

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Old Building, 1st floor, B-Wing, Room No.107, Mazgaon, Mumbai
- 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)
BEFORE THE BENCH OF

- (1) Shri. D. P. Gojamgunde, Joint Commissioner of State Tax, (Member)
(2) Ms. Priya Jadhav, Joint Commissioner of Central Tax, (Member)

ARA No.	NA
GSTIN Number, if any/ User-id	27AAOCS9173M1ZD
Legal Name of Applicant	M/s. SHARDA VASTU NIRMITEE PRIVATE LIMITED
Registered Address/Address provided while obtaining user id	FIRST FLOOR, 103-104, MAITHILI CHS, RAVI COMPOUND, PANCH PAKHADI, Thane, Maharashtra, 400602.
Details of application	GST-ARA, Application No. 40 Dated 10.10.2024
Concerned officer	Zone - MUMBAI, Commissionerate - THANE, Division - DIVISION VI, Range - RANGE-V
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	-----
B Description (in brief)	The applicant is private limited company engaged in the business of real estate Re-development of old buildings
Issue/s on which advance ruling required	<ul style="list-style-type: none">➤ Applicability of a notification issued under the provisions of the Act.➤ Determination of time and value of supply of goods or services or both➤ Determination of the liability to pay tax on any goods or services or both.➤ Whether any particular thing done by the applicant with respect to any goods and /or services or both amounts to or results in a supply of goods and/or services or both within the meaning of that term.
Question(s) on which advance ruling is required	As reproduced in para no. 01 of the proceedings.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the
Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by

M/s. Sharda Vastu Nirmitee Pvt. Ltd., the applicant, seeking an advance ruling in respect of the following questions.

QUESTION 1

Is GST payable ON AREA GIVEN FREE OF COST (which will include following) to existing members in pursuance to development agreement, where development agreement is entered into on 02.09.2016 and amended subsequently by supplementary agreement on 01/12/2021 and 20/04/2024, respectively?

- Area in lieu of existing area given
- Additional area given
- Amenities given
- Parking area
- Stamp duty & Registration borne by builder/developer?

QUESTION 2

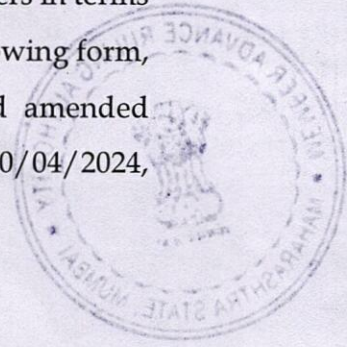
Is GST payable on monetary consideration payable to existing members in terms of development agreement for residential apartment projects, in following form, where development agreement is entered into on 02.09.2016 and amended subsequently by supplementary agreement on 01/12/2021 and 20/04/2024, respectively?

- Rent for alternate accommodation
- Brokerage for alternate accommodation
- Shifting charges
- Corpus to existing members
- Corpus to society?

QUESTION 3

What will be taxable value for levy of GST on area given free of cost to existing members (which will include following) in pursuance to development agreement, where development agreement is entered into on 02.09.2016 and amended subsequently by supplementary agreement on 01/12/2021 and 20/04/2024, respectively.

- Area in lieu of existing area given
- Additional area given
- Amenities given



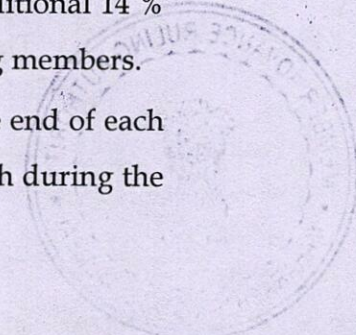
- Parking area
- Stamp duty & Registration borne by builder/developer.

01. FACTS AND CONTENTIONS - AS PER THE APPLICANT

- 1.1 We are a Private Limited Company engaged in the business of real estate Re-development of old buildings.
- 1.2 The company has been awarded a Re-development project of a housing society named as Shree Dutta Vihar Co-Op. Hsg. Soc. Ltd. Thane having 1130 Sq. Mtr of plot area.
- 1.3 The old society is a fully residential building having 22 members. The existing members are occupying area ranging from 260 Sq. Ft. to 680 Sq. Ft. carpet.
- 1.4 The Applicant has entered into a Development Agreement (DA) Dt. 02.09.2016.

TERMS OF DA: - (02.09.2016)

- 1.5 The FSI Rules then allowed to construct a building with 1:55 scheme. (15 % Re development benefit and 40 % TDR)
- 1.6 Out of 15 % Re-development benefit, it was agreed for an Additional 14 % area in carpet sq. Ft. over and above existing area to the existing members.
- 1.7 Monthly rent for alternate accommodation with a rise after the end of each calendar year of 10 % on last rent paid. (To be paid every month during the construction period)
- 1.8 To & Fro shifting Charges to the alternate accommodation.
- 1.9 Brokerage equal to one month rent for searching alternate accommodation.
- 1.10 Hardship compensation/Corpus payable 50 % while vacating the existing house and balance 50 % on occupying new house. Option of purchase of additional area at an agreed rate.
- 1.11 Out of Developer's share of sale, the applicant sold 1704 Sq. Ft. to existing members for a rate of Rs. 19,000/- on carpet Sq. Ft.
- 1.12 After allotting area as above, the applicant was left with an area of 4,893 Sq. Ft. for sale in open market.



