

	<b>KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM</b>	
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BEFORE THE AUTHORITY OF: Shri. Sivaprasad .S, IRS &  
: Shri. Senil A.K. Rajan.

Legal Name of the applicant	M/s. VICTORIA REALTORS
GSTIN	32AAJFV2527L1Z0
Address	10/728, Mettuppalayam Street, Near Head Post Office, Palakkad – 678001.
Advance Ruling sought for	i) Whether the new tax rate of 7.5% (effective rate of 5% after excluding land portion), with no ITC, is applicable to the 11 unbooked units in the said VRINDHAVAN project?  ii) Whether the answer given for the first question to VRINDHAVAN project is also applicable to the other similar projects in similar situations?
Date of Personal Hearing	22-12-2020
Authorized Representative	Shri. M.P.Tony, Chartered Accountant

**ADVANCE RULING No. KER/116/2021 Dated 28-05-2021**

M/s. Victoria Realtors (**hereinafter referred to as the applicant**) is a partnership firm registered in Tamil Nadu and engaged in promotion of gated community villa projects in the State of Kerala for the prospective villa buyers.

2. At the outset, the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

**3. Brief facts of the case:**

3.1. The applicant started the activities from 2012 onwards. They first identify locations suitable for the gated community villa projects and will buy land in

their own name and take layout approval in their name and promote the villas to various villa buyers. In another situation they identify locations suitable for the gated community villa projects and enter into agreement with the landlords for the purchase of the entire land area required for the project. The total area of land is divided into various plots and the layout approval is taken in the name of landlord and the villa approval is taken either in the name of landlord or in the name of villa buyers from concerned local authorities at their expense. After the approval from local authorities, they provide amenities like road, arch, compound wall, rain water harvest, health club etc required for the gated communities. They do marketing activities such as digital, paper ads, media advertisement etc and identify the suitable villa buyers for the projects.

3.2. They are having several projects out of which one project is "VRINDHAVAN" (all units in this project are "other than affordable villas") in which there are 20 units. Out of the 20 units, 9 units were already booked and got approval for villa from local authorities before 31.03.2019 and the balance 11 units in that project were unbooked and have not got the approval for villa from local authorities before 31.03.2019.

3.3. They opted (by exercising One time option in Form Annexure IV) for old GST rate of 18% - effective rate being 12% after excluding land portion - (as per Sl.No.3, Clause No.(if) of Notification No.11/2017-Central Tax (Rate) dated 28-06-2017 as amended by Notification No. 03/2019 - Central Tax (Rate) dated 29-03-2019) for the 9 units which were already booked and got the approval from local authorities before 31.03.2019 and have not opted the old rate of tax for the balance 11 units since they are unbooked and not got approval from local authorities before 31.03.2019. In the Option Form Annexure IV, only 9 villas were included and balance 11 villas were not included. The Form Annexure IV with only 9 villas was accepted by the proper officer. Since they have not opted for the old rate of 18%, for the balance 11 villas, they are made liable to pay GST at the new rate of 7.5% without ITC, (as per item (ia) in Sl.No.3 in the Notification) effective tax rate being 5% after excluding land portion.

4. The applicant requested advance ruling on the following;

1. *Whether the new tax rate of 7.5% (effective rate of 5% after excluding land portion), with no ITC, is applicable to the 11 unbooked units in the said VRINDHAVAN project?*

2. *Whether the answer given for the first question to VRINDHAVAN project is also applicable to other similar projects in similar situations?*

**5. Contentions of the Applicant:**

5.1. The applicant submits that as per Sl.No.3, item (ia), in Notification 11/2017 CT (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 CT (Rate) dated 29.03.2019 the CGST Rate of 3.75% (effective tax rate being 5% without ITC) is applicable for the following:

“Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, 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.”

5.2. As per Sl.No.3, item (if), in Notification 11/2017 CT (Rate) dated 28.06.2017 as amended by Notification 03/2019 CT (Rate) dated 29.03.2019 the old CGST rate of 9% (effective tax rate being 12% with ITC) is applicable for the following:

“Construction of a complex, building, civil structure or a part thereof, including; (i)..... (ii) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item in the manner prescribed herein.”

