

Director General of Anti-Profiteering v. Merit Magnum Construction (formerly Vimal Builders)

Case number: NAPA/146/PB/2025

Citation: No neutral or reporter citation printed in the identified official order.

Decision date: 17 July 2026

Everest Countryside Marigold: actual occupancy certificate limits the investigation; identifiable buyers receive benefit with interest

Court: Goods and Services Tax Appellate Tribunal, Principal Bench, New Delhi, Anti-Profiteering Division

Bench: Shri Anil Kumar Gupta, Member (Technical), Single Bench, Court III

Decision stage: Final reasoned liability judgment reducing the investigation period and fixing Rs. 2,67,114 inclusive of GST for eligible homebuyers, with 18% collection-to-refund interest, no penalty and a three-month compliance-report requirement.

01 Facts of case and issues

Sachin Kapure, acting for Dilip Atmaram Kapure and Kavita Dilip Kapure, complained that the developer had not passed ITC benefit for Flat 506 in Everest Countryside. The relevant building is Marigold. An earlier DGAP report dated 31 August 2021 was followed by CCI's 20 March 2024 direction for reinvestigation under Rule 133(4) after Reckitt Benckiser. The fresh 11 December 2024 report used April 2012–June 2017 as the pre-GST period and July 2017–March 2019 as the post-GST period. It proposed Rs. 10,00,084 base benefit plus Rs. 1,20,010 GST, totaling Rs. 11,20,094.

The developer argued that construction was complete before GST because it applied for an Occupancy Certificate on 25 April 2017. It disputed methodology and recipient identification, asserted that 24 buyers paid fully before GST and six made only nominal later payments, and challenged interest while invoking Dange Enterprise. A revised submission offered Rs. 5,61,511 under protest without interest or penalty, based on asserted post-GST receipts of Rs. 41,64,808. These positions were not accepted as the final computation or proof of payment.

The Tribunal established that the actual Occupancy Certificate was granted on 13 October 2017. By its 21 May 2026 direction it required CA-certified purchases and ITC for 1 July–13 October 2017. The supplementary report dated 30 June 2026 consequently restricted the post-GST purchases to Rs. 13,17,351 and net ITC to Rs. 2,91,894. The displayed pre/post credit ratios became 3.90% and 22.16%, an 18.26-percentage-point increment. Revised savings were Rs. 2,40,548 over 89,434 square feet, or displayed Rs. 2.69 per square foot. Applied to 88,660 square feet, the source fixes Rs. 2,38,495 plus Rs. 28,619 GST, totaling Rs. 2,67,114.

Pinpoint: Complaint/history: paragraphs 1–10, physical pp. 2–5. Defences and under-protest offer: paragraphs 11–15, pp. 5–6. Actual certificate, Tribunal direction and revised computation: paragraphs 16–19 and revised Tables A/B, pp. 6–8.

02 Discussion by Hon'ble Tribunal

The Tribunal independently decides completion, investigation period, methodology, recipient identification and penalty. It rejects the proposition that an application for an Occupancy Certificate alone proves pre-GST completion. The certificate was actually issued on 13 October 2017, and credit of Rs. 2,91,894 was availed between 1 July and that date. Reading the building-sale schedules with Sections 17(2) and 17(3), GSTAT confines this project's investigation to that period and accepts the revised CA-certified calculation. The discussion itself quotes the statutory condition concerning complete consideration after completion certificate or first occupation, whichever is earlier; it should not be expanded into an unconditional exemption for every transaction associated with a post-OC date.

Paragraphs 22.3–22.5 apply Reckitt scenario 128(c): a project started before GST continued into GST, and pre-GST payments do not eliminate entitlement to additional credit benefit accruing from post-GST procurement. An internal contradiction remains: paragraph 22.1 instead says the case falls within 128(a), which concerns fully pre-GST construction and payment. That isolated statement is not silently rewritten; it conflicts with the actual completion findings and the later express application of 128(c).

