

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 19/ 2023

Dated:26.04.2023

Present:

1. Dr. M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri. Kiran Reddy T
Additional Commissioner of Customs & Indirect Taxes Member (Central)

1.	Name and address of the applicant	M/s. Godrej Properties Limited, PID No.72-121-3/33, 10 th Floor, Prestige Obelisk, Kasturba Road, Next to Museum, Bengaluru-560001.
2.	GSTIN or User ID	29AAACG3995M1ZX
3.	Date of filing of Form GST ARA-01	10-11-2022
4.	Represented by	Smt Annapurna Kabra, Chartered Accountant
5.	Jurisdictional Authority - Centre	The Commissioner of Central Taxes, Bengaluru North GST Commissionerate, North Division-1, RANGE CND1, Bengaluru
6.	Jurisdictional Authority - State	ACCT, LGSTO- 020, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act and Rs.5,000-00 under SGST Act vide debit of Electronic Cash Ledger Reference No.DC2911220039875 Dated 09.11.2022

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Godrej Properties Limited, PID No.72-121-3/33, 10th Floor, Prestige Obelisk, Kasturba Road, Next to Museum, Bengaluru-560001 (hereinafter referred to as 'The applicant'), having GSTIN 29AAACG3995M1ZX have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant is a Public Limited Company registered under the provisions of Central



Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The applicant is engaged in the development of plots.

3. The applicant has sought advance ruling in respect of the following questions:

- i. *Whether the applicant is liable to charge GST, if the booking of plot, receipt of consideration and agreement for sale is entered as well as sale deed is executed **after** the release certificate, on the following components (Under Section 97(2)(e) of CGST / KGST Act):*
 - a. *Sale of Plot;*
 - b. *Basic Infrastructure Development charges; and*
 - c. *Other common amenities and facilities charges.*
- ii. *Whether the applicant is liable to charge GST, if the booking of plot and / or receipt of consideration and/or agreement for sale is entered **prior to** the release certificate and sale deed is executed after receipt of release certificate, on the following components (Under Section 97(2)(e) of CGST / KGST Act):*
 - a. *Sale of Plot;*
 - b. *Basic Infrastructure Development charges; and*
 - c. *Other common amenities and facilities charges.*
- iii. *What is the applicability of GST if the sale price is a consolidated price in the agreement for sale towards land cost, basic infrastructure development charges and other common amenities and facilities charges? (Under Section 97(2)(e) of CGST / KGST Act)*

4. **Admissibility of the application:** The question is about the “determination of the liability to pay tax on any goods or services or both” and hence is admissible under Section 97(2) (e) of the CGST Act 2017.

5. **BRIEF FACTS OF THE CASE:** The applicant furnishes some facts relevant to the issue:

5.1 The applicant has stated that it is a Public Limited Company having its registered office at Godrej One, 5th Floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai-400079 and its regional office at PID No.72-121-3/33, 10th Floor, Prestige Obelisk, Kasturba Road, Next to Museum, Bengaluru-01.

5.2 The applicant has stated that they own non-agricultural undeveloped immovable property and is now developing the Property III to be registered as “Godrej Woodland-Phase III” which shall comprise of 266 residential plots.

5.3 The applicant has stated that while obtaining the provisional layout plan, as per the terms of the plan approval, an area measuring 6060 square meters has been relinquished towards Satellite Town Ring Road (STRR) and an area measuring 6100 square meters has



been relinquished towards civic amenities sites in favour of the Member Secretary, STRR Planning Authority.

5.4 The applicant has stated that they have reserved an extent measuring 20240 square meters towards part and 20255 square meters towards roads in all admeasuring 40495 square meters which shall be relinquished to the concerned authority at the time of obtaining Release Certificate.

5.5. The applicant states that the development activities would be completed in the following sequence:

- Conversion of land into non-agricultural use
- Prepare plan for development
- Obtains NOC from different authorities
- Applying with sanctioning authorities for plan / layout approval.
- Registration of project under RERA
- Launch of the project and receiving application along with application money from prospective buyers.
- Booking of plots and entering into an agreement for sale and collecting advance from customers.
- Carry out the development activities and relinquishment of title of roads, drains, park etc (along with land) to local authority.
- Development of basic infrastructure and other common amenities and facilities.
- Verification of development of infrastructure by authorities.
- Release of plots for registration by authorities and registration of plots and collecting balance money.
- Completion of pending other common amenities and facilities and handing over the same to common association / apex body, as the case may be.

5.6 The applicant states that the sale consideration of the plots includes consideration towards plot of land, development of basic infrastructure prescribed by authorities in the approved plan as well as cost for providing all other common facilities, amenities and specifications to be provided within the project.

