

GSTAT

Division Bench Court No. 1

NAPA/112/PB/2025

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

.....Appellant

Versus

LIC HFL CARE HOMES LTD.

.....Respondent

Counsel for Appellant

Counsel for Respondent

Hon'ble Justice (Retd.) Dr. Sanjaya Kumar Mishra, President
Hon'ble Sh. A. Venu Prasad, Member (Technical)

Form GST APL-04A

[See rules 113(1) & 115]

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

whether remand order : No

Order reference no. : ZA070010326000080H

Date of order : 23/03/2026

1.	GSTIN/Temporary ID/UIN - 21AAACL7046A1Z7	
2.	Appeal Case Reference no. - NAPA/112/PB/2025	Date - 07/04/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. LIC HFL Care Homes Ltd. , pranay.sahay@khaitanco.com , 9820336978	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 23/03/2026 02/03/2026 11/02/2026 29/01/2026 06/01/2026 17/12/2025 13/10/2025 26/09/2025	

7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - Respondent has been directed to return the profiteered amount to the 240 home buyers along with a interest at the rate of 18 % within a period of 3 months. Respondent is at liberty to file appropriate application for refund of money deposited before the High Court / PAO.
Summary of Order	
9.	Type of order:- Return to Recipient of Amount not passed on, along with interest

Place :DELHI PB

Date : 23.03.2026



GOODS & SERVICES TAX APPELLATE TRIBUNAL (GSTAT)
PRINCIPAL BENCH, NEW DELHI
ANTI-PROFITEERING DIVISION
NAPA/112/PB/2025

In the matter of:

Director General of Anti-Profiteering, Central Board of Indirect Taxes
& Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh
Marg, Gole Market, New Delhi-110001.

Applicant

Versus

M/s LIC HFL Care Homes Ltd., IPICOL House, 3rd Floor, Janpath,
Rupali Square, Bhubaneswar-751022.

Respondent

AND IN THE MATTER OF Proceedings under Section 171 of
Central Goods and Service Tax Act, 2017(Act 12 of
2017)

Quorum:-

1. Dr. Sanjaya Kumar Mishra, President, Principal Bench, GSTAT.
2. Sh. A. Venu Prasad, Member (Technical), Principal Bench, GSTAT.

Present:-

1. Shri Suneel Kumar, Additional Assistant Directors - Authorised Representative, assisted by Shri Ravi Passi, Inspector, appeared on behalf of the DGAP.
2. Sh. Dinesh Aggarwal, Chartered Accountant, Sh. Pranay Sahay and Sh. Upkar Agrawal, Advocates appeared for the Respondent.
3. Sh. Niranjan Swain, original complainant appeared before Tribunal virtually.

Per, Sanjaya Kumar Mishra, President, GSTAT, PB.

Order

1. This is a proceeding under Section 171 of the Central Goods and Services Tax Act, 2017, hereinafter referred as the CGST Act for brevity. The simple question that arose in this case is as follows: -

I. Whether the Respondent had profiteered an amount of ₹2,07,08,131/- only by not passing the benefit of Input Tax Credit (ITC) to the homebuyers by way of commensurate reduction price of the flats?

II. Whether the Respondent is liable to pay Rs. 2,07,08,131/- only, plus GST at the rate 12%, amount to Rs. 24,84,976/-, totaling an amount Rs. 2,31,93,107/- only?

AND

III. Whether the Respondent is liable to interest on Rs. 2,31,93,107/- only at the rate of 18% ?

2. In this case the original applicant Shri Niranjana Swain, of Baramunda, Bhubaneswar allottee of the flat no. 605 of block no. A-3 of project Jeevan Anand of the Respondent i.e. M/s LIC HFL Care Homes Ltd., submitted a complaint to the effect that the Respondent / builder hereinafter referred as Respondent has not passed on the benefit of Input Tax Credit to him by way of commensurate reduction in prices and charged GST at the rate of 12% on the demand raised post GST.

The Complaint was considered by the Standing Committee and it was forwarded to the Directorate General of Anti-Profiteering, hereinafter referred as DGAP for brevity, for investigation, on 15.10.2020.

The DGAP conducted a detailed investigation to the allegation.

The DGAP submitted its report on 28.01.2021, with reference to the time period from 01.07.2017 to 30.09.2020, in terms of Section 171 of the CGST Act, 2017 in respect of the flat in Respondent's project "Jeevan Ananda" and calculated Profiteered amount to be Rs. 1,85,70,263/-.

The matter was placed before erstwhile NAA. It went through the said report, and vide its Final Order No. 22/2022 dated 20.06.2022 and accepted the report and directed the Respondent to pay to the complainant and other flat owners proportionate amounts.

The Respondent challenged the order the NAA in W.P. (C) No. 12533/2022 before Hon'ble Delhi High Court. The Hon'ble Delhi High Court vide its order dated 25.04.2024 remanded the matter for reinvestigation, holding as follows: -

“***

9. Consequently, the above eight (8) matters are remanded to the competition Commission of India for a determination / decision in accordance with the Judgment and order dated 29.01.2024 passed by this Court.

****”

3. The CCI vide letter dated 07.05.2024 directed the DGAP for reinvestigation the case in light of the High Court's Order in the case **Reckitt Benckiser India Ltd.** In the said Judgment the Delhi High Court upheld the constitutional validity of the Section 171 of the CGST Act, however, it did not accept the methodology adopted by the DGAP in calculating the profiteered amount. It is appropriate take note of the words used by the Delhi High Court.