On recipients, the developer said some buyers had not complained, could not presently be traced or had resold their units, and offered a Consumer Welfare Fund deposit under protest. GSTAT rejects that inference. The company's own books, allotment agreements, payment schedules and buyer-specific classifications supplied identifiable recipients. Nonparticipation, present difficulty contacting someone or resale did not establish inability to identify the relevant purchaser. The Tribunal found no genuine tracing effort and held that Rule 133(3)(b) recipient restitution applied. Its strict account of Rule 133(3)(c) concerns the identification defence here; it is not a complete restatement of every statutory circumstance for that provision.

The Tribunal viewed the proposed fund route as an attempt to avoid interest because the investigated period preceded the 28 June 2019 fund-interest amendment. It nevertheless imposed collection-to-return recipient interest under Rule 133(3)(b), whose operation is separately identified. No fund deposit is ordered. Its finding about this developer's conduct is attributed to the Tribunal, not an independent accusation by this note.

Revised Table B labels the sold-area date as 30 April 2024, although the investigation ends on 13 October 2017; the earlier table labels the same area by the completion-certificate date. That source-date difference is retained. Displayed ratios and unit savings are reported as the accepted workings rather than recalculated into a replacement judicial demand. The pre-GST table shows Rs. 52,13,341 credit over Rs. 13,13,59,307 purchases, which is approximately 3.968764%, rather than the adopted 3.90%. This unreconciled displayed-ratio difference is retained; the note does not independently certify the adopted 18.26% increment as an exact formula result or replace the ordered sum.

Pinpoint: Completion and period: paragraphs 20–21.6, physical pp. 8–9. Conflicting 128(a)/(c) statements and methodology: paragraphs 22.1–22.5, pp. 9–11. Recipient records and interest route: paragraphs 23.1–23.11, pp. 11–13. Sold-area labels: original Table B pp. 4–5 and revised Table B p. 7.

03 Judicial decision and operative relief

GSTAT accepted the supplementary report dated 30 June 2026 and found a Section 171 contravention. The developer must refund Rs. 2,67,114, comprising Rs. 2,38,495 principal benefit and Rs. 28,619 GST, to the eligible homebuyers identified in that report. Interest is 18% per annum from collection of the higher amount from each buyer until actual refund, under Rule 133(3)(b). Paragraph 23.11 directs individual restitution forthwith.

No penalty under Section 171(3A) is payable: the narrowed 1 July–13 October 2017 period precedes its 1 January 2020 commencement, and the Tribunal rejects retrospective penal application. Paragraph 26 separately requires a report evidencing principal and interest refunded to each eligible buyer to the jurisdictional CGST/SGST Commissioner, with a copy to DGAP, within three months from the order date. That reporting period does not erase the direction to refund forthwith.

Copies must be circulated for compliance; the matter was disposed of and pronounced in open court. The record does not establish that any offered deposit was made, that the refunds occurred or that the reporting obligation was fulfilled. The absent recipient schedule must be obtained before treating the 136-buyer contention or any current flat owner as the final payee list.

Pinpoint: Forthwith recipient refund and interest: paragraph 23.11, physical p. 13. Penalty reasoning: paragraphs 24.1–24.2, p. 13. Operative principal, interest, no penalty and three-month report: paragraphs 25–29, p. 14.

04 In favour of

Qualified mixed result. The developer obtained a shorter investigation period and substantial reduction from the earlier Rs. 11,20,094 proposal, with no penalty. Eligible homebuyers obtained Rs. 2,67,114 plus 18% interest through actual refund; the developer's unidentifiable-recipient/Consumer Welfare Fund alternative failed.

Final substantive adjudication resolving the completion and period disputes, testing the revised computation and rejecting the proposed fund substitution on buyer-record evidence. The reduced amount is a fresh recipient-refund direction, not closure after settlement or verified compliance.

Pinpoint: Paragraphs 20–29, physical pp. 8–14.

05 AKHB REVIEW POINT

AKHB analysis: Keep construction completion, the application for an Occupancy Certificate, actual certificate issuance and first occupation separate. Check both the factual chronology and the statutory consideration conditions; an application date alone was insufficient on this record. Align the investigation period with the proved project facts and reconcile the certificate date to procurement, credit and sold-area records.

Do not equate a purchaser's pre-GST payment with pre-GST completion. Read the exact Reckitt scenario and all its conditions, and preserve this judgment's conflicting 128(a) statement alongside its operative 128(c) reasoning. Obtain the primary authority and any clarification before treating an isolated sentence as the ratio.

