

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Old Building, 1st floor, B-Wing, Room No.107, Mazgaon, Mumbai - 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)
BEFORE THE BENCH OF

(1) Shri. D. P. Gojamgunde, Joint Commissioner of State Tax, (Member)

(2) Ms. Priya Jadhav, Joint Commissioner of Central Tax, (Member)

ARA No.	AD22711230417276
GSTIN Number, if any/ User-id	27AAGCG7455G1ZD
Legal Name of Applicant	M/s. Godrej Residency Pvt Ltd
Registered Address/ Address provided while obtaining user id	Godrej One, 5th Floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai - 400079
Details of application	GST-ARA, Application No. 37 Dated 07.02.2024
Concerned officer	Navi Mumbai, Division-V, Range-III
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	The applicant has acquired an ongoing project from the developer through a registered sale deed on as is where is basis to continue with the project and wants to know the taxability thereof. Statement of Facts and Statement containing the Applicant's interpretation of law are attached as Annexure A & B respectively.
Issue/s on which advance ruling required	➤ Applicability of a notification issued under the provisions of the Act
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. Godrej Residency Pvt Ltd., the applicant, seeking an advance ruling in respect of the following questions.

1. What would be the rate of GST to be paid by the applicant on the consideration for sale of residential premises to buyers?

2. Whether the applicant is bound by the option exercised by the then-promoter of payment of GST at the effective rate of 12% with input tax credit or can the applicant discharge GST at the effective rate of 5% without input tax credit under the Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019, for sale of residential premises of the Project and also for premises already sold by the then-promoter?
3. Whether the applicant can discharge GST @5% to the existing as well as new customers?
4. Whether the applicant can discharge the GST at the rate of 12% with input tax credit on the balance consideration received from the Buyers to whom premises are already sold by the then-promoter and can discharge GST at the rate of 5% without input tax credit on the consideration for sale of premises to new buyers by the applicant in its name? Further, in this case, how input tax credit will be available to the applicant?
5. Whether one-time option given under Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019 is qua the project or the promoter?

That the provisions of both the CGST Act, 2017 and the MGST Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act, 2017 would also mean a reference to the same provision under the MGST Act, 2017. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act, 2017 and MGST Act, 2017.

01. FACTS AND CONTENTIONS - AS PER THE APPLICANT

- 1.1. M/s Godrej Residency Private Ltd. (hereinafter referred to as 'the applicant') is a private limited company having its registered office at Godrej One, 5th Floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai - 400079 and is engaged in the real estate business.
- 1.2. The applicant is registered under Goods and Services Tax ('GST') Act and the present application is being filed u/s 97 of Central Goods & Services Tax Act, 2017 and Maharashtra Goods & Services Tax Act, 2017 (hereinafter also referred to 'CGST Act' and 'SGST Act' respectively). The provisions of the CGST Act and SGST Act are

identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the SGST Act.

- 1.3. The applicant enters into agreements for the sale of under-construction residential or commercial properties with prospective buyers. The applicant has entered into an agreement with Neelkamal Realtors Towers Private Limited (hereinafter referred to as 'the then-promoter') for purchasing the project land with the existing structure thereon and all the identified liabilities including the liability of amounts collected from customers of the project through a conveyance deed signed on 24th December 2022 for an agreed consideration.
- 1.4. For transfer of the land along with the development done till date of conveyance, consent of requisite number of customers was duly obtained. Consideration paid to the then-promoter has been recorded as land cost in the books of GRPL.
- 1.5. The then-promoter had commenced development of the plot of land vide a project named "One Mahalaxmi" [hereinafter referred to as 'the project'] in 2011. The said project consists of two residential buildings viz. Tower A and Tower B with a total saleable area of 14,75,577 square feet.
- 1.6. Upon enactment of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act"), the then-promoter registered the Project with the Maharashtra Real Estate Regulatory Authority under nos. P51900005216 (for Tower A) and P51900006299 (for tower B) in August 2017.
- 1.7. Prior to 01.07.2017, The then-promoter was discharging applicable service tax on the consideration for sale of flats under construction, prior to the issuance of the occupation certificate.
- 1.8. Under GST regime, i.e. with effect from 01.07.2017, the rate of GST applicable on supply of taxable services including the construction services was provided under Notification 11/2017 - CT (Rate) dated 28.06.2017. Vide Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019 (hereinafter referred as 'Notification'), the Notification no. 11/2017 -CT (Rate) dated 28.06.2017 was amended and certain tax rates were notified for payment of GST on the construction services. Sr. no. 3 of the



Notification, as amended, notified specific GST rates under various scenarios, for construction services under HSN 9954.

