Dated: 27.11.2026

GSTAT

Principal Bench at Delhi

Division Bench Court No. Court II

NAPA/117/PB/2025

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

Versus

SOUTHWINDS PROJECTS LLP **.....Respondent**

Quorum

Hon'ble Justice Sh. Mayank Kumar Jain, Member (Judicial)
Hon'ble Sh. A. Venu Prasad, Member (Technical)

Counsel for Appellant **Counsel for Respondent**

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. : ZA070011126000156H **Date of order :** 27/11/2026

1.	GSTIN/Temporary ID/UIN - 19ABJFS2172D1Z5	
2.	Appeal Case Reference no. - NAPA/117/PB/2025	Date - 04/03/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. Southwinds Projects LLP , jitendra.kochar@primarc.in , 9830014233	

5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 27/11/2026 29/10/2026 09/10/2026 16/09/2026 08/09/2026 18/08/2026 02/07/2026 08/05/2026 29/04/2026 15/04/2026 17/03/2026 04/02/2026 07/01/2026 01/12/2025 14/10/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - Revised report dated 10.09.2026 of the DGAP is hereby accepted and revised report dated 07.09.2026 of the DGAP is hereby rejected.	
	Summary of Order	
9.	Type of order : Closure Report	

ORDER

JUSTICE MAYANK KUMAR JAIN, MEMBER (JUDICIAL)
HON'BLE A. VENU PRASAD, MEMBER (TECHNICAL)

FACTUAL MATRIX

1. The Respondent, M/s. Southwinds Projects LLP, 6A, Elgin Road, Floor 2, Kolkata 700020 West Bengal (hereinafter referred to as 'the **Respondent**') is a limited liability partnership firm. The Respondent constructed 1991 apartments across four phases in its project "Southwinds". Phase-I and Phase-II comprises block I to VI in which 1045 flats were constructed. These two phases were commenced during pre-GST period. Phase III and Phase-IV were launched during post-GST period.

2. The present proceedings arises from a complaint made by Mr. Partha Sarthi Chatterjee residing at Flat 3B, Nirmala 24A, Avenue East, Santoshpur, Kokata 700075 (hereinafter referred to as '**the Applicant'**) under Rule 128 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as '**the CGST Rules, 2017'**) alleging profiteering in respect of construction services supplied by the Respondent in their project "Southwinds" situated in premises No. 132, Ghoshalpara Road, Manikpur, Kolkata South, 24 Parganas.

3. The Applicant has alleged that the Respondent did not pass on the benefit of Input Tax Credit (For short '**the ITC**') to the Complainant by way of commensurate reduction in the prices on the purchase of Flat No. BLK-8-8G, Phase II in the above referred project on the introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of Central Goods & Services Act, 2017, (hereinafter referred to as '**CGST Act, 2017'**).

4. The complaint was examined by the Standing Committee on Anti Profiteering and the same was forwarded to Director General of Anti Profiteering (hereinafter referred to as '**the DGAP**') under Rule 129(1) of the CGST Rules, 2017 for detailed investigation.

5. The investigation was set into motion by the DGAP. Notice was issued to the Respondent calling upon to show cause whether the benefit of the ITC had been passed on to the consumers by way of commensurate reduction in prices, and if so, to *suo-moto* determine the quantum thereof.

6. Upon completion of the investigation, the DGAP submitted its report dated 31.12.2020 to the National Anti-Profiteering Authority (For short 'the NAA'), the erstwhile authority.

7. The tenure of the NAA has ended on 30.11.2022. Thereafter, the Competition Commission of India ('hereinafter referred as to **"the CCI")** was empowered to examine matters related to Anti-profiteering with effect

from 01.12.2022 vide Notification No. 23/2022 - Central Tax dated 23.11.2022.

8. The CCI remanded the matter to the DGAP under Rule 133(4) of the CGST Rules, 2017 vide its letter No. F. No. M/ AP/28/Meeting/2023-24 Sectt./ 263-305 on 20.03.2024 to re-investigate as the methodology adopted by DGAP was held to be flawed by Hon'ble High Court of Delhi in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India (2024) 14 Centex 374 (Delhi).***

9. Pursuant thereto, a show cause notice was issued by the DGAP to the Respondent under Rule 129 of the CGST Rules, 2017 for redetermination of profiteering amount. In view of the submissions made by the Respondent and supporting documents placed on record and following the guidelines in ***Reckitt Benckiser*** (Supra), the DGAP submitted its report dated 25.02.2025.

10. The DGAP observed that the project "Southwinds" consists of 1991 unit spread over 16 blocks of Residential units and one Commercial block constructed in Four Phases i.e. Phase I, II, III and IV. Phase III and IV consisting of 1045 units which were out of purview of investigation as these phases were launched during the post-GST period. Out of remaining 946 units 71 units were also outside the scope of the investigation as they were sold after receipt of the Occupation Certification (for short "**the OC**") therefore, 875 units were considered for investigation as they were sold before the issuance of the OC.

11. The DGAP further found that the Completion Certificate (for short "the CC") for Block I to III of Phase I of the project was issued on 05.01.2018, For Block IV and V on 04.04.2018, for the Commercial Block on 04.07.2019. The CC of block VI to VIII of Phase II was issued on 07.02.2020. Therefore, the period of the current investigation is 01.07.2017 to 07.02.2020 i.e. up to the issuance of the last OC.

12. The DGAP referred that the Hon'ble High Court of Delhi in paragraph 129 of its Judgement in ***Reckitt Benckiser*** (supra) has observed: -

> *"This Court is in agreement with learned counsel of the petitioners that one needs to calculate the total saving 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. sq. ft. benefit to be passed on to each flat buyer. This would ensure that flat-buyers with equal square feet area received equal benefit."*

13. Accordingly, the DGAP adopted the methodology for determination of the amount of profiteering by calculating the ITC under GST which has become eligible to be taken as credit and has been availed and utilized by the supplier of the service to discharge its GST liability on Output service. Thus, any ITC would result in saving to the supplier of service only if the same has resulted in savings to the supplier in the reduction in cost on account of availment and utilization thereof in payment of GST on output service. Any positive difference in percentage of availability from the pre-GST being deducted from the post-GST can be multiplied with the amount spent in the post -GST on the purchase of inputs and inputs services to calculate the savings made by the Respondent as the excess availability of ITC in the GST period to the builder to pay output GST leads to reduction in cost to the builder which is required to be passed on to the recipient of the services. That amount of profiteering than needs to be attributed to the total area constructed during post-GST period to determine profiteering per sq. ft. and passed on to the home buyers in proportion of the area of the flat.