“124. This court is of the view that no fixed/uniform method or mathematical formula can be laid down for determining profiteering as the facts of each case and each industry may be different. The determination of the profiteered amount has to be computed by taking into account the relevant and peculiar facts of each case. There is “no one size that fits all” formula or method that can be prescribed in the present batch of matters. Consequently, NAA has to determine the appropriate methodology on a case-to-case basis keeping in view the peculiar facts and circumstances of each case.

125. It is also well-established that where a power exists to prescribe a procedure and such power has not been exercised, the implementing authorities are at liberty to determine and adopt such procedure as they may deem fit subject to the same being fair and reasonable. In *Dhanjibhai Ramjibhai v. State of Gujarat* [(1985) 2 SCC 5.], the Supreme Court has held, “... Merely because procedural rules have not been framed does not imply a negation of the power. In the absence of such rules, it is sufficient that the power is exercised fairly and reasonably, having regard to the context in which the power has been granted...”. In *Chairman and MD, BPL Ltd. v. S.P. Gururaja* [(2003) 8 SCC 567.], the Supreme Court has held, “...Under the Act or the Regulations framed thereunder, no procedure for holding such consultations had been laid down. In that situation it was open to the competent authorities to evolve their own procedure. Such a procedure of taking a decision upon deliberations does not fall foul of article 14 of the Constitution of India.”

126. Consequently, rule 126 of the Rules, 2017 to the extent it grants flexibility to NAA to determine the methodology and procedure to decide whether reduction in rate of tax or benefit of input-tax credit has been passed on or not to the recipient is reasonable and legal. Moreover, as per rule 126 NAA “may determine” the methodology and not “prescribe” it. The substantive provision, i.e., section 171 of the Act, 2017 itself provides sufficient guidance to NAA to determine the methodology on a case-by-case basis depending upon peculiar facts of each case and the nature of the industry and its peculiarities. Consequently, so long as the methodology determined by NAA is fair and reasonable,

the petitioners cannot raise the objection that the specifics of the methodology adopted are not prescribed. [Underlined to emphasize]

127. Since considerable emphasis was laid by learned counsel for the petitioners on the methodology adopted by NAA to determine commensurate reduction qua real estate industry, this court deems it appropriate to deal with the same at some length. With the introduction of the Goods and Services Tax scheme/regime, the availability of input-tax credit against various goods and services used in construction has increased or input-tax credit was available against more goods and services than before this resulted in a decrease in the cost of the builders as they now had more input-tax credit available to be set off against Goods and Services Tax paid by them in the Goods and Services Tax regime as compared to before and the same was not required to be collected from the consumers.

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 July 1, 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.

129. However, this court finds that the methodology adopted by NAA and DGAP to arrive at the profiteering amount of the real estate industry was generally based on the difference between the ratio of input-tax credit to turnover under the pre-goods and services and tax and post-goods and services and tax period. This court is in agreement with the contention of the learned counsel for the petitioners representing the real estate companies that the methodology adopted by NAA is flawed as in the real estate sector, there is no direct correlation between the turnover and the input-tax credit availed for a particular period. The expenses in a real estate project are not uniform throughout the life cycle of the project and the eligibility of credit depends on the nature of the construction activity undertaken during the particular period. As it is an admitted position that neither the advances received nor the construction activity is uniform throughout the life cycle of the project, the accrual of input-tax credit is not related to the amount collected from the buyers. This court is in agreement with learned counsel of the petitioners that one needs to calculate the total savings on account of introduction of goods and services tax for each project and then divide the same by total area to arrive at the per square feet benefit to be passed on to each flat buyer. This would ensure that flat-buyers with equal square feet area received equal benefit. The court, while hearing the present batch of matters on merits, shall take the aforesaid direction/interpretation into account. It is the prerogative of the Legislature to decide how the benefit is to be passed on to the consumers”.

4. The DGAP vide its present Report dated 04.04.2025 reinvestigated the matter in light of the Delhi High Court orders dated 29.01.2024 and 25.04.2024, and re-calculated profiteered amount as Rs. 2,31,93,107/- for the period July, 2017 to November, 2019. The ratio of input tax credit to the purchase value, during the pre-GST and post-GST periods were calculated and are furnished in table-'A' below:

Table-A			Amount in Rs.
Sl. No.	Particulars	Total (Pre-GST period upto June 2017)	Total (Post-GST period from July 2017 to November 2019)
1	CENVAT of Service Tax Paid on Input Services (A)	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-
3	Input Tax Credit of GST Availed (C)	-	2,07,76,653
4	Total CENVAT/ITC of VAT/ITC of GST (D = A+B+C)	-	2,07,76,653
5	Total Purchase value of goods and services for the project (E)	46,03,72,534	11,54,27,648
6	Percentage/ Ratio of the input tax credit to the purchase value (F = D*100/E)	0%	17.99%

Relying on the above table- 'A', it is submitted that the input tax credit as a percentage of the purchase value of the project that was available to the Respondent during the pre-GST period was 0% and during the post-GST period, it was 17.99%. Therefore, there is apparent savings made by the Respondent on account of introduction of GST as contemplated under the observations made by the Hon'ble High Court of Delhi in the impugned order dated 29.01.2024.

It is also submitted that the Central Government, on the

recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (Annex-14). The effective GST rate was 12% for construction service. Accordingly, based on the figures contained in table- 'A' above, the recalibrated base price and the excess realization (profiteering) during the post-GST period, are tabulated in Table-B below.

