



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



BEFORE THE AUTHORITY OF : Smt. S. L. Sreeparvathy, IRS &
: Shri Abraham Renn S. IRS

Legal Name of the applicant	M/s GALAXY HOMES PRIVATE LIMITED
GSTIN	32AABCG0461F1Z9
Address	66/3803, 6 th Floor, Galaxy House, Rajaji Road Junction, M. G. Road, Ernakulam – 682035.
Advance Ruling sought for	<ul style="list-style-type: none"> i) Applicability of a notification issued under the provisions of the Act. ii) Determination of time and value of supply of goods or services or both, iii) Determination of the liability to pay tax on any goods or services or both, iv) Whether any particular thing done by the applicant with respect to any goods and / or services or both amounts to or results in a supply of goods and / or services or both, within the meaning of that term.
Date of Personal Hearing	05.11.2021
Authorized Representative	Shri Thomas John and Hamsa Mohammed

ADVANCE RULING No. KER/135/2021 Dtd. 01.06.2022

1. M/s Galaxy Homes Private Limited (hereinafter referred to as the applicant) is engaged in the business of construction of residential apartments. They are not doing any joint venture projects but are purchasing the land in their own name and obtaining building permit in their name for constructing of apartment complex.

2. At the outset, it is clarified that 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. The Applicant has requested for advance ruling on the following;

- I. Applicability of a notification issued under the provisions of the Act.
- II. Determination of time and value of supply of goods or services or both,
- III. Determination of the liability to pay tax on any goods or services or both,
- IV. Whether any particular thing done by the applicant with respect to any goods and / or services or both amounts to or results in a supply of goods and / or services or both, within the meaning of that term.

4. Contentions of the Applicant:

4.1. The applicant submits that they enter into two agreements with the customers who want to have an apartment in their project. Firstly, an agreement for sale of undivided share of the land is executed between the company and the customer in which a particular number of undivided shares are agreed to be sold to the customer based on the square feet of the apartment proposed to be purchased by the customer. Along with the said agreement, another agreement for constructing the apartment is also executed between the company and the customer entrusting the work of constructing the apartment to the company. The value of the undivided share of the land is shown in the agreement for sale. A registered sale is executed in favour of the customer showing the said value of undivided share as the land cost and stamp duty is paid. Also, cost of construction of the proposed apartment as valued by a valuer is also to be shown as per the amendment of 2007 and stamp duty for the said amount is also shown in the sale deed and the same is paid along with the value of undivided share of land. No GST is collected or paid in respect of the value of undivided share of land.

4.2. The applicant further submits that since a definite amount is fixed as value of undivided share of land, and a definite amount is fixed as amount for works contract, GST at the rate of 18% is collected on the contract amount shown in



the agreement for construction. Usually in their cases, the value of the undivided share of land is less than 1/3rd of the total price of the apartment. Hence, they have been collecting 18% of the amount as per the agreement for construction and remitting the same after utilizing available input credit. Few of their customers have raised a contention that the rate of GST to be collected should be 12% only on the ground that land value should be deemed to be taken as 1/3rd of the total price of the apartment and that after land value is deemed at 1/3rd of the price of the apartment, then only 12% should be collected from the customers. They have relied on the GST Notification 11/2017-Central Tax (Rate) for this contention. Therefore, they have filed this application for ruling as to the rate at which they need to collect tax from their customers.

5. Remarks of the Jurisdictional Officer:

5.1. The application was forwarded to the jurisdictional officer as specified under subsection (1) of Section 98 of the CGST Act. The jurisdictional officer submitted that the applicant enters in to two agreements with the customers who purchase homes from them. One is for sale of undivided land on which they have to pay the stamp duty at the time of registration. The other one is for allowing them to execute the construction activity. VAT, Service Tax / GST is paid on the same. Since these are projects [that] started before introduction of GST, they were paying VAT and Service Tax and after introduction of GST they are paying GST [Now at the rate of 18%]. As per Notification No.11/2017-CT(Rate) dated 28.06.2017 as amended by Notification No.03/2019-CT (Rate) dated 29.03.2019 they have filed Annexure - IV and have declared to the department that they are collecting and paying tax at the rate of 18% [Old rate]. There is no objection by the department till date for this action of the applicant. The applicant has informed that instead of collecting 12% for the gross amount, they are collecting 18% on the charges for construction agreement. The tax payment appears to be correct. The Jurisdictional Officer has further stated that no proceedings in the questions raised in the case of the applicant are decided or pending.



