

GSTAT

Single Bench Court No. 3

NAPA/125/PB/2025

DGAP

.....**Appellant**

Versus

PAN REALTORS 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. : ZA070010126000132H

Date of order : 22/01/2026

1.	GSTIN/Temporary ID/UIN - 09AAFCP2034D1ZS	
2.	Appeal Case Reference no. - NAPA/125/PB/2025	Date - 14/01/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. Pan Realtors Pvt. Ltd. , arvind.maheshwari@panrealtors.com , 1204959129	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -

6.	Personal Hearing - 22/01/2026 06/01/2026 29/10/2025
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - Tribunal accepts DGAP report dated 10.01.2025 and confirms contravention of Section 171 CGST Act by Pan Realtors Private Limited. Respondent acknowledges the findings of the DGAP and agreed to pass on the profiteering amount of Rs. 40,096.
Summary of Order	
9.	Type of order : Closure Report

Place :DELHIPB

Signature

Date : 22.01.2026

DELHIPB Sandeep

Designation : Stenographer/Law researcher

Jurisdiction :Delhi (PB)

ORDER

Sd/-

(Sh. Anil Kumar Gupta)

Dated: 22.01.2026

The matter was heard today in physical mode. Mrs Geetika Chib, Additional Assistant Director- Authorized Representative was present on behalf of DGAP.

Shri Mudiet Mishra, Learned Advocate appeared on behalf of the Respondent.

1. The proceeding in the present case arises out of the investigation report dated 10.01.2025 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 a complaint referred by the Standing Committee on Anti-Profiteering on an application filed by Shri Umesh Kumar Shukla, Flat No. E-1003, GH-01, PAN Oasis, Sector 70, Noida, Distt. Gautam Buddha Nagar, Uttar Pradesh – 201301, hereinafter referred to as the "Applicant", alleging profiteering in respect of construction services supplied by Ms. Pan Realtors Private Limited, hereinafter referred to as the "Respondent", S-406, LGF, Greater Kailash-II, New Delhi-110048, with GST Registration Number 09AAFCP2034D1ZS, by way of not passing on the benefit of input tax credit through commensurate reduction in price in the Respondent's project "PAN Oasis" located at Sector 70, Noida, in alleged contravention of Section 171 of the CGST Act, 2017.

2. The Standing Committee on Anti-Profiteering, upon examination of the Applicant's complaint under Rule 128 of the Central Goods and Services Tax Rules, 2017, in its meeting held on 11.04.2019, forwarded the matter to the Director General of Anti-Profiteering (DGAP) for investigation. Pursuant thereto, the DGAP initiated an investigation and submitted its initial investigation report dated 31.01.2020 to the erstwhile National Anti-profiteering Authority (NAA). The Erstwhile NAA had issued an Order dated 24.06.2022 in the matter and inter alia ordered to re-investigate the matter. The DGAP re-investigated the matter and submitted its investigation report on 13.02.2022.
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 erstwhile NAA and DGAP for real estate cases was extensively reviewed, the Competition Commission of India, vide letter dated 21.03.2024, directed DGAP to carry out fresh re-investigation of the present matter in light of the Delhi High Court's judgment dated 29.01.2024. The relevant principles of law from the Hon'ble Delhi High Court judgment dated 29.01.2024 in WPC 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 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."

(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 12.04.2024 under Rule 129 of the CGST Rules to the Respondent, calling upon them 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.
5. The Director General of Anti-Profiteering (DGAP), in its final report dated 10.01.2025, observed that on examination of the project records and documents furnished under the Real Estate (Regulation and Development) Act, 2016, the PAN Oasis project comprised a total of 2,084 units, consisting of 2,051 residential flats and 33 commercial shops. It was noted that the Occupancy Certificate for the said project was issued on 17.01.2018. The DGAP further found that the total saleable area of all the 2,084 units was 30,80,033 square feet, out of which 1,865 units having a saleable area of 27,22,093 square feet had been sold prior to the issuance of the Occupancy Certificate, while the remaining 219 units having a saleable area of 3,57,940 square feet were sold thereafter. Accordingly, the DGAP held that the said 219 units sold after the issuance of the Occupancy Certificate were outside the scope of the present investigation, being exempt supplies in terms of the relevant provisions of the Central Goods and Services Tax Act, 2017.