5.3. As per Sl.No.3, item (if), in Notification 11/2017 CT (Rate) dated 28.06.2017 as amended by Notification 03/2019CT (Rate) dated 29.03.2019 the old CGST rate of 9% (effective tax rate being 12% with ITC) is applicable for Construction of a complex, building, civil structure or a part thereof including residential apartments in an ongoing project, in respect of which the promoter has exercised option to pay central tax on construction of apartments.

5.4. As can be seen from the above, the exercise of the option to pay tax at old rate is available even for a part of a project and the exercise of option to pay tax is in respect of the residential apartment in an ongoing project and not on ongoing project itself.

5.5. The heading of the Form Annexure IV states that this is a “form for exercising onetime option to pay tax on construction of apartments in a project.....”. That means the option is to pay tax on construction of apartments and accordingly, the option is on unit or villa wise and not on project wise. Point No.5 in the form also ask data for “the number, type and carpet area of the apartments for booking or sale in the project”.

5.6. Moreover, applicant had filed the Form Annexure IV by exercising the option to pay tax at old rate only for 9 Villas stating clearly in the Form itself by attaching a separate list of 9 villas opting the old tax rate and the authority had also accepted such Annexure and raised no objection in opting the old tax rate only for 9 villas in the project.

5.7. Based on the above points, applicant is of the view that the new tax rate of 5% (effective rate after excluding land portion), with no ITC, is applicable to the 11 unbooked units in the said VRINDHAVAN project. They are also of the view that the above principle applied for VRINDHAVAN project is also applicable for similar projects under similar situations.

**6. Comments of the Jurisdictional Officer:**

The jurisdictional officer submitted that the applicant had filed option on 09.05.2019 before the Joint Commissioner of State GST with the following details of 13 on-going projects.

Sl.No.	Name of Project	No. of villas
1	AMRITHAM	5
2	DISCOVERY	3
3	GEETHAM	4
4	GREENS	15
5	KEERTHANAM	17
6	POURNAMY	17
7	PRARTHANA	1
8	SAYOOJYAM	9
9	SHOBANAM	55
10	THAPASSYA	4
11	THE NELLIES	25
12	VEDHANTHA	9
13	VRINDHAVAN	9

The above option filed for continuing the old rate of tax was accepted as the construction had already began and the buildings were approved by the local authority. Subsequently, the applicant filed revised statement on 19.06.2019 requesting to pay tax at the old rate for one more villa under the project "VRINDHAVAN" stating that 70% of the construction was already completed on 31.03.2019. The revised option was rejected by the Joint Commissioner as the last date for filing option was on 20.05.2019.

#### **7. Personal Hearing:**

The applicant was granted opportunity for personal hearing on 22.12.2020. Shri. M.P.Tony, Chartered Accountant represented the applicant for personal hearing. He reiterated the contentions made in the application and requested to issue the ruling on the basis of the submissions made in the application.

#### **8. Discussion and Conclusion:**

8.1. The matter was examined in detail. A new tax structure for real estate sector was introduced with effect from 01.04.2019 onwards by amendment of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 by Notification No. 03/2019 - Central Tax (Rate) dated 29.03.2019. The Notification No. 03/2019 -Central Tax (Rate) dated 29.03.2019 substituted the rate for services related to real estate sector with effect from 01.04.2019 and also made provisions for continuing the old rate of tax (as it existed up to 31.03.2019) for the ongoing projects. The provisions for continuing the old rate of tax for the ongoing projects were incorporated in Items (ie) and (if) of Sl No. 3 of the Notification No. 11/2017 CT (Rate) dated 28.06.2017 as amended and the Item at (if) (ii) being in respect of construction of residential apartments other than affordable residential apartments is the provision that is applicable to the applicant. The condition prescribed under the above provision for continuing with the payment of tax at the old rates in respect of ongoing projects was that the registered person shall exercise within the specified time an option in the prescribed form to pay tax on construction of apartments in the project at the rates as specified for Item (if) of Sl No. 3 of the said notification. Accordingly, the applicant exercised option in the prescribed form for paying tax at the old rate for their ongoing project namely; "VRINDHAVAN" stating that the option is in respect of 9 units out of a total of 20 units comprised in the project on the ground that only 9 units were booked and approval obtained from the local authorities as on 31.03.2019 and the remaining 11 units were neither booked nor approval obtained from the local authorities. Now, the issue to be determined is whether such option as prescribed in Item (if) of the said notification can be exercised in respect of part of a project or it should be exercised for the entire project as a whole.

8.2. The term “ongoing project” is defined under clause (xx) of Para 4 of Notification 11/2017-CT (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 – CT (Rate) dated 29.03.2019 as follows;

“the term “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 31<sup>st</sup> March, 2019, and it is certified by any of the following that construction of the project has started on or before 31<sup>st</sup> 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

(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 31<sup>st</sup> March, 2019;

(c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31<sup>st</sup> March, 2019;

(d) apartments being constructed under the project have been, partly or wholly, booked on or before the 31<sup>st</sup> 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 31<sup>st</sup> March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31<sup>st</sup> March, 2019.

8.3. The definition of the term project is contained in clause 4(xv) of Para 4 of the Notification No.11/2017 – CT (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 CT (Rate) dated 29.03.2019; wherein it is specified that the term ‘project” shall mean a Real Estate Project or a Residential Real Estate Project. In clause 4(xviii) of the said notification it is stated that the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in Section 2(zn) of the Real Estate (Regulation and Development) Act, 2016.

8.4. Section 2 (zn) of the Real Estate (Regulation and Development) Act, 2016 defines “Real Estate Project” as follows;

“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 apartments 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.

8.5. As per clause (xix) of Para 4 of the said notification the term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP. As per clause (xxi) of Para 4 of the said notification; “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. As per clause (xiv) of Para 4 of the said notification the term “apartment” shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016. Section 2 (e) of the Real Estate (Regulation and Development) Act, 2016 defines the term “apartment” as follows;

“Apartment” whether called block, chamber, dwelling unit, flat, office, show room, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom, or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.”

8.6. Consequent to the notification of the new GST rate structure for real estate sector with effect from 01.04.2019 the CBIC has issued FAQs under F.No. 354/32/2019 – TRU dated 07.05.2019 clarifying the various doubts raised by trade and industry. The doubts regarding the meaning and scope of the term “ongoing project” and the exercise of option in respect of continuing payment of tax at the old rates for the ongoing projects were clarified by CBIC in Question Nos. 24,29,33 and 34 of the above FAQ’s and the same is extracted below;

Q.No. 24: From the plain reading of the provisions and the definitions of the various terms as defined in the Notification No. 3/2019- CT(R), it appears that the onetime option is required to be exercised for the entire REP or RREP. Does this mean that a Promoter can opt for old rates or new rates, as the case may be, for different projects being undertaken by him under the same entity?

Ans: Yes. The option to pay tax on construction of apartments in the ongoing projects at the effective old rates of 8% and 12% with ITC has to be exercised for each ongoing project separately. As per RERA, 2016, project wise registration is allowed. So, the promoter may exercise different options for different ongoing projects being undertaken by him.

Q.No. 29: What is the meaning of the term "first occupation" referred to in clauses (i) to (id) of Entry 3 of Notification No. 3/2019? Whether, in case of an ongoing project, where part occupation certificate has been received in respect of some of the premises comprised in the ongoing project, the Promoter is entitled to exercise the option of 1% / 5% (without ITC) or @ 8%/12% (with ITC) available in terms of Notification No. 3/2019 CT (R), in respect of the balance ongoing project?

Ans: 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.