6. Personal Hearing:

6.1. The applicant was granted an opportunity for a personal hearing on 05.11.2021. Shri Thomas John and Shri Hamsa Mohammed represented the applicant in the personal hearing. They submitted additional documents and reiterated the contentions made in the application and requested to issue a ruling based on the submissions in the application.

7. Discussion and Findings:

7.1. We have gone through the application and the submissions of the applicant during the personal hearing. The questions to be answered are regarding the rate of tax and taxable value in respect of the construction services of the apartments rendered by them from 01.07.2017; the date of introduction of GST onwards. The practice followed by the applicant is that they purchase the land in their name and obtain a building permit in their name and enter into two agreements with the customers; one for the sale of an undivided share of land and another for the construction of the apartment. Since the amount for the undivided share of land and the amount for construction are fixed and separately available, they are not collecting and paying GST on the amount collected for the undivided share of land and they are collecting GST at the rate of 18% on the amount collected for the construction of the apartment.

7.2. To answer the questions raised by the applicant it is necessary to analyse not only the definitions of various terms under the Notification No.11/2017 Central Tax (Rate) dated 28.06.2017 but also the rate structure in respect of the service of construction of residential apartments as notified by Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 before and after its amendment with effect from 01.04.2019 by Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019.

7.3. A new tax structure for the real estate sector was introduced with effect from 01.04.2019 onwards by amendment of Notification No.11/2017-CT(R) dated 28.06.2017 by Notification No.03/2019-CT(R) dated 29.03.2019. The Notification No.03/2019-CT(R) dated 29.03.2019 substituted the rate for



services related to the 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.

7.4. The provisions for continuing the old rate of tax (as it existed up to 31.03.2019) for the ongoing projects were incorporated in Items (ie) and (if) of Entry at Sl. No. 3 of Notification No.11/2017-CT(R) dated 28.06.2017 as amended. The entries in Item (ie) and (if) of Sl. No. 3 of Notification No.11/2017-CT(R) dated 28.06.2017 as amended by Notification No.03/2019-CT(R) dated 29.03.2019 reads as follows;

“(ie) Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item(d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table, 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.

(Provisions of paragraph 2 of this notification shall apply for valuation of this service)

(if) Construction of a complex, building, civil structure or a part thereof, including, -

(i) commercial apartments (shops, offices, godowns etc) by a promoter in a REP other than RREP,

(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, but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) above 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 removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib),(ic),(id) and (ie) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry.

(Provisions of paragraph 2 of this notification shall apply for valuation of this service)”

7.5. The rate of GST applicable for entry at Item (ie) is 12% [6% CGST + 6% SGST] and for the entry at Item (if) is 18% [9% CGST + 9% SGST]. The above rate of GST is subject to the conditions mentioned therein.

The conditions that are common to both the above entries are as follows;

“Provided that in case of ongoing project, the registered person shall exercise one time option in the Form at Annexure IV to pay central tax on construction of apartments in a project at the rates as specified for item (i.e.) or (if), as the case may be, by the 20th of May, 2019.

Provided also that where the option is not exercised in Form at Annexure IV by the 20th of May, 2019, option to pay tax at the rates as applicable to item (i) or (ia) or (ib) or (ic) or (id) above, as the case may be, shall be deemed to have been exercised.

Provided also that invoices for supply of the service can be issued during the period from 1st April 2019 to 20th May 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised.”

7.6. From the above it is evident that the concessional rate of 12% [6% CGST + 6% SGST] is available only in respect of the construction services of apartments in any of the following schemes specified in item (ie) of entry at Sl No: 3 of the 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;

(a) Sl. No. 3 (iv) (b) - Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;



- (b) Sl. No. 3 (iv) (c) - In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);
- (c) Sl. No. 3 (iv) (d) - Beneficiary led individual house construction/enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
- (d) Sl. No. 3 (iv) (da) - Economically Weaker Section (EWS) houses constructed under the Affordable Housing in Partnership by State or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);
- (e) Sl. No. 3 (iv) (db) - Credit Linked Subsidy Scheme for Economically Weaker Sections (EWS) / Lower Income Group (LIG) / Middle Income Group -1 (MIG-1) / Middle Income Group - 2 (MIG-2) under the Housing for All (Urban) Mission / Pradhan Mantri Awas Yojana (Urban);
- (f) Sl. No. 3 (v) (c) - Low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- (g) Sl. No. 3 (v) (d) - Low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under-
1) The "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission / Pradhan Mantri Awas Yojana; 2) Any housing scheme of a State Government.
- (h) Sl. No. 3 (v) (da) - Low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF dated the 30th March 2017.



- (i) *Sl. No; 3(vi) (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.*

7.7. Further, Para 4 of the said notification defines the different terms used in the above entries. The relevant definitions are reproduced below:

“(xiv) 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;

(xix) 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;

(xx) “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 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019-

(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.

(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 31st March 2019;

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



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

(xxix) "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority."

7.8. The relevant clauses of Section 2 of the Real Estate (Regulation and Development) Act, 2016 which contains the definition of the terms 'apartment', 'promoter' and 'real estate project' are reproduced below;

"(e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, 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;

(zk) "promoter" means,— (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or (iii) any development authority or any other public body in respect of allottees of— (a) buildings or apartments, as



the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or (vi) such other person who constructs any building or apartment for sale to the general public.

(zn) "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."

7.9. From the above provisions, it is evident that item (ie) of Sl No. 3 of the said notification prescribes the rate of tax on the construction of an apartment under the schemes specified in various sub-items of Item (iv), (v) and (vi) of Sl No. 3 as enumerated therein and Item (if) of Sl No. 3 of the said notification prescribes the rate of tax on the construction of residential apartments other than affordable residential apartments in an ongoing project in respect of which the promoter has exercised option to pay tax at the rates as specified under the item. The condition prescribed 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 prescribed time an option in the prescribed form to pay tax on the



construction of apartments in the project at the rates as specified for Item (ie) or (if) of Sl No. 3 of the said notification.

7.10. From the facts as disclosed in the application and from the remarks of the jurisdictional officer, it is evident the project of the applicant satisfies all the conditions of the definition of “ongoing project” in clause (xx) of Para 4 of the said notification and accordingly the applicant is eligible for filing option for continuing with the payment of tax at the old rates in respect of ongoing projects. It is also confirmed by the jurisdictional officer that the applicant has exercised the option to continue payment of tax at the old rate in respect of the project within the prescribed time and the manner prescribed in Item (ie) and (if) of Sl No. 3 of the said notification. Given the above option exercised by the applicant, the services of construction of residential apartments rendered by the applicant are liable to GST at the rates prescribed under Item (ie) or (if) of Sl No. 3 of the 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. From the submission of the applicant, it is evident that the project of the applicant does not come under any of the schemes specified under Item (ie) of Sl No. 3 of the Notification No. 11/2017 CT (R) dated 28.06.2017 as amended by Notification No. 03/2019 CT (Rate) dated 29.03.2019. Hence the services of construction of residential apartments in the project rendered by the applicant do not qualify for the concessional rate of tax of 12% [6% CGST + 6% SGST] prescribed under Item (ie) of Sl No.3 of the said Notification. Further, from the facts, as stated in the application and the comments of the jurisdictional officer it is evident that the services of construction of apartments provided by the applicant squarely fall within the description of services specified in Item (if) of Sl No. 3 of the 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 and accordingly the tax rates as prescribed in the said entry shall apply to the said services supplied by the applicant. Accordingly, the applicant is liable to pay GST at the



rate of 18% [9% - CGST + 9% - SGST] in respect of the services of construction of residential apartments supplied by them.

7.11. The next question raised by the applicant is regarding the taxable value of the services of construction of residential apartments rendered by them. The value of supply of goods and/or services is governed by the provisions of Section 15 of the CGST Act and the rules and notifications issued thereunder. Section 15 of the CGST Act reads as follows;

“(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include,—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation:—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.



- (3) *The value of the supply shall not include any discount which is given,*
- (a) *before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*
- (b) *after the supply has been effected, if,—*
- (i) *such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*
- (ii) *input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.*
- (4) *Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.”*

7.11.1. The entry at Item (if) of Sl No. 3 of the 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 specify that the provisions of Paragraph 2 of the said notification shall apply for valuation of the service. The provisions of Para 2 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 is extracted below;

“2. In case of supply of service specified in column (3), in item (i), (ia), (ib), (ic), (id), (ie) and (if) against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one-third of the total amount charged for such supply.

Explanation. –For the purposes of this paragraph—“total amount” means the sum total of,-

- (a) *consideration charged for aforesaid service; and*
- (b) *amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sublease.”*



7.11.2. In terms of the above Para 2 of the said notification, the taxable value in respect of the service specified at item (if) of Sl No. 3 of the said notification is the total amount charged for the supply less the value of land or undivided share of land and the value of land or undivided share of land shall be deemed to be one-third of the total amount charged for the supply. As per the valuation mechanism prescribed in paragraph 2 of the said notification, the value of land or undivided share of land is deemed to be one-third of the total amount charged for the supply irrespective of the actual value of land and accordingly the applicant is eligible to avail deduction of one-third of the total amount charged for the supply in arriving at the taxable value of the supply.

7.12. The next question raised by the applicant before the authority is regarding the time of supply of service. The time of supply of services is governed by the provisions of Section 13 of the CGST which reads as follows;

“Time of supply of services. —

(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:



Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation: —For the purposes of clauses (a) and (b),—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

(4) In case of supply of vouchers by a supplier, the time of supply shall be,

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases.



(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall, —

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the tax is paid.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.”

7.12.1. Further Notification No.06/2019 Central Tax (Rate) dated 29.03.2019 prescribes that in respect of the following categories of registered persons, namely;

(i) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

(ii) a promoter, who receives long term lease of land on or after 1st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name),
the liability to pay central tax on, -

(a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);

(b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;



(c) the upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relatable to construction of residential apartments in the project; and

(d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI), -

shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

7.12.2. Another question raised by the applicant is whether the activity of the applicant amounts to or results in a supply of goods and/or services or both. As per Para 5(b) of Schedule II of the CGST Act; 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 the completion certificate, where required, by the competent authority or after its first occupation whichever is earlier shall be treated as a supply of service. Therefore, the activity of the applicant qualifies to be classified as a supply of service.

RULING

Given the observations stated above, the following rulings are issued:

1. **Applicability** of a notification issued under the provisions of the Act.

Ruling: The applicant has exercised the option of 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. Accordingly, the applicant is liable to pay GST at the rate of 18% [9% - CGST + 9% - SGST] in respect of the services of construction of residential apartments supplied by them.



2. Determination of time and value of supply of goods or services or both.

Ruling: The provisions of section 13 of the CGST Act, 2017 will apply to the determination of the time of supply. The provisions of Section 15 of the CGST Act, 2017 read with Para 2 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 will apply for determining the taxable value of the services supplied for the period from 01.07.2017 onwards and accordingly one-third of the total amount charged for the supply shall be deemed to be the value of land or undivided share of land involved in the supply.

3. Determination of the liability to pay tax on any goods or services or both.

Ruling: Refer to the answers at (i) and (ii) above.

4. Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.

Ruling: The activity of the applicant qualifies to be classified as a supply of service.

~~Sreeparvathy S. L.
Joint Commissioner of Central Tax
Member~~


Abraham Renn S.
Additional Commissioner of State Tax
Member

To

M/s. GALAXY HOMES PRIVATE LIMITED
66/3803, Galaxy House, 6th Floor, Rajaji Road Junction,
M.G.Road, Ernakulam – 682035.

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: cccocchin@nic.in; ccu-cexcok@nic.in]



2. The Commissioner of State Goods and Services Tax Department,
Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The Assistant / Deputy Commissioner of Central GST, Ernakulam
Division, Ernakulam. [E-mail ID: cgst.ti04@gov.in]
4. The Superintendent of Central GST, Ernakulam Range - 2, Ernakulam.
[E-mail ID: cgst.ti0402@gov.in]

