

Director General of Anti-Profiteering v. Bengal Emami Housing Ltd.

Case number: NAPA/141/PB/2025

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

Decision date: 2 September 2026

Swan Court: fact-specific LIG/MIG pricing distinction limits liability to HIG buyers; no cross-buyer set-off

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

Bench: Justice (Retd.) Dr. Sanjaya Kumar Mishra, President, and Shri Anil Kumar Gupta, Member (Technical), Division Bench Court I

Decision stage: Final reasoned category-specific liability judgment: Rs. 70,58,488 inclusive of GST to eligible HIG homebuyers, with 18% interest and a conditional 10% penalty waiver.

01 Facts of case and issues

Sudhamoy Saha complained under Rule 128 of the CGST Rules that Bengal Emami Housing Ltd. had not passed on additional ITC benefit to buyers in Swan Court, Kolkata. The judgment records a project associated with the West Bengal Housing Board, with LIG (ASHA), MIG (Abhilasha) and HIG (Akankhya) apartments. The investigation covered 1 July 2017 to the Occupancy Certificate dated 4 August 2022 and the project had 440 units. The CCI-directed reinvestigation following Reckitt is recorded history, rather than this Tribunal's final quantification.

The original DGAP proposal was Rs. 13,35,51,188 inclusive of GST. Its report is dated 13 December 2024 in paragraphs 4, 11 and 19, but paragraph 3 prints 15 December 2024. The developer disputed the project-wide methodology, sought recognition of genuine cost escalation and documented benefit already passed on, and contended that the separately regulated LIG/MIG prices admitted recovery of direct costs only. The complainant disputed the cost allowance and HIG pass-through evidence, sought buyer-wise calculation without cross-buyer set-off, and questioned 14 allegedly omitted units.

DGAP's 15 April 2026 clarification accepted project-wide workings and a 14 March 2026 CA certificate covering actual increases in cement, steel, sand and stone-chip costs. Its revised Table B allowed Rs. 5,08,25,698 cost escalation. The printed pre/post credit-to-purchase ratios were 7.18% and 17.28%, a 10.10-percentage-point increment. Revised savings of Rs. 7,34,18,630 over 5,42,285 square feet yielded the displayed Rs. 135.39 per square foot; the printed calculation for 5,20,458 sold square feet gave Rs. 7,04,64,809 plus Rs. 84,55,777 GST, totaling Rs. 7,89,20,586. These are the report's project-wide figures, not the final HIG-only award. Displayed unit rates are rounded and are not substituted for the source totals.

Pinpoint: Paragraphs 1–7, physical pp. 2–8; original and revised Table B, physical pp. 5–6; investigation period and OC, paragraphs 17 and 25, physical pp. 13 and 17.

02 Discussion by Hon'ble Tribunal

The Tribunal independently framed liability, pass-through, interest and penalty issues. It accepted that additional ITC had accrued, but found the LIG/MIG pricing mechanism materially different from HIG: on this record, statutory prices were restricted to direct costs while overheads, administrative expenses and associated tax components were borne by the developer. It distinguished AMB Cinemas LLP, NAPA/4/PB/2025, dated 16 April 2026, because cinema prices were periodically monitored, whereas no subsequent revision of the one-time housing price fixation was shown. It therefore attributed no profiteering to LIG/MIG units in this project and confined liability to HIG. This is a fact-specific finding, not a general exemption for controlled-price or lower-income housing.

The 14-unit objection failed: nine units were sold after the 4 August 2022 OC and five remained unsold. Paragraph 18 refers to Schedule III paragraph 5 and the conditions applicable to a sale of a building. The Tribunal found their exclusion explained by transaction status and the statutory scheme; it did not declare all post-OC transactions exempt regardless of statutory conditions.

DGAP's revised verification used buyer correspondence, customer-wise workings, credit notes, application forms, ledgers and the CA certificate, replacing reliance on email verification alone. Paragraph 18 records the DGAP's finding that Rs. 5,74,63,690 reached HIG allottees through booking-form price reductions for July 2017–June 2018, July 2018 newspaper-advertised reductions, and later application-form reductions until the OC. These are findings about evidence in the proceedings; the underlying buyer instruments have not been independently audited for this note.

Revised Table C records Rs. 9,06,90,657 aggregate documented benefit against Rs. 7,89,20,586 aggregate computation, yet Rs. 2,16,72,591 remained due to 325 all-category buyers: Rs. 1,56,64,589 for 275 buyers plus Rs. 60,08,002 for 50 buyers. Excess amounts for other buyers cannot cancel those positive shortfalls. Paragraph 19 expressly rejects cross-buyer adjustment because each recipient has an independent entitlement. The Tribunal then fixes Rs. 70,58,488 for HIG alone; 325 must not be presented as its final HIG recipient count.

Paragraph 19's superseded history prints Rs. 13,35,51,188 less Rs. 77,63,930 as Rs. 12,60,55,300. That subtraction actually gives Rs. 12,57,87,258. The inconsistent printed balance is preserved as a source discrepancy, not silently corrected or treated as a revised operative liability.

