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	<i>Govt. of India</i> <i>Office of the Commissioner of Central Excise</i> <i>'Siddhi Sadan', Plot No.6776/B-1, Narayan Upadhyay Road, Off Waghawadi Road,</i> <i>Bhavnagar</i>
	Ph.No. : 0278- 2523627 Fax No.: 0278-2513086

By R.P.A.D.

F. No. V/15-31/Dem-ST/HQ/2011-12.

Date of Order: 23/03/2012

Date of Issue: 20/04/2012

Passed by

IMAMUDDIN AHMED
Joint Commissioner
Central Excise
Bhavnagar

Order-in-Original No: 26 / BVR / Jt.Commr / 2012

This copy is granted free of charge for private use of the person(s) to whom it is sent.

Any person(s) deeming himself aggrieved by this Order may appeal against this order under Section 85 of Finance Act, 1994 to the Commissioner, Central Excise(Appeals), Rajkot, Central Excise Bhavan, Race Course Ring Road, Rajkot-360001 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs 2.50/- paise only.

The appeal should be filed in form ST-4 in duplicate, as per the provisions of Section 85 of the Finance Act, 1994 read with Rule 8 of the Service Tax Rules, 1994. It should be signed by the appellants in accordance with the provisions of sub-rule (2) of Rule 3 of the Central Excise (Appeal) Rules, 2002.

It should be accompanied with the following:

- Copy of appeal in duplicate
- Copies of the order, one of which shall be certified copy **OR** the other must bear a court fee stamp of Rs 2.50/- paise as per Schedule 1 to Article 6 of the Court Fee Stamp Act, 1870.

BY R.P.A.D.

To,
M/s. Sumeru Builders,
G-1, Sumeru Complex, Dawn,
Bhavnagar.

Subject: Show Cause Notice Number No. V/15-31/Dem-ST/HQ/2011-12 Dated 16.01.2010 issued to M/s. Sumeru Builders, Bhavnagar demanding Service Tax of Rs.14,14,259/-.

Brief facts:

01. M/s Sumeru Builders, having their site office at "Sumeru Arc", Plot No. 1914A-B, Rupani Circle, Bhavnagar 364 001 and registered office at G-1, Sumeru Complex, Dawn, Bhavnagar (hereinafter referred to as 'the Noticee') are engaged in providing taxable services of Commercial or Industrial Construction and Construction of Complex. They have obtained Service Tax registration No. ABKFS4885QSD001 for providing these services.

02. On collection of intelligence that the Noticee is engaged in providing taxable services under category of 'Construction of Residential Complex' without payment of applicable service tax on it, the Officers of the Anti - Evasion Section, Central Excise and Service Tax, Headquarters, Bhavnagar, (hereinafter referred to as 'the Officers') carried out a search at one of the site office of the Noticee located at 'Sumeru Arc', Rupani Circle, Bhavnagar on 13/04/2011 and resumed incriminating documents such as booking register, booking receipt books etc. under Panchnama.

