

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Smt. P Vinitha Sekhar, Addl. Commissioner of Central Tax, (Member)

(2) Shri. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AACCD9800E1ZV
Legal Name of Applicant		M/s. Joyville Shapoorji Housing Private Limited
Registered Address/Address provided while obtaining user id		41/44, Shapoorji Pallonji Centre. Minoo Desai Marg, Colaba, Mumbai, Maharashtra, 400005
Details of application		GST-ARA, Application No. 29 Dated 19.07.2019
Concerned officer		MUM-VAT-E-611, LTU-004
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service provision, Works Contract
B	Description (in brief)	Eligibility of the Applicant to claim benefit of concessional rate of Goods and Service Tax under Entry (v) (da) of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No.01/2018-Central Tax (Rate) dated 25.01.2018.
Issue/s on which advance ruling required		(i) Classification of goods or services or both (ii) Applicability of a notification issued under the provisions of the Act (v) Determination of the liability to pay tax on any goods or services or both
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. Joyville Shapoorji Housing Private Limited**, the applicant, seeking an advance ruling in respect of the following questions.

- Whether the dwelling units at Joyville, Virar qualify as low cost houses'? Consequentially whether the said dwelling units are eligible for the concessional rate of 12% under Entry (v) (da) of Notification No.11/2017 Central Tax (Rate) dated*

28.6.2017 as amended by Notification No.1/2018-Central Tax (Rate) dated 25.01.2018 with effect from 25.01.2018?

2. *Whether the benefit of concessional rate would be available to common amenities such as club house, swimming pool and amenities of like nature?*
3. *Whether the project of the Applicant at Joyville, Virar qualifies as an 'ongoing project under Notification No. 3/2019-Central Tax (Rate) dated 29.03.2019 so as to be eligible for the concessional rate of benefit under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017?*
4. *What would be the rate of Goods and Services Tax on the units at Joyville, Virar which do not qualify the criteria of 'low cost houses'? Whether 12% or 18% tax is to be levied on those units?*

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

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions of the applicant made vide letter 19.07.2019 is as under:-

2.1 Joyville Shapoorji Housing Private Limited (Applicant), a real estate developer in India is presently involved in a residential development project under the name 'Joyville Virar, at Palghar district of Vasai, Maharashtra (Project). The subject Project is proposed to be built in 6 phases consisting of 7 towers in total of which currently, development is in progress for 4 phases comprising of 5 towers with each phase having separate registration number under The Real Estate (Regulation and Development) Act, 2016 ("RERA"). Phase 1 consists of two towers of 308 units, out of which 264 units have a carpet area of less than 60 sq. mtrs: (i.e. 83% of the total Floor Space Index). Phases 2, 3 and 5 have all the units of carpet area less than 60 square meters. Applicant further states that as per the approval plans, the balance two phases which are yet to be launched have all units less than 60 sq. mtrs.

2.2 Applicant has submitted that, Notification 01/2018-Central Tax (Rate) dated 25.01.2018 ("Notification No 01/2018") inserted entry (v) (da) to Notification 11/2017-Central Tax (Rate) dated 28.06.2017 (Notification No. 11/2017"), wherein a concessional rate of GST was given to projects which are 'low cost houses' in an affordable housing project. As per the said entry, a 'low cost house shall be accorded the benefit of concessional rate which is in an

Affordable Housing Project ("AHP") and has been given Infrastructure status under the Notification F. No. 13/6/2009-INF dated 30.03.2017 issued by Department of Economic Affairs ("DEA Notification").

2.3 Applicant states that since more than 50% of Floor Space Index is utilized towards construction of the dwelling units of less than 60 sq. mtrs: at Joyville Virar ((100%in Phase 2,3&5]. and 83% in Phase 1), the subject project qualifies as an AHP.

2.4 They have submitted that as on 31.03.2019, in respect of all the existing phases (Phase 1, 2, 3 & 5): (a) The Commencement Certificate has been issued for the Phases before 31.03.2019, (b) Completion Certificate or Occupancy Certificate ("OC") has not been issued for any Phase before 31.03.2019 and (c) Some of the units in each Phase have already been booked before 31.03.2019 and the money was received by the Applicant.

2.5 Applicant has also submitted that, Notification No. 11/2017 has been amended by Notification No. 03/2019-C.T. (Rate) dated 29.03.2019 ("Notification No.3/2019") whereby the applicable rates of GST have been reduced for services of the residential construction sector and in respect of ongoing projects (*as defined under Clause 4. (xx) of Notification No.03/2019*). An option has been given to suppliers of such services to continue payment of GST as per the erstwhile applicable rates. It further provided that suppliers, choosing to continue at the old rates under Notification No. 11/2017 should file a form in Ann-IV to the Jurisdictional Commissioner. Applicant has filed Ann. IV for the RERA Phases 1, 2, 3, and 5 with the concerned authorities.

2.6 Applicant submits that the Government had issued Notification No. 01/2018 which extended the benefit of concessional rate of 12% GST in respect of original works' pertaining to low cost houses up to 60 Sq. Mts. in an affordable housing project having infrastructure status. To avail the benefit of reduced rate of GST under entry (v) (da), Composite supply of works contract by way of construction, erection; commissioning or installation of original works has to be undertaken and the units must be low cost house up to carpet area of 60 Sq. mtrs. in an AHP having the infrastructure status.

2.7 THE DWELLING UNITS AT JOYVILLE VIRAR UNDER PHASES. 1,2,3 AND 5 QUALIFY AS 'LOW COST HOUSES' IN AN 'AFFORDABLE HOUSING PROJECT' AND THEREFORE IS ELIGIBLE FOR THE BENEFIT OF CONCESSIONAL RATE OF TAX UNDER ENTRY (v) (da) OF NOTIFICATION NO.11/2017 READ WITH NOTIFICATION NO.01/2018 WITH EFFECT FROM 25.01.2018

2.7.1 Applicant submits that, contract entered into with the customer, is for construction of housing units wherein there is a transfer of property in goods involved. Applicant shall transfer a dwelling unit after the materials are incorporated and construction is completed. Therefore,

considered as an AHP having Infrastructure status as per the DEA Notification. Reference has also been made to the decision of the Maharashtra AAR in another ruling, namely, **The Ideal Construction (2018-VIL-149-AAR)**.

2.8 THE APPLICANT HAS SUBMITTED THAT THEY ARE ALSO ENTITLED TO THE BENEFIT OF CONCESSIONAL RATE TO COMMON AMENITIES SUCH AS CLUB HOUSE, SWIMMING POOL AND AMENITIES OF LIKE NATURE

2.8.1 Applicant submits that the common amenities form part of the overall construction service and are always naturally bundled when offered to customers. Therefore, such services will qualify as composite supply of works contract service. Accordingly, rate applicable to the principal supply will also be applicable to common amenities. In this regard, they have referred to the West Bengal Advance Ruling issued in the case of *Bengal Peerless Housing Development Company Ltd. [2019-TIOL-137-GST]* which held supply of common amenities with apartments as composite supply.

2.8.2 Applicant has also submitted that, the word 'real estate project as defined under Cause 2(zn) of the RERA covers every amenities and common amenities which are required to be constructed for the proper functioning of the real estate project and such amenities undoubtedly cover club house, swimming pool and other amenities of like nature. The meaning of the word project is not confined to only dwelling units, but it takes within fold its common amenities, structures and all improvements therein. On a bare perusal of Clause 2(zn), it can be said that even common amenities come within the purview of the definition of project' and hence, the benefit under Entry (v)(da) of Notification No. 11/2017 should be made applicable for the common amenities as well since the same are ancillary supply to the principal supply of construction of dwelling units.

2.8.3 Alternatively, it is submitted that in the case of 904 units being constructed at Joyville Virar which satisfy the criteria of 'low cost house', the corresponding benefit of reduced rate of GST of 12% under Entry (V)(da) of Notification No. 11/2017 should be given to the common amenities like club house, swimming pool and amenities of like nature.

2.9 THE PROJECT AT JOYVILLE VIRAR QUALIFIES AS AN ONGOING PROJECT UNDER NOTIFICATION NO.03/2019

2.9.1 Applicant submits that Notification No.3/2019 has provided a right to registered suppliers to either continue to discharge GST under entry 3(v)(da) of Notification No. 11/2017 or migrate to the new rate of GST as prescribed under entry (ie) of Notification No. 3/2019. However, Notification No.3/2019 provides that registered suppliers can discharge GST at the

old rates with respect to projects which were being already undertaken under Entry (v) (da) of Notification No11/2017 with certain conditions. Entry (ie) of Notification No.3/2019 reads as:

SI No	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
3.	Heading 9954 (Construction services)	(ie) Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), sub item (d),sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item(vi), against serial number 3 of the Table, in respect of which the promoter has exercised the option to pay central tax on construction of apartments at the rates as specified for this item.	6% CGST + 6% SGST	Provided that in case of ongoing 995.4 project, the registered person shall exercise one time option in the Form at Annexure IV to pay central tax on construction of apartments in a project at the rates specified for item (ie) or (if),as the case may be, by 10th of May, 2019: Provided also that where the option is not exercised in Form at: Annexure IV by the 10th 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;

2.9.2 Applicant submits that to continue to be eligible under Entry (v)(da) of Notification No. 11/2017, the projects when undertaken under Entry (v)(da) should be an ongoing project' even after the introduction of Notification No.3/2019 and that Format Ann IV must be filed before 2014 May 2019 with the concerned jurisdictional authority. Applicant submits that all the current phases of the Project undoubtedly qualify as 'ongoing project', since commencement certificate has been issued to the Project (Copy of the commencement certificate, received from time to time has been submitted, additionally, a certificate of Architect certifying that the project had commenced before 31.03.2019 is also submitted); Site preparation is complete ; Occupation certificate (OC) has not been issued and Units are sold and at least one installment credited in the bank account. (Sample copy of invoices, evidencing the booking of apartments before 31st March, 2019 is submitted.) (Copy of the demand note and bank statement reflecting the amount being credited in the bank account of Applicant prior to 31.03.2019 is also submitted). They have already filed Form IV with the jurisdictional Commissioner on 07.05.2019 for the phases of the project, (A copy of Ann IV as filed with the Jurisdictional Commissioner at the central & the state level is submitted.).

2.10 Applicant is also seeking clarity about the tax rate on the remaining units at Joyville Virar which do not satisfy the conditions attached to 'low cost house, whether the units can be taxed at 12% under Entry (V)(da) being part of the same housing project or should it be taxed at 18%.

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

The jurisdictional office has made submissions as under:-

3.1 With respect to Question 1, it is submitted that there is no restriction on the supplier of the service whether it is developer or contractor and if the project fulfills the criteria / norms of an “Affordable Housing Project” which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017 then the concessional rate of 12% would be applicable to developer as well as contractor also to the extent of supply of services effected after 25.01.2018 as provided under Entry (v)(da) of Notification No.11/2017-C.T. (Rate) dated 28.06.2017 as amended by Notification No.01/2018-C.T. (Rate) dated 25.01.2018, pertaining to low-cost houses up to a carpet area of 60 square meters per house. Dwelling units at Joyville up to a carpet area of 60 square meters per house, Virar qualify as low cost houses.

3.2 With respect to Question 2, it is submitted that Common amenities form part of the overall construction service and are always naturally bundled when offered to the customer. Therefore, such services will qualify as composite supply of works contract service wherein provision of construction services is the principal supply. Accordingly, the rate applicable to the principal supply will also be applicable to common amenities.

3.3 With respect to Question 3, it is submitted that the criteria for qualifying as an ongoing project stands satisfied in view of the fact that Commencement Certificate has already been issued before 31/03/2019. The work commenced for the phases prior to 31.03.2019 (i.e. site preparation is completed), No occupation certificate or Completion certificate has been granted to the applicant, Various units under phase 1,2,3 and 5 and have been booked before 31/03/2019 and installments are credited in bank accounts and Applicant has already submitted Ann. IV to the office of Hon Joint Commissioner LTU-IV on 08/05/2019 of exercising option of paying Central tax at earlier rate

3.4 In respect of Question 4, it is submitted that Housing units which do not qualify the criteria of ‘low cost houses’ cannot be eligible for the concessional rate of tax of 12% (CGST @ 6% and SGST @ 6%) and applicant would be required to pay GST at normal applicable rate. Hence applicable GST @ 18%.

04. HEARING

Preliminary hearing in the matter was held on 05.11.2019. Ms. Kanupriya Bhargava, Advocate and Sh. Arjyadeep Roy appeared and requested for admission of their application. Jurisdictional Officer, Ms. Manjiri Phansalkar, DC (E-611), LTU-4 also attended.

The application was admitted and called for final hearing on 20.11.2019. Ms. Kanupriya Bhargava, advocate and Sh. Arjyadeep Roy Advocate along with Mr. Tinish Salot, C. A. and Mr. Himanshu Jani, CFO appeared and made oral and written submissions. During the course of Final Hearing, applicant submitted one agreement copy and also partly reframed Question No. 2. Jurisdictional Officer Ms. Manjiri Phansalkar, DC (E-611), LTU-4 also attended.

05. OBSERVATIONS AND FINDINGS:

Heard both sides.

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

5.2 Applicant has submitted that in the subject project at Joyville Virar, out of the 4 phases currently under development, Phases 2, 3 and 5 have all the units of carpet area less than 60 square meters. However Phase 1 consists of two towers of 308 units, out of which 264 units have a carpet area of less than 60 sq. mtrs. (i.e. 83% of the total FSI). Applicant has further submitted that the balance two phases which will be taken up at a later stage have all units less than 60 sq. mtrs. The applicant has also submitted that all units in Phases 1, 2, 3 and 5 were sold out before 31.03.2019.

5.3 In view of the above facts, the applicant has raised the question: *“Whether the dwelling units at Joyville, Virar qualify as low cost houses? Consequentially whether the said dwelling units are eligible for the concessional rate of 12% under Entry (v) (da) of Notification No.11/2017 Central Tax (Rate) dated 28.6.2017 as amended by Notification No.1/2018-Central Tax (Rate) dated 25.01.2018 with effect from 25.01.2018?”*

5.3.1 We find that the issue before us is whether the construction services provided by the applicant under the subject qualifies for the reduced GST rate of 12% as provided in Sr. No. 3 – item (v) – sub item (da) of Notification No. 01/2018-CT (Rate) dated 25.01.2018

5.3.2 This issue is with respect to the affordable housing project undertaken by the applicant in Virar, Mumbai. The Four Phases, namely, Phase 1, 2, 3, and 5 are under development where the applicant will be constructing dwelling units majority of which would be less than 60 sq.mtrs, with some units exceeding 60 sq.mtrs.

5.3.3 Notification No. 11/2017-C.T. (Rate) dated 28.06.2017, has specified the rate of central tax to be levied on Intra State supply of services of description specified in Column 3 of the Table in the said Notification, falling under scheme of classification of services mentioned therein. The relevant clauses of the said Notification as amended by Notification No. 20/2017-C.T. (Rate) dated 22.10.2017 is reproduced below:-

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
3	Heading 9954 (Construction services)	<p>(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-</p> <p>(a);</p> <p>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas Yojana;</p> <p>(c) a civil structure or any other original works pertaining to the "In-situ rehabilitation of existing slum dwellers using land as a resource through private participation" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers;</p> <p>(d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p> <p>(e); or</p> <p>(f)</p>	6	-]
		<p>(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-</p> <p>(a);</p> <p>(b);</p> <p>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;</p> <p>(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under-</p> <p>(1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p> <p>(2) any housing scheme of a State Government;</p> <p>(e); or</p> <p>(f)</p>	6	

5.3.4 Notification No. 1/2018-C.T. (Rate) dated 25.01.2018 has made amendments to Sr. No. 3, column no. 3, item no. iv & v to the above Notification No 11/2017 reads as follows:-

In the said notification,

“(i) in the Table, -

(a) against serial number 3, in column (3), -

(A) in item (iv), -

(I) for sub-item (c), the following sub-item shall be substituted, namely: -

‘(c) a civil structure or any other original works pertaining to the “In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);’;

(II) after sub-item (d), the following sub-items shall be inserted, namely: -

‘(da) a civil structure or any other original works pertaining to the “Economically Weaker Section (EWS) houses” constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);

(db) a civil structure or any other original works pertaining to the “houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/

Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)” under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana

(Urban);’;

(III) ”;

(B) in item (v),

(I) in sub-item (a), for the word “excluding”, ;

(II) after sub-item (d), the following sub-item shall be inserted, namely: -

“(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March,2017;”

5.3.5 According to sub item (da) of item (v), “low-cost houses up to a carpet area of 60 square meters per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017 would attract a tax rate of 12%. This clause will be applicable to the applicant if the project undertaken by them is an affordable housing project which has been given infrastructure status vide Government of India notification mentioned above.

5.3.6 Department of Economic Affairs’ notification issued vide F. No. 13/6/2009-INF, dated the 30th March,2017 has included Affordable Housing under the column “Infrastructure sub

sector” against the category of Social and Commercial Infrastructure and has further defined *“Affordable Housing”, as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters and "Carpet Area" shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.*

5.3.7 One of the recommendations made by the GST Council in its 25th meeting held on 18th January 2018 at Delhi was to extend the **concessional rate of 12% (8% GST after deducting value of land) to services by way of construction of low cost houses up to a carpet area of 60 sqm** in a housing project which has been given infrastructure status under notification No. 13/06/2009 dated 30th March, 2009. The said notification of Department of Economic Affairs provides infrastructure status to Affordable Housing. The recommendation of the Council would **extend the concessional rate to construction of flats/ houses of less than 60 sqm in projects other than the projects covered by any scheme of the Central or State Government also. The GST Council has also observed that “It may be recalled that all inputs used in and capital goods deployed for construction of flats, houses, etc attract GST of 18% or 28%. As against this, most of the housing projects in the affordable segment in the country would now attract GST of 8% (after deducting value of land). As a result, the builder or developer will not be required to pay GST on the construction service of flats etc. in cash but would have enough ITC (input tax credits) in his books to pay the output GST, in which case, he should not recover any GST payable on the flats from the buyers. He can recover GST from the buyers of flats only if he recalibrates the cost of the flat after factoring in the full ITC available in the GST regime and reduces the ex-GST price of flats.”** The GST Council has also mentioned that the builders/developers are expected to follow the principles laid down under Section 171 of the GST Act (Anti-Profiteering Rules) scrupulously.

5.3.8 In response to a request for clarification to enable availing 8% GST on Affordable Housing made by the builders association namely, CREDAI vide their letter no. CREDAI/MoF/2018/14 dated 19th March, 2018, the Government vide F. No. 354/52/2018-TRU, Government of India Ministry of Finance Department of Revenue (TRU) dated 7th May, 2018 has clarified that “Low cost houses up to a carpet area of 60 square metres per house in an affordable housing project, which has been given infrastructure status under notification F. No. 13/6/2009-INF, dated the 30th March, 2017 of MOF (DEA), attract concessional GST of 8% (the value of the undivided share of land is included in the price of the house). *Whether the housing project qualifies as affordable housing project or not, shall be determined by the builder/ developer as per the definition of affordable housing given in the above mentioned*

notification (i.e., affordable housing has been defined as a housing project using at least 50% of FAR/FSI for dwelling units with carpet area of not more than 60 SQM). No certificate from any authority is required.”

5.3.9 We find that the total FSI consumed in the said project is greater than 50% for flats having carpet area below 60 sq mtrs. and therefore, their project falls under the definition of “Affordable Housing” as in DEA Notification mentioned above. We also find that all the units in Phase 1, 2, 3 and 5 have been booked prior to 31.03.2019.

5.3.10 Hence, from a reading of the above clarification, notification and the clause (da) of item (v) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017, we find that applicant’s case is covered under the tax rate of 12% (8% GST after deducting value of land), under Heading 9954 (Construction Services), (v) (da) of above mentioned Notification No. 11/2017, as amended, since the project undertaken by applicant falls under the definition of “Affordable Housing”. The benefit of reduced rate would be available to applicant only in the cases of supply effected after 25.01.2018 i.e. the date on which Notification 1/2018-Central Tax (Rate) was issued and only in respect of dwelling units having carpet area less than 60 sq. mtrs.

5.4 **Question No. 2:- Whether the benefit of concessional rate would be available to common amenities such as club house, swimming pool, etc., except corpus fund subscription and share application money, as mentioned in Annexure D of the agreement for sale?**

5.4.1 We have no doubt that the project undertaken by the applicant is an affordable housing project and that in the subject project, the applicant will be constructing dwelling units of less than 60 sq mtrs. carpet area as well as dwelling units having carpet area greater than 60 sq mtrs.

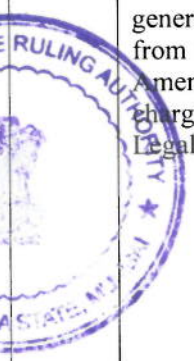
5.4.2 We agree with the applicant’s submissions that common amenities form part of the overall construction service and are always naturally bundled when offered to the customer. Therefore, such services will qualify as composite supply of works contract service, where the principal supply would be, construction services. Accordingly, the rate applicable to the principal supply will also be applicable to common amenities. The word ‘housing project’ cannot be confined only to dwelling units, it would also include within its fold, other common amenities, structures, etc. The jurisdictional office has also opined that Common amenities form part of the overall construction service and are always naturally bundled when offered to the customer. Therefore, such services will qualify as composite supply of works contract service wherein provision of construction services is the principal supply. Accordingly, the rate applicable to the principal supply will also be applicable to common amenities.

5.4.3 We shall now discuss whether the charges mentioned in Annexure D of the agreement submitted before us on 20.11.2019, are collected for services which are an integral part of a

composite supply of works contract, construction services being the principal supply and whether applicant will be eligible for concessional rate of GST, for such charges collected by them.

5.4.4 Advance Maintenance Charges are charges collected in advance from the purchasers of units/flats and are used for maintenance of flats, etc., during the period, after the possession is given to such buyers and before the society is formed. Hence, these charges cannot be considered as a part of composite supply where the principal supply is construction of dwelling units in an Affordable Housing project.

Further, Vide F. No. 354/32/2019-TRU dated 14.05.2019, Government of India Ministry of Finance Department of Revenue (Tax Research Unit) issued FAQs (Part II) on real estate which is reproduced as under:-



Sr.No.	Question	Answer
4	For the purpose of determining the threshold of Rs.45 lakhs in case of “affordable residential apartment”, whether the following charges generally recovered by the developer from the buyer shall be included? • Amenity Charges • Society formation charges • Advance maintenance • Legal Charges	For the purpose of determining the threshold of the gross amount of Rs.45.00 lakh for affordable residential apartments, all the charges or amounts charged by the promoter from the buyer of the apartments shall form part of the gross amount charged. Clause xvi, sub-clause (a)(ii)(C) of paragraph 4 of notification No. 11/2017-CT(R) dated 28.06.2017, reproduced below, refers. “C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.” However the value shall not include stamp duty payable to the statutory authority, maintenance charges / deposits for maintenance of apartment or maintenance of common infrastructure

From a reading of the said Table it is seen that, for the purpose of determining the threshold of Rs.45 lakhs in case of “affordable residential apartment”, the value shall not include stamp duty payable to the statutory authority, **maintenance charges / deposits for maintenance of apartment or maintenance of common infrastructure**. Hence GST @ of 18% will be charged on such amounts collected by Applicant.

5.4.5 Club house development charges are collected by applicant, from all buyers of dwelling units whether low cost or otherwise, to develop a club house in the subject project. Since development of a club house is incidental to the construction of dwelling units in the subject project it can be said to be a part of composite supply, where principal supply is construction of dwelling units in an Affordable Housing project. Hence concessional rate of 12% will be charged on such amounts collected by the applicant from buyers of units with area

less than 60 sq mtrs. and GST @ of 18% will be charged on such amounts collected by applicant from buyers of units with area greater than 60 sq mtrs.

5.4.6 Water, Electricity, Drainage, Sewerage, Society Formation, Legal Service and Documentation Charges, are collected for services which are an integral part of a composite supply of works contract, construction services being the principal supply. The developer is bound to provide Water, Electricity, Drainage, Sewerage to the flat owners and also provide legal support and documentation services to the customers. Further, the formation of Society is also the developer's responsibility. These services form an important part of the composite supply of works contract services provided by the applicant where the principal supply is construction of dwelling units in an Affordable Housing project. Hence concessional rate of 12% will be charged on such amounts collected by the applicant from buyers of units with area less than 60 sq mtrs. and GST @ of 18% will be charged on such amounts collected by the applicant from buyers of units with area greater than 60 sq mtrs.

5.5 Question No. 3:- *Whether the project of the Applicant at Joyville, Virar qualifies as an ongoing project under Notification No. 3/2019-Central Tax (Rate) dated 29.03.2019 so as to be eligible for the concessional rate of benefit under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017?*

5.5.1 As per Sr.No. (xx) of Notification No. 3/2019-C.T.(Rate) dated 29.03.2019 an on-going project is defined as under:-

(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 sub- clause (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.

5.5.2 Applicant has submitted that commencement certificate for the subject project were received from time to time from concerned authorities. A certificate of Architect certifying that the project had commenced before 31.03.2019 is also submitted. The said certificate mentions that 100% Excavation Work has been done as on 30.03.2019. Applicant has further submitted that no completion or occupation certificate has been granted with respect to any unit in the subject project. They have also submitted that the various units being constructed at Joyville, Virar under Phase 1, 2, 3 and 5, have been booked before 31.03.2019. In the said Notification, it is further provided that the registered suppliers choosing to continue at the old rates under Notification No. 11/2017 have to file a form in Annexure-IV to the Jurisdictional Commissioner exercising their option to discharge GST at the old rates. Applicant has submitted that they have filed Annexure IV for the four RERA Phases under consideration, with the concerned authorities.

5.5.3 In view of the above, we find that, the project of the Applicant at Joyville, Virar qualifies as an 'ongoing project under Notification No. 3/2019-C.T. (Rate) dated 29.03.2019. Further, the jurisdictional officer has also agreed that subject project is an 'ongoing project' as per said Notification No. 3/2019-Central Tax (Rate) dated 29.03.2019.

5.6 Question No. 4:- *What would be the rate of Goods and Services Tax on the units at Joyville, Virar which do not qualify the criteria of 'low cost houses'? Whether 12% or 18% tax is to be levied on those units?*

We find that that applicant's case is covered under the concessional rate of 12% (8% GST after deducting value of land), under Heading 9954 (Construction Services), (v) (da) of above mentioned Notification No. 11/2017, as amended since the project undertaken by them falls under the definition of "Affordable Housing". The benefit of reduced rate would be available to them only in the cases of supply effected after 25.01.2018 i.e. the date on which Notification 1/2018-Central Tax (Rate) was issued and the benefit of this reduced rate would be applicable in case of only those flats which are of carpet area upto 60 sq mtrs., in this scheme

which is covered in the category of affordable housing. In case of other flats which have carpet area more than 60 sq.mtrs. applicant would be required to pay GST at normal applicable rate i.e. @18% GST.

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- 29/2019-20/B- 123

Mumbai, dt. 26/12/2019

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

Question 1. Whether the dwelling units at Joyville, Virar qualify as low cost houses? Consequentially whether the said dwelling units are eligible for the concessional rate of 12% under Entry (v) (da) of Notification No.11/2017 Central Tax (Rate) dated 28.6.2017 as amended by Notification No.1/2018-Central Tax (Rate) dated 25.01.2018 with effect from 25.01.2018?

Answer:

The dwelling units measuring less than 60 sq.mtrs. will qualify as low cost houses. They are eligible for the concessional rate of 12% (8% GST after deducting value of land) under Entry (v) (da) of Notification No.11/2017 Central Tax (Rate) dated 28.6.2017 as amended by Notification No.1/2018-Central Tax (Rate) dated 25.01.2018 with effect from 25.01.2018 on such units.

Question 2. Whether the benefit of concessional rate would be available to common amenities such as club house, swimming pool, etc., except corpus fund subscription and share application money, as mentioned on Annexure D of the agreement for sale?

Answer:- Concessional rate of 12%, would be available only in respect of Society Formation Charges; club house development charges; Water, Electricity, Drainage, Sewerage Charges; Legal Service Charges and Documentation Charges which are collected from buyers of houses having area less than 60 sq mtrs.

Question 3. Whether the project of the Applicant at Joyville, Virar qualifies as an 'ongoing project under Notification No. 3/2019-Central Tax (Rate) dated 29.03.2019 so



as to be eligible for the concessional rate of benefit under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017?

Answer:- The project of the Applicant at Joyville, Virar qualifies as an 'ongoing project under Notification No. 3/2019-Central Tax (Rate) dated 29.03.2019. Applicant is eligible for the concessional rate of benefit under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, only for dwelling units measuring less than 60 sq mtrs.

Question 4. What would be the rate of Goods and Services Tax on the units at Joyville, Virar which do not qualify the criteria of 'low cost houses'? Whether 12% or 18% tax is to be levied on those units?

Answer:- The units at Joyville, Virar which do not qualify the criteria of 'low cost houses' will be taxed at 18% GST.





P.VINITHA SEKHAR
(MEMBER)


A.A. CHAHURE
(MEMBER)

Copy to:-

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

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

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