GSTAT

Division Bench Court No. Court I

NAPA/123/PB/2025

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

Versus

OXFORD REALTY LLP (PROJECT - GODREJ INFINITY) ....**Respondent**

Counsel for Appellant **Counsel for Respondent**

Hon'ble Justice (Retd.) Dr. Sanjaya Kumar Mishra, President
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. : ZA070010826000001H **Date of order:** 03/08/2026

1.	GSTIN/Temporary ID/UIN - 27AADFO8243J1ZZ	
2.	Appeal Case Reference no. - NAPA/123/PB/2025	Date - 27/01/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondant - 1. Oxford Realty LLP (project - Godrej Infinity) , akheria@godrejproperties.com , 9920566195	
5.	Order appealed against -	

	(5.1) Order Type -
	(5.2) Ref Number - | Date -
6.	Personal Hearing - 03/08/2026 16/07/2026 15/06/2026 05/06/2026 13/05/2026 22/04/2026 19/03/2026 03/02/2026 20/01/2026 17/10/2025
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The Respondent is directed to refund the net profiteered amount of Rs. 40,99,917/- (Rupees Forty Lakhs Ninety-Nine Thousand Nine Hundred and Seventeen Only) to the 128 homebuyers mentioned in Annexure-9 to the Impugned Report, in proportion to the area of their respective flats and in accordance with the buyer-wise details provided in the said Annexure. 21.2 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 computed from the respective dates of payment of the last instalment by each eligible homebuyer until the date of actual refund.
	Summary of Order
9.	Type of order: Return to Recipient of Amount not passed on, along with interest

Place: DELHI PB

Date : 03.08.2026

ORDER

➢ Per, Anil Kumar Gupta, Member (Technical).

1. The present proceedings arise from an application filed under Rule 128 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as **"the CGST Rules"**) by Mr. Manish Jain (hereinafter referred to as **"the 1st**

Applicant"), alleging profiteering by the Respondent, M/s Oxford Realty LLP, in respect of the purchase of a residential unit in its project **"Godrej Infinity"**. Subsequently, two more applications were forwarded by the Standing Committee, filed by Mr. Manish Saleraj Jain (on behalf of Mr. Jaya Prakash Madjraju) and Sh. Viraj Ingle (hereinafter referred to as the **"2nd Applicant"** and **"3rd Applicant"** respectively).

2. The Applicants alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to them by way of commensurate reduction in the price of flats on the introduction of GST w.e.f. 01.07.2017, thereby contravening the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act").

3. The applications were examined by the Standing Committee on Anti-Profiteering, which, in its meeting, decided to forward the same to the Director General of Anti-Profiteering (hereinafter referred to as "**the DGAP**") for a detailed investigation under Rule 129(1) of the CGST Rules.

4. Pursuant to the reference, the DGAP conducted an investigation and submitted its first report dated 29.01.2021 to the erstwhile National Anti-Profiteering Authority (NAA). The DGAP, in its report, adopted the methodology of comparing the ratio of ITC to turnover in the pre-GST and post-GST periods.

5. The matter was argued before the NAA, and the Respondent filed detailed submissions challenging the methodology adopted by the DGAP. However, no order could be passed by the NAA as its tenure ended on 30.11.2022. Subsequently, the Government empowered the Competition Commission of India (CCI) to examine anti-profiteering matters w.e.f. 01.12.2022.

6. The Hon'ble Delhi High Court, in its landmark judgment in *Reckitt Benckiser India Private Limited v. Union of India [2024 SCC OnLine Del 588]*, held that the methodology previously adopted by the DGAP and NAA for the Real Estate sector based on the ITC to turnover ratio was flawed. The Court directed that the total savings on account of GST for each project must be calculated and then divided by the total area to arrive at the per square feet benefit to be passed on to each flat buyer. The relevant observations of the Hon'ble High Court are extracted as under:

> *"129. ...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 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."*

7. In light of the above judgment, the CCI, vide letter dated 20.03.2024, remanded the matter to the DGAP for re-investigation under Rule 133(4) of the CGST Rules, to re-determine the profiteering amount in accordance with the methodology laid down by the Hon'ble High Court.

