
	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
---	--	---

BEFORE THE AUTHORITY OF: Shri. Sivaprasad.S, IRS &
: Shri. Senil A.K. Rajan.

Legal Name of the applicant	Confederation of Real Estate Developers Association of India [CREDAI], Kerala Chapter
GSTIN	32AABTC2424R1ZQ
Address	CREDAI Kerala Chapter, House of CREDAI, JNI Stadium Link Road, Kaloor, Kochi – 682017.
Advance Ruling sought for	<ol style="list-style-type: none"> 1. Prior to 08.11.2019, what would be the date of completion of an apartment constructed within the State of Kerala for the purpose of determining whether the transaction of sale of apartment would be treated as supply attracting GST liability? 2. Post 08.11.2019, what would be the date of completion of an apartment constructed within the State of Kerala for the purpose of determining whether the transaction of sale of apartment would be treated as supply attracting GST liability?
Date of Personal Hearing	06-01-2021
Authorized Representative	Adv. Jose Jacob

ADVANCE RULING No. KER/127/2021 Dated 31-05-2021

M/s. Confederation of Real Estate Developers Association of India [CREDAI] (hereinafter referred to as the applicant) is the apex body of private real estate developers representing 20000 members spread across 21 state level chapters and 220 city level chapters in India.

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 was established in the year 1999 with the charter for policy advocacy in favour of housing and real estate. They are the prime knowledge sharing forum for latest industry data, technological advancements and industry benchmarks. They have emerged as the preferred platform with regard to national discourse on housing and habitat through strong networking with Government, policy makers, investors, financial institutions and real estate developers.

3.2. In the light of the evolving provisions of goods and services tax the members of the applicant engaged in the activity of construction and sale of apartments have queries regarding the date of completion of an apartment within the State of Kerala for the purpose of determining whether the transaction of sale of apartment would be treated as supply attracting GST liability under the CGST Act.

4. Accordingly, the applicant requested advance ruling on the following;

1. *Whether prior to 08.11.2019 the activity of sale of apartment undertaken by the applicant would be treated a supply to determine GST liability, if the agreement for sale of the apartment is entered into by the applicant and entire consideration towards said sale is received from the customer after submission of completion certificate in Form Appendix F issued by the Registered Architect / Engineer / Supervisor to the Secretary for obtaining occupancy certificate in Form Appendix H as per Rule 22 of the Kerala Municipality Building Rules, 1999 but before expiry of 15 days from the date of such submission?*

2. *Whether prior to 08.11.2019 the activity of sale of apartment undertaken by the applicant would be treated a supply to determine GST liability, if the agreement for sale of the apartment is entered into by the applicant and entire consideration towards said sale is received from the customer after expiry of 15 days from the date of submission of completion certificate in Form Appendix F issued by the Registered Architect / Engineer /*

Supervisor to the Secretary for obtaining occupancy certificate in the Form Appendix H as per Rule 22 of the Kerala Municipality Building Rules, 1999?

3. *Prior to 08.11.2019, what would be the date of completion of an apartment constructed within the State of Kerala for the purpose of determining whether the transaction of sale of apartment would be treated as supply attracting GST liability?*

4. *Whether post 08.11.2019 the activity of sale of apartment undertaken by the applicant would be treated a supply to determine GST liability, if the agreement for sale of the apartment is entered into by the applicant and entire consideration towards said sale is received from the customer after submission of completion certificate in Form Appendix E3 issued by the Registered Architect / Engineer / Supervisor to the Secretary for obtaining occupancy certificate in Form Appendix F2 as per Rule 20 of the Kerala Municipality Building Rules, 2019 but before expiry of 15 days from the date of such submission?*

5. *Whether post 08.11.2019 the activity of sale of apartment undertaken by the applicant would be treated a supply to determine GST liability, if the agreement for sale of the apartment is entered into by the applicant and entire consideration towards said sale is received from the customer after expiry of 15 days from the date of submission of completion certificate in Form Appendix E3 issued by the Registered Architect / Engineer / Supervisor to the Secretary for obtaining occupancy certificate in the Form Appendix F2 as per Rule 20 of the Kerala Municipality Building Rules, 2019?*

