


<p style="text-align: center;">GUJARAT AUTHORITY FOR ADVANCE RULING</p> <p style="text-align: center;">GOODS AND SERVICES TAX</p> <p style="text-align: center;">A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</p> <p style="text-align: center;">AHMEDABAD – 380 009.</p>	
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ADVANCE RULING NO. GUJ/GAAR/R/2020/14

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/51)

Date: 19.05.2020

Name and address of the applicant	:	M/s. Amba Township pvt.ltd., Basement, Vardan Tower-A, Opp. Shanti Appt., Pragati Nagar, Shastri Nagar, Naranpura, Ahmedabad-380013..
GSTIN of the applicant	:	24AAFCA1933J1ZW
Date of application	:	27.08.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) applicability of a notification issued under the provisions of this Act. (e) determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	19.03.2020
Present for the applicant	:	Shri Punit Prajapati C.A

BRIEF FACTS

The applicant vide their application for Advance Ruling has submitted that they are engaged in the construction of residential and commercial construction on works contract basis; that at present they are engaged in the construction and development of a township namely “AMBA TOWNSHIP” located at Adalaj, Gandhinagar, Gujarat; that they are developing a township which consists of many real estate projects within a township; that since the development of the town is a continuous process, the applicant is developing the township in a phased manner; that different schemes or projects are being undertaken by the applicant at different span of time; that at present, Sector-4 of the township is being constructed which is also divided into two parts namely Part-A and Part-B.

Part-A is further divided into two phases i.e. Phase-1 and Phase-2.

The projects under Phase-1 are (i) Sarvaswa-1 (ii) Sanatan-1 (iii) Sanatan-2 (iv) Stuti-1 (v) Stuti-2 (vi) Swaroop-1 (vii) Swaroop-2 (viii) Swaroop-3 and (ix) Swaroop-4.

The projects under Phase-2 are : (i) Sanatan-3 (ii) Swaroop-5 and (iii) Swaroop-7

The projects under Part-B are: (i) Sarvasva-2 (ii) Stuti-3 and (iii) Swaroop-6 which are mainly for small and affordable houses; that it can be seen that 74.08% of the total Floor Space Index (FSI) is used for small houses having carpet area upto 60 sq. metres which can be understood better by seeing the table below:

Project	No.of units	Total FSI	Avg. FSI per unit sq. Mt.	% of total FSI
Carpet Area upto 60 sq. Mt. Per unit				
Sarvasva-2	338	10820.99	32.01	30.88%
Stuti-3	286	15140.34	52.94	43.20%
Total		25961.33		74.08%
Carpet Area higher than 60 Sq.Mt. per Unit				
Swaroop-6	104	9085.41	87.36	25.92%
Total	728	35046.74	48.14	100%

2. The applicant have further submitted that with effect from 25.01.2018, Notification No.01/2018-Central Tax(Rate), dated 25.01.2018 has inserted sub-clause(da) to clause(v) of entry number-3 of Notification No.11/2017-Central Tax(Rate) which reads as follows.

“(da) Low-cost houses upto 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 30th March, 2017.”

3. They have stated that through above amendment, effective rate of GST has been reduced from 18% (9% CGST + 9% SGST and further deduction of 1/3rd of total amount charged towards value of land making effective total rate of 12% on total amount charged including cost of land) to 12% (6% CGST + 6% SGST and further deduction of 1/3rd of total amount charged towards value of land making effective total rate of 8% on total amount charged including cost of land) for low cost housing as stated in above entry; that ‘affordable housing’ is given infrastructure status through notification from F.No.13/6/2009-INF dated 30.03.2017 wherein *affordable housing is defined as a housing project using at least 50% of the Flow Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters* and ‘Carpet Area’ is defined as – *“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.”* Thus, definition of affordable housing is dependent on carpet area and definition of carpet area is dependent on the RERA Act, 2016.

4. The applicant has further submitted that Sector-4 is registered under RERA Act, 2016 as three independent projects/phases: (a) Amba Township-Sector 4 Part-A – Phase-1 (b) Amba Township-Sector 4 Part A – Phase-2 (c) Amba Township – Sector 4 Part-B and have submitted 3 registration certificates issued under RERA Act, 2016; that Part-B of Sector-4 is a separate project in itself and also separately registered under RERA Act, 2016 as a “Real Estate Project”; that ‘Part B’ is independent of other projects within its Phase and Township and has its separate facilities like parking, foyer, electricity connection, water supply etc. The applicant has also submitted a copy of certificate of a Chartered Accountant issued in FORM 3 as required under RERA Act, 2016 showing carpet area of each individual unit in project ‘Part B’.

