



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)
ADVANCE RULING NO.HAR/HAAR/R/2019-20/13



(In Application No.: 13/2019-20, dated 26.08.2019)

Name & Address of the Applicant	:	M/s Nani Resorts and Floriculture Pvt. Ltd., Building No. 80, First Floor, Sector-44, Gurugram, Haryana.
GSTIN of the Applicant	:	06AABCN4603L1ZK
Date of Application	:	26.08.2019
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Clause(b)- applicability of a notification issued under the provisions of this Act.
Date of Personal Hearing	:	15.11.2019
Present for the Applicant	:	Sh. K.K Bomb (Advocate) and Smt. P. Manchanda (Advocate).

Memo No.: 1053

Dated: 28.08.2020

1. Statement of Facts:

- 1.1 The applicant company M/s Nani Resorts and floriculture Pvt. Ltd. is registered under HGST Act & CGST Act holding GSTIN: 06AABCN4603L1ZK. The company is a developer & is into construction business. It is setting up an Affordable Group Housing Colony in District Gurugram under Affordable Housing Policy, 2013.

2. Brief Facts:

- 2.1 The brief facts of the case are that M/s Nani Resorts and Floriculture Pvt. Ltd., Gurugram is engaged in development of commercial properties and had launched an Affordable Housing Project on 01.12.2015 under the scheme approved by the Government of Haryana. For the construction of Affordable Group Housing Colony, the applicant was granted **License No.11 of 2014 dated 10.06.2014** by the Town and Country Planning Department, Haryana, on the land measuring **5.00** acres in the revenue estate of Village Dhankot, Sector 102, Gurugram. The building plan in respect of License No.11 dated 10.06.2014 for construction of affordable flats was approved on 26.03.2015. The applicant started construction of flats on the land measuring **5.00 acre before 01.04.2019 and the bookings in respect of flats over this land were also made in the pre-GST period.**



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2.2 Later on, the applicant submitted an application to the Director General, Town & Country Planning, Haryana, on **03.02.2018** for the grant of license for setting up an Affordable Groups Housing Colony over the Land measuring **4.1125** Acre in the Revenue Estate of Village Dhankot, Sector 102, Gurugram. A **separate License bearing No.82 of 2018** for the construction of flats on the land measuring 4.36875 Acre was granted by the Town & Country Planning Department on **06.12.2018**. The building plan in respect of the second project was approved on **27.05.2019**. On the basis of License No.82 of 2018, the applicant was granted license bearing **No.GGM/339/339/71/2019/33 dated 27.05.2019 by the RERA** for construction of 595 flats in six towers.

3. Sequence of events as per the applicant:

Date	Particulars in relation to First License
09.12.2013	Letter of intent for grant of License for setting up of Affordable Group Housing Colony on the land measuring 5.00 acres falling in the revenue estate of Vill Dhankot, Sector 102, Gurgaon was proposed to be approved by Directorate of Town & Country Planning, Haryana (ref Memo No. LC 2983-JE (VA) 2013 60019)
10.06.2014	License (No. 11 of 2014) for setting up of Affordable Group Housing Colony on the land measuring 5.00 acres granted by Directorate of Town & Country Planning, Haryana (ref Memo No. LC 2983-JE (VA) 2014/12391) valid upto 09.06.2019
26.03.2015	Building Plan was approved (ref Memo No. ZP 992/AD RA 2015/4864-68)



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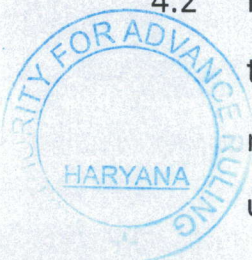
Provisions of Law/Notifications on the subject matter:

			Rate of Tax
28.06.2017	Notification No. 11/2017-Central Tax (Rate)	Notification No. 46/ST2 Dated 30.06.17 HGST	9% +9% with input + land abatement
22.08.2017	Notification No. 20/2017-Central Tax (Rate) (Amendment to Notification No. 11/2017)	Notification No. 74/ST2 Dated 22.08.17 HGST (Amendment to Notification No. 46/ST2)	6% +6% with input + land abatement
29.03.2019	Notification No. 3/2019 & Notification No. 4/2019-Central Tax (Rate) (Amendment to Notification No. 11/2017) Amendment to No. 11/2017-Central Tax (Rate), date the 28 th June, 2017	Notification No. 45/GST 2 & 46/GST 2, Dated 31.03.19 (Amendment to Notification No. 46/ST2)	0.5% +0.5% without input

4. Question for Advance Ruling:

4.1 In view of the given facts & provisions of law, notified from time to time, whether the applicant taxpayer is to pay tax @ 6%+6% (after availing land abatement= 4%+4%) availing the input tax & as provided under notification 11 & 17 of 2017 under CGST Act & notification 46 & 74 of 2017 under HGST Act.

4.2 In view of the given facts & provisions of law, notified from time to time, the applicant taxpayer is to pay tax @ 0.5%+0.5% as provided under notification 3 & 4 of 2019 under CGST Act & notification 45 & 46 of 2019 under HGST Act.



5. **Discussion and findings:**

5.1 The applicant was heard at length, through its representatives Advocate K.K Bomb and P. Manchanda. The comments of the Jurisdictional Officer were also sought, which have been received and are placed on file.

5.2 Before deciding the issue at hand, it is necessary to discuss the applicable provisions of law.

- As per Notification no. 03/2019 – Central Tax (Rate), some of the explanations were inserted, namely:

➤ **“Project”** - shall mean a Real Estate Project or a Residential Real Estate Project;

➤ **“Real Estate Project (REP)”** - shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

➤ **“Affordable residential apartment”** - shall mean a residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project 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 number 3, as the case may be, 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.

➤ **“ongoing project”** shall mean a project **which meets all** the following conditions, namely-

(a) commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019:-

(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



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- (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.
- (b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub- clause (a) above that construction of the project has started on or before the 31st March, 2019;
- (c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;
- (d) apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

Explanation:- For the purpose of sub- clause (a) and (b) above, construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.

- "competent authority" as mentioned in definition of "commencement certificate" and "residential apartment", means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;
- "commencement certificate" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, **as per the sanctioned plan;**
- "Real Estate Regulatory Authority" shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government;



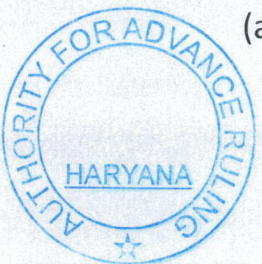
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It is also important to refer to relevant provisions of Real Estate (Regulation and Development) Act, 2016.

- Section 2 (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;
- Section 2 (zq) "sanctioned plan" means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project;
- Section 3. (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, **without registering the real estate project with the Real Estate Regulatory Authority established under this Act:**

On the basis of the above provisions of the law, the project shall be covered under the **ongoing category**, if the following parameters are fully met:

- (a) **commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019** and it is certified by any of the following that construction of the project has started on or before 31st March, 2019:-



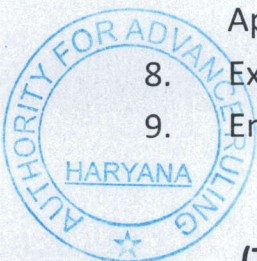
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- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
 - (ii) a chartered engineer registered with the Institution of Engineers (India); or
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.
- (b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub- clause (a) above that construction of the project has started on or before the 31st March, 2019;
- (c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;
- (d) apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

As per the information gathered by the Jurisdictional officer the real estate project for the land measuring 4.1125 located at Sector 102 of GMUC, Village Dhankot was registered with the Haryana Real Estate Regulation Authority, Gurgaon only on 11/06/2019 on the basis of following self-declaration filed by the company:

1.	Name/Registered Address of the Co:	Nani Resorts & Floriculture Pvt. Ltd.
2.	Location & Address of the Project	ROF Aalayas
3.	Fee(s) Paid	Rs. 4,00,000/- on 03.04.2019 Rs. 4,01,518/- on 20.05.2019 Rs. 5,15,461/- on 20.05.2019
4.	License No. granted by the Dept. of - Town & Country planning.	82 of 2018
5.	Date of sanction of the project	05.04.2019
6.	Likely date of starting the construction	05.07.2019
7.	Expenditure incurred till the date of Application	NIL
8.	Expenditure to be made in each qtr.	April to June 2019 – Nil
9.	Environment clearance	Applied on 19/03/2019, but not yet received

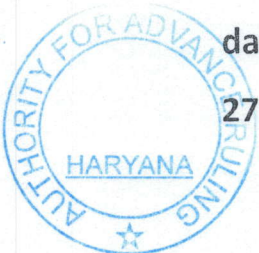
(The related documents are placed on file).



5.3 On the basis of above self-declaration by the company, all the events i.e. Sanction of building plans, declaration of likely date of start of construction & registration under Haryana Real Estate Regulation Authority etc. occurred after 31/03/2019. Further, the company had not got the Environment Clearance certificate till the date of grant of RERA certificate, which has to be obtained, before start of construction activities of the project. As a confirmation of non-start of Construction activities, the company has declared that they had not incurred any expenditure on the project. This fact is clear from the declaration of the applicant before the RERA that expenditure incurred till the date of declaration was NIL.

5.4 In view of the above facts, it is clear that a separate license bearing No.82 of 2018 dated 06.12.2018 and RERA License No.GGM/339/339/71/2019/33 dated 27.05.2019 for construction of residential apartments over the land measuring 4.36875 Acres had been obtained by the Applicant on which construction commenced only after 01.04.2019. So, this project being developed by the company does not fall under the definition of "ongoing project". Rather this project falls under the category of a project "other than an ongoing project as provided in the notification no. 03/2019 – Central Tax (Rate)" and the rate of tax applicable on flats over the land measuring 4.36875 Acre is applicable @ 0.5% + 0.5%(Without Input Tax).

5.5 While obtaining license from the RERA, the applicant itself declared the likely date of starting the construction work on an land measuring 4.36875 Acre as **05.07.2019**. Moreover, the bookings of flats over an land measuring 4.36875 acres were made after **01.04.2019**. So, it is clear that the construction over the land measuring 4.36875 was started after 1.04.2019. Since the construction of affordable residential apartments over the land measuring 4.36875 Acre with respect to **separate License No.82 of 2018 dated 06.12.2018 and RERA License No.GGM/339/339/71/2019/33 dated 27.05.2019** commenced after 01.04.2019, so, this is not an ongoing project.



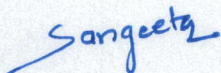
6. Ruling:


- 6.1 The project with respect to License No.11 dated 10.06.2014 is an ongoing project as the construction was started on the land measuring 5.00 Acre before 31.03.2019. Therefore, the rate of tax applicable in respect of flat over land measuring 5.00 Acre is 12%(With Input + Land Abatement) in view of the Notification No.20/2017-Central Tax(Rate) dated 22.08.2017 as the applicant submitted an option to pay GST at old effective rate of 8% and 12% with ITC.
- 6.2 Whereas the project over land measuring 4.1125 Licence No. 82/2018 is not an ongoing project as per the Notification No. 03/2019- CT(Rate). Hence, the applicable rate of tax is 0.5%+0.5% (without Input Tax Credit).

Ordered accordingly.
To be communicated.

20.11.2019
Panchkula.




(Sangeeta Karmakar)
Member CGST


(Madhubala)
Member SGST

Regd. AD/Speed Post
M/s Nani Resorts and Floriculture Pvt. Ltd.,
Building No. 80, First Floor, Sector-44,
Gurugram, Haryana.

Copy to:

1. The Principal Commissioner of Central Goods & Service Tax, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
2. Deputy Excise and Taxation Commissioner (ST), Gurugram (East).
3. Deputy/Assistant Commissioner, CGST, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.

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