1.13 The building was planned as Stilt + 7 upper Floors with 5 Flats of each floor i.e. 35 Flats total out of which 22 members were allotted 24 flats and developer has 11 flats for sale.

1st SUPPLEMENTARY AGREEMENT TO DA: - (01.12.2021)

1.15 Due to change in DCR rules, the project could not be started for a long period and in due course, the building was declared dilapidated by Thane Municipal Corporation. Hence, it was decided to opt for alternate scheme of 1:1.50 scheme instead of 1:1.55 scheme. In the meantime, new DCR rules as per UDCPR were introduced and the project became eligible for further FSI due to which the revised building was planned as Stilt + 7 upper floors with 7 flats on each floor (In place of 5 flats on each floor) i.e. total 49 Flats (In place of 35 flats as mentioned hereinabove) and hence after allotting 24 flats to existing 22 members, the Developers were left with 25 Flats for sale (In place of 11 Flats as mentioned hereinabove). Hence, a Supplementary Agreement was entered in to on 01.12.2021 with the society following additional benefits to existing members as well as society against additional salable area as mentioned hereinabove.

The details of revised benefits to members and society are as follows:

TO MEMBERS

Particulars	As per DA Dt. 02.09.2016	As per 1 st Suppl. DA Dt. 01.12.2021	Remarks
Additional area free of cost over and above existing area	14%	NIL	No additional benefit
Monthly Rent	Rs. 30.00 per existing carpet sq.ft. with a rise of 10 % after every 12months. Payable on 10th of every month.	NIL	No additional benefit

Shifting Charges	Rs. 25,000/- To and For (Rs.12,500/- at the time of vacating old house and 12,500/-at the time of possession of new house)	NIL	No additional benefit
Brokerage for alternate accommodation	Equal to one month rent - payable at the time of vacating old house	NIL	No additional benefit
Hardship Compensation/ Corpus	Rs.500.00 per existing carpet sq.ft. payable as 50% on vacating old house and 50% on occupying new house	NIL	No additional benefit

TO SOCIETY: - CORPUS

Particulars	As per DA Dt. 02.09.2016	As per 1 st Suppl. DA Dt. 1.12.2021	Remarks
Lump sum Compensation to society	NIL	Rs.20.00 Lakhs to Society	Corpus of 20.00 Lakhs to society towards GST
Corpus @ Rs. 3,000/- per carpet Sq. Ft. on Society additional saleable area over and above 4,893 Carpet payable on sale of additional area (7,765 Sq. Ft) and if unsold, within one year from OC	NIL	Rs. 232.95 Lakhs to society	Corpus of Rs. 232.95 Lakhs to Society towards additional saleable over and above 4,893 Sq. Ft.
One Additional Lift	NIL	Additional Amenity	Additional Amenity



COMMENCEMENT OF PROJECT (MARCH 2022)

- 1.16 The actual construction started only in March 2022. The project was completed in July 2024. The Developer paid
- Shifting Charges of Rs. 12,500/- to each of the member,
 - Rent on 10th of every month starting from March 2022 till August 2024 to each of the member.
 - 1st Instalment of Corpus @ Rs. 200/- per existing carpet Sq. Ft. to each of the member
 - Brokerage equal to 1st month rent to each of the member.

2nd SUPPLEMENTARY DA (20.04.2024).

- 1.17 Due to further amendments to UDCPR, the project was eligible for one additional floor i.e. a building of Stilt + 8 upper floor with 7 flats on each floor totaling to 56 flat project. After allotting 24 flats to existing 22 members, the Developers had 32 Flats for sale. Accordingly, due to above referred changes, the Developers offered an additional area of appx. 40 Sq. Ft. free of cost (Over and above 14 % as agreed in DA) to each of 24 members flats against one additional floor (8thFloor). A supplementary Agreement for the same was executed on 20.04.2024. No monetary compensation was given to existing members or society.

ADDDITIONAL BENEFIT TO MEMBERS / SOCIETY:

To Members: -

- Additional 40 Sq. Ft. Carpet area in the form of Balcony free of cost to all the 24 flats of 22 members.
- No Compensation in cash in the form of Corpus.

To Society: - Nil.

COMPLETION OF PROJECT

- 1.18 The construction of project was completed in July 2024 and accordingly, Thane Municipal Corporation issued Occupation certificate on 12.08.2024.
- 1.19 On completion of project and after receiving Occupation Certificate, the Developer made following payments to members and society.

To Members: -

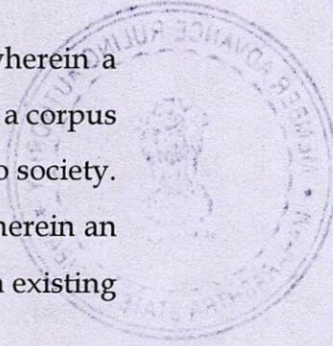
1. Physical Possession of units with 14 % additional free area as agreed in DA and additional appx. 40 Sq. Ft. area free of cost in the form of a balcony as agreed in 2nd Suppl. Agr.
2. Rent up to 10.08.2024.
3. Shifting Charges of Rs. 12,500/-.
4. 2nd and final instalment of corpus as agreed in DA

To Society:-

1. A sum of Rs. 20.00 Lakhs as agreed in 1st Suppl. Agreement
2. A sum of Rs. 58,23,750/- as part payment against corpus of Rs. 3,000/- per additional saleable sq. ft. as agreed in 1st Suppl. Agreement.

