

<p align="center"><b>GUJARAT AUTHORITY FOR ADVANCE RULING</b>  <b>GOODS AND SERVICES TAX</b>  <b>A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</b>  <b>AHMEDABAD – 380 009.</b></p>	
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**ADVANCE RULING NO. GUJ/GAAR/R/2022/49**  
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/33 )

**Date: 30 / 12 / 2022**

Name and address of the applicant	:	M/s. Shivam Developers, D-175, Sundarvan Society, New Sama Road, Vadodara
GSTIN/ User Id of the applicant	:	24AEJFS0939M1ZM
Date of application	:	21-06-2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(G)
Date of Personal Hearing	:	08-07-2022 and 26-09-2022
Present for the applicant	:	C.A. Tejas Purohit

**Brief facts:**

M/s Shivam Developer (for the sake of brevity referred as “the applicant”) is a partnership firm and is engaged in the business of construction & development of real estate project. The applicant has started a new project namely “Shivvay Landmark” duly registered under the provisions of RERA 2016 which consists of construction of shops, duplexes & flats. As per the approved layout plan & commencement certificate issued by the competent authority (Vadodara Municipal Corporation), total carpet area of all the units in the project is 7406.99 Square Meters. Type wise summary of carpet area of the project is as under:

Sr. No.	Type	Total No. of Units	Total Carpet Area (in Sq. Mt.)	Percentage to total Carpet Area
1	Shops	32	776.59	10.49%
2	Duplexes	20	1707.04	23.05%
3	Flats	78	4923.36	66.46%
	<b>Total</b>	<b>130</b>	<b>7406.99</b>	<b>100.00%</b>

2. The applicant has submitted that carpet area of each shop is less than 90 square meter, carpet area of each duplex is less than 90 square meter and proposed selling price of each duplex is more than rupees 45 lakh. It is submitted that the carpet area of each apartment is less than 90 square meter and proposed selling price of each apartment is less than rupees 45 lakh.





3. The applicant submits that the carpet area of commercial apartment (shops) is less than 15% of the total carpet area of the project. It falls under the definition of “Residential Real Estate Project”. As per the notification no. 03/2019-Central Tax (Rate) dated 29/03/2019 vide entry no. (ib) the said commercial apartments (shops) are chargeable to tax @5%. Duplexes will be chargeable to tax @ 5% vide entry no. 9(ia) as it does not satisfy the definition of “affordable residential apartments”.

4. It is submitted that the applicant is of the view that construction of residential flats will attract GST @ 1% as per entry No. (i) of Not. No. 3/2019-CT (Rate) irrespective of the fact these flats are part of the same residential real estate project which consists of construction of commercial apartments (Shops) as well as construction of residential duplexes which does not fulfill definition of “Affordable residential apartment” based on the following facts & legal provisions :

- a. *In the above notification the term “affordable residential apartment” has been defined as a residential apartment in a project which commences on or after 01/04/2019 or in an ongoing in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial no.3, as the case may be, having carpet area not exceeding 60 square meters in metropolitan cities and 90 square meters in cities or town other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.*
- b. *As per entry no. (i) of the above notification, applicable rate of tax is 1% in case of construction of affordable residential apartments by a promoter in a Residential Real Estate Project.*
- c. *Hence if any apartment/flat/duplex/unit in a project which fulfills the definition of “affordable residential apartments” will be chargeable to tax @ 1% irrespective of the fact that other units of the same projects are non-affordable residential apartments which are chargeable to tax @ 5%. There is no bar in the provision for charging different tax rates in the same project which consists of affordable residential apartments & non-affordable residential apartments. The said notification has started the wording with “**construction of affordable residential apartments by a promoter in a residential real estate project....**” It has used the word “**in a residential real estate project**” Literal interpretation of this wording is that if any one or more unit in the project fulfills the definition of “affordable residential apartment” than it will be chargeable to tax at the rate as prescribed under entry no. (i) of the notification no. 03/2019-Central Tax (Rate) dated on 29/03/2019 i.e. @ 1%.*





5. The applicant has submitted that as per para 5(b) of schedule-II of the Act, any services provided by a builder in relation to construction of 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 shall be treated as “supply of services” & it shall be taxable at the rates as prescribed.

