

AUTHORITY FOR ADVANCE RULING, TAMIL NADU
No.207, 2nd FLOOR, PAPJM BUILDING, No.1, GREAMS ROAD,
CHENNAI 600 006.

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND
UNDER SECTION 98(4) OF THE TNGST ACT, 2017

Members present:

Shri C. Thiyagarajan, I.R.S., Additional Commissioner/Member (CGST), Office of the Commissioner of GST and Central Excise, Audit I Commissionerate, Chennai - 600 101.	Shri B. Suseel Kumar, B.E., MBA., Joint Commissioner/Member (SGST), Authority for Advance Ruling, Tamil Nadu, Chennai - 600 006.
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Advance Ruling No. 1/ARA/2026, dated 08.01.2026

1. *Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/TNGST Act 2017, within 30 days from the date on which the ruling sought to be appealed is communicated.*
2. *In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
 - (a) *On the applicant who had sought it in respect of any matter referred to in sub-section (2) Section 97 for advance ruling.*
 - (b) *On the concerned officer or the Jurisdictional Officer in respect of the applicant.*
3. *In terms of Section 103(2) of the Act, this Advance Ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
4. *Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
5. *The provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act (herein referred to as the 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 Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.*

GSTIN Number, if any/User id	33AFZPJ5868F1ZU
Legal Name of Applicant	POONAPALLI RAMACHANDRAN JAIPRAKASH
Trade Name of Applicant	M/s. JAYPEE ENTERPRISES
Registered Address/ Address provided while obtaining User id	Plot No. 9A, Jubilee Homes, Road No.7, HCF Mathigiri Hosur, Krishnagiri, Tamilnadu - 635110
Details of Application	Application Form GST ARA-01 received from the applicant on 04.03.2025.
Jurisdictional Officer	State – Hosur (South)-I Assessment Circle Krishnagiri Zone Hosur Division
Other Jurisdiction	Centre – Mathigiri Range Hosur-I Division Salem Commissionerate
Nature of activity (s) (proposed/present) in respect of which advance ruling sought for A. Category B. Description (in brief)	<p>Construction Industry, Supply of Goods and Service Provider.</p> <p>The applicant is sole proprietorship concern registered with GST for supply of goods (under HSN 69041000, 44181000, 72151000 etc. and provision of construction service.</p> <p>2. The applicant self acquires a piece of land under a sale deed. After developing the land purchased lay out is designed and necessary approval is obtained from the competent authorities. The applicant enters into MOU with prospective buyers for purchase of Land and construction of residential house. Two separate agreements with the buyer is entered one for sale of plot(Sale deed) and the other for construction of residential house (construction agreement). The payment schedule is as per the MOU entered with the buyers.</p> <p>3. The buyer shall pay for the following, (a) Land & Building (b) Maintenance of common amenities</p>

	<p>(c) Common expenses with other buyers</p> <p>4. On receipt of the minimum amount, as per the MOU, the sale deed and the construction agreement is executed. The MOU charges single amount which includes considerations attributable towards both sale of land and construction of residential house. The applicant starts the construction as soon as getting approval from the concerned authorities for residential house. Stage-wise payments are received from the buyer as per the agreed terms mentioned in the payment schedule and conditions in the construction agreement.</p>
<p>Issues on which advance ruling required</p>	<p>(i) Classification of Goods and/or services or both</p> <p>(ii) Determination of time and value of supply of goods or services or both</p> <p>(iii) Admissibility of input tax credit of tax paid or deemed to have been paid</p> <p>(iv) Determination of the liability to pay tax on any goods or service or both</p> <p>(v) 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.</p>
<p>Question(s) on which advance ruling is required</p>	<p>1. Whether the actual value charged for 'transfer of land' is available as per sale deed and the actual value for construction of residential houses is available as per construction agreement, can GST be charged @ 18% as per Entry No. 3(xii) of Notification No. 11/2017-CT(Rate) r/w Notification No. 11/2017-ST(Rate) <i>only on the amount charged in construction agreement(with corresponding benefit of input tax credit)</i> instead of charging GST @ 1.5%/7.5% as per Entry No. 3(i) and 3(ia) on 'total amount charged' as per Notification No. 11/2017-CT(Rate) r/w Notification No. 11/2017-ST(Rate)</p>

2. If GST is to be charged @ 1.5%/7.5% as per Entry No. 3(i) and 3(ia) as per Notification No. 11/2017-CT(Rate) r/w Notification No. 11/2017-ST (Rate) without input tax benefit, can the 'amount charged for the transfer of land' at least be considered as per sale deed instead of deemed value of one third of total amount charges?