14. The DGAP on the basis of the data duly certified by the Chartered Accountant of the Respondent concluded that the Respondent has availed CENVAT credit of Service Tax for the pre-GST period from Financial Year

2012-13 to June, 2017 of Rs. 7,94,47,948/-. As the project was executed in different phases and the investigation was limited to Phase I & Phase II, the CENVAT of service tax attributable to these Phases could not be directly ascertained from the statutory service tax returns from the relevant period. Therefore, the amount of Rs 7,94,47,948/- was considered as total CENVAT credit for pre-GST period. For the period from July 2017 to February 2020 as certified by the Chartered Accountant of the Respondent the DGAP was informed that for the post-GST period the Respondent claim GST ITC available as Rs. 16,75,47,529/-. Further, the net ITC of Rs. 1,47,12,166/- was reversed on account of receipt of OC. Therefore, the ITC available to the Respondent was Rs. 15,28,35,363/-.

15. The DGAP calculated the difference in the ratio of credit availed to purchase value during pre-GST and post-GST periods as under: -

Table A

Sl. No.	**Particulars**	**Pre-GST Period (July, 2013 to June, 2017)**	**Post-GST Period (July, 2017 to February, 2020)**
	1	2	3
1	Credit of Central Excise Duty and Service Tax availed (A)	7,94,47,948	-
2	Credit of VAT availed (B)	0	-
3	ITC of GST Availed (C)	-	16,75,47,529
4	Reversal of ITC of GST (D)	0	1,47,12,166
5	Input Tax Credit of GST actually availed after reversal of ITC (E= C-D)	0	15,28,35,363
6	Total Credit Availed (F = A+B or E)	7,94,47,948	15,28,35,363
7	Purchase Value of Goods and Services (Excluding Taxes and Duties) (G)	1,12,86,64,560	1,68,28,82,819

8	**Ratio of Credit Availed to Purchase Value (in %) (H =F*100/G)**	**7.04**	**9.08**

16. On the basis of the aforesaid calculations, the DGAP has computed the profiteering amount as tabulated here under: -

Table B

S. No	**Particulars**		**Post-GST**
1	Period	A	July, 2017 to, February, 2020
2	Ratio of Credit availed to Purchase Value as per Table - A above (%)	B	7.04/9.08
3	Increase in input tax credit availed post-GST (%)	C	2.04
4	Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	1,68,28,82,819
5	Total Savings on account of additional ITC benefit	E = D*C/100	3,43,30,810
6	Total Saleable Area (in Sq. Ft.)	F	10,43,991
7	Total Saving Per Sq. Ft.	G = E/F	32.88
8	Total Sold Area (in Sq. Ft.)	H	969458
9	**Profiteered Amount**	**I = G * H**	**3,18,79,851**
10	**Profiteered Amount (including @12% GST)**		**3,57,05,434**

17. The DGAP has computed the total amount of profiteering as Rs. 3,57,05,434/- including GST @12%. The DGAP further, on the basis of the documents supplied by the Respondent, observed that the Respondent had passed on Rs 3,97,74,951/- as GST benefit to 869 buyers. The details of the GST benefit passed on are tabulated as below: -

Table C

Sl. No.	Category of buyers	No. of units	Area (in Sq. ft.)	Amount of Profiteering inclusive of GST @12% worked out in the current investigation	Benefit already passed on to 869 (525+161+183) home buyers	Profiteering benefit to be passed on to 531 (6 + 525) home buyers
	1	2	3	4	5	6
1	Benefit to be passed on	6	5,972	2,19,951	Nil	2,19,951
2	Further benefit to be passed on	525	5,83,512	2,14,90,924	1,19,23,771	95,67,153
3	Excess benefit passed on*	161	1,78,229	65,64,228	2,04,20,850	1,38,56,622 (Excess benefit passed on) *
4	Benefit already passed on	183	2,01,745	74,30,330	74,30,330	Nil
TOTAL		**875**	**9,69,458**	**3,57,05,433**	**3,97,74,951**	**97,87,104**

18. The DGAP, vide its report dated 25.02.2025, concluded that the Respondent has profiteered an amount of Rs 3,57,05,433/- and the remaining amount which is required to be passed on to 431 eligible recipients, after deducting the benefit already passed on by the Respondent, amounts to Rs 97,87,104/- . Thus, the Respondent has contravened the provision of Section 171 of the CGST Act, 2017.

19. Further, the DGAP has submitted its revised report dated 07.09.2026 excluding the cost of land and certain other expenses, but considered the aspect of the cost escalation as claimed by the Respondent, and the purchase of service and inputs during pre and post-GST period. The Ratio of Credit availed to purchase value is calculated as under;

Table A

(Amount in Rs.)

S. No.	Particulars	Pre-GST Period (2012-13 to June, 2017)	Post-GST Period (July 2017 to Feb 2020)
1	Purchase Value of Goods and Services (Excluding Taxes and Duties)	82,71,36,885	1,24,79,04,186
2	Credit of Service Tax availed	7,94,47,948	-
3	Credit of VAT availed	-	-
4	Total Credit Availed in Pre-GST Period	7,94,47,948	-
5	Net ITC of GST Availed	-	15,28,35,363
6	Ratio of Credit Availed to Purchase Value (in %)	9.61	12.25
	Difference		**2.64**

20. Vide this report the DGAP accepted an amount of Rs 2,67,72,553/- towards cost escalation and computed the profiteering amount as under;

Table B

S. No.	Particulars		Post-GST
1	Period	A	July, 2017 to Feb, 2020
2	Ratio of Credit availed to Purchase Value as per Table - A above (%)	B	9.61/12.25
3	Increase in input tax credit availed post-GST (%)	C	2.64
4	Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	1,24,79,04,186
5	Total Savings on account of additional ITC	E = D*C/100	3,29,44,671
6	Cost Escalation	F	2,67,72,553
7	Total Savings on account of additional ITC benefit	G = E-F	61,72,118
8	Total Saleable Area (in Sq. Ft.)	H	10,43,991
9	Total Saving Per Sq. Ft.	I = G/H	5.912
10	Total Sold Area (in Sq. Ft.) till the date of Occupancy Certificate	J	9,69,458

11	Profiteered Amount	K = I*J	57,31,436
12	GST@12% on profiteered Amount	L = K*12%	6,87,772
13	**Total Profiteering Amount including GST@ 12%**	**M = K+L**	**64,19,208**

21. The DGAP also considered the passing of the benefit of reduction in rate of tax to eligible home-buyers as under:

Table C

S. No.	Category of buyers	No. of Units	Area (sq ft)	Amount of Profiteering inclusive of GST @12%	Benefit already passed on	Profiteering to be passed on
	1	**2**	**3**	**4**	**5**	**6 (4-5)**
1.	Benefit to be passed on	6	5,972	39,544	-	39,544
2.	Further benefit to be passed on	8	7,924	52,468	44,876	7,592
3.	Excess benefit passed on	861	9,55,562	63,27,196	3,97,30,075	-3,34,02,879
	TOTAL	**875**	**9,69,458**	**64,19,208**	**3,97,74,951**	**47,136**

22. Based on this calculation, the DGAP concluded that an amount of Rs. 47,136 is required to be passed on to 14 eligible home buyers.

