Notification No. 11/2017–Central Tax (Rate) dated 28.06.2017. Accordingly, the Respondent was liable to pay GST @ 12% with ITC, and therefore, the additional ITC benefit was required to be passed on to the homebuyers.

- g. Based on the above findings, the DGAP has computed the amount of profiteering by applying the additional ITC benefit of 5.75% on the post-GST purchase value and apportioning the same on a per square foot basis, which is tabulated in Table–B below:

Table – B

Particulars		Post- GST
Period	A	July 2017 to 30.09.2024
Ratio of Credit availed to Purchase Value as per Table-A above (%)	B	8.25% / 14.00%
Increase in input tax credit availed Post- GST (%)	C	5.75%
Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post- GST Period	D	24,18,91,674/-
Total savings on account of additional ITC benefit	$E = D * C / 100$	1,39,08,771/-
Total saleable area (in Sq. Ft.) as per the list of buyers	F	16,01,387
Total saving per Sq. Ft.	$G = E / F$	8.69/-
Total Sold Area (in Sq. Ft)	H	15,34,201
Base Profiteered Amount	$I = G * H$	1,33,32,208/-

From Table–A and Table–B above, it is clear that the additional ITC benefit of 5.75% should have resulted in a commensurate reduction in prices. However, the Respondent has not passed on the such benefit to the buyers. Accordingly, in terms

of Section 171 of the CGST Act, 2017, the Respondent has profiteered an amount of Rs.1,33,32,208/-. After adding GST @ 12%, amounting to Rs.15,99,865/-, the total profiteered amount comes to Rs.1,49,32,073/-, which is required to be passed on to the 1525 eligible homebuyers.

5. With effect from 01.10.2024, the Central Government, on the recommendations of the GST Council, empowered the Principal Bench of the GST Appellate Tribunal (GSTAT), constituted under sub-section (3) of Section 109 of the CGST Act, 2017, to adjudicate anti-profiteering cases in terms of Notification No. 18/2024–Central Tax dated 30.09.2024.
6. The above Report was received in the Principal Bench, GSTAT, on 28.03.2025 for adjudication under Section 171 of the CGST Act, 2017. A Notice dated 30.10.2025 was issued to the Respondent directing it to file written submissions on the DGAP Report.
7. The Respondent, vide submissions dated 11.03.2026, contended as follows:
 - 7.1. The project was executed under a development agreement with West Bengal Housing Infrastructure Development Corporation Ltd. (WBHIDCO), wherein the prices of the units were fixed at the inception of the project, and the Respondent had no authority to revise or alter the same during the course of the project.
 - 7.2. For invocation of Section 171 of the CGST Act, 2017, there must be a demonstrable reduction in the cost of supply on account of Input Tax Credit which has not been passed on to the buyers. In the present case, there has been no reduction in cost; rather, the cost of construction has increased post-GST due to higher tax rates on inputs and input services (approximately 18%) as compared to the effective output GST rate of 12%.
 - 7.3. The difference between input tax rates and output tax rates has resulted in an inverted duty structure, leading to accumulation of input tax credit. A substantial portion of such accumulated ITC remains unutilized and cannot be effectively

utilized for payment of output tax liability. Such unutilized ITC does not constitute a real financial benefit and, therefore, cannot be treated as a benefit for the purposes of Section 171 of the CGST Act, 2017.

7.4. It is further contended that only that portion of ITC which is utilized for discharge of output tax liability can be considered as a benefit, and mere availability of ITC in the books does not reduce the cost. Accordingly, the methodology adopted in the DGAP Report, which treats the entire additional ITC as a benefit, is erroneous and contrary to the scheme of the GST law.

8. The DGAP, vide communication dated 06.04.2026, contended the following:

8.1. The methodology adopted for determination of profiteering is in accordance with the judgment of the Hon'ble High Court of Delhi dated 29.01.2024, wherein it has been held that, in real estate cases, the benefit of Input Tax Credit accrued in the GST regime is required to be computed for the project as a whole and passed on to buyers on a per square foot basis.

8.2. The methodology based on comparison of ITC to turnover has been held to be inappropriate, and therefore, the approach adopted by the DGAP in the present case, computing additional ITC and distributing the same proportionately over the saleable area is legally valid and consistent with the said judgment. Accordingly, the contentions raised by the Respondent are not tenable and the findings of profiteering as determined in the Report dated 25.03.2025 are liable to be upheld.

9. The Complainant, vide his submissions dated 18.11.2025, 13.02.2026 & 13.04.2026, inter alia, made the following submissions:

9.1. The project "Shukhobrishti" has been declared and promoted as an affordable housing project, and therefore the applicable tax regime for such projects ought to be considered while determining the tax liability and passing on of benefits.

- 9.2. He further submitted that, as per clarification obtained from the CBIC Mitra Help Desk, GST at the rate of 1% is applicable in case of affordable housing where Input Tax Credit is not availed, whereas in other cases the applicable rate is 5%, and therefore levy of tax under the earlier scheme was not justified. It was also contended that the Respondent had no authority to deviate from the applicable statutory provisions and ought to have recalculated the tax liability in accordance with the prevailing GST framework.
- 9.3. The Complainant also alleged that the Respondent had collected excess Service Tax, SBC and KKC on various instalments, which was not in accordance with the applicable rates, and such excess amount is liable to be refunded with interest. It was further claimed that interest on such excess collection and suitable compensation ought to be granted.
- 9.4. It was additionally contended that the benefit of Input Tax Credit ought to have been extended to all phases of the project, including other segments such as “Sparsh (2 BHK)” and “Spandan (1 BHK)”, and not restricted to specific phases under investigation, and that certain issues raised in earlier representations have not been examined by the investigating authority.
- 9.5. The Complainant, vide further submissions dated 13.04.2026, also alleged that the Respondent had increased prices, delayed possession of units without compensation, and collected excess amounts towards Service Tax and GST. He further raised issues regarding excess stamp duty and registration charges, maintenance charges without adequate services, and irregularities in allotment of parking spaces, and sought refund of such amounts along with interest and compensation.
10. Notwithstanding the above, the Respondent, during the course of the hearing held on 16.04.2026, through his Authorised Representative, submitted that he accepts the

findings of the DGAP Report. However, it was contended that GST @ 12% on the profiteered amount, i.e., Rs.15,99,865/-, ought not to be levied.

11. Further, the Complainant, vide email dated 16.04.2026, submitted that he was unable to attend the hearing scheduled on the said date due to health reasons and requested that his earlier letter dated 13.02.2026, along with attachments, be placed before the Hon'ble Tribunal. He stated that the said letter had been sent earlier through courier as well as email but had not been taken on record by the Tribunal. The Complainant also requested that a copy of the submissions filed by the Respondent be provided to him.
12. Hearings in the matter were held on 08.01.2026, 10.03.2026, 08.04.2026 and 16.04.2026. Sh. Naresh Kumar Chawla, Chartered Accountant and Authorised Representative, assisted by Sh. Naresh Kumar Aggarwal, Chartered Accountant, appeared for the Respondent. Sh. Rahul Rao Gautam, Additional Assistant Director, assisted by Sh. Anurag Gupta, appeared for the Directorate General of Anti-Profiteering. None appeared on behalf of the Original Complainant/Applicant.

Issues for Determination:

13. In view of the DGAP Report and the submissions made by the parties, the following issues arise for determination:
 - (i) Whether the Respondent had derived any additional benefit of Input Tax Credit consequent to the introduction of GST?
 - (ii) If so, whether such benefit has been passed on to the homebuyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017?
 - (iii) Whether the Respondent is liable to return the profiteered amount along with applicable interest, and if so, what is the quantum of such refund?
 - (iv) Whether penalty under Section 171(3A) of the CGST Act, 2017 is attracted in the facts and circumstances of the present case, and if so, the quantum of penalty?

Determination of Profiteering and Passing of ITC Benefit:

14. With regard to Issue Nos. (i) and (ii) above, it is evident from the DGAP Report that the Respondent has derived the benefit of additional Input Tax Credit consequent to the introduction of GST. The ratio of Input Tax Credit to purchase value has increased from 8.25% in the pre-GST period to 14.00% in the post-GST period, resulting in an additional benefit of 5.75%. Such benefit was required to be passed on to the homebuyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017. However, the Respondent has not passed on the said benefit, thereby contravening the provisions of the Act.
15. The contention of the Respondent regarding the existence of an inverted duty structure and accumulation of unutilised Input Tax Credit is devoid of merit. The benefit under Section 171 is to be computed on the basis of availability of Input Tax Credit and not its actual utilisation. The mere accrual of additional ITC reduces the cost of supply, irrespective of whether such credit is utilised or remains accumulated in the electronic credit ledger. The Respondent may claim refund of unutilised ITC, if admissible under the provisions of the CGST Act and Rules; however, this does not dilute the statutory obligation to pass on the benefit of such ITC to the recipients. Further, the argument that prices were fixed under a development agreement does not override the mandate of Section 171.
16. It is not in dispute that, upon the introduction of GST w.e.f. 01.07.2017, the Respondent became entitled to avail Input Tax Credit on a wider base of inputs and input services used in the construction of the project. The contention that there has been no reduction in cost due to increase in GST rates is not tenable. The availability of additional Input Tax Credit reduces the overall tax incidence and cost of supply. The DGAP has established, on the basis of records, that the additional ITC benefit of 5.75% accrued to the Respondent. Accordingly, the benefit arising therefrom was required to be passed

on to the homebuyers in terms of Section 171 of the CGST Act, 2017.

17. It is also noted that the Respondent, during the hearing held on 16.04.2026, accepted the findings of the DGAP Report. However, the contention regarding non-levy of GST @ 12% on the profiteered amount of Rs.15,99,865/- has been reiterated.
18. In light of the above, this Tribunal concludes that the Respondent has derived the benefit of additional Input Tax Credit, as determined in the DGAP Report, after the introduction of GST, and such benefit is required to be passed on to the homebuyers in terms of Section 171 of the CGST Act, 2017. The Respondent has accepted the findings of the DGAP Report and the liability to refund the profiteered amount of Rs.1,33,32,208/-; however, it has been contended that GST @ 12%, amounting to Rs.15,99,865/-, on the said profiteered amount ought not to be levied.

Levy of GST on the Profiteering Amount:

19. With regard to the levy of GST @ 12%, amounting to Rs15,99,865/-, it is observed that the DGAP has computed the profiteered amount by applying the ratio of Input Tax Credit availed to the purchase value of goods and services, which is exclusive of GST. The Respondent has, however, collected the total consideration from the homebuyers inclusive of GST. Accordingly, the amount realised by the Respondent inherently includes the GST component. Consequently, any profiteered amount, being part of such consideration, is required to be returned along with the corresponding GST component, as collected from the homebuyers.
20. In view of the above, the DGAP has rightly included the GST component to the profiteered amount. Reference in this regard may be made to the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019***, wherein the Hon'ble Court has dealt with this issue in paragraph 157 of the judgment. The relevant extract is reproduced below for the sake of brevity:

157. Both the Central as well as the State Government had no intent of collecting additional Goods and Services Tax on the higher price as they had sacrificed their revenue in favour of the buyer. By compelling the buyers to pay the additional Goods and Services Tax on a higher price, the supplier has not only defeated the intent of the Governments but has also acted against the interest of the consumer and therefore, the Goods and Services Tax collected by him on the additional realization has rightly been included in the profiteered amount.

Interest:

21. The next issue for determination is whether interest is payable on the profiteered amount and, if so, the date from which such interest is to be computed. Section 171 of the CGST Act, 2017 casts a statutory obligation on the Respondent to pass on the benefit of reduction in tax rate or additional Input Tax Credit to the recipients by way of commensurate reduction in prices at the time of supply. Further, Rule 133(3)(b) of the Central Goods and Services Tax Rules, 2017 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 18% per annum, from the date of collection of the higher amount till the date of its actual return. The said provision is mandatory and leaves no discretion in the matter.

22. With regard to the issue of interest, reference may be made to the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019***, wherein the Hon'ble Court has dealt with this issue in paragraph 153 of the judgment. The relevant extract is reproduced below:

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 amounts so pocketed by the supplier /registered person would not have a

sufficient deterrent effect on deviant behavior 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 the 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.

Penalty:

23. Further, insofar as penalty under Section 171(3A) of the CGST Act, 2017 is concerned, the said provision came into force w.e.f. 01.01.2020, and since the period of contravention in the present case extends from 01.07.2017 to 30.09.2024, including the period subsequent to its coming into force of the said provision, penalty under Section 171(3A) of the CGST Act, 2017 is attracted. The relevant provision reads as under:

“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 profited under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent of the amount so profited:

PROVIDED that no penalty shall be leviable if the profited amount is deposited within thirty days of the date of passing of the order by the Authority”.

Conclusion:

24. The Respondent is directed to refund the profiteered amount of Rs.1,33,32,208/-, along with GST @ 12% amounting to Rs.15,99,865/-, aggregating to Rs.1,49,32,073/-, to the eligible homebuyers as detailed in Annexure-11 of the DGAP Report. The said amount shall be refunded along with interest at the rate of 18% per annum, in terms of Rule 133(3)(b) of the Central Goods and Services Tax Rules, 2017, from the date of collection of such higher amount from the buyers till the date of its actual refund. Compliance of this Order shall be reported to the jurisdictional Commissioner with intimation to the DGAP within a period of three months from the date of this Order.
25. A copy of this Order be forwarded to the Respondent, the Applicant, the Directorate General of Anti-Profitteering, and the jurisdictional CGST/SGST Commissioner(s) for necessary action and record.
26. The matter is disposed of accordingly.
27. Order pronounced in the open court.

Sh. A Venu Prasad,
Member, Technical (State), GSTAT

Date- 27.04.2026