SUMMARY:

- The DA was executed on 02.09.2016
- Members were offered Additional area, one four-wheeler parking slot, two wheeler parking slot as per TMC rules, Monthly rent, Brokerage, Shifting Charges and Corpus payable to members.
- Members were offered purchase of additional area @ Rs. 19,000/- per Carpet Sq. Ft. ➤ The project commenced in March 2022.
- 1st Supplementary Agreement was executed on 01.12.2021 wherein a corpus of 20.00 lakhs towards additional taxes (GST/VAT) and a corpus of 232.95 Lakhs for additional sale area was agreed to be paid to society.
- 2nd Supplementary Agreement was executed on 02.04.2024 wherein an additional area of 40 Sq. Ft. appx was agreed to be given to each existing member free of cost over and above 14 % as agreed in DA.
- On OC, rent upto OC, Shifting Charges, 2nd instalment of Corpus were paid to members.
- On OC, a sum of Rs. 20.00 as agreed in 2nd Supplementary Agreement was paid to society.
- On OC, a sum of Rs. 58,23,750.00 (25% of 232.95 Lakhs) as agreed in 2nd Supplementary Agreement was paid to society.



02. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

Applicant's Interpretation on Question - A

2.1 Notification No. 03/2019-State Tax (Rate) dated 30th March'2019

This notification is forward charge notification fixes the liability on builder/developer to pay GST on supply of construction of apartments to the landowner - promoter

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Notification No. 05/2019-State Tax (Rate) dated 30th March'2019

This notification is reverse charge notification fixes the liability on promoter (builder/developer) to pay GST on transfer of development rights or FSI for construction of a project by a promoter

&

Notification No. 06/2019-State Tax (Rate) dated 30th March'2019

This notification defines GST liability payable, on development rights to be paid by promoter (builder/developer) arises on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

All above notifications are made effective from 01.04.2019 Prior to above notifications, GST payable in respect of development rights was under forward charge having no impact of promoter (builder/developer).

In the present case though, 2 supplementary agreements were made after 01.04.2019, these are noting but extension of original development agreement, which was entered into on 02.09.2016, even prior to applicability of GST law.

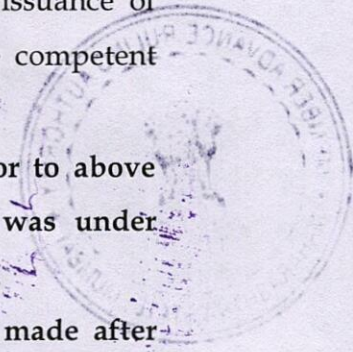
In view of above, THERE IS NO LIABILITY TO PAY GST BY THE PROMOTER (BUILDER/DEVELOPER)

Applicant's Interpretation on Question - B

Not applicable in view negative answer to question A

Applicant's Interpretation on Question - C

Not applicable in view negative answer to question A



03. CONTENTION - AS PER THE CONCERNED OFFICER:

3.1 Question. A: is GST payable ON AREA GIVEN FREE OF COST (which will included following) to existing members in pursuance to development agreement, where development agreement is entered into on 02.09.2016 and amended subsequently by supplementary agreement on 01.12.2021 and 20.04.2024, respectively.

- Area in lieu of existing area given
- Additional area given
- Amenities given
- Parking area
- Stamp duty & Registration born by builder/ developer

Ans- Occupation Certificate (O.C) of the re-developed building was issued on 01.12.2019. Therefore, the point of taxation is on 18.02.2019. Thus, GST is liable to be paid by the Noticee on the 'construction service' involved in the flats to be given to the existing flat owner. Further, the activities pertaining to the construction under redevelopment scheme for land owners and tenants is a supply of service as per schedule II Sr. No. 5 under section 7 of the CGST Act, 2017. Further the valuation of the said service activities is liable to be made as per the provision of section 15 of the CGST Act, 2017. This is also in view of Advance ruling, Authority for Advance Ruling under GST, Telangana [2021 (54) G.S.T.I, 472 (A.A.R.- GST-Telangana) [19.07.2021] in case of M/s. Vajra Infracorp India Pvt. Ltd and Notification no. 4/2018-Central Tax (Rate) dated 25th January 2018 the point of taxation in the instant case would be the date of handing over the completed flats or on transferring possession or the right in the constructed complex, building or civil structure/ to the person supplying the development rights by entering into a conveyance deed or similar instrument. Therefore, the developer is nounded as the person liable to pay GST on the allotment of flats given free of cost to society members. Thus, GST is liable to be paid by the builder/developer on the



'construction service' involved in the flats to be given to the existing flat owner.

3.2 Question- B: - Is GST payable on monetary consideration payable to existing members in terms of development agreement for residential apartment projects, in flowing form, where development agreement is entered into on 02.09.2016 an amended subsequently by supplementary agreement on 01.0.12.2021 and 20.04.2024, respectively.