23. Vide our order dated 08.09.2026, we directed the DGAP to exclude the amount of cost escalation from the aforesaid computation, as it was considered by the DGAP contrary to our order dated 02.07.2026.

24. Thereafter, the DGAP submitted its revised report dated **10.09.2026** excluding the amount of cost escalation. The ratio of credit availed to purchase value remained the same at 2.64% as shown in the following table:

Table A:-

S. No	Particulars	Pre-GST Period (2012-13 to June, 2017	Post-GST Period (July 2017 to Feb 2020)
1	Purchase value of Goods and Services (Excluding Taxes and Duties)	82,71,36,885	1,24,79,04,186

2	Credit of Service Tax availed	7,94,47,948	-
3	Credit of VAT availed	-	-
4	Total Credit availed in pre-GST Period	7,94,47,948	-
5	Net ITC of GST availed	-	15,28,35,363
6	Ratio of Credit availed to Purchase value (in %)	9.61	12.25
	Difference		**2.64**

25. Based on the aforesaid ratio, the profiteering amount is calculated as under:

Table- B

(Amount in Rs.)

S. No.	**Particulars**		**Post-GST**
1	Period	A	July, 2017 to Feb. 2020
2	Ratio of Credit availed to Purchase Value as per Table - A above (%)	B	9.61/12.25
3	Increase in input tax credit availed post-GST (%)	C	2.64
4	Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	1,24,79,04,186
5	Total Savings on account of additional ITC	E = D*C/100	3,29,44,671
6	Total Saleable Area (in Sq. Ft.)	F	10,43,991
7	Total Saving Per Sq. Ft.	G = E/F	31.55647
8	Total Sold Area (in Sq. Ft.) till the date of Occupancy Certificate	H	9,69,458
9	Profiteered Amount	I = G*H	3,05,92,672
10	GST@12% on profiteered Amount	K = I*12%	36,71,121
11	**Total Profiteering Amount including GST@12%**	**L = I+K**	**3,42,63,793**

26. The amount already passed on to eligible homebuyers is noted in the report as:

Table – "C"

S. No.	**Category of buyers**	**No. of Units**	**Area (sq ft)**	**Amount of Profiteering inclusive of GST @12%**	**Benefit already passed on**	**Profiteering to be passed on**

	1	2	3	4	5	6 (4-5)
1.	Benefit to be passed on	6	5,972	2,11,070	-	2,11,070
2.	Further benefit to be passed on	524	5,82,238	2,05,78,181	1,18,77,961	87,00,220
3.	Excess benefit passed on	345	3,81,248	1,34,74,542	2,78,96,990	-1,44,22,448
	TOTAL	**875**	**9,69,458**	**3,42,63,793**	**3,97,74,951**	**89,11,290**

27. Thus, on the basis of the aforesaid computation, the DGAP has concluded that the Respondent has profiteered an amount of Rs 3,42,63,793/-, which is required to be passed on to eligible home buyers. However, as the Respondent had already passed on an amount of Rs 3,97,74,951/-, the Respondent is now required to pass on an amount of Rs 89,11,290/- as some homebuyers were passed excess ITC benefits, whereas others did not receive full benefit.

WRITTEN SUBMISSIONS BY RESPONDENT

28. The Respondent had filed the written submissions on several occasions against the DGAP report dated 25.02.2025 and 10.09.2026. The Respondent did not file written submissions in response to the DGAP report dated 07.09.2026 as he accepted the computation made by the DGAP, although this report was also prepared by adopting the same methodology which was earlier adopted by the DGAP. The written submissions filed by the Respondent are summarised here under: -

(i) The Final Report was issued without a valid Document Identification Number (hereinafter "**the DIN**"), in violation of the CBIC Circular No. 128/47/2019-GST dated 23.12.2019. As a result, any communication without a DIN is non-est and invalid in the eyes of law.

(ii) The DGAP has adopted a flawed methodology for computing the alleged profiteering amount of Rs. 97,87,104/-, which is contrary to the Judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser (supra)*****.** The computation should be based on the percentage of completion of each block and the ITC availed during the post-GST period.

(iii) The Respondent has computed the actual benefit payable to home-buyers at only Rs. 6,11,131/ (comprising Rs. 15,338/- payable to 6 unit holders and Rs. 5,95,793/- payable to 525 unit holders), as against the amount of Rs. 97,87,104/- determined by the DGAP.

(iv) Section 171 of the CGST Act, 2017 and the Rules framed thereunder suffer from excessive delegation and arbitrary, and are therefore unconstitutional.

(v) The DGAP erroneously computed the benefit of ITC based on materials/services purchased in 2018-19 and 2019-20 for Blocks VI to VIII, which ideally had no linkage with Blocks I to V, as the entire construction for Blocks I to III was completed by December 2017 and that of Blocks IV and V by March 2018. Under Section 171 of the CGST Act, 2017, only the purchase value of goods and services is liable to be considered for the purpose of computation of the profiteering amount.

(vi) The total procurement details in respect to Blocks I to V (for the period 01.07.2017 to 31.03.2019) resulted in an additional ITC benefit of Rs. 1,35,74,163/. Since the Respondent had already passed an amount of Rs. 1,19,23,771/- to the home buyers, the maximum additional benefit required to be passed on should be Rs. 16,50,391/-.

29. The Respondent had for the first time through his written submissions dated 21.06.2026 claimed for offsetting the benefit arising from the reduction in tax incidence due to GST with the cost escalation of certain inputs. It is stated: -

(i) The project witnessed significant inflationary pressure and a substantial rise in the cost of construction materials during the GST regime. The actual expenditure incurred for Phase I and Phase II exceeded the budgeted cost by approximately Rs. 2,67,72,553/- on account of the escalation in the prices of Steel and Cement.

(ii) The allotment for Blocks I to VIII was made to the different buyers and from 2013 onwards. It was agreed that the building would be completed on or before 31st January 2016 with a grace period of six months subject, however, to force majeure. The construction was delayed due to land issues and pending sanctions. Crucially, despite the first Development Agreement of September, 2013, the second (revised) Development Agreement with landowners was executed only in March 2016. While Phase I (Blocks I to V) and Phase II (including Blocks VI to VIII and the Commercial Block) were budgeted and sold at fixed, unrevised consideration, promised for completion by 31.01.2016 at the latest by 31.07.2016 with grace period. The construction could start only after the original scheduled completion date had already lapsed. The execution of Phase I (Blocks I to V) remained severely delayed. The Occupancy Certificates for Phase I were procured only between 03.01.2018 and 31.03.2018, thereby establishing an admitted delay of over 24 months in handing over possession.