Table-B			Amount in Rs.
Sl. No.	Particulars		Post-GST
1	Period	A	July, 2017 to November, 2019
2	Ratio of Credit availed to Purchase Value as per Table- A above (%)	B	0/ 17.99
3	Increase in input tax Credit availed Post-GST (%)	C	17.99
4	Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	11,54,27,648
5	Total Savings on account of additional ITC benefit	$E = D * C / 100$	2,07,65,434
6	Total Area (in Sq. Ft.) of the project	F	2,70,048
7	Total Saving Per Sq. Ft.	$G = E / F$	76.895
8	Total Sold Area (in Sq. Ft.)	H	2,69,304
9	Profiteered Amount	$I = G * H$	2,07,08,131

5. The DGAP alleged that provisions of Section 171 of the Central Goods and Services Tax Act, 2017 have been contravened by the Respondent, in as much as the Respondent had saved/profiteered an amount of Rs. 2,07,08,131/- plus GST@ 12% i.e., 24,84,976/-, totaling to Rs. 2,31,93,107/-.

6. Another homebuyer Sh. Saroj Kumar Dash filed his submissions/petition dated 07.04.2025 to be taken on record in the matter.

7. Matter was taken up by the Tribunal on 26.09.2025, 13.10.2025, 17.12.2025, 06.01.2026, 29.01.2026, 11.02.2026 and 02.03.2026. Sufficient opportunity of hearing and submissions of written documents were granted to both the parties. Shri Suneel Kumar, Additional Assistant Directors - Authorised Representative, assisted by Shri Ravi Passi, Inspector, appeared on behalf of the DGAP. Sh. Dinesh Aggarwal, Chartered Accountant, Sh. Pranay Sahay and Sh. Upkar Agrawal, Advocates appeared for the Respondent. Sh. Niranjana Swain, original complainant appeared before Tribunal virtually.

8. Respondent filed its submissions dated 13.10.2025 and 03.11.2025. The same has been summarized as below: -

- a. Erstwhile NAA passed order dated 20.06.2022 confirming profiteering amount of Rs. 1,85,70,263/-. Further, as per Hon'ble Delhi High Court orders dated 01.09.2022 and 02.12.2022, out of total profited amount the Respondent has deposited Rs. 61,90,088/- with 'Pay and Account Officer (Consumer Affairs)' and another sum of Rs. 1,23,80,176/- was deposited with 'Registrar General Delhi High Court'.
- b. DGAP's report dated 04.04.2025 failed to follow the principles/directions laid down by Delhi High Court in order dated 29.01.2024 in para 127 and para 128. As the High court vide above order directed to pass benefit of ITC on taxes paid on Construction material purchased by the builder in post-GST period.
- c. The entire construction work was outsourced to the contractors and therefore, under Section 10 (4a) (b) of the Odisha VAT Act, 2004 the Respondent was neither eligible to avail ITC on the construction

materials nor liable to pay VAT. Service Tax laws also barred CENVAT credit on the materials used in the construction. Thus, taxes paid on construction materials was built in the price of the flat.

- d. Respondent submitted that ITC of GST availed on inward goods (materials) is Rs. 14,52,570/- and ITC of GST availed on inward services is Rs. 1,93,28,564/-. Therefore, only a sum of Rs. 14,52,570/- can be considered as profiteered amount as directed by High Court.
- e. As per para 129 of high court order the methodology adopted by NAA and DGAP is flawed in real estate sector, there is no direct correlation between the turnover and the ITC availed for a particular period.

9. DGAP has filed clarifications vide letter dated 21.11.2025 on the Respondent's submissions. The same has been summarized as below: -

- a. DGAP submitted that vide para 129 of its order dated 29.01.2024, the Delhi High Court observed that since the expenses in a real estate project are not uniform throughout the life cycle of the project and the eligibility of credit depends on the nature of construction activity undertaken during the particular period, the previous methodology was flawed. The amount of profiteering needs to be attributed to the total area constructed to determine profiteering per square feet and passed on to the homebuyers in proportion of the area of the flats.
- b. For the contention raised by the Respondent that Delhi high court has not prescribed any methodology for a scenario where construction was launched in pre-GST period and completed in post-GST period. In this regard, the DGAP clarified that the

methodology ordered by the court for real estate sector is mentioned in Para 129.

- c. For the contention of the Respondent that Hon'ble court has consciously excluded taxes paid on services because ITC on such services was available in pre-GST era and therefore cost of such taxes was not built in price of flat. The DGAP clarified that on introduction of GST taxes such as Central Excise Duty, VAT, Service Tax etc. got subsumed into a single tax. Hence, for computation of total savings on account of introduction of GST, the analysis must necessarily involve all the pre-GST tax structures.
- d. For the contention of the Respondent that ITC of taxes paid on services was available to the Respondent, taxes paid on the services was not built in the price of flat. The DGAP clarified that in Para 15 of its report dated 04.04.2025, the total CENVAT availed by the Respondent as per ST-3 returns filed during the period from July 2012 to June 2017 was Nil. Hence. The Service Tax paid by the Respondent on input services purchased during pre-GST period was cost to the Respondent. But during post-GST period, the ITC paid on input services was availed by the Respondent. Accordingly, the Respondent is liable to pass on the benefit of ITC.
- e. For the averment raised by the Respondent that DGAP has erroneously compared the ITC availed in pre-GST period with ITC availed in post-GST period and that the higher ITC arising due to higher tax incidence cannot be considered as benefit to Respondent. The DGAP clarified that ITC of some taxes was not being allowed in pre –GST regime for example ITC of Central Sales Tax and ITC of Central Excise Duty paid on inputs were not allowed in pre-GST. W.e.f. 01.07.2017, all these taxes got subsumed in GST an ITC of GST is available in respect of all goods and services; therefore,

additional benefit of ITC accrued to the Respondent is required to be passed on as per Section 171.

- f. For the contention of the Respondent that due to inadvertent error, the Respondent failed to take credit of Service Tax paid on input services, and DGAP ought to have excluded ITC on services from the profiteered amount. The DGAP already clarified on this issue in para 10(d) above, the DGAP further submitted that it is responsibility of the Respondent to pass on the benefit of ITC to the home buyers.
- g. For the averment made by the Respondent that the DGAP has considered entire ITC amount including tax paid on services as the profiteered amount, which is beyond the direction of the Hon'ble High Court as well as scope of profiteering under Section 171. The DGAP clarified that during pre-GST period, the Respondent was not availing any credit on input taxes, whereas after introduction of GST, the Respondent availed ITC of GST amounting to Rs. 2,07,76,653/- paid on input and input services. Accordingly, the DGAP concluded that Respondent had profiteered by an amount of Rs. 2,31,93,107/-.

10. The Original Complainant Sh. Niranjana Swain had also filed his rejoinder to the Respondent's submissions. The same has been summarized as below: -

- a. The Complainant contested the Respondent's submissions regarding the reliance on judgment of Delhi High Court in **Reckitt Benckiser India Pvt. Ltd. v. Union of India** wherein the Respondent stated that Claimed ITC benefit to be passed only on construction materials purchased in post-GST period and Argued ITC on services was already available in pre-GST regime; hence no

additional benefit on services. In response the Complainant submitted that the Judgment must be read holistically, not selectively. Section 171 applies to any supply of goods or services. ITC benefit includes credit on both inputs and input services. Hon'ble Court emphasized actual tax saving in rupee terms must be passed on. Respondent misinterpreted paras 128–129 to restrict benefit to material only.

- b. For the Respondent's submissions that only incremental ITC (not previously available) should be passed and that higher GST rate (18% vs 15%) resulted in higher ITC, hence not a "benefit". The Complainant submitted that Section 171 clearly mandates passing of reduction in tax rate or benefit of ITC. The complainant further submitted that hon'ble court held tax foregone by Government cannot be appropriated by supplier (principle of unjust enrichment) and that net ITC benefit actually availed must be passed on.
- c. Regarding the issue of Methodology, the Respondent relied on High Court's discussion of four specific construction scenarios and claimed methodology applies even where part payment was pre-GST and part post-GST and concluded buyer entitled only to ITC on post-GST construction material. The Complainant responded stating that High Court has not prescribed any methodology for a scenario where construction was launched in pre-GST period and part payment was received in pre-GST period and part payment is received in post-GST period. Further, the hon'ble high Court said that no uniform mathematical formula can be laid down for determining profiteering.
- d. The Complainant contested the Respondent's submissions that ITC benefit limited to Rs.14,52,570/- (on construction materials) and that the comparison of pre-GST and post-GST ITC is flawed. The Complainant stated that the DGAP vide its report dated 04.04.2025

calculated profiteering of Rs. 2,31,93,107/-. The Respondent availed ITC of Rs. 2,07,76,653/- (July 2017–Nov 2019) and ITC was utilized to offset output GST @12%. The Complainant submitted that GST collected from buyers was retained instead of being used for tax payment and that retention constitutes benefit to be passed on.

- e. For the Respondent's contention that DGAP wrongly compared two tax regimes and Pre-GST taxes were different and therefore comparison is invalid. The Complainant submitted that in Pre-GST there were (Excise Duty, VAT, Entry Tax) with limited credit however in post-GST full ITC is available on goods and services. Further, CBIC vide its office memorandum dated 15.06.2017 clarified that embedded taxes would not form part of cost under GST and that the builders must pass benefit to buyers and therefore comparison is necessary to assess tax benefit.
- f. For the averment of the Respondent that since tax rate on services increased post-GST, higher ITC cannot be treated as benefit. The Complainant replied that the Hon'ble High Court clarified that focus is not on rate increase but on actual tax saving. If ITC reduces effective tax burden, price must reduce accordingly. Further, the Hon'ble court vide para 117 held that costing and market factors are irrelevant.
- g. For the Respondent's submissions that ITC on services was already available under CENVAT and hence no new benefit was accrued to him. The Complainant submitted that Pre-GST credit was limited under composition scheme however, Post-GST, ITC allowed against 12% GST collected.
- h. The complainant submitted that in earlier proceedings before erstwhile NAA, the Respondent admitted of profiteering to the tune of Rs.1.39 crores.

- i. The Complainant submitted that ITC benefit applies to both goods and services. Profiteering amount computed by DGAP should be upheld.

11. During the hearing held on 17.12.2025, the Original Complainant Sh. Niranjan Swain, appeared virtually and emphasized that the Respondent in the written statement submitted before the erstwhile NAA on 15.03.2021 at paragraph 22 had categorically admitted that there had been a profiteering on their part and they were ready to pass on the profiteered amount of Rs. 1,39,93,358/- only to the 181 flat buyers. Sh. Niranjan Swain would further submit that at present the calculation of profiteering involves 240 flat buyers and accordingly, the profiteering amount should be enhanced. The admissions on the part of the Respondent appears in the form of written documents, *viz.*, the written submissions filed before the erstwhile NAA on dated 15.03.2021, *vide*, paragraph 22 which is quoted below: -

22. “Without pre-judice and in addition to the above, assuming without admitting that the above proposition is not accepted, it is submitted that the benefit of arising out of increase in ITC to the Company on account of procurement of services has also been mis-computed by the DGAP. It is an admitted fact that rate of service tax on the supply of taxable services in the erstwhile regime was 15% whereas rate of GST on the supply of taxable services in the GST regime is 18%, thus the Company has paid an additional tax of 3% on the same service. This additional burden of tax cannot be brought within the ambit of the benefit arising out of increase in ITC. 3% ITC on this count is not a benefit as the Company has paid this in the GST regime which otherwise under the erstwhile regime, was not required to be paid. Thus, the quantum of ITC (on an illustrative basis)) for the purpose of Section 171 needs to be re-worked as below: -