8. Pursuant to the remand, a fresh notice for initiation of investigation was issued by the DGAP to the Respondent under Rule 129 of the CGST Rules on 09.04.2024. After considering the submissions and supporting documents, the DGAP submitted its final investigation report dated 22.01.2025 (hereinafter referred to as "**the Impugned Report**"). The period of investigation in the

Impugned Report is from 01.07.2017 to 31.03.2024. The DGAP, following the mandate of the *Reckitt Benckiser* judgment, changed its methodology from comparing ITC to turnover to comparing the ratio of credit availed to the purchase value of goods and services. The DGAP's findings are summarized as follows:

Table - A: Ratio of Credit Availed to Purchase Value

S. No.	Particulars	Pre-GST Period (in Rs.)	Post-GST Period (in Rs.)
1.	Purchase Value of Goods and Services (Excluding Taxes and Duties)	1,22,96,07,070	2,73,29,28,575
2.	Credit of Service Tax availed	17,42,83,993	
3.	Total Credit Availed in Pre-GST Period	17,42,83,993	
4.	ITC of GST Availed		43,03,73,696
5.	Ratio of Credit Availed to Purchase Value (in %)	14.17%	15.75%
6.	**Difference**		**1.57%**

9. Based on the above, the DGAP concluded that the Respondent had benefited from an additional ITC of 1.57% in the post-GST period. The DGAP further computed the profiteering amount as under:

Table - B: Computation of Profiteered Amount

S. No.	Particulars	Amount (in Rs.)
1.	Period	July 2017 to October 2019
2.	Increase in input tax credit availed Post-GST (%)	1.57%
3.	Purchase Value of Goods and Services during Post-GST Period	2,73,29,29,575

4.	Total Savings on account of additional ITC benefit (E = D*C/100)	4,30,09,540
5.	Total Saleable Area (in Sq. Ft.)	13,06,607
6.	Total Saving Per Sq. Ft. (G = E/F)	32.91
7.	Total Sold Area (in Sq. Ft.) till the date of Completion Certificate	12,58,712
8.	**Base Profiteered Amount (I = G * H)**	**4,14,32,982**

10. The DGAP accordingly determined that the Respondent had profiteered an amount of Rs. 4,14,32,982/-, and after adding GST @12% of Rs. 49,71,958/-, the total profiteered amount was Rs. 4,64,04,940/-.

11. The DGAP also acknowledged that the Respondent had claimed to have passed on a benefit of Rs. 16,77,04,076/- to its home buyers. The DGAP noted that this aspect was discussed in the earlier report dated 29.01.2021 and, therefore, there was no need to re-verify the genuineness of the said claim in the present investigation. After netting off the benefit already passed on at the customer level, the total net profiteering alleged by the DGAP in the Impugned Report amounted to Rs. 40,99,917/-.

Submissions of the Respondent:

12. The Respondent filed detailed Written Submissions dated 21.04.2026 and Additional Written Submissions dated 13.05.2026, wherein the Respondent made the following submissions:

    12.1 The Respondent contended that in cases of profiteering, it is not the exact mathematical accuracy but the intent to pass on the benefit and the actual passing of the benefit that matters. The Respondent submitted that it had passed on a benefit of Rs. 16,77,04,076/- (3.97% of the unbilled value), which is substantially higher than the benefit of Rs. 4,64,04,940/- (1.57%) computed by the DGAP. The Respondent argued that the benefit passed on is more than 3.5 times the benefit required as per the DGAP's computation, and therefore, the proceedings are liable to be dropped. It was submitted that in the absence of any prescribed methodology, the Respondent's method was reasonable and fair, and the intent to comply with Section 171 was clear.