- Rent for alternate accommodation
- Brokerage for alternate accommodation
- Shifting Charges
- Corpus to existing members
- Corpus to society

Ans: - In the present case the flats given to existing society members are not given for consideration of money, but the consideration is in the form of land given for re-development. Accordingly, as per Rules 27(a), the value of these flats would be equal to the value of similar flats charged by the builder/developer from the other buyers in the form of money at the time of supply. In case the prices of flats/house undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the last sale of the flat/house), the value of similar flats as are should nearer to the time of supply i.e. actual handing over of the completed flat when the flats are ready for occupation. This construction service is liable to GST in terms of clause 5(b) of Schedule II of CGST Act 2017.



3.3 Question C:- What will be taxable value for levy of GST on area given free of cost to existing members (which will including following) in pursuance to development agreement, where development agreement is entered into on 02.09.2016 and amended subsequently by supplementary agreement of 01.12.2021 and 20.04.2024, respectively.

- Area in lieu of existing area given
- Additional rea given
- Amenities given-Parking area

- Stamp duty & Registration borne by builder/developer

Ans. The value of the taxable services would be equivalent to the gross amount charged by the Taxpayer to the buyers of the flats sold in open market to new buyers against the monetary consideration per the existing rates per square feet. The value of similar flats sold near to the date of completion certificate of the building is to be considered for determination of value of flats allowed to the existing members in terms of Rule 27 of CGST Rule, 2017. In the instant case, the valuation of the supply of construction services of the flat given in lieu of transfer of development rights shall be equivalent to the value of the flat sold nearest to the date of completion certificate. Thus, the value of the service shall be arrived at the per Rule 27 of CGST Rule, 2017.

Further, it is to inform that, a show cause notice SCN NO. 396/2021-22 dated 16.03.2022 was issued to the applicant on similar issue and was decided recently vide order-In-Original NO. 209VDS/AC/Div-VI/CGST/TH/2024-25 (centralized SCN NO. 1316/TH/2024-25) dated 03.02.2025.

04. HEARING

Preliminary e-hearing in the matter held on 24.01.2025. Mr. Dnyanesh V. Retharekar, Advocate & others appeared and requested for admission of the application. Jurisdictional Officer Mr. Prakash, Deputy Commissioner of CGST is available.

The application was admitted and called for final e-hearing on 13.03.2025. Mr. Dnyanesh V. Retharekar, Advocate & others Authorized Representative, appeared made oral and written submissions. Jurisdictional Officer Mr. Prakash, Deputy Commissioner of SGST appeared. We heard both the sides.

05 FINDINGS AND OBSERVATIONS

5.1 The applicant is a private limited company having its registered office at 1St Floor, 103-104, Maithili CHS, Ravi Compound, Panch Pakhadi, Thane - 400602 and is engaged in the real estate business.

- a. The applicant is registered under Goods and Services Tax ('GST') Act and the present application is being filed u/s 97 of Central Goods & Services Tax Act, 2017 and Maharashtra Goods & Services Tax Act, 2017 (hereinafter also

referred to as 'CGST Act' and 'MGST Act' respectively). The provisions of the CGST Act and MGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act.

- b. The applicant is engaged in the business of real estate Re-development of old buildings. The company has been awarded a Re-development project of a housing society named as Shree Dutta Vihar Co-Op. Hsg. Soc. Ltd. Thane having 1130 Sq. Mtr of plot area. The old society is a fully residential building having 22 members. The existing members are occupying area ranging from 260 Sq. Ft. to 680 Sq. Ft. of carpet area each.
- c. The Applicant entered into a Development Agreement dated 02.09.2016 with the aforementioned Society. However, project did not commence for long time due to change in DC Rules. Subsequently, the parties executed a First Supplementary Agreement on 01.12.2021, followed by a Second Supplementary Agreement dated 20.04.2024.

The applicant has sought advance ruling on the following questions: -

- a) QUESTION A:- Is GST payable ON AREA GIVEN FREE OF COST (which will include following) to existing members in pursuance to development agreement, where development agreement is entered into on 02.09.2016 and amended subsequently by supplementary agreement on 01/12/2021 and 20/04/2024, respectively.

- Area in lieu of existing area given
- Additional area given
- Amenities given
- Parking area
- Stamp duty & Registration borne by builder/developer

- b) Question - B

Is GST payable on monetary consideration payable to existing members in terms of development agreement for residential apartment projects, in following form, where development agreement is entered into on



02.09.2016 and amended subsequently by supplementary agreement on 01/12/2021 and 20/04/2024, respectively.

- Rent for alternate accommodation
- Brokerage for alternate accommodation
- Shifting charges
- Corpus to existing members
- Corpus to society

c) QUESTION C: What will be taxable value for the levy of Goods and Services Tax (GST) on the area provided free of cost to existing members which would include following) in pursuance of development agreement is entered into on 02.09.2016 and amended subsequently by supplementary agreement on 01/12/2021 and 20/04/2024.

- Area in lieu of existing area given
- Additional area given
- amenities given
- Parking Area
- stamp duty and registration borne by builder / developer



5.2 The questions asked by the applicant are cogently summarized as below:

- a. Whether supply of free units inclusive of parking area and other amenities given to the existing members is liable for GST in a redevelopment project undertaken by the applicant in pursuance to development agreements dated 02.09.2016, 01.12.2021 and 20.04.2024? and what would be value on which tax is leviable, if at all it is liable to tax?
- b. In lieu of development rights received from the society, apart from the free units, applicant also pays monetary consideration as below to the existing members.
 1. Rent for alternate accommodation.
 2. Brokerage for alternate accommodation
 3. Shifting charges.
 4. Corpus to existing members.
 5. Corpus to society.