Pinpoint: Evidence and revised Table C: paragraph 5, physical pp. 6–7. Tribunal's own category reasoning: paragraphs 11–16, physical pp. 10–13. Unit status, HIG price reductions, buyer-specific calculation and final amount: paragraphs 17–20, physical pp. 13–15.

03 Judicial decision and operative relief

GSTAT directed Bengal Emami Housing Ltd. to pass on Rs. 70,58,488 inclusive of GST to eligible HIG homebuyers identified in Annexure 1 to the DGAP clarification/report dated 15 April 2026. Rule 133(3)(b) interest is 18% per annum from each collection of the higher amount until actual refund. The Tribunal treats interest as compensatory restitution of the recipients' time value of money. Although paragraph 21 describes the provision as discretionary, the Tribunal found no reason to depart from 18%; that description is attributed to this order, not stated as a universally settled rule. The operative direction does not use the complainant's proposed uniform 1 July 2017 interest commencement.

03 Judicial decision and operative relief

Because the contravention period ran from 1 July 2017 to 4 August 2022 and extended beyond the 1 January 2020 commencement of Section 171(3A), the Tribunal held a penalty of 10% of the profiteered amount leviable. Paragraph 27 provides that this penalty stands waived if the entire profiteered amount is passed to eligible homebuyers within thirty days from the date of passing the order. This conditional waiver is not a finding that the condition was fulfilled, and it does not dispense with interest. No independently verified penalty debt or actual recovery is calculated here.

Paragraph 28 separately requires compliance to be reported to the jurisdictional Commissioner within three months from the date of the order, with a copy to DGAP. The matter was disposed of and the order pronounced in open court. The form and final typed date are 2 September 2026; both visible digital-signature stamps are dated 3 September 2026. Later refunds, interest payments, fulfilment of the waiver condition and the compliance report remain unverified.

Pinpoint: Interest: paragraphs 21–24, physical pp. 15–16. Penalty and operative directions: paragraphs 25–31, physical pp. 17–18. Form identity and summary: physical pp. 1–2. Typed date and digital-signature stamps: physical p. 18.

04 In favour of

Mixed outcome. The developer obtained exclusion of LIG/MIG liability on this project's direct-cost pricing facts and rejection of the 14-unit omission challenge. Eligible HIG buyers obtained Rs. 70,58,488 with 18% interest, without cross-buyer set-off. A 10% penalty remains subject to the stated thirty-day full-pass-through waiver condition; completed compliance is not established.

Final substantive HIG-only liability, following independent category, evidence, buyer-entitlement, interest and penalty analysis. The earlier project-wide DGAP figures are superseded for operative relief; neither total exoneration nor completed compliance follows from the reduction.

Pinpoint: Paragraphs 11–31, physical pp. 10–18, especially paragraphs 16, 19–20 and 26–28.

05 AKHB REVIEW POINT

AKHB analysis: Identify the precise statutory pricing instrument, permissible cost components and actual category-specific records before relying on this decision. A maximum price alone is insufficient to reproduce the result. Obtain the underlying West Bengal notification: paragraphs 4 and 12–13 identify No. 738-H1/1M-2/2007 (Pt.) and 17 August 2015, while paragraph 8 instead prints a 2017 number and 17 August 2025 date. The inconsistent reference must not become an independently verified notification citation.

Keep cost escalation separate from benefit actually passed to buyers. Reconcile contemporaneous application forms, advertised rates, credit notes and ledgers to the relevant recipients and periods. A CA certificate or aggregate excess is not, without the supporting facts, a general substitute for commensurate price reduction. Preserve each positive buyer shortfall without using another buyer's excess to reduce it.

05 AKHB REVIEW POINT

Obtain the actual HIG Annexure 1 before implementing payments, identifying final recipients or asserting their number. For each eligible buyer, verify collection and refund dates and compute the ordered interest accordingly. Track the thirty-day full-principal condition for penalty waiver separately from the three-month reporting requirement; neither elapsed time nor an undertaking proves compliance. Preserve both the 2/3 September source dates and the superseded arithmetic discrepancy rather than silently repairing the judicial record.

Pinpoint: AKHB commentary based on paragraphs 4–8, 12–20 and 21–28, physical pp. 3–8 and 11–18; recommendations are distinct from the Tribunal's holding.

Sources and limitations

Relevant provisions

CGST Act 2017: Section 171, including Sections 171(1), 171(2) and 171(3A), recipient pass-through, examination context and conditional penalty; CGST Act 2017: Schedule III paragraph 5, transaction-status discussion for the post-OC units, subject to the statutory conditions; CGST Rules 2017: Rules 128 and 133(3)(b), complaint and recipient-return interest; West Bengal Housing Department pricing notification: No. 738-H1/1M-2/2007 (Pt.) dated 17 August 2015 as recorded in paragraphs 4 and 12–13, with paragraph 8's inconsistent number/date expressly qualified and the underlying instrument not independently obtained; Telangana Cinema (Regulation) Act 1955: historical reference in the distinguished AMB Cinemas discussion, not an independently examined basis for this housing decision; CGST Act 2017: Sections 109 and 171(2), institutional/current-law context; Central Tax Notifications 18/2024 and 19/2024: Principal Bench empowerment and new-request-cutoff context; Finance (No. 2) Act 2019: Section 112, insertion of Section 171(3A), read with Central Tax Notification 01/2020 for commencement.

