

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/56/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/22)

Date: 30.07.2020

Name and address of the applicant	:	M/s. Ashapura Buildcon, B-403, Millenium Plaza, Judges Bunglow Road, Vastrapur, Ahmedabad-380015
GSTIN/ User Id of the applicant	:	24ABGFA7498H1Z4
Date of application	:	13.03.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) Applicability of Notification issued under the provisions of this Act.
Date of Personal Hearing	:	02.07.2020 (through Video Conferencing)
Present for the applicant	:	Shri Priyam Shah

M/s. Ashapura Buildcon, B-403, Millenium Plaza, Judges Bunglow Road, Vastrapur, Ahmedabad is a partnership company having a GSTIN: 24ABGFA7498H1Z4, filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

2. M/s. Ashapura Buildcon, an applicant is engaged in the business of construction of residential and commercial complex. Presently, residential project called “SAMANVAY RESIDENCY” at village: Zundal, Taluka and Dist: Gandhinagar is under development. The details of the project are as follows:

- a. Projects SAMANVAY RESIDENCY started on 1st May 2017 and expected to complete in August 2019.
- b. This scheme has 5 block/ tower having Ground + 7 floors in each tower.
- c. Total number of flats in the project/scheme are 154 and having 10 shops.

- d. The flats are being developed over 3465 sq.mtrs of land. The total FSI of the scheme is of 9342.61 Sq. mtr and 9084.81 Sq. Mtrs. of FSI consumed in the flats having carpet area below 60Sq. Mtrs.

3. The applicant has submitted plan for project before appropriate authority and this plan gets approved by authority namely AUDA (Ahmedabad Urban Development Authority) vide their approval letter in “Form D” dated 27/04/2017 having Sr. No. PRM/347/12/2016/249 under “Residential Affordable Housing Scheme”.

4. Accordingly, the applicant sought Advance Ruling on the following question:

Whether, the construction services provided by the applicant under the project “SAMANVAY RESIDENCY” qualifies for the reduced CGST rate of 6% (under CGST and SGST Act) as provided in Sr. No. 3 item (v) sub-item (da) of Notification No. 01/2018-CT (Rate) Dated 25.01.2018.?

Applicant’s Interpretation of Law/Taxation under GST Regime

5. The applicant submitted that their activity is covered under Sr. No. 5 (b) of Schedule II of CGST Act, which is read as under:

“Supply of Services :

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.”

6. The applicant submitted that as per their understanding they are covered under Sr. No. 3 of Notification No. 11/2017-CT (Rate) dated 28.06.2017 under the head of Construction services liable to GST at the rate of 18% (CGST 9%+ SGST 9%) subject to certain exception. Further submitted that explanation 2 of the said Notification provides that, *“the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply”*.

7. The applicant submitted that Notification No. 11/2017-CT (Rate) has been amended time to time to add certain services as well as to charge rate of GST towards supply of various Goods and Services or both. Notification No.

11/2017 CT (rate) amended vide Notification No. 01/2018-CT (Rate) dated 25.01.2018 vide which GST rate on specified construction services was reduced from earlier 18% to 12%, so in case of transfer of property in goods or services with land effectively GST rate becomes 8% after availing 1/3rd deduction towards value of land. Vide Notification No. 01/2018-CT (Rate) dated 25.01.2018 in Sr. No. 3 (v), new item (da) has been inserted to specify the rate of CGST as 6% in case of following services:

Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017”

Work contract is defined in Section 2(119) of the CGST Act, 2017 as :

“works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

8. The applicant has submitted following regarding Affordable Housing Project :

8.1 The reduced rate of 12% (8% after reducing 1/3rd towards land) is applicable only for the low cost houses up to a carpet area of 60 Sq. Mtrs. per house in an affordable housing projects which have been given infrastructure status by Govt. of India vide F. No. 13/6/2009-INF dated 30.03.2017.

8.2 In the said Notification, “Affordable Housing” is covered at Sr. No. 5 under the head “Social and Commercial Infrastructure” and as per the Notification, “Affordable Housing” is defined as a housing project using at least 50% of the Floor Area Ratio(FAR)/ Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 Sq. Mtrs.

8.3 Accordingly, a housing project using at least 50% of the Floor Area Ratio (FAR)/ Floor Space Index for dwelling units with carpet area @ of not more than 60 Sq. Mtrs. has been given the infrastructure

status by the GOI and therefore would be eligible for the benefit of reduced rate.