5.7 The applicant states that the cost of electrical connectivity to the common amenities, water line and plumbing till the plot, etc is included in the sale consideration. The applicant upon obtaining the Release Certificate from the competent authority shall offer in writing the possession of the plot, to the purchaser/s in terms of the draft agreement for sale, to be taken within two months from the date of issue of release certificate as per

RERA Act.



M/s. Godrej Properties Limited

6. Applicant's Interpretation of Law:

6.1 The applicant is of the understanding that sale of land is neither a supply of goods nor a supply of service as per Entry No.5 of III Schedule to CGST / KGST Act, 2017. Since sale of land is neither supply of goods nor supply of service, it would not matter whether the land is developed or undeveloped. Both the kinds of land would not be a supply of goods or services.

6.2 The applicant submits that where booking of plot, agreement of sale and sale deed are entered into after receipt of release certificate from the competent authorities, then the entire consideration would be towards sale of developed land and hence the entire consideration would not be liable to GST due to Entry No.5 of III Schedule to CGST / KGST Act, 2017 and accordingly consideration received towards plot of land, basic infrastructure development and other common amenities and facilities received after release certificate would not be liable to GST.

6.3 The applicant states that para 14 of Circular No.177/09/2022 TRU dated 03-08-2022, clarifies that sale of developed land is covered by Entry No.5 of Schedule III of CGST / KGST Act, 2017 and hence not liable to GST. Hence, the applicant believes that based on the above analysis sale of plot, basic infrastructure development charges and other common amenities & facilities charges are not liable for GST.

6.4 The applicant is of the understanding that where booking of plots, and / or agreement of sale is entered and / or advances from customers are received prior to receipt of release certificate by applicant from competent authority, then the amount attributable to transfer of title in land would not be liable to GST being covered under Entry No.5 of Schedule III of CGST / KGST Act, 2017.

6.5 The applicant relies on the decision of the advance ruling No.KAR ADRG 31/2022 dated 08-09-22 in the case of M/s. Rabia Khanum where the advance received towards sale of plot is not liable to GST. In the said case, the authority has relied on clarification issued in Circular No.177/09/2022 TRU dated 03-08-2022. Therefore, the applicant is of the understanding that in case of advance received towards sale of plot as well as basic infrastructure development and other common amenities and facilities charges before the release certificate is also not liable to GST.

6.6 The applicant is of the understanding that even where single price is charged for sale of plot, basic infrastructure development charges and other common amenities and facilities charges in the agreement for sale, it is not liable for GST considering the decision of authority for advance ruling in No.KAR ADRG 31/2022 dated 08-09-2022 and based on Circular No.177/09/2022 TRU dated: 03-08-2022.

PERSONAL HEARING / PROCEEDINGS HELD ON 12.12.2022

7. Smt Annapurna Kabra, Chartered Accountant and Duly Authorised Representative appeared for personal hearing proceedings held on 12.12.2022 and reiterated the facts narrated in their application.



FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts along with the arguments made by their authorized representative and also their submissions made during the time of hearing.

10. The applicant has stated that the development activities would be completed in the following sequence:

- a. conversion of land into non-agricultural use
- b. Preparation of plan for development
- c. Obtaining of NOC from different Authorities
- d. Applying for sanctioning authorities for plan / layout approval
- e. Registration of project under RERA
- f. Launch of project and receiving application alongwith application money from prospective buyers
- g. Booking of plots and entering into an agreement for sale and collecting advance from customers
- h. Carryout the development activities and **relinquishment of title of roads, drains, park etc (along with land) to local authority**
- i. Development of basic infrastructure and other common amenities and facilities
- j. Verification of development of infrastructure by authorities
- k. Release of plots for registration by authorities and registration of plots and collecting balance money
- l. Completion of pending other common amenities and facilities and handing over the same to common association/ apex body, as the case may be.

11. From the above, it is seen that the applicant is launching the project first by calling for application and also booking the plots collecting advance money and then taking up the development activities. Further, the development project involves three activities

- a. Sale/Transfer of plots to the prospective plot owners
- b. Transfer of basic infrastructure to the local authorities by relinquishment of title of roads, drains, park, etc.
- c. Transfer of other common amenities and facilities like club house etc. to the common association or apex body, as the case may be

