

**GSTAT**

**Single Bench Court No. 3**

**NAPA/61/PB/2025**

DGAP

.....Appellant

**Versus**

TRANSCON SHETH CREATORS PVT. LTD.

.....Respondent

**Counsel for Appellant**

**Counsel for Respondent**

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

Form GST APL-04A

[See rules 113(1) & 115]

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

**whether remand order : No**

**Order reference no. : ZA070010126000125H**

**Date of order : 21/01/2026**

<b>1.</b>	GSTIN/Temporary ID/UIN -	
<b>2.</b>	Appeal Case Reference no. - NAPA/61/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. Transcon Sheth Creators Pvt. Ltd.	
<b>5.</b>	Order appealed against -	
	<b>(5.1) Order Type -</b>	

	<b>(5.2) Ref Number -</b>	Date -
6.	Personal Hearing - 21/01/2026 08/01/2026 04/11/2025 25/09/2025 28/08/2025 14/08/2025 08/08/2025 08/07/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - Tribunal accepts DGAP report dated 23.09.2025 and confirms contravention of Section 171 CGST Act by Transcon Sheth Creators Pvt. Ltd. Respondent acknowledges the findings of the DGAP and agreed to pass on the profiteering amount of Rs. 1,00,67,677. Tribunal directs the Respondent to refund the full amount plus interest u/r 133(3)(b) CGST Rules and distribute to 340 eligible buyers within 30 days. File compliance report with DGAP/GST authorities; proceedings closed. Order pronounced in open court today.	
<b>Summary of Order</b>		
9.	Type of order : Closure Report	

Place :DELHIPB

Signature

Date : 21.01.2026

DELHIPB Sandeep

Designation : Stenographer/Law researcher

Jurisdiction :Delhi (PB)

### **ORDER**

1. The proceeding in the present case arises out of the investigation report dated 23.09.2025 submitted by the Director General of Anti-Profiteering, hereinafter referred to as the "DGAP", under Section 171 of the Central Goods and Services Tax Act, 2017, hereinafter referred to as the "CGST Act", read with Rule 129 of the Central Goods and Services Tax Rules, 2017, hereinafter referred to as the "CGST Rules". The investigation was initiated pursuant to

complaints referred by the Standing Committee on Anti-Profiteering following applications filed by (i) Shri Binod Kumar Gupta, 1901-1902, Tower No. 1, Rustomjee O Zone Complex, Goregaon Mulund Link Road, Goregaon West, Mumbai – 400062, hereinafter referred to as the "Applicant No. 1", and (ii) Shri Achal Desai, hereinafter referred to as the "Applicant No. 2", alleging profiteering in respect of construction services supplied by Ms. Transcon Sheth Creators Pvt. Ltd., hereinafter referred to as the "Respondent", Waterford Building, C302, 3rd Floor, Juhu Lane, Above Navnit Motors, Andheri West, Mumbai – 400058, with GST Registration Number 27AAACT0197J1Z6, by way of not passing on the benefit of input tax credit through commensurate reduction in price in the Respondent's project "Auris Serenity Tower-2" located at Malad West, Mumbai (Maharashtra RERA No. P51800001413), in alleged contravention of Section 171 of the CGST Act, 2017.

**2.** The Standing Committee on Anti-Profiteering, having examined the Applicants' complaints under Rule 128 of the CGST Rules, formed the opinion that prima facie cases of profiteering existed. Consequently, the matter was referred to the Directorate General of Anti-Profiteering for detailed investigation to collect all necessary evidence to determine whether the benefit of input tax credit had been passed on by the Respondent to its customers. The DGAP accordingly initiated investigation and furnished its initial investigation report dated 28.07.2021, inter alia concluding that Section 171 of the CGST Act, 2017 had been contravened by the Respondent in the present case.

**3.** Subsequently, upon consideration of the principles of law enunciated by the Honourable High Court of Delhi in Writ Petition Civil No. 7743/2019 and connected matters, "*Reckitt Benckiser India Pvt. Ltd. v. Union of India & Ors.*", decided on 29.01.2024, wherein the methodology adopted by the NAA and DGAP for real estate cases was extensively reviewed, the Competition Commission of India, vide letter F. No. M/AP/28/Meeting/2023-24/Sectt dated 20.03.2024,

remanded the present case to the DGAP for re-investigation in light of the said judgment. The relevant principles of law from the Honourable Delhi High Court's judgment dated 29.01.2024 in W.P.(C) No. 7743/2019 and connected matters, which bear direct relevance to the method of computation of profiteering in real estate matters, are reproduced herein:

(i) Para 124 - NO FIXED/UNIFORM METHOD OR MATHEMATICAL FORMULA CAN BE LAID DOWN FOR DETERMINING PROFITEERING: "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 profited 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."

(ii) Para 128 - METHODOLOGY FOR FOUR SCENARIOS: "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."