8.4 Further it was also mentioned in the above referred notification dated 30.03.2017 that “Carpet Area” shall have the same meaning as assigned to it in clause (k) of Section 2 of the Real Estate (Regulation and Development) Act, 2016.

8.5 As per Section 2(k) of RERA, “Carpet Area” means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area but includes the area covered by the internal partition walls of the apartment.

Explanation – For the purpose of this clause, the expression “exclusive balcony or verandah area” means the area of the balcony or verandah, as the case may be, which is apartment to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and “exclusive open terrace area” means the area of open terrace which is appurtenant to the net usable floor area of open terrace which is appurtenant to the net usable floor area of an appurtenant, meant for the exclusive use of allottee;

9. The applicant has submitted the Architect’s Certificate with regard to the carpet area usage in the project under consideration. The Architect in his Certificate has stated that, it is evident that the project ‘SAMANVAY RESIDENCY’ has total consumed/ Permissible FSI of 9342.61 Sq. Mtrs. Out of which 9084.81 Sq. Mtrs. F.S.I area are consumed by Flats having carpet area below 60 Sq. Mtrs. Therefore, the said housing project is using around 97% of total Floor Area Ratio (FAR)/ Floor Space Index (FSI) for dwelling units with carpet area @ of not more than 60 Sq. Mtrs.

10. The applicant submitted that from the above discussion it is reasonably understood that ‘SAMANVAY RESIDENCY’ project would qualify as to be an affordable housing project and accordingly, construction of low cost houses with carpet area up to 60 Sq. Mtrs per house in the said housing project would be eligible for the reduced rate of 12% GST w.e.f. 25.01.2018. The effective rate of GST would be 8% after reducing 1/3rd towards value of land as provided in Notification No. 11/2017-CT (Rate) dated 28.06.2017.

11. The applicant further submitted that it would be relevant to note that GST law do not provide any separate meaning to define the term low cost houses. Thereby, applicant is of the understanding that the houses with carpet area of not more than 60Sq. Mtr. itself be considered as low cost houses for

determining the rate of GST.

Personal Hearing

12. The authorized representative of the company appeared and reiterated the submission already made in the application filed with the Authority of Advance Ruling.

Findings and Discussion

13. We have considered the submissions made by the Applicant in their application for advance ruling as well as the additional submissions made by authorised signatory, during the personal hearing proceedings on 02-07-2020 before this authority. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

14. We have gone through the facts of the case. The only issue before us is whether the construction services provided by the applicant under the project "Samanvay Residency" qualifies for the reduced CGST rate of 6% as provided in Sr. No. 3 - item (v) - sub-item (da) of Notification No. 1/2018-C.T. (Rate) dated 25-1-2018.

15. We observe that applicant is engaged in the business of construction of residential and commercial complex. Presently, the applicant is under development of residential project called "SAMANVAY RESIDENCY" at village: Zundal, Taluka and Dist: Gandhinagar. The applicant has submitted that Projects SAMANVAY RESIDENCY started on 1st May 2017 and expected to complete in August 2019, this scheme has 5 block/ tower having Ground + 7 floors in each tower, total number of flats in the project/scheme are 154 and having 10 shops and flats are being developed over 3465 Sq.Mtrs of land. The total FSI of the scheme is of 9342.61 Sq. Mtr out, of which 9084.81 Sq. Mtrs. of FSI consumed in the flats having carpet area below 60Sq. Mtrs. The applicant have, whilst submitting Architect's Certificate in support, submitted that their housing project 'SAMANVAY RESIDENCY' has total consumed/ Permissible FSI of 9342.61 Sq. Mtrs. Out of which 9084.81 Sq. Mtrs. F.S.I area are consumed by Flats having carpet area below 60 Sq. Mtrs. Therefore, the said housing project is using around 97% of total Floor Area Ratio (FAR)/ Floor

Space Index (FSI) for dwelling units with carpet area @ of not more than 60 Sq. Mtrs. They have also submitted that their Scheme is approved by Ahmedabad Urban Development Authority (AUDA) vide No. PRM/347/12/2016/249 dated 27.04.2017 under the Building Type “Residential Affordable Housing”.

16. Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, has specified the rate of central tax to be levied on services of description specified in Column 3 of the Table in the said Notification. The relevant clause of the said Notification, as amended by Notification No. 20/2017-Central Tax (Rate), dated 22-10-2017 is reproduced below:-

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
3	Heading 9954 (Construction services)	<div>(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -</div> <div>(a)</div> <div>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;</div> <div>(c) a civil structure or any other original works pertaining to the “<i>In situ</i> rehabilitation of existing slum dwellers using land as a resource through private participation” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers;</div> <div>(d) a civil structure or any other original works pertaining to the “Beneficiary led individual house construction/enhancement” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</div> <div>(e);</div> <div>or</div> <div>(f)</div>	6	-]

			
		<p>(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to, -</p> <p>(a)</p> <p>(b)</p> <p>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the ‘Scheme of Affordable Housing in Partnership’ framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;</p> <p>(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under -</p>		
		<p>(1) the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p> <p>(2) any housing scheme of a State Government;</p> <p>(e);</p> <p>or</p> <p>(f)</p>		

17.1 Notification No.1/2018-Central Tax (Rate), dated 25-1-2018 has made amendments to Sr. No. 3, Column No. 3, item no. iv & v the above Notification No. 11/2017 as follows:-

In the said notification,

(i) in the Table, -

(a) against serial number 3, in column (3), -

(A) in item (iv), -

(I) *for sub-item (c), the following sub-item shall be substituted, namely:-*

‘(c) a civil structure or any other original works pertaining to the “In situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);’;

(II) after sub-item (d), the following sub-items shall be inserted, namely :-

‘(da) a civil structure or any other original works pertaining to the “Economically Weaker Section (EWS) houses” constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);

(db) a civil structure or any other original works pertaining to the “houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);’;

(III)”;

(B) in item (v),

(I) in sub-item (a), for the word “excluding”,.....;

(II) after sub-item (d), the following sub-item shall be inserted, namely :-

“(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017;”

17.2 According to sub-item (da) of item (v), low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project, which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017 would attract a tax rate of 12%. This clause will be applicable to the applicant if the project undertaken by them is an affordable housing project which has been given infrastructure status vide Government of India notification mentioned above.

18. Department of Economic Affairs’ in the Notification issued vide F. No. 13/6/2009-INF, dated the 30th March, 2017, has included Affordable Housing under the column “Infrastructure sub-sector” against the category of Social and Commercial Infrastructure. In the said notification, term “Affordable Housing” has defined as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters. Further, in the said Notification, it is mentioned

that “Carpet Area” shall have the same meaning as assigned to it in clause (k) of Section 2 of the Real Estate (Regulation and Development) Act, 2016.

19. The Notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017 is reproduced below:-

With the approval of the Competent Authority, an updated Harmonized Master List of Infrastructure Sub-sectors (Annexure-I) is hereby notified. The new list incorporates the following changes to the notification dated 1st August, 2016;

1. Under the category of “Social and Commercial Infrastructure” a new sub-sector - “Affordable Housing” is added.

Annexure-I

Updated Harmonized Master List of Infrastructure Sub-sectors

<i>Sl. No.</i>	<i>Category</i>	<i>Infrastructure sub-sectors</i>
	<i>Transport</i>	<ul style="list-style-type: none">• <i>Roads and bridges</i>• <i>Ports</i>• <i>Shipyards</i>• <i>Inland Waterways</i>• <i>Airport</i>• <i>Railway Track, tunnels, viaducts, bridges</i>• <i>Urban Public Transport (except rolling stock in case of urban road transport)</i>
	<i>Energy</i>	<ul style="list-style-type: none">• <i>Electricity Generation</i>• <i>Electricity Transmission</i>• <i>Electricity Distribution</i>• <i>Oil pipelines</i>• <i>Oil/Gas/Liquefied Natural Gas (LNG) storage facility</i>• <i>Gas pipelines</i>
	<i>Water and Sanitation</i>	<ul style="list-style-type: none">• <i>Solid Waste Management</i>• <i>Water supply pipelines</i>• <i>Water treatment plants</i>• <i>Sewage collection, treatment and disposal system</i>• <i>Irrigation (dams, channels,</i>

