

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY
PAPJM Buildings, II Floor, No.1, Greams Road, Chennai - 600 006.**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Ms. Manasa Gangotri Kata, IRS Joint Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai
2. Thiru S. Vijayakumar, M.Sc., Joint Commissioner (CT) / Member (FAC),
Office of the Joint Commissioner (ST), Enforcement
Inter-State Investigation Cell, Chennai-6.

ORDER No.01/AAR/2019 DATED: 21.01.2019

GSTIN Number, if any / User id		33AAKFK9951G1Z1
Legal Name of Applicant		M/s. Kara Property Ventures LLP
Registered Address/Address provided while obtaining user id		No.1, 2 nd Floor, Mashkur Building, Krishnama Road, Nungambakkam, Chennai-600034.
Details of Application		GST ARA-01 Application Sl. No. 39 dated : 13.07.2018
Concerned Officer		State: The Assistant Commissioner (ST) Valluvar Kottam Assessment Circle, Chennai. Centre: Chennai North Commissionerate-Division - Nungambakkam.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Works Contract
B	Description (in Brief)	The Applicant is engaged in business of construction activities.
Issue/s on which Advance Ruling required		Determination of value of supply of services in the business of construction activities w.e.f. 01.07.2017 in terms of the provisions of CGST ACT 2017 read with Notification No.11/2017- Central Tax(Rate) dated 28.06.2017(as amended from time to time).
Question(s) on which Advance Ruling is required		What is the value of supply of services provided from July 1, 2017 in terms of the provisions of CGST ACT 2017 read with Notification No.11/2017- Central Tax(Rate) dated 28.06.2017(as amended from time to time)

Note : Any Appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days

from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. Kara Property Ventures LLP, No.1, 2nd floor, Mashkur Building, Krishnama Road, Nungambakkam, Chennai-600034 (hereinafter called the Applicant) is engaged in business of Construction activities. They are Registered under GST with GSTIN 33AAKFK9951G1Z1. They have preferred an Application seeking Advance Ruling on the following question :

“What is the value of supply of services provided from July 1, 2017 in terms of the provisions of CGST ACT 2017 read with Notification No.11/2017- Central Tax (Rate) dated 28.06.2017(as amended from time to time)”?

The Applicant has submitted the copy of Application in Form GST ARA – 01 and also submitted the copy of Challan evidencing payment of Application Fees of Rs.5,000/- each under Sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.1 The Applicant has stated that they have a residential project by the name of 'One Crest' in Chennai comprising of 4 Basement + Stilt + 16 floors having 43 units ('Project'). They enter into a separate Agreement with the Customers for the sale of undivided share in the land (Land Agreement) and construction of a super- structure (Construction Agreement) on the said land. Both the agreements are registered for the purpose of Stamp duty.

2.2 The details of transaction as submitted by the Applicant are as under:

- i. The Applicant has purchased the land from the land owner.
- ii. After the land is transferred to the Applicant, the construction activity is commenced on the said land to develop the project which inter-alia includes obtaining requisite approvals, awarding contracts etc.
- iii. The interested customer approached the Applicant for buying unit in the project.
- iv. Once the commercials are agreed between the customer and the Applicant two agreements viz., Land and Construction Agreements are entered with

the customer and executed simultaneously. Thereafter, on receipt of 80% of total sale consideration, deed of sale is executed and registered in favour of customer for transferring the ownership of undivided share in land to the customer.

- v. The payment to be made by the customer is based on milestone linked to the stage of completion of the construction activity.
- vi. The unit is handed to the customer only after Deed of sale is executed and registered and the applicant obtains the completion certificate from the competent authority.