6. The applicant submits that as per Notification No.11/2017-Central Tax (Rate) dated 28/06/2017 as amended by Notification No. 3/2019-Central Tax (Rate) dated 29/03/2019 w.e.f. 01/04/2019, effective rate of GST applicable on construction of residential apartments by promoters in a real estate project are as under:

Sr. No.	Description	Effective rate of GST (After deduction of value of Land)
1	Construction of affordable residential apartments in RREP or REP (Serial No.3(i) & i(c) of table)	1% without ITC on total consideration
2	Construction of residential apartments other than affordable residential apartments in RREP or REP (Serial No.3(ia) & (id) of table)	5% without ITC on total consideration
3	Construction of commercial apartment in RREP (Serial No. 3(ib) of table)	5% without ITC on total consideration

**RREP**=Residential Real Estate Project

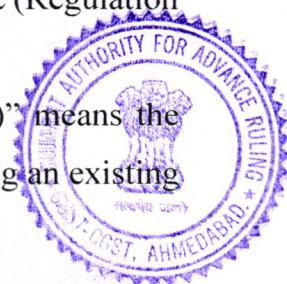
**REP** =Real Estate Project

7. The term “Residential Real Estate Project (RREP)”, as defined in the said notification, shall mean a real estate project (REP) in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP;

8. The applicant submits that the term “affordable residential apartment” in case of new project which is commenced after 01/04/2019 is also defined in the said notification and it shall mean “a residential apartment in a project which commences on or after 01/04/2019 having a carpet area not exceeding 60 square meter in metropolitan cities or 90 square meters in cities or town other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.

9. As per the said notification the terms “Real Estate Project” & “apartment” shall have same meaning as assigned to it in section 2(zn) & section 2(e) of the Real Estate (Regulation and Development) Act, 2016 respectively.

10. As per section 2(zn) of the RERA 2016, “Real Estate Project (REP)” means the development of a building or a building consisting of apartments, or converting an existing





building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

11. As per section 2(e) of the RERA 2016, “apartment” whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a spate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancilliary to the purpose specified;

12. **Question on which Advance Ruling sought:**

1. Whether item no. (i), (ia) & (ib) of Point no. (ii)(a) Of the notification no. 03/2019-Central Tax Rate dated 29/03/2019 is applicable project wise or apartment wise? Meaning hereby is that when a project consists of construction of some of the units which satisfies the definition of “Affordable residential apartment” & the construcion of some of the units which does not satisfy the definition of “Affordable residential apartment” in that case whether the supplier can apply the GST rate as specified in item no. (i) on units which satisfies the definition of “affordable residential apartments” & GST rate as specified in item no. (ia) & (ib), as the case may be, on the units which are non-affordable residential units in the same residential real estate project?

2. With respect of our case, promoter is constructing affordable residential units as well as non-affordable residential units in “Residential Real Estate Project (RREP)”. In such case can the promoter apply separate GST rates in following manner in respect of construction of affordable residential apartments & non-affordable residential apartments in the same project (RREP)?

Sr. No.	Description	Rate of Tax
1	Construction of commercial units in RREP (Shops)	5%
2	Construction of non-affordable residential units in RREP (Duplexes)	5%
3	Construction of affordable residential units in RREP (Flats)	1%

**Personal Hearing:**

13. Personal hearing granted on 26-09-22 was attended by Shri Tejas Purohit, and he reiterated the submission.





## Revenue's Submission:

14. Revenue vide letter F. No. IV/16-06/Advance Ruling/Tech/2022-23 dated 13-7-22 issued by the Joint Commissioner (Tech), Central GST & Central Excise, Vadodara-I Commissionerate has submitted the comments as follows:

(i) As per item (i) of Sr. no. 3 in the table of notification no. 03/2019-CT (Rate) dated 29.03.2019, Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (RREP) which commences on or after 1<sup>st</sup> April, 2019..... Will attract central tax as per above Notification and shall be paid in cash subject to other conditions laid down in the notification supra.

(ii) The Residential Real Estate Project (RREP) has been defined in clause (xix) of para 4 of notification no. 03/2019 as,

*"the term 'Residential Real Estate Project (RREP)' shall mean a project in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP."*

(iii) As per section 2(zn) of the Real Estate (Regulation and Development) Act, 2016 Real Estate Project means-

*(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.*

(iv) As per clause (xvi) of paragraph 4 of the notification no. 03/2019, the term "affordable residential apartment,, shall mean -

*"A residential apartment in a project which commences on or after 01.04.2019, or in an ongoing project in respect of which... having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees*

(v) As per clause (xv) of paragraph 4 of the notification supra the term 'project' project shall mean a Real Estate Project or a Residential Real Estate project.

(vi) The applicant in his application has informed that the carpet area of shops in total project is less than 15% and area of the flats to be constructed is less than 90 square meter and price of these flats is also less than forty five lakhs rupees.

(vii) In light of the facts, it appears that the project consisting flats fulfils the parameters prescribed in the above provisions to be considered as affordable residential apartment.





## FINDINGS:

15. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by authorised signatory, during the personal hearing proceedings on 26-9-22 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.

16. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

17. The issue involved in the instant case is to decide (i) whether the project which is currently under construction by the applicant shall be regarded as a Residential Real Estate Project (RREP) or Real Estate Project (REP). (ii) Whether the project consisting residential Apartment eligible for GST Rate 1% being an affordable residential apartment without ITC, 5% without ITC for other than residential affordable apartment and 5% without ITC for commercial shops.