		<i>embankments, etc.)</i> <ul style="list-style-type: none"> • <i>Storm Water Drainage System</i> • <i>Slurry Pipelines</i>
	<i>Communication</i>	<ul style="list-style-type: none"> • <i>Telecommunication (fixed network)</i> • <i>Telecommunication towers</i> • <i>Telecommunication & Telecom Services</i>
	<i>Social and Commercial Infrastructure</i>	<ul style="list-style-type: none"> • <i>Education Institutions (capital stock)</i> • <i>Sports Infrastructure</i> • <i>Hospitals (capital stock)</i> • <i>Three-star or higher category classified hotels located outside cities with population of more than 1 million</i> • <i>Common infrastructure for Industrial Parks and other parks with industrial activity such as food parks, textile parks, Special Economic Zones, tourism facilities and agriculture markets</i> • <i>Post-harvest storage infrastructure for agriculture and horticultural produce including cold storage</i> • <i>Terminal markets</i> • <i>Soil-testing laboratories</i> • <i>Cold Chain</i> • <i>Affordable Housing</i>

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10. “Affordable Housing” is defined as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters.

@ “Carpet Area” shall have the same meaning as assigned to it in clause (k) of Section 2 of the Real Estate (Regulation and Development) Act, 2016.

20. One of the recommendations made by the GST Council in its 25th meeting held on 18th January, 2018 at Delhi was to extend the concessional rate of 12% (8% GST after deducting value of land) to services by way of construction of low cost houses up to a carpet area of 60 sqm in a housing project, which has been given infrastructure status under Notification No. 13/06/2009 dated 30th March, 2009. The said notification of Department of Economic Affairs provides infrastructure status to Affordable Housing. The recommendation of the Council would extend the concessional rate to construction of flats/houses of less than 60 sqm in projects other than the projects covered by any scheme of the Central or State Government also.

21. In response to a request for clarification to enable availing 8% GST on Affordable Housing made by the builders association namely, CREDAI vide their letter no. CREDAI/MoF/2018/14, dated 19th March, 2018, the Government vide F. No. 354/52/2018-TRU, Government of India Ministry of Finance Department of Revenue (TRU) dated 7th May, 2018 has clarified that “Low cost houses up to a carpet area of 60 square metres per house in an affordable housing project, which has been given infrastructure status under Notification F. No. 13/6/2009-INF, dated the 30th March, 2017 of MOF (DEA), attract concessional GST of 8% (the value of the undivided share of land is included in the price of the house). Whether the housing project qualifies as affordable housing project or not, shall be determined by the builder/developer as per the definition of affordable housing given in the above mentioned notification (i.e., affordable housing has been defined as a housing project using at least 50% of FAR/FSI for dwelling units with carpet area of not more than 60 SQM). No certificate from any authority is required.”

21.1. The applicant has during the personal hearing submitted that land on which the project “Samnvay Residency” was constructed is free hold land not having any common area of facility in respect of any other land or Residential or Commercial project. They, subsequently, submitted an affidavit dated 07.07.2020 wherein it is stated that, land on which the project “Samnvay Residency” was constructed is free hold land not having any common area of facility in respect of any other land or Residential or Commercial project. Further, we find that Ahmedabad Urban Development Authority has approved

“Samnvay Residency” under the “Affordable Housing Project” and Architect has given certificate that land area of the said scheme is 3465 Sq. Mtrs. This scheme is having total 5 blocks namely A to E. The total FSI of the scheme is 9342.61 Sq. Mtrs. and out of which 9084.81 Sq. Mtr. of FSI consumed in the flats having carpet area below 60 Sq. Mtrs.

21.2 From a reading of the above clarification, notification and the clause (da) of item (v) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 and facts on record, we find that the applicant’s case is covered under the tax rate of 12%, under Heading 9954 (Construction Services), (v) (da) of above mentioned Notification No. 11/2017, as amended since the project undertaken by them falls under the definition of “Affordable Housing” as stated by them in the application. The benefit of reduced rate would be available to them only in the cases of supply effected after 25-1-2018 i.e. the date on which Notification 1/2018-Central Tax (Rate) dated 25-01-2018 was issued and the benefit of this reduced rate would be applicable in case of only those flats which are having carpet area upto 60 sq mtrs. in this scheme which is covered in the category of affordable housing. In case of other flats which have carpet area more than 60 Sq. Mtrs. the applicant would be required to pay GST at normal applicable rate.

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

RULING

Question : Whether, the construction services provided by the applicant under the project “SAMANVAY RESIDENCY” qualifies for the reduced CGST rate of 6% (under CGST and SGST Act) as provided in Sr. No. 3 item (v) sub-item (da) of Notification No. 01/2018-CT (Rate) Dated 25.01.2018.?

Answer : Affirmative as discussed above.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 30.07.2020.