Period	ITC availed on inward goods	GST paid on inward services @18%	Additional burden @3% on services	Benefit of alleged increase in ITC for services	Total ITC availed	ITC covered u/s 171 for goods & services
2017-18	8,30,700	99,28,261	16,54,710	82,73,551	1,07,58,961	91,04,251
2018-19	34,860	83,52,856	13,92,143	69,60,713	83,87,716	69,95,573
2019-20	4,79,119	14,64,084	2,44,014	12,20,070	19,43,203	16,99,189
2020-21	4,324	9,28,180	1,54,697	7,73,483	9,32,504	7,77,807
Total	13,49,003	2,06,73,381	34,45,564	1,72,27,818	2,20,22,384	1,85,76,821

Accordingly, alleged profiteering is re-worked as below: -

Sr No	Particulars	July 2017 to September 2020 (Post GST)	Recomputed
1	CENVAT Credit of Service Tax paid on input services as per ST3 returns (A)	-	
2	ITC of VAT paid on inputs (B)	-	
3	Input Tax Credit of GST Availed (C)	2,20,20,794	1,85,76,821
4	Total CENVAT/ITC Availed (D)= (A+B) or (C)	2,20,20,794	
5	Turnover for Residential Flats & Shops as per Home Buyers List (E)	14,09,91,429	14,09,91,429
6	Total Saleable Area (in SQF) (F)	2,70,048	2,70,048
7	Total Sold Area relevant to Turnover (G)	2,03,419	2,03,419
8	Relevant CENVAT/ITC [(H)= (D)*(G)/(F)]	1,65,87,599	1,39,93,358
Ratio of CENVAT/Input Tax Credit to Turnover [(I)= (H)/(E)]		11.76%	9.92%

The Respondent in its Writ Application No. 12533/2022 filed before Delhi High Court at para 11(d), Page-28, quoted as below: -

d) “Without prejudice, Rate of service tax on the supply of taxable services in the erstwhile regime was 15% whereas rate of GST on the supply of taxable services in the GST regime is 18%, thus the Petitioner has paid an additional tax of 3% on the same service, and availed credit thereof. This additional 3% input tax credit is not a benefit of input tax credit. Accordingly, the profiteering can only be alleged only to the tune of Rs 1,39,93,358/-.”

12. Further, during the hearing held on 06.01.2026, it transpired that in the earlier written submissions filed by the Respondent before erstwhile NAA, at paragraph 22, they had made certain admissions to the effect that the Respondent had profiteered by not passing the ITC on goods as the VAT on goods were not eligible for ITC in pre-GST period. However, it was contended that in the pre-GST period, the Respondent company was liable to pay the service tax at the rate of 15 % of the 30 % of the taxable value of the project. It was contended by Sh. Dinesh Agrawal, the Learned Tax Professional, appearing for the Respondent that even assuming, for the sake of argument, it was considered that the Respondent had profiteered, by not passing on ITC availed on service tax to the ultimate consumer, maximum amount of profiteering would be Rs. 1,39,93,358/- and not Rs. 1,65,87,599/- as alleged by the DGAP. Since, there was some disagreement between the Respondent and the original complainant regarding the rate of the Service Tax effectively passed on to the consumer, the Tribunal allowed the Respondent to file single page affidavit within a period of 10 days, thence, reflecting the rate of service tax that the Respondent was liable to pay in the pre-GST regime on relevant date of the payment, along with corresponding Gazette Notification evidencing rate of tax. The original complainant was also given liberty to file single page affidavit with annexed documents within the period of 10 days,

thence, in evidence of the exact Service tax he had paid on the date of the actual payment.

13. Further, hearing in the matter was held on 29.01.2026, during the hearing, it was pointed out by the Tribunal that the Respondent had not complied the Tribunal order dated 06.01.2026. However, the Complainant had filed his affidavit dated 19.01.2026 wherein, he has stated that he had deposited Rs. 45,60,877/- with the Respondent including Service Tax and GST, details of which are given below:

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Date of Payment	Instalment	Basic Cost	Service Tax/GST	Total	Rate of ST [Comp. scheme]	Rate of GST	Demand Letters & Money receipt
19.08.2011 26.07.2011	1st- 50%	18,25,000	47,000	18,72,000	2.575% [10.3% * 25%]	NA	Annexure - 1
17.04.2012	2nd- 20%	7,30,000	18,800	7,48,800	2.575% [10.3% * 25%]	NA	Annexure - 2
24.10.2013	2nd- 20%	7,30,000	22,557	7,52,557	3.09% [12.36% * 25%]	NA	Annexure - 3
17.06.2020	4th-10% + parking	5,15,000	61,800	5,76,800	NA	12.00 %	Annexure - 4
17.06.2020	Escalation 12% of cost	4,56,000	54,720	5,10,720	NA	12.00 %	Annexure - 5
17.06.2020	Onetime, Maintenance	84,746	15,254	1,00,000	NA	12.00 %	Annexure - 6
Total		43,40,746	2,20,131	45,60,877			

14. The Respondent vide email dated 09.02.2026 had submitted affidavit filed by Ms. Bhargavi G, CEO, LICHFL Care Homes Limited, wherein she has submitted that:

- a. The Respondent Company has undertaken a residential project on leasehold land and was duly registered for the purposes of services tax under Chapter V of Finance Act 1994 vide Registration No. AAACL7046ASD002 and that during the period from 1st June

2011 till 30th June 2017, service tax on construction of residential complex service was levied as under:

