

**AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICE TAX  
UTTAR PRADESH  
4, VibhutiKhand, Gomti Nagar, Lucknow-**

**ADVANCE RULING NO. UP ADRG 42 /2024/ DATED 16-01-2024**

**PRESENT:**

- 1. Shri Amit Kumar**  
Joint Commissioner, Central Goods and Service Tax  
Audit Commissionerate, Lucknow .....Member (Central Tax)
  
- 2. Shri Harilal Prajapati**  
Joint Commissioner, State Goods and Service Tax .....Member (State Tax)

1.	Name and address of the Applicant	M/s Savfab Buildtech Private Limited, Plot No. 108, Katori Mill, Loni Road, Mohan Nagar Ghaziabad, U.P.
2.	GSTIN or User ID	09AAOCS7407E2Z2
3.	Date of filing of Form GST ARA-01	10.10.2023( Received on 30.10.2023)
4.	Represented by	CA Anuj Garg
5.	Jurisdictional Authority-Centre	Range-Range-26, Division-DivisionVI Ghaziabad, Commissionerate- Ghaziabad
6.	Jurisdictional Authority-State	Sector- Ghaziabad Sector-12, Range- Ghaziabad (B), Zone- Ghaziabad I, Uttar Pradesh
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes HDFC23090900480919

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017  
& UNDER SECTION 98 (4) OF THE UPGST ACT, 2017**

**M/s Savfab Buildtech Private Limited**, having registered office at Plot No. 108, Katori Mill, Loni Road, Mohan Nagar Ghaziabad, U.P.(hereinafter referred as "the applicant") having GSTIN-09AAOCS7407E2Z2, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of UPGST Act, 2017 read with Rule 104 of the UPGST Rules, 2017 in Form GST ARA-01 (the application form for Advance Ruling), discharging the fee of Rs. 5,000/-each under the CGST Act and the UPGST Act.

The applicant is an Indian company incorporated under Companies Act, 1956 (Now repealed by Companies Act, 2013)and is engaged in developing a group housing project in the name and style of 'Saviour Park' located at Mohan Nagar, Ghaziabad and has obtained GST registration in the state of Uttar Pradesh for the purpose of construction and sale of the group housing project named 'Saviour Park'.



2. The applicant has sought advance ruling in respect of the following questions:

1. Whether selling of residential units in the project Saviour Park after 'deemed completion' or 'first occupation' in that phase (Phase IV) of the project is taxable or exempt Supply.

2. If answer to the above is affirmative, unit sold after which date shall be treated as exempt from GST.

3. The question is about applicable GST rate under the provisions of CGST Act and liability to pay GST, hence is admissible under Section 97(2)(a) of the CGST Act 2017. Further, as per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

4. Statement of relevant facts having a bearing on the question(s) raised:

(a) That Savfab Buildtech Private Limited ('SBPL' or 'the Applicant') is an Indian company incorporated under Companies Act, 1956 (Now repealed by Companies Act, 2013) and is engaged in developing a group housing project in the name and style of 'Saviour Park' located at Mohan Nagar, Ghaziabad.

(b) That the SBPL has obtained GST registration at site address which is in the state of Uttar Pradesh.

(c) That the applicant was charging GST @ the rate of 12% i.e. 6% CGST and 6% SGST (After abatement of 1/3 part on account of land value).

(d) That w.e.f. 01.04.2019 the applicant opt for new regime and start charging GST @ the rate of 5% i.e. 2.5% CGST and 2.5% SGST (After abatement of 1/3 part on account of land value).

(e) That the Applicant is engaged in developing the project 'Saviour Park' having 1150 Units in aggregate. The said project has been divided into 4 phases. First Three Phases has already been completed and delivered to customers. Phase IV is having total 282 units and registered under RERA vide registration number UPRERAPRJ7191. The said phase was constructed and completed in two parts. Part I of Phase IV having 169 units was already completed and delivered. Part II of Phase IV having 113 was under construction and has been completed in April 2023.