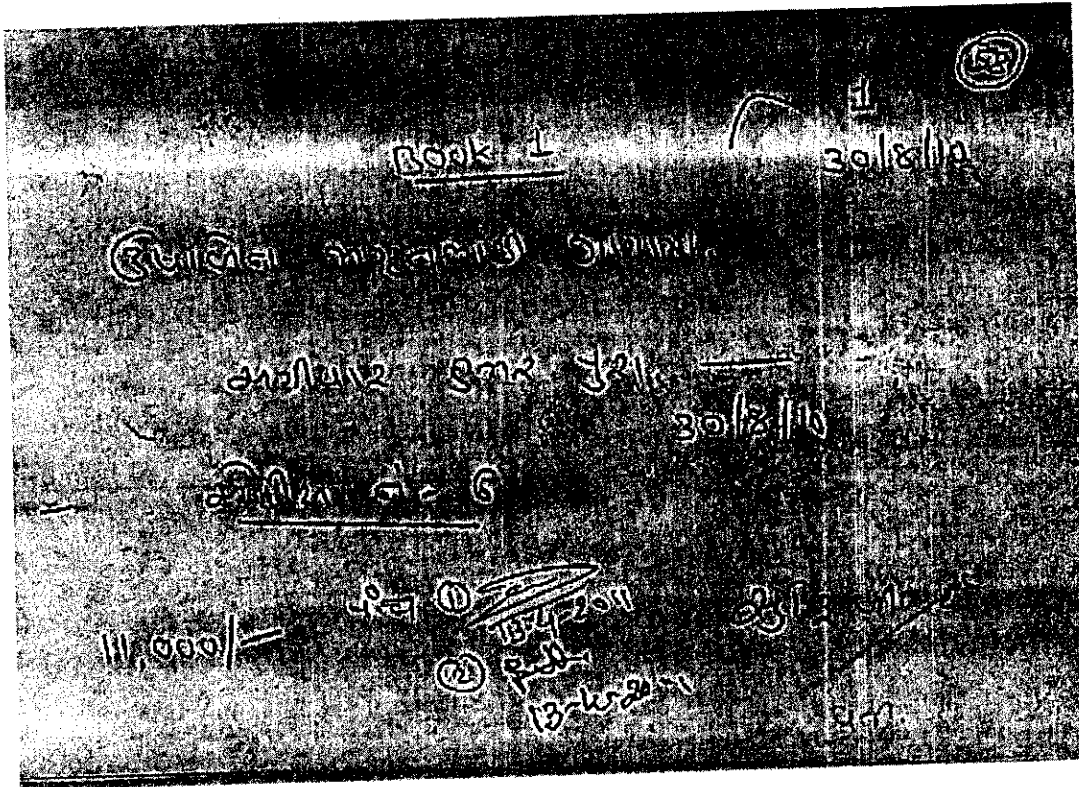
3.1 During scrutiny of the document mentioned as "*Flat Booking Receipt Book*" at serial number 6, in the Annexure to the Panchnama dated 13.04.2011, it is found that it is a receipt book found to contain the details regarding the amounts received, date, name of person, Flat No. etc. It also contained the carbon copy of the receipts issued to the respective persons. Scrutiny reveals that this book contains the details of advance payments received by the Noticee from the prospective residents/buyers of the flats/shops in the Building Complex, 'Sumeru Arc', Rupani Circle, Bhavnagar.

3.2 Further on scrutiny of the document mentioned at Sl. No. 3 in the Annexure to the Panchnama dated 13.04.2011 i.e. a "*Booking Register*" containing page numbers 1 to 66 in which the details of the advances received from the prospective residents/buyers of flats/shops are found recorded in an informal fashion. For example, page 59 of said booking register relates to the advance of Rs.11,000/- received in cash from one Ushaben Jagrutbhai Ganatra and a cross reference is made as 'Book-1 (1)'. When the above said document "*Flat Booking Receipt Book*" is referred to, it is found that in this receipt book the receipt Sl.No.1 is indeed pertaining to the receipt of cash of Rs.11,000/- for 'Office no.-6'. It also becomes clear that Book-1(1) stands for Receipt No. 1 of the Receipt Book No.1. For convenience scanned images of relevant portion of page 59 of "*Booking Register*" and of receipt Sl. No.1 of "*Flat Booking Receipt Book*" are reproduced below.

Scanned Image of relevant portion of page 59 of "Booking Register"

613	Sr. Nit	62	FORM NO. 59
* कल्याण कान्हायल पण्ड्या			
11,000/-			
30/8/10			
Book-1(1)			

Scanned Image of receipt Sl. No.1 of "Flat Booking Receipt Book" No.1



Similarly page 12 of the "Booking Register" is related to advance payment of Rs.1,00,000/- by one Kalpesh Kanhaiyalal Pandya through cheque No. 300669 of SBI (Waghawadi) for Flat No. B-202 and a cross reference is made as 'Book 1(3)' dated 31/08/2010 i.e. Receipt No. 3 of "Flat Booking Receipt Book" No. 1 issued on 31/08/2010. When the said document "Flat Booking Receipt Book" is referred to, it is found that in this receipt book the receipt Sl.No.3 is indeed pertaining to the receipt of Rs.1,00,000/- through cheque No. 300669 dated 02/09/2010 of SBI (Waghawadi) for Flat No. B-202 from Kalpeshbhai Kanhaiyalal Pandya. For the sake of convenience scanned images

of relevant portion of page 12 of "Booking Register" and of the receipt Sl. No.3 of "Flat Booking Receipt Book" are reproduced below.

