GSTAT

Single Bench Court No. Court III

NAPA/146/PB/2025

DG ANTI PROFITEERING, DIRECTOR GENERAL OF ANTI-PROFITEERING, DGAP ....**Appellant**

Versus

MERIT MAGNUM CONSTRUCTION (FORMERLY M/S VIMAL BUILDERS) ....**Respondent**

Counsel for Appellant **Counsel for Respondent**

Hon'ble Sh. Anil Kumar Gupta, Member (Technical)

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZA070010726000059H **Date of order :** 17/07/2026

1.	GSTIN/Temporary ID/UIN - 27AACFV9391F1ZR	
2.	Appeal Case Reference no. - NAPA/146/PB/2025	Date - 12/12/2024
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. Merit Magnum Construction (formerly M/s Vimal Builders) , yashshah@terraformrealty.com , 022-62704900	
5.	Order appealed against -	

	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 17/07/2026 10/07/2026 08/07/2026 21/05/2026 05/05/2026 10/04/2026 12/03/2026 28/01/2026 16/12/2025 28/10/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - The supplementary investigation report of the DGAP dated 30.06.2026 is hereby accepted. Respondent is directed to refund the total profiteered amount of Rs. 2,67,114/- comprising a base profiteered amount of Rs.2,38,495/- and GST @12% amounting to Rs.28,619/-, to the eligible homebuyers along with interest at the rate of 18% per annum, in terms of Rule 133(3)(b) of the CGST Rules, 2017. The Respondent is not liable to pay penalty under Section 171(3A) of the CGST Act, 2017.	
Summary of Order		
9.	Type of order : Return to Recipient of Amount not passed on, along with interest	

Place :DELHIPB

Date : 17.07.2026

<u>ORDER</u>

<u>NAPA/146/PB/2025 : DGAP VS M/s Merit Magnum Construction</u>

1. The present proceedings arise from an application filed by Shri Sachin Kapure, acting on behalf of Shri Dilip Atmaram Kapure and Smt. Kavita Dilip Kapure (hereinafter referred to as **"the Applicant"**), residents of B3/104, Lok Nisarg, Near Vaishali Nagar Depot, Ghati Pada, Mulund (West), Mumbai- 400080, before the Maharashtra State Screening Committee on Anti-Profiteering under Section 171 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as **"the Act"**).
2. The Applicant has alleged that M/s. Merit Magnum Construction (formerly known as Vimal Builders), having its address at Godrej Colliseum, 1301 A Wing, Somaiya Hospital Road, GTB Nagar, Everard Nagar, Sion (East), Mumbai – 400022, and its registered office at Samridhi House, Office Floor, Plot No. 157, 18th Road, Near Ambedkar Garden, Chembur East, Mumbai – 400071 (hereinafter referred to as **"the Respondent"**), has failed to pass on the commensurate benefit of Input Tax Credit

(hereinafter referred to as "**ITC**") to the Applicant in respect of Flat No. 506 situated in the project titled "Everest Countryside."

3. Pursuant thereto, the Maharashtra State Screening Committee examined the said application and observed that the Respondent had not passed on the benefit of additional ITC to the Applicant by way of commensurate reduction in price and, accordingly, with its recommendation, forwarded the matter to the Standing Committee on Anti-Profiteering for further action.
4. Further, the said application was examined by the Standing Committee on Anti-Profiteering. Upon being prima facie satisfied that the Respondent had not passed on the benefit of reduction in GST rate as mandated under Section 171 of the Act, the Standing Committee referred the matter to the Director General of Anti-Profiteering (hereinafter referred to as **"the DGAP"**).
5. The DGAP submitted an Investigation Report dated 31.08.2021 under Rule 129 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as **"the Rules"**), before the erstwhile National Anti-Profiteering Authority (hereinafter referred to as **"the NAA"**).
6. The tenure of the NAA ended on 30.11.2022. Thereafter, the Competition Commission of India (hereinafter referred to as **"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.
7. Further, the CCI, vide letter dated 20.03.2024, remanded the matter back to the DGAP under Rule 133(4) of the CGST Rules, 2017 for re-investigation, as the methodology adopted by the DGAP in the real estate sector was held to be flawed by the Hon'ble High Court of Delhi in the matter of *Reckitt Benckiser India Pvt. Ltd. v. Union of India*, (2024) 14 Centax 374 (Delhi).
8. In the said judgment, the Delhi High Court upheld the constitutional validity of Section 171 of the CGST Act; however, it did not approve the methodology adopted by the DGAP for computation of the profiteered amount. The Court observed that no fixed or uniform formula can be prescribed for determination of profiteering in all cases. Nevertheless, in respect of the real estate sector, the Court in para 129 of the aforesaid judgment stated that:

   > *"…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."*

9. The Principal Bench of the GST Appellate Tribunal (hereinafter referred to as **"this Tribunal"**), constituted under sub-section (3) of Section 109 of the CGST Act, has been empowered to examine anti-profiteering cases with effect from 01.10.2024, vide Notification No. 18/2024-Central Tax dated 30.09.2024.
10. In compliance with the CCI's letter dated 20.03.2024, the DGAP re-investigated the matter and submitted a fresh report dated 11.12.2024 before this Tribunal. The said report contained, inter alia, the following observations and conclusions:
    10.1 That the input tax credit as a percentage of the purchase value available to the Respondent during the pre-GST period, i.e., April 2012 to June 2017, was **3.9%**, and during the post-GST period, i.e., July 2017 to March 2019, was **17.5%** in the project "EVEREST COUNTRYSIDE".

10.2 This clearly confirms that the Respondent benefited from additional input tax credit during the post-GST period. The methodology adopted by the DGAP is tabulated hereinunder: -

Table- 'A'

(Amount in Rs)

S. No.	Particulars	Pre-GST Period	Post-GST Period
1.	Purchase Value of Goods and Services (Excluding Taxes and Duties)	13,13,59,307	74,18,207
2.	Credit of Service Tax availed	52,13,341	-
3.	Credit of VAT availed	-	-
4.	Total Credit Availed in Pre-GST Period	52,13,341	-
5.	ITC of GST Availed	-	13,03,929
6.	Ratio of Credit Availed to Purchase Value (in %)	3.9	17.5

10.3 It was further stated in the said report 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 dated 28.06.2017. The effective GST rate was 12% for flats. Accordingly, based on the figures contained in table-'A' above, the comparative figures of the ratio of input tax credit availed/available to the purchase value in the pre-GST and post-GST periods as well as the purchase value, the recalibrated base price and the excess realization during the post-GST period, are tabulated in Table-B below: -

Table- 'B'

(Amount in Rs.)

S. No.	Particulars		Post-GST
1.	Period	A	July, 2017 to March, 2019
2.	Ratio of Credit availed to Purchase Value as per Table - A above (%)	B	3.9/17.5
3.	Increase in input tax credit availed post-GST (%)	C	13.6
4.	Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	74,18,207
5.	Total Savings on account of additional ITC benefit	E = D*C/100	10,08,876
6.	Total Saleable Area/ Carpet Area (in Sq. Ft.)	F	89,434
7.	Total Saving Per Sq. Ft.	G = E/F	11.28

8.	Total Sold Area (in Sq. Ft.) till the date of Completion Certificate	H	88,660
9.	Profiteered Amount	I = G * H	10,00,084

10.4 Consequently, DGAP concluded that provisions of Section 171 of the Central Goods and Services Tax Act, 2017 have been contravened by the Respondent, in as much as by failing to pass on the benefit of such additional input tax credit to homebuyers, resulting in profiteering amount of Rs. 10,00,084/- plus GST @12% of Rs. 10,00,084/- i.e., Rs. 1,20,010/-, totalling to Rs. 11,20,094/-.

11. Pursuant to the notice dated 28.10.2025 issued by this Tribunal, the Respondent filed its written submissions vide email dated 17.02.2026 and raised the following contentions:

11.1 That the construction of the building in question, namely "Marigold", had been completed on 25.04.2017, i.e., prior to the implementation of GST on 01.07.2017, and therefore, no question of profiteering arises. The same is evident from the Commencement Certificate dated 09.09.2002 and the application seeking the Occupancy Certificate from the Competent Authority on 25.04.2017.

11.2 That the buyer-wise computation made by the DGAP is incorrect and unsupported by facts, as the complaint was filed by a non-owner, no evidence from the actual owners exists, yet all 136 buyers have been wrongly treated as affected.

11.3 That no interest is chargeable, as the provisions relating to interest are not applicable in the facts of the present case. The Respondent further relied upon the judgment of this Tribunal in the matter of DGAP v. Dange Enterprise, NAPA/16/PB/2025.

11.4 That no penalty is leviable, as the penalty provision under Section 171(3A) came into effect only on 01.01.2020, which is after the period of the alleged profiteering.

11.5 That the methodology adopted by the DGAP for computing profiteering is erroneous.

12. The Respondent further submitted that certain inadvertent errors had occurred in paragraph 14 of its written submissions dated 12.03.2026 and, accordingly, amended paragraphs 14 and 15 were filed on 04.05.2026 pursuant to the liberty granted by this Tribunal. It was contended that the post-GST receipts pertaining to the Marigold Building amounted to Rs. 41,64,808/- and that, on a revised computation, the profiteered amount, if any, worked out to Rs. 5,61,511/- instead of Rs. 10,00,084/- as computed by the DGAP. Without prejudice, the Respondent expressed its willingness to deposit Rs.5,61,511/- under protest, without interest or penalty.

13. Per contra, the DGAP submitted its clarification dated 27.03.2026 before this Tribunal and submitted as follows:

13.1 That the Respondent applied for the Occupancy Certificate on 25.04.2017; however, the same was not granted at that time. The Respondent had continued to avail input tax credit to the extent of Rs. 13,03,929/- till March 2019.

13.2 That the methodology adopted in the report was in conformity with the principles laid down by the Hon'ble High Court of Delhi in the matter of Reckitt Benckiser (supra).

13.3 That the DGAP conducted the investigation under Section 171 of the Act read with Rule 129 of the CGST Rules.

14. During the course of hearing, the learned counsel for the Respondent submitted that, as stated in its written submissions dated 17.02.2026, 24 home buyers had made full payment prior to the introduction of GST.
Consequently, in view of paragraph 128(a) of the judgment of the Hon'ble Delhi High Court in Reckitt Benckiser, such buyers would fall outside the purview of profiteering. It was further submitted that only nominal payments had been received from six home buyers after the introduction of GST and, therefore, the profiteered amount computed by the DGAP was excessive.
In response thereto, the representative of the DGAP submitted before this Tribunal that a clarification, along with a revised computation report, would be placed on record.

15. Pursuant thereto, the DGAP filed an additional clarification dated 18.05.2026, contending as follows:
    15.1 That the mere filing of an application for the Occupancy Certificate on 25.04.2017 does not establish completion of the project prior to GST. The project can be treated as completed only upon actual receipt of the Occupancy Certificate, which admittedly was received during the post-GST period.
    15.2 That the project falls under paragraph 128(c) of the judgment of the Hon'ble Delhi High Court in Reckitt Benckiser and not under paragraph 128(a), as claimed by the Respondent.
    15.3 That the Respondent's contention that the 24 home buyers who had made payment prior to GST and the six home buyers who had made only nominal payments post-GST are outside the ambit of profiteering is denied. Since the project continued into the post-GST period, all such buyers are entitled to the benefit of ITC in terms of paragraph 128(c) of the said judgment.
    15.4 That the DGAP accordingly stood by its Investigation Report dated 11.12.2024 and prayed that appropriate orders may be passed by this Tribunal.

