



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
VANIYA BHAWAN, PLOT NO I-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2018-19/15
(In Application No.: 15/2018-19, dated 04.07.2018)

Name & Address of the Applicant	: M/s Informage Realty Pvt. Ltd., SCO No. 62, 2 nd Floor, Civil Lines, Old Judicial Complex, Sector-15, Gurugram.
GSTIN of the Applicant	: 06AADC13515J1ZQ
Date of Application	: 04.07.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	: (c) Determination of time and value of supply of goods or service or both. (e) Determination of liability to pay tax on any goods or services or both.
Date of Personal Hearing	: 13.09.2018
Present for the Applicant	: Sh. Kapil Aggarwal, CA, Sh. Amit Tayal, Director,

Factual Background As Per Applicant

Statement of relevant facts and Statement containing the applicant's interpretation of law and/or facts.

Proposed Scenario :-

Applicant (M/s Informage Realty Private Limited, here in referred to as Applicant) and Mr. A, Mr. B and Mr. C (hereinafter referred to as "Land Owners) are land owners. On the land a Residential Plotted Township/Colony is proposed to be developed. Applicant is the Technical Partner (as well as applicant owns some land). To full fill the condition of getting license of residential plotted colony/township, Mr. A, Mr. B and Mr. C will enter into a collaboration agreement with the Applicant for getting license and development of Residential plotted colony.

Mr. A, Mr. B and Mr. C agree to give 20% of licensed plotted area to Applicant, in consideration of that Applicant will be responsible for obtaining license, to lay roads, sewerage, storm water etc. Thus the Land Owners (Mr. A, Mr. B and Mr. C) will have 80% of the licensed plotted area arising out of their respective share of land.

As per the prevailing provisions of the concerned authority, for granting the licence to develop Residential plotted colony/township, approx. 55% of total area are being entitled to be developed as residential plotted area and approx. 3% are entitled to be developed as Commercial area. Apart from these, the rest of the area would be covered under roads, parks, facilities etc. Thus the Saleable area will be Approx. 55% as residential Plots and 3% as commercial plots.

As per the collaboration agreement proposed to be entered into, the Applicant and Land owners all the land owners will give to the applicant 20% plotted area in consideration of the doing following activity by the applicant :-



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- a. Applying and obtaining for license to get the license to develop the residential plotted colony of the proposed land, using its technical and financial capabilities for the same.
- b. Development of the residential plotted colony (On its own or by providing work contract(s) to third party).
- c. It will include laying of the roads, sewerage lines, storm water system, providing electricity poles etc.

Thus the Applicant will receive 20% out of the residential plots and 20% out of the Commercial Plots from Mr. A, B and C in consideration of providing work contract services of development of township as explained above.

Question(s) on which advance ruling is sought

1. Whether GST will be applicable on the booking/selling of plots to be done by The Applicants and Land owners during the development (before completion of the development work of the township) of the township? If GST is applicable then what will be the taxable value and applicable tax rate in this case.
2. Whether GST will be applicable on the 20% share of licensed plotted area agreed to be provided by the land Owners to the Applicant (developer).if GST is applicable then what will be the taxable value and applicable tax rate in this case.

Applicant's interpretation of law and/or facts, in respect of the aforesaid question(s)

For Question No. 1

The plotted areas are proposed to be sold/booked by all the persons during the development (before completion of the development work of the township) of the township.

From the conjoint reading of Section 7 and Paragraph 5 of Schedule III of SGST/CGST Act, any activity/transaction in the nature of "Sale of Land" is not covered within the preview of GST, hence no GST is payable on the transaction resulting in the sale of lands.

Thus, view of the Applicant GST will not be applicable in this case as this sale/transfer of Plot in a plotted colony is sale/ transfer of land and GST is not applicable on sale/Transfer of land.

For Question No.2

As per Section 3(a) of Land Acquisition Act, 1894, the expression 'land' includes benefits that arise out of land and things attached to earth or permanently fastened to anything attached to the earth.

In the case of Safiya Bee vs Mohd. Vajahath Hussain – (2011) 2 SCC 94, the Apex court held that 'land' includes rights in or over land, benefits to arise out of land.