(iii) Para 129 - REJECTION OF ITC-TO-TURNOVER RATIO AND MANDATE FOR AREA-BASED COMPUTATION: "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-GST and post-GST period. This Court is in agreement with the contention of the learned counsel of 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 aforesaid directions/interpretations into account."

**4.** The DGAP conducted a fresh re-investigation and issued a Notice dated 08.04.2024 under Rule 129 of the CGST Rules to the Respondent, calling upon it to reply as to whether they admitted that the benefit of input tax credit had not been passed on to its customers by way of commensurate reduction in prices, and if so, to suo-moto determine the quantum thereof and indicate the same in its reply, along with furnishing all supporting documents. The Respondent was provided an opportunity to inspect the non-confidential evidence and information furnished by the Applicants during the period 29.04.2024 to 30.04.2024, though such opportunity was not availed by the Respondent.

**5.** In response to the Notice dated 8.04.2024, the Respondent, vide multiple letters and email communications dated 30.05.2024, 18.06.2024, 18.07.2024, 23.09.2024, 07.12.2024, and 18.09.2025, furnished the information and records called for in the said Notice, as summarised in the DGAP's report dated 23.09.2025.

**6.** The DGAP, in its final report dated 23.09.2025, records that upon perusal of the project records and RERA

documentation, it ascertained that the Auris Serenity Tower-2 project comprises a total of 340 residential flats. The Occupancy Certificate for the project was issued on 20.12.2021. The DGAP's examination further revealed that the total saleable area of all 340 units is 3,69,171 square feet. All 340 flats were sold prior to the issuance of the Occupancy Certificate, and consequently, all 340 units having a total saleable area of 3,69,171 square feet fall within the scope of investigation as eligible units.

**7.** In accordance with Para 128(b) of the High Court's judgment and the provisions of Sections 172-173 of the CGST Act, which pertain to input tax credit availability on construction services, the investigation has been conducted in respect of all 340 units sold prior to the Occupancy Certificate dated 20.12.2021, having a total saleable area of 3,69,171 square feet. The investigation period has been determined to span from 01.07.2017 to 20.12.2021, being the date of issue of the Occupancy Certificate. The Respondent had opted for the scheme of 12% GST with ITC in accordance with Notification No. 03/2019-Central Tax Rate dated 29.03.2019 w.e.f. 01.04.2019, and the profiteering calculation has been computed accordingly.

**8.** The DGAP, in compliance with Para 129 of the High Court's ruling, which explicitly rejects the ITC-to-turnover ratio methodology and mandates an area-based computation approach, has adopted a project-wise methodology focusing on the ratio of Input Tax Credit to total purchase value, rather than turnover. Based on Chartered Accountant-certified project-specific financial data submitted by the Respondent, the DGAP has extracted and verified the following figures:

**8.1 Pre-GST Period (FY 2016-17 to June 2017):**

- CENVAT credit availed by the Respondent: Rs. 7,71,23,245/-
- VAT input tax credit availed: Nil
- Total credit availed during pre-GST period: Rs. 7,71,23,245/-

- Purchase value of goods and services excluding taxes and duties: Rs. 62,19,01,483/-
- Ratio of Credit Availed to Purchase Value: 12.40%

### **8.2 Post-GST Period (FY 2017-18 to FY 2021-22):**

- ITC of GST availed by the Respondent: Rs. 36,17,20,889/-
- Less: ITC reversed for exempt supplies: Rs. 9,53,20,691/-
- Net ITC credit availed during post-GST period: Rs. 26,64,00,198/-
- Purchase value of goods and services excluding taxes and duties: Rs. 2,07,56,95,957/-
- Ratio of Credit Availed to Purchase Value: 12.83%

**8.3** The differential incremental input tax credit benefit accruing to the Respondent in the post-GST period, as compared to the pre-GST period, is thus **0.43 percentage points** (i.e., **12.83% minus 12.40% = 0.43%**). These certified figures have been verified by the DGAP and stand uncontested and undisputed by the Respondent.

**8.4** Applying the area-based methodology endorsed by the High Court in Para 129, the DGAP has calculated the total monetary benefit accruing to the Respondent from the introduction of GST in the post-GST period as follows:

- **Increase in ITC ratio: 0.43%**
- Total purchase value in the post-GST period: Rs. 2,07,56,95,957/-
- Total project-level savings: Rs. 89,88,997/- [Computation:  $0.43\% \times \text{Rs. } 2,07,56,95,957/-$ ]

**8.5** The total saleable area of the Auris Serenity Tower-2 project is 3,69,171 square feet, as per certified architectural documentation and project records. Dividing the total project-level savings by the total saleable area yields the per-square-foot benefit accruing uniformly to all eligible buyers:



- Per-square-foot benefit: Rs. 24.35 per square foot [Computation: Rs. 89,88,997/- ÷ 3,69,171 sq. ft.]