2.3 The Applicant has stated that Schedule II of CGST Act specifies that supply related to construction of a complex or building is treated as supply of service except where full consideration has been received after issuance of completion certificate and under Section 15(5) of CGST Act, the government has notified the value of such supply of service vide with Notification No.11/2017- Central Tax (Rate) dated 28.06.2017(as amended from time to time). The Applicant states that they enter into two separate agreements with the buyer, for sale of undivided share of land and another for construction, though they are both intrinsically connected with each other. In the opinion of the Applicant, even in this case the valuation should be in terms of Para 2 of the above Notification i.e. two-third value of total value for undivided land and construction put together. In view of the above, the Applicant has approached Advance Ruling to clarify, what is the value of supply of services provided from July 1, 2017 in terms of the provisions of CGST ACT 2017 read with Notification No.11/2017- Central Tax(Rate) dated 28.06.2017(as amended from time to time).

3. The Authorized Representative of the Applicant was personally heard in the matter. At the time of hearing, they stated that they are entering separate Agreement for sale of land and for construction and the payments are accounted separately. However, both contracts are tied together and cannot exist without the other. They are providing construction services and as per the Notification explanation, are eligible for 1/3rd land value deduction. They submitted copy of a Construction Agreement and Agreement for Sale for a buyer of an Apartment, Invoices raised for these agreements, ledger accounts for these transactions.

4.1 The submissions of the Applicant were carefully examined. From the submissions, it is seen that the Applicant is undertaking the construction of a residential project by the name of 'One Crest' , with 43 units with other facilities such as Club House, Swimming Pool etc., in Chennai. They have purchased the land and are developing the project. They have entered into two agreements with the customers simultaneously- One for sale of undivided

share in the land and the other for the construction of the super-structure. The 'Agreement of Sale' is for purchase of a proportionate undivided share of land identified in the attached schedule for a consideration with the understanding that Sale deed will be executed subsequently. Clause 12 of this Agreement states that the possession of this property will be transferred only after execution and registration of Sale Deed. Clause 11 of this agreement states that a separate Construction Agreement has been executed on the same date for construction of an Apartment on this property.

4.2 It is seen that the 'Construction Agreement' is for construction of an apartment, of the specifications mentioned in the agreement, for the buyer by the Applicant for a consideration as per a payment schedule/milestones. Clause 5 of this agreement states that the completed apartment will be handed over on completion of obligations under this agreement and Agreement of Sale. Clause 10 of this agreement states that in case Agreement of sale of undivided share is registered before completion of payments under this agreement, the Applicant would still proceed with the construction. Clause 12 states that the buyer shall hold the land as an undivided share of the total land of the project along with other buyers and at no time can the buyer demand partition of the undivided share of land. Clause 13 states that a separate Agreement for Sale has been executed for purchase of undivided share of land. Clause 16 states that this agreement will be cancelled by executing a deed of cancellation for certain actions, which would also effectively cancel the Agreement of Sale. On such cancellation, a percentage of the consideration for both these agreements will have to be paid.

Clause 11 of the Agreement for Sale and Clause 13 of Construction Agreement state that these two agreements are co-existent and co-terminus and shall run concurrently; each agreement cannot be terminated without terminating the other. Breach of any one agreement is equivalent to breach of the other nor will either be made independently enforceable.

The Applicant has submitted that on receipt of 80% of total sale consideration for both agreement, deed of sale is executed and registered. On verification of Invoices, it is seen that GST Invoice is being raised with SAC 995411 as 'Sale of unit under construction' for a taxable value which is according to the schedule of payment /milestone in the Construction Agreement.

The Applicant has sought ruling on the value of supply of services.

5.1 From the facts as furnished, it is seen that the activity of the Applicant is construction of apartment units on land owned by them and when a customer purchases the unit, they also purchase a portion of the land.

Supply under GST is defined under Section 7 of CGST Act, 2017:

7. (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;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated 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) 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

Schedule III of the CGST ACT provides for activities or transactions which shall neither be treated as supply of goods nor services and Entry 5 of the Schedule is as follows:

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

Schedule II provides for activities or transactions which shall be treated as supply of goods or services and entry No.5 of the Schedule is 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.*

In the instant case, the Applicant is selling to the buyer a portion of undivided share of land which the buyer can never demand partition from the combined land owned by other buyers. The Agreement of Sale states that this sale is only because the buyer intends to purchase an apartment which the applicant is constructing on the combined land for which another agreement has been made. The Sale Deed itself would be executed and registered only after the construction of the apartment is completed and completion certificate is received. Hence, it is seen that this transaction is not a sale of land as per Schedule III above.