M/s JAY PEE ENTERPRISES, a sole proprietorship concern having its office at Plot No. 09A, Jubilee Homes, Road No.-7, HCF Mathigiri Hosur, Krishnagiri, Tamilnadu – 635110 (hereinafter called as the "Applicant") is registered with GST in the State of Tamilnadu vide registration No. 33AFZPJ5868F1ZU. The applicant has sought advance ruling on the following question:

1. *Whether the actual value charged for 'transfer of land' is available as per sale deed and the actual value for construction of residential houses is available as per construction agreement, can GST be charged @ 18% as per Entry No. 3(xii) of Notification No. 11/2017-CT(Rate) r/w Notification No. 11/2017-ST(Rate) only on the amount charged in construction agreement(with corresponding benefit of input tax credit) instead of charging GST @ 1.5%/7.5% as per Entry No. 3(i) and 3(ia) on 'total amount charged' as per Notification No. 11/2017-CT(Rate) r/w Notification No. 11/2017-ST(Rate);*
2. *If GST is to be charged @ 1.5%/7.5% as per Entry No. 3(i) and 3(ia) as per Notification No. 11/2017-CT(Rate) r/w Notification No. 11/2017-ST (Rate) without input tax benefit, can the 'amount charged for the transfer of land' at least be considered as per sale deed instead of deemed value of one third of total amount charges?*

2. The applicant has filed this application for advance ruling under Section 97 of the CGST Act, 2017, and corresponding provisions under the Section 97 of TNGST Act, 2017. The Applicant has made a payment of application fees of Rs.5,000/- each under sub rule (1) of Rule 104 of CGST Rules, 2017 and TNGST Rules, 2017 on 01-04-2025 through their Electronic Cash Ledger.

3. FACTS AS STATED BY THE APPLICANT

- The applicant is sole proprietorship concern registered with GST for supply of goods (under HSN 69041000, 44181000, 72151000 etc.) and provision of construction service.
- The applicant has self acquires a piece of land under a sale deed dated 12-09-2012 and registered as document No. 12090/2012. The applicant developed the land so purchased into a lay out i.e "Jay Pee Grand Layout" approved by the Director, Town and Country Planning, Chennai vide

approval No. 9/98 dated 17-08-2023. The applicant enters into MOU with prospective buyers for purchase of Land and construction of residential house. For this purpose, two separate agreements with the buyer is entered, one for sale of plot (Sale deed) and the other for construction of residential house (construction agreement). The payment schedule is as per the MOU entered with the buyers.

- The buyer shall pay for the following,
 - (a) Land & Building
 - (b) Actual cost towards electricity and water deposits for securing connections.
 - (c) Maintenance of common amenities
 - (d) Common expenses with other buyers
- On receipt of the minimum amount, as per the MOU, the sale deed and the construction agreement is executed. The MOU charges single amount which includes considerations attributable towards both sale of land and construction of residential house. The applicant starts the construction as soon as getting approval from the concerned authorities for residential house. Stage-wise payments are received from the buyer as per the agreed terms mentioned in the payment schedule and conditions in the construction agreement.
- As per the industry practice, two methods exist in which the title of the property can be transferred.
 - (a) First method is to execute agreement for sale of residential house and receive consideration towards residential house including value of underlying land. Once consideration is received, a sale deed is executed for entire amount containing both the land value and building value. This method requires payment of higher stamp duty since it is paid on both the value of land and building.
 - (b) In the second method, two separate documents are executed, one, a sale deed for sale of land and the other for construction of residential house.
- The applicant is following the second method since it entails payment of stamp duty only on the value of land and not on the building.
- The applicant placed reliance on para 8.3 to 8.6 of Circular DOF No. 334/1/12010-TRU dated 26-02-2010 issued during Service Tax Regime and contended that the service tax provisions has been incorporated in Entry 5(b) of Schedule-II to the Act which excludes transactions on those immovable properties from levy of GST if the entire consideration is received after issuance of completion certificate.
- In the applicant's case, the applicant admits that GST is payable on the construction service of residential house. The applicant is however is of

the understanding that the consideration received as per MOU pertaining to sale of land is not exigible to GST as per Entry No. 5 of Schedule-III to GST Act, 2017.

