NATION TAX MARKET	**KERALA AUTHORITY FOR ADVANCE RULING** **GOODS AND SERVICES TAX DEPARTMENT** **TAX TOWER, THIRUVANANTHAPURAM**	KERALA GST State Goods & Services Tax

BEFORE THE AUTHORITY OF: Shri. Jomy Jacob IRS &

: Shri. Mansur M.I.

Legal Name of the applicant	M/s. SI PROPERTY KERALA PRIVATE LIMITED
GSTIN	32AAFCS2896E1ZC
ARN No.	AD3201230022904
Address	TC 5/2520-4, Unit No. GD, Silver Oaks, Near Golf Club, Kowdiar, Thiruvananthapuram, Kerala-695003
Advance Ruling sought for	1. Whether GST is applicable to the Landowner's share of constructed residential flats? 2. If GST applicable on point 1 above, what will be the rate of GST and the value on which such GST is applicable?
Date of Personal Hearing	20.06.2025
Authorized Representative	Shri.M.Thajudeen, Chartered Accountant

ADVANCE RULING No.KER/30/2025 Dated 08.10.2025

1. M/s SI Property Kerala Private Limited, TC 5/2520-4, Unit No. GD, Silver Oaks, Near Golf Club, Kowdiar, Thiruvananthapuram, Kerala-695003 *(hereinafter referred to as the applicant)* is in the business of development of apartments & villas in own property and as joint venture with third party owners, execution of turn key projects and provision of works contract services. They are registered under CGST Act 2017 with GSTIN 32AAFCS2896E1ZC.

2. At the outset it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (herein after referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (herein after referred to as KSGST Act) are same except for certain provisions. Accordingly, a reference herein after to the

AUTHORITY FOR ADVANCE RULING GST KERALA

provisions of the CGST Act, Rules and Notifications issued thereunder shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued thereunder.

3. The facts of the issue

3.1 The applicant is engaged in the business of developing apartments and villas on self-owned land as well as through joint ventures with third-party landowners. They also undertake turnkey projects and provide works contract services. On 08.04.2022, the applicant entered into a Joint Development Agreement (JDA) with a landowner, Shri S. Madhava Menon (hereinafter referred to as the landowner), for the construction of a residential apartment complex. Prior to this, the landowner had executed a JDA with M/s Powerlink Builders Private Limited on 17.11.2014, which was subsequently cancelled by mutual agreement on 07.04.2022. M/s Powerlink Builders did not collect any advance from prospective apartment buyers during the period of their agreement. However, they had prepared architectural drawings for an apartment complex, obtained approvals from the Thiruvananthapuram Municipal Corporation under Building Permit No. E9/BA/434/14 (which was later renewed on 03.08.2022), and secured clearances from the Fire & Rescue Department, Pollution Control Board, and other regulatory authorities. They also paid the requisite statutory fees and completed the piling work on the project site during the validity of their agreement.

As per the terms of the JDA between the applicant and the landowner, the applicant will construct 39 residential apartments, out of which 11 apartments, having a total built-up area of 13,573 sq. ft., will constitute the landowner's share. These apartments will be handed over to the landowner upon completion of the project. Since the transfer of the landowner's share takes place after obtaining the completion certificate from the competent authority, such transfer is considered a transfer of immovable property and, therefore, not liable to GST. However, in the event that GST is deemed applicable, it shall be levied at the rate of 5% and collected from the landowner.

3.2 In response to certain queries, the applicant clarified that they have entered into a valid Joint Development Agreement with the landowner. They

AUTHORITY FOR ADVANCE RULING GST KERALA

explained that the term "built-up space" refers to the total saleable area of the apartment, and that the share of land sold by the builder does not include the 20.14% of the total land area retained by the landowner. Nevertheless, the developer will undertake the development of the entire land parcel, including the 20.14% retained by the landowner, as this portion is part of the total undivided share of land and forms the basis for the apartments to be allotted to the landowner. In a further clarification dated 27.09.2024, the applicant stated that the 20.14% land retained by the landowner is part of the total extent of 17.36 Ares under development and represents the common land portion allocated to the 11 apartments to be handed over to the landowner. Subsequently, vide e-mail dated 25.07.2025, the applicant intimated that, since the JDA with the landowner was executed on 08.04.2022 for the construction of a residential building complex, the applicability of GST, if any, may kindly be considered from the financial year 2022–23 onwards.