(iii) This additional input GST paid on account of cost escalation cannot be attributed towards profiteering. The genuine cost escalations must be deducted from the total savings while computing profiteering. All 530 home buyers had entered into agreements prior to the introduction of GST, and the contractual consideration remained unchanged despite the cost escalation, meaning the Respondent absorbed the increased costs without recovering it from the buyers.

(iv) The Respondent submitted that the revised report of the DGAP dated 07.09.2026, which was accepted the cost escalation of Rs. 2,67,72,553/- and computed the net profiteering amount at Rs. 47,136/- in respect of 14 buyers, should be accepted and given effect. The Respondent has prayed that the final Report dated 25.02.2025 and 10.09.2026 be rejected.

CLARIFICATIONS BY THE DGAP

30. The DGAP has submitted its clarifications against the written submissions made by the Respondent which are summarised as under;

(i) The investigation report was submitted to the GSTAT and not to the Respondent directly. The requirement of generation of the DIN is applicable in respect of all communication directly sent to the taxpayers and other concerned persons by any office of the Central Board of Indirect Taxes and Customs across the country.

(ii) The DGAP has adopted the methodology laid down by the Hon'ble High Court of Delhi in ***Reckitt Benckiser (supra).*** In order to calculate the profiteering, the ratio of CENVAT or ITC on inputs or input services needs to be determined by comparing it with a construction activity which is directly related to the quantum of CENVAT/VAT or ITC that becomes eligible or

available. Since the ITC or CENVAT for the recipient of goods or services is the output tax paid by the supplier of services, which is an amount calculated ad-valorem as a percentage of applicable service tax/ VAT or GST on the basic assessable value of that input and input services. The amount spent on purchase of inputs as well as input services is directly commensurate with the availability of CENVAT or ITC thereon. Thus, the amount availed as CENVAT or ITC, viz.-a-viz. the amount spent on purchase of inputs and input services has a direct correlation which can be used to determine profiteering. If the proportion of ITC as a percentage of amount spent on purchase of inputs and input services during pre-GST and post-GST periods can be compared to check whether the introduction of GST has resulted in extra availability of ITC than what was being availed in the pre-GST period. Any positive difference in percentage of ITC availability from the pre-GST being deducted from the post-GST can be multiplied by the amount spent in the post-GST period on the purchase of inputs and input services to calculate the savings made by the Respondent, as the excess availability of ITC in the GST period to the Respondent to pay output GST leads to a reduction in cost incurred to the Respondent. The amount of profiteering then needs to be attributed to the total area constructed to determine profiteering per sq. ft. and passed on to the home buyers in proportion to the area of their respective flats. Which is, as per the provisions of Section 171 of the CGST Act, 2017, needs to be passed on to the recipient.

(iii) The Hon'ble High Court of Delhi in ***Reckitt Benckiser (supra)*** has suggested a methodology 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 the total area to arrive at per sq. benefit to be passed on to each buyer.

(iv) The investigation was initiated and completed as per the provisions of the CGST Act, 2017 and associated rules, thus it is valid. It is immaterial whether the complainant withdraws his complaint at a later stage. The matter was referred by the Standing Committee to the DGAP. In terms of Rule 129 (ii) of the CGST Rules, 2017, the DGAP is empowered to conduct an investigation and collect evidence to determine whether the benefit arising from reduction in the rate of tax on any supply of goods or services or the benefit of ITC has been passed on to the recipient irrespective of the fact that the Applicant had withdrawn the complaint.

(v) The Constitutional validity of the provision under section 171 and rules *ibid* has been upheld by Hon'ble High Court of Delhi in **Reckitt Benckiser (supra)**.

31. We have heard Ms. Nidhi Dabas, Additional Assistant Director for the DGAP and Shri Rajrishi Das Gupta, Learned Chartered Accountant for the Respondent.

32. Peruse the record.

DISCUSSIONS AND OBSERVATIONS

33. Section 171 of the CGST Act reads thus:

> *"Section 171 Anti-profiteering measure. –*
>
> *(1). Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.*

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an Page 11 of 30 existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. Provided that the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

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

Explanation 2. —For the purposes of this section, the expression "Authority" shall include the "Appellate Tribunal (3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed. (3A) Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered: Page 12 of 30

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

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

34. The Hon'ble High Court of Delhi in ***Reckitt Benckiser (Supra)*** has extensively discussed about the scope and mandate of Section 171 of the CGST Act, 2017 and the consequences of reduction in the rate of tax. As a result of such reduction, the ultimate benefit should mandatorily be passed on to the recipient. It is observed;

"*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. The said Section further enables the establishment of an Authority to determine whether Suppliers have passed on the benefits of Input Tax Credits and reduction of the tax rates, and to exercise such other powers and functions as may be prescribed.*

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 flavour 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. Consequently, the judgments of Ahmedabad Urban Development Authority (supra), Indian Carbon Limited (supra), V.V.S. Sugars (supra) and Shree Bhagwati Steel Rolling Mills v. CCE (supra), relied on by the Petitioners, are not applicable as they deal with the validity of delegated authority imposing tax/fee or charging interest on delayed payment of tax in the absence of empowering provision in the statute.*

108. This Court is of the view that Section 171 of the Act 2017 is a complete code in itself and it does not suffer from any ambiguity or arbitrariness. Section 171 of the Act 2017 sets out the function, duty, responsibility and power of NAA with exactitude. It stipulates that the pre-conditions for applicability of the provision are either the event of reduction in rate of tax or the availability of benefit of input tax credit (resulting in such reduction). Once the said pre- requisites/conditions exist, the direct consequence contemplated i.e. reduction of the price must follow. Therefore, if before such reduction of rate of taxes or benefit of Input Tax Credit, the price paid by the recipient inclusive of the applicable tax at the relevant time was a particular amount, then on account of the reduction of the tax rate or the benefit of the Input Tax Credit, there has to be

reduction in the subject price. Further, ***the reduction in the tax rate or the benefit of Input Tax Credit which is mandated to be passed on to the recipient is a matter of right for the recipient*** *and consequentially, the price reduction must be commensurate to such benefit. For instance, when the Goods and Services Tax rate on a service of Rs.100 is 28%, the MRP of the service at which it is sold to the consumer is Rs.128. When the Goods and Services Tax rate is reduced by the Government from 28% to 18%, the provision requires that this reduction in Goods and Services Tax rate should be reflected in the price of the service and the benefit from such reduction of tax rate should be passed on to the consumers by way of commensurate reduction in the price. As a result, the new MRP of the service should be Rs.118.*

119. This Court is in agreement with the submission of learned Amicus Curiae that if there is any variation on account of other factors, such as any costs necessitating the setting off of such reduction of price, the same needs to be justified by the supplier. The inherent presumption that these must necessarily be a reduction in prices of the goods and services is a rebuttable presumption. It is clarified that if the supplier is to assert reasons for offsetting the reduction, it must establish the same on cogent basis and must not use it merely as a device to circumvent the statutory obligation of reducing the prices in a commensurate manner contemplated under Section 171 of the Act, 2017."