12. The draft agreement of sale produced by the applicant is verified and it is found as under

- a. In para I, it is seen “. . . The promoter may at its sole discretion develop portion or whole of additional lands along with the Larger Property in



different phases upon obtaining suitable approvals and consents from the concerned authority and finally integrate entire phases of development with common amenities and facilities including club house so that the plot owners of integrated development has access and use the amenities and facilities including club house in common. The Promoter is desirous of integrating the Additional land with the larger property and/or excluding certain portion of the Larger Property to form a single integrated plotted development residential project to be developed in phase-wise manner and such phase-wise development shall be considered as future phases of Godrej Woodland residential layout upon completion and become part and parcel of Godrej Woodland, hereinafter referred to as "Future Development". The Promoter is entitled to develop the said Additional Lands earmarked for future development by modifying the existing Layout Plan sanction and RERA approval for Godrej Woodland, Godrej Woodland Phase-II, Godrej Woodland Phase-III and the Purchaser/s confirm that he/she/they is/are aware of the same and hereby give his/her/their consent for such future development of Godrej Woodland by modification of existing Plan. Purchaser/s is/are aware that the Purchaser/s and occupiers of the said future development in Additional Land earmarked for future development, **shall use the entrance, approach road, pathway, infrastructure, other facilities and amenities** of "Godrej Woodland", "Godrej Woodland Phase-II" and "Godrej Woodland Phase-III" **in common with the Purchaser/s of such Future Development**. The Purchaser/s confirms that he/she/they do not have any objection for the same. The Parties hereby confirm that they are signing this Agreement with full knowledge of all the representations made by the Promoter."

- b. In para N, it is seen as under- The Purchaser/s has applied to the Promoter for allotment of a Plot in the Project vide application dated ____ and have been allotted a Plot No. _____ admeasuring ____ sq mtrs, as permissible under the applicable law as defined under the Act. (hereinafter referred to as the "Plot" more particularly described in Schedule "B" and the site plan of the Plot is annexed hereto and marked as Annexure "A"). For the purposes of this Agreement "Plot Area" means the net dimension of the Plot for **exclusive use** of the Purchaser/s.
- c. In Para 1.1 it is seen as under - "At the request of the Purchaser/s, the Promoter has agreed to sell to the Purchaser/s and the Purchaser/s has/have agreed to purchase from the Promoter the Plot which is more particularly described in the Schedule 'B' hereunder written and shown on the plan thereto annexed as Annexure 'A', **along with the right to use the Basic Infrastructure and Other Common Amenities and facilities** more particularly described in the Annexure "C" **in common with other residents of the Project, Phase I and other residents of Future Development**.
- d. In para 1.2 it is seen as under: "The Plot area of the said Plot is ____ square meters. The Plot Area shall have the meaning as described to it in Recital above.
- e. In para 1.3 it is seen as under: "In consideration for the above, the Purchaser/s hereby agrees to pay to the Promoter a total sale



consideration of Rs. _____/- ("Sale Consideration") for the area of the Plot for residential use, and the breakup of the total cost is as morefully described in Annexure B herein below."

- f. Para 1.4 Along with the aforesaid Sale consideration, the Purchaser/s agrees and undertakes to pay to the Promoter, amounts as specified in Clause 6.1 of this Agreement in the manner detailed/specified in Payment Plan (Annexure "B") annexed hereto.
- g. Para 1.5 states as under: "The Purchaser/s has paid an Application money/ initial amount of Rs. _____/- to the Promoter as part payment towards the Sale Consideration of the Plot. The Purchaser/s hereby agrees to pay the balance Sale Consideration and other charges towards the Plot as per the Payment Plan (Annexure 'B') annexed hereto, as demanded by the Promoter within the time and in the manner specified therein.
- h. Para 1.6 states as under: "The Sale Consideration of the said Plot includes recovery of price of land, development of the Basic Infrastructure and Other common amenities and facilities and cost for providing all other facilities, amenities and specifications to be provided within the Plot and the Project. The Promoter shall provide the electric wiring till the Plot, electrical connectivity to the common amenities, water line and plumbing till the Plot, etc., the cost of which is included in the Sale consideration.
- i. Para 2 Variation states as under: "The Promoter shall confirm the final Plot Area that has been allotted to the Purchaser/s after the development of the Project is complete and the Plot Release Certificate is granted by the competent authority, by furnishing details of the changes, if any, in the Plot Area. In the event of any variation in the Plot Area, total consideration payable for the plot area shall be recalculated upon confirmation by the Promoter and in such event only recourse shall be a pro-rata adjustment in the last instalment payable by the Purchaser/s towards the Sale Consideration under clause 1.3. All these monetary adjustments shall be made at the same rate per square meter as agreed in this Agreement and the variation of Plot Area stated above shall not be more than 5% of the Schedule B Plot Area.
- j. Clause 4.1 states as under: "The Sale Consideration and other charges payable under this Agreement exclude Taxes. Taxes includes Goods and Services Tax (GST), said Land under construction tax, property tax, or other taxes, duties, cesses, levies, charges which are leviable or become leviable under the provisions of the Relevant Laws or any amendments thereto pertaining or relating to the sale of Plot.
- k. Para 6.1 states as under: "The Purchaser/s shall on or before delivery of possession of the said Plot deposit and keep deposited with the Promoter such estimated amounts as more particularly described in the Payment Plan (Annexure B) here below and shall be referred to as "Estimated Other Charges", which shall be transferred to the Association of Owners/Apex Body, as the case may be.
- l. Para 6.2 states as under: "The Purchaser/s shall on demand pay to the Promoter the amount towards membership fee for the Association of Owners/ Apex Body/ies, deposit towards water connection charges,