4. Comments of the Jurisdictional Officer

The application was forwarded to the Jurisdictional Officer as per provisions of Section 98(1) of the CGST Act. The Jurisdictional Officer reported that there are no pending or decided proceedings against the applicant under any provisions of the CGST Act 2017.

5. Personal hearing

The applicant was granted opportunity for personal hearing on 20.06.2025. Shri. M.Thajudeen, Chartered Accountant represented the applicant for personal hearing, and reiterated the contentions made in the application.

6. Discussion and Findings.

6.1. The application is admissible and is fit to pronounce advance ruling as it falls under the ambit of the section as per sub section 2(g) of section 97.

6.2 The issue was examined in detail. The facts are as follows: the landowner, holding freehold rights over 17.36 Ares of land as described in 'Schedule A' of the

AUTHORITY FOR ADVANCE RULING GST KERALA

agreement, approached the applicant to develop the said land by constructing a multi-storied residential building complex, for which requisite approvals had already been obtained. Based on mutual consent, the landowner and the applicant executed a Joint Development Agreement. As per the agreement, both parties concurred that the total apparent consideration for the land described in Schedule A and the built-up area described in Schedule B is Rs. 3,87,72,500/-. The landowner agreed to sell a portion of the land to the applicant or their nominees, and in return, the landowner shall receive 11 apartments, with a built-up area of approximately 13,573 sq. ft., inclusive of the proportionate share in the common areas and garages. The value of the 11 apartments, inclusive of the undivided share in the land and common areas, is also deemed to be Rs. 3,87,72,500/-. The total agreed saleable area allotted to the landowner is 14,409 sq. ft., and the difference in the contributed value, amounting to Rs. 45,98,000/-, shall be adjusted in the final settlement of accounts between the parties.

6.3 The landowner, through this agreement, nominates, constitutes, and appoints the applicant as the developer to undertake and complete the construction of the residential building complex at the applicant's cost. The landowner has also executed a power of attorney in favour of the applicant, authorising them to carry out all activities related to construction, including entering into agreements with prospective buyers and accepting payments from such buyers. The landowner shall have no claim or entitlement over the proceeds received by the developer from such sales.

6.4 Upon execution of the agreement, the landowner shall hand over possession of the subject property to the applicant for the purpose of project implementation. The applicant shall market and sell the remaining built-up area after earmarking the landowner's share of 13,573 sq. ft. along with the proportionate undivided share of land. The landowner shall not have any right or claim over the sale proceeds received by the developer from the sale of the remaining apartments.

6.5 The arrangement in the present case represents a typical Joint Development Agreement (JDA) a pre-arranged contractual relationship between a landowner and a developer/builder, wherein the landowner contributes land, and the developer undertakes the responsibilities of obtaining statutory approvals, carrying out construction, launching, marketing, and managing the project with its own financial resources. In the instant case, the JDA is not based on revenue sharing but is structured on an area-sharing basis, whereby the landowner receives a share of the constructed area in lieu of land contribution.

6.6 As per Clause XI (Sl. No. 2) - 'Understandings and Terms between the Land Owner and Developer', in page 7 of the agreement, it is stated that:

"The LANDOWNER shall on executing this Agreement handover vacant and peaceful possession of the said Property to the DEVELOPER for the purposes of implementation of the project as envisaged in this Agreement, and the DEVELOPER shall thereafter be authorized to commence construction of the 'BUILDING COMPLEX' on the said land in accordance with the plans approved and/or sanctioned by the Competent Authority with or without acceptable modifications and take such steps as may be necessary or expedient and incidental to carry out the development of the said land at their own costs and expenses. For the said purpose, the DEVELOPER shall be entitled to appoint Architects, Engineers, Surveyors, Contractors, Agents and other personnel and shall be entitled to take all such steps as may be necessary or incidental for such development and construction work at their own costs and expenses."

6.7 From the above clause, it is evident that the agreement contemplates a transfer of development rights by the landowner to the applicant/developer for the purpose of project execution.

6.8 As per the terms of the agreement between the landowner and the applicant, the landowner agrees to sell a portion of the land (as specified in Schedule A of the agreement) to the developer or its nominees. In exchange, the landowner is entitled to receive 11 residential apartments, aggregating to approximately 13,573 sq. ft., including proportionate share in the built-up common area, along with the undivided share in land and garages. The total agreed saleable area allotted to the landowner is 14,409 sq. ft. and the value of the said 11 apartments along with the common area has been mutually agreed at Rs. 3,87,72,500/-.