Whether GST is payable on monetary consideration paid as above?

Let's analyze each of these questions.

5.3 Whether supply of free units to existing members of the society in a redevelopment project constitutes taxable supply under GST Act.

Three agreements were signed between the society and the developer. By virtue of these agreement, developments rights are transferred to the developer. The analysis of terms of these agreements is as below:

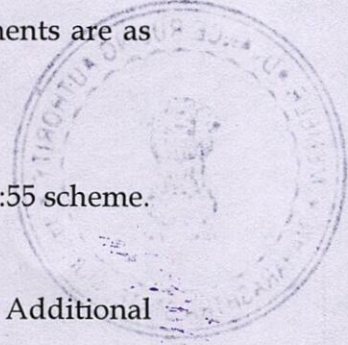
5.3.1 The Applicant has submitted that he entered into agreement with Dattavihar Co-operative Housing Society Ltd. on the following dates:

- Original Development Agreement dated 02.09.2016
- First Supplementary Agreement dated 01.12.2021
- Second Supplementary Agreement dated 20.04.2024

The prominent terms and conditions of the aforesaid agreements are as under:

(a) Terms of First Agreement (DA) dated 02.09.2016

- i) The FSI Rules then allowed to construct a building with 1:55 scheme.
(15 % Re- development benefit and 40 % TDR)
- ii) Out of 15 % Re-development benefit, it was agreed for an Additional 14 % area in carpet sq. Ft. over and above existing area.
- iii) Monthly rent for alternate accommodation with a rise after end of each calendar year of 10 % to last rent. (To be paid every month during the construction period) to the existing members of the society.
- iv) To & Fro shifting charges for the alternate accommodation
- v) Brokerage equal to one month rent required to be paid to the agent for finding alternate accommodation.
- vi) Hardship compensation/Corpus payable 50 % while vacating the existing house and balance 50 % on occupying new house.
- vii) Option to purchase additional area at an agreed rate.
- viii) Out of Developer's share of sale, applicant sold 1704 Sq. Ft. to existing members for a rate of Rs. 19,000/- per Sq. Ft. of carpet area.



ix) After allotting area to existing members, the applicant is left with an area of 4,893 Sq. Ft. for sale in open market.

x) The building was planned as Stilt + 7 upper Floors with 5 Flats on each floor i.e. 35 Flats total out of which 22 existing members were to be allotted 24 flats and the developer was to have 11 flats for sale.

(b) 1st Supplementary Agreement to DA dated 01.12.2021

The building was declared dilapidated by Thane Municipal Corporation. In the meantime, new Development Control rules as per UDCPR (Unified Development Control and Promotion Regulations) were introduced and the project became eligible for further FSI due to which the building plan was revised as Stilt + 7 upper floors with 7 flats on each floor (in place of 5 flats on each floor) i.e. total 49 Flats (In place of 35 flats as mentioned in earlier agreement) and hence after allotting 24 flats to existing 22 members, the Developer was left with 25 Flats for sale (In place of 11 Flats as mentioned in earlier agreement). Hence, a Supplementary Agreement was entered in to on 01.12.2021 with the society.

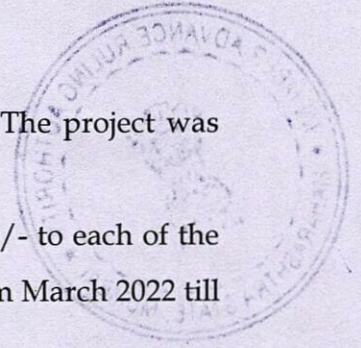
(c) Commencement Of Project (March 2022)

The actual construction started only in March 2022. The project was completed in July 2024.

- i) The Developer paid Shifting Charges of Rs. 12,500/- to each of the member, rent on 10th of every month starting from March 2022 till August 2024 to each of the member.
- ii) 1st Instalment of Corpus @ Rs. 200/- per Sq. ft. of existing carpet to each of the member was paid to each member.
- iii) Brokerage equal to 1st month rent to each of the member, was paid.

(d) 2nd Supplementary Agreement to DA dated 20.04.2024.

Due to further amendments to UDCPR, the project was eligible for one additional floor i.e. a building of Stilt + 8 upper floor with 7 flats on each floor totaling to 56 flat projects. After allotting 24 flats to existing 22 members, the Developers had 32 Flats for sale.