(Emphasis added)

35. The provisions contained in Section 171 of the CGST Act, 2017 mandates that the benefit of ITC resulted on account of any reduction in the rate of tax on any supply of goods and services should be passed on to the consumer by way of commensurate reduction in prices.

36. The Hon'ble High Court for the State of Telangana at Hyderabad in WP Nos. 4760 of 2021 and 5351 of 2021 ***Sudarshan Theatre 35MM vs. Union of India***, observed about the spirit of the legislation behind the provision u/s 171 of the CGST Act, 2017 as: -

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

37. Following issues emerge on the basis of the pleadings of the parties:
    (i) Whether the Final Report dated 25.02.2025 issued without a valid DIN is non-est and invalid in the eyes of law?
    (ii) Whether the methodology adopted by the DGAP to compute the profiteering amount is in consonance with the guidelines rendered by the Hon'ble High Court of Delhi in ***Reckitt Benckiser (supra)***?

(iii) Whether the Respondent has successfully established, on a cogent basis, the reasons for offsetting the reduction on account of cost escalation?

Disposal of issue no. (i)

Whether the Final Report dated 25.02.2025 issued without a valid DIN is non-est and invalid in the eyes of law?

38. The Learned Counsel for the Respondent has vehemently argued that the report dated 25.02.2025 has been issued without a valid DIN, which is in contravention to the **Circular No. 128/47/2019-GST dated 23.12.2019** issued by the CBIC. Therefore, the Respondent contended that the report is non-est in the eyes of law. Reliance is placed on the following decisions;

(a) *Pradeep Goyal v. Union of India* [2022] 141 taxmann.com 64(SC)

(b) *Raam Autobahn India Private Limited v. Assistant Commissioner*, [2025] 171 taxmann.com 241 (A. P).

39. Per contra, the learned Authorised Representative of the DGAP has contended that the investigation report was submitted to the Authority and was not directly communicated to the Respondent. The requirement for generation of DIN is applicable in respect of all communication issued to taxpayers and other concerned persons by any office of the Central Board of Indirect Taxes and Customs across the country.

40. Relevant extract of the aforesaid Circular is reproduced;

"*Subject: Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons — reg.*

Attention is invited to Board's Circular No. 122/41/2019- GST dated 05" November, 2019 that was issued to implement the decision for Generation and Quoting of Document Identification Number (DIN) on specified documents. This was done with a view to leverage technology for greater accountability and transparency in communications with the trade/ taxpayers/ other concerned persons.

2. Vide the aforementioned Circular, the Board had specified that the DIN monitoring system would use for incorporating a DIN on search authorisations, summons, arrest memos, inspection notices to begin with. Further, a facility was provided to enable the recipient of these documents/communications to easily verify their genuineness by confirming the DIN on-line at cbic.gov.in. In continuation of the same, ***the Board has now directed that electronic generation and quoting of Document Identification Number (DIN) shall be done in respect of all communications including e-mails) sent to tax payers and other concerned persons*** *by any office of the Central Board of Indirect Taxes and Customs (CBIC) across the country. Instructions contained in this Para would come into effect from 24.12.2019,*

3. Accordingly, the online digital platform/facility already available on the DDM's online portal "cbicddm.gov.in" for electronic generation of DIN has been suitably enhanced to enable electronic generation of DIN in respect of all forms of communication (including e-mails) sent to tax payers and other concerned persons. On the one hand electronic generation of DIN's would create a digital directory for maintaining a proper audit trail of communications sent to tax payers and other

concerned persons and on the other hand, it would provide the recipient of such communication a digital facility to ascertain the genuineness of the communication.

4, 5 & 6……"

41. A plain reading of the aforesaid Circular indicates that the intention behind the issuance of this circular is that where the department issues any communication, to a taxpayer or any other stakeholder, to ensure the authenticity or such communication, a DIN is required to be generated.

42. We are in agreement with the arguments advanced by the learned Authorised Representative of the DGAP that the report dated 25.02.2025 was submitted to the Authority and was not directly communicated to the Respondent. Therefore, there was no requirement to generate a DIN to communicate the Final report to the Authority. The submission of the learned Chartered Accountant appearing for the Respondent cannot be accepted that since the DIN was not generated therefore, the report dated 25.02.2025 is non-est and invalid in the eyes of law. Therefore, we decide this issue against the Respondent.

Disposal of Issue No. (ii):

Whether the methodology adopted by the DGAP to compute the profiteering amount is in consonance with the guidelines rendered by the Hon'ble High Court of Delhi in *Reckitt Benckiser (supra)*?

43. The Respondent's primary contention throughout the proceedings is that the methodology adopted by the DGAP for computing the profiteered amount is fundamentally flawed and against the findings recorded by the Hon'ble High Court of Delhi in ***Reckitt Benckiser (supra).***

44. The Learned Counsel for the Respondent, while challenging the methodology adopted by the DGAP, has vehemently and consistently argued that the ITC benefit cannot be computed on post-GST procurement for Blocks VI-VIII when the construction of Blocks I-V was already completed

in the early stages of the GST regime The computation should be based on the percentage of completion of each block and the ITC availed during the post-GST period.

45. Per contra, the learned Representative for the DGAP categorically submitted that the computation of the profiteering amount is made strictly in consonance with the directions laid down by the Hon'ble High Court of Delhi in ***Reckitt Benckiser (supra).***

46. It is further submitted that the DGAP adopted the methodology for determination of the amount of profiteering by calculating the ITC under GST which has become eligible for availment as credit and has been availed and utilised by the supplier of services to discharge its GST liability on provision of output services. Thus, any availment and utilisation of ITC will result in savings to the supplier of service only if the same has resulted in savings to the supplier in the form of the decreased cost on account of availment and utilisation thereof in payment of GST on output service. Any positive difference in the percentage of availability from the pre-GST being deducted from the post-GST can be multiplied by the amount spent in the post-GST on the purchase of the inputs and input services to calculate the savings made by the Respondent, as the excess availability of ITC in the GST period to the builder to pay output GST leads to a reduction in cost incurred by the builder, which is required to be passed on to the recipient of the services. The amount of profiteering then needs to be attributed to the total area constructed in post-GST to determine profiteering per sq. ft. and passed on to the home buyers in the proportion to the area of their respective flat.

47. The Hon'ble High Court of Delhi in ***Reckitt Benckiser (supra)*** has suggested the following methodology to be adopted by the DGAP for

computation of amount of profiteering under Section 171 of the CGST Act, 2017. It reads thus:-

"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."

