

**GSTAT**  
**Single Bench Court No. 2**

**NAPA/98/PB/2025**

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

.....Appellant

**Versus**

SOBHA LIMITED

.....Respondent

**Counsel for Appellant**

**Counsel for Respondent**

**Hon'ble Justice Sh. Mayank Kumar Jain, Member(Judicial)**

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. : ZA070010426000007H**

**Date of order : 02/04/2026**

<b>1.</b>	GSTIN/Temporary ID/UIN - 06AABCS7723E1ZJ	
<b>2.</b>	Appeal Case Reference no. - NAPA/98/PB/2025	Date - 09/01/2025
<b>3.</b>	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
<b>4.</b>	Name of the Respondent - 1. Sobha Limited , 0124-4855555	
<b>5.</b>	Order appealed against -	
	<b>(5.1) Order Type -</b>	

	<b>(5.2) Ref Number -</b>	Date -
6.	Personal Hearing - 02/04/2026 12/03/2026 06/02/2026 12/01/2026 23/12/2025 10/12/2025 14/11/2025 17/10/2025 18/07/2025 11/07/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - The report of the DGAP dated 21.08.2025 is accepted.	
<b>Summary of Order</b>		
9.	Type of order : Closure Report	



GOODS & SERVICES TAX APPELLATE TRIBUNAL (GSTAT)  
PRINCIPAL BENCH, NEW DELHI  
ANTI-PROFITEERING DIVISION

**JUSTICE MAYANK KUMAR JAIN, (Retd.) JUDICIAL MEMBER.**

**JUDGEMENT**

1. Heard Shri Rahul Rao Gautam, Additional Assistant Director/Authorized Representative assisted by Shri Anurag Gupta, Inspector, on behalf of the DGAP, Col. Shri Ajesh Kumar, Complainants in Person and Shri Onkar Roy, Advocate on his behalf and Shri Tarun Jain, learned Advocate, on behalf of the Respondent.
2. Perused the record.

### **Background of the matter**

3. The present proceedings arise out of an application filed by Shri Ajesh Kumar S/o Prahlad Bhagat and Mrs. Savita Ahluwalia W/o Shri Ajesh Kumar, C-601, Fakhruddin Memorial CGHS, Plot-18 Sector-10, Dwarka, New Delhi (for short '**the Complainants**') alleging that M/s Sobha Limited, 5<sup>th</sup> Floor, Rider House, Plot No. 136-P, Sector-44, Gurugram-122 003 (for short '**the Respondent**') has indulged in profiteering in contravention of Section 171 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as '**CGST Act**') in respect of construction services supplied by the Respondent.
4. This application was examined by the Standing Committee on Anti-Profiteering. Upon being *prima facie* satisfied that the Respondent had not passed on the benefit of reduction in GST rate as mandated under Section 171 of the CGST Act, 2017 the Standing Committee referred the matter to the Director General of Anti-Profiteering (for short '**the DGAP**') under Rule 129(1) of the Central Goods and Services Tax Rules, 2017 (for short '**CGST Rules**') for detailed investigation.
5. The Complainants have alleged that the Respondent did not pass on the benefit of input tax credit (for short '**ITC**') on introduction of GST with effect from 01.07.2017, by way of commensurate reduction in the prices of flat purchased by them in their project '**International City**' situated at Sector 106, 108 & 109, Gurugram, Haryana.
6. The investigation was set into motion by the DGAP by issuance of a notice to the Respondent calling upon it to show cause as to whether the benefit of ITC has not been passed on to their home buyers by way of commensurate reduction in prices, and further directed the Respondent to *suo-moto* compute the quantum of such benefit, if any.
7. The Respondent submitted its detailed reply along with supported documents and annexures, denying the allegation of profiteering.

8. Upon completion of the investigation, the DGAP submitted its report dated 21.08.2025. In the said report, it was observed that the ratio of credit availed to purchase value stood at 12.26% during the pre-GST regime, which declined to 11.02% subsequent to the introduction of GST. The resultant difference i.e. -1.24% indicates that no incremental benefit accrued to the Respondent. Consequently, the question of passing on any benefit to the recipient did not arise. It was, therefore, concluded that the Respondent had not contravened the provision of Section 171 of CGST Act read with Rule 129(6) of the CGST Rules, 2017. The methodology adopted by the DGAP to compute the aforesaid ratio is tabulated hereinbelow: -

(Amount in Rs.)