deposit towards electric connection charges including setting up of sub-station, proportionate share of taxes, other charges/ levies in respect of the society or limited company/ federation/ Apex body and any other charge (if any applicable) as may be decided by the Promoter/ the Association of Owners/ Apex body towards availing any amenities or forming part of the Project and shall not dispute the same.

- m. Para 17.1 states as under: "The Promoter has proposed to construct a Club House at the location reserved for civic amenities in Future Development, which the Promoter has taken on lease/ allotment basis from the concerned authority or on one of the plots in Additional Land. Upon payment of subscription fees as prescribed by the Promoter or its nominees, the Purchaser/s shall be entitled to use the facilities and services of the Club House. The Club House shall be in complete control of the Promoter/ remain in exclusive ownership of the Promoter and the Promoter has the sole right and discretion to sell, lease, mortgage, encumber, construct buildings, complexes, etc., the Club House and the Purchaser/s are specifically made aware of this fact before the execution of this Agreement. The Promoter, at its own discretion, may also hand over the Club House to the Association of Owners/ Apex Body for maintenance and management of the Club House.
- n. The Annexure B which is part of the above agreement and related to the Sale Consideration and Payment Plan, shows as under

"ANNEXURE B

SALE CONSIDERATION AND PAYMENT PLAN

The Sale consideration shall be Rs. _____/- (Rupees _____ only) excluding taxes.

Sl.No.	Particulars of Sale Consideration	Rupees
(i)	Towards Plot Area	
(ii)	Towards Basic Infrastructure Development Charges	
(iii)	Towards Other Common Amenities and Facilities Charges	
	Total	Rs.

Sl.No.	Particulars of Estimated Other Charges	Rupees
(i)	Estimate amounts for deposit towards provisional monthly contribution towards outgoings of Society or Limited Company/ Federation/ Apex body for 36 months	
(ii)	Estimate amounts towards ad-hoc corpus fund to be deposited with Promoter/ Service Provider, as may be directed by the Promoter	
	Total	Rs.



From the above, it is seen that the applicant has separately collected the consideration towards the (a) Plot area, (b) basic infrastructure development charges, and (c) other common amenities and facilities.

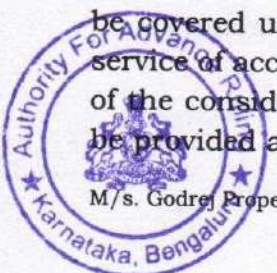
13. As far as consideration towards the plot area is concerned, it is clear that the same is covered under entry 5 of Schedule III, and hence the transaction shall be treated neither as a supply of goods nor a supply of services.

14. As far as the consideration separately shown to have been collected towards basic infrastructure charges, it is seen that the same are done to provide the basic infrastructure facilities like electricity access up to the plot, water and sewerage access up to the plot and roads, etc. These are mandatory requirement for release of plots and the plots become the saleable plots only after the provision of these basic infrastructure and facilities. Hence they are a part and parcel of the consideration for the plot though collected and shown separately. These facilities created are to be handed over to the local authorities and no longer remain the part of the applicant's property. Hence the consideration collected towards basic infrastructure development is part of the consideration towards the plot and is not a consideration for a separate supply. Further, clause (119) of Section 2 of the CGST Act, 2017 defines the works contract as to mean a contract for construction of any immovable property wherein transfer of property in goods is involved in the execution of such contract. In the pertinent situation, the construction of immovable property is present but there is no transfer of property in goods from the applicant to the plot owners. These constructions are done on the land not transferred to the plot owners but remains in the ownership of the applicant till it is relinquished to the local authorities. Hence the amount collected on account of this only increases the value of the land (plot) and hence do not form a separate supply.