Sr No.	Period	Rate of tax.	Abatement	Cess	Effective rate of service tax (inclusive of Cess)
1	01.06.2011-31.03.2012	10%	75%	3%	2.58%
2	01.04.2012-31.05.2015	12%	75%	3%	3.09%
3	01.06.2015-14.11.2015	14%	75%	0%	3.50%
4	15.11.2015-31.05.2016	14%	75%	0.5%	3.62%
5	01.06.2016-30.06.2017	14%	\ 70%	1%	4.50%
^	Section 66 of the Finance Act, 1994 read with Section 65(30a) thereof, read with Notification No 08/2009-ST dated 24 February 2009				
^^	From 01.04.2012 to 30.06.2012 under Section 66 of the Finance Act, 1994 read with Section 65(30a) thereat read with Notification No 08/2009-ST dated 24 February 2009. From 01.07.2012, under Section 66B of the Finance Act, 1994				
•	Notification No. 26/2012-ST dated 20.06.2012 (as amended)				
#	Education and second n Cess-applicable on service tax amount				
\$	Swachh Bharat Cess under Section 119 of Finance Act 2015, read with read with Notification No. 22/1.015-S.T., dated 6 November 2015				
@	Swachh Bharat Cess@0.5% and Krishi Kalyan Cess@ 0.5% under Section 161 of the Finance Act, 2016				

- b. That during the period 2011-2017 (up to 30 June 2017), the Respondent Company has paid a total of Rs 1,79,44,457 as service tax (inclusive of Cess) as reported in the Service Tax return Form ST-3 filed for the said period.
- c. That the Company has procured input services which were taxable under Section 66/66B of the Finance Act., 1994, for use in the construction of residential complex and the respective service providers had charged applicable service tax (inclusive of Cess) thereon. Entire construction was outsourced to various work contractors.
- d. That during the period from 1st June 2011 till 30th June 2017, effective rate of service tax on input services were as below:

	Rate of	Abatement on works		Effective rate of service tax (inclusive of cess)
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Period	tax	contract service	Cess	Works Contract	Other input service
01.06.2011-31.03.2012	10%	60%	3%	4.12%	10.30%
01.04.2012-30.09.2014	12%	60%	3%	4.94%	12.36%
01.10.2014-31.05.2015	12%	60%	3%	4.94%	12.36%
01.06.2015-14.11.2015	14%	60%	0%	5.60%	14.00%
15.11.2015-31.05.2016	14%	60%*	0.5%	5.80%	14.50%
01.06.2016-30.06.2017	14%	60%*	1%	6.00%	15.00%
* Rule 2A of the Service Tax (Determination of Value) Rules, 2006					

- e. That during the period 2011-2017 (up to 30 June 2017), the Respondent Company has paid a total consideration of Rs. 49,86,79,598/- towards purchase of input services (works contract and other services) for construction of residential units, as per submissions made before DGAP vide letter dated 26.07.2024 which would have suffered Service Tax as below: -

Year	Purchase value of the in at services	Rate of service tax	Service Tax amount
2011-12	14,11,97,424	4.12%	58,17,334
2012-13	16 00 07 874	4.94%	79,04,389
2013-14	11,76,10,088	4.94%	58,09,938
2014-15	469 72 178	4.94%	23,20,426
2015-16	-	-	-
2016-17 (up to June 2017)	3,28,92,034	6.00%	19,73,522
Total			2,38,25,609

- f. That under Rule 3 of the CENVAT Credit Rules 2004, the Respondent Company would have been eligible to avail CENVAT credit of Rs. 2,38,25,609/- (based on above computation), but due to human mistake/error, same was not claimed. The Company had actually paid entire amount of service tax of Rs. 1,79,44,457/- in cash without utilization of the CENVAT Credit during the period 2011-2017 (up to 30 June 2017}, as reflected in Service Tax

returns.

- g. That service tax which was payable to the service providers were not included in the project cost as approved by the Board of the Respondent Company for accord of Financial Sanction.

15. Oral arguments were concluded on 11.02.2026. Original Complainant submitted written arguments on 02.03.2026. The same has been summarized below in brief points: -

- a. The Respondent developed “Jeevan Ananda” in Bhubaneswar; the Complainant paid most instalments in the pre-GST era with service tax, and the final instalment in the post-GST period with GST @12% (with ITC benefit).
- b. As per the DGAP Report dated 04.04.2025, the Respondent allegedly profiteered ₹2,31,93,107/- (including GST), by not passing on ITC benefits to flat buyers.
- c. The Complainant contended that the Respondent wrongly relied on the judgment in **Reckitt Benckiser India Pvt. Ltd. vs. Union of India** to argue that ITC benefit is restricted only to construction materials (goods) and not services. The Complainant submitted that the judgment must be read as a whole and does not limit ITC benefit to goods alone.
- d. Under Section 171 of the CGST Act, any benefit of reduction in tax rate or ITC (on goods and services) must be passed on through commensurate price reduction. The legislative intent is consumer welfare and prevention of unjust enrichment.
- e. The Hon’ble High Court held that no uniform mathematical formula applies to profiteering cases; hence, the Respondent cannot selectively apply a methodology to reduce its liability.
- f. The Respondent wrongly compared pre-GST and post-GST ITC structures and claimed limited credit; the Complainant argues that

under GST, ITC on goods and services is pooled and utilized against output GST @12%, hence full benefit must be passed on.

