

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/26/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/15)

Date: 02.07.2020

Name and address of the applicant	:	M/s V 2 Realty, 143,144 and 145, V2 Signature –A, Daman Road, Chala, Vapi, Gujarat.
GSTIN/ User Id of the applicant	:	24AAJFV5088L1ZJ
Date of application	:	26.02.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	a)Classification of goods and/or services or both. c) Determination of the liability to pay tax on any goods or services or both: d) Admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	:	18.06.2020 (Through video Conferencing)
Present for the applicant	:	Shri. Nirav Shah

M/s. V 2 Realty, 143,144 and 145, V2 Signature –A, Daman Road, Chala, Vapi, Gujarat having a GSTIN : 24AAJFV5088L1ZJ, 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. The applicant submitted that they are engaged in construction business. Their project V2 Signature is going on at Chala, Vapi. Ground and First Floor in all wings of their project are commercial shops. Remaining floors are residential flats. Further, submitted that they have received BUP (Completion Certificate) for commercial shops i.e. Ground and First floors on 26.09.2017.

Therefore, they are not liable to pay GST from 26.09.2017 on new commercial bookings. There is also first occupancy in the building from 26.12.2017.

3. Accordingly, the applicant sought Advance Ruling on the following questions:

I Whether selling of residential flats after date of completion certificate of commercial shops or after first occupancy in building is exempt supply?

II Manner of reversal of ITC on expenses incurred up to date of completion certificate shops.

III Manner of claiming ITC on expenses incurred after date of completion certificate of commercial shops.

Applicant's Interpretation of Law and/or fact

4. The applicant submitted that in terms of para 5(b) of Schedule II to the CGST Act, 2017, 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 shall be treated as supply of services. As per their interpretation residential flats are also exempt from GST from 26.09.2017.

Personal Hearing

5. Personal hearing in the matter was held on 18-06-2020. Shri Nirav Shah, Practitioner appeared on behalf of the applicant and re-iterated the submission made in the Application.

Discussion and Finding

6. We have considered the submissions made by the Applicant in their application for advance ruling. 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.

7. The applicant has submitted that they are engaged in construction business. Their project V2 Signature is going on at Chala, Vapi and in the said project, Ground and First Floor in all wings of their projects are commercial shops. Remaining floors are residential flats. The applicant submitted that they have received BUP (Completion Certificate) for commercial shops i.e. Ground and First floors on 26.09.2017. There is also first occupancy in the building from 26.12.2017. Accordingly, the applicant sought the Advance Ruling on the following question:

I Whether selling of residential flats after date of completion certificate of commercial shops or after first occupancy in building is exempt supply?

II Manner of reversal of ITC on expenses incurred up to date of completion certificate shops.

III Manner of claiming ITC on expenses incurred after date of completion certificate of commercial shops.

8. To answer the first question we look into the Para 5(b) of Schedule II to the CGST Act, 2017. Para 5(b) of CGST Act, 2017 is read as under,

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 shall be treated as supply of services.

8.1 The main condition in Para 5(b) of schedule-II is that a complex, building, civil structure or a part there of including a complex or building intended for sale to a buyer, wholly or partly where entire consideration is received after the issuance of Completion certificate by the competent authority or after its occupation, whichever is earlier shall not be treated as supply under said Para 5(b) of Schedule-II to CGST Act, 2017. Accordingly, we have gone through the submission of the applicant wherein stated that they have received BUP (Completion Certificate) for commercial shops i.e. Ground and First floors on 26.09.2017 and there is also first occupancy in

the building from 26.12.2017. The applicant has submitted the copy of Building Used Permission No. TP/Regi2/Vashi/2017-18 dated 26.09.2017 “GRANT OF PART BUILDING USE PERMISSION” issued by Chief Officer, Vapi Area Development Authority. In the said permission, it is mentioned “Total FSI Area: 4820.38 Sq. Mt. (Ground and First Floor)”. This clearly shows that they have received the BU Permission for the Ground and First Floor i.e. only for commercial shops of building. The applicant has not submitted any documents, by which it can be established that they have received the Building Used Permission in respect of Residential Flats as such said aforesaid B. U. Permission is Part Building used permission and not for entire building. The applicant has submitted that, “there is also first occupancy in the building from 26.12.2017” but applicant has not submitted any evidence/document by which it can be seen that whether first occupancy is in commercial shop or Residential Flat. Further, during the personal hearing, the applicant himself stated that they didn’t receive Completion Certificate in respect of their residential building (units). They have received only partial Building Use permission in respect of commercial units but not for residential units.

8.2 Therefore, in view of the submission and documents, it is clarified that applicant has received part Building Used Permission for the commercial Shops of Ground and First Floor and not for the Residential Flat. Accordingly, we hold that since no Building used permission has been issued by the competent authority in respect of residential flat and since no residential unit has been occupied by prospective buyer, supply of residential flats shall be treated as supply of service in terms Para 5(b) of Schedule-II of CGST Act, 2017.

9. With regard to second question, it is to rule that the manner of reversal of ITC on expenses incurred up to date of completion certificate shops is provided in Rule 42 and Rule 43 of CGST Act, 2017 read with Notification No. 16/2019-CT dated 29.03.2019.

10. The third question is regarding the manner of claiming ITC on expenses incurred after date of completion certificate of commercial shops. In this regard manner of claiming Input Tax Credit have been provided under Section 16 and 17 of CGST Act, 2017.

11. In view of the foregoing we rule as follows:

RULING

Question 1. Whether selling of residential flats after date of completion certificate of commercial shops or after first occupancy in building is exempt supply?

Ans. Negative.

Question 2. Manner of reversal of ITC on expenses incurred upto date of completion certificate shops.

Answer : The manner of reversal of ITC on expenses incurred up to date of completion certificate shops has been provided under Sections 16 and 17 of CGST Act, 2017 read with Rules 42 and 43 of CGST Rules, 2017 read with Notification No. 16/2019-CT dated 29.03.2019.

Question 3. Manner of claiming ITC on expenses incurred after date of completion certificate of commercial shops.

Answer: The manner of claiming Input Tax Credit has been provided under Sections 16 and 17 of CGST Act, 2017 read with Rules 42 and 43 of CGST Rules, 2017 read with Notification No. 16/2019-CT dated 29.03.2019.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 02.07.2020.