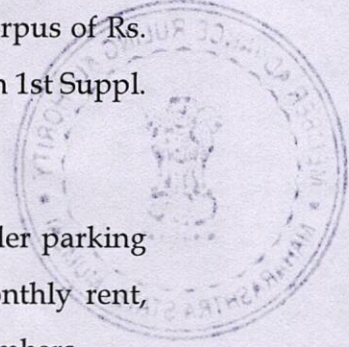
Accordingly, due to above referred changes the following changes were made in the supplementary agreement:

(e) Additional benefits to society and members through supplementary agreement:

- i) The Developers offered an additional area of appx. 40 Sq. Ft. free of cost (Over and above 14 % as agreed in DA) to each of 24 members flats against one additional floor (8th Floor).
- ii) Physical Possession of units with 14 % additional free area as agreed in DA and additional appx. 40 Sq. Ft. area free of cost in the form of a balcony as agreed in 2nd Suppl. Agreement.
- iii) Rent up to 10.08.2024 for the alternate accommodation.
- iv) Shifting charges of Rs. 12,500 to and from alternate accommodation.
- v) 2nd and final instalment of corpus as agreed in DA to Society: -
- vi) A sum of Rs. 20.00 Lakhs as agreed in 1st Suppl. Agreement
- vii) A sum of Rs. 58,23,750/- as part payment against corpus of Rs. 3,000/- per additional saleable sq. ft. area as agreed in 1st Suppl. Agreement.

f) Summary of three Agreements :-

- i) Members were offered Additional area, one four-wheeler parking slot, two wheeler parking slot as per TMC rules, Monthly rent, Brokerage, Shifting Charges and Corpus payable to members.
- ii) Members were offered purchase of additional area @ Rs. 19,000/- per Carpet Sq. Ft.
- iii) The project commenced in March 2022.
- iv) 1st Supplementary Agreement was executed on 01.12.2021 wherein a corpus of 20.00 lakhs towards additional taxes (GST/VAT) and a corpus of 232.95 Lakhs for additional sale area was agreed to be paid to society.
- v) The Second Supplementary Agreement was executed on April 2, 2024, pursuant to which an additional area of 40 square feet of carpet area in the form of a balcony was allotted free of cost to each of the 24 flats owned by 22 members.



vi) Pursuant to the execution of the agreement dated April 2, 2024, the developer became entitled to a total of 32 flats, as opposed to the 11 flats originally agreed upon in the original agreement agreement dated on September 2, 2016.

(g) Completion of Project

The construction of project was completed in July 2024 and accordingly, Thane Municipal Corporation issued Occupation certificate on 12.08.2024.

5.3.2 The commencement of project was in March-2022 and the project was completed in July 2024. Thus, the construction services have been provided by the developer in respect of the entire project. In order to understand if these services provided in respect of free units given to the existing members of the society, amounts to supply under GST Act, provisions of supply u/s. 7 of the GST Act are reproduced as under:

Section 7. Scope of supply -

(1) For the purposes of this Act, the expression "supply" includes--

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

In the light of the Scope of supply as expressly provided under the MGST Act, it is unequivocally stated that "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange,



license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business

The Applicant has entered into an Agreement for Redevelopment with Datta Vihar Co-operative Housing Society Ltd. Pursuant to the said Agreement, the Applicant has received consideration in the form of Development Rights and society in turn received constructed flats free of cost. This constitutes an exchange transaction.

As per the Oxford Dictionary, "exchange" is defined as the act of giving or returning something to someone while receiving something in return.

In the present case, the Applicant has received Transfer of Development Rights (TDR), and in return he has supplied a constructed flats free of cost along with other benefits. Consequently, this transaction squarely falls under "exchange" as mentioned in Section 7 (1) (a) of MGST Act and thus within the purview of Scope of Supply under MGST Act, 2017.

5.3.3 Section 7 (1A) provides that schedule II shall list activities that are to be treated as supply of goods or supply of services. The relevant Sr. No.5 of Annexure II is reproduced as under:

5. Supply of services. – The following shall be treated as supply of service, namely: –

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation. --For the purposes of this clause--

- (1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: –

- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
 - (ii) a chartered engineer registered with the Institution of Engineers (India); or
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
 - (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
 - (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and
 - (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.



In the present case, the Developer has entered into an Agreement to provide construction services in accordance with the terms set out in Clause 5(b) of Schedule II. In turn, the Society has agreed to transfer development rights to the applicant and has also agreed to vacate the premises to facilitate the construction of the building. Hence, the said transaction falls within the ambit of "supply" as contemplated under the provisions of the Maharashtra Goods and Services Tax (MGST) Act and is taxable as supply of services.

In a typical redevelopment project, transactions involved are as below.

1. Society transfers development rights (TDR/FSI) to the developer, which is considered a supply of service under GST.

2. Developer constructs new residential units and provides them to existing society members (often free of monetary consideration) in lieu of TDR/FSI.
3. Developer sells additional units to independent buyers, which is a taxable supply.
4. Free units supplied to society members are part of the barter/exchange transaction, where the consideration is the TDR/FSI provided by the society.

The supply of "free" residential units by the developer to society members is not truly free, as it is in exchange for the TDR/FSI provided by the society. This is treated as a exchange/barter transaction under GST, and both sides of the transaction are taxable. Here's how it works:

1. Taxability of Free Units:

- The supply of residential units to society members is considered a supply of construction services under Section 7 of the CGST Act, as it involves the construction of a building for the society in exchange for TDR/FSI.
- As per Notification No. 03/2019-CT(R), the developer is liable to pay GST on this supply at the effective rate of 1% (for affordable housing) or 5% (for non-affordable housing) without Input Tax Credit (ITC) for projects commencing on or after April 1, 2019.
- The value of this supply is determined as per the open market value of similar apartments sold to independent buyers nearest to the date of the development agreement, as per Notification No. 04/2019-CT(R).

Valuation:

- Since no monetary consideration is involved, the value of the construction service (free units) is deemed to be equal to the price charged for similar units sold to independent buyers.