- The consideration stated in the MOU to the extent it pertains to construction agreement is exigible to GST as per Entry No. 5(b) of Schedule-II of the Act read with para 2 of the Notification No. 11/2017-CT(Rate) which provides for deduction towards value of such 'transfer of land'.
- Para 2 of the Notification states that the value of supply made shall be equivalent to 'total amount charged for the supply less the value of transfer of land'. Hence the applicant contended that the said amount ought to be reduced as per para 2.
- The applicant further submits that only when actual value of land is not available can deemed value equal to one third of total amount be considered as value of land. Incorporating deemed value when actual value is available tantamount to levying GST on sale of land which is specifically treated as neither supply of goods nor supply of service as per Entry No. 5 of Schedule-III to GST Act, 2017.
- The applicant relies on *Munjjal Manishbhai Bhatt Vs. UOI, 2022(62) GSTL 262 (Gujarat)* in support of aforesaid submission. The applicant submits that since the value charged for land is available in the sale deed, the said value should be reduced from the total amount charges as per the above decision.

4. SUBMISSION ON CLASSIFICATION UNDER ENTRY 3(i) AND (ia) OF NOTIFICATION No. 11/2017-CT(Rate)

- The applicant submits that construction of each and ever individual residential house tantamount to construction of an 'apartment' as per para-4(xiv) of Notification No. 11/2017-CT(rate) read with Section 2€ of RERA.
- The applicant submits that they are constructing residential apartments as per para 4(xxix) of Notification No. 11/2017-CT(rate) as it is intended for residential use as declared to competent authority. Competent authority is being defined in para 4(xxv) of the notification. Permission for construction of apartments is taken from Onnalwadi Panchayat.
- The applicant submits that theirs is a real estate project as per para 4(xviii) of the notification read with Section 2€ of RERA.
- Within the meaning of real estate project, the applicant submits that their activity is classifiable as Residential Real Estate Project (RREP) as per par 4(xix) since the carpet area is not more than 15% of the total carpet area of all the apartments in the Real Estate Project.
- The applicant submits that they are promoters as per Para 4(xvii) of the Notification since they construct building apartments for the purpose of selling it other persons.

- The applicant submits that residential houses are constructed as per plan for each plot and according to the requirements of the purchaser and hence the 'competent authority' to issue 'completion certificate' as per Entry No. 5 of Schedule-II of the act shall be the Chartered Engineer who is registered with Council of Architecture as per Explanation (1(i) to Entry 5(b) of Schedule-II of the Act.
- The applicant submits that:
 - (i) **They are constructing affordable/other than affordable residential apartment;**
 - (ii) The construction is by applicant, who is a promotor;
 - (iii) The construction is in a residential real estate project;
 - (iv) **The construction has commenced after 01-04-2019;**
 - (v) The apartments (residential houses) are intended for sale to a buyer;
 - (vi) The consideration is received before issuance of completion certificate or first occupancy, whichever is earlier.
- The applicant therefore submits that they have satisfied all the conditions specified in Entry No. 3(i), (ia) of the Notification and hence are liable to charge GST at the rate of 0.75%/3.75% depending on type of the project.
- The applicant submits that they seek to reduce the actual value of land as per value stated in sale deed instead of 1/3rd total value by placing reliance on *Munjaal Manishbhai Chatt Cs. UOI, 2022 (62) GSTL 262 (Gujarat)*.
- The applicant submitted the following documents:
 - (i) MOU dated 1st Jun, 2023
 - (ii) Agreement for sale dated 25th May, 2023
 - (iii) Sale deed dated 28th Jun, 2023
 - (iv) Construction agreement dated 28th Jul, 2023
- The sale deed and the construction agreements are executed on the same date. This demonstrates the *consensus ad idem* between the parties is to convey a residential house and not for sale of land.