15. As for as the consideration separately shown to have been collected towards common amenities and facilities, the clauses in the agreement is verified and found the following:

- (a) The clause 17.1 of the agreement clearly states that the Promoter is going to construct a Club House at the location reserved for civic amenities in Future Development, which the Promoter has taken on lease/ allotment basis from the concerned authorities or on one of the plots in Additional Land.
- (b) The Purchasers are entitled to use the facilities and services of the Club House upon payment of subscription fees as prescribed by the Promoter or its nominees
- (c) The Club House shall be in complete control of the Promoter/ remain in exclusive ownership of the Promoter and the Promoter has the sole right and discretion to sell, lease, mortgage, encumber, construct buildings, complexes, etc.
- (d) The Promoter, at its own discretion, may also hand over the Club House to the Association of Owners/ Apex Body for maintenance and management of the Club House.

16. From the above, it can be seen that the Club House and other common amenities are provided as a service with no transfer of title to land or buildings and hence would not be covered under entry 5 of Schedule III of the CGST Act. What is provided is only a service of access to the service facilities and hence is liable to tax and does not form part of the consideration for the land or building. These are also not mandatory facilities to be provided as per any law. The ownership rights on the above facilities are found to be



still remaining with the Promoter and the Promoter can assign these facilities to anyone of his choice and the Purchaser is only provided with access rights. Hence this provision of access rights for a separate consideration would definitely form a separate supply under the provisions of Section 7(1) of the CGST Act, 2017.

17. It can be seen that the applicant is collecting Estimated Other Charges on behalf of the future service provider in advance and is treated as deposit in the invoice. Since the same is not refundable and adjusted towards the future services to be provided to the plot owners, the same is in the nature of advance. Further, the Promoter is in control of the services and is the service provider till the new service provider is employed and handed over, the same is clearly a service provided and hence is a supply by the applicant.

18. As far as corpus fund is concerned, the same is found to be in the nature of deposit for future expenses and if the future expenses are known when the amount is collected, the same attains the nature of advance and hence becomes taxable at the time of its collection itself. If the nature of expenses are not known at the time of collection and it is for unforeseen expenses, it would be in the nature of a deposit and is not a part of consideration for a supply at the point of collection but when the same is applied to an expense, the supply would be constituted and would be taxable. The definition of "consideration" in clause (31) of Section 2 of the CGST Act is to be seen for this, which reads as under:

"(31) "consideration" in relation to the supply of goods or services or both includes –

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;"

19. The Applicant wants to know the applicability of GST if the sale price is a consolidated price which includes land cost, basic infrastructure development charges and other common amenities and facilities charges. There is only service of access to club house and common amenities and the same is considered as a supply as explained in para 14 supra and hence the value proportionate to club house and common amenities are applicable to



20. In view of the foregoing, we pass the following

RULING

i.

a) *The applicant is not liable to charge GST on sale of plot, if the booking of plot, receipt of consideration and agreement for sale is entered as well as sale deed is executed after the release certificate.*

b) *The applicant is not liable to charge GST on Basic Infrastructure Development charges if the booking of plot, receipt of consideration and agreement for sale is entered as well as sale deed is executed after the release certificate.*

c) *The applicant is liable to charge GST on Other common amenities and facilities charges if the booking of plot, receipt of consideration and agreement for sale is entered as well as sale deed is executed after the release certificate.*

ii.

a) *the applicant is not liable to charge GST on sale of plot, if the booking of plot and / or receipt of consideration and/or agreement for sale is entered prior to the release certificate and sale deed is executed after receipt of release certificate.*

b) *the applicant is not liable to charge GST on Basic Infrastructure Development charges, if the booking of plot and / or receipt of consideration and/or agreement for sale is entered prior to the release certificate and sale deed is executed after receipt of release certificate.*

c) *the applicant is liable to charge GST on Other common amenities and facilities charges, if the booking of plot and / or receipt of consideration and/or agreement for sale is entered prior to the release certificate and sale deed is executed after receipt of release certificate.*

iii. *If the sale price is a consolidated price, then charges proportionate to common amenities and facilities charges are applicable to GST.*



(Dr. M.P. Ravi Prasad)

Member

MEMBER

Karnataka Advance Ruling Authority

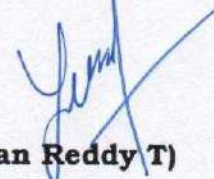
Bengaluru - 560 009

Place: Bengaluru,

Date: 26.04.2023

To,
The Applicant

M/s. Godrej Properties Limited



(Kiran Reddy T)

Member

MEMBER

Karnataka Advance Ruling Authority

Bengaluru - 560 009

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Taxes, Bengaluru North GST Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-020, Bengaluru.
5. Office Folder.