05 AKHB REVIEW POINT

A known buyer who is difficult to contact is different from an objectively unidentifiable recipient. Preserve a documented tracing process and the original transaction/payee records, including any resale or assignment evidence. The fund route is not a unilateral substitute for the ordered recipient refunds or a way to remove the accompanying interest.

Obtain the 30 June 2026 supplementary buyer schedule and reconcile principal, GST and buyer-specific collection dates. Document actual refunds, interest and the report due within three months of the order. An under-protest offer is not a receipt, and the reporting window should not be described as an unconditional extension of the forthwith refund direction.

Pinpoint: AKHB commentary based on paragraphs 16–26, physical pp. 6–14; recommendations are distinct from the Tribunal’s holding.

Sources and limitations

Relevant provisions

CGST Act 2017: Sections 171 and 171(3A), pass-through liability and pre-commencement penalty; CGST Act 2017: Sections 17(2) and 17(3), credit attribution/reversal context; CGST Act 2017: Schedule II paragraph 5(b) and Schedule III paragraph 5, building-sale conditions; CGST Act 2017: Section 109(3), recorded Principal Bench constitution; CGST Rules 2017: Rules 129 and 133(4), investigation and historical remand; CGST Rules 2017: Rule 133(3)(b), operative recipient refund and interest; CGST Rules 2017: Rule 133(3)(c), rejected fund-route defence and identification discussion; Central Tax Notifications 23/2022 and 18/2024, historical authority succession; Central Tax Notification 31/2019 dated 28 June 2019, fund-interest amendment discussed in paragraph 23.8; Central Tax (Rate) Notification 11/2017 dated 28 June 2017, historical construction-rate reference printed without Rate in paragraph 10.3.

Statutory note

Checked 13 October 2026. Section 171(1) requires the benefit of a tax-rate reduction or ITC to reach recipients through commensurate price reduction. Notification 18/2024-Central Tax empowers the Principal Bench from 1 October 2024 under Section 171(2) read with Section 109; Notification 19/2024-Central Tax fixes 1 April 2025 as the cutoff for accepting new examination requests. Its text does not repeal Section 171 or expressly terminate pending proceedings. This anti-profiteering role is distinct from ordinary GST appellate jurisdiction. These are targeted primary checks, not an exhaustive current-law audit. Targeted India Code checks confirm Sections 17(2)–(3), Schedule II paragraph 5(b) and Schedule III paragraph 5. The building-service exclusion turns on the statutory consideration, completion-certificate and first-occupation conditions; first occupation may be earlier, and the competent-authority explanation must also be respected. Merit's rejection of an OC application as completion proof is reported on its facts, not as a universal certificate-only rule. Rule 133(3)(b) provides recipient-return interest. Rule 133(3)(c) also addresses a recipient who does not claim return, not solely unidentified recipients; Merit rejects the requested Fund route on its record of identifiable original payees. Notification 31/2019-Central Tax inserted express Fund-interest wording into existing clause (c), not the whole Fund mechanism. Section 171(3A) commencement on 1 January 2020 supports the reported non-retrospective penalty conclusion. Historical Notification 11/2017-Central Tax (Rate) item 3(i) prescribed 9% central tax; paragraph 2 dealt with one-third land value and paragraph 5 commenced it on 1 July 2017. The Tribunal's combined/effective-rate recital is distinguished from this central instrument alone; no present construction-rate advice is given.

Treatment note

Checked 13 October 2026. The freshly retrieved official original is byte-identical to the collected PDF. The four exact final detail pages, the returned final-index page with pagesize 100 and interim-index page with pagesize 30, and bounded exact-party/case searches located no later matching stay, recall, reversal or modification. Only those returned index pages and stated searches were checked, not every court or tribunal docket. A search negative does not certify absence of an appeal or stay. The official Supreme Court cause list of 13 May 2026 lists Reckitt SLP(C) 12705/2024 and Excel Rasayan SLP(C) 3112/2024; it establishes historical listing only, not merits affirmation, a stay, final disposal or present pendency. Reckitt paragraphs 128(a) and 128(c) describe different scenarios; the judgment's inconsistent scenario label remains disclosed rather than rewritten. Dange Enterprise is the developer's cited authority and does not displace Merit's actual recipient-return direction. Unrelated earlier same-name Supreme Court property litigation is not later treatment of this order. The underlying recipient schedule, actual refund, interest calculations and compliance report remain unverified.