5. APPLICANTS'S INTERPRETATION ON THIS ISSUE

- Regarding rate of tax, the applicant is of the understanding that they are liable to pay GST at the rate of 1,5%(0.75% CGST and 0.75% SGST) in respect of the services of construction of affordable apartments as per entry at item (i) and at the rate of 7.5% (3.75% CGST and 3.75% SGST) in respect of services of construction of residential apartments other than affordable residential apartments as per Entry at item No. (ia) of Sl. No. 3 of Notification No. 11/2017-CT(Rate) dated 28-06-2017 subject to the condition prescribed under the respective entries.
- Regarding taxable value, as per para-2 of Notification No. 11/2017-CT(Rate) dated 28-06-2017, GST is chargeable on 'total amount charged for such supply'. Para 2 further specifically provides for deduction

towards 'value of such transfer of land' from total amount charged. Since actual value for transfer of land is available as per Sale Deed, the said value should be reduced from the total amount (available in MOU) to ascertain taxable value instead of 1/3rd value as per *Munjaal Manishbhai Chait Cs. UOI, 2022 (62) GSTL 262 (Gujarat)*.

6. PERSONAL HEARING

The applicant was given an opportunity to be heard in person on 23.09.2025. Smt. Annapurna Kabra and Shri. Manjunath, S, Chartered Accountants (CAs) of M/s. Annapurna & Associates and Authorised Representatives (ARs) of the applicant appeared for the personal hearing. AR stated that they have satisfied all the conditions of Notification No. 11/2017-CT(Rate) amended vide Notification No. 03/2019-CT(Rate) dated 28-03-2019 and hence are liable to charge GST at the rate of 0.75%/3.75% depending on the type of project. AR further stated that the applicant is eligible to exclude the actual value of land instead of 1/3rd of the total value prescribed in para 2 of the Notification. The members asked AR to furnish copies of documents submitted to RERA, Brochure copy and any other documents relating to this issue.

DISCUSSION AND FINDINGS

7. We have carefully considered the facts and submissions made by the appellant in their application and submissions made during the personal hearing. The applicant has not furnished any documents as promised during the personal hearing. However, as per the facts placed before us in the application and submissions made during the personal hearing, the applicant has stated that the construction has commenced after 01-04-2019. Therefore, the instruction and the guidelines issued by the Government vide Notification No. 03/2019-CT(Rate) dated 29-03-2019 which amends the parent Notification No. 11/2017-CT(Rate) dated 28th Jun, 2017 is only applicable to the applicant for all purposes.

8. Whether the activity of the applicant is supply of service or supply of goods? The activity of construction being done by the applicant involves both supply of goods and supply of services. This means that the activity of construction is a taxable activity and the taxability of it is prescribed under clause (b) of Rule 5 of the Schedule-II of the Act, which is reproduced below.

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.

Explanation. -For the purposes of this clause-

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: -

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 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;

(2) the expression "construction" includes additions, alterations, replacements or re-modelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

9. As pr the facts presented by the applicant, the applicant is a 'promotor' as defined in clause (xvii) of the notification meaning,

(xvii) the term "promotor" shall have the meaning as assigned to it in clause (zk) of section 2 of Real Estate (regulation and Development) Act, 2016 (16 of 2016).

10. As per clause (zk) of Section 2 of Real Estate (regulation and Development) Act, 2016 (16 of 2016), promotor is defined to mean,

(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.

Explanation. —For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder;

11. “Original Works” is defined under Para 2(zs) of Notification No. 12/2017-CT(Rate) dated 28-06-2017 as

*(zs) “original works” means- **all new constructions;***

(i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

12. The activity rendered by the applicant is in the nature of ‘original works since the applicant is constructing a new building. The applicant enters into a Memorandum of Understanding (MOU) with the prospective buyers for sale of land and construction of residential house. Therefore, it fits into the definition of ‘single residential unit’ as defined under para 2(zze) which states that

(zze) “single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

13. ‘Real Estate Project (REP)’ and ‘Residential Real Estate Project (RREP)’ are defined in Notification No. 03/2019-CT(Rate) dated 29-03-2019 and Notification No. 04/2019-CT(Rate) dated 29-03-2019 to mean,

(ix) the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in clause (zn) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

14. As per clause (zn) of Section 2 of Real Estate (regulation and Development) Act, 2016 (16 of 2016), 'Real Estate Project is defined as,