12.2 The Respondent argued that no profiteering can be computed for new bookings made one year after the implementation of GST. It was submitted that Section 171 applies to transition contracts (entered into in the pre-GST regime) and not to new contracts entered into after the introduction of GST. For units booked after 30.06.2018, the prices were negotiated afresh considering various factors, including the benefit of ITC, demand-supply, and market forces. The Respondent relied on the NAA order in Smt. Shubhra Vipin Gajbhiye v. Pyramid Arcades Pvt. Ltd., where it was held that only turnover from units booked in the pre-GST period should be considered. The Respondent submitted that 74 units booked post-GST, with an alleged profiteering of Rs. 34,65,350.85, must be excluded from the ambit of the investigation.

12.3 The Respondent submitted that in terms of Rule 133(3)(c) of the CGST Rules, if the Tribunal holds that there is profiteering, the amount should be deposited into the Consumer Welfare Fund, as the

128 home buyers concerned have not claimed return of the amount and are not identifiable. It was submitted that only the three Applicants filed complaints, and they have already been passed on more benefit than they were entitled to. Furthermore, after the formation of the Infinity Cooperative Housing Society Limited and the transfer of the project, the Respondent is no longer involved in the day-to-day operations and cannot identify the original home buyers.

12.4 Further, in its Additional Written Submissions, the Respondent submitted that it had inadvertently passed on Rs. 12,53,99,053/- in excess to 1039 customers. It was contended that the Tribunal has the power to direct the customers to refund the excess amount or allow a set-off of the excess paid amount against the remaining liability of Rs. 40,99,916/-.

12.5 The Respondent argued that the profiteered amount was incorrectly inflated by adding 12% GST. It was submitted that the GST component of Rs. 49,71,958/- has already been deposited with the Government and does not constitute a benefit retained by the Respondent. The Respondent relied on the Supreme Court judgment in R.S. Joshi v. Ajit Mills Ltd. to argue that "collected" means "collected and kept as his" and that the GST amount was only collected tentatively and deposited with the Government. The Respondent further relied on the GSTAT order in DGAP v. Procter & Gamble Group to submit that no interest is payable.

12.6 The Respondent submitted that no interest is payable in the absence of a charging section for interest under Section 171. It was argued that Section 50 of the CGST Act only covers delay in payment of tax or wrongful ITC and does not cover Section 171. Alternatively, it was submitted that interest is not payable for the period up to 28.06.2019, as Rule 133(3)(c) did not provide for interest until then. Regarding penalty, the Respondent submitted that Section 171(3A) was inserted w.e.f. 01.01.2020 and cannot be applied retrospectively. It was argued that in the absence of any malafide intention, no penalty can be imposed.

Submissions of the DGAP:

13. The DGAP filed its clarifications/ rejoinders on 16.01.2026, 21.05.2026, 10.06.2026, and 07.07.2026, wherein they made the following submissions:

13.1 The DGAP submitted that the methodology adopted in the Impugned Report is in strict compliance with the Hon'ble Delhi High Court's directions in *Reckitt Benckiser (supra)*. The DGAP clarified that the ratio of ITC to the purchase value of inputs and input services has a direct correlation, which is used to determine the extra availability of ITC in the post-GST period. The savings made by the Respondent are calculated based on the excess availability of ITC, which is then attributed to the total area constructed to determine profiteering per square feet.

13.2 The DGAP countered the Respondent's argument regarding post-GST bookings by stating that if the construction of the flat had started in the pre-GST period and continued/completed in the post-GST period, a buyer who purchased the flat even in the post-GST period is entitled to the benefit of ITC on the material purchased in respect of that flat during the post-GST period. The builder is obligated to reduce the price commensurately and pass on the benefit.