<b>S. No</b>	<b>Particulars</b>	<b>Pre-GST Period</b>	<b>Post-GST Period</b>
1	Purchase Value of Goods and Services (Excluding Taxes and Duties)	2,87,06,06,587	2,12,39,88,859
2	Credit of Service Tax availed	31,63,23,366	-
3	Credit of VAT Availed	3,55,32,196	-
4	Total Credit Availed in Pre-GST Period	35,18,55,562	-
5	ITC of GST Availed	-	23,40,21,576
<b>6</b>	<b>Ratio of Credit Availed to Purchase Value (in%)</b>	<b>12.26</b>	<b>11.02</b>
	<b>Difference</b>		<b>(-1.24)</b>

### **Proceedings before GSTAT**

9. The Principal Bench of the GST Appellate Tribunal (GSTAT), constituted under sub-section (3) of section 109 of CGST Act, has been empowered to examine Anti-Profiteering cases w.e.f. 01.10.2024, *vide* Notification No. 18/2024-Central Tax dated 30.09.2024.

10. A notice was issued to the Complainants calling upon their objections, if any, against the DGAP report dated 21.08.2025. The Complainants, however, instead of filing objections to the said report, moved an application under Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC'), seeking a direction to the DGAP to furnish complete records supplied by the Respondent during the course of investigation.
11. Notice was issued to the Respondent to participate in the proceedings.
12. The Respondent filed preliminary objections challenging the maintainability of the present proceedings which are summarised hereunder: -
  - (i) That the Complainants, through an application dated 17.06.2019, sought allotment from the Respondent for purchase of Duplex Villa No. E-61A. Upon due consideration and deliberation, the parties entered into a Builder and Buyer Agreement (for short 'BBA') on 08.07.2019. Accordingly, the contractual relationship between the parties stood established by virtue of the aforesaid agreement.
  - (ii) That the prices were determined after factoring in the availability of ITC to the Respondent in the post-GST regime, which benefit was not available under the pre-GST regime. The Complainants had, at the relevant time, consented to and accepted the prices so fixed by the Respondent.
  - (iii) That no construction was going on at the time of execution of the BBA. The construction activity could commence only after entering upon of the aforesaid agreement.
  - (iv) That the entire payment was made by the Complainants after the introduction of GST. The Occupation Certificate was also issued to the Respondent on 26.02.2024. Therefore, the Complainants has no legal right to object against the report of the DGAP.

- (v) The case of the Respondent is fully covered by the findings given by Hon'ble High Court of Delhi in paragraph 128(d) of Judgment of ***Reckitt Benckiser India Pvt. Ltd.v UOI (2024) 14 Centax 374 (Delhi)***.
13. Per contra, the Complainants submitted the following reply against the preliminary objections: -
- (i) The preliminary objections filed by the Respondent are misconceived, based on wrong interpretation of law and legal precedence. Therefore, they cannot be permitted to be sustained.
  - (ii) That the property in question was an under-construction unit at the time it was booked by the Complainants. It was scheduled to be constructed, and the payment obligations were linked to the various stages of construction. Accordingly, the property in question cannot be construed as a “constructed property.”
  - (iii) The DGAP never objected to the plea of the Complainants with respect to the nature of the construction of the property. The Judgment of the Hon'ble High Court of Delhi is mis-interpreted and mis-understood by the Respondent.
  - (iv) The Complainants came before this Tribunal only in respect to ITC which had not been passed to him by the Respondent as per law. The ITC has been mis-appropriated by the Respondent and the DGAP has not acted against them as per law.
  - (v) The entire reliance of the Respondent on legal precedence is of no use as the facts and circumstances of those cases are totally different from the present case.
  - (vi) That merely because agreement was executed in post-GST period, Section 171 of the CGST Act, 2017 does not become inapplicable since the Respondent has failed to pass on ITC benefit to the Complainants. The burden lies upon the Respondent to demonstrate compliance.