(f) That the construction of the 113 units in Phase IV was completed by the applicant in April 2023 and the applicant has also obtained certificates / NOC from various authority required for completion of building structure. NOCs required for completion of building are Fire Safety NOC, Structure stability certificate, lift NOC, Electrical NOC.

(g) That after completion of construction and obtaining necessary NOCs, applicant vide letter dated 11.04.2023 has applied to Ghaziabad Development Authority (hereinafter referred to as 'GDA') for issuance of completion certificate of 113 units in block A1 and A2. Along with the application all required certificates / NOC was also submitted. Copy of letter submitted to GDA is enclosed.

(h) That neither any completion certificate was issued by GDA within next 15 days from the date of submission of letter nor any other intimation was received from GDA regarding issuance / denying completion certificate.

(i) That the applicant vide letter dated 24.04.2023 inform to Uttar Pradesh Real Estate Regulatory Authority (hereinafter referred to as 'UPRERA') that since no intimation was received from GDA within 8 working days, as per RERA order 8208 / UP RERA / 20<sup>th</sup> Meeting / Office Order / 2019-20, the project shall be deemed to be completed. Copy of letter submitted to UP-RERA is enclosed.



(j) After deemed completion, the applicant proceed to give possession of units to its customers and execute the sale deed. The first possession was given on 25.04.2023. Sale Deed of various customers has also been executed and possession has also been given to them. Out of the sale deed executed, copy of three sale deed and possession letter duly acknowledge by customers is enclosed.

(k) That after 15 days, Ghaziabad Development Authority vide letter dated 27.04.2023, received on 02.05.2023, without taking into consideration the construction work, certificates and NOC of various authorities, denied to issue the completion certificate on account of solitary reason of pending dues of GDA in respect of certain development, FAR and other charges. Copy of letter received from GDA is enclosed.

(l) That, charges imposed by GDA was under dispute and applicant had also filed writ petition before the Hon'ble Allahabad High Court in this regard. Hon'ble High Court disposing off the writ has directed to GDA to reassess the charges as per the applicable law. Copy of order passed by the Hon'ble High Court is enclosed.

(m) Some relevant date of first possession, first sale deed and date of deemed completion are as under:

Particular	Date
Date of first possession of unit in Part 2 of Phase IV	25.04.2023
Date of execution of first sale deed in Part 2 of Phase IV	26.07.2023
Date of Deemed completion of Part 2 of Phase IV as per GDA byelaws and RERA order	21.04.2023

(n) That till date sale deed of more than 64 customers has been executed and possession to all those customers has also been given. Those customers have also occupied the units.

(o) That GST on all the units sold before the date of deemed completion has been duly charged and paid to the government. The same has been duly disclosed in GSTR 1 and GSTR 3B of respective period.

5. The applicant has submitted their interpretation of law as under-

The Applicant most respectfully begs to submit the interpretation of law as per the Applicant in relation to the taxability of units sold in the project 'Saviour Park' sold after deemed completion or first occupation.

### 5.1 Legal Provisions of the GST Law:

- Section 2(52) of Central Goods And Services Tax Act, 2017  
*"goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;*

- Section 2(102) of Central Goods And Services Tax Act, 2017  
*"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.*

*Explanation.—For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;*

- Section 7 of the CGST Act manifests as below:



For the purposes of this Act, the expression "supply" includes –

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II

• Section 9(1) of CGST Act states as below

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

• Para 5(b) of Schedule II of Central Goods And Services Tax Act, 2017

The following shall be treated as supply of services, namely:—

(a) .....

(b) 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.

Explanation.—For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(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;

(2) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;

• Para 5 of Schedule III of Central Goods And Services Tax Act, 2017

5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

## 5.2 The units sold in the project 'Saviour Park' after deemed completion or after first occupation is exempt from GST

- A. No GST is leviable on sale of Immovable property
- B. Phase IV in the project is separately registered under RERA and a distinct project
- C. Completion certificate has been deemed approved
- D. First Occupation has been given in the building
- E. Sale deed has been executed and registered with the registrar
- F. Completion Certificate of Architect and Chartered Engineer has been obtained.