6.9 The agreement between the landowner and the applicant was executed on 08.04.2022. It is also noted that there is no information provided, either in the Advance Ruling (AAR) application or in the agreement, as to whether the landowner is registered under the GST law.

6.10 The above facts and structure of the transaction between the landowner and the applicant clearly fall within the scope of the following provisions under the Goods and Services Tax (GST) law:

7. Scope of Supply

7.1 (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, license, 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.

(1A) Where certain activities or transactions constitute a supply in accordance with sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

Accordingly, "supply" under the GST law encompasses all types of transfers or exchanges made for a consideration in the course of business.

7.1.1 In the present case, the applicant has entered into a Joint Development Agreement (JDA) with the landowner, under which the applicant (developer) receives development rights in exchange for the construction of residential apartments that are handed over to the landowner. This constitutes a

AUTHORITY FOR ADVANCE RULING GST KERALA

transaction by way of exchange, which is covered under Section 7(1)(a) of the CGST Act and qualifies as a "supply".

7.1.2 The Oxford Dictionary defines "exchange" as the act of giving or returning something to someone while receiving something in return. Here, the applicant has received transfer of development rights (TDR) and, in return, has supplied constructed flats (along with certain amenities) to the landowner free of cost. This clearly establishes that the transaction falls within the definition of "supply" under the CGST Act, 2017.

7.1.3 As per entry 5(b) of Schedule II of CGST Act 2017, construction of complex, building, civil structure or 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. Thus, if some conditions are satisfied, construction of a complex, building, civil structure or part thereof, including a complex or building intended for sale to a buyer takes on the character of supply. From the above, it is clarified that the activity of the applicant being developer/promoter is related to supply under CGST Acts..

7.1.4 In the present case, the Developer has entered into an Agreement to provide construction services in accordance with the terms set out in Clause 5(b) of Schedule II. In return the land owner has agreed to transfer development rights to the applicant/developer. Hence, the said transaction falls within the ambit of "supply" as contemplated under the provisions of the CGST Act 2017 and is taxable as supply of services.

7.2 **Valuation of Supply:**

7.2.1 As per Section 15(1) of the Central Goods and Services Tax Act, 2017 (CGST Act), the value of a supply of goods or services, or both, shall be the transaction value, which is the price actually paid or payable, provided that the supplier and recipient are not related and the price is the sole consideration for the supply. Further, Section 15(4) provides that where the value of the supply

AUTHORITY FOR ADVANCE RULING GST KERALA

cannot be determined under sub-section (1), it shall be determined in the manner as may be prescribed.

7.2.2 According to Rule 27 of the CGST Rules, 2017, in cases where the supply of goods or services is for a consideration not wholly in money, the value of such supply shall be determined as follows:

(a) If available, the open market value of the supply shall be taken;

(b) If the open market value is not available, the value shall be the sum total of the monetary consideration plus the equivalent monetary value of the non-monetary consideration, provided such value is known at the time of supply.

7.2.3 Further, as clarified under Para 2A of Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019:

"Where a person transfers development rights or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service provided to such person shall be deemed to be the value of similar apartments charged by the promoter from independent buyers, nearest to the date on which such development rights are transferred."

8. GST on Construction Service

8.1 **Applicability of GST Notification**

8.1.1 As per Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, and subsequently amended by Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, with effect from 01.04.2019, a new mechanism for taxation of real estate projects has been introduced.

8.1.2 Under this new regime, the builder/promoter, who constructs or converts a building into apartments or develops a plot for sale, is required to pay GST in accordance with the amended Notification No. 03/2019-Central Tax (Rate).This notification prescribes various scenarios under which the developer-promoter or land promoter is liable to pay GST.

AUTHORITY FOR ADVANCE RULING
GST
KERALA

8.1.3 Serial No. 3 of Notification No. 11/2017-CT(R) (as amended by Notification No. 03/2019-CT(R)) prescribes the following for construction of residential apartments:

Construction of residential apartments, other than affordable residential apartments, in a Residential Real Estate Project (RREP), intended for sale to a buyer (including the landowner under a Joint Development Agreement), wholly or partly-except where the entire consideration has been received after issuance of the completion certificate or first occupation, whichever is earlier-the applicable GST rate is 5% (2.5% CGST + 2.5% SGST). No Input Tax Credit (ITC) shall be available to the supplier of services.