Scanned Image of relevant portion of part of page 12 of "Booking Register"

1995 59-44	B-202	Blue Book PAGE NO. 159
* 90-421 સુમેરુ આર્ક બિલ્ડિંગ		
લોકેટ - 1933-34/A, ડાઉન ટાઉન સ.ર.7		
અરબિયન ડાઉન ટાઉન મુન્સિપલિટી		
M- 942559920 (સુમેરુ આર્ક)		
1)	1,00,000/-	S.R.7 (સુમેરુ આર્ક) 300000 31/8/10 Book-1(3)

Scanned Image of receipt Sl. No.1 of "Flat Booking Receipt Book" No.1

B (58)

Book-1 31/8/10

સુમેરુ આર્ક બિલ્ડિંગ

ડાઉન ટાઉન સુમેરુ આર્ક

S.R.7 (સુમેરુ આર્ક) 300000 31/8/10

ફોર્મ નં. B-202

1,00,000/-

A further study of "Booking Register" and "Flat Booking Receipt Book" reveals that both tally with each other. Hence it can be safely deduced that both the above documents are pertaining to the receipts of construction linked advance payments for purchase of flat/shop in the Building Complex, 'Sumeru Arc', Rupani Circle.

4.1 During investigation, Shri Jatan Girishbhai Shah, Partner of the Noticee appeared before the Superintendent of the Central Excise (AE), H.Q., Bhavnagar on 25/04/2011 and his statement was recorded under Section 14 of the Central Excise Act, 1944 wherein he inter alia stated that they had four projects committed to their partnership concern M/s Sumeru Builders, Bhavnagar, the details of which are tabulated below:

Sl. No.	Name of Project	Start date	Status of project	No. of residential units & shops/office
1.	Shapath	19.03.2008	Completed on 13.08.09	22 flats
2.	Safal	13.08.2009	Completed on 08.03.11	20 flats and 16 offices.
3.	Sumeru Bungalows	31.03.2010	In progress	65 separate bungalows
4.	Sumeru Arc	03.01.2011	In progress	33 flats and 27 offices.

4.2 In his statement, he gave details of the different stages in construction of residential complexes right from the procurement of the land till actual sale deed of the flat to the buyer. He admitted that although they had taken Service Tax registration in August-2010, yet they made first payment of Service Tax on the services provided by them in April-2011. Regarding payment of Service Tax Shri Jatan Girishbhai Shah deposed that they had made a payment of Rs.14,21,401/- on 18.04.2011 and a further payment of Rs.7,585/- on 23.04.2011 towards Service Tax and produced self-attested worksheets regarding advance payments received from the buyers and calculation of Service Tax and copies of the Tax payment challan as proof of the same. Therefore it can easily be deduced from the statement that the Noticee had made payment of service tax only after the search was carried out on one of their site office "Sumeru Arc" Rupani Circle, Bhavnagar on 13.04.2011.

05. The Noticee vide their letter dated 25.04.2011 submitted among other documents a sample copy of a registered sale deed in respect of one of the flat of 'SAFAL' residential complex, the project mentioned at Sl. No. 2 of the above table in paragraph 4. A scrutiny of the same revealed that it is a sale deed dated 31.03.2011 between Shri Prakash Pravinchandra Doshi, partner of the noticee and Shri Nilesh Arvindbhai Dave, buyer of Flat No. 202 of SAFAL residential complex. A reading of the sale deed confirms that the noticee has received various sums as tabulated below as advance payments during the construction of the project on nine occasions.

Sl. No.	Amount paid in Rs.	Date on which paid	Cheque No. and Bank details .
1.	60,000	27/04/2009	991257 of IDBI bank.
2.	2,90,000	27/04/2009	566288 of HDFC bank.
3.	1,00,000	22/09/2009	991260 of HDFC bank
4.	1,25,000	06/01/2011	991268 of HDFC bank
5.	4,75,000	06/01/2010	274965 of SBI RACPC
6.	3,20,000	17/06/2010	573213 of SBI RACPC
7.	52,000	21/06/2010	991264 of HDFC bank
8.	2,85,000	24/12/2010	824334 of SBI RACPC
9.	1,43,000	31/03/2011	824948 of SBI RACPC

TOTAL	18,50,000		
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From the above illustration, it becomes clear that the noticee has received construction linked advances from the prospective buyer and the acts of the noticee in delivering a flat to the buyer by constructing it in a phase wise manner after receiving advance payments as tabulated above are in the nature of a service provided to the service receiver.

06. The Noticee under their letter dated 19/09/2011 further submitted copies of "Bank Books" in respect of their projects 'Sumeru Bungalows', "Sumeru Arc" and "Safal" for the period from 01/07/2010 to 31/03/2011 alongwith photocopies of receipts issued by the Noticee to prospective buyers of residential units in respect of "Sumeru Bungalows". The copies of receipts issued by the Noticee to prospective buyers of residential units found to be similar to the receipts found in "Flat Booking Receipt Book". A comparison of the "Bank Books" with the "Booking Register" and the "Flat Booking Receipt Book" and also with the photocopies of receipt books in respect of "Sumeru Bungalows" revealed that the same are in agreement of each other. For example a part of relevant page of Bank Book in respect of Sumeru Arc has been scanned and the same is reproduced herein below for convenience :

Scanned image of part of relevant page of Bank Book

SUMERU BUILDERS. (SUMERU ARC) 2010-11.				
Bank Reg. For AXIS BANK 200010200008587 From: 01/07/2010 To: 31/03/2011				
				Page No. : 4
Date	Particulars	Withdrawals	Deposits	Balance
01/09/2010 3501	MANUBHA K. JADEJA A/C. CH : 245299 01/09/2010 Given by Cheque.	4500.00		378854.39
02/09/2010 4004	KALPESH KANAIYALAL PANDYA (B-202) CH : 300669 02/09/2010 Received by Cheque. SBI WAGHAWADI.		100000.00	478854.39
02/09/2010 4008	AMULBHAI G. MEHTA (A-401) CH : 521630 02/09/2010 Received by Cheque. HDFC.		100000.00	578854.39

07. The second entry dated 02/09/2010 in the above shown scanned image is of deposit of Rs.1,00,000/- paid by Kalpesh Kanaiyalal Pandya for Flat B-202 through cheque No. 300669 SBI Waghawadi, which is exactly as mentioned at page 12 of the "Booking Register" & the receipt Sl. No.3 of "Flat

Booking Receipt Book" as discussed in para 3 above. A further cross checking of all the booking receipts submitted/recovered from the Noticee with the worksheets submitted by them was carried out and correlation between them was found.

7.1 The taxable service under category "construction of complex" has been defined under Section 65[30(a)] of the Finance Act, 1994 (hereinafter referred to as the Act). The same is reproduced here :

"construction of complex" means —

- (a) construction of a new residential complex or a part thereof; or
- (b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or
- (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;]

7.2 Definition of a "residential complex" has been given under Section 65[91(a)] of the Act which is as under :

"residential complex" means any complex comprising of—

- (i) a building or buildings, having more than twelve residential units;
- (ii) a common area; and
- (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

- (a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;
- (b) "residential unit" means a single house or a single apartment intended for use as a place of residence;]

7.3 The applicability of Service Tax on "construction of complex" has been laid down in Section 65 (105) (zzzh) of the Act, which is reproduced below :

the taxable service is "any service provided or to be provided to any person, by any other person, in relation to construction of complex";

[Explanation.—For the purposes of this sub-clause, construction of a complex which is intended for sale, wholly or partly, by a builder

or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorised by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer.]

7.4 From investigation of the matter, it was found that the Noticee has constructed buildings under their construction schemes "SAFAL", "SUMERU BUNGALOWS" & "SUMERU ARC", each of which having more than 12 residential units having common area and facilities, located within a premises and layout of which is approved by the BMC/BADA. The said buildings have not been constructed/being constructed by the Noticee for their personal use. Therefore, the act of construction of such buildings by the Noticee falls within the ambit of "construction of complex" which is a taxable service under Section 65 (105) (zzzh) of the Act.

08. The taxable service of "construction of complex came into effect on 16/06/2005 and in light of the Notification No. 36/2010 - Service Tax, dated 28/06/2010 and clarifications issued by the Board vide Circular No. 108/02/2009 - ST dated 29/01/2009 it is clear that that the Noticee are liable to pay Service Tax on all the advance payments received by them on & after 01.07.2010 from the prospective buyers of residential units of all the complexes constructed or being constructed by them.

09. Shri Jatan Girishbhai Shah, partner of M/s Sumeru Builders has admitted the Service Tax liability on the Noticee in his statement dated 25.04.2011. Therefore it appears that despite of being well aware about their Service Tax liability the Noticee deliberately avoided payment of Service Tax with an intention to evade the same.

10. Further as per provisions of Rule 4A of the Service Tax Rules, 1994 (hereinafter referred to as "the Rules") a taxable service is to be provided on invoice, bill or challan. Whereas the Noticee has issued only simple booking receipt which do not contain the details as prescribed in the said Rule. Also the Noticee has not furnished any list of all the records and other details as mentioned in the rule 5 of the Rules.

11. The gross amount charged by the Noticee to prospective buyers of residential units in their construction schemes "SAFAL", "SUMERU BANGALOWS" on and after 01.07.2010 has been worked out on the basis of the "Bank Books" [RUD-10], of "Flat Booking Receipt Book" photocopies of

receipts issued by the Noticee to prospective buyers of residential units in respect of "Sumeru Bungalows" and Worksheets submitted by the Noticee and the same is tabulated as below (for the sake of convenience for calculation of Interest on Service Tax the amount charged has been worked out for three separate quarters) :

12.1 Construction linked advance amounts received by the Noticee from the buyers of residential unit in "SAFAL" complex :

Sr. No.	Flat No.	Name	Advance Amount Received (Rs.)		
			1/7/10 to 30/9/10	1/10/10 to 31/12/10	1/01/11 to 31/03/11
1	F - 101	Jay H Shah	350000	0	700000
2	F - 102	Jasumati N Chantbar	200000	300000	549000
3	F - 103	Kanulal K Trivedi	0	0	0
4	F - 104	Jay A Raval	0	0	0
5	F - 201	Hardik J Oza	200000	200000	250000
6	F - 202	Nilesh A dave	0	285000	268000
7	F - 203	Pradip vasa	200000	0	0
8	F - 204	Manda P gohel	100000	0	451000
9	F - 205	Parul M Mehta	1200000	300000	0
10	F - 206	Dhirajlal V Chudasama	200000	0	1050000
11	F - 301	Dipak S Rupareliya	0	0	665000
12	F - 302	Ashok M Shah	100000	100000	150000
13	F - 303	Nita H Rana	100000	0	0
14	F - 304	Bharti C Modi	300000	200000	404000
15	F - 305	Gaurang Bhatt	400000	0	500000
16	F - 306	Neha N Desai	0	364857	0
17	F - 401	Saroj M Shah	200000	400000	600000
18	F - 402	Nalin Pandit	0	0	0
19	F - 403	Chaya S mehta	200000	0	200000
20	F - 404	Bipin Shah	300000	0	300000
21	O - 1	S . P . Talreja	0	0	156000
22	O - 2	Chetan Sanghavi			325000
23	O - 5	Naresh C Kothari	52000	0	0
24	O - 6	Megna K Shah	0	0	125000
25	O - 7	Amees H Shah			685500
26	O - 8	Chandni V Mehta	75000	50000	261800
27	O - 101	Akash J Modi	0	0	300000
28	O - 102	Chiman Shekani			100000
29	O - 103	Dilharba H Gohil	0	0	0
30	O - 104	Jagrutiba K Gohil		50000	0
31	O - 105	Mukesh Trivedi	40000	80000	40000
32	O - 106	Bharat K Shivnani	0	0	0
33	O - 107	Jayanti B Dharajiya	0	0	389000
34	O - 108	Tejas J Sarvaiya	0	100000	0
TOTAL			4217000	2429857	8469300

12.2 Construction linked advance amounts received by the Noticee from the buyers of residential unit in "SUMERU BUNGALOWS" complex :

Sr. No.	Plot no.	Name	Advance Amount Received (Rs.)		
			1/07/10 to 30/09/10	1/10/10 to 31/12/10	1/01/11 to 31/03/11
1	1	Raghuram C Gondliya	0	0	382000
2	2	Dipiks R Gosai	0	0	0
3	3	Manish B Pandya	279400	0	0
4	4	Sapna P Dhangdhariya	49350	0	500750
5	5	Charu S Dhangdhariya	65750	300000	208750
6	6	Mukesh B Bhatt	309900	309900	206600
7	7	Parul J Navdiya	314700	314700	209800
8	8	Bharti N Dhudharejiya	0	250000	150000
9	9	Sandip V Patel	0	0	0
10	10	Aarti A Pandya	268600	0	447000
11	11	Rajdeep S Gohil	250000	200000	65000
12	12	Rajesh R Sarvaiya	504000	0	0
13	13	Tejsh P Ghuntla			1186500
14	14	Jatin C Raval	250000	260000	166500
15	15	Niladevi H Zala	254250	0	423750
16	16	Gaurang P Solanki	254250	0	394250
17	17	Mahesh S Dave			1119000
18	18	Heena J Dave	300000	0	400000
19	19	Kiran B Mehta	0	0	426000
20	20	Pallvi S Bhatt		762750	254250
21	21	Rekha B Pandya	145750	0	254750
22	22	Shailesh R Vadher	300000	0	200000
23	23	Dipakgiri U Goswami	412750	0	254250
24	24	Ravubha B Vala	262750	0	254250
25	25	Pravin P Bhatt	260000	2750	254250
26	26	Himat A Kabir	200000	0	300000
27	27	Sanjeev V Pandya	264600	0	268200
28	28	Bhavesh P Goswami		101000	630800
29	29	Bhavesh P Goswami		101000	625400
30	30	Kishor G Joshi	240900	0	0
31	31	Aartiba P Parmar	100000	150000	150000
32	32	Jayvantsinh B Gohil	280000	0	0
33	33	Rajnikant s Bhavsar	200000	300000	200000
34	34	Ambrish R	100000	1187000	377200