**8.6** The total saleable area of eligible units sold prior to the Occupancy Certificate is 3,69,171 square feet, being the entire project, as per Chartered Accountant-certified details submitted by the Respondent. Applying the uniform per-square-foot benefit to all eligible buyers:

- Base profiteering amount: **Rs. 89,88,997/-** [Computation: 3,69,171 sq. ft. × Rs. 24.35 per sq. ft.]
- GST at 12% effective rate on construction service (applicable at the relevant time as per Notification No. 11/2017-Central Tax Rate dated 28.06.2017): **Rs. 10,78,680/-**
- Total profiteered amount: **Rs. 1,00,67,677/- [Rupees One Crore Sixty-Seven Lakhs Sixty-Seven Thousand Six Hundred and Seventy-Seven Only]**

This computation stands undisputed and has been fully accepted by the Respondent in its communication dated 08.01.2026.

**9.** On the basis of the foregoing analysis, the DGAP concluded, in its report dated 22.09.2025, that Section 171 of the CGST Act, 2017 has been contravened by the Respondent. While the Respondent did initially realize a profiteering benefit of Rs. 89,88,997/- plus GST of Rs. 10,78,680/-, totalling Rs. 1,00,67,677/-, the Respondent, through its written communication, accepted the findings and agreed to discharge its statutory obligations. The DGAP Report notes that the buyer-wise benefit is to be passed on by the Respondent in proportion to the area of each eligible buyer among the 340 units sold prior to the Occupancy Certificate.

**10.** The Respondent, vide email dated 07.01.2026 through its authorized representative CA Rajesh Hodge, has submitted to the tribunal an unambiguous and unqualified

acceptance of the DGAP's report. The text of the said communication reads with as follows:

*"In this case we would like to submit that we have received your report. We hereby agree to pass on the credit as mentioned in the report."*

**10.1** This categorical acceptance by the Respondent of the DGAP's findings constitutes substantial evidence of the Respondent's acknowledgement of the profiteering computation and its commitment to voluntary discharge thereof.

**11.** I have carefully considered the facts of the case, the finding in the investigation report submitted by the DGAP dated 23.09.2025 as well as the Respondent's unqualified acceptance thereof, This Tribunal finds that:

**11.1** Profiteering to the quantified extent of Rs. 1,00,67,677/- (comprising base amount Rs. 89,88,997/- plus GST Rs. 10,78,680/-) did arise from the Respondent's pricing structure in the post-GST period due to the increase in the ITC ratio of 0.43 percentage points.

**11.2** The Respondent has voluntarily and unambiguously acknowledged the said profiteering and has explicitly agreed to pass on the benefit to the respective homebuyers as mentioned in the DGAP Report.

**11.3** The Respondent undertakes to pass on the said benefit to all eligible 340 home buyers in proportion to their respective unit areas, as detailed in the DGAP Report.

**11.4** The Respondent shall pay interest on the profiteered amount in terms of Rule 133(3)(b) of the Central Goods and Services Tax Rules, 2017, as applicable to each eligible home buyer.

**12.** In view of the above findings, the investigation report dated 23.09.2025 submitted by the Director General of Anti-Profiteering is hereby accepted. The proceedings

relating to the complaints of Shri Binod Kumar Gupta (Applicant No. 1) and Shri Achal Desai (Applicant No. 2) against Ms. Transcon Sheth Creators Pvt. Ltd. (Respondent) are hereby closed, with a finding that the Respondent has agreed to refund the profiteered amount to the applicant and promised to discharge the statutory mandate of Section 171 of the Central Goods and Services Tax Act, 2017 in respect of the sale of residential units in the Auris Serenity Tower-2 project, Malad West, Mumbai, through its acceptance of the DGAP's findings. Further, the Respondent agreed to comply with the DGAP's report by refunding the profiteered amount to all 340 home buyers.

**13.** The Respondent is hereby directed to refund the profiteered amount of Rs. 1,00,67,677/- along with applicable interest to all the eligible 340 home buyers in accordance with the buyer-wise calculations detailed in **Annexure-11** of the DGAP Report, in proportion to their respective unit areas, within a period of thirty (30) days from the date of this order. The Respondent shall file a compliance report before the DGAP and the jurisdictional GST Commissioner(s) evidencing the completion of such distribution to all eligible buyers. The case is accordingly disposed of.

**14.** A copy of this order shall be forwarded to all concerned parties including the Respondent, Applicants (Shri Binod Kumar Gupta and Shri Achal Desai), Director General of Anti-Profiteering and jurisdictional GST Commissioner(s) in Maharashtra, for necessary action and record.

**15.** Order is pronounced in the open court.

Sd/-  
(Sh. Anil Kumar Gupta)

**Dated: 21.01.2026**