8.1.4 Vide Notification No.03/2019 CT(R) dated 29.03.2019, taxpayers were given one-time option to opt for old tax regime in case of ongoing projects, i.e. projects which commenced on or before 31.03.2019. If this option was not exercised by the taxpayer, then such projects would automatically fall under the new GST rate structure prescribed in the Notification, which is:

- 1% GST without Input Tax Credit (ITC) for affordable residential apartments, and
- 5% GST without ITC for residential apartments other than affordable category.

Under the notification, an "affordable residential apartment" refers to:

8.1.5 A residential apartment in a project which commenced on or after 1st April 2019, or in an ongoing project where the promoter has not opted to pay tax at the older rates under items (ie) or (if) of Serial No. 3 of the Notification. To qualify as "affordable," such apartments must have a carpet area not exceeding 60 square meters in metropolitan cities or 90 square meters in other cities/towns, and the gross amount charged must not exceed Rs. 45 lakhs.

For the purpose of this definition:
(i) Metropolitan cities include Bengaluru, Chennai, Delhi NCR (including Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata, and Mumbai Metropolitan Region (MMR), as demarcated by notifications issued by

AUTHORITY FOR ADVANCE RULING GST KERALA

the Central or respective State Governments.

(ii) The gross amount shall include:

a. Consideration charged for construction services covered under items (i) and (ic) of Serial No. 3 of the Notification;

b. The amount charged for the transfer of land or undivided share in land, whether by way of lease, sub-lease, or otherwise;

c. Any other charges levied by the promoter on the buyer, including preferential location charges, development charges, parking charges, and common facility charges, among others.

8.1.6 Based on the analysis of the Joint Development Agreement and the relevant provisions of the GST law as outlined above, the following conclusions can be drawn:

- The project is being undertaken in Thiruvananthapuram, which is classified as a non-metropolitan city under Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, read with Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.
- The landowner's share consists of 11 residential apartments with a total built-up area of approximately 13,573 sq. ft. Accordingly, the average area per apartment is approximately 1,234 sq. ft., which translates to 114.64 square metres.
- Since the area of each apartment exceeds the 90 square metre threshold applicable to non-metropolitan cities, the project does not qualify under that criterion for classification as an "affordable residential apartment project."
- For an apartment project to be considered "other than affordable residential apartment", both of the following conditions must be met:
    1. Carpet area exceeding 60 sq. metres (metropolitan cities) or 90 sq. metres (non-metropolitan cities), and
    2. Gross amount charged for the apartment exceeding Rs. 45 lakhs.(to get the value)

- While the project clearly meets the first criterion (area > 90 sq. metres), there is no mention in the AAR application or its enclosures regarding the gross amount charged by the builder or promoter for each apartment.
- Therefore, based on available data, the project satisfies one of the two required conditions to be classified as a "project other than affordable residential apartment". The second condition relating to the amount charged remains unverified due to lack of disclosure in the documents submitted.

8.1.7 Since the applicant entered into a Joint Development Agreement with Shri S. Madhava Menon on 08.04.2022 for the construction of a residential apartment complex, and the project does not qualify as an affordable residential apartment project, the applicant is liable to pay GST at the rate of 5% (without Input Tax Credit) on the construction services rendered in respect of the residential units allotted to the landowner, as per Notification No. 03/2019-CT(R) dated 29.03.2019, read with Notification No. 11/2017-CT(R).

8.1.8 Further the value of the construction service provided to the landowner shall be determined in accordance with Para 2A of Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, which states:

"Where a person transfers development rights or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service provided to such person shall be deemed to be the value of similar apartments charged by the promoter from independent buyers, nearest to the date on which such development rights are transferred."

Accordingly, the taxable value for the purpose of GST shall be the open market value of similar flats sold to other buyers around the date the landowner transferred the development rights to the promoter.

9 GST on development rights

9.1 Applicability of GST Notification and Rate

9.1.1 On detailed verification, the arrangement in the present case represents a typical Joint Development Agreement (JDA) - a pre-arranged contractual relationship between a landowner and a developer/builder, wherein: The landowner contributes the land and the developer undertakes the responsibilities of obtaining statutory approvals, carrying out construction, launching, marketing, and managing the project using its own financial resources.