13.3 The DGAP contended that the Respondent's argument for depositing the amount in the Consumer Welfare Fund is not tenable as the home buyers are identifiable in the present case. The profiteering amount is rightly to be transferred to the individual buyers of the home as per the provisions of Rule 133 of the CGST Rules.

13.4 The DGAP submitted that Section 171 requires the supplier to pass on the benefit by way of a commensurate reduction in the price, which includes both the base price and the tax paid on it. If a supplier has charged more tax from the recipients, the statutory provisions require that such amount be refunded. The Hon'ble Delhi High Court in Reckitt Benckiser (supra) has upheld the inclusion of GST in the profiteered amount.

13.5 The DGAP clarified that the total profiteering amount worked out in the Impugned Report is Rs. 4,64,04,940/- in respect of 1167 homebuyers. Out of the total claim of Rs. 16.77 crores claimed to have been passed on, the Respondent has passed on benefit in excess to what was worked out by DGAP in respect of 1039 homebuyers. In the remaining 128 homebuyers, the DGAP has worked out a net profiteered amount of Rs. 40,99,917/-, where the benefit passed on is less than what was calculated by the DGAP.

14. Upon careful examination of the facts and records of the matter, it is observed that during the course of the hearings, the Respondent did not raise any objection regarding either the quantum of the profiteered amount or the methodology adopted by the DGAP to compute the profiteered amount. However, the Respondent has raised their objection, which are limited to the issues set out below: -

(i) Whether the Respondent is entitled to exclude units booked in the post-GST period (after 30.06.2018) from the ambit of the profiteering investigation?

(ii) Whether the net profiteered amount of Rs. 40,99,917/-, as determined by the DGAP after netting off the benefit already passed on, is liable to be deposited, and if so, whether the same should be returned to the individual home buyers or deposited in the Consumer Welfare Fund?

(iii) Whether the Respondent is entitled to a set-off of the excess benefit passed on to 1039 customers against the profiteered amount determined for the remaining 128 customers?

(iv) Whether the inclusion of GST @12% on the profiteered amount is correct and sustainable?

(v) Whether the Respondent is liable to pay interest on the profiteered amount under Rule 133(3)(b) of the CGST Rules, and if so, from which date?

(vi) Whether penalty under Section 171(3A) of the CGST Act is attracted in the present case?

15. Issue (i): Exclusion of Post-GST Bookings after 30.06.2018

15.1 The Respondent has vehemently argued that no profiteering can be computed for units booked after 30.06.2018 (one year after GST implementation), as the prices for such units were negotiated afresh after considering the benefit of ITC and other factors. The Respondent relied on the NAA order in *Smt. Shubhra Vipin Gajbhiye v. Pyramid Arcades Pvt. Ltd.*, where it was held that only turnover from units booked in the pre-GST period should be considered.

15.2 This Tribunal is unable to accept this contention of the Respondent. The Hon'ble Delhi High Court in Reckitt Benckiser (supra) has explicitly addressed this scenario in paragraph 128 of its judgment, which is reproduced as under:

> *"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."

15.3 The Hon'ble Delhi High Court's observation in scenario (b) clearly states that if the construction of a flat started in the pre-GST period and continued/completed in the post-GST period, a buyer who purchased the flat in the post-GST period is entitled to the benefit of ITC.

15.4 The Court's observation was not restricted only to pre-GST bookers. The crucial factor is whether the construction activity spanned across the pre-GST and post-GST periods and whether the builder availed ITC in the post-GST period on inputs used for the construction of the entire project. The benefit of ITC is project-specific, and it must be passed on to all homebuyers who purchased units in the project, irrespective of when the booking was made, as long as the construction activity continued after GST implementation and the builder availed ITC. In the present case, the construction activity was ongoing, and the Respondent continued to avail ITC in the post-GST period up to the receipt of the Occupancy Certificate. Therefore, the benefit of such ITC must be passed on to all homebuyers who purchased units in the project.