Q.No.33: A registered project has three blocks and Completion Certificate has been received for one block prior to 1<sup>st</sup> April, 2019 and for two blocks will be received after that date. Will such a project for which multiple completion certificates are received partly before 1<sup>st</sup> April, 2019 and partly after that date, constitute an ongoing project?

Ans: Where more than one completion certificate is issued for one project, for the purpose of definition of ongoing project as defined in the clause (xx) in the paragraph 4 of the notification No. 11/ 2017- CTR, dated 28.06.2017, completion certificate issued for part of the project shall not be considered to have been issued for the project on or before 31-03-2019 unless completion certificate(s) have been issued for the entire project. Therefore, if completion certificate has not been issued for part of the project on or before 31-03-2019, the project shall still be considered as ongoing project provided other conditions of the definition of "ongoing project" are met.

Q.No.34: It is a prevalent practice that more than one commencement certificate is issued by competent authority for single project. For example, in case of a single tower comprising of 50 floors and registered as single project,



separate commencement certificates may be issued by the competent authority for (i) basement and parking which is common to entire building (ii) first twenty floors (iii) next thirty floors. If one or two commencement certificates are received by the Developer prior to 1st April, 2019 and remaining on or after that date, will such a project be considered as an ongoing project?

Ans: Where commencement certificate has been issued even for part of the project on or before 31-03-2019, it shall be treated as an ongoing project provided other requirements of the definition of ongoing project are met.

8.7. On a conjoint reading of the definitions of the terms and the clarification of CBIC as extracted above it is evident that the option envisaged under Item (if) of Sl No. 3 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019 is in respect of the entire ongoing project and not in respect of part of the project. Further, as is clarified by CBIC, even if the commencement certificate issued is only for part of the project, the same shall be treated as an ongoing project. Hence, as per provisions of the said notification, the option to pay tax at the old rate can only be exercised project-wise and not for part of project or individual apartments / villas comprised in a project. Therefore, the option exercised by the applicant for paying tax at the rate as specified in Item (if) of Sl No. 3 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019 in respect of the ongoing project "VRINDHAVAN" is applicable for the entire 20 villas comprised in the project and not for the 9 villas as claimed by the applicant.

9. The second question raised by the applicant is whether the answer given for the first question to VRINDHAVAN project is also applicable to the other similar projects in similar situations?

9.1. Section 103 of the CGST Act that pertains to the applicability of advance ruling reads as follows;

"103. Applicability of advance ruling— (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed."

9.2. Therefore, the advance ruling is binding only on the applicant and the jurisdictional officer of the applicant. Hence the answer to the first question is applicable only to similar projects of the applicant in similar situations.

In view of the observations stated above, the following rulings are issued;

**RULING**

1. Whether the new tax rate of 7.5% (effective rate of 5% after excluding land portion), with no ITC, is applicable to the 11 unbooked units in the said VRINDHAVAN project?

No. Since the applicant has exercised option for paying tax at the rate as specified in Item (if) of Sl No. 3 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019 in respect of the ongoing project "VRINDHAVAN", the old rate of tax at 18% [9%- CGST + 9% - SGST] with input tax credit is applicable for all the apartments / villas comprised in the project-"VRINDHAVAN".

2. Whether the answer given for the first question to VRINDHAVAN project is also applicable to the other similar projects in similar situations?

The answer to Question No. 1 above is applicable to the other similar projects of the applicant in similar situations.



Sivaprasad.S

Joint Commissioner of Central Tax  
Member



Senil A.K. Rajan

Additional Commissioner of State Tax  
Member

To

M/s. VICTORIA REALTORS,  
10/728, Mettupalayam Street,  
Near Head Post Office,  
Palakkad - 678001.

**Copy to:**

- 1) The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R.Building, I.S.Press Road, Cochin-682018. [E-mail ID: [cccochin@nic.in](mailto:cccochin@nic.in)]
- 2) The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram - 695002.
- 3) The Deputy Commissioner of State Tax, State Goods and Services Tax Department, Palakkad. [E-mail ID: [iacpkd@gmail.com](mailto:iacpkd@gmail.com)]