16. Subsequently, as per the direction of this Tribunal, the Respondent also filed a brief synopsis vide email dated 20.05.2026. On perusal of the clarification submitted by the DGAP and the synopsis submitted by the Respondent, it is found that the Occupancy Certificate was granted on 13.10.2017, whereas the period of investigation taken in the report was from 01.07.2017 to 31.03.2019.
    16.1 Consequently, this Tribunal, vide its order dated 21.05.2026, directed the Respondent to submit the information/data of the total purchases made during the period from 01.07.2017 to 13.10.2017 and the amount of ITC availed during this period, duly certified by a Chartered Accountant, within two weeks. The Tribunal further directed the DGAP to, upon receipt of the aforesaid data, re-determine the quantum of profiteering and submit its supplementary report/clarification before this Tribunal.

17. Pursuant thereto, the DGAP undertook a fresh computation of the profiteered amount for the period from 01.07.2017 to 13.10.2017, i.e., up to the date of issuance of the Occupancy Certificate, pertaining to the project "Everest Countryside Marigold", based on the Chartered Accountant-certified data furnished by the Respondent. The computations contained in the Investigation Report dated 11.12.2024 were revised, which are reproduced below:

Table-A

S. No.	Particulars	Total Pre-GST (Amount in Rs)	Total post-GST (Amount in Rs)
	Period (01.07.2017-13.10.2017)		
1.	Purchase Value of Goods and services (Excluding taxes and duties)	13,13,59,307	13,17,351
2.	Credit of Service Tax availed	52,13,341	—
3.	Credit of VAT availed	—	—
4.	Total Credit availed	52,13,341	—
5.	Net ITC of GST availed	—	2,91,894
6.	Ratio of Credit Availed to Purchase Value (%)	3.90	22.16
	Difference		18.26

Table-B

Particulars		Amount in Rs (Post - GST)
Period	A	01.07.2017 to 13.10.2017
Ratio of Credit availed to Purchase Value as per Table -A above (%)	B	3.9 / 22.16
Increase in ITC availed Post GST (%)	C	18.26
Purchase Value of Goods and services (Excluding Taxes and Duties) during Post – GST period	D	13,17,351
Total Savings on account of additional ITC benefit	E=D×C/100	2,40,548
Total Area (Sq.Ft.) of the project as CA certificate	F	89,434
Total Savings Per Sq.Ft.	G=E/F	2.69
Total Sold Area as on 30.04.2024 (Sq.Ft.) As per CA Certificate	H	88,660
Profiteered Amount (Rs)	**I=G×H**	**2,38,495**

From the above revised computation, the ratio of ITC to purchase value increased from 3.90% during the pre-GST period to 22.16% during the post-GST period, resulting in an additional ITC benefit of 18.26%. The DGAP has accordingly concluded that the Respondent has profiteered to the extent of Rs. 2,38,495/-. Additionally, applying the applicable GST rate of 12% on the said amount, the DGAP has computed the total profiteered amount, inclusive of GST, at **Rs. 2,67,114/-** (comprising Rs. 2,38,495/- as principal profiteered amount and Rs. 28,619/- as GST thereon).

18. In response to the updated DGAP report, the respondent's counsel has filed a synopsis dated 09.07.2026, mainly reiterating the earlier submissions. However, the contention that the recipients/flat purchasers, from whom the alleged profiteering has been recovered, are not identifiable has been reiterated specifically, that certain homebuyers have not filed any complaints, are not currently traceable, or have already

resold their flats, and therefore the amount cannot be returned to the recipient with interest under Rule 133(3)(b) of CGST Rule, 2017 hence, the provisions of Rule 133(3)(c) would be attracted. Without prejudice to the above legal objections, the Respondent offers to deposit the disputed amount in the Consumer Welfare Fund (Centre and State) under protest.