(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;

(x) 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 per cent. of the total carpet area of all the apartments in the REP;

15. As per the facts presented by the applicant, the project being undertaken by them is a RREP and further stated that they have no commercial apartments constructed in their project. i.e the carpet area of commercial apartment is zero and hence satisfies the definition of RREP which specifies less than 15% of the carpet area. Also, they have stated that all their construction in the said project has commenced after 01-04-2019 and hence the project is not an ongoing one. The applicant stated that the consideration is received before issuance of completion certificate or first occupancy, whichever is earlier. Hence, all the construction activity done by the applicant in the project is taxable. They have not exercised any option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) as the case may be. The applicant, hence has no option, but to follow the procedures prescribed in Notification No. 03/2019-CT(Rate) dated 29-03-2019. The applicant has stated that they are constructing both affordable and other than affordable residential apartments. Therefore, the activity of the applicant would fall under 3(a) and 3(ia) of the Notification No. 03/2019-CT(Rate) fated 29-03-2019 which amends the parent Notification No. 11/2017-CT(Rate) dated 28th Jun, 2017 and the conditions mentioned should be strictly adhered to for claiming the benefit of the above Notification. For ease of reference, the relevant portion of the Notification is reproduced below.

Sl. No. (1)	Chapter, Section or Heading (2)	Description of Services (3)	Rate (percent) (4)	Condition (5)
3	Heading 9951 (Construction services)	"(i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1 st April, 2019 or in an ongoing RREP"	0.75	Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only; Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;

	<p>in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, 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)</p>		<p>Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1 st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of RREP other than RREP and in Annexure II in the case of RREP;</p> <p>Provided also that where a registered person (landowner- promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, -</p> <p>(i) the developer- promoter shall pay tax on supply of construction of apartments to the landowner- promoter, and</p> <p>(ii) (ii) such landowner - promoter shall be eligible for credit of taxes charged from him by the developer promoter towards the supply of construction of apartments by developer- promoter to him, provided the land owner promoter further supplies such apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer promoter</p>
	<p>(ia) Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which commences on or after 1 st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, 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</p>	<p>3.75</p>	<p>Explanation. -</p> <p>(i) "developer- promoter" is a promoter who constructs or converts a building into apartments or develops a plot for sale,</p> <p>(ii) (ii) "landowner- promoter" is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently</p> <p>Provided also that eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only;</p> <p>Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been</p>

		<p><i>apply for valuation of this service)</i></p>	<p><i>purchased from registered person;</i></p> <p><i>Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 per cent., tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of eighteen percent on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both;</i></p> <p><i>Provided also that notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017), shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement;</i></p> <p><i>(Please refer to the illustrations in annexure III)</i></p> <p><i>Explanation.</i></p> <p><i>1. The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.</i></p> <p><i>2. Notwithstanding anything contained in Explanation 1 above, tax on cement received from unregistered person shall be paid in the month in which cement is received.</i></p> <p><i>3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-313 [Row No. 1 (D)(2)]</i></p>
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16. The next to be decided is the value of taxable service provided by the applicant. The activity of construction by the applicant is 'supply of Service'

as per Rule 5(b) of Schedule-II of the Act. Here, the said supply of services by the applicant involves both transfer of property in land and construction activity.

17. In the instant case, the applicant first executed a Memorandum of Understanding (MOU) with the prospective buyers for both purchase of land and construction of residential building. This implies that the buyers cannot buy only land from the applicant and construct building on their own or engaging any other promoter/builder for construction. With the MOU signed with the applicant, it becomes mandatory for buyers to engage the applicant for construction also. Only with this assurance, an arrangement of signing MOU is being executed by the applicant with the buyers and the payment schedule of the total cost of land and construction of building is also tabulated in the MOU. After signing the MOU, the applicant enters into two agreements with the buyers for sale of land and construction of residential house on the same day. Signing of MOU and the execution of two agreements on the same day implies that the construction service provided by the applicant to the buyers is a single contract for sale of land and construction of building.