15.5 The Respondent's argument that prices were "negotiated afresh" and the benefit of ITC was "factored in" is a mere assertion and is unsupported by any specific documentary evidence or calculations demonstrating that the prices were indeed commensurately reduced. The Respondent has failed to produce any evidence to show that the prices charged to post-June 2018 customers were calculated by subtracting the benefit of ITC that accrued to the Respondent. The Respondent's own submission that it separately showed the benefit of 3.97% for bookings made from July 2017 to June 2018 but failed to do so after June 2018, suggests that the benefit was not consistently and transparently passed on. The average price per square foot comparison provided by the Respondent in Annexure-7 does not conclusively prove that the benefit was passed on, as prices in the real estate sector are influenced by multiple factors such as the stage of construction, floor level, location, demand-supply dynamics, and negotiation skills of the buyer, etc. The Respondent has not demonstrated that the prices post-June 2018 were lower than the prices post-benefit in the preceding period. Mere maintenance of average prices does not establish that the ITC benefit was passed on; it only shows that prices did not increase, which could be attributable to other market forces. The absence of a transparent mechanism to demonstrate the pass-through of ITC benefit to post-June 2018 customers cannot be a ground to exclude them from the purview of

Section 171. Accordingly, the objection of the Respondent on this ground is rejected.

16. Issue (ii): Consumer Welfare Fund

16.1 The Respondent has submitted that the net profiteered amount of Rs. 40,99,917/- in respect of 128 units should be deposited into the Consumer Welfare Fund under Rule 133(3)(c) of the CGST Rules, as the eligible persons (home buyers) have not claimed return of the amount and are not identifiable. The Respondent argued that only the three Applicants filed complaints, and the remaining 125 homebuyers have not made any claim. Furthermore, it was submitted that after the formation of a cooperative housing society and the transfer of the project, the Respondent is no longer involved in day-to-day operations and is not aware of the current ownership status of the 128 units, rendering the homebuyers "not identifiable."

16.2 This Tribunal finds the Respondent's argument is devoid of merit. Rule 133(3)(c) is a residuary provision and is attracted only in those cases where the eligible recipients are genuinely unidentified. The expression "recipient is not identifiable" 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. The said provision contemplates a situation where, despite the exercise of due diligence, the recipient cannot be ascertained or traced. The principle of identification cannot be conflated with the mere difficulty in contacting the recipients or with the fact that no claim has been filed by them. The identification of a recipient is a factual determination, based on the records of the transaction, and not a procedural one dependent on the filing of a complaint or claim.

16.3 In the present case, the DGAP has clearly stated that the consumers are identifiable, as Annexure-9 to the Impugned Report contains the buyer-wise details of the profiteering amount for the 128 units. The Respondent, being a real estate developer, is expected to maintain exhaustive records of each homebuyer, including the name, address, unit number, area of the flat, agreement value, amounts received, and corresponding tax liabilities. The fact that the Respondent may not have the current contact details of the homebuyers does not mean they are "not identifiable" in the eyes of the law. The records of the project contain the names and details of the original allottees. The primary objective of the anti-profiteering provisions under Section 171 is to ensure that the benefit of ITC or reduced tax rate is passed on to the *recipient* of the supply. The rule prioritizes the return of the profiteered amount to the recipient. It is only when the eligible person does not claim the return or is not identifiable that the amount is directed to be deposited into the Consumer Welfare Fund.

16.4 The Respondent's argument that the project has been transferred to the society is also not a valid ground, as the liability to pass on the benefit under Section 171 is that of the registered person who profiteered, and the same is not extinguished on transfer of the project. Therefore, the net profiteered amount of Rs. 40,99,917/- is not liable to be deposited in the Consumer Welfare Fund and must be returned to the individual homebuyers mentioned in Annexure-9 to the Impugned Report.

17. Issue (iii): Set-off of Excess Benefit Passed On

17.1 The Respondent, in its Additional Written Submissions, contended that it had inadvertently passed on Rs. 12,53,99,053/- in excess to 1039 customers. It was argued that the Tribunal has the power to direct the refund of such excess or allow a set-off of the same against the present liability. The Respondent relied on the principle laid down in *Kasinka Trading v. Union of India, 1994 (74) E.L.T. 782 (S.C.)*, wherein the Hon'ble Supreme Court held that "the power to give includes the power to take back." The Respondent submitted that since the Tribunal has the power to direct commensurate reduction in prices under Section 171 of the CGST Act, it also possesses the incidental or implied power to order the refund of excess amounts passed on to customers or, in the alternative, to permit the adjustment of such excess against the remaining liability.

17.2 This Tribunal finds the Respondent's argument on set-off to be misconceived and legally untenable. Section 171 of the CGST Act mandates that the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices. The statutory obligation is to the recipient of the supply, and the recipient is the person who is entitled to the benefit. The Respondent cannot claim a set-off of an excess payment made to some customers against the liability owed to other customers, as the obligations are owed to distinct and separate legal entities.

17.3 This Tribunal does not possess any such power to direct the customers to refund the excess amount, as the provision of Section 171 of the CGST Act does not contemplate any such direction. The power of the Tribunal under the CGST Act is circumscribed by the statutory framework. It is limited to ensuring that the benefit of ITC or reduction in tax rate is passed on to the recipients by way of commensurate reduction in prices. The Act does not confer any power on the Tribunal to order recovery of amounts from consumers or to permit set-off of such amounts against the liability of the supplier to other consumers. The legislative intent underlying Section 171 is consumer-centric and is designed to protect the interests of the recipients, not to provide a mechanism for the supplier to recover amounts from consumers. The principle of "power to give includes the power to take back," as enunciated in Kasinka Trading, applies to the exercise of sovereign or statutory power by the State in the context of exemptions and notifications, and cannot be extended to the rights of private parties under a fiscal statute. Therefore, the Respondent cannot use this as a ground to deny the legitimate claim of the remaining 128 customers.

17.4 The reliance on *Kasinka Trading v. Union of India* is misplaced. The said judgment pertains to the power of the State to withdraw an exemption notification and does not deal with the rights of individual consumers or the obligations of a supplier under a fiscal statute. In *Kasinka Trading*, the Hon'ble Supreme Court was concerned with the question of whether the Government could withdraw an exemption notification that had been issued in the public interest. The Court held that the power to grant exemption inherently includes the power to rescind, revoke, or withdraw the same, as such an exemption is susceptible to being modified or subjected to conditions in the public interest. The principle that "power to give includes the power to take back" applies to the exercise of sovereign or statutory power by the State, not to the rights of private parties. In the present case, the Respondent is not exercising a sovereign power but is complying with a statutory obligation to pass on a benefit to consumers. The Respondent cannot invoke a principle designed for the exercise of State power to claim a right to recover amounts from consumers or to seek set-off against its statutory liability. The obligations under Section 171 are towards the recipients, and the Respondent's unilateral act of overcompensating some customers does not create a corresponding right to deny the legitimate claims of other customers. Therefore, the principle is inapplicable. Accordingly, the plea for set-off is rejected.

18. Issue (iv): Inclusion of GST @ 12% on the Profiteered Amount

18.1 The Respondent contended that the inclusion of GST @12% on the profiteered amount of Rs. 49,71,958/- is incorrect and unsustainable, as the GST component has already been deposited with the Government and does not represent a benefit retained by the Respondent. The Respondent argued that "profiteering" implies retention of the amount and that the GST collected was only a temporary collection and deposited with the exchequer. The

Respondent relied on the Supreme Court judgment in *R.S. Joshi, Sales Tax Officer, Gujarat v. Ajit Mills Limited,* reported at (1977) 4 SCC 98.