- GST is payable at the time of receipt of the completion certificate (CC) or first occupancy (OC), whichever is earlier.

5.3.4 The Telangana State Authority for Advance Ruling in case of M/s. Maddi Seetha Devi have held that transfer of development rights by the landowner to the developer is consideration received by such developer for supply of construction services.

5.3.5 Value of supply on which tax is leviable:

In this context, reference is made to the provisions under paragraph 2A of the Notification No. 11/2017 CT(R) dated 28.06.2017.

"2A. Where a person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service in respect of such apartments shall be deemed to be equal to the Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right or FSI (including additional FSI), nearest to the date on which such development right or FSI (including additional FSI) is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 above."

In view of this provision, the value of supply of the apartment in lieu of the development right is equivalent to sale of apartments sold by the developers to the independent buyers nearest to the date on which development right is transferred.

Further, time of payment of such liability is provided by the Notification No.06/2019 CT(R) dated 29.03.2019. It is reproduced as under.

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely

- (i) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;*



(ii) a promoter, who receives long term lease of land on or after 1st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name),

as the registered persons who shall pay central tax on, -

- (a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);
- (b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;
- (c) the upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relatable to construction of residential apartments in the project; and
- (d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI), -
in a tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls.

In cases where flats are allotted to existing members of a society under a re-development arrangement, such allotment is not made in consideration of monetary payment. Instead, the consideration is in the form of development rights transferred by the society to the developer for the purpose of re-development. In accordance with above mentioned para 2A and Rule 27(a) of the Central Goods and Services Tax Rules, 2017, where the consideration is not wholly in money, the value of such flats shall be deemed to be equal to the value of similar flats supplied by the builder or developer to independent buyers for monetary consideration as mentioned above.

Such construction services rendered by the developer to the landowner or society members, in exchange for development rights,



constitute a supply of service within the meaning of clause 5(b) of Schedule II of the Central Goods and Services Tax Act, 2017, and are accordingly liable to Goods and Services Tax (GST).

5.4 Now, coming to the second question whether GST is payable on various monetary payments made to the society members.

5.4.1 From the perusal of the three above mentioned agreements it is seen that after the first development agreement work could not commence due to change in DC Rules.

5.4.2 The developer has commenced construction of project in March 2022 i.e. after signing of the 1st supplementary agreement dated 01-12-2021. The key aspects concerning the construction to be undertaken was decided through this agreement. As this agreement has taken place on 01-12-2021, i.e. in the GST regime, it can be said that transfer of development right have been executed in GST regime after 01-04-2019.

5.4.3 For an agreement to be deemed an executed agreement, the following essential conditions must be fulfilled:

a. **Mutual Consent:** All parties to the agreement must have provided their unequivocal consent to its terms and conditions. In the instant case mutual consent happened only after the third agreement.

b. **Definitive Terms:** The agreement must set forth clear, specific, and enforceable terms, leaving no material aspects open for future determination.

In the said case, the terms / crux of original agreement allocation of area between developer and society got changed via First supplementary agreement and again got changed through second supplementary agreement. In conclusion only, secondary agreement consists of definitive terms.

c. **Completion of Obligations:** The obligations stipulated under the agreement must have been duly performed or legally enforceable at the time of execution. Completion of Obligation of the said case is of second supplementary agreement.



d. **Finality of Rights and Liabilities:** The rights, obligations, and liabilities of the parties must be conclusively determined and enforceable without the necessity of any further agreement or supplementary arrangement.

In the absence of fulfillment of the aforementioned conditions, agreement dated 02.09.2016 cannot be categorized as an executed agreement in the legal sense as it did not fulfill all contractual obligations and conditions.

5.4.4 The amendments introduced to the Agreement dated 02.09.2016, the First Supplementary Agreement dated 01.12.2021, and the Second Supplementary Agreement dated 20.04.2024, have materially altered the terms and conditions of the initial agreement. The project was completed in July 2024, in accordance with the revised terms and conditions stipulated in the aforementioned supplementary agreements. Hence it would not be legally correct to consider that the transfer of development rights has occurred through first agreement.

5.4.5 It is essential to note that the substantial modifications made in the allotment of flats between the society and the developer were made through first and second supplementary agreement. Pursuant to the original Agreement dated 02.09.2016, the allocation of flats to the developer was 11. Under the First Supplementary Agreement, the number of flats allocated to the developer was increased to 24. Furthermore, under the Second Supplementary Agreement, the number of flats allocated to the developer was further increased to 32. These changes represent a fundamental alteration to the original allotment terms and substantiate the fact that transfer of development rights have taken place in GST regime. Allotment of total carpet area and number of the flats between developer and the society, is essence of the executed agreement for transfer of development rights. Hence, the original Agreement dated 02.09.2016 cannot be classified as an executed agreement. Rather, it is more appropriate to state that the first Supplementary Agreement after which



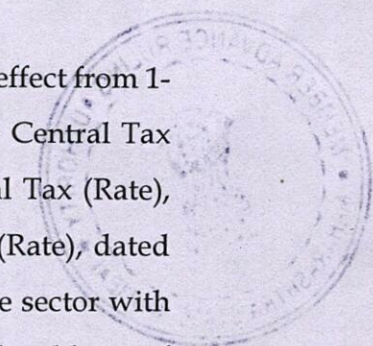
construction commenced governs the execution of transfer of development rights.

