



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



BEFORE THE AUTHORITY OF: Dr.S.L. Sreeparvathy, IRS &
: Shri Abraham Renn S. I.R.S

Legal Name of the applicant	Confederation Of Real Estate Developers' Association of India (CREDAI), Kerala Chapter
GSTIN	32AABTC2424R1ZQ
Address	House of CREDAI, JNI Stadium Link Road, Kaloor, Kochi, Kerala – 682017.
Advance Ruling sought for	<p>i) Whether the portion of apartments constructed by Developers and allotted to the Land Owners as part of a joint development arrangement between the Developers and the Land Owners would be treated as supply liable to GST?</p> <p>ii) If the allotment of apartments of Land Owners by the Developers as part of a joint development arrangement is treated as a supply and liable to GST, what is the value to be adopted for the purpose of computing GST liability?</p> <p>iii) If the allotment of apartments to Land Owners by the Developers as part of a joint development arrangement is treated as a supply and liable to GST, what is the time of supply in such a transaction and when does the GST liability arise?</p> <p>iv) If the allotment of apartments to Land Owners by the Developers as part of a joint development arrangement is treated as a supply and liable to GST, what is the rate of GST applicable?</p>
Date of Personal Hearing	03/11/2021
Authorized Representative	Adv. Jose Jacob



ADVANCE RULING No.KER/136/2021 Dtd. 01.06.2022

1. The Confederation of Real Estate Developers Association India (**herein after 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 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. Applicant requested advance ruling on the following:

- i) Whether the portion of apartments constructed by Developers and allotted to the Land Owners as part of a joint development arrangement between the Developers and the Land Owners would be treated as supply liable to GST?
- ii) If the allotment of apartments of Land Owners by the Developers as part of a joint development arrangement is treated as a supply and liable to GST, what is the value to be adopted for the purpose of computing GST liability?
- iii) If the allotment of apartments to Land Owners by the Developers as part of a joint development arrangement is treated as a supply and liable to GST, what is the time of supply in such a transaction and when does the GST liability arise?



iv) If the allotment of apartments to Land Owners by the Developers as part of a joint development arrangement is treated as a supply and liable to GST, what is the rate of GST applicable?

4. Contentions of the Applicant:

4.1. The applicant submits that 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. Several members of the applicant are engaged in joint venture development for construction and sale of apartments (hereinafter referred to as the Developer(s)) on land owned by one or more independent third parties (hereinafter referred to as "Land Owners"). In a typical joint development arrangement between the Developers and the Land Owners involving construction of apartment project, the Developers enter into joint development agreements with the Land Owners by virtue of which the land owners agree to part with a certain percentage of the undivided share in the immovable property belonging to the Land Owners. Post completion of construction of the apartment project, the land owners are entitled to retain a certain number of apartments in the said project which typically approximates to 1/3rd of the total number of apartments in the project. In the light of the evolving provisions of GST, the developer members of the applicant entering into joint development arrangements with land owners have queries regarding the implication of GST under the CGST Act, 2017 and KSGST Act, 2017 on the land owner's entitlement to a portion of the constructed apartment.



4.2. The developers are constructing apartments on the property owned by the land owners, which would be sold by the developers to the end customers along with proportionate undivided share in the property wherein the property is registered in favour of the end customers by the land owners. As regards the developer, the entire income from sale of apartments is received from the end customer and subjected to GST if sold prior to completion. As regards the portion of the built-up area the land owners are entitled to, while the developers incur construction expenses towards construction of the same, there is no flow of income from the land owners to the developer on account of such entitlement. The land owners and the developer being unrelated parties, the land owner's entitlement to a portion of the apartment constructed by the developer shall not amount to a supply liable to GST under the CGST / SGST Act since there is no consideration flowing from the land owners to the developer. Should the entitlement of the land owners to a portion of the apartment constructed by the developer be treated as a supply, the value on which GST is to be discharged for the said transaction shall be determined in accordance with Section 15(1) of the CGST / SGST Act. According to Section 15(1) of the CGST / SGST Act, the value of supply of goods or services or both shall be the transaction value, where the supplier and the recipient of the supply are not related and the price is the sold consideration for the supply. Since the parties are unrelated and since no consideration is flowing from the land owners to the developer, the value of supply would be zero and no GST is payable by the developer.