- g. The Respondent claims only ₹14.42 lakh is passable, whereas DGAP determined ₹2.31 crores. The Complainant asserts entitlement to the full DGAP-determined amount.
- h. Respondent opted for Composition Scheme under Works Contract and paid service tax at reduced rate (2.57% / 3.09%).
- i. Under the said scheme, CENVAT credit on inputs is not permissible as per Rules.
- j. Since contractor also opted for composition scheme, no CENVAT credit could be availed or passed on to the Respondent.
- k. Credit cannot be claimed indirectly when it is not allowed directly. The Complainant in this regard relied up CESTAT judgment of Gauri Plasticulture (P) Ltd. v. Commissioner of Central Excise, Indore, 2006 (202) E.L.T. 199 (Tri.-LB) and case of Bharat Oman Refineries Ltd. V. Commissioner of C.Ex. & S.T., Bhopal, 2017 (5) G.S.T.L. 49 (Tri. – Del).
- l. Respondent's claim to reduce profiteered amount by unavailed CENVAT credit is legally unsustainable.
- m. Complainant claims ₹2,31,93,107/- with 18% interest as per DGAP report.
- n. Interest Claim: Under Rule 133(3), the Complainant
- o. Seeks refund of the profiteered amount along with 18% interest from the date of excess collection till refund.

16. We have carefully perused the report of the DGAP and written submissions/clarifications/rejoinder placed on record. Hearings in the matter were held before the Tribunal on 26.09.2025, 13.10.2025, 17.12.2025, 06.01.2026, 29.01.2026, 11.02.2026 & 02.03.2026. Sh. Dinesh Aggarwal, Chartered Accountant, Sh. Pranay Sahay and Sh. Upkar Agrawal, Advocates appeared for the Respondent. Sh. Niranjana Swain, original complainant

appeared before Tribunal virtually. Shri Suneel Kumar, Additional Assistant Directors - Authorised Representative, assisted by Shri Ravi Passi, Inspector, appeared on behalf of the DGAP.

17. It is clear that as per the judgment of Delhi High Court in the case of **Reckitt Benckiser India Pvt. Ltd.**, the Authority in *Seisin* of the question of profiteering by the Respondent 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. The DGAP in this case has taken into consideration the total pre-GST period up to June 2017 and the post-GST from July 2017 to November 2019 and calculated the profiteering.

Based on the documents submitted by the Respondent the DGAP has calculated, (in fact the said amount is not disputed by the Respondent) that the total purchase value of the goods and services for the project is Rs. 46,03,72,534/-, for the period under consideration, and percentage / ratio of the ITC to the purchase value is NIL, prior to 01.07.2017. After 01.07.2019 but before November 2019 the ITC availed by the Respondent is Rs. 2,07,76,653. The total CENVAT / ITC of VAT / ITC of GST is Rs. 2,07,76,653 /- and therefore, the percentage / ratio of Input Tax Credit to the purchase value which mentioned earlier, it was 17.99 %. Hence, it is apparent that savings made by the Respondent on account of introduction of GST as per the observations made by the Hon'ble High Court of Delhi in case of **Reckitt Benckiser (Supra)** dated 29.01.2024. The Respondent has admitted that it has not availed ITC in the pre-GST period as the entire work was outsourced contractors. It is apparent that he has stated that the entire construction work was outsourced to the contractors and, therefore, under Section 10 (4a) (b) of the Odisha VAT Act, 2004 the Respondent was neither eligible to avail ITC on the construction materials nor liable to pay VAT. Service Tax laws also barred CENVAT credit on the materials used in the construction. Thus, taxes paid on construction materials was built in the

price of the flat. It is understood that Respondent has admitted in the pre-GST period he was not getting any ITC for any of the materials or services purchase.

18. It is a foundational principle in legal evidence that “what is admitted need not be proved”. The rationale is simple: if a party voluntarily acknowledges a fact against their own interest, there is high presumption of truth. In the context, the document we have reviewed, reveals a fact that there has been a admission before the erstwhile NAA as wells as Delhi High Court that the Respondent has profiteered by introduction of the GST regime and is ready to repay the amount. What is disputed is amount of profiteering? once a formal admission is made, it typically removes the needs for opposing party to provide further evidence on that specific point. The Courts and Tribunal viewed statements made against one’s own interest as inherently is more reliable than self-serving statements. In fact, an admission to estoppsa the party from approbating and reprobating, that is taking contrary position at differencing the case to a legal proceeding.

19. It is a settled principle of law that judicial admissions during proceedings in the form of written submissions which is duly verified are usually conclusive unless courts allow them to withdraw or party making such admissions, manifestly demonstrate that such admissions were incorrect or having made under some wrong assumption of fact. However, some extra judicial admissions made outside the court are relevant but can be reverted on explainable by party who makes them. Since, the two admissions we refer to above are made during judicial proceedings like quasi-judicial proceeding before the erstwhile NAA and before the Delhi High Court in a Writ Application filed by the Respondent itself and have been verified by the Competent its officers duly identified by the Advocate.

We are of the considered view that judicial admissions made during judicial proceeding and therefore, judicial admissions which stands at a higher footings than extra judicial admission. Thus, we accept the admissions made that the Respondent has profiteered as conclusive.

20. This brings us to the question of quantum of profiteered amount. It is clear from the record that Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction services, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (Annex-14). The effective GST rate was 12% for construction services. Accordingly, based on the figures contained in the preceding paragraph, (refer table- 'A' of para 4 of this final order), we find that in the post-GST regime, the ratio of credit availed to purchases value as per Table-A in percentage is 0 / 17.99%. The increase in ITC availed is 17.99%. Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period is Rs, 11,54,27,648/- only. Total Savings on account of additional ITC benefit is, therefore, Rs. 2,07,65,434. Total Area (in Sq. Ft.) of the project is 2,70,048. Thus, the Total Saving Per Sq. ft. is equal to division between Total Savings on account of additional ITC benefit is to Total Area (in Sq. ft.) of the project. It is Rs. 76.895 /-. Total Sold Area (in Sq. ft.) is 2,69,304, the remaining being unsold area. Thus, a profiteering amount is multiplication of Rs 76.895/- and 2,69,304, sq. ft., which comes to Rs. 2,07,08,131/- only.