(Emphasis Added)

48. We are of the view that based on the aforesaid guidelines laid down by the Hon'ble High Court of Delhi, the DGAP has adopted the methodology for computing the amount of profiteering under Section 171 of the CGST Act, 2017.

49. The computation made by the DGAP in its report dated 25.02.2025, as shown in table "A", is that the ITC as a percentage of purchase value available to the Respondent during the pre-GST period was 7.4% and during the post-GST period it was 9.4%. It has been confirmed that the Respondent has benefitted from additional ITC during the post-GST period.

50. In this particular case, DGAP found an increase of approximately 2% in ITC availability due to the introduction of GST. The Ministry of Finance, vide Press Release dated 15.06.2017, also recognised that GST would reduce the overall tax burden on construction by eliminating the cascading effect of earlier indirect taxes and providing full ITC. Further, CREDAI has acknowledged that the reduction in GST rates on construction materials

would result in a 2–5% reduction in project costs, depending upon the stage of construction. This means that where a major portion of construction was completed during the pre-GST period, the benefit would be lower, whereas a greater portion of construction undertaken during the post-GST period would result in a higher benefit. Therefore, the DGAP's finding of approximately 2% profiteering appears reasonable and commensurate with the additional ITC benefit arising during the relevant period.

51. We wish to point out one important aspect that the Respondent has challenged the methodology adopted by the DGAP in its reports dated 25.02.2025 and 10.09.2026. However, the Respondent no objection about the methodology adopted by the DGAP while preparing the report dated 07.09.2026, although that report took into account the cost escalation as claimed by the Respondent. We are of the view that the DGAP has rightly followed the methodology laid down by the Hon'ble High Court of Delhi in ***Reckitt Benckiser (supra)***. It is pertinent to say that, because the report dated 07.09.2026 favoured the Respondent, it neither objected to the methodology nor filed any objections to that report. In our opinion, the Respondent cannot have butter on both sides of the bread.

52. In view of the foregoing discussion, we hold that the methodology adopted by the DGAP is strictly in consonance with the observations made by Hon'ble High Court of Delhi in ***Reckitt Benckiser (Supra)***. Therefore, the issue no. (ii) is decided in favour of the DGAP.

Disposal of Issue No. (iii)

Whether the Respondent has successfully established, on a cogent basis, the reasons for offsetting the reduction on account of cost escalation?

53. The learned Counsel for the Respondent has vehemently argued that the substantial cost escalation of Rs. 2,67,72,553/- incurred on Steel and Cement during the post-GST period must be set off against the additional ITC

benefit, as the burden of this increased cost was borne by the Respondent and not passed on to the buyers. The Agreements for Sale executed with all 530 buyers were entered into prior to the introduction of GST based on the budgeted project costs prevailing at the time of allotment, and the agreed contractual consideration remained unaltered throughout the relevant period. Consequently, since the Respondent has absorbed the impact of post-GST cost escalation without recovering any additional amount from the buyers, the said cost escalation ought to be accounted for while computing profiteering, if any.

54. It is further submitted that as laid down by the Hon'ble High Court of Delhi in ***Reckitt Benckiser (supra***), a supplier is entitled to raise prices based on genuine commercial factors, including cost escalation, provided such increase is not a mere pretence. Therefore, such factors do not by themselves constitute profiteering. It was contended that the documented cost escalation incurred by the Respondent must be duly factored into determining the existence and quantum of profiteering, making the revised methodology adopted in the DGAP report dated 07.09.2026, whereby proven cost escalation was deducted from total savings which is fully consistent with settled judicial principles.

55. Heavy reliance is placed on the decision passed by the co-ordinate bench of this Tribunal in ***DGAP v. Vertex Homes Pvt. Ltd.*****, [2026] 190 taxmann.com 80 (GSTAT- NEW DELHI).** It is submitted that the developer's proof of substantial escalation in major construction material prices was considered which was duly substantiated by a Chartered Accountant's certificate and verified by the DGAP against sample invoices following which the DGAP's revised methodology was approved deducting verified cost escalation from total savings, resulting in negative net savings and nil profiteering.

56. Further, reliance is placed on ***DGAP v. Laureate Buildwell Pvt. Ltd.*, [2026] 189 taxmann.com 559 (GSTAT- NEW DELHI)** and it is submitted that the DGAP's supplementary report deducting cost escalation from gross ITC savings to arrive at net savings and revised profiteering figures was accepted.

57. Before adverting to this issue, we would like to refer to some orders passed by us during the course of hearing

(a) On 02.07.2026, the following order was passed: -

"*5. During the course of hearing, the learned Authorised Representative for the DGAP submitted that the written submissions* ***filed by the Respondent*** ***included the cost of land and certain other expenses while computing the profiteering amount. It was further submitted that, in terms of Section 171 of the CGST Act, 2017, only the purchase value of goods and services is liable to be considered for the purpose of computation of the profiteering amount****. Accordingly, it was submitted that the computation requires re-examination in light of the invoices and documents furnished by the Respondent.*

6. The learned Chartered Accountant appeared on behalf of the Respondent submitted that the Respondent shall produce all invoices and other relevant documents before the DGAP to facilitate verification.

7.In view of the above, four weeks' time is granted to the DGAP to re-examine the calculations after verification of the invoices and other supporting documents submitted by the Respondent and to file a revised report before this Tribunal."

(b) On 08.09.2026, the following order was passed: -

"*4. The DGAP in pursuance to our earlier order dated 02.07.2026 has re-examined the computation of profiteered amount on the basis of documents submitted by the Respondent and has submitted its report dated 07.09.2026 computing the profiteering amount to the tune of Rs. 47,136/-.*

5. ***No objections are brought on record on behalf of the Respondent against the DGAP report dated 07.09.2026.***

6. The learned Counsel for the Respondent fairly undertook that the Respondent is willing to deposit the computed amount of profiteering in DGAP report dated 07.09.2026.

7. We have perused the report of the DGAP report dated 07.09.2026.

8. Vide our earlier order dated 02.07.2026, we have directed the DGAP to submit revised report after consideration of land value and certain other expenses which are not part of goods and services.

9. Now, the perusal of the recent DGAP report dated 07.09.2026, indicates that DGAP has also taken into consideration the cost escalation for the project on the basis of the certificate of Chartered Accountant dated 12.08.2026. An amount of Rs. 2,67,72,553/- towards cost escalation is accepted by the DGAP.

***10. In view of the above, we direct the DGAP to compute the amount of profiteering strictly in accordance to our earlier order dated 02.07.2026 and to submit a supplementary report within one week from today.*"**

58. Upon perusal of the aforesaid orders, it transpires that we never directed the DGAP to submit a revised report after taking into account the cost

escalation. The Respondent had included the cost of land and certain other expenses while computing the profiteering amount on its own. The spirit of our orders was as simple as that, under the Rules, the land value should be excluded and only the purchase value of goods and services should be considered for computing the profiteering amount.