5. The applicant has submitted his view point and submissions on issues on which the advance ruling is sought which is as under:

- (1) Benefit of reduced rate of tax is provided under sub-clause (da) to clause (v) of entry no.3 of Notification No.11/2017-Central Tax(Rate) based on the condition that an affordable housing project has been given an infrastructure status as provided under the Notification of the Government of India, in Ministry of Finance, Department of Economic Affairs vide F.No.13/6/2009-INF, dated 30.03.2017 and as per the said notification, a housing project using 50% or more of the FAR/FSI for dwelling units with carpet area upto 60 square metres has been given infrastructure status.
- (2) As the applicant is developing a township, which is a continuous process and not limited to one or two phases of development, entire area of a township cannot be considered for arriving at 50% or more FSI as required under the Notification dated 30.03.2017;; that a project is complete project in itself which is independent of other projects (within township) which are either completed before, during or after completion of Part B of Sector 4; that as township is a continuous development process, it is not having any fixed total area under development and hence it could not have a fixed FSI as required under the notification dated 30.03.2017; that a township is different from a standalone housing project which is undertaken for a particular class of people and shall comprise of houses for all sections of the society; that a township is an integration of various projects for different types of people of society i.e. higher, middle and weaker class of people; thus, Part-B is independent project for affordable housing and total FSI of Part-B should be considered as denominator to arrive at 50% as required under notification dated 30.03.2017.
- (3) The term ‘housing project’ is not defined under the Notification dated 30.03.2017 based on which reduced rate of 8% is applicable; that for real estate projects, terms defined under the RERA Act, 2016 can be useful for interpretation; that definition of Carpet Area is also borrowed in the said notification from RERA Act, 2016 which also implies that the term ‘project’ may also

be borrowed from RERA Act; that in terms of section 3 of the RERA Act, 2016, every real estate project is required to be registered under the said Act, every phase shall be considered as a standalone real estate project and shall be separately registered; thus, even for RERA Act, 2016, Part-B is a standalone housing project and required to be registered separately; that as notification dated 30.03.2017 is dependent on carpet area as defined under the RERA Act, 2016 it should be considered as denominator to arrive at 50% as required under the notification dated 30.03.2017.

- (4) As total FSI for the project is 35046.74 square metre and out of that 25961.33 square metres of FSI is used for units having carpet area of not more than 60 square metres, 74.08% of FSI of total Part B of Sector 4 is used for affordable housing and hence Entry No.3(v)(da) is applicable to the appellant.
- (5) In view of the above facts, it appears to the applicant that the benefit of reduced rate of GST as provided under entry Number-3(v)(da) of the Notification No.11/2017-Central Tax (Rate) as amended by Notification No:01/2018-Central Tax (Rate) dated 25.01.2018, is available to the applicant for houses constructed with a carpet area of not more than 60 square metres per house in Project Part-B of Sector-4 and thus effective rate of GST applicable should be 12% (6% CGST + 6% SGST) and where further deduction of 1/3rd of total amount charged towards value of land is allowable, effective total tax rate of 8% on total amount charged including cost of land will be applicable for low cost housing as stated in above entry.

6. The applicant has put the following question for advance ruling in their application:-

“Whether, under given facts and circumstances, is benefit of reduced rate as provided under Entry Number 3(v)(da) of the Notification No.11/2017-Central Tax (Rate) as amended by Notification No.01/2018-Central Tax (Rate) dated 25.01.2018, available to the applicant for houses constructed with a carpet area of 60 square metres per house?”

DISCUSSION & FINDINGS

7. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. During the personal hearing held on 19.03.2020, Shri PunitPrajapati and Shri Vishal Sayani appeared on behalf of the applicant. During the course of hearing, they stated that there are three phases in the project out of which the applicant has applied for ruling in respect of Part-B of Sector-4 for which they have received a different RERA registration RAA01040/181217; that however, the land on which construction is being done in respect of Sector-4, which includes Part-A and Part-B has common land, common facilities and common entrance; that they have received common permission for entire land housing Part-A and Part-B but for Stage ‘C’ and ‘D’ exclusively. Part ‘A’ consists of 9 buildings and Part ‘B’ consists of 3 buildings; that Part ‘A’ and Part ‘B’ do not qualify under ‘affordable housing’; that the basic question raised by the applicant settles down to question whether project should be read as Part ‘B’ standalone or should it be defined in terms of entire Sector-4 having common land; they requested that Part ‘B’ should be taken as individual project since it is separate project under RERA and definition of Carpet area under the Act depends upon RERA Act; that the undivided share of land in the project is being determined in terms of Sector-4 and not merely on Stage ‘C’ and ‘D’ i.e. Part-B of the project.

8. The issue involved in this case pertains to applicability of benefit of Entry No.3(v)(da) of the Notification no. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No.01/2018-Central Tax (Rate) dated 25.01.2018 in respect of low-cost houses constructed by the applicant with 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 30.03.2017.

9. Relevant portion of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 (as amended) reads as under:

“3.v.(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;”;

10. Therefore, in order to be eligible for the benefit of the aforementioned notification, the work should be for construction of 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.(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 sq.meters).

10.1 As regards condition mentioned above, we need to define the terms – housing project, affordable housing and carpet area.

- (a) Definition of a ‘housing project’ is not available under the CGST Act, 2017 or in the notification dated 30.03.2017 of the Department of Economic affairs, hence it would have to be construed in generic terms. A ‘housing project’ would mean the construction/development of a building or buildings consisting of apartments, development of land into flats or apartments and selling of the same for a consideration consisting of stair cases, lifts, common basements, terraces, parks, play areas, common water tanks and have common land, common facilities and common entrance. Therefore, in generic terms, a housing project would necessarily be a project having common facilities, common area, common entrance, common land etc.
- (b) Affordable housing has been defined as a housing project using at least 50% of FAR/FSI for dwelling units with carpet area or not more than 60 sq.meters) in Notification No.13/06/2009 dated 30.03.2017 of the Government of India, Ministry of Finance, Department of Economic Affairs.
- (c) Carpet area means the net usable area of the apartment which includes the thickness of the internal wall but excludes balcony or terrace. Technically, the distance between inner walls of an apartment is carpet area.

10.2. The arguments put forward by the applicant to support his submission as well as our view point/opinion is discussed point-wise as under:

- (a) The applicant has submitted that benefit of reduced rate of tax is provided under sub-clause (da) to clause (v) of entry no.3 of Notification No.11/2017-Central Tax(Rate) based on the condition that an affordable housing project has been given an infrastructure status as provided under the Notification of the Government of India, in Ministry of Finance, Department of Economic Affairs vide F.No.13/6/2009-INF, dated 30.03.2017 and as per the said notification, a housing project using 50% or more of the FAR/FSI for dwelling units with carpet area upto 60 square metres has been given infrastructure status. In this regard, we find it necessary to define a ‘housing project’. As discussed earlier,a ‘housing project’ would mean the construction/development of a building or buildings consisting of apartments, development of land into flats or apartments and selling of the same for a consideration and could also consist of stair cases, lifts, common basements, terraces, parks, play areas, common water tanks and other common facilities, common area, common land and common entrance and therefore, in generic terms, a housing project can be defined as a project having common facilities, common entrance, common area, common land etc. The benefit of the said notification would be available to the applicant subject to the condition that he builds a housing project using 50% or more of the FAR/FSI for dwelling units with carpet area upto 60 square metres.
- (b) The applicant has also submitted that he is developing a township, which is a continuous process and not limited to one or two phases of development; that entire area of a township cannot be considered for arriving at 50% or more FSI as required under the Notification dated 30.03.2017;; that a project is complete project in itself which is independent of other projects (within township) which are either completed before, during or after completion of Part B of Sector 4; that as township is a continuous development process, it is not having any fixed total area under development and hence it could not have a fixed FSI as required under the notification dated 30.03.2017; that a township is different from a standalone housing project