#### **A. No GST is leviable on sale of Immovable property**

- As per Section 9 of CGST Act, 2017, tax is levied on supply of goods or services or both except on the supply of alcoholic liquor for human consumption.
- Section 2(52) defines the goods, opening words of which states Goods means any kind of movable property other than money and securities. Thus goods does not include immovable property.
- Thus, immovable property is neither covered under goods. Delving further, it is submitted that schedule III of CGST Act, 2017, which states activities or transactions which shall be treated neither as a supply of goods nor a supply of services, includes Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building. Thus, sale of land and building is neither supply of goods nor supply of services.
- Thus it is beyond doubt that GST is not levied on sale of immovable property. However, as per para 5(b) of Schedule II of CGST Act, 2017, construction of a building intended for sale to a buyer 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, is a supply of service and hence GST is leviable.
- Simply put, sale of any building during its construction before the completion or first occupation is excisable to GST. In other words, if completion certificate is received or first occupation is given in the building, GST shall not be levied.
- The cardinal principle behind these provisions is that once completion certificate of a building is received or occupation of building is given, it becomes immovable property.

#### **B. Phase IV in the project is separately registered under RERA and a distinct project**

- The applicant has started the construction of Phase IV in Jan 2018. In phase IV there was total 282 units. Out of 282 units, 169 was completed in Dec 2022 for which partial NOC was applied with GDA. Remaining 113 units has been completed in April 2023.
- At the outset it is submitted that the Applicant is limiting its submissions to the 113 units which was constructed as Part II of Phase IV of the project Saviour Park which is independent from other Phases and also separately registered under RERA as Phase IV.
- As per FAQ (Part I) Q No. 30(a) and 30(b) issued by CBI&C vide circular F No. 354/32/2019-TRU dated 7-5-2019, in a Single building if projects registered under RERA as separate projects, those shall be treated as distinct projects. The circular is enclosed. Relevant excerpt of the circular is reproduced for easy reference.

30. (a) In case of a single building registered as 2 (two) separate projects under the provisions of RERA viz. 1st to 10th floor as one Project and 11th to 20th floor as another project, whether the Developer can consider the entire building as single ongoing project, since all the three conditions to be complied with for classifying a project as an ongoing project can be satisfied only if the entire building is considered as a single project?

(b) Furthermore, if different towers in a single layout are registered as separate projects under the provisions of RERA but where the approvals are common for all the towers, whether the Developer can consider entire layout as a single Ongoing project ?

(a) Both the projects registered as separate projects under RERA, 2016 shall be treated as distinct projects for the purpose of 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. Both the projects will have to independently satisfy the requirements of the definition of ongoing projects.

(b) No. All the towers registered as different projects under RERA shall be treated as distinct projects. Only such towers registered as distinct projects for which commencement certificate has been issued on or before 31-03-2019, construction has started on or before 31-03-2019 and for which apartments have been booked on or before 31-03-2019 but



### C. Completion certificate has been deemed approved

- The applicant has completed the construction and applied for the completion certificate, after obtaining necessary approvals and NOCs as per the requirement, vide letter dated. 11.04.2023. Copy of letter has been enclosed.
- However, neither any completion certificate was issued nor any intimation in this regard was received from GDA till 21 days. A letter dated 27.04.2023 was received on 02.05.2023 from GDA denying to issue completion certificate due to pending dues of applicant. Copy of letter received from GDA is enclosed.
- It is further submitted that procedure for issuing completion/ occupation certificate is prescribed in Building Byelaws of Ghaziabad Development authority for building construction and development-2008, as amended till date(hereinafter referred to as 'Byelaws'). Chapter 3 of byelaws provides the conditions / necessities of building construction.
- Para 3.1.8 of chapter 3 of Byelaws provides for issuance of completion / occupation certificate. As per the para 3.1.8 of byelaws, after completion of construction work, concerned person shall inform to GDA in form 'A' as per Appendix 6 along with copy of sanctioned MAP in compact Disc (CD). Detailed process of issuance of completion certificate is specified in annexure 2 of Bye laws. Copy of Chapter 3 of Building byelaws of GDA, which prescribed condition for building construction, is enclosed.
- In Annexure 2 of Building byelaws of GDA, detailed procedure of completion certificate has been prescribed. Para 5 of Annexure 2, which prescribed the process of rejection of completion certificate, clearly states within 7 days from the date of receiving application for completion certificate, Vice Chairman or any officer authorized by him shall examine the construction and accept, or in case of construction work is found not in accordance with the approved map shall reject the application and inform to applicant within 8 working days along with modification required. Completion shall be deemed approved in case of it is not done. Copy of Annexure 2 of Building byelaws of GDA, which prescribed the process of completion certificate, is enclosed. For ready reference relevant text of para 5 of Annexure 2 of building bye laws of GDA is reproduced below:

5. पूर्णता प्रमाण-पत्र अस्वीकार करना
- पूर्णता प्रमाण-पत्र हेतु आवेदन प्राप्त होने के अधिकतम सात कार्य-दिवस में जाँच/परीक्षण कर स्वीकृत अथवा शमनित मानचित्र के अनुरूप मौके पर विकास/निर्माण न पाए जाने की स्थिति में उपाध्यक्ष अथवा उसके द्वारा प्राधिकृत अधिकारी द्वारा पूर्णता प्रमाण पत्र के आवेदन को अस्वीकार करते हुए अपेक्षित संशोधनों सहित आवेदक को आवेदन करने के 08 कार्य-दिवस में सूचित कर दिया जायेगा। ऐसा न करने की दशा में प्राधिकरण द्वारा पूर्णता प्रमाण पत्र स्वीकृत किया (डीम्ड एप्रूव्ड) माना जायेगा।

- The above amendment was made in the Byelaws of GDA vide Government order NO.:1241/8-3-17-34Misc./2008 dated 31.10.2017. The said amendment was made in byelaws for implementation of Business Reform Action Plan 2017 under AMRUT Scheme and Ease of Doing Business. Copy of Government order is enclosed.
- Delving further, it is submitted that UP RERA, which is a state regulatory authority of Real estate, vide order no. 8208/UPRERA/20<sup>th</sup>Meeting/office order/2019-20 dated 16.09.2019 also clearly states that if promoter (applicant in the present case) has applied for completion certificate before competent authority, along with electrical safety certificate, fire safety certificate, structural engineer certificate, and lift safety certificate, and competent authority has not intimated the rejection of application within 8 days along with required modifications, it shall be deemed approved by competent authority. Copy of RERA order is enclosed. Relevant portion of said order is reproduced herewith for ready reference:



अतः आवंटियों के हितों के संरक्षण तथा रेरा अधिनियम एवं नियमावली में आवंटियों को उन्हें आवंटित इकाईयों का कब्जा सुलभ करवाने के उद्देश्यों के पूर्ति हेतु उ.प्र. भू-सम्पदा विनियामक प्राधिकरण द्वारा दिनांक 04.09.2019 को आयोजित प्राधिकरण की बैठक में सम्यक विचारोपरान्त निम्नवत निर्णय लिया गया :-

1- यदि प्रोमोटर द्वारा विद्युत आपूर्ति, जलापूर्ति, सीवरेज निस्तारण, जल निकासी तथा आन्तरिक मार्गों से सम्बन्धित कार्यों को पूर्ण करके 1- इलेक्ट्रिकल सेफ्टी सर्टीफिकेट, 2-फायर सेफ्टी सर्टीफिकेट, 3-स्ट्रक्चरल इंजीनियर सर्टीफिकेट तथा 4-लिफ्ट इन्स्टालेशन/सेफ्टी सर्टीफिकेट सहित सक्षम प्राधिकारी के समक्ष पूर्णता प्रमाण-पत्र के लिए आवेदन-पत्र प्रस्तुत कर दिया गया है और सक्षम प्राधिकारी द्वारा प्रोमोटर के आवेदन-पत्र को 7 कार्य दिवस में अस्वीकार करते हुए अपेक्षित संशोधनों सहित आवेदक को 8 कार्यदिवस के अन्दर सूचित नहीं किया गया है, तो सक्षम प्राधिकारी द्वारा ऐसा पूर्णता प्रमाण-पत्र स्वीकृत किया (डीम्ड अप्रूव्ड) माना जाएगा।