18.2 This Tribunal is not persuaded by the Respondent's argument. The reliance on *R.S. Joshi v. Ajit Mills Ltd.* is misplaced. In that case, the Supreme Court was examining the meaning of the word "collected" in the context of a forfeiture provision under the Gujarat Sales Tax Act. The Court held that "collected" means "collected and kept as his" by the trader, and that amounts gathered tentatively and kept in a suspense account did not constitute "collected" for the purposes of forfeiture. However, the present case is not about forfeiture or the meaning of "collected." The present case is about the statutory obligation under Section 171 to pass on the benefit of ITC to the recipient by way of commensurate reduction in prices. The issue is not whether the GST amount was "collected and kept" by the Respondent, but whether the homebuyer paid an amount that he was not liable to pay. The homebuyer paid the extra GST on the inflated base price, and this extra amount is part of the profiteered amount that must be refunded to the homebuyer.

18.3 The Hon'ble Delhi High Court, in *Reckitt Benckiser (supra)*, has conclusively settled this issue in paragraph 157 of its judgment, which is reproduced below:

> *"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."

18.4 The Hon'ble Delhi High Court's reasoning is clear and sound. The profiteered amount is the extra consideration extracted from the homebuyer. This extra consideration includes the GST component that was calculated on the inflated base price. The homebuyer paid this extra GST, which was deposited by the Respondent with the Government. The benefit of this extra GST, if the profiteering had not occurred, would not have been payable by the homebuyer. In economic terms, the homebuyer is the one who has borne this additional cost. To restore the homebuyer to the position he would have been in had the benefit been passed on, he must be refunded the entire extra amount paid by him, including the GST on that extra amount.

18.5 Accordingly, this Tribunal upholds the inclusion of GST @12% on the profiteered amount and holds that the total profiteered amount of Rs. 4,64,04,940/- is correctly computed. For the remaining liability, the net profiteered amount of Rs. 40,99,917/- (inclusive of GST) is directed to be returned.

19. Issue (v): Interest on the Profiteered Amount

19.1 The Respondent has argued that no interest is payable as Section 171 does not provide for the levy of interest and that Section 50 is the only charging section for interest under the CGST Act. The Respondent further relied on the GSTAT order in *DGAP v. Procter & Gamble Group* to argue that interest is not payable for the period up to 28.06.2019.

19.2 This Tribunal finds the Respondent's arguments to be incorrect. The Hon'ble Delhi High Court in Reckitt Benckiser (supra) has explicitly held that Rule 133(3)(b) of the CGST Rules, which provides for interest at the rate of 18% per annum, is a valid enabling provision. The Court observed in paragraph 153 of its judgment as under:

> *"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 place."

19.3 Rule 133(3)(b) of the CGST Rules, 2017, which provides for interest at the rate of 18% per annum from the date of collection of the higher amount till the date of its actual return, is a valid and enabling provision that gives effect to the mandate of Section 171. The relevant provision is reproduced below:

> *"(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;"*

19.4 The reliance on the Procter & Gamble order is not applicable to the present facts. The Procter & Gamble case pertained to the levy of interest under Rule 133(3)(c), which is a distinct provision dealing with deposits to the Consumer Welfare Fund and was amended by Notification No. 31/2019-Central Tax dated 28.06.2019. The levy of interest under Rule 133(3)(b), which deals with the return of the amount to the recipient, has existed in the rules since their inception.

19.5 However, this Tribunal acknowledges the practical difficulty in determining the exact date of "collection of the higher amount" when the benefit is computed on a project-completion basis. In the present case, the profiteering has been computed by comparing the total ITC benefit and the total purchase value for the entire project up to October 2019. The per-square-feet benefit of Rs. 32.91 was determined on a project-wide basis. Therefore, it is not possible to determine the exact date on which each homebuyer paid the higher amount for each square foot. To provide clarity and certainty, and in line with the orders of this Tribunal in similar matters, this Tribunal directs that the interest shall be computed from the date of payment of the last instalment by each homebuyer. This approach is pragmatic and takes into account the fact that the profiteering was determined on a project-completion basis, and the total liability crystallized only upon the completion of the project. The date of the last instalment represents the date on which the final consideration was collected from the homebuyer, and it serves as a reasonable and justifiable benchmark for the commencement of interest liability. The Respondent shall calculate and pay the interest accordingly.