Scope of source review

One final reasoned Principal Bench anti-profiteering decision for Everest Countryside Marigold. DGAP's original/revised reports, the developer's under-protest offers and GSTAT's own findings are separately attributed. The eligible-homebuyer schedule in the supplementary report is not appended to this PDF; 136 appears in the developer's objection and is not treated as a verified final recipient count. No complete GSTAT or ordinary appellate coverage is claimed.

Identity note

NAPA/146/PB/2025; reference ZA070010726000059H; order and digital signature 17 July 2026. Merit Magnum Construction is formerly Vimal Builders; project Everest Countryside, Marigold building. The final report dated 30 June 2026 reduces the investigation to 1 July–13 October 2017. Paragraph 22.1's scenario 128(a) statement conflicts with the later 128(c) application. The revised sold-area table prints 30 April 2024; the final buyer schedule is absent, and 136 is a respondent contention. The printed pre-GST ratio 3.90% differs from the approximately 3.968764% obtained from its table components. Paragraph 4 uses rate-reduction language although the quantified claim concerns additional ITC.

Primary source

Source description: Complete 14-page official PDF, including Form GST APL-04A and the final reasoned order. All original pages read and individually viewed by the AI author; source bytes preserved.

Official source: [Open source document](#)

Source pages: 14

Outcome type: mixed

Additional source

Central Tax Notification 18/2024 dated 30 September 2024

Source document: [Open source document](#)

Pinpoint: Paragraphs 1–2, physical p. 1: statutory power and commencement on 1 October 2024.

Central Tax Notification 19/2024 dated 30 September 2024

Source document: [Open source document](#)

Pinpoint: Operative paragraph, physical p. 1: 1 April 2025 cutoff for accepting examination requests.

CGST Act 2017, India Code compilation marked as at 11 June 2026

Source document: [Open source document](#)

Pinpoint: Targeted Sections 109 and 171; additional text checks of Sections 17(2)–(3), physical pp. 31–32, Schedule II paragraph 5(b) and explanation, pp. 126–127, and Schedule III paragraph 5, p. 128. Not a complete legislative-update audit.

Reckitt Benckiser India Private Limited v. Union of India, Delhi High Court, 29 January 2024

Source document: [Open source document](#)

Pinpoint: Targeted primary text/image checks of paragraphs 117–119, 128–129 and 163, physical pp. 120–121, 124–126 and 141: supported commercial changes, differing real-estate scenarios, methodology and preservation of merits remedies. No approval of each later calculation or final Supreme Court affirmation is asserted.

Supreme Court cause list for 13 May 2026

Source document: [Open source document](#)

Pinpoint: Physical pp. 33 and 37: Excel Rasayan SLP(C) 3112/2024 and Reckitt SLP(C) 12705/2024. Historical listing evidence only, not a merits judgment, stay order or present-pendency certification.

Historical CGST Rules, consolidated 13 September 2018

Source document: [Open source document](#)

Pinpoint: Rules 133(3)(b) and (c), physical pp. 106–107; recipient-return interest, nonclaimants/unidentifiable recipients and Fund split. Read with subsequent amendments.

Central Tax Notification 31/2019 dated 28 June 2019

Source document: [Open source document](#)

Pinpoint: Physical p. 5, amending rule 17(c): express 18% interest wording inserted into existing Rule 133(3)(c), not creation of the entire Fund mechanism.

Central Tax Notification 01/2020 dated 1 January 2020

Source document: [Open source document](#)

Pinpoint: Complete physical p. 1, read with the CGST Act commencement footnote: Section 171(3A) insertion commenced on 1 January 2020.

Central Tax (Rate) Notification 11/2017 dated 28 June 2017

Source document: [Open source document](#)

Pinpoint: Targeted physical pp. 1, 13 and 14: original construction entry, one-third land-value provision and 1 July 2017 commencement. Historical central instrument, not present-rate advice.

Disclosures and source rights

AI disclosure: Prepared with AI assistance from the identified sources. No human legal review is claimed.

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