		Chudhary			
35	35	Nimesh A Pandya	0	597000	199700
36	36	Tushar A Pandya	0	0	796900
37	37	Rajeshree K Raval	398500	199700	199700
38	38	Dipti K Trivedi	300000	497200	199700
39	39	Bhavin R Shah	275000	100000	100000
40	41	Rashila K Mehta	0	0	300000
41	42	Hansagauri S Raval	0	0	316000
42	43	Chetan C Mandaliya	217350	0	0
43	45	Nishat J Shulka	333589	0	0
44	46	Anjna D Shah	0	200000	0
45	47	Hetal P Shah	240000	0	0
46	48	Mitul S Patel	0	217050	0
47	49	Vipul M Kachadiya	0	185000	0
48	50	Parul S Rathod	0	125000	275000
49	51	Sanjkarlal D Raval	0	0	316000
50	52	Raksha N Bhavsar	64400	0	382200
51	53	Usha J Ganatra	0	250000	0
52	54	Jagdish B Javiya			159000
53	55	Pragna M Vyas	336700	100000	50000
54	56	Pritesh M Patel	437550	0	0
55	57	Anand C Trivedi	300000	0	0
56	58	Parvati A Kachadiya	0	250000	0
57	59	Harshul D Parikh	270000	0	0
58	60	Premal B Vyas	121000	75000	0
59	62	Archana H Dhameliya	330000	0	0
60	63	Dipti T Desai	327000	0	0
61	63	Bharat V Patel	325000	0	0
62	64	Bhupendra B Mehta			1706000
63	65	Gordhan B Patel	0	0	100000
TOTAL			1,01,43,039	70,35,050	1,54,09,450

12.3 Construction linked advance amounts received by the Noticee from the buyers of residential unit in "SUMERU ARC" complex :

Sr. No.	Plot No.	Name	Advance Amount Received (Rs.)		
			1/07/10 to 30/09/10	1/10/10 to 31/12/10	1/01/11 to 31/03/11
1	A - 101	Heena M Patel	300000	0	0
2	A - 103	Varsha I Trivedi			251000
3	A - 104	Hansa M Mehta			701000
4	A - 105	Kiran J Virpura	100000	0	0
5	A - 106	Paresh A Shah	100000	0	0
6	A - 203	Purvi G Raval		0	0
7	A - 204	Vijay H Dave	100000	290000	0
8	A - 205	Heena B Mehta	11000	100000	0
9	A - 206	Mukesh k Shah	100000	0	0

10	A - 301	Prit Corporation	100000	0	0
11	A - 304	Urvi J Bhayani	100000	0	435500
12	A - 305	Jaypraksh V Pandya	100000	0	0
13	A - 401	Amul G Mehta	100000	0	0
14	B - 102	Pankaj D Bhatt	100000	0	0
15	B - 104	Prashant D Patel	100000	0	0
16	B - 201	Bharatkumar H Shah	21000	0	0
17	B - 202	Kalpesh K Pandya	100000	0	0
18	B - 204	Rekha N Mehta	100000	0	0
19	B - 302	Apex Farma	100000	1000000	0
20	B - 304	Steel Cast Ltd.	100000	837666	128833
21	B - 401	Amisha D Bhadiyadra			51000
22	O - 6	Usha J Ganatra	11000	0	0
23	O-7	Fenil V Doshi		300000	0
24	O- 9	Brhamkumari Dixit	100000	0	0
25	O - 11	Prabhudas B Hirani	100000	0	0
26	O - 16	Kirtisinh V Jadeja	21000	0	150000
27	O - 20	Anita D Reshamiya	89000	0	0
28	O - 23	Uma C Agraval	21000	0	0
29	O - 24	Vijay H Dave	100000	0	0
30	O - 25	Uttam Selection	100000	700000	0
TOTAL			22,74,000	32,27,666	17,17,333

12.4 In view of the above total of construction linked advance amounts received by the Noticee from various buyers of residential units in their schemes "SAFAL", "SUMERU BUNGALOWS" & "SUMERU ARC" comes as under.

(Figures in Rs.)