6. *Post 08.11.2019, what would be the date of completion of an apartment constructed within the State of Kerala for the purpose of determining whether the transaction of sale of apartment would be treated as supply attracting GST liability?*

5. Contentions of the Applicant:

5.1. Scope of supply for levy of GST is covered under Section 7 of the CGST Act which reads as follows;

“7. Scope of supply— (1) *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; and
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration;
- (1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.
- (2) Notwithstanding anything contained in sub-section (1) —
- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,
- shall be treated neither as a supply of goods nor a supply of services.
- (3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—
- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

5.2. As per Section 7(2) of the CGST Act, activities specified under Schedule III shall be treated neither as a supply of goods nor a supply of services. Para 5 of Schedule III reads as follows;

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

5.3 Para 5 of Schedule III specifically covers sale of building as an activity or transaction which shall be treated neither as a supply of goods nor a supply of services, subject to clause (b) of Para 5 of Schedule II of the CGST Act. Therefore, where the condition stipulated in clause (b) of Para 5 of Schedule II of the CGST Act has been satisfied, sale of building shall not be treated as a supply and hence will not attract GST liability.

5.4. Schedule II to the CGST Act, lists out the activities that are treated as supply of service for levy of GST. As per clause (b) of Paragraph 5 of Schedule II to the CGST Act, where the consideration for sale of a structure has been received after issuance of completion certificate by the competent authority, the said transaction of sale of apartment is not treated as supply of service under the CGST Act. An explanation to the said provision further clarifies who constitutes a competent authority to issue completion certificate for the purpose of the provision. The relevant portion of Paragraph 5 of Schedule II to the CGST Act reads as follows;

"5. Supply of services

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

(a) renting of immovable property;

(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; 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 remodelling of any existing civil structure."

5.5. It may be understood from the explanation to clause (b) of paragraph 5 of Schedule II of the CGST Act that "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, a certificate from a registered Architect, a Chartered Engineer or a Licensed Surveyor meeting the

criteria specified in the said provision. Therefore, it is clear that the competent authority for issue of completion certificate is governed by the laws applicable to the builder.

5.6. The applicant and its members are carrying on construction activity within the State of Kerala and for the period prior to 08.11.2019 were governed by the Kerala Municipality Building Rules, 1999 (hereinafter referred to as KMBR, 1999) and for the period post 08.11.2019 are governed by the Kerala Municipality Building Rules, 2019 (hereinafter referred to as KMBR, 2019). The KMBR, 1999 and KMBR, 2019 shall hereinafter collectively be referred to as KMBR.

5.7. As per KMBR applicable during the relevant period a builder intending to construct a building or make alteration or addition or extension to the building in the State of Kerala shall apply in writing to the Secretary of municipal corporation, municipal council or Town Panchayat as may be applicable in the form in Appendix A of the KMBR, 1999 where application was made prior to 08.11.2019 or in the form in Appendix A1 of the KMBR, 2019 where the application is made post 08.11.2019 together with plans and statements as required under the applicable KMBR for obtaining a building permit. The format of application in form Appendix A and Appendix A1 is enclosed as Exhibits 1 and 2.

5.8. The Secretary on being satisfied with the application, plans and drawings and other documents shall issue to the builder, a building permit in form in Appendix C of the KMBR, 1999 or in form in Appendix B2 of the KMBR, 2019 as applicable during the relevant period. The format of building permit in Appendix C and Appendix B2 is enclosed as Exhibits 3 and 4.

5.9. On completion of construction of the building as per the building permit issued to the builder by the Secretary, the builder shall intimate completion of construction to the Secretary as stipulated under the KMBR.

5.10. For the period, prior to 08.11.2019, Rule 22 of the KMBR, 1999 deals with completion certificate, development certificate and occupancy certificate. The relevant portion of Rule 22 of the KMBR, 1999 reads as follows;

"22. Completion certificate, development certificate and occupancy certificate. -

(1) Every owner shall, on completion of the development or redevelopment of land or construction or reconstruction or addition or alteration of building, as per the permit issued to him, submit a completion certificate certified and signed by him, to the Secretary in the form in Appendix E:

Provided that in the case of buildings, other than single residential units up to two floors with total floor area not exceeding 150 sq. meters, the completion certificate shall be certified and signed by the owner and registered architect or engineer or supervisor also as in Appendix F.