- Thus as per the building bylaws of GDA, Government order dated 31.10.2017 and order of UPRERA 16.09.2019, since the applicant didn't get any intimation / communication from GDA till 21 days (15 working days) from the date of application and hence the building for which application was submitted to GDA considered as deemed approved after expiry of 8 working days. Thus project was deemed approved on 21.04.2023. Accordingly the letter cum declaration was submitted to UPRERA by the applicant informing that project has been deemed to be completed.
- Even for the sake of discussion, assuming without admitting, the letter received from GDA rejecting the application for completion certificate after the expiry of prescribed 8 working days is taken into consideration, the said letter is itself in violation of building bylaws of GDA and hence invalid on account of the reason discussed in ensuing paras.
- A Combined reading of the para 3.1.8 and Annexure 2 of Building Byelaws of GDA, it is amply clear that on receiving application for completion certificate, Vice chairman or any officer authorised by him shall examine and accept the application and in case of construction work is found not in accordance with the approved map, shall reject the application and inform to applicant within 8 working days along with required modification.
- In the present case, application was neither examined as per rules laid down in byelaws nor any construction at site was examined and nor completion certificate was denied on ground of deviation / deficiency in construction work from approved maps.
- That fact that application has been rejected by GDA without any cogent reason and in baseless manner can also be established from that fact that that letter states nothing about any modification required in construction which is also a prerequisite to reject the application as per the building byelaws of GDA.
- It is further submitted charges imposed by GDA was under dispute against which writ petition was also filed before the Hon'ble Allahabad High Court by the applicant. Hon'ble High Court disposing off the writ has directed to GDA to reassess the charges as per the applicable law. Copy of order passed by the Hon'ble High Court is enclosed as **Annexure - 5A.**
- Thus, letter issued by GDA rejecting the application is not in accordance with the bylaws and order of government as also mentioned in UPRERA order and hence invalid.
- Since letter was not issued by GDA within the prescribed period of 8 working days and even the letter issued after the prescribed period is not in accordance with the byelaws, the project shall be considered as deemed completed w.e.f. 21.04.2023



#### **D. First Occupation has been given in the building**

- Without prejudice to above, it is further submitted that first occupation in the Part II of Phase IV has already been given on 25.04.2023 and therefore the condition as prescribed in para 5(b) of Schedule III is satisfied and hence GST is not leviable on unit sold after first occupation even if completion certificate or occupancy certificate is not granted.
- The fact that first occupation has been taken in the building is clearly evident possession letter duly acknowledge by the customers. Also the sale deed of the units in Part II of Phase IV which is also confirmative evidence that possession has been given. Copy of possession letter and sale deed of few units are enclosed .
- As per FAQ (Part I) Q No. 29 issued by CBI&C vide circular F No. 354/32/2019-TRU dated 7-5-2019, 'first occupation' means 'first occupation' of the project in accordance with laws, rules and regulations of State/Central Government or any other authority.
- If literal meaning of the circular is comprehended, it treats 'first occupation' as per the law. As per law occupation cannot be given before completion / occupation certificate. If this interpretation is taken, the words '*or its first occupation whichever is earlier*' become redundant. It is well settled that an interpretation which treats some words as otiose or redundant should not be adopted.
- Even without prejudice to the above, the applicant has given the occupation of the building as per the law. The applicant, while discharging all its duties, applied for completion certificate to GDA. However no intimation was received from GDA within the prescribed time limit of 8 working days and accordingly the it was considered as deemed approved which has been explicitly specified in byelaw as well as supported by UPRERA order. Thus the applicant has given the occupation of the building in accordance with laws, rules and regulations of State/Central Government and Ghaziabad Development authority.