Period	Receipt			
	Safal	Sumeru Bungalows	Sumeru Arc	Total
01/07/10 to 30/09/10	42,17,000	1,01,43,039	22,74,000	1,66,34,039
01/10/10 to 31/12/10	24,29,857	70,35,050	32,27,666	1,26,92,573
01/01/11 to 31/03/11	84,69,300	1,54,09,450	17,17,333	2,55,96,083
Total	1,51,16,157	3,25,87,539	72,18,999	5,49,22,695

Thus, the gross amount charged by the Noticee to prospective buyers of residential units in their construction schemes "SAFAL", "SUMERU BANGALOWS" on and after 01.07.2010 comes to be Rs. 5,49,22,695/-.

13. The Service Tax Notification No. 1/2006 dated 01.03.2006 as amended vide Service Tax Notification No. 29/2010 dated 22.06.2010 provides abatement on gross value charged to arrive on the assessable value liable for Service Tax. In light of these Notifications, the Noticee is entitled for abatement to the tune of 75% of gross amount charged. Therefore the taxable value of service provided by the Noticee comes out to be as shown below :

Period	Total amount of Advance Receipt (Rs.)	Abatement Allowed	Taxable Value after allowing due abatement (Rs.)
01/07/10 to 30/09/10	1,66,34,039	75%	41,58,510
01/10/10 to 31/12/10	1,26,92,573	75%	31,73,143
01/01/11 to 31/03/11	2,55,96,083	75%	63,99,021
Total	5,49,22,695	75%	1,37,30,674

The amount of service tax on the above value is calculated as under :

(Figures in Rs.)

Taxable value after allowing due abatement	Service Tax @ 10% p.a.	EC @ 2% p.a.	S&HEC @ 1% p.a.	Total Service Tax	Due date of Payment
41,58,510	4,15,851	8,317	4,159	4,28,327	05-10-2010
31,73,143	3,17,314	6,346	3,173	3,26,833	05-01-2011
63,99,021	6,39,902	12,798	6,399	6,59,099	31-03-2011
1,37,30,674	13,73,067	27,461	13,731	14,14,259	TOTAL

Therefore, the Noticee is liable to pay Service Tax of Rs.14,14,259/- (including Education Cess and Secondary & Higher Education Cess) alongwith interest for delayed payment under Section 75 of the Act.

14. The Noticee has made payments of Rs.14,21,401/- on 18.04.2011 and of Rs. 7,585/- on 23.04.2011 as per following details :

(Amount in Rs.)

Date of Challan	Challan No.	ST	E. Cess	S&HE Cess	Total ST	Interest	Late Fee	Grand Total
18-04-2011	00024	0	0	0	0		2,000	2,000
18-04-2011	00022	2,06,417	4,128	2,064	2,12,609	1,887	0	2,14,496
18-04-2011	00023	59,221	1,184	592	60,997	2,388	0	63,385
18-04-2011	00019	71,598	1,432	716	73,746	2,887	0	76,633
18-04-2011	00018	41,856	837	419	43,112	383	0	43,495
18-04-2011	00016	1,71,461	3,429	1,715	1,76,605	6,915	0	1,83,520
18-04-2011	00015	3,75,565	7,511	3,756	3,86,832	3,434	0	3,90,266
18-04-2011	00017	2,47,211	4,944	2,472	2,54,627	18,312	0	2,72,939
18-04-2011	00021	1,02,780	2,056	1,028	1,05,864	7,613	0	1,13,477
18-04-2011	00020	55,422	1,108	554	57,084	4,106	0	61,190
23-04-2011	0015	7,068	142	71	7,281	304	0	7,585
TOTAL		13,38,599	26,771	13,387	13,78,757	48,229	2,000	14,28,986

15. The details of amount deposited by the Noticee after starting of the investigation and the amount still to be recovered is as under :

(Amount in Rs.)

Total Service Tax	Due date of Payment	Date of payment made	Amount of payment made	Interest till 31-03-11			Interest from 01.04.11 onwards			Total Interest on paid amount	Interest paid
				Rate p.a.	No. of days	Interest	Rate p.a.	No. of days	Interest		
428327	05-10-2010	18-04-2011	428327	13%	177	27002	18%	18	3802	30804	30804
326833	05-01-2011	18-04-2011	326833	13%	85	9895	18%	18	2901	12796	12796
659099	31-03-2011	18-04-2011	6,23,597	13%	0	0	18%	18	5535	5535	4629
1414259			1378757			36897			12238	49135	48229

	Service Tax	Interest on Service Tax
Liability	14,14,259	To be calculated after final payment
Payment made	13,78,757	48,229
Balance	35,502	To be Calculated after final payment

16. Thus, the Noticee, by their acts of omission and commission has contravened the following provisions of the Chapter V of the Finance Act, 1994 and Service Tax Rules, 1994:-