4.3. Regarding question no.2 it is submitted without prejudice to the above submission, that if this authority is of the view that the developer is liable to discharge GST and that value has to be determined by applying Section 15(4) of the CGST /SGST Act where value of the supply of goods or



services or both cannot be determined under sub-section (1), the same shall be determined by resorting to the valuation rules. Rule 27 of the CGST / Kerala SGST Rules, 2017, lay down the method of determination of value of supply of goods or services where the consideration is not wholly in money.

4.4. In order to proceed with the valuation, sub rules (a) to (d) of Rule 27 or the CCST / SCST Rules would have to be examined, in that order. As per sub rule (a) of Rule 27 of the CCST / SGST Rules, the value of supply of services for which consideration is not received wholly in money shall be the open market value of such supply. However, in the instant case the service if any provided by the developers is that of supply of construction services or works contract services which do not involve immovable property / undivided share in immovable property. Whereas the service provided to end customers is that of sale of apartment / part of a building which involves immovable property / undivided share in immovable property. Furthermore, the transaction between the developer and end customers is typically for the sale of one apartment, while the construction service / works contract undertaken by the developer for the land owners is for several apartments. The transactions being entirely different both in terms of the nature of the transaction as well as the quantum of the transaction, it would be incorrect to adopt the market value of the apartments allotted or sold to independent buyers and it has to be concluded that neither open market value nor value of supply of services or both of like kind and quality is not available in the present case. Consequently, sub rule (a) & (c) of Rule 27 of the CGST / SGST Rules fail.

4.5. Since open market value is not available, sub-rule (b) of Rule 27 of the CGST / SGST Rules may be examined. According to the said sub-rule (b) of Rule 27 of the CGST / SGST Rules, the value of supply in the absence of market value shall be the total of consideration in money and any such



further amount in money as is equivalent to the consideration not in money. However, in the instant case since no consideration is flowing from the land owners to the developers and if the undivided share of land transferred to the end customers is treated as the consideration, for which the money equivalent is not ascertainable and extremely subjective, this sub rule also fails.

4.6. In view of the above, reliance is to be placed on sub rule (d) of Rule 27 of the CGST / SGST Rules to determine the value of the said transaction. As per sub rule (d) of Rule 27 of the CGST / SGST Rules, if the value is not determinable by sub rules (a), (b) or (c) of Rule 27 of the CGST / SGT Rules, then the value shall be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of Rule 30 or Rule 31 in that order.

4.7. Therefore, as per the provisions laid down under Rule 30 of the CGST / SGT Rules, if the allotment of apartments to land owners by the applicant as part of the joint development arrangement is treated as a supply and liable to GST the value of construction services provided to the land owners in a joint development arrangement shall be one hundred and ten percent of the cost of construction. Should the arrangement between the land owners and the developer be liable to GST, the time of supply is to be determined under sub-section (2) of Section 13 of the CGST / SGST Act. As per Section 13(2)(a) and Section 13(2)(b) of the CGST / SGST Act, the time of supply is date of invoice / date of provision of service or date of receipt of payment whichever is earlier. In the present arrangement, since there is no invoice or payment, Section 13(2) (a) and Section 13(2)(b) of the CGST / SGST Act will not apply. Consequently, section 13 (2)(c) of the CGST / SGST Act would apply which states that the time of supply is the date on which the recipient shows the receipt of services in his books of account. From an



accounting perspective, the land owner will show the receipt of the apartments in his books only at the time of completion. Consequently, time of supply will be only upon completion of construction, at which point of time the GST liability will have to be discharged.

4.8. As regards the rate of GST applicable in the event the allotment of apartments to land owners by the developer as part of a joint development arrangement is treated as a supply liable to GST, construction services are classified under GST in Notification No.11/2017-Central Tax (Rate) dated 28-06-2017. The term “affordable housing” for the purpose of the above extracted rate notification is defined in Explanation 4(xvi) of the same. From the above notification, the applicant is of the understanding that where construction is of affordable residential apartments, the effective rate of GST would be 1.5% and where construction is of residential apartments other than affordable residential apartments the effective rate of GST would be 7.5%, subject to satisfaction of conditions mentioned in Column 5 of the table mentioned against the relevant entry.