5.4.6 The Applicant relies on the terminology used, such as "Original Agreement," "Supplementary Agreement," and "Second Supplementary Agreement." However, the GST law recognize the mere usage of such terminology as determinative. The law explicitly refers to an "executed agreement," and it is evident that the Agreement dated 02.09.2016 does not fall within the purview of an executed agreement as it got amended through subsequent agreements dated on 1.12.2021 and 02.04.2024. Hence, the FAQ referred by the applicant is inapplicable to the Applicant's case, as the factual circumstances of agreement dated on 02.09.2016 do not align with its scope of "Executed agreement".

As per Notification No. 06/2019-State Tax (Rate) dated 30th March 2019, GST liability payable, on development rights is to be paid by promoter (builder/developer) on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

5.4.7 A new tax structure for real estate sector was introduced with effect from 1-4-2019 onwards by amendment of Notification No. 11/2017, Central Tax (Rate), dated 28-6-2017 by Notification No. 03/2019 - Central Tax (Rate), dated 29-3-2019. The Notification No. 03/2019 -Central Tax (Rate), dated 29-3-2019 substituted the rate for services related to real estate sector with effect from 1-4-2019 and also made provisions for continuing the old rate of tax (as it existed up to 31-3-2019) for the ongoing projects. Notification No. 04/2019 -Central Tax (Rate), dated 29-3-2019 provided that the promoter shall be liable to pay tax at applicable on reverse charge basis.

5.4.8 As per notification No. 4/2019 the liability to pay tax in respect of development rights for construction of residential arises under reverse charge mechanism in the hands of developer. As per entry 41A introduced in Notification No. 12/2017 CT(R) dated 28/06/2017, the liability will be to the extent of unsold flats on the date of completion certificate. The applicant has provided construction services to the existing members. Thus, it can be



said that in lieu of the development rights received from the society, developer has provided the following.

- i. Free unit/flats
- ii. Rent for alternate accommodation.
- iii. Brokerage for alternate accommodation.
- iv. Corpus to existing members
- v. Corpus to society.

The value of free units is to be decided as mentioned in para 5.3.5 above. Other charges have been provided in terms of money. Thus, this is the total consideration paid by the developer to the society in lieu for development rights. However, mere payments of monetary charges do not amount to supply of services on the part of the developer as he is paying these amounts. Thus, these amounts are in the form of consideration paid along with free units for acquiring development rights. The taxation of development rights after 01-04-2019 is governed by entry 41A of NN 12/2017 CT(R) dated 28/06/2017. The tax would be payable to the extent of unsold flats on the date of CC. It says promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, whichever is earlier. It is further provided that tax payable shall not exceed 1% of the value in case of affordable residential apartments and 5% of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation. The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier.



6. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the
Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 40/2024-25/B-

215

Mumbai, dt.

30/04/2025

For reasons as discussed in the body of the order, the questions are answered thus -

QUESTION A: - Is GST payable ON AREA GIVEN FREE OF COST (which will include following) to existing members in pursuance to development agreement, where development agreement is entered into on 02.09.2016 and amended subsequently by supplementary agreement on 01/12/2021 and 20/04/2024, respectively.

- Area in lieu of existing area given
- Additional area given
- Amenities given
- Parking area
- Stamp duty & Registration borne by builder/developer

Answer: - Answered in Affirmative.

QUESTION B: Is GST payable on monetary consideration payable to existing members in terms of development agreement for residential apartment projects, in following form, where development agreement is entered into on 02.09.2016 and amended subsequently by supplementary agreement on 01/12/2021 and 20/04/2024, respectively.

- Rent for alternate accommodation
- Brokerage for alternate accommodation
- Shifting charges
- Corpus to existing members
- Corpus to society

Answer :- The total consideration paid by the developer to the society in lieu for development rights is the free flats and the above mentioned charges. However, mere payments of monetary charges do not amount to supply of services on the part of the



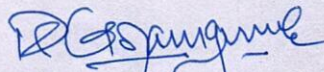
developer as he is paying these amounts. These amounts are in the form of consideration paid along with free units by the Developer for acquiring development rights from the Society. The taxation of development rights after 01-04-2019 is governed by entry 41A of NN 12/2017.CT(R) dated 28/06/2017.

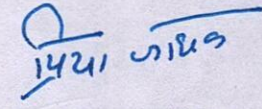
QUESTION C: What will be taxable value for the levy of Goods and Services Tax (GST) on the area provided free of cost to existing members which would include following) in pursuance of development agreement is entered into on 02.09.2016 and amended subsequently by supplementary agreement on 01/12/2021 and 20/04/2024.

- Area in lieu of existing area given
- Additional area given
- amenities given
- Parking Area
- stamp duty and registration borne by builder / developer

Answer: - The value of supply of the apartments to the existing members in lieu of the development right, is equivalent to sale of similar apartment sold by the developer to the independent buyers nearest to the date on which development right is transferred.




D.P. GOJAMGUNDE
(MEMBER)


PRIYA JADHAV
(MEMBER)

PLACE - Mumbai
DATE -

Copy to: -

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.



Note: -An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th Floor, Air India Building, Nariman Point, Mumbai - 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