Statutory note

Checked 13 October 2026 through targeted official statutory sources and same-day verified statutory review. Section 171(1) of the CGST Act 2017 requires the benefit of a tax-rate reduction or ITC to reach recipients through commensurate price reduction. Notification 18/2024-Central Tax, issued under Section 171(2) read with Section 109(1) and the second proviso to Section 109(5), empowers the Principal Bench constituted under Section 109(3) from 1 October 2024. Notification 19/2024-Central Tax fixes 1 April 2025 as the date from which new examination requests will not be accepted; it does not itself repeal Section 171 or terminate pending matters. Section 171(3A) commenced on 1 January 2020, supported by Notification 01/2020-Central Tax and the India Code commencement footnote. Rule 133(3)(b) provides recipient-return interest. The historical rule compilation and targeted statutory readings are not a complete current-law audit. The underlying West Bengal housing-pricing notification has not been independently obtained; its scheme is described as found in this judgment, with its inconsistent printed citation preserved.

Treatment note

Checked 13 October 2026. The freshly retrieved official original is byte-identical to the collected PDF. The exact official detail page and bounded party/case and official-court searches located no later matching stay, recall, reversal or modification. Some live final-index requests timed out and readable indexed pages supplemented the checks; this is not an exhaustive live-index or appellate-docket audit, a finding that no appeal exists, or proof of compliance. The Delhi High Court's Reckitt judgment of 29 January 2024 supplies historical authority. The official Supreme Court cause list of 13 May 2026 lists Reckitt SLP(C) 12705/2024 but does not establish a stay, merits affirmation, final outcome or present pendency.

Scope of source review

One final reasoned GSTAT Principal Bench anti-profiteering order. DGAP computations, the CCI-directed reinvestigation and cited judicial history are distinguished from GSTAT's own findings. The recipient-level Annexure 1 to the DGAP clarification/report of 15 April 2026 is referred to but is not appended to this 18-page PDF. Its final HIG recipient count and subsequent payment records have not been independently verified. This review does not cover ordinary GST appeals, all State Benches or the complete GSTAT corpus.

Identity note

NAPA/141/PB/2025; order reference ZA070010926000020H. Printed order date 2 September 2026, digital signatures 3 September 2026. Swan Court HIG-only operative amount Rs. 70,58,488 inclusive of GST. Preserve the 13/15 December 2024 DGAP report-date discrepancy, the inconsistent West Bengal notification reference, and paragraph 19's historical subtraction mismatch. The referenced HIG buyer annexure is not appended to the identified 18-page official PDF.

Primary source

Source description: Complete 18-page official PDF, including Form GST APL-04A and the final reasoned order. Every original page read and individually viewed by the AI author and independent source reviewer; source bytes preserved.

Official source: [Open source document](#)

Source pages: 18

Outcome type: final

Additional source

Official final-order detail: Bengal Emami Housing Ltd., NAPA/141/PB/2025

Source document: [Open source document](#)

Pinpoint: Exact official detail page linking the final order dated 2 September 2026; checked 13 October 2026.

Central Tax Notification 18/2024 dated 30 September 2024

Source document: [Open source document](#)

Pinpoint: Paragraphs 1–2, physical p. 1: Principal Bench empowerment and commencement on 1 October 2024. Same-day targeted statutory evidence reused.

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. Same-day targeted statutory evidence reused.

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

Source document: [Open source document](#)

Pinpoint: Sections 109 and 171, including Section 171(3A) and its commencement footnote. Relevant passages checked through same-day targeted statutory evidence; not a complete legislative-update audit. Schedule III paragraph 5 is discussed in the Bengal Emami order at paragraph 18.

Central Tax Notification 01/2020 dated 1 January 2020

Source document: [Open source document](#)

Pinpoint: Physical p. 1: commencement of specified Finance (No. 2) Act 2019 provisions, including Section 112 inserting Section 171(3A). Whole-page reading and visual verification recorded in same-day statutory evidence.

CGST Rules, historical official compilation updated 13 September 2018

Source document: [Open source document](#)

Pinpoint: Rule 133(3)(b), physical p. 106: 18% recipient-return interest. Historical text used for this targeted provision, not represented as a fully current consolidated rules audit.

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

Source document: [Open source document](#)

Pinpoint: W.P.(C) 7743/2019 and connected matters, 2024:DHC:609-DB. Paragraphs 118, 153 and 163 concern commercial cost changes and statutory interest/penalty power. Targeted primary review only; no claim of final Supreme Court approval.

Supreme Court cause list for 13 May 2026

Source document: [Open source document](#)

Pinpoint: Physical p. 37, connected item 48.20, Reckitt SLP(C) 12705/2024. Historical listing evidence only, not a stay or merits disposition.

Disclosures and source rights

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

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