18. Now, we proceed to decide whether the project is a Residential Real Estate Project (RREP) or Real Estate Project (REP). The term Real Estate Project (REP) and Residential Real Estate Project (RREP) has been defined in clause (xviii) and (xix) respectively of Notification No. 3/2019-CT (Rate) dated 29-3-2019. Clause (xviii) and (xix) are reproduced as under:

*(xviii) The term Real Estate Project (REP) shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).*

*Clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) is read as under:*

*(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.*

*(xix) The term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.*

18.1 The project to be covered under Residential Real Estate Project (RREP), the carpet area of commercial apartment should not be more than 15% of the total carpet area of all





the apartments. The term carpet area is defined under clause (xxvi) of Not. No. 3/2019-CT (Rate). Clause (xxvi) is reproduced as under :

*(xxvi) The term “carpet area” shall have the same meaning assigned to it in clause (k) of section 2 of Real Estate (Regulation and Development) Act, 2016 (16 of 2016).*

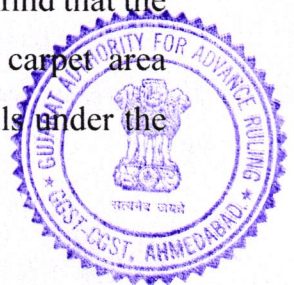
clause (k) of section 2 of Real Estate (Regulation and Development) Act, 2016 (16 of 2016) is read as under :

*(k) “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 appurtenant 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 an apartment, meant for the exclusive use of the allottee;*

18.2 The applicant has submitted Form 3 {For Registration of a Project and subsequent withdrawal of Money) duly certified by Chartered Accountant. In the Annexure of Form-3 mentioned un-booked total carpet area 7407 Sq. Mtrs of the impugned Project. In FORM-3 it has been mentioned that no Residential Flat and Commercial Shops have been booked or sold. This means that total Carpet area of the Project is 7407 Sq. Mtr which includes carpet area of both type of Flats and commercial Shops. We find that the applicant on his own has submitted that commercial shops have total 776.49 Sq. Mtr. carpet area but have not submitted any documents in support of carpet area of commercial shops. We find that in terms of percentage carpet area of commercial shops comes to 10.49% of Total Carpet Area 7407 Sq. Mtr of the project. The carpet area of commercial shops is less than 15% of total carpet area of Apartment and commercial shops, hence the applicant project covers under the definition of RREP.

19. We find that the applicant is developing buildings consisting of apartments and commercial shops for the purpose of selling. The instant project, shall be treated as RREP if the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP. Here, as discussed in Para 18.2 we find that the instant project having commercial shop carpet area less than 15% of total carpet area considering the submission of the applicant. As a result, the instant project falls under the category of Residential Real Estate Project (RREP).





20. Now, we proceed to decide applicable GST rate on affordable residential apartment, other residential apartment and commercial shop.

20.1 The applicant has argued that they have constructed the affordable residential apartments having carpet area below 90 Sq. Mtr. and cost of the apartment is below 45 lakh. To decide the applicable GST rate @1% without ITC for affordable residential flat, we refer to entry No. 3 (i) of Notification No. 11/2019-CT (Rate) dated 28-6-2017 amended by Not. No. 3/2019-CT (Rate) dated 29-3-2019. To cover under the said entry the following conditions shall be satisfied to fall under the category of affordable residential flat:

- (i) Construction of the said project is in a non-metropolitan area;
- (ii) Carpet area shall be below 90Sq. Mtr of all the flats ;
- (iii) the carpet area of the commercial areas shall not be more than 15 percent of the total carpet area of the project
- (iv) The consideration charged from customer shall be below 45 lakhs

20.2 The applicant has also argued that the Residential Flat other than affordable category of Residential Flats and Commercial Shops are eligible for payment of GST Rate of Tax @ 5% without ITC in terms of entry No. 3 (i), (ia) and (ib) of Notification No. 11/2019-CT (Rate) dated 28-6-2017 amended by Not. No. 3/2019-CT (Rate) dated 29-3-2019.

20.3 We have noticed that for the applicability of GST Tax Rate @ 1% in case of affordable residential Flat without ITC the conditions mentioned in (i) to (iv) in Para 20.1 shall be satisfied. Further, for Leviability of @ 1% without ITC of affordable residential apartment other than above conditions, for Leviability of @ 5% without ITC of Residential Flat (other than affordable residential Flat) and Commercial Shop, the following conditions shall also be satisfied :

- (i) **Credit of input tax charged on goods and services used in supplying the service has not been taken** except to the extent as prescribed in Annexure II in the case of RREP.
- (ii) The registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1<sup>st</sup> April, 2019, which shall be calculated in the manner as prescribed in Annexure II in the case of RREP
- (iii) **Eighty percent of value of input and input services**, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], **used in supplying the service shall be received from registered supplier only;**





(iv) Inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person

(v) Where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) **falls short of the said threshold of 80 per cent., tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of eighteen percent on reverse charge basis** and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both;

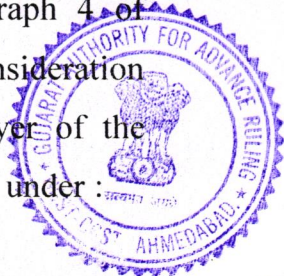
(vi) In case cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017), shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement;

(vii) The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.