19. I have carefully examined the DGAP report dated 11.12.2024, revised report dated 30.06.2026 as well as the written and oral submissions advanced by both the Respondent and the Applicant and find that the following issues arise for consideration in the present matter.

20. ***Whether, for the purposes of Section 171 of the CGST Act, 2017, project completion is to be reckoned from the date of actual issuance of the Occupancy Certificate or date of filing of the application seeking such certificate?***

20.1 The submission of the Respondent that the construction of the project 'Marigold' stood completed on 25.04.2017, merely on the ground that an application for Occupancy Certificate was filed on that date, is devoid of merit and cannot be sustained. It is well settled that a project is deemed to be completed only upon the actual grant of the Occupancy Certificate from the Competent Authority, and not upon the mere filing of an application therefor.

20.2 In the present case, the Occupancy Certificate was granted on 13.10.2017, i.e., during the post-GST period. Furthermore, the Respondent continued to avail Input Tax Credit to the tune of Rs. 2,91,894/- during the period from 01.07.2017 to 13.10.2017, which clearly establishes that the project was ongoing in the post-GST period. Accordingly, the contention of the Respondent is rejected.

21. ***Whether, for the purposes of Section 171 of the CGST Act, 2017, the DGAP, in its revised Investigation Report dated 30.06.2026, has correctly restricted the period of investigation to the period from 01.07.2017, being the date of introduction of GST, till 13.10.2017, being the date of issuance of the Occupancy Certificate for the project in question?***

21.1 During the course of hearing, the learned counsel for the Respondent contended that the Occupancy Certificate in respect of the project was granted on 13.10.2017, whereas the investigation report dated 11.12.2024 has adopted the period from 01.07.2017 to 31.03.2019 as the relevant period of investigation. Accordingly, the question that arises for consideration is as to what ought to be the appropriate period of investigation in the facts and circumstances of the present case.

21.2 In this regard, it is pertinent to examine the scheme of the Central Goods and Services Tax Act, 2017. Paragraph 5 of Schedule III to the Act provides that the sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building shall be treated neither as a supply of goods nor as a supply of services. Clause (b) of paragraph 5 of Schedule II stipulates that construction of a complex, building, civil structure or a part thereof intended for sale to a buyer constitutes a supply of service, except where the entire consideration has been received after issuance of the completion certificate by the competent authority or after its first occupation, whichever is earlier.

21.3 A conjoint reading of the aforesaid provisions with Sections 17(2) and 17(3) of the CGST Act makes it evident that the sale of units after the issuance of the Occupancy/Completion Certificate is treated as an exempt supply and falls outside the purview of taxable supply. Consequently, input tax credit attributable to such supplies is not available and is liable to be reversed in accordance with Section 17(2) & Section 17(3) of the Central Goods and Services Tax Act, 2017, which read as under:

> Section 17 (2) *"Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies"*.
>
> Section 17 (3) *"The value of exempt supply under sub-section (2) shall be such as may be prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building"*.

21.4 Since the anti-profiteering provisions contained in Section 171 of the CGST Act operate only where a benefit of input tax credit accrues to the supplier and is required to be passed on to the recipients, no question of profiteering can arise in respect of units sold after the issuance of the Occupancy Certificate, as no admissible input tax credit benefit survives in relation to such units. Consequently, the investigation, for the purposes of determining profiteering under Section 171 of the Act, is liable to be confined to the period up to the date of issuance of the Occupancy Certificate, i.e., 13.10.2017.

21.5 The DGAP, in its revised report dated 30.06.2026, has correctly restricted the period of investigation to 01.07.2017 to 13.10.2017, being the date of issuance of the Occupancy Certificate. This period represents the duration during which the project was ongoing, and the Respondent was availing input tax credit under the GST regime.