9.1.2 In the instant case, the JDA is not based on revenue sharing but is structured on an area-sharing basis, whereby the landowner receives a share of the constructed area in lieu of land contribution. It is evident that the agreement contemplates a transfer of development rights (TDR) by the landowner to the applicant/promoter for the purpose of project execution.

9.1.3 Though the term 'Development Rights' is not specifically defined under the GST law, in general parlance, it refers to the entitlements of a landowner to develop or allow the development of land in accordance with applicable land use regulations and statutory norms.

9.1.4 A new tax structure for real estate sector was introduced with effect from 01.04.2019 onwards by amendment of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 .

9.1.5 As per Serial No. 41A, Heading 9972 of Notification No. 04/2019-Central Tax (Rate) dated 29.03.2019, read with Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, any service by way of transfer of development rights (TDR) or Floor Space Index (FSI), including additional FSI, on or after 1st April 2019 for the construction of residential apartments by a promoter in a project intended for sale to buyers (whether wholly or partly), is exempt from GST, subject to the condition that the entire consideration is not received after issuance of the completion certificate or first occupation of the project, whichever is earlier.

AUTHORITY FOR ... RULING GST KERALA

9.1.6 Where the exemption applies, the promoter is liable to pay GST on a reverse charge basis, on such proportion of the value of TDR or FSI (including additional FSI), or both, as is attributable to the residential apartments that remain un-booked as on the date of issuance of the completion certificate or first occupation, whichever is earlier.

9.1.7 The GST liability is to be computed using the following formula:

GST Payable = GST payable on TDR/FSI had there been no exemption × (Carpet area of the un-booked residential apartments on date of completion certificate or first occupation)/(Total carpet area of all residential apartments in the project)

Further, the tax payable under reverse charge shall not exceed:

- 0.5% of the value in case of affordable residential apartments, and
- 2.5% of the value in the case of other residential apartments that remains un-booked on the date of issuance of the completion certificate or first occupation.

The liability to pay such central tax on the specified portion of the TDR or FSI (or both) shall arise on the date of issuance of completion certificate or first occupation, whichever occurs earlier.

9.1.8 The valuation of TDR for exemption purposes is explained in the Board's FAQs on Real Estate (Part II) vide F. No. 354/32/2019-TRU dated 14th May 2019, wherein it is clarified that:

"*Value of TDR shall be equal to the amount charged by the promoter for similar apartments from independent buyers, booked on the date that is nearest to the date on which such development rights or FSI is transferred by the landowner to the promoter.*"

9.1.9 As per Notification No. 05/2019-Central Tax (Rate) dated 29.03.2019, read with Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017, the entire GST liability under Section 9 of the *Central Goods and Services Tax Act, 2017* on services supplied by any person by way of transfer of

AUTHORITY FOR ADVANCE RULING GST KERALA

development rights or FSI (including additional FSI) for the purpose of constructing a project shall be payable by the promoter on a reverse charge basis.

9.1.10 In addition, as per Notification No. 06/2019-Central Tax (Rate) dated 29.03.2019, a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April 2019 for construction of a project, in return for consideration paid or payable either wholly or partly in the form of construction services (of commercial or residential apartments) or in any other form including cash, is deemed to be a registered person liable to pay central tax under the following conditions:

- On the construction services provided by the promoter to the landowner in exchange for development rights or FSI (including additional FSI);
- On any monetary consideration paid by the promoter for supply of development rights or FSI (including additional FSI) related to construction of residential apartments;
- On the supply of construction services by the promoter where the consideration is received in the form of development rights or FSI (including additional FSI);

In all such cases, the liability to pay central tax shall arise on the date of issuance of the completion certificate for the project by the competent authority, or on the date of first occupation, whichever is earlier.

10. Based on the analysis of the agreement and the relevant provisions of the GST law as outlined above, the following conclusions can be drawn:

10.1 As per Sl. No. 41A – Heading 9972 of Notification No. 04/2019-Central Tax (Rate) dated 29.03.2019, read with Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as well as Notification Nos. 05/2019 and 06/2019, both dated 29.03.2019, the service by way of transfer of development rights (TDR) or Floor Space Index (FSI) (including additional FSI), received on or after 1st April

2019 for the construction of residential apartments by a promoter intended for sale (wholly or partly), is exempt from GST, provided that the entire consideration is not received after the issuance of the completion certificate by the competent authority or after the first occupation, whichever is earlier.

10.2 However, in such cases, the promoter is liable to pay GST on a reverse charge basis on such proportion of the value of development rights as is attributable to the residential apartments that remain un-booked on the date of issuance of the completion certificate or first occupation, whichever occurs earlier.