1.9. Sr. no. 3(if) of the said Notification notified that in case of an ongoing residential real estate project, in respect of which promoter had exercised option to pay central tax on construction of apartments at the rates as specified for the said item in the manner specified therein, the rate of GST will be 18% (with 1/3rd abatement towards value of land) with an entitlement to avail input tax credit of GST paid both on inputs and inputs services. One of the conditions specified of the said Sr. No. 3(if) required the developer to exercise one-time option by filing Annexure IV to pay GST either under item (ie) or (if), as the case may be, by 10.05.2019 (extended up to 20.05.2019).

1.10. The then-promoter had exercised one-time option as above to pay GST, at normal rate with ITC by filing Annexure IV vide letter dated 07.05.2019. (Copy of Annexure IV attached as Annexure 3). Accordingly, on and after 31.03.2019, the then-promoter discharged the GST at the normal tax rate (i.e. an effective rate of 12% after claiming 1/3rd abatement towards value of land) and availed ITC of the GST paid on inputs and input services.

1.11. Due to commercial exigency and other reasons, the then-promoter could not complete the said project. Vide Conveyance dated 24.12.2022 ('the Conveyance'), the then-promoter conveyed the said plot of land with the existing structures and liabilities to the Applicant for an agreed consideration. The Applicant undertook the obligation of the then-promoter qua the buyer of the residential premises under construction.

1.12. In February 2023, the Applicant has made an application for change of the name of the Promoter in the RERA registrations obtained by the then-promoter. The RERA authority has approved the said change of the name of the Promoter and accordingly, the Applicant's name is reflected on the RERA website, as the new Promoter. Screenshot of the Maharerera website is enclosed as Annexure 5. Further, in August 2023, on an application of the Applicant, the Municipal Corporation of Greater Mumbai (MCGM) has extended the CC till 32nd Floor for tower A.

1.13. The then-promoter had unutilized ITC available in its books of accounts in respect of the said Project on the date of conveyance. However, the Applicant has not taken over



the said unutilized ITC lying in the books and therefore, has not transferred the said ITC to its Electronic Credit Ledger.

1.14. The applicant is eligible to file the application for advance ruling the advance ruling provisions are covered in Chapter XVII of the Central Goods and Service Tax Act, 2017. The definition of term 'advance ruling' has been provided in section 95(a) of the said Act. The said definition is reproduced below:

"(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 or of section 101C, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;"

Hence as per definition, advance ruling means decision provided in relation to supply of service being undertaken and proposed to be undertaken by applicant. Therefore, application can be filed in relation to supply of service which has been undertaken by the applicant. In the present case, the Applicant proposes to complete the Project. The applicant seeks advance ruling with respect to taxability of the flats already sold by the then Promoter and the proposed sale of flats.

02. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS

2.1 Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019

2.1.1 Vide Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019, the Notification no. 11/2017-CT (Rate) dated 28.06.2017 was amended and different options were notified for payment of GST on the construction services. Sr. no. 3 of the Notification, as amended, notified, the options of the Developers, for paying GST at the different rates for providing Construction Services under Heading 9954.

2.1.2 The relevant portion of the said notification reads as under: -

Sr. No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
1	2	3	4	5
		(ia) Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which	3.75	



		commences on or after 1st 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.		
		(if) Construction of a complex, building, civil structure or a part thereof, including, - (i) commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP, (ii) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item in the manner prescribed herein, but excluding supply by way of services specified at itsms (i), (ia), (ib), (ic), (id) and (ie) above intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance completion certificate, where required, by the competent authority after its first occupation, whichever is earlier.	9	Provided that in case of ongoing project, the registered person shall exercise one-time option in the Form at Annexure IV to pay central tax on construction apartments in project at the rates as specified for item (ie) or (if), as the case may be, by the [20 th] of May, 2019; Provided also that where the option is not exercised in Form at annexure IV by the [20 th] of May, 2019, option to pay tax at the rates as applicable to item (i) or (ia) or (ib) or (ic) or (id) above, as the case may be, shall be deemed to have been exercised;

		Explanation. - For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry.		
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2.1.3 As per sr. no. 3(ia) of the Notification, in case of an ongoing residential real estate project, in respect of which the promoter had not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if), the rate of GST was notified at 7.5% i.e. central tax at 3.75% and state tax at 3.75% totaling to 7.5%. The condition, as notified under column (5) of the said sr. no. 3(ia) provided that, if the option as specified therein was not exercised no ITC would be available.