- (vii) That the question whether benefit was passed on is a matter of evidence. The preliminary objections are filed to avoid adjudication on merits and to delay proceedings.
- (viii) The Respondent was asked to file their reply but they filed preliminary objections which are not maintainable.
14. Shri Tarun Jain, Learned Counsel, appearing on behalf of the Respondent, vehemently argued that the Complainants have no cause of action and *locus standi* to agitate against the DGAP report. In support of his submission, he relied upon paragraph 128(d) of the decision rendered by Hon'ble High Court of Delhi in **Reckitt Benckiser India Pvt. Ltd. (Supra)**.
15. Learned counsel for the Respondent has further emphasized upon the payment schedule (Annexure-IV) mutually agreed between the Respondent and the Complainants prior to execution of BBA on 08.07.2019. It was agreed that the transactions would be subject to GST at applicable rate of 12%, amounting to Rs. 41,72,668/- (Rs. 20,86,334/- CGST + Rs. 20,86,334/- SGST). The Complainants was, at all times, fully aware of the applicable rate of GST and total tax liability, as the same was agreed at the time of submission of the application itself.
16. Learned counsel for the Respondent further contended that the CGST Act came into force on 01.07.2017. The Complainants applied for allotment of Duplex Villa No. E-61A on 17.06.2019. Upon due deliberation and consideration of the said application, the parties entered into BBA on 08.07.2019. The entire payment was made by the Complainants to the Respondent in accordance with the agreed payment scheduled during the GST regime. Further, "*the pricing and payment schedule*" was agreed upon by the Complainants prior to the agreement. The construction of the villa was undertaken by the Respondent during the GST regime. These relevant facts are not controverted by the Complainants. It is, therefore, manifest that the entire activity was undertaken during the GST regime.

17. It is further submitted that aforesaid facts clearly establish that all the transactions in question were affected during GST regime. The price was mutually agreed between the parties on the basis of taxes prevailing at the time of the transaction. None of these factual and legal prepositions have been controverted by the Complainants.
18. It is additionally submitted that no benefit of ITC would be available to the Complainants as the price of the Duplex Villa was fixed after factoring in the ITC available to the Respondent in the GST regime, which benefit was not available in the pre-GST regime.
19. With regard to the objections raised by the Complainants that on the date of the agreement, the property was not constructed, it is submitted that the finding given by the Hon'ble High Court of Delhi in ***Reckitt Benckiser (Supra)*** are very clear. There is no such requirement that on the date of agreement or making the payment, the building should be fully constructed. At the time of agreement, the Complainants opted for construction linked plan.
20. To buttress his argument, the learned Counsel for the Respondent placed reliance upon the following Judgments: -
  - (i) ***Reckitt Benckiser India Pvt. Ltd. v. Union of India (2024) 14 Centax 374 (Delhi).***
  - (ii) ***DGAP v. Shrivision Towers Pvt. Ltd. (Shriram Greenfield) NAPA/136/PB/2025.***
  - (iii) ***K.B. Sreedevi v. Siva Rama Constructions (2023) 11 Centax 129 (N.A.P.A.)***
  - (iv) ***Ritesh Kumar Khandelwal v. Forever Buildtech Pvt. Ltd. (2023) 4 Centax 239 (N.A.P.A.)***
  - (v) ***Priyanshu Pathak v. Forever Buildtech Pvt. Ltd. (2023) 4 Centax 238 (N.A.P.A.)***

**(vi) DGAP v. Pyramid Infratech Pvt. Ltd. (2026) 39 Centax 113 (Tri-GST-Delhi)**

21. Shri Tarun Jain, learned counsel for the Respondent placed heavy reliance on the paragraph 128(d) of the decision of Hon'ble High Court of Delhi in **Reckitt Benckiser (Supra)**, which is reproduced here: -

*“128. There is not 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 01<sup>st</sup> 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 the 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 Service Tax.”**

(Emphasis supplied)

22. Contrary to it, the learned counsel for the Complainants submitted that the property-in-question was not constructed when it was booked by the Complainants. It was scheduled to be constructed. The payment was to be made by the Complainants on the basis of different stages of construction under the construction linked plan. Therefore, in no way the property-in-question can be construed as “Constructed Property” as referred by Hon’ble High Court of Delhi in paragraph 128(d) of its Judgement. Therefore, the said Judgement has been mis-interpreted and misunderstood by the Respondent. It is also argued that merely because entire activity is undertaken in GST regime, Section 171 of the CGST Act, 2017 does not become inapplicable.
23. The foundation of the arguments on behalf of the Respondent is based upon the Judgement of the Hon’ble High Court of Delhi in ***Reckitt Benckiser (Supra)***. In Paragraph 128 of that decision, the Hon’ble Court has explicitly expressed that there is no dispute with regard to the methodology to be adopted for computation of profiteering in construction services. Clause (d) of said paragraph addresses the situation when flat is constructed

in the post-GST period and purchased after construction being completed by making upfront payment of the full price. Thus, the methodology for computation of profiteering in accordance with clause (d) of this paragraph may be adopted when the following two conditions are satisfied:

- (i) That the flat is constructed in post-GST period, **and**
- (ii) That the flat is purchased after construction being completed after making upfront payment of the full price.