(2) The Secretary shall, on receipt of the completion certificate and on being satisfied that the development or redevelopment of land has been effected in conformity with the permit given, issue a development certificate in the form in Appendix G, not later than 15 days from the date of receipt of the completion certificate:

.....

(3) The Secretary shall, on receipt of the completion certificate and on being satisfied that the construction or reconstruction or addition or alteration has been carried out in conformity with the permit given, issue occupancy certificate in the form in Appendix H not later than fifteen days from the date of receipt of the completion certificate:

Provided that if no such occupancy certificate is issued within the said fifteen days, the owner may proceed as if such occupancy certificate has been duly issued to him.

5.11. For the period post 08.11.2019, Rule 20 of the KMBR, 2019 deals with completion certificate, development certificate and occupancy certificate. The relevant portion of Rule 20 of the KMBR, 2019 reads as follows;

"20. Completion certificate, development certificate and occupancy certificate—

(1) Every owner shall, on completion of development or redevelopment of land or construction or reconstruction or addition or alteration of building, as per the permit issued to him, submit a completion certificate certified and signed by him to the Secretary in the form in Appendix E1 together with sufficient copies of plans and drawings of completed building:

Provided that in the case of buildings, other than residential buildings up to two floors with total built-up area not exceeding 150 sq. metres, the completion certificate shall be certified and signed by the owner and registered Institution or Architect or Building Designer or Engineer or Supervisor also as in Appendix E3 together with sufficient copies of plans and drawings of completed building.

(2) The Secretary shall, on receipt of the completion certificate and on being satisfied that the development or redevelopment of land has been effected in

conformity with the permit given, issue a development certificate in the form in Appendix F1 along with a copy of the plans duly signed by the Secretary, not later than 15 days from the date of receipt of the completion certificate:

.....
(3) The Secretary shall, on receipt of the completion certificate and on being satisfied that the construction or reconstruction or addition or alteration has been carried out in conformity with the permit given, issue occupancy certificate in the form in Appendix F2 not later than fifteen days from the date of receipt of the completion certificate:

.....
Provided further that if no such occupancy certificate is issued within the said fifteen days, the owner may proceed as if such occupancy certificate has been duly issued to him.

On the expiry of fifteen clear days from the date of valid application for occupancy certificate, the applicant shall submit a letter stating that he is liable to get occupancy certificate and now it is deemed to have issued by the authority.

All Secretaries of Local Self Government Institutions shall acknowledge the receipt of the letter stated in the above paragraph with stamp and date on the same day on the duplicate copy of the letter. This shall be a deemed occupancy certificate.

5.12. From the above extracted provisions, it may be understood that in the case of residential buildings having more than two floors and total built-up area exceeding 150 Sq.mtrs, the completion certificate is a certificate issued and signed by the owner and registered institution or Architect or Building Designer or Engineer or Supervisor in the stipulated form in Appendix F of the KMBR, 1999 for the period prior to 08.11.2019 and in form in Appendix E3 of the KMBR, 2019 for the period after 08.11.2019. The format of completion certificate in Appendix F and Appendix E3 is enclosed as Exhibits 5 and 6.

5.13. The said completion certificate is to be submitted by the builder to the Secretary for issuance of occupancy certificate in the form in Appendix H of the KMBR, 1999 for the period prior to 08.11.2019 and in the form in Appendix F2 of the KMBR, 2019 for the period after 08.11.2019. The format of occupancy certificate in Appendix H and F2 is enclosed as Exhibits 7 and 8.

5.14. The proviso to sub-rule (3) of Rule 22 of the KMBR, 1999 and sub-rule (3) of Rule 20 of the KMBR, 2019 further provide that where the Secretary fails to issue the occupancy certificate within 15 days of the receipt of completion certificate, the owner

may proceed as if such occupancy certificate has been duly issued to him under the KMBR as may be applicable for the relevant period.