2.1.4 As per sr. no. 3(if) of the said Notification notified, in case of an ongoing residential real estate project, in respect of which the Promoter had exercised option to pay central tax on construction of apartments at the rates as specified for the said item in the manner specified therein, the rate of GST will be 18% with an entitlement to avail ITC of GST paid both on inputs and inputs services.

2.1.5 One of the conditions specified in column 5 of the said Sr. No. 3 (if) required the Developer to exercise one-time option by filing Annexure IV to pay GST either under item (ie) or (if), as the case may be, by 10.05.2019 (extended upto 20.05.2019).

2.1.6 In terms of the Notification, as amended, the then-promoter had an option to either avail concessional rate of tax (without ITC) under clause 3(ia) of the Notification or avail for a normal tax rate (with ITC) in accordance with clause 3(if) of the said notification.

2.1.7 Paragraph 2 of the Notification 11/2017-CT(R) dated 28.06.2017 reads as below:

"In case of supply of service specified in column (3), in item [(i), (ia), (ib), (ic), (id), (ie) and (if)] 131 , against serial number 3 of the Table above, involving transfer

of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer 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 this paragraph, "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 including by way of lease or sublease."

2.1.8 In terms of the said Paragraph 2 as above, under both the options specified under Sr. no. 3(ia) and 3(if) of the Notification, a deduction of value of transfer of land or undivided share of land, which is deemed to be 1/3rd of the total amount charged is allowed.

2.1.9 Accordingly, the effective rate of tax in terms of Sr. No. 3(ia) is 5% and 3(if) is 12%, considering 1/3rd deduction towards land value as provided under the above paragraph 2.

2.2 Ongoing projects under the Notification

2.2.1 Paragraph 4 (xx) i.e. explanation for the purpose of the Notification defines "ongoing project".

Definition is reproduced herein below-

"(xx) the term "ongoing project" shall mean a project which meets all the following conditions, namely: -

(a) commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019: -

- (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.
- (b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in subclause (a) above that construction of the project has started on or before the 31st March, 2019;
- (c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;
- (d) apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

Explanation: - For the purpose of sub- clause (a) and (b) above, construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019"

2.2.2 Conditions (a) and (b) deals with the requirement that the project has been commenced before 31.03.2019.

2.2.3 As per clause (xxi) of Para 4 of the said notification; "commencement certificate" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan.

In this case, basis the commencement certificate issued by the municipal corporation the project has commenced before 31.03.2019.

2.2.4 Condition (c) deals with the requirement that the project has not been completed before 31.03.2019. This again is clearly evidenced as a fact.

2.2.5 Clause (d) requires that some apartments being constructed have been booked before 31.03.2019. In the instant case, there were some apartments booked before 31.03.2019. It does not matter whether the said units were booked by the then-promoter or by the Applicant. The said clause also abstains from focusing on the person who has booked the apartments but restricts itself to the requirement of the apartments in the project being booked.



2.2.6 Further, on a perusal of the definition, it is evident that the definition of 'ongoing project' is based on the nature of the project and not the promoter or the developer involved in the project.

2.3. Option of payment of tax at normal rate

2.3.1 Vide letter dated 07.05.2019, the then-promoter had exercised the option of payment of the normal tax rate (with input ITC) in accordance with clause 3(if) of the Notification No. 3/2019-Central Tax (Rate) dated 29.03.2019 by filing declaration in the prescribed Annexure IV.

2.3.2 On and after 31.03.2019, the then-promoter discharged the GST at the normal tax rate (i.e. an effective rate of 12% after claiming 1/3rd abatement towards value of land) and availed ITC of the GST paid on inputs and input services. Therefore, the project qualifies as an ongoing project as defined under clause 4(xx) of the Notification.