24. In our opinion, the expression “*the flat is constructed in the post- Goods and Service Tax period*” by no means implies that the flat was already constructed or it was yet to be constructed. Similarly, the term “*after making upfront payment of the full price*” cannot be interpreted to mean that the entire payment should have been made in one go (in a single lumpsum). Ordinarily, when a new project is launched by a builder, the proposed buyer opts for “construction-linked plan” to facilitate ease of payment and to maintain their financial equilibrium. In ordinary course financing facilities are availed from the different banks or other financial institutions providing housing loan to the buyers. As the construction of the flat progresses, in accordance with the plan and BBA, the builder raises demands for subsequent installment. Such installments are paid by the buyer from the loan amount sanctioned by the said financial institution. The buyer continues to repay the housing loan amount by way of monthly installments.
25. Suffice to say that the expressions used in clause (d) of paragraph 128 of the Judgement do not mean that it would be applicable only if the construction of the flat has been completed at the time of agreement. The fact that the “construction of flat was yet to be raised” or the property was not “fully constructed” is of no consequences to attract the conditions as laid down in paragraph 128(d) of the said Judgement. What is crucial is

that the entire spectrum of activities from inception to completion must have taken place during the post-GST period.

26. In the present case, it is an admitted position that the booking of the unit, its allotment, execution of the agreement, the entire construction activities, as well as the receipt of payments made by the Complainants, all transpired in the post-GST era.
27. As apparent from the material available on the record, these facts are not controverted by the Complainants that they had submitted an application dated 17.06.2019 for allotment of the Villa. Thereafter, the Complainants entered into the BBA with the Respondent on 08.07.2019, thereby establishing the contractual relationship between them. The entire construction activity has been undertaken by the Respondent only after the execution of agreement. The price of the unit was determined after factoring the benefit of ITC, which became available to the Respondent in the post-GST regime and was not admissible under the pre-GST regime, and on the basis of prevailing rates applicable during the GST regime. The Complainants, having accepted the price so fixed, proceeded to execute the BBA on 08.07.2019, without objection.
28. Based upon the aforesaid uncontroverted facts, we are of the view that the case of the Respondent is fully covered by the findings given by the Hon'ble High Court of Delhi in paragraph 128(d) of judgment passed in **Reckitt Benckiser (Supra)**. Thus, the Complainants have no *locus standi* and legal rights to contest the DGAP report.
29. The coordinate Bench of this Tribunal in **DGAP v Pyramid Infratech Pvt. Ltd (2026) 39 Centax 113 (Tri. GST-Delhi)** observed that: -

*“10. It is observed that section 171 of the CGST Act, 2017 applies only in cases involving reduction in tax rate or increase in ITC, particularly in projects spanning pre-GST and post-GST periods.*

*Since the impugned project commenced wholly in the post-GST regime there is no comparative ITC benefit arising for passing on.*

*11. Reliance placed on Paragraph 128(d) of the Judgment dated 29.01.2024 of the Hon'ble Delhi High Court wherein it had been held that no benefit of ITC is required to be passed on where both construction and supply take place entirely post-GST period.”*

30. Having considered the DGAP report, preliminary objections, reply submitted by the Complainants and rival contentions of the parties, we arrive at the conclusion that the preliminary objections raised by learned counsel for the Respondent deserve to be accepted. Since the entire activity had undertaken from in post-GST period, therefore, the case of the Respondent is fully covered with the preposition as laid down in paragraph 128 (d) of the decision. Resultantly, no benefit of ITC would be available to the Complainants as the price of the flat had been fixed after taking into account the incremental ITC that would have become available to the Respondent subsequent to introduction of GST, if any.
31. The DGAP has rightly concluded that the ratio of credit availed to purchase value was 12.26% in the pre-GST era which declined to 11.02% in post GST period. The reduction of 1.24% implies that no benefit accrued to the Respondent and hence question of passing on any benefit to the recipient would not arise. The Respondent has, therefore, not contravened the provision of Section 171 of CGST Act read with Rule 129(6) of the CGST Rules. The DGAP report dated 21.08.2025 deserves to be accepted.

### **Order**

32. The preliminary objections made by the Respondent are accepted.
33. The objection raised against the preliminary objections by the Complainants are, hereby, rejected.

34. Accordingly, the report of the DGAP dated 21.08.2025 is accepted.
35. All the miscellaneous applications pending shall stands disposed of.
36. The copy of the Judgment and the order be sent to concerned CGST/SGST Jurisdictional Commissioner for necessary action, if any, at their end.
37. Judgment pronounced in open court today.

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(Justice Mayank Kumar Jain)

**Dated: 02.04.2026**  
Mamta Verma