The Construction Agreement entered into is for construction of a complex with 43 units and various other facilities such as Club House, Swimming Pool etc. where the consideration is to be paid on the basis of milestones of the construction achieved. Further, as stated in both agreements, they are co-existent and co-terminus and shall run concurrently; each agreement cannot be terminated without terminating the other. Breach of any one agreement is equivalent to breach of the other nor will either be made independently enforceable. Cancellation of the Construction agreement is equivalent to cancellation of the Agreement of sale of undivided share of land. Hence, it is seen that though there are two Agreements with separate consideration for this transaction, it is a single supply which is squarely covered under Sl.5 (b) of Schedule II making this transaction a supply of service as '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' where consideration is being paid while construction. We find this position is not contested by the Applicant.

5.2 The value of Supply is determined under provisions of Section 15 of the GST Act and is as follows:

15 (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 price is the sole consideration of the supply

.....

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the council shall be determined in such manner as may be prescribed.

Notification 11/2017- Central Tax (Rate) dated 28.06.2017 as amended and No.II(2)/CTR/532(d-14)/2017 vide G.O. (Ms) No. 72 dated 29.06.2017 as amended provides the applicable rate of CGST and SGST in respect of construction of complex or building covered under entry 5(b) of Schedule III of CGST Act, 2017 and TNGST Act respectively.

The relevant extracts from notification are as under:

Sl.No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
3	Heading 9954 (Construction services)	(i) 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. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	-

Paragraph 2 is as under:

Para 2. In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value 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 paragraph 2, “total amount” means the sum total of,-

(a) consideration charged for aforesaid service; and

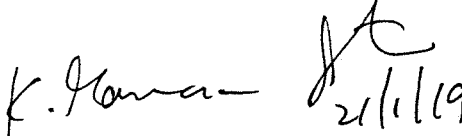
(b) amount charged for transfer of land or undivided share of land, as the case may be.

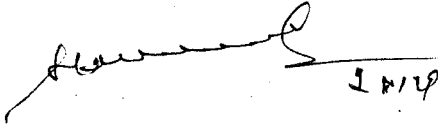
From the above, it is seen that for the Supply of 'Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier', the value of the supply of service has been notified by the Government as per Section 15(5) of the CGST Act as the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value 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 where the "total amount" means the sum total of consideration charged for construction service and amount charged for transfer of undivided share of land, as the case may be.

6. In view of the foregoing, we rule as under:

RULING

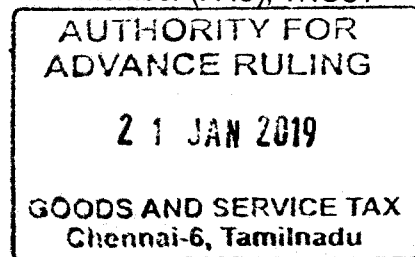
The value of supply of services provided by the Applicant in the project 'One Crest' in Chennai, wherein the Applicant has entered into two separate agreements, viz., one for 'Sale of undivided share of land' and the other for 'Construction' with the customers, the measure of levy of GST on the supply of service of 'Construction' shall be 2/3rd of the total value charged for construction service and amount charged for transfer of undivided share of land, as per entry No. 3(i) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended and No.II(2)/CTR/532(d-14)/2017 vide G.O. (Ms) No. 72 dated 29.06.2017 as amended.


Ms. Manasa Gangotri Kata, IRS
Member, CGST


Shri. S. Vijayakumar, M.Sc.,
Member (FAC), TNGST

To
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/By SPAD/



Copy Submitted to:

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