

Shrinivasa Realcon (April 2025)

GST applicability on development agreements — whether construction in exchange for built-up area constitutes transfer of development rights (TDR/FSI) under GST.

Date of Order: April 8, 2025
Case Law No: GIB-BHC-2025-45
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CASE DESCRIPTION / SUMMARY

The most significant development after Prahitha came from the Bombay High Court (Nagpur Bench) in *Shrinivasa Realcon Private Ltd. v. Deputy Commissioner, Anti-Evasion Branch, CGST & Central Excise, Nagpur* (Writ Petition No. 7135 of 2024, decided 8th April 2025). This judgment directly contradicts the spirit of the Prahitha ruling and provides significant relief to developers.

Shrinivasa Realcon Pvt. Ltd. was appointed as a developer by the landowner to construct a multi-storey complex on an 8,000 sq. ft. land. As per the development agreement dated January 7, 2022, consideration involved ₹7 crores and two apartments; the developer was to hand over certain constructed units to the landowner. The GST department issued two SCNs claiming GST liability under Entry 5B of Notification dated June 28, 2017, revised on March 29, 2019. The petitioner challenged the applicability of GST, contending that the transaction does not involve a supply of Transfer of Development Rights (TDR) or Floor Space Index (FSI) as defined under applicable regulations.

The Nagpur Bench of the Bombay High Court held that no GST is payable on services supplied by any person by way of transfer of land development rights or FSI. The bench observed that the TDR/FSI as contemplated by Entry 5B cannot be related to the rights which a developer derives from the owner under the agreement of development for constructing the building for the owners, in lieu of the owner agreeing to permit the developer to transfer certain built-up units for consideration to be appropriated by the developer.

High Court noted that the agreement involved construction for the landowner, not a transfer of development rights for independent use. Entry 5B applies only to transactions involving actual transfer of TDR/FSI and does not cover development rights granted under a private development agreement.

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