which is undertaken for a particular class of people and shall comprise of houses for all sections of the society; that a township is an integration of various projects for different types of people of society i.e. higher, middle and weaker class of people; thus, Part-B is independent project for affordable housing and total FSI of Part-B should be considered as denominator to arrive at 50% as required under notification dated 30.03.2017. In this regard, it is to mention that the representatives of the applicant have submitted during the course of personal hearing that they have received common permission for entire land housing Part-A and Part-B of Sector-4 and that the entire Sector-4 (of Amba township) is having a common entrance, common facilities, common area common land etc. and it includes Part-A (Phase-I and II) and Part-B. The applicant has submitted a photocopy of the said permission received by them which contains the 'Layout plan showing proposed residential building in Block No.444/260.P.(Sub Plot No.R1) at Adalaj Taluka and District-Gandhinagar issued by the Junior Town Planner, Gandhinagar Urban Development Authority on 16.09.2016. The said plan shows the layout of all the proposed buildings of Part-A and Part-B as well as the internal roads, common areas etc. Further, Table-A and Table-B therein contains exclusive details such as the number of units to be constructed in each building, their built-up area, total built-up area etc. Therefore, we are of the opinion that when a common permission has been obtained from the concerned authorities for the entire township containing of Part-A and Part-B which is also having a common entrance, common facilities, common land etc., then the entire township has to be considered as a single housing project. Thus, for a housing project to be considered a standalone housing project, the basic condition would be to have a common entrance, common facilities, common area, common land, etc. In the instant case, Part-B of Sector-4 (of Amba Township) would qualify to be a housing project if and only if it fulfils the basic conditions mentioned above. The representatives of the applicant have themselves mentioned during the course of personal hearing that Part-B is a part of the Sector-4 of the township and shares a common entrance, common facilities and common land with Part-A, which is also a part of Sector-4 of the township. Under the circumstances, it would not be possible to consider Part-B of Sector-4 (of Amba township) as a standalone independent housing project. The applicant during the personal hearing also submitted that the undivided share of land in the project is being determined in terms of Sector-4 and not merely on Stage 'C' and 'D' i.e. Part-B of the project. Therefore, it is very clear that the applicant has himself regarded the entire Sector-4 as a holistic, comprehensive, single housing project and the units in the building being sold as part of this housing project. The applicant himself has been selling the entire project as one and giving undivided share to all buyers irrespective of whether unit is sold in Part-A or Part-B of the project. Therefore, the buyer of unit in Part-A of the project is equitable owner of common areas, common entrance, common facilities and common land as is the buyer of unit in Part-B. Therefore, the submissions of the applicants are self-contradictory in itself since on one hand the applicant has been obtaining various permissions from authorities for entire project comprehensively and even selling the units as part of one project with common facilities and undivided share of land in entire project yet on the other hand claiming a part of the housing project as separable project in order to obtain the exemption. It is seen from the submission made by the applicant that 74.08% of the FSI of Part-B of the township of Sector-4 has been used for constructing units with a carpet area of upto 60 sq meters. However, since Part-B is not an independent/standalone housing project as discussed above, total FSI of Part-B cannot be considered as denominator to arrive at 50% as required under notification dated 30.03.2017 of the Department of Economic affairs, Ministry of Finance to determine the applicability of the benefit of Sr.No.3(v)(da) of Notification No.11/2017-Central Tax(Rate) dated 28.06.2017.

- (c) The applicant has further submitted that the term 'housing project' is not defined under the Notification based on which reduced rate of 8% is applicable; that for real estate projects, terms defined under the RERA Act, 2016 can be useful for interpretation; that definition of Carpet Area is also borrowed in the said notification from RERA Act, 2016 which also implies that the term 'project' may also be borrowed from RERA Act; that in terms of section 3 of the RERA Act, 2016, every real estate project is required to be registered under the said Act, every phase shall be considered as a standalone real estate project and shall be separately registered; thus, even for RERA Act, 2016, Part-B is a standalone housing project and required to be registered separately; that as notification dated 30.03.2017 is dependent on carpet area as defined under the RERA Act, 2016 it should be considered as denominator to arrive at 50% as required under the notification dated 30.03.2017. In this context, we have to point out that it would be irrelevant to discuss the definition of 'real estate project' or the reasons or