6. In accordance with Para 128(a) of the High Court's judgment and the provisions of Schedule III read with Sections 172-173 of the CGST Act, which pertain to reversal of input tax credit on exempt supplies, units sold after the Occupancy Certificate and units that remained unsold as on 17.01.2018 are outside the scope of Section 171 of the CGST Act, as no ITC benefit would accrue in respect of such units. Consequently, the investigation has been confined to the 1,865 units sold prior to the Occupancy Certificate dated 17.01.2018, having a total saleable area of 27,22,093 square feet, with the Applicant's unit being one of these eligible units. The investigation period covered in the current investigation is from 01.07.2017 to 17.01.2018.

7. Upon examination of the information furnished by the Respondent regarding the Input Tax Credit availed and the purchase value of inputs and input services in respect of the project "PAN Oasis", the DGAP determined the ratio of Input Tax Credit to the purchase value for the pre-GST and post-GST periods. The said ratios, as computed by the DGAP, are reflected in **Table "A"** below :-

"Table A"

S. No.	Particular	Total (Pre- GST)	Total (Post-GST till Jan-2018)
1	CENVAT of Service Tax Paid on Input Services (A)	12,61,58,884	NA
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	24,97,42,095	NA
3	Net Input Tax Credit of GST Availed	NA	4,18,45,932
4	Total CENVAT/ITC of VAT/ITC of GST (D=A+B+C)	37,59,00,979	4,18,45,932
5	Total Purchase value of goods and services for the project during the period (E)	4,64,72,47,639	51,67,44,601
6	Percentage/Ratio of the Input Tax credit to the purchase value (F=D*100/E)	8.088%	8.097%

From the above table, it is evident that the Input Tax Credit as a percentage of the purchase value of the project utilised by the Respondent during the pre-GST period was **8.088%**, whereas during the post-GST period it stood at **8.097%**. Accordingly, the ratio of Input Tax Credit to the purchase value increased marginally by **0.009%** in the GST regime. Consequently, there is a marginal benefit/saving accruing to the Respondent on account of the introduction of GST, as contemplated in the observations of the Hon'ble High Court of Delhi in its order dated **29.01.2024**.

8. It is further observed that the Central Government, on the recommendation of the GST Council, levied GST at the rate of **18%** on construction services, with one-third abatement towards the value of land, resulting in an effective GST rate of **12%** on flats, vide **Notification No. 11/2017–Central Tax (Rate) dated 28.06.2017**. Accordingly, based on the figures contained in **Table “A”** above, the recalibrated base price and the excess realisation (profiteering), during the post-GST period have been computed and are set out in **Table “B”**.

“Table-B”

Table-B		(Amount In Rs.)	
	Particular	Post-GST	
S. No.	Period	A	
1	Ratio of Credit availed to purchase Value as per Table-A Above (%)	B	8.008/80.97
2	Increase in Input Tax Credit availed post-GST (%)	C	0.009%
3	Purchase value of goods and services (Excluding Taxes and Duties) during Post-GST Period (as per Para 20 supra) (in Rs.)	D	51,67,44,601
4	Total Savings on account of additional ITC benefit (in Rs.)	E=D*C/100	46,507
5	Total Area of project (As per Para 16 supra) (in Sq. Ft.)	F	30,80,033
6	Total Savings Per Sq. Ft. (in Rs/Sq.Ft.)	G=E/F	0.013
7	Total Sold Area before OC (in Sq. Ft.) (As per CA Certified details submitted by the Respondent	H	27,22,093

8	Base Profiteered Amount (in Rs.)	I=G*H	35,800
---	---	--------------	---------------

9. Further, from the above table, it was evident that the Respondent has profiteered an amount of Rs. 35,800/- plus GST @ 12% i.e. Rs. 4,296/- totaling to Rs. 40,096/-. Which needs to be refunded and distributed in proportion to the area of each eligible buyer among the 1,865 units sold before the Occupancy Certificate. The flat Homebuyer and unit no. wise break-up of this amount was given in Annex-14 in the report.