59. To our surprise, the DGAP exceeded our directions and considered the cost escalation incurred by the Respondent. As a result, the profiteered amount was reduced considerably to Rs. 47,136/-. The Respondent neither objected to the methodology adopted by the DGAP nor disputed the computation. He further expressed his willingness to deposit the said amount. upon perusal of the report dated 07.09.2026, we found that it was not in consonance with our directions contained in the order dated 02.07.2026. We, therefore, directed the DGAP to submit a revised report strictly in accordance with our order dated 08.09.2026. Thereafter, the DGAP submitted its report dated 10.09.2026, excluding the amount of cost escalation. The profiteering amount was thus determined as Rs. 89,11,290/-, after deducting the benefit already passed on by the Respondent to its home buyers.

60. The Respondent has claimed cost escalation on the ground that the prices of iron, steel and cement rose substantially. It also stated that the construction was delayed due to land issues and pending sanctions. Crucially, although the first Development Agreement was executed in September 2013, the second (revised) Development Agreement with the landowners was executed only in March 2016. Phase I (Blocks I to V) and Phase II (including Blocks VI to VIII and the Commercial Block) were budgeted and sold at fixed and unrevised consideration, on the basis that completion would take place by 31.01.2016 with a six months grace period up to 31.07.2016 respectively. Construction could start only after the original scheduled completion date had already passed. Execution of Phase I (Blocks I to V)

remained severely delayed and the Occupancy Certificates for Phase I were obtained between 03.01.2018 to 31.03.2018. This establishes an admitted delay of over 24 months in handing over possession.

61. The Respondent has submitted that the additional input GST paid on account of cost escalation cannot be treated as profiteering, and that genuine cost escalation must be deducted from the total savings while computing profiteering. It is further submitted that all 530 eligible recipients had entered into agreements before the introduction of GST, and that the contractual consideration remained unchanged despite the cost escalation. Thus, the Respondent absorbed the increased costs without recovering them from the buyers.

62. The consideration for the flats having been mutually agreed upon by the parties and embodied in the respective Builder-Buyer Agreements, the Respondent cannot unilaterally enhance the agreed sale consideration on account of an increase in the prices of cement, steel or other construction materials, particularly when the agreements do not contain any clause permitting such escalation. It is also relevant to note that cement and steel constitute only two of the numerous inputs used in the construction of a building. While the prices of certain construction materials may have increased during the relevant period, the prices of certain other materials may have declined. Therefore, a selective reference to an increase in the prices of cement and steel, without undertaking an overall assessment of the variations in the cost of all relevant construction inputs, would not provide a complete or balanced picture of the actual cost impact.

63. Further, the sale consideration of flats is ordinarily determined by builders after taking into account various commercial factors, including the anticipated cost of construction, possible fluctuations in the prices of materials, labour costs, procurement arrangements and prevailing market

conditions. It is also not uncommon for builders to enter into long-term procurement or supply contracts for major construction materials even before executing Builder-Buyer Agreements with purchasers. Such arrangements are, *inter-alia,* intended to manage or mitigate the risk of price fluctuations. The commercial risk arising from variations in input costs is, therefore, ordinarily required to be assessed by the builder.

64. In ***Reckitt Benckiser(supra)***, the Hon'ble Delhi High Court, in the following Paragraph has explained the manner in which the introduction of GST reduces the overall tax incidence by eliminating the cascading effect of taxes through the availability of Input Tax Credit. The Court illustrated that, under the earlier tax regime, the cost to the consumer was higher due to the accumulation of taxes, whereas under the GST regime, the removal of such cascading taxes reduced the final cost.

> *93. The Goods and Service Tax is a destination-based tax and is levied at the point of consumption. Accordingly, the taxes get accumulated with the original price and due to the effect of Input Tax Credit, the cascading effect i.e. tax on tax is removed. This is best illustrated by the Following example:*

OLD SYSTEM		*GOODS AND SERVICES TAX SYSTEM*	
MANUFACTURING COST OF CAR		MANUFACTURING COST OF CAR	
	250,000		250,000
ADD: PROFIT @20%	50,000	ADD: PROFIT @20%	50,000
TOTAL COST	300,000	TOTAL COST	300,000
ADD: EXCISE DUTY @10%	30,000	ADD: EXCISE DUTY @10% NA	0
COST AFTER TAX	3,30,000	COST AFTER TAX	3,00,000
ADD : VAT @10%	33000	ADD : VAT @10% NA	0
COST TO CUSTOMER	3,63,000		300,000
		ADD:GOODS And	
		SERVICES TAX@ 20%	60000
		COST TO CUSTOMER	3,60,000

65. From the above it is clear that the GST has benefitted Rs. 3000 through tax rationalization and this benefit has to passed onto the customers, similarly in this instant case also only tax benefit has to be passed on to the homebuyers as per Section 171 without looking into any other factors like cost escalation.

66. Further, in *Reckitt Benckiser (supra),* the Hon'ble Delhi High Court has also clarified that a supplier seeking to set off other costs against the GST benefit must justify the claim with cogent evidence. The Court observed that:

> *119. This Court is in agreement with the submission of learned Amicus Curiae that if there is any variation on account of other factors, such as any costs necessitating the setting off of such reduction of price, the same needs to be justified by the supplier. The inherent presumption that these must necessarily be a reduction in prices of the goods and services is a rebuttable presumption. It is clarified that if the supplier is to assert reasons for offsetting the reduction, it must establish the same on cogent basis and must not use it merely as a device to circumvent the statutory obligation of reducing the prices in a commensurate manner contemplated under section 171 of the Act, 2017.*
>
> ***(Emphasis added)***

67. In our considered view, having regard to the peculiar facts of this case, the Respondent's claim of cost escalation must be examined on the basis of an overall and objective assessment of the relevant evidence. The claimed increase in the cost of construction, by itself, cannot justify reducing the additional ITC benefit determined by the DGAP. Any assessment of such costs must remain consistent with, and cannot defeat or dilute, the Respondent's statutory obligation under Section 171(1) of the CGST Act, 2017 to pass on that benefit to the homebuyers.