- (i) Rule 4A of the Service Tax Rules, 1994 inasmuch as they have failed to provide the taxable service of construction of complex on an invoice containing the prescribed fields.
- (ii) Rule 5 of the Service Tax Rules, 1994 inasmuch as they failed to provide a list of all the records prepared or maintained by them for accounting of transactions in regard to providing of construction of complex service.
- (iii) Section 67 of the Finance Act, 1994 inasmuch as they have suppressed the value of Taxable Services rendered;
- (iv) Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 inasmuch as they failed to pay the appropriate service tax on the gross value of taxable services rendered by them;
- (v) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 inasmuch as they failed to correctly assess, pay service tax due thereon and to file a return in such form with correct details about services rendered and in such manner and at such frequency as prescribed;

17. The Noticee has admittedly not paid the Service Tax on the service provided by them under category "Construction of Complex" when they were due and thereby rendered themselves liable to penalty under Section 76 of the Finance Act, for nonpayment of Service Tax and liable for interest under section 75 of the Finance Act.

18. For the act of not issuing invoices against the services rendered by them in the prescribed manner and for not providing list of all the records prepared or maintained by them for accounting of transactions in regard to providing of construction of complex service, the Noticee have rendered themselves liable for penalty under Section 77 of the Act.

19. The Noticee has deliberately not paid the Service Tax on the taxable service provided by them under "Construction of Complex" category when the same was due with an intent to evade the Service Tax as they were consciously aware of the fact that the above services rendered by them falls within the purview of Service Tax and are taxable as is evident from their letter dated 20.04.2011. They have suppressed the fact of rendering of taxable services, value of taxable services rendered, receipt of consideration etc. and evaded the payment of Service Tax as and when the same was due and hence the extended period of five years as contemplated under Section 73 of the Act is liable to be invoked for recovery of Service Tax not paid alongwith applicable interest under section 75 of the Act. Further, for the act of suppression of facts of providing taxable services under the category of "Construction of Complex" and contravention of provisions of the Act, and the Rules as discussed hereinabove with an intent to evade payment of Service Tax, the Noticee have rendered themselves liable to penalty under Section 78 of the Act.

20. Therefore a show cause Notice F. No. V/15-31/Dem-ST/HQ/2011-12 dated 16.01.2012 was issued to the Noticee, as to why: -

- (i) the Service Tax totally amounting to Rs.14,14,259/- (Fourteen Lacs Fourteen Thousand Two Hundred & Fifty Nine) including Service Tax of Rs. 13,73,067/- plus Education Cess of Rs. 27,461/- plus Secondary & Higher Education Cess of Rs. 13,731/- as calculated in para 14 of the notice should not be demanded and recovered under proviso to Section 73(1) of the Act;
- (ii) interest at appropriate rate on delayed payment of Service Tax from the due date of payment of Service Tax to the actual payment

- of the same should not be charged and recovered under Section 75 of the Act;
- (iii) an amount total of Rs.13,78,757/- (Thirteen Lakhs Seventy Eight Thousand Seven Hundred & Fifty Seven Only) paid by the Noticee towards Service Tax as detailed in the table at para 18 of the notice should not be appropriated against the Service Tax payable as detailed in para 14 of the notice under the provisions of Finance Act, 1994;
 - (iv) an amount total of Rs.48,229/- (Forty Eight Thousand Two Hundred & Twenty Nine Only) paid by them towards interest on delayed payment of the Service Tax as discussed in the table at para 18 of the notice should not be appropriated against the Interest leviable on delayed payment of Service Tax payable under the provisions of Finance Act, 1994;
 - (v) penalty should not be imposed upon them under Section 77 (1) (a) of the Act for the act of not issuing invoices against the services rendered by them in the prescribed manner and for not providing list of all the records prepared or maintained by them for accounting of transactions in regard to providing of construction of complex service.
 - (vi) penalty should not be imposed upon them under Section 76 of the Act for the failure to assess service tax as required under Section 70 of the Act and make the payment of service tax within the period and in the manner prescribed under Section 68 of the Act read with rule 6 of the Rules.
 - (vii) penalty should not be imposed upon them under Section 78 of the Act for the Service Tax not levied and not paid by them by suppressing the facts with intent to evade payment of Service Tax and for the contravention of the provisions of the Act and the Rules made thereunder.

Defence :

21.1 The Noticee filed their reply to the show cause notice vide letter dated 13,02.2012. They submitted that the provisions of section 73(3) of the Act, which clearly provides that where any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on