21. The Respondent has also admitted this aspect though he disputes that part of the amount is not to be treated as profiteered amount. Respondent in its written submission has categorically submitted that ITC of GST availed on inward goods (materials) is Rs. 14,52,570/- and ITC of GST availed on inward services is Rs. 1,93,28,564/-. Therefore, only a sum of Rs. 14,52,570/- can be considered as profiteered amount as directed by High Court.

It is submitted by the Respondent that as per para 129 of high court order the methodology adopted by NAA and DGAP is flawed in real estate sector, there is no direct correlation between the turnover and the ITC availed for a particular period. This aspect is taken up by the DGAP in the sense that they have taken into

consideration the total area sold and that they have calculated the total GST paid by them and the total savings as per square feet. Thereafter, they have multiplied the total area in terms square feet into the savings made per square feet and arrived at the figure Rs. 2,07,08,131/-. In fact, the sum total of the two figures mentioned by the Respondent is Rs. 2,07,08,134/- which almost equal to the amount calculated, rather it is Rs. 3 more than what is calculated above.

22. The learned Tax professional appearing for the Respondent would submit that under Rule 3 of the CENVAT Credit Rules 2004, the Respondent Company would have been eligible to avail CENVAT credit of Rs. 2,38,25,609/- but due to human mistake/error, same was not claimed. The Company had actually paid entire amount of service tax of Rs. 1,79,44,457/- in cash without utilization of the CENVAT Credit during the period 2011-2017 (up to 30 June 2017) as reflected in Service Tax returns. Therefore, it was contended by the learned tax professional for the Respondent that the credit Rs. 1,79,44,457/- as Service Tax credit should have been taken into consideration and in calculating the percentage / ratio of the ITC to the purchase value.

23. The DGAP in reply would submit that the Respondent's contention that due to inadvertent error, the Respondent failed to take credit of Service Tax paid on input services, cannot be considered as it is responsibility of the Respondent to pass on the benefit of ITC to the home buyers.

DGAP further clarifies that the total CENVAT availed by the Respondent as per ST-3 returns filed during the period from July 2012 to June 2017 was Nil. Hence, it was further clarified that the Service Tax paid by the Respondent on input services purchased during pre-GST period was cost to the Respondent. But during post-GST period, the ITC paid on input services was availed by the Respondent. Accordingly, the Respondent is liable to pass on the benefit of ITC and, therefore, the inadvertent error of the Respondent or its employee will not absolve it, from the duty of passing of the tax credit in favor of the home buyers.

24. Thus, we come to the conclusion that the DGAP has submitted correct report in calculating profiteering of Rs. 2,07,08,131/-. The question of adding GST at the appropriate rate on the profited amount, to calculate the sum to be paid by the Respondent, is no more *Res Integra*. This aspect of inclusion of GST collected on the additional realization made by the Respondent / builder has been considered by the Delhi High Court in the case of **Reckitt Benckiser (Supra)** in the para 157, which is quoted 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 profited amount. (Underlined to lay emphasis)

Thus, it is clear that the Respondent has profited an amount of Rs. 2,07,08,131/- and it attracts a GST @ 12% that is a sum of Rs. 24,84,976/- (collected from home buyers) totaling to Rs. **2,31,93,107/-**, which is to be returned to the home buyers mentioned in the Annexure-15 of the DGAP Report. Further, as per the Section 133 (3) (b) of the CGST Rules, 2017, Respondent is liable to pay interest at the rate of 18% from the date of payment of the last installment by each home buyers mentioned in the Annexure-15 of the DGAP Report. Hence, it is directed that the Respondent shall pay to each home buyers a portion of the aforesaid amount, calculated by taking into account the total area sold to him / her in sq. ft., multiplied by Rs. 76.895/- only plus an interest at the rate of 18% calculated on the amount so arrived at from the date of payment of the last installment.

25. It is brought to our notice that Respondent has deposited Rs. 61,90,088/- with 'Pay and Account Officer (Consumer Affairs)' and another sum of Rs. 1,23,80,176/- was deposited with 'Registrar General, Delhi High Court', Since, we have directed the Respondent to pay profiteered amount along with interest as mentioned in the preceding paragraphs. Respondent is given liberty to file appropriate application before concerned authorities i.e. 'Pay and Account Officer (Consumer Affairs)' and 'Registrar General, Delhi High Court' for refund of the aforesaid amounts along with accrued interest, if any, without any further delay. The registry is directed to, on the request of the Respondent, to send the extract the copy of this final order to both the authorities mentioned above, with a request to release a money deposited by the Respondent in its favor, along with interest as stated above, if there is no other due to be paid by the Respondent to the aforesaid authorities.

26. A report in compliance of this order shall be submitted to this Tribunal by the concerned Jurisdictional Commissioner within a period of three months from the date of receipt of this order.

27. A copy of this order be supplied to the Respondent, Applicant, DGAP and concerned Commissioners CGST / SGST for necessary action.

28. Judgment pronounced in open Court.

Digitally signed by SANJAY KUMAR MISHRA
Date: 24-03-2026 15:05:58 PM

Dr. S. K. Mishra,
President, GSTAT.

Digitally signed by ARABIND VENU PRASAD
Date: 24-03-2026 15:15:15 PM

Sh. A. Venu Prasad,
Technical Member, GSTAT.

Date- 23.03.2026