10.3 Additionally, as per Notification No. 05/2019-Central Tax (Rate) read with Notification No. 13/2017-Central Tax (Rate), the entire GST liability under Section 9 of the CGST Act for services supplied by any person by way of transfer of development rights or FSI shall be discharged by the recipient of the service (i.e., the promoter) under reverse charge mechanism.

10.4 Further, Notification No. 06/2019-Central Tax (Rate) notifies that in cases where a promoter receives development rights or FSI against consideration paid or payable whether wholly or partly in the form of construction services or in cash the liability to pay GST on such construction services provided by the promoter to the landowner shall arise on the date of issuance of the completion certificate or first occupation, whichever is earlier.

10.5 The transfer of development rights (TDR) by a landowner to a developer is treated as a supply of service under Section 9 of the CGST Act, read with Heading 9972 of Notification No. 11/2017-Central Tax (Rate), and attracts tax at 18% and in respect of the unsold units as on the date of completion, GST at 18% becomes payable by the developer under RCM, with the liability arising at the time of issuance of the completion certificate or first occupation, as specified under Notification No. 06/2019.

AUTHORITY FOR ADVANCE RULING GST KERALA

11. Given the observations stated above, the following rulings are issued;

RULINGS

(i) Question No. a). Whether GST is applicable to the Land owner's share of Constructed residential flats?

Ruling- Yes, GST is applicable to the landowner's share of constructed residential flats. The landowner receives these flats as consideration for the transfer of development rights (TDR) to the promoter. Such consideration constitutes a taxable supply under GST. The construction service provided by the promoter to the landowner is liable to GST, and the promoter is required to discharge the tax liability on this supply. Further, in respect of development rights received on or after 1st April 2019, the promoter is also liable to pay GST under reverse charge on the portion of the development rights attributable to the residential apartments that remain un-booked as on the date of issuance of the completion certificate or first occupation, whichever is earlier.

(ii) Question No. b) If GST applicable on point a) above, what will be the rate of GST and the value on which such GST is applicable.

RULING: Yes, as established in point (a), GST is applicable on the landowner's share of constructed residential flats as detailed below:

GST applicable on Construction Services

Since the applicant (promoter) is constructing residential apartments (other than affordable units) under a Residential Real Estate Project, the applicable GST rate is 5% (2.5% CGST + 2.5% SGST) without ITC, as per Notification No. 03/2019 dated 29.03.2019 and the value of the construction service shall be deemed to be the value of similar apartments sold to independent buyers near the date of transfer of development rights, as per Para 2A of Notification No. 03/2019.

GST on Development Rights under RCM

As per Section 9 of the CGST Act, 2017, read with Notification Nos. 11/2017, 13/2017 as amended and 04/2019, GST at 18% applies to the transfer of

AUTHORITY FOR ADVANCE RULING GST KERALA

development rights (TDR) by a landowner to a promoter, payable by the promoter under reverse charge. However, TDR used for construction of residential apartments is exempt, except for the portion relating to un-booked units as on the date of completion certificate or first occupation, as detailed in the discussion above.

Jomy Jacob, IRS
Addl. Commissioner of Central Tax
Member

Mansur M.I
Joint Commissioner of State Tax
Member

OFFICE OF THE COMMISSIONER STATE G.S.T.D KERALA ★ THIRUVANANTHAPURAM ★

To,

M/s. SI PROPERTY KERALA PRIVATE LIMITED,
TC 5/2520-4, Unit No. GD, Silver Oaks,
Near Golf Club, Kowdiar, Thiruvananthapuram, Kerala-695003

Copy submitted to,

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R. Building, I.S. Press Road, Cochin-682018. [E-mail ID: cccochin@nic.in; ccu-cexcok@nic.in]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The Commissioner of Central Tax and Central Excise, GST Bhavan, Statue, Thiruvananthapuram.

Copy to:-

1. The Additional Commissioner, TPS (HQ), Thiruvananthapuram
2. The Deputy Commissioner, ITMD, Thiruvananthapuram
3. The Assistant Commissioner / State Tax Officer, Tax Payer services Circle, Kowdiar, Thiruvananthapuram.
4. The Superintendent, Central Tax, Pattom Range, Thiruvananthapuram North Division.

AUTHORITY FOR ADVANCE RULING ★ GST KERALA