circumstances under which each phase of a project is considered as a different project by the RERA Act or to discuss the RERA Act in toto or how it could be applicable in the instant case since we are discussing the applicability of Sr.No.3(v)(da) of Notification No.11/2017-Central tax (Rate) under the provisions of the CGST Act, 2017. Further, we also do not feel the need to borrow the definition of 'project' from the definition of 'real estate project' (as defined in the RERA Act) and make it applicable to a 'housing project' as contended by the applicant. We distinguish the term 'housing' as defined in RERA act from the term 'housing project' as provided in the Notification No.11/2017-Central Tax(Rate) dated 28.06.2017. As discussed earlier, the representatives of the applicants, themselves, have stated during the course of personal hearing that they have received common permission for entire land housing Part-A and Part-B of Sector-4 from Gandhinagar Urban Development Authority and that the entire Sector-4 (of Amba township) is having a common entrance, common facilities, common land etc. which includes Part-A (Phase-I and II) and Part-B. They also stated that all units are being sold in entire project with common undivided share of land establishing that owner of units in Part-A and Part-B have common ownership of undivided share of land. Under the circumstances, it would not be possible to consider Part-B of Sector-4 (of Amba township) as a standalone housing project. It is also seen from the submission made by the applicant that 74.08% of the FSI of Part-B of the township of Sector-4 has been used for constructing units with a carpet area of upto 60 sq meters which cannot be denied. However, since Part-B of Sector-4 of township cannot be considered as a standalone housing project and since 50% of FAR/FSI of the entire housing project of Sector-4 (of Amba township) which comprises of Part-A and Part-B has not been used for construction of dwelling units with carpet area of not more than 60 sq.meters (as per the requirement in Notification No.13/06/2009 dated 30.03.2017 of the Government of India, Ministry of Finance, Department of Economic Affairs), the said housing project cannot be considered as an '**affordable housing project**' in terms of the said notification.

- (d) The applicant has also submitted that as total FSI for the project is 35046.74 square metre and out of that 25961.33 square metres of FSI is used for units having carpet area of not more than 60 square metres, 74.08% of FSI of total Part B of Sector 4 is used for affordable housing and hence Entry No.3(v)(da) is applicable to the appellant. In this regard, it is observed from the submission made by the applicant that 74.08% of the FSI of Part-B of the township of Sector-4 has been used for constructing units with a carpet area of upto 60 sq meters. However, since Part-B of Sector-4 of township cannot be considered as a standalone housing project (for reasons discussed earlier) and since 50% of FAR/FSI of the entire housing project of Sector-4 (of Amba township) comprising of Part-A and Part-B has not been used for construction of dwelling units with carpet area of not more than 60 sq.meters, the benefit of Entry No.3(v)(da) of Notification No:11/2017-Central Tax(Rate) dated 28.06.2017 is not applicable to the applicant.
- (e) The applicant has concluded by stating that in view of the above facts, it appears that the benefit of reduced rate of GST as provided under entry Number-3(v)(da) of the Notification No.11/2017-Central Tax (Rate) as amended by Notification No:01/2018-Central Tax (Rate) dated 25.01.2018, is available to the applicant for houses constructed with a carpet area of not more than 60 square metres per house in Project Part-B of Sector-4 and thus effective rate of GST applicable should be 12% (6% CGST + 6% SGST) and where further deduction of 1/3rd of total amount charged towards value of land is allowable, effective total tax rate of 8% on total amount charged including cost of land will be applicable for low cost housing as stated in above entry. In this regard, we would once again reiterate that since Part-B of Sector-4 of township cannot be considered as a standalone housing project since it shares common land, common facilities and common entrance with Part-A of Sector-4 of the township and since 50% of FAR/FSI of the entire housing project of Sector-4 (of Amba townshippvt.ltd.) comprising of Part-A and Part-B has not been used for construction of dwelling units with carpet area of not more than 60 sq.meters (as per the requirement in Notification No.13/06/2009 dated 30.03.2017 of the Government of India, Ministry of Finance, Department of Economic Affairs), the said housing project cannot be considered as an '**affordable housing project**'. The applicant, therefore, does not fulfil the conditions as envisaged in Entry No.3(v)(da) of Notification No:11/2017-Central Tax(Rate) dated 28.06.2017 (as amended by Notification No.01/2018-Central Tax (Rate) dated 25.01.2018), hence the benefit of the said notification is not applicable to them.

10.3. In view of the above discussions, it can be concluded that the applicant has not fulfilled the condition mentioned at Para-10 above and therefore the benefit of Entry No.3(v)(da) of Notification No:11/2017-Central Tax(Rate) dated 28.06.2017 (as amended by Notification No.01/2018-Central Tax (Rate) dated 25.01.2018)is not applicable to them.

11. In view of the foregoing, we rule as under –

R U L I N G

The applicant M/s. Amba township pvt.ltd. is not eligible for the benefit of reduced rate as provided under Entry Number 3(v)(da) of the Notification No.11/2017-Central Tax (Rate) as amended by Notification No.01/2018-Central Tax (Rate) dated 25.01.2018, available for houses constructed with a carpet area of 60 square metres per house”for the reasons mentioned hereinabove.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 19.05.2020.