68. We also take strength from the decision of the Hon'ble High Court of Delhi in *LICHFL Care Homes Limited v. Director General of Anti-Profiteering W.P.(C) 13665/2026*, decided on 28.09.2026, While examining the methodology prescribed in *Reckitt Benckiser (supra)*, the Court observed that the computation of profiteering does not contemplate a broad balancing of commercial expenses against the additional ITC benefit. The Court observed:

> *50. It is also relevant that the methodology mandated in Reckitt Benckiser (supra) does not contemplate a broad balancing of every commercial expense incurred by a developer against the ITC benefit. The direction was to determine the total savings arising from introduction of GST and thereafter distribute that benefit on a per square foot basis. The exercise cannot be converted into an unrestricted enquiry into every commercial cost or expenditure of the project.*
>
> *51. The central factual position in the present case remains undisputed: the Petitioner availed NIL CENVAT/VAT credit during the pre-GST period, whereas it availed GST ITC of Rs.2,07,76,653/- during the post-GST period. The DGAP then quantified the additional benefit against the post-GST purchase value and distributed the resulting project-level saving over the total area. GSTAT has examined and accepted the said exercise.*
>
> ***(emphasis added)***

69. The aforesaid observation clarifies that the methodology under Section 171 requires the GST benefit to be calculated and passed on to homebuyers. It does not permit a general set-off of project expenses against that benefit. Accordingly, the Respondent's cost escalation claim, by itself, cannot

reduce the additional ITC benefit determined by the DGAP. Nor does the judgment identify any discrepancy in the DGAP's methodology.

70. Furthermore, the builder cannot claim an automatic right to set off an increase in construction costs against the benefit arising from additional ITC. More importantly, where the consideration for the flats has already been contractually agreed upon, the builder cannot rely upon subsequent variations in construction costs as a justification for recovering additional amounts from the purchasers in the absence of a contractual stipulation permitting such recovery.

71. We cannot also lose our sight with the fact that delays in the execution of housing projects may themselves result in an increase in construction costs. Such delays, particularly when not attributable to the homebuyers, cannot be made a ground for transferring the additional financial burden to them. The homebuyers have no control over the pace of construction or the builder's project execution arrangements. They have already suffered the consequences of delayed possession, including continuing liability to service their housing loans and pay interest thereon. To subject them to a further financial burden on account of escalation in construction costs would compound the hardship already suffered by them. In effect, the homebuyers would be made to bear the consequences of project delays for which they are not responsible. It would be inequitable to place such an additional burden on purchasers who have committed their hard-earned savings, often representing their lifetime earnings, towards the purchase of a home.

72. The distinction is, therefore clear that an increase in the cost of construction is a commercial event, whereas the obligation to pass on the benefit of additional ITC is a statutory mandate. The former cannot, merely by being established, neutralise the latter. Any examination of variations in construction costs must be based on an overall and

objective assessment of the relevant evidence and cannot be permitted to defeat or dilute the statutory mandate contained in Section 171(1) of the CGST Act, 2017.

73. The statutory obligation under Section 171(1) of the CGST Act, 2017, to pass on the benefit arising from additional ITC is distinct from the contractual and commercial considerations governing the cost of construction. The benefit accruing on account of additional ITC is required to be passed on to the recipient by way of commensurate reduction in prices. An increase in the cost of construction, by itself, cannot extinguish, override or dilute this statutory obligation.

74. We are not in agreement with the reasons advanced by the Respondent for offsetting the reduction on account of cost escalation. The Respondent kept the hard-earned money of the home buyers for more than three years, on the ground that construction could not commence because the land dispute with the landowners remained unresolved. As a result, the home buyers lost a great deal of interest on their money and did not receive their flats on time, though no fault of their own. If the Respondent is now allowed to offset the reduction on account of cost escalation, these home buyers would suffer further financial loss. It would also defeat the very object of Section 171 of the Act, 2017, which was enacted in public interest to ensure that suppliers must pass on the benefit of ITC and reduction in the rate of Goods and Services Tax to consumers.

75. Therefore, we are of the considered opinion that in view of the foregoing discussion and observations, the reasons advance for setting off the cost escalation, as stated by the Respondent, cannot be accepted. Thus, the Respondent has failed to establish, any valid ground for setting off cost escalation. Therefore, we decide this issue against the Respondent.

76. Further, insofar as penalty under Section 171(3A) of the CGST Act, 2017 is concerned, the Completion Certificate for Blocks I to III of Phase I of the project: Southwinds was issued on 05.01.2018; for block IV and V was issued on 04.04.2018 and for commercial block it was issued on 04.07.2019. Whereas the Completion Certificate for Blocks VI to VIII of the Phase II was issued on 07.02.2020.

77. The provision imposing penalty for contravention of Section 171 of the CGST Act, 2017 came into force w.e.f. 01.01.2020, and since the period of contravention in the present case for Blocks VI to VIII of the Phase II extends from 01.01.2020 to 07.02.2020, including the period subsequent to its coming into force of the said provision. 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 profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent of the amount so profiteered: PROVIDED that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority".*

78. In view of the above, penalty under Section 171(3A) of the CGST Act, 2017 is attracted.

CONCLUSION

79. Based on our detailed discussion and observations made hereinabove, we conclude that:

(a) The methodology adopted by the DGAP is in accordance with the observations/guidelines made by the Hon'ble High Court of Delhi in paragraph 128 of ***Reckitt Benckiser (supra)***, and

(b) The Respondent's argument has no basic or logic to adjust the cost escalation of certain details against the benefit of ITC accrued due to introduction of GST. The Respondent has failed to establish with cogent reasons for offsetting the reduction on account of cost escalation.

ORDER

80. Revised report dated 10.09.2026 of the DGAP is hereby accepted.

81. Revised report dated 07.09.2026 of the DGAP is hereby rejected.

82. The Respondent is hereby directed to pass on the profiteered amount of Rs. **89,11,290/- (Rupees Eighty-Nine Lakh Eleven Thousand Two Hundred and Ninety only**), along with GST @ 12%, amounting to Rs. 10,69,354/-, aggregating to Rs. 99,80,644/-, to the eligible homebuyers. The said amount shall be passed on along with interest @ 18% per annum, in terms of Rule 133(3)(b) of the CGST Rules, 2017, from the date of collection of the higher amount from the buyers till the date of actual payment of the corresponding benefit. In the event, the Respondent fails to pass on the benefit to the eligible home-buyers within thirty days from this order, the Respondent would also be liable to pay penalty as applicable.

83. The DGAP is directed to ensure passing of the benefit to eligible home-buyers in accordance with our order.

84. The DGAP shall submits its compliance report to the Registrar, GSTAT within two months from the date of this Order, who in-turn shall place the report before us. This direction be communicated to the Registrar, GSTAT for compliance.

85. A copy of this Judgment be sent to the SGST/CGST Jurisdictional Commissioner and the Applicant for information and necessary action.

86. The Judgment is pronounced in open Court today in presence of Shri Rajarshi Dasgupta, Learned Chartered Accountant for the Respondent and Shri Saurabh Yadav, Authorised Representative for the DGAP.

Digitally signed by MAYANK KUMAR JAIN
Date:27-11-2026 16:26:00 PM

(Justice Mayank Kumar Jain)

Digitally signed by ARABANDI VENU PRASAD
Date:27-11-2026 16:26:38 PM

(Sh. A. Venu Prasad)

Date:- 27.11.2026.