Shrinivasa Realcon (April 2025)

Whether a Development Agreement granting a developer the right to construct a multi-storied complex on the landowner's plot — without any purchase of TDR or FSI from any external person/entity — falls within Entry 5B of the GST Notification dated 28.0

Date of Order: April 8, 2025
Case Law No: GIB-BHC-2025-45
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND & FACTS

Shrinivasa Realcon Pvt. Ltd. (petitioner/developer) entered into an Agreement of Development dated 07.01.2022 (also referred to as 07.04.2022 in the order) with a landowner for development of Plot No. 2 admeasuring 8,000 sq. ft., Mouza Lendra, into a multi-storied complex. The consideration under the agreement was Rs. 7 crores and two apartments to the landowner. The petitioner was granted the right to develop the property by utilizing its present FSI or any increases thereof. No TDR or FSI was purchased by the owner or by the petitioner from any external person or entity in execution of this agreement.

The department issued a Show Cause Notice dated 24.07.2024 demanding GST on the aforesaid transaction, followed by a second Show Cause Notice dated 14.08.2024, claiming GST under Entry 5B of the Notification dated 28.06.2017 as amended by Notification dated 29.03.2019. The department sought to rely on Clause 18 of the Development Agreement — which merely required the landowner to execute a deed of declaration under Section 2 of the Maharashtra Apartment Ownership Act, 1970, and execute apartment deeds in favour of individual buyers nominated by the developer — to contend that a "transfer" was involved attracting Entry 5B. An order dated 10.12.2024 was also passed pursuant to the show cause notices. The petitioner challenged both the show cause notices and the consequent order before the High Court.

COURT OBSERVATIONS (Verbatim)

Para 4: "*A perusal of the language of entry 5B, above would indicate, that it relates to services which can be said to be supplied by any person by way of transfer of development rights or Floor Space*

Index (FSI) [including additional FSI] for construction of a project by a promoter. The expression 'transfer of development rights' read in conjunction with 'FSI' as indicated in entry 5B, would only relate to a TDR (Transferable Development Rights) as contemplated by clause 11.2.2 under the regulations for grant of TDR in the Unified Development Control and Promotion Regulations for the State of Maharashtra, clause 11.2.1 of which defines transferable development rights, to mean compensation in the form of Floor Space Index (FSI) or development rights, which shall entitle the owner for construction of built up area subject to the provisions in the said regulations. It therefore, follows, 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."

Para 5: "*In the instant case, the agreement dated 07.4.2022 (page 27) is an agreement of development entered into between the petitioner and the land owner, in terms of which, the petitioner, has been granted right to develop the property in question by utilizing its present FSI or any increases thereof. Mr. Naik, learned Senior Counsel, upon instructions, submits, that in the execution of the agreement dated 07.4.2022 no TDR or FSI has been purchased by the owner or for that matter by the petitioner from any person / entity whomsoever.*"

Para 6: "*Clause 18 relied upon by Mr. Nalamwar, learned counsel for the respondents merely indicates, that the owners shall sign and execute a deed of declaration under Section 2 of the Maharashtra Apartment Ownership Act, 1970, submitting the entire scheme to the provisions of the Maharashtra Apartment Ownership Act and the execution of the apartment deeds in favour of each individual buyers to the nominees of the developers. It is, therefore, apparent, that the transaction as contemplated in terms of the agreement dated 07.4.2022 does not fall within entry 5B of the Notification dated 28.6.2017, as it stand amended by the Notification dated 29.3.2019, in view of which, neither the show cause notice dated 14.08.2023 (page 123) nor the consequent order dated 10.12.2024 (page 137), can be sustained and are hereby quashed and set aside.*"

FINAL VERDICT

Writ petition allowed. The Development Agreement dated 07.04.2022 does not involve any TDR/FSI as contemplated under Entry 5B of the GST Notification. Both the show cause notices and the consequent order are quashed and set aside. GST under Entry 5B is not leviable on the transaction.

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