5.15. For further clarity in the matter, an RTI application dated 14.03.2018 was made to the Corporation of Thiruvananthapuram and it was clarified that the corporation does not issue completion certificate and the same is to be submitted by the party; i.e; the builder along with application for occupancy certificate. As regards the occupancy certificate it was informed that if the party; i.e; the builder completes the building as per the permit issued then an occupancy certificate is issued to the revenue section for the assessment of tax and issue of TC number. It was specifically clarified that the builder is not issued an occupancy certificate. The copy of RTI application and reply are also enclosed as Exhibits 9 and 10.

5.16. In view of Rule 22 of the KMBR, 1999 and Rule 20 of the KMBR, 2019 and the response dated 13.04.2018 to the RTI application the applicant and its members are of the understanding that as regards an apartment constructed in the State of Kerala the only certificate issued to the builder indicating completion of a building project is the completion certificate issued by the Registered Architect / Building Designer / Engineer / Supervisor as the case may be in form Appendix F to KMBR, 1999 or in form Appendix E3 to the KMBR, 2019 as applicable during the relevant period. Therefore, obtaining the said certificate marks the completion of the project in question and the date of the certificate shall be the date of completion of the project.

5.17. In view of the above, they are of the bonafide belief that the completion certificate obtained by a builder from a Registered Architect / Building Designer / Engineer / Supervisor as the case may be in form Appendix F to KMBR, 1999 or in form Appendix E3 to the KMBR, 2019 as applicable, upon completion of the project is sufficient to satisfy the requirement of obtaining a completion certificate under sub- clause (b) of paragraph 5 of Schedule II to the CGST Act. Therefore, the date of completion of construction for the purpose of determining whether the activity is to be treated as supply of service under sub-clause (b) of paragraph 5 of Schedule II of the CGST Act is the date of issue of completion certificate.

5.18. Therefore, if the consideration towards sale of apartment is received after obtaining completion certificate from a Registered Architect / Building Designer /

Engineer / Supervisor as the case may be in form Appendix F to KMBR, 1999 or in form Appendix E3 to the KMBR, 2019 as applicable, the said transaction would not be treated as a supply of service and would therefore, not attract GST liability under the CGST Act.

6. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The jurisdictional officer has not offered any comments and hence it is presumed that the jurisdictional officer has no specific comments to offer. It is also construed that there are no proceedings pending on the issue against the applicant.

7. Personal Hearing:

The applicant was granted opportunity for personal hearing on 06.01.2021. Adv. Jose Jacob 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. The scope and meaning of "supply"- the taxable event in GST is contained in Section 7 of the CGST Act. As per clause (a) of sub-section (2) of Section 7 the activities or transactions specified in Schedule III shall be treated neither as a supply of goods nor a supply of services. Paragraph 5 of Schedule III states that the Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building shall be treated neither as a supply of goods nor a supply of services. Clause (b) of Paragraph 5 of Schedule II states that construction of 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 shall be treated as a supply of services. Therefore, it follows that the determining factor as to whether GST liability will be attracted for the services of construction of building / apartment intended for sale is the receipt of consideration in respect of the contract of sale. If any consideration is received in respect of the contract, before the issuance of completion certificate then the activity / transaction shall fall within the scope of supply as defined in sub-section (1) of Section 7 and consequently would be deemed to be a supply of services as per provisions contained in sub-section (1A) of Section 7 read with Paragraph 5 (b) of Schedule II of the CGST Act. Therefore, the issue

to be determined is what constitutes the completion certificate as mentioned in clause (b) of Paragraph 5 of Schedule II of the CGST Act and when such completion certificate would be said to have been issued.

8.2. Paragraph 5 (b) of Schedule II of the CGST Act is reproduced below;

“(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; 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 remodelling of any existing civil structure.”

On a plain reading of the above provision, it is evident that the completion certificate mentioned therein is the “Completion Certificate” issued in accordance with the laws, rules and regulations laid down in this regard by the Central Government, State Government or any other authority.

8.3. The Rules governing the construction or reconstruction or alteration or extension of public and private buildings in the State of Kerala are contained in the Kerala Municipality Building Rules, 1999 issued under G.O.(Ms) No. 188/1999/LSGD dated 01.10.1999 of the Government of Kerala published as S.R.O No. 777/1999 dated 01.10.1999. The Kerala Municipality Building Rules, 1999 was superseded by the Kerala Municipality Building Rules, 2019 issued under G.O (P) No. 77/2019/LSGD dated 02.11.2019 of the Government of Kerala published as S.R.O No. 828/2019 dated 02.11.2019.

8.4. The provisions governing completion certificate, development certificate and occupancy certificate were contained in Rule 22 of the Kerala Municipality Building Rules, 1999 and are contained in Rule 20 of the Kerala Municipality Building Rules, 2019. The full text of Rule 22 of KMBR, 1999 and Rule 20 of KMBR, 2019 is reproduced below;

“Kerala Municipality Building Rules, 1999;

22. Completion certificate, development certificate and occupancy certificate. -

(1) Every owner shall, on completion of the development or redevelopment of land or construction or reconstruction or addition or alteration of building, as per the permit issued to him, submit a completion certificate certified and signed by him, to the Secretary in the form in Appendix E:

Provided that in the case of buildings, other than single residential units up to two floors with total floor area not exceeding 150 sq. meters, the completion certificate shall be certified and signed by the owner and registered architect or engineer or supervisor also as in Appendix F.

(2) The Secretary shall, on receipt of the completion certificate and on being satisfied that the development or redevelopment of land has been effected in conformity with the permit given, issue a development certificate in the form in Appendix G, not later than 15 days from the date of receipt of the completion certificate;

Provided that if no such development certificate is received within the said fifteen days, the owner may proceed as if such a development certificate has been duly issued to him.

(3) The Secretary shall, on receipt of the completion certificate and on being satisfied that the construction or reconstruction or addition or alteration has been carried out in conformity with the permit given, issue occupancy certificate in the form in Appendix H not later than fifteen days from the date of receipt of the completion certificate:

Provided that if no such occupancy certificate is issued within the said fifteen days, the owner may proceed as if such occupancy certificate has been duly issued to him.

(4) The owner of a building may if he intends to occupy the building before its completion, apply to the Secretary for that purpose and the Secretary shall, on being satisfied that such occupancy will not endanger life issue occupancy certificate in respect of the completed part.”

“Kerala Municipality Building Rules, 2019: -

20. Completion certificate, development certificate and occupancy certificate. —

(1) Every owner shall, on completion of development or redevelopment of land or construction or reconstruction or addition or alteration of building, as per the permit issued to him, submit a completion certificate certified and signed by him to the Secretary in the form in Appendix E1 together with sufficient copies of plans and drawings of completed building:

Provided that in the case of buildings, other than residential buildings up to two floors with total built-up area not exceeding 150 sq. metres, the completion certificate shall be certified and signed by the owner and registered Institution or Architect or Building Designer or Engineer or Supervisor also as in Appendix E3 together with sufficient copies of plans and drawings of completed building.

(2) The Secretary shall, on receipt of the completion certificate and on being satisfied that the development or redevelopment of land has been effected in conformity with the permit given, issue a development certificate in the form in Appendix F1 along with a copy of the plans duly signed by the Secretary, not later than 15 days from the date of receipt of the completion certificate:

Provided that if no such development certificate is received within the said fifteen days, the owner may proceed as if such a development certificate has been duly issued to him.

On the expiry of fifteen clear days from the date of valid application for development certificate, the applicant shall submit a letter stating that he is liable to get development certificate and now it is deemed to have issued by the authority.

All Secretaries of Local Self Government Institutions shall acknowledge the receipt of the letter stated in the above paragraph with stamp and date on the same day on the duplicate copy of the letter. This shall be a deemed development certificate.

(3) The Secretary shall, on receipt of the completion certificate and on being satisfied that the construction or reconstruction or addition or alteration has been carried out in conformity with the permit given, issue occupancy certificate in the form in Appendix F2 not later than fifteen days from the date of receipt of the completion certificate:

Provided that, in case there is deficiency as per provisions of these Rules, in minimum width of mandatory open space/yard after completion of the construction, other than the distance stipulated as per section 383A of the Kerala Municipality Act, 1994 (20 of 1994) and sub-rule (5) of rule 81 of these rules, the Secretary may allow a tolerance up to 5% of the minimum mandatory open space/yard to be provided as per these rules or twenty five centimeters, whichever is less, for the building constructed:

Provided further that if no such occupancy certificate is issued within the said fifteen days, the owner may proceed as if such occupancy certificate has been duly issued to him.

On the expiry of fifteen clear days from the date of valid application for occupancy certificate, the applicant shall submit a letter stating that he is liable to get occupancy certificate and now it is deemed to have issued by the authority.

All Secretaries of Local Self Government Institutions shall acknowledge the receipt of the letter stated in the above paragraph with stamp and date on the same day on the duplicate copy of the letter. This shall be a deemed occupancy certificate.

(4) The owner of a building may, if he intends to occupy the building before its completion, apply to the Secretary for that purpose together with partial completion certificate by the owner and registered Institution /Architect/Building designer/Engineer/ Supervisor in Appendix E2 and E4 respectively, and sufficient copies of plans and drawings of partially completed building.

(5) Secretary shall ensure the compliance of the provisions of these rules in respect of the partially completed building and on being satisfied that such occupancy will not endanger life, issue occupancy certificate in respect of such partially completed building.

8.5. The format of the completion certificate prescribed in proviso to sub-rule (1) and the format of the occupancy certificate prescribed in sub-rule (3) of Rule 20 of the KMBR, 2019 in Appendix E3 and Appendix F2 respectively is reproduced below;

APPENDIX E3

[See rule 20(1) & 88(1)]

COMPLETION CERTIFICATE BY INSTITUTION, ARCHITECT, ENGINEER, ETC.

Certified that the development or redevelopment of land or construction or reconstruction or addition or alteration of building(s)/ erection of telecommunication tower or pole structure or work has been supervised by me and has been completed on as per the approved plan and permit No.

. dated.....

Place:

Date:

Signature:

Name:

Register No:

(Registered Institution/ Architect/ Engineer/
Building Designer /Town Planner/ Supervisor)

APPENDIX F2

[See rules 17(5) (f), 20 (3) and 88 (2)]

OCCUPANCY CERTIFICATE OR USE CERTIFICATE

.....Municipal Corporation / Municipal Council /
Town Panchayat

Reference: Completion certificate / Partial Completion certificate submitted by the applicant
..... dated and the licensee (Name & Reg. No.)
.....dated

Certified that the construction or reconstruction or addition or alteration of building or erection of telecommunication tower or pole structure or work under the permit No. dated issued to and supervised by has been inspected by me and that the work executed is in accordance with the permit and the building / tower or pole structure is now fit for occupation/use.

Place:
Date:

Signature of the Secretary

8.6. On a combined reading of the above provisions and the prescribed formats; it is clear that the completion certificate in respect of the construction of a building or civil structure in the State of Kerala is the certificate prescribed in sub-rule (1) of Rule 22 and Rule 20 respectively of the KMBR, 1999 and KMBR, 2019. On the basis of the discussion above, we conclude that the completion certificate under any law for the time being in force mentioned in clause (b) of Paragraph 5 of Schedule II of the CGST Act, in so far as the State of Kerala is concerned is the certificate in form in Appendix F prescribed under proviso to sub-rule (1) of Rule 22 of the KMBR, 1999 or the certificate in form in Appendix E3 prescribed under proviso to sub-rule (1) of Rule 20 of the KMBR, 2019. Accordingly, the date of issue of completion certificate for the purpose of clause (b) of Paragraph 5 of Schedule II of the CGST Act shall be the date of issue of the completion certificate submitted to the Secretary in form in Appendix F of the KMBR, 1999 or in form in Appendix E3 of the KMBR, 2019.

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

RULING

1. Whether prior to 08.11.2019 the activity of sale of apartment undertaken by the applicant would be treated as supply to determine GST liability, if the agreement for sale of the apartment is entered into by the applicant and entire consideration towards said sale is received from the customer after submission of completion certificate in Form Appendix F issued by the Registered Architect / Engineer / Supervisor to the Secretary for obtaining occupancy certificate in Form Appendix H as per Rule 22 of the Kerala Municipality Building Rules, 1999 but before expiry of 15 days from the date of such submission?