21.6 The revised computation undertaken by the DGAP is based on the Chartered Accountant-certified data furnished by the Respondent and is in strict conformity with the methodology laid down by the Hon'ble High Court of Delhi in Reckitt Benckiser (supra). The ratio of ITC to purchase value increased from 3.90% during the pre-GST period to 22.16% during the post-GST period, resulting in an additional ITC benefit of 18.26%. The profiteered amount of Rs. 2,38,495/- has been correctly computed as the product of the per square feet saving of Rs. 2.69 and the total sold area of 88,660 square feet.

22. **Whether the methodology adopted by the DGAP for computation of the profiteered amount is legally sustainable as per Section 171 of the Act and relevant rules framed thereunder and is in conformity with the principles laid down by the Hon'ble Delhi High Court in the matter of Reckitt Benckiser (supra).**

22.1 Dealing with the respondent's contention that a substantial amount of the total consideration was received from home buyers before the introduction of GST. The case falls squarely within Para 128(a) of the Reckitt Benckiser (supra) judgment, which exempts fully pre-GST projects from anti-profiteering obligations.

22.2 As per the mentioned judgment, the following principles are laid down for the determination of profiteering in the real estate sector. Paragraph 128 of the said judgment is relevant and is reproduced hereinbelow:

> *"128. There is no 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 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 Services Tax."*

22.3 In light of the principles laid down by the Hon'ble Delhi High Court in *Reckitt Benckiser India Pvt. Ltd.* (supra), particularly paragraph 128 thereof, the present case squarely falls within Scenario (C). The project had commenced and substantially progressed in the pre-GST period, while certain procurements and availment of Input Tax Credit occurred during the post-GST period prior to the issuance of the Occupancy Certificate. The purchasers had booked the units and made payments during the pre-GST period and, therefore, became entitled to the benefit of additional Input Tax Credit accruing to the Respondent in the post-GST period. Such benefit could not be retained by the Respondent and was required to be passed on by way of a commensurate reduction in price.

22.4 The DGAP, in the revised investigation report, has computed the additional ITC benefit by comparing the ratio of ITC to purchase value in the pre-GST and post-GST periods and has confined the investigation period up to 13.10.2017, i.e., the date of issuance of the Occupancy Certificate. The computation is founded on the actual ITC availed and the actual purchase values certified by the Respondent and, therefore, represents a reasonable and fact-based determination of the benefit accrued on account of the implementation of GST.

22.5 Accordingly, this Tribunal holds that the methodology adopted by the DGAP is in conformity with Section 171 of the CGST Act, 2017 and the Rules framed thereunder and is also consistent with the principles enunciated by the Hon'ble Delhi High Court in *Reckitt Benckiser India Pvt. Ltd.* (supra). The revised methodology appropriately identifies and quantifies the additional ITC benefit that accrued to the Respondent in the post-GST period and determines the amount required to be passed on to the recipients by way of commensurate reduction in price. Consequently, no infirmity can be found in the methodology adopted by the DGAP or in the quantification of the profiteered amount arrived at thereunder.

23. **Whether the Respondent's contention that the recipients/flat purchasers in respect of whom the alleged profiteering has occurred are unidentifiable is tenable and, consequently, whether the present case falls within the ambit of Rule 133(3)(c) or Rule 133(3)(b) of the CGST Rules, 2017?**

23.1 The Respondent has contended that the recipients/flat purchasers from whom the alleged profiteering has been realised are not identifiable and, therefore, the case is covered by Rule 133(3)(c) of the CGST Rules, 2017. It has been argued that certain homebuyers have neither filed complaints nor are presently traceable, some of them have resold their flats and the amount cannot be returned to the recipients and, consequently, the provisions of Rule 133(3)(c) alone would be attracted.

23.2 The aforesaid contention is devoid of merit and cannot be accepted. Rule 133(3)(b) mandates that where profiteering is established, the registered person shall 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 per cent from the date of collection of the higher amount till the date of return of such amount.

23.3 Rule 133(3)(c), on the other hand, is a residuary provision and is attracted only in those cases where the eligible recipients are genuinely unidentified. The very genesis of Rule 133(3)(c) demonstrates that it was intended to operate as a remedial and residuary provision so that a registered person who has contravened Section 171 does not unjustly retain the profiteered amount merely because the actual consumers cannot be identified. The provision, therefore, creates a legal fiction whereby, in the absence of identifiable recipients, the profiteered amount is directed to be deposited in the Consumer Welfare Funds maintained by the Central and State Governments.

23.4 The expression "recipient is not identifiable" occurring in Rule 133(3)(c) cannot be interpreted to mean that the recipient has not filed a complaint, is not presently available, or that the computation has not initially been made buyer-wise. The test under Rule 133(3)(c) is one of objective impossibility of identification. Where the supplier's books of account, allotment letters, agreements for sale, demand notices, payment schedules and statutory records disclose the identity of the purchasers, the recipients remain identifiable notwithstanding that they may not have participated in the proceedings or may presently be untraceable or may have resold their flats.

23.5 In the present case, the Respondent is a real estate developer engaged in the sale of residential flats. The very nature of a real estate transaction necessitates maintenance of exhaustive records of each homebuyer, including the name and address of the purchaser, unit number, area of the flat, agreement value, amounts received and corresponding tax liabilities. Indeed, the Respondent itself has relied upon buyer-specific data and has categorised purchasers according to the stage and timing of payments received. Such a stand itself demolishes the contention that the recipients are unidentifiable.

23.6 The anti-profiteering provisions embodied in Section 171 of the CGST Act are fundamentally benevolent in nature. Their primary object is to ensure that the benefit arising from reduction in tax incidence or additional input tax credit reaches the ultimate consumers. The statutory intent is not merely to recover the profiteered amount from the supplier but to restore the economic benefit to the persons from whom such amount was collected. Therefore, Rule 133(3)(c), being an exception to the general rule of restitution, must receive a strict and narrow interpretation and can be invoked only in cases where identification of the recipients is genuinely impossible.

23.7 The Hon'ble Delhi High Court in *Reckitt Benckiser India Pvt. Ltd. v. Union of India*, (2024) 14 Centax 374 (Delhi), while upholding the constitutional validity of Section 171, recognised that the anti-profiteering framework is intended to ensure that the pecuniary benefit arising from GST reforms is passed on to consumers and that the statutory mechanism is essentially compensatory and deterrent.

> *100.“Accordingly, Section 171 of the Act, 2017 has been enacted, in public interest, with the consumer welfare objective of ensuring that suppliers pass on the benefit of Input Tax Credits and reduction of rate of Goods and Services Tax to the consumers. The Section does this by firstly creating a substantive obligation under sub-section (1) requiring manufacturers / suppliers to pass on benefits of Input Tax Credits and/or reduction in rate of tax by way of commensurate reduction in prices to the recipients.”*

> *“102 To summarise, Section 171 of the Act, 2017 mandates that whatever is saved in tax must be reduced in price. Section 171 of the Act, 2017 incorporates the principle of unjust enrichment. Accordingly, it has a flavor of consumer welfare regulatory measure, as it seeks to achieve the primary objective behind the Goods and Services Tax regime i.e. to overcome the cascading effect of indirect taxes and to reduce the tax burden on the final consumer.”*

23.8 This Tribunal is of the view that the Respondent's reliance on Rule 133(3)(c) is clearly an attempt to avoid paying interest on the profiteered amount. The said provision, which requires payment of interest on deposits made into the

Consumer Welfare Funds, was inserted on 28.06.2019 by Notification No. 31/2019-Central Tax. However, the present investigation relates to the period from 01.07.2017 to 13.10.2017, which is prior to the insertion of this provision. Accepting the Respondent's interpretation would allow a supplier to gain from its own default and defeat the very purpose of Section 171 of the Act, which is to protect consumer interest. Such an interpretation, which encourages non-compliance and undermines the object of the anti-profiteering provisions, cannot be accepted in law.