#### **E. Sale deed has been executed and registered with the registrar**

- It is also submitted that as per section 17(1)(b) of Registration Act, Non-testamentary Instrument purport to create, declare, assign, limit or extinguish any right, title or interest of the value of over Rs. 100 in **immovable property** requires compulsory registration with Registrar or Sub-Registrar appointed by Government.
- Thus, as per Indian registration act, 1908, any instrument (sale deed in the present case), for transferring title in immovable property having value of more than Rs. 100, requires compulsory registration with registrar or sub-registrar.
- As per section 2(6) of Registration Act, 1908, Immovable property includes any land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit arising out of land, and things attached to earth or permanently fastened to anything which is attached to earth, but does not include standing timber, growing crops or grass.
- In the present case, sale deed has been executed between the applicant and buyer of units. This sale deed has been duly registered with the Sub-Registrar I, Ghaziabad as mandated in Registration Act, 1908. First sale deed was executed on 26.07.2023
- Since sale deed of units has been executed and has been duly registered with sub-registrar, it is itself corroborative evidence that these units are immovable property in building as it has been duly registered with the sub-registrar as immovable property.

#### **F. Completion Certificate of Architect and Chartered Engineer has been obtained.**

- Based on the above submissions it is clearly established that construction of building has been completed, Completion certificate has been deemed approved and first occupation has already been given.
- Further, the applicant has also obtained the completion certificate of building from Architect and Chartered Engineer.



- As per Para 5(b) of Schedule II of CGST act, in case of no-requirement of completion certificate from any authority, certificate from Architect, Chartered Engineer or licenced surveyor can be obtained.
- In the present case, although there is requirement to get the completion certificate from GDA. However, as additional evidence of completion of units, certificate from Architect and chartered engineer has also been obtained by the applicant.
- That certificate issued by architect or chartered engineer clearly states that building has been 100% constructed and completed.
- Copy of certificate of Architect and Chartered Engineer is enclosed.

6. The application for advance ruling was forwarded to the Central Jurisdictional GST Officer vide letter dated 01.12.2023 to offer their comments/views/verification report on the matter. GST officer sent his comments vide letter dated 29.12.2023 and his observations are as under:

1. Phase IV of the project is separately registered under RERA vide RRA registration No.UPRERAPRJ7191
2. The date of first possession in Block A1 and A2 of Phase IV of unit is 25.04.2023 & date of execution of first sale deed is 26.07.2023.
3. As per Ghaziabad Development Authority's bye laws as well as UPRERA order No.8208/UPRERA/20th Meeting/office order/2019-20 dated 16.09.2019, the completion certificate should be issued within 8 working days from the receipt of the application in this regard which was submitted by the taxpayer to the Ghaziabad Development Authority on 11.04.2023.
4. However, no completion certificate was issued by the Ghaziabad Development Authority within stipulated time as prescribed by bye laws of Ghaziabad Development Authority /UPRERA Order, but a letter dated 27.04.2023 received on 02.05.2023 by the taxpayer denying to issue the completion certificate on account of solitary reason of pending dues of GDA in respect of certain development charges, FAR and other charges. However, as per bye laws of GDA completion certificate can only be denied if the development/ construction of project is not as per the approved MAP
5. In our view, the date of first sale deed 26.07.2023 may be considered as date of first occupation in terms of clause (b) of paragraph 5 of Schedule II.

7. The applicant was granted personal hearings on 10.01.2024 which was attended by Mr. Anuj Garg, CA, Authorized Representative during which they reiterated the submissions made in the application of advance ruling.

### **DISCUSSION AND FINDING**

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 provision under the UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

9. We have gone through the submissions made by the applicant and have examined the same. The applicant in the present application has sought advance ruling on following question/clarification-

1. Whether selling of residential units in the project Saviour Park after 'deemed completion' or 'first occupation' in that phase (Phase IV) of the project is taxable or exempt Supply.



2. If answer to the above is affirmative, unit sold after which date shall be treated as exempt from GST.

10. We have gone through the Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issues on which advance ruling required-

(1) determination of the liability to pay tax on any goods or services or both .

At the outset, we admit both question related to the applicant is squarely covered under Section 97(2) of the CGST Act 2017. We therefore, admit the application for consideration on merits.

11. On going through the documents provided by the party, the brief facts of the case are as under

The applicant i.e. Savfab Buildtech Private Limited. Plot No. 108, Katori Mill, Loni Road, Mohan Nagar Ghaziabad, U.P. is a registered assessee under GSTN No. 09AAOCS7407E2Z2.

The Applicant is engaged in developing the project 'Saviour Park' having 1150 Units in aggregate. The said project has been divided into 4 phases. First Three Phases has already been completed and delivered to customers. Phase IV is having total 282 units and registered under RERA vide registration number UPRERAPRJ7191. The said phase was constructed and completed in two parts. Parts I of Phase IV having 169 units was already completed and delivered. Part II of Phase IV having 113 was under construction and has been completed in April 2023.

That the construction of the 113 units in Phase IV was completed by the applicant in April 2023 and the applicant has also obtained certificates / NOC from various authority required for completion of building structure i.e Fire Safety NOC. Structure stability certificate, lift NOC, Electrical NOC.

The applicant vide letter dated 11.04.2023 has applied to Ghaziabad Development Authority for issuance of completion certificate of 113 units in block A1 and A2 enclosing copy of Fire Safety NOC, Structure stability certificate, lift NOC, Electrical NOC, RWH-certificate etc.. Applicant has submitted that the letter received from GDA rejecting the application for completion certificate after the expiry of prescribed 8 working days is taken into consideration; the said letter is itself in violation of building bylaws of GDA. But the Ghaziabad Development Authority vide letter C.No. 212/प्रवर्तन खंड जोन -7/2023 dated 27.04.2023 denied to issue the completion certificate on account of solitary reason of pending dues of GDA in respect of certain development. The applicant has relied on the order no. 8208/UPRERA/20thMeeting/office order/2019-20 dated 16.09.2019 of UP RERA regarding deemed approved by competent authority. We cannot comment on the grounds of rejecting application of completion certificate as it is out of ambit of this authority. Here we find that completion certificate has not been granted by GDA for whatever reason may be.

Para 5(b) of schedule II of GST Act 2017 read with section 7 which covers activities [or transactions] to be treated as supply of goods or supply of services is as under:

#### 5. Supply of services

The following shall be treated as supply of services, namely:—

.....

*(b) 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.*



12. It may further be pointed out that it is not the case that GDA has not given completion certificate within a specified time and thus it may be treated as deemed completion. On the other hand the GDA vide letter dt. 27.04.2023, received on 02.05.2023, denied to issue the completion certificate. Thus, with respect to 113 units of the project, it cannot be considered as deemed completion.

Here it may be further pointed out that in a single building if projects are registered under RERA as separate projects, those shall be treated as distinct projects. The applicant was engaged in the building of 1150 units in aggregate. The said project was divided in 4 phases. The first three phases have already been completed and delivered to the customers. The 4th phase was completed in two parts- 169 units in one part and 113 units in second part.

Here it may be pointed out that the applicant did not have any problem to obtain the completion certificate with respect to first three phases as well as with respect to Part 1 of phase 4. Since the 4th phase had separate registration, as per Board's clarification, the 4th phase will be treated as distinct project and will have to independently satisfy the requirements of the definition of ongoing projects. Thus the 4th Phase was an independent project and completion certificate was to be obtained for the same in order to treat it as sale of property.

13. As per the para 3.1.8 of Building Bye-laws of Ghaziabad Development Authority "निर्माण कार्य का पूर्णता/अधिभोग प्रमाण-पत्र" (Completion Certificate/Occupancy Certificate) is mandatory for the above project.