If the entire consideration in respect of the transaction is received after submission of the completion certificate in Form Appendix F to the Secretary as per Rule 22 of the Kerala Municipality Building Rules, 1999 the transaction shall not be treated as supply under GST in view of provisions contained in Paragraph 5 of Schedule III of the CGST Act, 2017.

2. Whether prior to 08.11.2019 the activity of sale of apartment undertaken by the applicant would be treated as supply to determine GST liability, if the agreement for sale of the apartment is entered into by the applicant and entire consideration towards said sale is received from the customer after expiry of 15 days from the date of submission of completion certificate in Form Appendix F issued by the Registered Architect / Engineer / Supervisor to the Secretary for obtaining occupancy certificate in the Form Appendix H as per Rule 22 of the Kerala Municipality Building Rules, 1999?

If the entire consideration in respect of the transaction is received after submission of the completion certificate in Form Appendix F to the Secretary as per Rule 22 of the Kerala Municipality Building Rules, 1999 the transaction shall not be treated as supply under GST in view of provisions contained in Paragraph 5 of Schedule III of the CGST Act, 2017.

3. Prior to 08.11.2019, what would be the date of completion of an apartment constructed within the State of Kerala for the purpose of determining whether the transaction of sale of apartment would be treated as supply attracting GST liability?

The date of issue of completion certificate for the purpose of clause (b) of Paragraph 5 of Schedule II of the CGST Act shall be the date of issue of the completion

certificate in form in Appendix F submitted to the Secretary as per Rule 22 of the Kerala Municipality Building Rules,1999.

4. Whether post 08.11.2019 the activity of sale of apartment undertaken by the applicant would be treated a supply to determine GST liability, if the agreement for sale of the apartment is entered into by the applicant and entire consideration towards said sale is received from the customer after submission of completion certificate in Form Appendix E3 issued by the Registered Architect / Engineer / Supervisor to the Secretary for obtaining occupancy certificate in Form Appendix F2 as per Rule 20 of the Kerala Municipality Building Rules, 2019 but before expiry of 15 days from the date of such submission?


If the entire consideration in respect of the transaction is received after submission of the completion certificate in Form Appendix E3 to the Secretary as per Rule 20 of the Kerala Municipality Building Rules, 2019 the transaction shall not be treated as supply under GST in view of provisions contained in Paragraph 5 of Schedule III of the CGST Act, 2017.

5. Whether post 08.11.2019 the activity of sale of apartment undertaken by the applicant would be treated a supply to determine GST liability, if the agreement for sale of the apartment is entered into by the applicant and entire consideration towards said sale is received from the customer after expiry of 15 days from the date of submission of completion certificate in Form Appendix E3 issued by the Registered Architect / Engineer / Supervisor to the Secretary for obtaining occupancy certificate in the Form Appendix F2 as per Rule 20 of the Kerala Municipality Building Rules, 2019?

If the entire consideration in respect of the transaction is received after submission of the completion certificate in Form Appendix E3 to the Secretary as per Rule 20 of the Kerala Municipality Building Rules, 2019 the transaction shall not be treated as supply under GST in view of provisions contained in Paragraph 5 of Schedule III of the CGST Act, 2017.

6. Post 08.11.2019, what would be the date of completion of an apartment constructed within the State of Kerala for the purpose of determining whether the transaction of sale of apartment would be treated as supply attracting GST liability?

The date of issue of completion certificate for the purpose of clause (b) of Paragraph 5 of Schedule II of the CGST Act shall be the date of issue of the completion certificate in form in Appendix E3 submitted to the Secretary as per Rule 20 of the Kerala Municipality Building Rules,2019.



Sivaprasad.S

Joint Commissioner of Central Tax
Member



Senil A.K. Rajan

Additional Commissioner of State Tax
Member

To,

M/s. Confederation of Real Estate Developers Association of India [CREDAI],
Kerala Chapter,
House of CREDAI, JNI Stadium Link Road,
Kaloor, Kochi – 682017.

Copy to;

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R.Buildings, I.S.Press Road, Cochin- 682018. [E-mail ID: cccochin@nic.in]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The State Tax Officer – 3, State Goods and Services Tax Department, First Circle, Thripunithura, Ernakulam. [E-mail ID: ctotripunithura1@yahoo.com]