10. The above Report of the DGAP dated 10.01.2025 was considered by this tribunal and a Notice dated 29.10.2025 was issued to the Respondent (with the intimation to the original applicant) to explain why the above-referred Report of the DGAP should not be accepted and why his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed. In reply, the Respondent furnished his written submissions vide his replies dated 05.01.2026 through mail.

11. Hearing in this matter was held on 06.01.2026. Sh. Mudiet Mishra, Learned advocate, had appeared on behalf of the Respondent and filed his Vakalatnama before the Tribunal. None appeared on behalf of the Applicant. The Authorized Representative of the Respondent has submitted to this Tribunal an unambiguous and unqualified acceptance of the DGAP's report findings. The text of the said reply and compliance memorandum reads as follows:

"That without prejudice to its rights and contentions in law, and in order to bring finality to the long-pending proceedings, the Respondent accepts the findings of the DGAP Report to the limited extent of compliance and execution. That in furtherance thereof, the Respondent is today tendering a Demand Draft of Rs. 40,096/- Rupees Forty Thousand Ninety-Six Only towards substantial compliance of the amount determined under the said Report."

11.1. DGAP vide letter dated 16.01.2026 replied that they stand by its Investigation Report dated 10.01.2025

11.2. 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.

12. The Tribunal had carefully considered the investigation report submitted by the DGAP dated 10.01.2025, the Respondent's unqualified acceptance thereof, the documentary evidence on record, the verified Statutory Auditor-certified

financial statements, and the mathematical computations which remain uncontested by the Respondent and Applicant. This Tribunal finds that:

12.1. While profiteering to the quantified extent of Rs. 40,096/- (comprising base amount Rs. 35,800/- plus GST Rs. 4,296/-) did initially arise from the Respondent's pricing structure in the post-GST period due to the marginal increase in the ITC ratio of 0.009 percentage points;

12.2. The Respondent has fully acknowledged the said profiteering and has tendered a Demand Draft of Rs. 40,096/- for discharge of its obligation under Section 171 of the CGST Act, 2017;

12.3 The Respondent undertakes to pass on the said benefit to the eligible 1,865 home buyers in proportion to their respective unit areas, as detailed in the DGAP Report; and

12.4 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.

13. In view of the above findings, the investigation report dated 10.01.2025 submitted by the Director General of Anti-Profiteering is hereby accepted. The proceedings relating to the complaint of Shri Umesh Kumar Shukla (Applicant) against Ms. Pan Realtors Private Limited (Respondent) are hereby closed, with a finding that the Respondent has agreed 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 PAN Oasis project, Sector 70, Noida, by accepting DGAP's Report. Further, the Respondent has agreed to comply with DGAP's report by refunding the profiteered amount to the respective homebuyers.

14. The Respondent is hereby directed to refund the profiteered amount of Rs. 40,096/- along with applicable interest to the eligible 1,865 home buyers in accordance with the buyer-wise calculations detailed in Annexure-14 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 to the DGAP and to the jurisdictional GST Commissioner(S) within the said period, evidencing the completion of such distribution to all eligible buyers. The case is accordingly disposed of.

15. A copy of this order shall be forwarded to all concerned parties, including the Respondent, Applicant (Shri Umesh Kumar Shukla), Director General of Anti-Profiteering, and jurisdictional GST Commissioner(s) in Uttar Pradesh for necessary action and record.

16. Order is pronounced in the open court.

Sh. Anil Kumar Gupta,
Technical Member, GSTAT.