20. Issue (vi): Penalty under Section 171(3A)

20.1 The Respondent submitted that no penalty is imposable as Section 171(3A) of the CGST Act was inserted w.e.f. 01.01.2020 and cannot be applied retrospectively.

20.2 Section 171(3A) of the CGST Act, 2017, reads as under:

"(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 a 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."

20.3 The penalty provision under Section 171(3A) was inserted vide Section 112 of the Finance (No. 2) Act, 2019, with effect from 01.01.2020. Upon careful examination of the facts of the present case, the Tribunal notes that the period of contravention, i.e., the period during which the Respondent is alleged to have profiteered, is from 01.07.2017 to 30.10.2019. This is evident from Table-B of the Impugned Report, wherein the DGAP has computed the profiteering for the period from July 2017 to October 2019. The Respondent had received the Occupancy Certificate for the project "Godrej Infinity" on 30.10.2019. Out of the total 1209 units in the project, 42 flats remained unsold after the receipt of the Occupancy Certificate. Therefore, the total 1167 homebuyers who purchased units up to the date of the Occupancy Certificate were considered for profiteering purposes. The entire period of contravention, i.e., the period during which the Respondent is alleged to have profiteered, stands fully completed on 30.10.2019, which is prior to the coming into force of Section 171(3A) on 01.01.2020.

20.4 Since the alleged contravention stands fully completed on 30.10.2019, prior to the enforcement of Section 171(3A) with effect from 01.01.2020, the said penalty provision has no application to the facts of the present case. The penal provision cannot be applied retrospectively to a period when it was not in force. Accordingly, the Respondent is not liable to pay any penalty under Section 171(3A) of the CGST Act, 2017.

21. In light of the foregoing discussions, the Impugned Report of the DGAP dated 22.01.2025 is hereby accepted. The Respondent, M/s Oxford Realty LLP, is found to have contravened the provisions of Section 171 of the CGST Act, 2017, by not fully passing on the benefit of additional ITC to the eligible homebuyers.

21.1 The Respondent is directed to refund the net profiteered amount of Rs. 40,99,917/- (Rupees Forty Lakhs Ninety-Nine Thousand Nine Hundred and Seventeen Only) to the 128 homebuyers mentioned in Annexure-9 to the Impugned Report, in proportion to the area of their respective flats and in accordance with the buyer-wise details provided in the said Annexure.

21.2 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 computed from the respective dates of payment of the last instalment by each eligible homebuyer until the date of actual refund.

21.3 In view of the fact that the entire period of contravention, i.e., from 01.07.2017 to 30.10.2019 (the date of receipt of the Occupancy

Certificate), was completed prior to the coming into force of Section 171(3A) of the CGST Act, 2017, which was inserted by the Finance (No. 2) Act, 2019 and took effect from 01.01.2020, the Respondent is not liable to pay any penalty under the said provision.

22. 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.

23. A copy of this Order be forwarded to the Respondent, the Applicants, the DGAP, and the jurisdictional CGST/SGST Commissioner(s) for necessary action and compliance.

24. The matter is disposed of accordingly.

25. Order pronounced in the open court.

Digitally signed by SANJAY KUMAR MISHRA
Date:03-08-2026 16:37:33 PM

(Dr. Sanjaya Kumar Mishra)

Digitally signed by ANIL KUMAR GUPTA
Date:03-08-2026 14:33:47 PM

(Sh. Anil Kumar Gupta)

Date- 03.08.2026