(viii) Tax on cement received from unregistered person shall be paid in the month in which cement is received.

(ix) Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)].

20.4 We find from the records of the applicant available with us that the applicant is constructing the present project in Vadodara City which falls under the category of a non-metropolitan city. Further, applicant has submitted that affordable Residential Flat carpet area is below 90 Sq. Mtr and consideration charged from the customer is less than Rs. 45 lacs. In this regard applicant have submitted FORM-3 duly signed by Chartered Accountant wherein mentioned the carpet area of each flat of both types and commercial shop; also the consideration of the Flat of both types and commercial shops. The applicant have not submitted any sale deed or legal document by which it can be established the exact carpet area and consideration to be charged from the customers in case of Affordable Residential Apartment, other than residential Apartment and commercial shops which are shown in FORM-3. We have observed that clause (xvi) sub-clause (a)(ii) of paragraph 4 of notification No. 11/2017-CT(R) dated 28.06.2017 has explained the types of consideration make the Gross Amount i.e. taxable value received from the potential buyer of the Residential Flat. Clause (xvi) sub-clause (a) (ii) of paragraph 4 is reproduced as under :





*(ii) Gross amount shall be the sum total of; -*

*A. Consideration charged for the services specified at item (i) and (ic) in column (3) against sl. No. 3 in the Table;*

*B. Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sub lease; and*

*C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc*

20.5 Further, in this regard CBIC has issued FAQ (Part II) on real estate on 14<sup>th</sup> May 2019 wherein Q. No. 4 has clarified the following :

*Q. No. 4 For the purpose of determining the threshold of Rs.45 lakhs in case of “affordable residential apartment”, whether the following charges generally recovered by the developer from the buyer shall be included?*

- *Amenity Charges*
- *Society formation charges*
- *Advance maintenance*
- *Legal Charges*

*Ans. For the purpose of determining the threshold of the gross amount of Rs.45.00 lakh for affordable residential apartments, all the charges or amounts charged by the promoter from the buyer of the apartments shall form part of the gross amount charged. Clause xvi, sub-clause (a)(ii)(C) of paragraph 4 of notification No. 11/2017-CT(R) dated 28.06.2017, reproduced below, refers.*

*“C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.”*

*However the value shall not include stamp duty payable to the statutory authority, maintenance charges / deposits for maintenance of apartment or maintenance of common infrastructure.*

20.6 We have observed that the consideration of Rs. 45 Lacs as mentioned in the Notification in case of Affordable Residential Apartment is the gross amount which includes all types of charges collected from the potential buyer except Stamp Duty payable. We find that the applicant have not submitted any legal documents to ascertain that the which types of charges makes exact gross amount of the affordable residential flat which are collected from the customer. The applicant has not submitted the types of heads under





which consideration have been received and make Gross Amount of the affordable Residential Flat less than 45 lacs.

20.7 Similarly, the applicant have not submitted any legal documents in support of exact carpet area and consideration recovered from the customer in respect of other than affordable residential flat and commercial shops.

20.8 It is noticed that the applicant is silent about the conditions (i) to (ix) mentioned in Para 20.3 and also not submitted any documents by which it can be establish that they have fulfilled all the conditions of the Notification No. 11/2017-CT (Rate) dated 28-6-2017 amended by Not. No. 3/2019-CT (Rate) dated 29-3-2019.

21. In view of the above discussion, we find that the applicant have not submitted sufficient documents to decide the Ruling on the question sought for, therefore we are not inclined to pronounce the Ruling in absence of proper documents. We are of the view that the ruling can be pronounced on the basis of proper documents in support of the questions and not on simple facts and assumptions. Hence application is not maintainable in view of the above discussion.

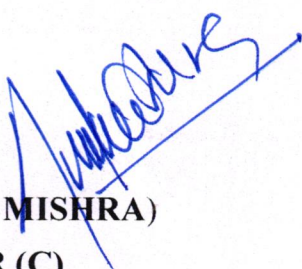
22. We, hereby pass the Ruling:

**RULING**

The application is not maintainable in view of the above discussion.

  
(MILIND KAVATKAR)  
MEMBER (S)



  
(AMIT KUMAR MISHRA)  
MEMBER (C)

Place: Ahmedabad

Date: 30.12.2022