As per Para 5(b) of Schedule II of CGST act, in case of no-requirement of completion certificate from any authority, certificate from Architect, Chartered Engineer or licenced surveyor can be obtained. Since, completion certificate from GDA is required for the project, the certificate from Architect, Chartered Engineer or licenced surveyor is not applicable.

As per the clause (zf) of section 2 of UP RERA Act:- "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity.

The term first occupation has been defined in Subject: FAQs on real estate- reg issued vide F. No. 354/32/2019-TRU dated 7th May, 2019 by Tax Research Unit, Department of revenue as under:

*The term "first occupation" appearing in Schedule II para 5 (b) and in notification No. 11/2017 – Central Tax (Rate) dated 29-03-2019 means the first occupation of the project in accordance with the laws, rules and regulations laid down by the Central Government, State Government or any other authority in this regard. Where occupation certificate has been issued for part (s) of the project but not for the entire project by 31-03-2019, the first occupation of the project shall not be considered to have taken place on or before 31-03-2019 and the project shall be considered ongoing project provided it satisfies the other requirements of the definition of the term ongoing project. Promoter shall be entitled to exercise option to pay tax @ 1%/5% (without ITC) or @ 8%/12% (with ITC) on construction of apartments in such project.*

Thus, we find that any occupancy in the Phase IV the project without "Completion Certificate/Occupancy Certificate" is in contravention of Bye-laws of Ghaziabad Development Authority.

In support of the clause "first occupation", the applicant has submitted letter of possessions duly acknowledge by the customer and respective sale deeds.



At this point, it is essential to underline the difference between a possession certificate and an occupancy certificate. An Occupation certificate (OC) is a certificate stating that the project has been built in accordance with all construction norms, building bye-laws, etc. It is only after a project receives an OC, can the builder apply for various utilities for the project. Whereas a possession certificate is issued to the buyer by the developer as proof of transfer of ownership. While a possession certificate signifying the transfer of possession whereas, an occupancy certificate is a green signal from local authorities that the property is fit for residence. The latter provides you with the official right to occupy the property, a guarantee not offered by the possession certificate.

Thus, we find that letter of possessions cannot be substitute the occupation certificate. Thus, having letter of possessions or sale deed does not necessarily imply that "first occupation" has taken place.

From the above it is clear, the Completion Certificate was denied to the applicant by GDA. Once, GDA denied Completion Certificate to the applicant. Hence, Completion Certificate cannot be said to be deemed approved. The 'first occupation' cannot be said to be taken either. Thus, the sale of residential units in Phase IV of the project by the applicant is not sale of immovable property but sale of services and thus GST is leviable.

14. In view of the above discussions, we, both the members unanimously rule as under;

#### RULING

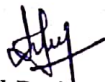
**Question 1:** Whether selling of residential units in the project Saviour Park after 'deemed completion' or 'first occupation' in that phase (Phase IV) of the project is taxable or exempt Supply.

**Answer:** The sale of residential units in Phase IV of the project by the applicant is not sale of immovable property but sale of services and thus GST is leviable.

**Question 2:** If answer to the above is affirmative, unit sold after which date shall be treated as exempt from GST.

**Answer:** - The date on which completion/ Occupancy certificate is obtained from Ghaziabad Development Authority for that phase (Phase IV) of the project.

15. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.



(Harilal Prajapati)

Member of Authority for Advance Ruling



(Amit Kumar)

Member of Authority for Advance Ruling

To,

M/s Savfab Buildtech Private Limited,  
Plot No. 108, Katori Mill, Loni Road,  
Mohan Nagar Ghaziabad, U.P.-201007



## AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Principal Commissioner, CGST & C. Ex, Ghaziabad, C.G.O. Complex-II, Kamla Nehru Nagar, Near Hapur Chungi, Ghaziabad-201002.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VI Ghaziabad, C.G.O. Complex-II, Kamla Nehru Nagar, Near Hapur Chungi, Ghaziabad-201002.
5. Through the Additional Commissioner, Gr-I, Commercial Tax, ~~ZONE-1, GZB.....~~, Uttar Pradesh to jurisdictional tax assessing officers.

**Note:** An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khand, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.

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