23.9 This Tribunal observes that the Respondent has made no genuine or demonstrable attempt to trace the affected homebuyers, notwithstanding the fact that a builder, in the ordinary course of business, maintains comprehensive and systematic records of all its homebuyers, including their contact details, Email Ids and transaction histories. The Respondent, therefore, cannot claim any inability or practical difficulty in identifying and locating the recipients of the impugned supplies.

23.10 In the instant case, the homebuyers are clearly identifiable and ascertainable from the records maintained by the Respondent itself. Consequently, the factual matrix of the present case falls squarely within the ambit and scope of clause (b) of sub-rule (3) of Rule 133 of the CGST Rules, 2017, which mandates the return of the profiteered amount to the affected recipients where they are identifiable. The Respondent, having collected excess consideration from the homebuyers in contravention of Section 171 of the CGST Act, 2017, cannot be permitted to retain the same.

23.11 Accordingly, the Respondent is directed to refund the profiteered amount to the respective homebuyers, individually and forthwith. Further, in terms of the provisions of Rule 133(3)(b) read with Section 171 of the Act, the Respondent shall also be liable to pay interest on the profiteered amount at the rate of 18% per annum, calculated from the date of collection of the excess amount from each homebuyer until the date of actual restitution of the same.

24. **Whether the Respondent is liable to pay penalty leviable under section 171(3A) of the CGST Act, 2017.**

24.1 The Respondent has contended that no penalty is leviable as the penalty provision came into effect only on 01.01.2020, which is after the period of the alleged profiteering. Since the period of investigation in the present case has been restricted to 01.07.2017 to 13.10.2017, which is prior to the coming into force of Section 171(3A) on 01.01.2020, the penalty provision is not attracted for the period of investigation.

24.2 It is a well-settled principle of law that penal provisions cannot be applied retrospectively unless expressly stated. Section 171(3A) was inserted with effect from 01.01.2020 and does not contain any provision for retrospective application. Therefore, for the period prior to 01.01.2020, the Respondent cannot be held liable for penalty under the said provision.

ORDER

25. In light of the foregoing discussions, the supplementary investigation report of the DGAP dated 30.06.2026 is hereby accepted. The Respondent, M/s Merit Magnum Construction, is found to have contravened the provisions of Section 171 of the CGST Act, 2017 by not passing on the benefit of additional ITC to the eligible homebuyers.
    - 25.1 The Respondent is directed to refund the total profiteered amount of **Rs. 2,67,114/- (Rupees Two Lakhs Sixty-Seven Thousand One Hundred and Fourteen Only)**, comprising a base profiteered amount of Rs. 2,38,495/- and GST @12% amounting to Rs. 28,619/-, to the eligible homebuyers as detailed in the DGAP's supplementary report dated 30.06.2026.
    - 25.2 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 CGST Rules, 2017. The interest shall be calculated from the date of collection of the higher amount from the respective homebuyers till the date of actual refund.
    - 25.3 The Respondent is not liable to pay penalty under Section 171(3A) of the CGST Act, 2017, as the period of investigation pertains to a period prior to the coming into force of the said provision on 01.01.2020.
26. The Respondent shall file a compliance report evidencing the refund of the profiteered amount along with the aforesaid interest to each of the eligible homebuyers. Such compliance report shall be submitted to the jurisdictional CGST/SGST Commissioner and a copy endorsed to the DGAP within a period of three months from the date of this Order.
27. A copy of this Order be forwarded to the Respondent, the Applicant, the DGAP, and the jurisdictional CGST/SGST Commissioner(s) for necessary action and compliance.
28. The matter is disposed of accordingly.
29. Order is pronounced in the open court.

Digitally signed by ANIL KUMAR GUPTA
Date:17-07-2026 12:49:09 PM

(Anil Kumar Gupta)
Member (Technical)