5. 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 submitted remarks on the merits of the questions raised in the application.

6. Personal Hearing:

The applicant was afforded opportunity of personal hearing on 03/11/2021. Adv. Jose Jacob represented the applicant and presented in detail the contentions made in the application and requested to issue ruling on the basis of the submissions made in the application and at the time of personal hearing.

7. Discussion and Finding:



7.1. The issue was examined. The questions raised by the applicant before the authority is on the following issues;

1. Whether the portion of apartments constructed by Developers and allotted to the Land Owners as part of a joint development arrangement between the Developers and the Land Owners would be treated as supply liable to GST?
2. If the allotment of apartments to Land Owners by the Developers as part of a joint development arrangement is treated as a supply and liable to GST, what is the value to be adopted for the purpose of computing GST liability?
3. If the allotment of apartments to Land Owners by the Developers as part of a joint development arrangement is treated as a supply and liable to GST, what is the time of supply in such a transaction and when does the GST liability arise?
4. If the allotment of apartments to Land Owners by the Developers as part of a joint development arrangement is treated as a supply and liable to GST, what is the rate of GST applicable?

7.2. It is stated by the applicant that several members of the applicant are engaged in joint venture development for construction and sale of apartments and the members of the applicant entering into joint development arrangements with land owners have queries regarding the implication of GST on the land owner's entitlement to a portion of the constructed apartment and hence the application. Therefore, the questions raised by the applicant are in respect of the activities undertaken by the members of the applicant. Therefore, it is necessary to examine the provisions governing advance ruling in the CGST Act, 2017.



7.3. Section 95(a) of the CGST Act defines the term “advance ruling”. As per Section 95(a) of the CGST Act “advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. As per Section 95 (c) of the CGST Act; “applicant” means any person registered or desirous of obtaining registration under the Act.

7.4. Section 97 of the CGST Act that pertains to application for Advance ruling reads as follows;

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of—

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

7.5. 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.”

7.6. On a combined reading of the definition of the terms, advance ruling, applicant and the above provisions governing advance ruling under the CGST Act it is evident that an applicant can make an application for advance ruling if the following conditions are satisfied;

(1) the applicant is either registered under GST law or is desirous of obtaining registration;

(2) the matter or question pertains to any issue specified in Section 97 (2);

(3) such a transaction is being undertaken or proposed to be undertaken by the applicant and the advance ruling is binding only on the applicant and the jurisdictional officer of the applicant.

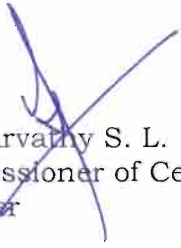
7.7. In the instant case the questions raised by the applicant pertains to the GST liability of the activity undertaken by the developers; who are the members of the applicant; i.e., the applicability of GST on the supplies made by third persons and not in respect of any supply undertaken or proposed to be undertaken by the applicant. As discussed above, the provisions of the CGST Act governing advance ruling does not provide for an applicant to seek a ruling regarding the applicability of the provisions of the Act or the notification issued there under to a third person other than the applicant.




7.8. Admittedly, the applicant has preferred this application on behalf of the members of the applicant and hence the application is not in respect of any matter specified in Section 97 (2) of the CGST Act in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Hence this authority has no jurisdiction to issue ruling on the above question.

RULING

Ruling: The questions raised by the applicant being not in respect of any matter specified under Section 97 (2) of the CGST Act in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant, this authority has no jurisdiction to answer them for the reasons as stated above.


Sreeparvathy S. L.
Joint Commissioner of Central Tax Member


Abraham Renn S.
Additional Commissioner of State Tax Member

To

M/s. Confederation Of Real Estate Developers Association Of India (CREDAI),
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Kochi, Kerala - 682017.

Copy to;

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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: ctotritunthura1@yahoo.com]