18. Schedule-III of the Act prescribes those "activities or transactions which shall be treated neither as a supply of goods nor as a supply of services". As per para 5 of the list,

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

19. From the above, the sale of land is out of the purview of supply of goods/services. However, in cases of supply of services specified in column (3), in item (i), (ia), (ib), (ic), (id), (ie) and (if) involving transfer of land/undivided share of land, para 2 of Notification No. 11/2017-CT(Rate) dated 28-06-2017 prescribes the method to adopt for arriving at the taxable value for the purpose of paying GST. It states that the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land/undivided share of land and the value of such transfer shall be deemed to be one third of the total amount charged for such supply. Para 2 is reproduced below.

2. In case of supply of services 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.

20. As per the above, the applicant is eligible to deduct land value to the extent of one-third of the total amount charged thereby fixing the land value in real estate transactions as 1/3rd irrespective of actual value available or identifiable.

21. It is known fact that the land value may not be same across the country as the value of land depends on various factors such as location, socio-economic components etc. There may exist huge variation in the land cost between Metro cities, Towns and Rural areas while the cost of construction may vary in any of the places. The intention of the legislature is to foresee the possible under-valuation or over-valuation in the real estate and construction industry if the exclusion of actual land value is provided. To avoid this, the government came up with a mechanism of valuation to deduct the land value in terms of para 2 of the para 2 of Notification No. 11/2017-CT(Rate) dated 28-06-2017 as amended by Notification No. 03/2019-CT(Rate) dated 29-03-2019.

22. Though Schedule-III of the Act excludes the value of land from the purview of GST, it prescribed the method of valuation to be adopted for arriving at the taxable value in Para 2. Therefore, the deduction of the actual land value shall not be claimed by the applicant as clarified by the CBIC on the FAQs on Real Estate vide TRU's letter F. No. 354/32/2019-TRU dated 7th May, 2019 which is reproduced below.

Sl. No.	Question	Answer
36	Can a developer take deduction of actual value of land involved in sale of unit instead of taking deduction of deemed value of Land as per paragraph 2 to Notification No. 11/2017-CT(Rate)?	No, Valuation mechanism prescribed in paragraph 2 of the notification No. 11/2017-CT (rate) dated 28-06-2017 clearly prescribes one-third abatement towards value of land.

23. In view of the above, we pass the ruling,


RULING

1. Whether the actual value charged for 'transfer of land' is available as per sale deed and the actual value for construction of residential houses is available as per construction agreement, can GST be charged @ 18% as per Entry No. 3(xii) of Notification No. 11/2017-CT(Rate) r/w Notification No. 11/2017-ST(Rate) only on the amount charged in construction agreement (with corresponding benefit of input tax credit) instead of charging GST @ 1.5%/7.5% as per Entry No. 3(i) and 3(ia) on 'total amount charged' as per Notification No. 11/2017-CT(Rate) r/w Notification No. 11/2017-ST(Rate);


The applicant is eligible to claim 3(i) and 3(ia) of Notification No. 11/2017-CT(Rate) read with Notification No. 11/2017-ST(Rate) as amended by Notification No. 03/2019-CT(Rate) dated 29-03-2019 read with Notification No. 03/2019-ST(Rate) dated 29-03-2019 and liable to pay GST @ 1.5% (0.75% -CGST + 0.75%-SGST) in respect of construction of affordable residential apartments and @ 7.5% (3.75%-CGST + 3.75%-SGST) for construction of other than affordable residential apartments respectively subject to the adherence of conditions prescribed under the respective entries in the redeveloped project undertaken by the applicant after 01-04-2019.

2. If GST is to be charged @ 1.5%/7.5% as per Entry No. 3(i) and 3(ia) as per Notification No. 11/2017-CT(Rate) r/w Notification No. 11/2017-ST (Rate) without input tax benefit, can the 'amount charged for the transfer of land' at least be considered as per sale deed instead of deemed value of one third of total amount charges?

The taxable value for Construction services supplied by the applicant is governed by provisions of Para 2 of Notification No. 11/2017-CT(Rate) r/w Notification No. 11/2017-ST(Rate) as amended by Notification No. 03/2019-CT(Rate) dated 29-03-2019 r/w Notification No. 03/2019-ST(Rate) dated 29-03-2019. Accordingly, the applicant is eligible to avail only the deduction of one-third of the total amount charged for the supply for arriving at the taxable value of supply.


(B. Suseel Kumar)
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(C. Thiyagarajan)
Member (CGST)

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