2.3.3 Further, the Project was considered as an 'ongoing project' as per sub-clause (xx) of clause 4 of the Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019 and accordingly the then-promoter was allowed to exercise the option of payment of GST under clause 3(if) of the said Notification. Even though there is a change of the Promoter in the RERA registrations, the Project continues to be registered under the existing registration.

2.3.4 The Applicant has applied for and MCGM has extended the existing commencement certificate issued to the then-promoter till 32nd Floor in the name of the then-promoter post the Conveyance. This also indicates that the Project is an ongoing project.

2.3.5 It appears that the Applicant will not be able to discharge GST at a different rate to existing buyers for the consideration received by the Applicant in view of the fact that the then-promoter has already discharged GST at 12 per cent and availed the ITC for the period during which it was executing the Project.

2.4. One-time exercise of the option under Entry (if)

2.4.1 The Notification provides for one-time option to discharge GST for the Project and no provisions are found for change of option during the completion of the Project either to the Promoter or the new Promoter.



2.4.2 The entry (if) of the Notification requires that the option should be exercised by 'the' promoter. The use of the article 'the' brings in specificity to the subject thereafter. Therefore, there can be only one person who is obligated to exercise the option. At the time when the option was to be exercised, the obligation to exercise the option was with then-promoter and he has fulfilled the obligation. When the Applicant continues with the project through the conveyance deed in December 2022, the said condition has no applicability since the exercise of the option was one-time for the project.

2.4.3 This interpretation that the one-time option has to be exercised vis-à-vis the project and not vis-à-vis the legal entity promoting the project is supported by the text of the Annexure to be filed at the time of exercising the option. On a perusal of the said Annexure, it is evident that the focus is on the project rather than the promoter of the project, who is merely a confirming or verifying party to the exercise of the option.

2.4.4 It is evident that the entire objective of the dual entries in the notification with conditions attached to each of them is to ensure that the entire project bears a uniform tax treatment throughout its life span. Such an objective seems achievable only if the activities carried out by the Applicant are eligible for classification under Entry (if).

2.4.5 Attention is invited to CBIC PRESS RELEASE, DATED 19-3-2019 wherein this has been clarified. The relevant para is extracted below:

"Option in respect of ongoing projects

2. The promoters shall be given a one-time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 1-4-2019) which have not been completed by 31-3-2019.

3. The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply."



2.5. Applicability of normal rates to the entire project or part of the project

2.5.1 The applicability of GST rates for part of the project is examined in case of Victoria Realtors by the Kerala Authority for Advance Rulings wherein out of 20 units 9 units were already booked and GST rate to be determined for remaining 11 units. In this case, attention was drawn to the clarification issued by way of an FAQ by the CBIC wherein multiple commencement certificates were issued for a single project. The relevant FAQ is reproduced below:

34	It is a prevalent practice that more than one commencement certificate is issued by competent authority for single project. For example, in case of a single tower comprising of 50 floors and registered as single project, separate commencement certificates may be issued by the competent authority for (i) basement and parking which is common to entire building (ii) first twenty floors (iii) next thirty floors. If one or two commencement certificates are received by the Developer prior to 1st April, 2019 and remaining on or after that date, will such a project be considered as an ongoing project?	Where commencement certificate has been issued even for part of the project on or before 31-03-2019, it shall be treated as an ongoing project Provided other requirements of the definition of ongoing project are met.
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2.5.2 Basis the above, it was pronounced that the entire project will be considered as an ongoing project. The relevant para is given below:

"On a conjoint reading of the definitions of the terms and the clarification of CBIC as extracted above it is evident that the option envisaged under Item (if) of SI. No. 3 of Notification No. 11/2017, Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 03/2019- Central Tax (Rate), dated 29-3-2019 is in respect of the entire ongoing project and not in respect of part of the project. Further, as is clarified by CBIC, even if the commencement certificate issued is only for part of the project, the same shall be treated as an ongoing project. Hence, as per provisions of the said notification, the option to pay tax at the old rate can only be exercised project- wise and not for part of project or individual apartments/villas comprised in a project."

Therefore, the applicability of normal rate will be for the entire project and the applicant will not have option to opt for GST rate of 5% without ITC for new buyers.



2.6 Basis the above, as per our interpretation,

- Rate of GST to be paid by the applicant would be normal rate of tax i.e. 18% (with ITC). Applicable deduction of value of transfer of land or undivided share of land, which is deemed to be 1/3rd of the total amount charged will be available.
 - The applicant is bound by the option exercised by the then-promoter of payment of GST at the effective rate of 12% with input tax credit for sale of residential premises and also for premises already sold by the then promoter of the Project with the same name. The applicant can discharge the GST at the rate of 12% with input tax credit on the balance consideration received from the Buyers to whom premises are already sold by the then-promoter.
 - The applicant is bound to discharge GST @ 12% with input tax credit on the consideration received from existing as well as new buyers since the option exercised is qua the project. The applicant cannot opt for two different rates i.e. the applicant cannot discharge GST at the rate of 12% for balance consideration to be received from the buyers to whom premises are already sold by the then-promoter and at a different rate of 5% without input tax credit on the consideration for sale of premises to new buyers.
- The Applicant is eligible for input tax credit since he is bound to discharge GST @12% on consideration received from existing as well as new buyers.
- The one-time option given under Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019 is qua the project.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

OFFICER SUBMISSION DATED 30.01.2025:

Questions Raised and replies

3.1. What would be the rate of GST to be paid by the applicant on the consideration for sale of residential premises to buyers?

Departmental submission:

Effective rate of 12% after claiming 1/3rd abatement towards value of land. Details are as under:

Notification 3/2019-Central Tax (Rate) dated 29.03.2019: -



Paragraph 4 (xx) I.e. explanation for the purpose of the Notification defines "ongoing project".

Definition Is reproduced herein below-

"(xx) the term "ongoing project" shall mean a project which meets all the following conditions, namely: -

(a) commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019: -

(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.

(b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in subclause (a) above that construction of the project has started on or before the 31st March, 2019;

(c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;

(d) apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

Explanation. - For the purpose of sub- clause (a) and (b) above, construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019"

All the above conditions are met in this project. Further, on a perusal of the definition, it is evident that the definition of 'ongoing project' is based on the nature of the project and not the promoter or the developer involved in the project.

Vide letter dated 07.05.2019, the then-promoter had exercised the option of payment of the normal tax rate (with input ITC) in accordance with clause 3(if) of the Notification No. 3/2019-Central Tax (Rate) dated 29.03.2019 by filing declaration in the prescribed Annexure IV.



Accordingly, the then-promoter discharged the GST at the normal tax rate (i.e. an effective rate of 12% after claiming 1/3rd abatement towards value of land) and availed ITC of the GST paid on inputs and input services. Therefore, the project qualifies as an ongoing project as defined under clause 4(xx) of the Notification. Even though there is a change of the Promoter in the RERA registrations, the Project continues to be registered under the existing registration. This also indicates that the Project is an ongoing project.

Further, it appears that the Applicant will not be able to discharge GST at a different rate to existing buyers for the consideration received by the Applicant in view of the fact that the then-promoter has already discharged GST at 12 per cent and availed the ITC for the period during which it was executing the Project.

Hence, rate of GST to be paid by the applicant would be normal rate of tax i.e. 18% [(9% CGST + 9% SGST) with ITC]. Applicable deduction of value of transfer of land or undivided share of land, which is deemed to be 1/3rd of the total amount charged will be available.

3.2. Whether the applicant is bound by the option exercised by the then-promoter of payment of GST at the effective rate of 12% with input tax credit or can the applicant discharge GST at the effective rate of 5% without input tax credit under the Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019, for sale of residential premises of the Project and also for premises already sold by the then promoter?

Departmental submission:

The Notification provides for one-time option to discharge GST for the Project and no provisions are found for change of option during the completion of the Project either to the Promoter or the new Promoter.

The entry (if) of the Notification requires that the option should be exercised by 'the' promoter. The use of the article 'the' brings in specificity to the subject thereafter. Therefore, there can be only one person who is obligated to exercise the option. At the time when the option was to be exercised, the obligation to exercise the option was with the then-promoter and he has fulfilled the obligation. When the Applicant continues with the project through the conveyance deed in December 2022, the said



condition has no applicability since the exercise of the option was one-time for the project.

This interpretation that the one-time option has to be exercised vis-a-vis the project and not vis-a-vis the legal entity promoting the project is supported by the text of the Annexure to be filed at the time of exercising the option. On a perusal of the said Annexure, it is evident that the focus is on the project rather than the promoter of the project, who is merely a confirming or verifying party to the exercise of the option.

Attention is invited to CBIC PRESS RELEASE, DATED 19-3-2019 wherein this has been clarified. The relevant para is extracted below:

"Option in respect of ongoing projects

2. The promoters shall be given a one-time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 1-4-2019) which have not been completed by 31-3-2019.

3. The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply. "

The applicant is bound by the option exercised by the then-promoter of payment of GST at the effective rate of 12% with input tax credit for sale of residential premises and also for premises already sold by the then promoter of the Project with the same name. The applicant can discharge the GST at the rate of 12% with input tax credit on the balance consideration received from the Buyers to whom premises are already sold by the then promoter.

3.3. Whether the applicant can discharge the GST at the rate of 12% with input tax credit on the balance consideration received from the Buyers to whom premises are already sold by the then-promoter and can discharge GST at the rate of 5% without input tax credit on the consideration for sale of premises to new buyers by the applicant in its name? Further, in this case, how input tax credit will be available to the applicant in respect of the units wherein GST at the effective rate of 12% is charged to the customers?

Departmental submission:

The applicant is bound to discharge GST @ 12% with input tax credit on the consideration received from existing as well as new buyers since the option exercised is qua the project. The applicant cannot opt for two different rates i.e. the applicant



cannot discharge GST at the rate of 12% for balance consideration to be received from the buyers to whom premises are already sold by the then-promoter and at a different rate of 5% without input tax credit on the consideration for sale of premises to new buyers. The Applicant is eligible for input tax credit since he is bound to discharge GST @12% on consideration received from existing as well as new buyers.

3.4. Whether one-time option given under Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019 is qua the project or the promoter?

Departmental submission:

The one-time option given under Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019 is qua the project.

04. HEARING

Preliminary e-hearing in the matter held on 10.01.2025. Mr. Archit Agrawal, Consultant appeared, and requested for admission of the application. Jurisdictional Officer Mr. Arun Kumar Singh, Superintendent of CGST, Deputy Commissioner of SGST is available.

The application was admitted and called for final e-hearing on 13.02.2025. Mr. S. S. Gupta, C.A., Authorized Representative, appeared made oral and written submissions. Jurisdictional Officer Mr. G.N. Jha, Assistant Commissioner, CGST appeared. We heard both the sides.

05. OBSERVATIONS AND FINDINGS:

5.1 We have gone through the facts of the case, documents on record, oral and written submissions made by the applicant as well as the written submissions made by the jurisdictional officer.

5.1.1 M/s Godrej Residency Private Ltd. is a private limited company having its registered office at Godrej One, 5th Floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai - 400079 and is engaged in the real estate business.

5.1.2 The applicant is registered under Goods and Services Tax ('GST') Act and the present application is being filed u/s 97 of Central Goods & Services Tax Act, 2017 and Maharashtra Goods & Services Tax Act, 2017 (hereinafter also referred to 'CGST Act' and 'SGST Act' respectively). The provisions of the CGST Act and

SGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the SGST Act.

5.1.3 The applicant has entered into an agreement with Neelkamal Realtors Towers Private Limited (hereinafter referred to as 'the then promoter') for purchasing the project land with the existing structure thereon and all the identified liabilities including the liability of amounts collected from customers of the project through a conveyance deed signed on 24th December 2022 for an agreed consideration.

5.1.4 The then-promoter had commenced development of the plot of land vide a project named "One Mahalaxmi" in 2011. The said project consists of two residential buildings viz. Tower A and Tower B with a total saleable area of 14,75,577 square feet.

5.1.5 Upon enactment of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act"), the then-promoter registered the Project with the Maharashtra Real Estate Regulatory Authority under nos. P51900005216 (for Tower A) and P51900006299 (for tower B) in August 2017.

5.1.6 A new tax structure for real estate sector was introduced with effect from 1-4-2019 onwards by amendment of Notification No. 11/2017, Central Tax (Rate), dated 28-6-2017 by Notification No. 03/2019 - Central Tax (Rate), dated 29-3-2019. The Notification No. 03/2019 - Central Tax (Rate), dated 29-3-2019 substituted the rate for services related to real estate sector with effect from 1-4-2019 and also provided option for continuing the old rate of tax (as it existed up to 31-3-2019) for the ongoing projects. The provisions for continuing the old rate of tax for the ongoing projects were incorporated in clause (ie) and (if) of Entry. No. 3 of the Notification No. 11/2017 CT (Rate), dated 28-6-2017 as amended and the sub-clause (ii) of clause at (if) being in respect of construction of residential apartments other than affordable residential apartments is the provision that is applicable to the applicant. The condition prescribed under the above provision for continuing with the payment of tax at the old rates in respect of ongoing projects was that the registered person shall exercise within the specified time an option in the prescribed form to pay tax on construction of apartments in the



project at the rates as specified for clause (if) of Sl. No. 3 of the said notification. Accordingly, the then promoter exercised option in the prescribed form for paying tax at the old rate for their ongoing project.

5.1.7 The term "ongoing project" is defined under clause (xx) of Para 4 of Notification No. 11/2017-CT (Rate), dated 28-6-2017 as amended by Notification No. 03/2019 - CT (Rate), dated 29-3-2019 as mentioned in applicant submission.

It needs to be verified if all the conditions mentioned in the definition of "Ongoing Project" are to be fulfilled or not. These conditions are as below.

1. Commencement Certificate is issued by the competent authority on or before 31.03.2019.
2. Completion Certificate is not issued on or before 31.03.2019
3. Apartments being constructed under the project have been partly or wholly booked on or before 31.03.2019

In this case commencement certificate is issued on 16.08.2011 by the Municipal corporation. That means project has commenced before 31.03. 2019. It is seen from the record that completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019 and apartments being constructed under the project have been, partly booked on or before the 31st March, 2019. All the conditions mentioned in definition are met in this project.



5.1.8 Further, on a perusal of the definition, it is evident that the definition of 'ongoing project' is based on the nature of the project and not the promoter or the developer involved in the project. So, as per Sr. no. 3(if) of the said Notification, in the case of an ongoing residential real estate project, in respect of which promoter had exercised option to pay central tax on construction of apartments at the rates as specified for the said entry in the manner specified therein, the rate of GST will be 18% (with 1/3rd abatement towards value of land) with an entitlement to avail input tax credit of GST paid both on inputs and inputs services. One of the conditions specified in the said entry at Sr. No. 3(if) requires the developer to exercise one-time option by filing Annexure IV to pay GST either under clause (ie) or (if), as the case may be, by 10.05.2019 (extended up to

20.05.2019). Accordingly, the then-promoter had exercised one-time option as above to pay GST, at normal rate with ITC by filing Annexure IV vide letter dated 07.05.2019. Accordingly, after 31.03.2019, the then-promoter discharged the GST at the normal tax rate (i.e. an effective rate of 12% after claiming 1/3rd abatement towards value of land) and availed ITC of the GST paid on inputs and input services.

5.1.9 Thus, we observe that the Applicant will not be able to discharge GST at a different rate to existing buyers for the consideration received by the Applicant in view of the fact that the then-promoter has already discharged GST at 12 per cent and availed the ITC for the period during which it was executing the Project.

5.2. One-time exercise of the option under Entry (if)

5.2.1 We observed that the Notification provides for one-time option to discharge GST for the Project and no provisions are found for change of option during the completion of the Project either to the Promoter or the new Promoter. The entry (if) of the Notification requires that the option should be exercised by 'the' promoter. At the time, when the option was to be exercised, the obligation to exercise the option was with then-promoter and he has fulfilled the obligation. When the Applicant continues with the project through the conveyance deed in December 2022, the said condition has no applicability since the exercise of the option was one-time for the project.

5.2.2 This interpretation that the one-time option has to be exercised vis-à-vis the project and not vis-à-vis the legal entity promoting the project is supported by the text of the Annexure to be filed at the time of exercising the option. On perusal of the said Annexure, it is evident that the focus is on the project rather than the promoter of the project, who is merely a confirming or verifying party to the exercise of the option.

5.2.3 It is evident that the entire objective of the dual entries in the notification with conditions attached to each of them is to ensure that the entire project bears a uniform tax treatment throughout its life span. Such an objective seems achievable only if the activities carried out by the Applicant are eligible for



classification under clause (if), of Entry NO. 3 of Notification No. 11/2017 CR dated 28.06.2017.

5.2.4 Further, on a perusal of the definition, it is evident that the definition of 'ongoing project' is based on the nature of the project and not the promoter or the developer involved in the project.

5.2.5 We observed that CBIC PRESS RELEASE, DATED 19-3-2019 has been issued wherein, this issue has been clarified. The relevant para is extracted below:

"Option in respect of ongoing projects

2. The promoters shall be given a one-time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 1-4-2019) which have not been completed by 31-3-2019.

3. The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply."

Thus, the option is to be exercised once for an ongoing project which has already been exercised in this case.

5.2.6 The applicability of GST rates for part of the project is examined in case of Victoria Realtors by the Kerala Authority for Advance Rulings wherein out of 20 units 9 units were already booked and GST rate was to be determined for remaining 11 units. Question was Whether the new tax rate of 7.5% (effective rate of 5% after excluding land portion), with no ITC, is applicable to the 11 unbooked units in the said VRINDHAVAN project? Advance ruling authority held that, since the applicant has exercised option for paying tax at the rate as specified in clause (if) of Sl. No. 3 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 03/2019- Central Tax (Rate), dated 29-3-2019 in respect of the ongoing project "VRINDHAVAN", the old rate of tax at 18% [9% CGST + 9% SGST] with input tax credit is applicable for all the apartments/ villas comprised in the project- "VRINDHAVAN". Therefore, the applicability of normal rate will be for the entire project and the applicant will not have option to opt for GST rate of 5% without ITC for new buyers.

5.2.7 Thus, the applicant is bound by the option exercised by the then-promoter of payment of GST at the effective rate of 12% with input tax credit for sale of residential premises and also for premises already sold by the then promoter of



the Project. The applicant can discharge the GST at the effective rate of 12% (after 1/3rd deduction for land cost) with input tax credit on the balance consideration received from the buyers to whom premises are already sold by the then promoter.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the
Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 37/2023-24/B- 157 Mumbai, dt. 27/03/2025

For reasons as discussed in the body of the order, the questions are answered thus -

Question No.1. What would be the rate of GST to be paid by the applicant on the consideration for sale of residential premises to buyers?

Answer No.1 Rate of GST to be paid by the applicant would be normal rate of tax i.e. 18% [(9% CGST + 9% SGST) with ITC]. Applicable deduction for value of transfer of land or undivided share of land, which is to be 1/3rd of the total amount charged will be available.

Question No.2. Whether the applicant is bound by the option exercised by the then-promoter of payment of GST at the effective rate of 12% with input tax credit or can the applicant discharge GST at the effective rate of 5% without input tax credit under the Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019, for sale of residential premises of the Project and also for premises already sold by the then-promoter?

Answer No.2 The applicant is bound by the option exercised by the then-promoter of payment of GST at the effective rate of 12% with input tax credit for sale of residential premises and also for premises already sold by the then promoter of the Project. The applicant is required to discharge the GST at the rate of 12% with input tax credit on the balance consideration received from the Buyers to whom premises are already sold by the then promoter.

Question No.3 Whether the applicant can discharge GST @5% to the existing as well as new customers?

Answer No.3 Answered in the negative.



Question No.4 Whether the applicant can discharge the GST at the rate of 12% with input tax credit on the balance consideration received from the Buyers to whom premises are already sold by the then-promoter and can discharge GST at the rate of 5% without input tax credit on the consideration for sale of premises to new buyers by the applicant in its name? Further, in this case, how input tax credit will be available to the applicant?

Answer No.4 The applicant is bound to discharge GST at the effective rate of 12% with input tax credit on the consideration received from existing as well as new buyers since the option exercised is for the project. The applicant cannot opt for two different rates i.e. the applicant cannot discharge GST at the rate of 12% for balance consideration to be received from the buyers to whom premises are already sold by the then-promoter and at a different rate of 5% without input tax credit on the consideration for sale of premises to new buyers. The Applicant is required to discharge GST at the effective rate of 12% on consideration received from existing as well as new buyers.

Question No.5 Whether one-time option given under Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019 is qua the project or the promoter?

Answer No.5 The one-time option given under Notification no. 3/2019-Central Tax (Rate) dated 29.03.2019 is qua-project.



D.P. Gojamgunde
D.P. GOJAMGUNDE
(MEMBER)

Priya Jadhav
PRIYA JADHAV
(MEMBER)

Copy to: -

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.

Note: -An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.