The Apex court in the case of Pradeep Oil Corporation vs Municipal Corporation of Delhi – (2011) 5 SCC 270 observed that land includes benefits to arise out of land.

From the conjoint reading of Section 7 and Paragraph 5 of Schedule III of SGST/CGST Act, any activity/transaction in the nature of "Sale of Land" is not covered with in the preview of GST, hence no GST is payable on the transaction resulting in the sale of lands.



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In understanding of the Applicant, GST on transfer of 20% share/right of licensed plotted area, given as per the collaboration agreement, will not be applicable, as this is transfer of Land as explained above, and GST is not applicable on Sale/Transfer of Land.

Record of Personal Hearing

Personal hearing in the case was conducted on 13.09.2018 which was attended by Sh. Kapil Aggarwal, CA, Sh. Amit Tayal, Director of the firm. The applicant besides reiterating the submissions made in their application had given additional submissions which were taken on record. .

Discussion and finding of the authority

The nature of the proposed agreement as described by the Applicant is a Joint Development Agreement wherein the land owners and the Applicant enter into an agreement for development of the land so as to make it saleable. The Applicant will be responsible for obtaining license from the concerned authority, to lay the roads, sewerage, storm water etc. On completion of the development work or say during the completion period itself, the landowners will transfer 20% of their share of the developed property as a consideration towards the works contract services provided by the Applicant to the land owners.

In the above proposed agreement there are in-fact two kinds of transactions. One pertains to booking/selling of plots to be done by the Applicant and the Land owners during the development (before completion of the development work) of the township and the other is transfer of 20% share of developed land/plots by each of the land owners to the Applicant.

So far as the first transaction of booking/sale of developed plots by the Applicant and the land owners is concerned, it amounts to sale of land and the understanding of the Applicant of the law regarding this aspect of the transaction is correct. From the conjoint reading of Section 7 and Paragraph 5 of Schedule III of SGST/CGST Act, any activity/transaction in the nature of "Sale of Land" is not covered with in the preview of GST, hence no GST is payable on the transaction resulting in the sale of lands.

So far as the second part of the transaction of transferring 20% share of their plots by the landowners to the Applicant is concerned, the question is itself answered in the query of the Applicant that it is consideration for the works contract services rendered by the Applicant and therefore, we do not agree with the understanding of law by the Applicant on this part of the transaction. The transfer value of the plots will be considered as consideration paid by the land owners for the services rendered by the Applicant for development of their land and will be regarded as 'works contract, services attracting 18% GST (9%CGST+9%HGST).

Advance ruling under section 98 of the CGST/HGST Act 2017

In the backdrop of above discussions and findings the advance ruling on the questions is pronounced as under: -

1. Whether GST will be applicable on the booking/selling of plots to be done by The Applicant and Land owners during the development (before completion of the development work of the township) of the township? If GST is applicable then what will be the taxable value and applicable tax rate in this case.

Ruling:

Booking/selling of plots to be done by the Applicant and Land owners during the development of the township will remain a transaction of sale/transfer of land and thus will not attract GST. It is immaterial whether the said booking/sale is done before completion or after completion of the development work.

2. Whether GST will be applicable on the 20% share of licensed plotted area agreed to be provided by the land Owners to the Applicant (developer). If GST is applicable then what will be the taxable value and applicable tax rate in this case.

Ruling:

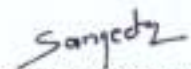
Yes. It is consideration for the works contract services rendered by the Applicant and therefore, is a service independent of sale of land. The transfer value of the plots will be considered as consideration paid by the land owners for the services rendered by the Applicant for development of their share of land being 'works contract' services attract 18% GST (9%CGST+9%HGST).

Ordered accordingly.

To be communicated.

Dated: 05.10.2018

Panchkula.


(Sangeeta Karmakar)
Member CGST


(Vijay Kumar Singh)
Member CGST

Regd. AD/Speed Post

M/s Informage Realty Pvt. Ltd., SCO No. 62,
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Sector-15, Gurugram (East).

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Copy to

1. The Commissioner, CGST & CE, Gurugram, GST Bhawan, Plot No.-36-37, Sector 32, Gurugram-122001.
2. Deputy Excise & Taxation Commissioner (ST), Gurugram (East).
3. The Assistant Commissioner of Central Goods and Services Tax Division, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram.