



HARYANA AUTHORITY FOR ADVANCE RULING,  
GOODS AND SERVICES TAX,  
HARYANA VANIJYA BHAWAN, PLOT NO. 1-3, SECTOR 5,  
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2018-19/41  
(In Application No.: 41/2018-19, dated 07.12.2018)

Name & Address of the Applicant	:	M/s Experion Developers Pvt. Ltd., 2 <sup>nd</sup> floor, Plot No. 18, Institutional Area, Sector-32, Gurugram.
GSTIN of the Applicant	:	06AACCG8138L1ZC
Date of Application	:	07.12.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Clause(g)- determination of liability to pay tax on any goods of services or both
Date of Personal Hearing	:	25.02.2019
Present for the Applicant	:	Sh. Ankit Gulguli (C.A), Sh. Vikas Aggarwal (A.R),

Memo No.: 801

Dated: 09/01/19

**1. Facts in Brief:**

- 1.1 The applicant, Experion Developers Private Limited, is a company registered under The Companies Act, 1956 and a registered taxpayer (hereinafter referred to as "Developer"/ "First Party"/ "Company"/ "Applicant"/ "EDPL") is in the business of real estate development. The Company is 100% subsidiary of Singapore based Holding Company. EDPL is engaged in the business of undertaking construction development projects including construction of residential apartments, commercial complexes, plotted townships, hotels etc.
- 1.2 The applicant entered into Memorandum of Understanding dated 23.07.2013 (hereinafter referred to as "MOU") with M/s Ragnor Buildtech India Private Limited along with its Associates companies and shareholders, collectively hereinafter referred to as "LOC"/ "RBIPL"). RBIPL is engaged in the business of acquiring and developing land for the purpose of real estate projects by either itself or through contractors and developers.
- 1.3 RBIPL acquired land pursuant to MOU and consequently became owner of the land in District Panipat, Haryana ("hereinafter referred to as Developable Land").
- 1.4 Further RBIPL (acting for itself and the Associated) has offered to grant Development Rights to EDPL for the Developable Land.
- 1.5 As per Clause 1.1 of MOU, Development Rights have been defined as under:-



- 1.5.1 "Development Rights" shall mean all the rights for development granted under any license to develop or change of land use or any consent/ permission of a similar nature granted by the concerned Governmental Authority and *inter-alia* include the following development, construction and marketing rights, with respect to the Developable Land;
- 1.5.1(a) enter upon and take possession of the Developable Land for the purpose of developing a commercial and/ or residential project;
  - 1.5.1(b) apply to the relevant Governmental Authority for obtaining sanction and / or modification of the layout plans and architectural plans in connection with the execution of the project;
  - 1.5.1(c) make necessary applications and/ or revise, modify, renew or amend applications on behalf of RBIPL, under any Applicable Law, as may be required;
  - 1.5.1(d) get the plans of the proposed buildings to be constructed on the Developable Land prepared and sanctioned in accordance with the rules and regulations of the Governmental Authority for their approval and sanction and make applications and/ or revise or modify applications for the change of user of the Developable Land;
  - 1.5.1(e) appoint architects, surveyors, engineers, contractors, consultants and other Person(s) with respect to the development;
  - 1.5.1(f) make applications to the concerned Governmental Authority for obtaining water and electricity connection and permits for cement, steel, sewerage, internet, phone line, gas pipe and other controlled building materials, if any;
  - 1.5.1(g) file applications, declarations, certificated and submit information, as may be required under the Applicable Law, before the Department for Town and Country Planning, Haryana and/ or other statutory authorities, on behalf of RBIPL;
  - 1.5.1(h) demolish any existing structures on the Developable Land and to level the same;
  - 1.5.1(i) construct buildings, including residential units, villas, office premises, sheds, warehoused and the like and to sell and/ or lease out the same and/ or transfer the same in any manner whatsoever;
  - 1.5.1(j) subdivide the Developable Land or portion thereof into plots;
  - 1.5.1(k) construct internal roads, drainage facilities, water supply facilities, sewage disposal facilities, electricity supply lines and equipments;





- 1.5.1(l) manage, directly or indirectly, the Developable Land and the property and facilities constructed upon it;
- 1.5.1(m) acquire floor space index as is known currently or by whatever name it may be called in future ("FSI") and use the same for the purpose of development of the project and all benefits, whether present or future, arising out of the Developable Land, including but not limited to the FSI arising out of the Developable Land;
- 1.5.1(n) sell, mortgage, lease, transfer, license, etc. the premises and/ or the buildings constructed and/ or portions thereof and to enter into agreements in the regard, at EDPL's sole discretion, on behalf of RBIPL and for EDPL's own benefit in any manner EDPL may deem fit and proper;
- 1.5.1(o) file objection(s) against land acquisition and/ or any land acquisition proceedings by the Government and institute any writ/ petition for compensation etc. in the court of law and receive compensation thereof or settle the same in any manner;
- 1.5.1(p) enter into collaboration agreement/ joint venture for development of the Developable Land with any Third Party;
- 1.5.1(q) Receive sale consideration, i.e. to say receive all the monies payable by the prospective purchaser(s) on allotments of developed plots and/ or built up areas and on execution of the pre-sale agreements and other documentation, of the built up areas;
- 1.5.1(r) right to enter into agreements, as may be required, in connection with any of the aforesaid rights and obtain registration of such agreement and;
- 1.5.1(s) accept the service of any writ of summons or other legal process or notice, to appear and represent RBIPL before any court, judicial magistrate, tribunal or any Governmental Authority in connection with any portion of the Developable Land, to commerce or file suits, legal actions or other proceedings in any court, before any judicial magistrate, tribunal or any Governmental Authority for partition of the Developable Land, the recovery of possession over the Developable Land, for enforcement of title to the Developable Land and/ or to sign, execute, deliver or file all necessary vakalatnamas, warrants, claims, complaints, orders, applications, affidavits and/ or other documents, papers and writings.



**1.6 Further, as per Clause 2.6 of MOU,**

*"Pursuant to the Agreement, the Development Rights will be automatically, irrevocably and unconditionally granted, without the requirement of*

*execution of any further deed, upon issuance of license to develop the Developable Land by the appropriate Government Authority".*

- 1.7 Hence, by virtue of intended Development agreement (hereinafter referred to as "DA") which is yet to be executed, Applicant will be granted irrevocable and unconditional development rights to the Developable Land. The main purpose of the entire process is to acquire the required amount of land in a hassle free manner.
- 1.8 Subsequent to the DA when executed, LOC cannot sell land and will also give power of attorney for sale to the developer. The developer will be entitled to possess, develop and market the plots in the proposed township.
- 1.9 Further DA will be duly registered and stamp duty of 2% on value of land as applicable in Haryana on DA will be paid.
- 1.10 Further, it is noteworthy that the project will have industrial plots with some residential and commercial plots as per policy in Haryana. There is no construction service by Developer to LOC.
- 1.11 Further, sale of developed plots is not taxable under GST as it is sale of land.
- 1.12 Now, this Application for Advance Ruling is filed to Hon'ble Advance Ruling Authority to obtain ruling on applicability of GST on grant of these irrevocable development rights along with other queries as detailed hereunder.

**2. Issue for Ruling:**

- 2.1 Whether grant of Development rights in the current situation would attract the Levy of GST?
- 2.2 If Liable to GST, what shall be Valuation *Modus Operandi* to tax in GST?



**Discussion:**

The applicant has equated the transfer of development rights with **the sale of land or transfer of title in Land**. Based on its submissions, the applicant has derived the following interpretations:-

- Interpretation No. 1



*"The transaction of sale of land (plots) shall be out of levy of GST".*

- Interpretation No. 2

*"The transaction of sale of Buildings shall be out of levy of GST except in case of clause 5(b) of Schedule II".*

- Interpretation No. 3

*"The word 'sale' denotes **transfer of title** which is **irrevocable and permanent**". Hence 'sale of land' denotes 'transfer of title in land. Hence sale of land (GST Regime) is status quo transfer of title (Negative List).*

- Interpretation No. 4

*"A '**Right**' transferred by way of sale is a '**Title**' transferred by way of sale".*

- Interpretation No. 5

*"Permanent & Irrevocable Transfer of Development Rights is not a transaction of Lease".*

*(a) Lease gives revocable right to enjoy property to lessee, while in case of transfer of development rights (TDR) the right is transferred permanently and irrevocably.*

*(b) Lease gives right to enjoy while TDR give right to develop.*

*(c) Lease regains possession after lease term, while in TDR it is not the case.*

*(d) Lease rights do not permit development but mere possession, while TDR permits development.*

*(e) Lease involves recurring compensation, while TDR involves fixed and generally single compensation.*

- Interpretation No. 6

*"Permanent & Irrevocable Transfer of Development Rights is not a transaction of License".*

*(a) License cannot create interest in property while TDR creates interest.*

*(b) Licensee cannot transfer the product while under TDR the developers can enter in flat buyer's agreement with the customers.*

*(c) Licensor discretion stands in case of license while in TDR the developer has the discretion to develop and sell the project.*



- Interpretation No. 7

*"Transfer of Development Rights does not constitute to lease or License".*

*Hence, Serial No. 2(a) of Schedule II of CGST which describes activities which constitute as supply in relation to land. (i.e. any lease, tenancy, easement, license to occupy land is a supply of services) does not apply to the activity of transfer of Development rights and **thus no GST Tax is levied on the basis of this serial no.***

- Interpretation No. 8

*(a) "Transfer of Irrevocable and Unconditional Development Rights is the benefit arising out of land.*

*(b) Transfer of Development Rights is transfer of immovable property.*

*(c) Transfer of Development Rights is Sale of Land.*

3.2 The whole argument of the applicant regarding exemption of development rights from levy of GST hinges on its belief/ contention that the transfer of development rights amounts to sale of land.

3.3 The term immovable property as defined in the CGST/SGST Act includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to the earth. Section 54 of Transfer of Property Act 1882 defines sale as transfer of ownership in exchange for a price paid or promised or part paid and part promised.

3.4 In order to ascertain the nature of development rights, it is important to have a glance at some of the terms of Memorandum of Understanding (MOU) signed between RBIPL and EDPL (applicant).

(a) Pursuant to the Agreement, the Development Rights will be automatically, irrevocably and unconditionally granted, without the requirement of execution of any further deed, upon issuance of license to develop the Developable Land by the appropriate Government Authority.

(b) The requisite application for seeking license from the Governmental Authorities for the development of the Developable Land will be made by RBIPL, Associates along with EDPL (designated as developer)





within 18 months from the date of this MOU at the cost of EDPL. EDPL shall be the sole communicator with the Government Authorities for self and on behalf of RBIPL and Associates for the Government Approvals.

- (c) Pursuant to RBIPL and Associates granting the Development Rights of the Developable Land to EDPL, the entire cost of development of the Developable Land shall be exclusively borne by EDPL. Further, post obtaining the Development Rights as aforesaid, EDPL shall on behalf of RBIPL and Associates, obtain at its own cost, all necessary Governmental Approvals that shall be required for the development of the Developable Land.
- (d) All municipal taxes, rates, cesses and other public dues with respect to the Developable Land due and outstanding and accrued on or after the date of grant of Development Rights shall be paid and discharged by RBIPL/ Associates.
- (e) RBIPL and the Shareholders agree that if RBIPL/ Associates is not successful in granting the Development Rights for the entire Developable Land, for any reason whatsoever, EDPL may, in its sole discretion, decide not to acquire Development Rights altogether or to acquire such portion of Development Rights as may have been available. If EDPL, in its sole discretion as aforesaid, decides to acquire such portion of Development Rights as may have been available, in such case, the Consideration after proportionate reduction as envisaged above, such excess of Advance shall be refunded to EDPL by RBIPL/ Associates immediately upon notice of demand being made by EDPL.
- (f) RBIPL agrees that the original title documents of the Developable Land shall be deposited with EDPL as guarantee for the due performance of the Secured Obligations, immediately upon acquisition of the Developable Land. Further, RBIPL agrees that the original title documents of any further land which may be acquired by RBIPL shall be deposited with EDPL as guarantee for the due



performance of the Secured Obligations, immediately upon acquisition of such land.

- (g) Transfer, sale or otherwise dispose of any interest in the Developable Land to any other Person or enter into an agreement or arrangement or solicit arrangement with any other Person for such transfer, sale or disposal, other than as contemplated under this MOU;

3.5 A bare reading of these terms suggests that the application for seeking license from the Government for the development of developable land is to be made by RBIPL along with the applicant. EDPL is authorized to communicate with the Govt. on behalf of the RBIPL. The EDPL shall obtain the necessary governmental approval on behalf of RBIPL and associates. All municipal taxes, cesses and other public dues with respect to the developable land shall be paid and discharged by RBIPL. Further, the RBIPL has agreed to deposit the original titled documents of the developable land as guarantee for the performance of secured obligations, meaning thereby that RBIPL is the owner of the developable land.

3.6 These terms of MOU make it crystal clear that the title of ownership of land vests with the RBIPL. Since RBIPL is the owner of the developable land, mere transfer of certain rights i.e. the development rights does not confer any title or ownership in the developable land upon the applicant.

3.7 Hence, the argument that the transfer of Development rights amounts to sale of land under Entry No. 5 of Schedule III appended to CGST Act (Activities or transaction which shall be treated neither as a supply of goods nor a supply of services) is outrightly rejected.

**4. It is also important to have a glimpse of some of the definitions under the CGST Act:-**



- "Section 2(52):- "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;
- "Section 2(102):- "Services" means anything other than goods, money and securities but includes activities relating to the use of



money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

- The expression "works contract" is defined under Section 2(119) of the GST Act 2017. The definition is "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;
- \*It is worth mentioning here that the provisions of CGST Act and SGST Act are almost identical. So, unless a specific reference is made, a reference to CGST Act shall also mean a reference to HGST Act.

4.1 As per Section 9 of the CGST Act, 2017- Tax is levied on all intra-State supplies of goods or services or both, except on alcoholic liquor for human consumption.

4.2 Now, in order to determine the liability to tax, the definition of 'supply' should also be closely examined. The definition of supply as per Section 7(1) of the CGST Act, 2017 includes-

- 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;
- import of services for a consideration whether or not in the course or furtherance of business;
- the activities specified in Schedule I, made or agreed to be made without a consideration; and
- the activities to be treated as supply of goods or supply of services as referred to in Schedule II.



4.3 Clause 5(b) of Schedule II deems the following to be supply of services:

*"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."*

4.4 Whereas Section 7(2) of the CGST Act overrides the definition of supply given as per Section 7(1) of the CGST Act, 2017. As per this sub-section, the activities or transactions specified in Schedule III are to be treated as neither supply of goods nor supply of services.

4.5 Para 5 of Schedule III states the following:

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

***The exclusion as per Schedule III is only the land and not benefit arising out of Land.***

5. **Value and Time of supply:**

5.1 Under Section 13 of the CGST Act, 2017, the Government issued Notification No. 4/2018- Central Tax (Rate) dated 25th January, 2018. The notification provides a special procedure with regard to the timing of payment of taxes for both, the landowners and the developers. Following are the wording of the said notification:

*"In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely:-*

- (a) *Registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and*
- (b) *Registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights,*

*as the registered persons in whose case the liability to pay tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed*





*complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter)."*

5.2 Notification 4/2018-CGST(Rate), dated 25.01.2018 notified that the liability to pay tax in case of transfer of development rights in exchange of constructed space shall be the date of allotment of constructed complex, i.e., the letter of allotment issued by the developer after the construction is complete. The notification clearly suggests the liability to pay tax on transfer of Development Rights.

5.3 As regards the second point for determination, the value of supply has to be determined in accordance with Notification No. 11/2017 Central Tax (Rate), dated 28 June, 2017 read with notification No. 4/2018 Central Tax (Rate), dated 25 January 2018. The relevant entry for valuation is Sr. No. 3, Heading 9954 read with Para No. 2 of Notification No. 11/2017 Central Tax (Rate), dated 28 June, 2017.

## 6. Finding:

### (1) Ruling

Yes, the grant of Development Rights is currently taxable under the GST Act.

### (2) Ruling

The modus operandi for valuation is as contained in Para 5 of this order.

Ordered accordingly.  
To be communicated.

27.02.2019  
Panchkula.



*Sangeeta*  
(Sangeeta Karmakar)  
Member CGST

*Madhubala*  
(Madhubala)  
Member SGST

**Regd. AD/Speed Post**

**M/s Experion Developers Pvt. Ltd.,  
2<sup>nd</sup> floor, Plot No. 18, Institutional Area,  
Sector-32, Gurugram.**



Copy to:

- o/c
1. Principal Commissioner of Central Goods & Service Tax, GST Bhavan, Plot No. 36-37, Sector-32, Gurugram (Haryana).
  2. Deputy Excise and Taxation Commissioner (ST), Gurugram (East).