

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) Shri. Rajiv Magoo, Joint Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AABCP0109R1Z9
Legal Name of Applicant		M/s. Puranik Builders Ltd.
Registered Address/Address provided while obtaining user id		Puranik's One, Kanchan Pushpa, Kavesar, Ghodbunder Road, Thane (West) 400 615.
Details of application		GST-ARA, Application No. 68 Dated 27.11.2019
Concerned officer		THA-VAT-E-005, Thane Division
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	Applicant is engaged in the business of construction and sale of residential apartments. They discharge Goods & Services Tax in respect of supply of construction services in respect of residential units for which consideration is received before receipt of Occupancy / Completion Certificate.
	Issue/s on which advance ruling required	(i) classification of goods and/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. Puranik Builders Ltd. , the applicant, seeking an advance ruling in respect of the following questions.

- (a) Whether the Other Charges received by the company will be treated as consideration for construction services of the Company and classified under HSN 9954 along with the main residential construction services of the Company or whether the same will be treated as consideration for independent service(s) of the respective head?

(b) Consequently, what will be the applicable effective rate of GST on services underlying the Other Charges?

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 made by the applicant are as under:-

2.1 *M/s Puranik Builders Pvt. Ltd., the applicant, holding GSTIN 27AABCP0109R179, is engaged in the business of construction and sale of residential apartments and discharge Goods and Services Tax (GST) in respect of supply of construction services in respect of residential units for which consideration is received before receipt of Occupancy / Completion Certificate.*

2.2 *The terms of under construction sale of residential apartments by the Applicant are governed by an 'Agreement for Sale' made and entered between the Applicant and their customers, which upon completion of construction is supplemented by a sale deed.*

2.3 *The said construction services of the Applicant are classified under HSN 9954 and accordingly get covered at Entry 3 of the Notification no. 11/2017 – C.T, (Rate) ('said Notification'). As per Sr. No. 2 of the said Notification, value of transfer of land or undivided share of land is deemed as 1/3rd of the total value of such construction services, and the same is deducted from the total value of such services to arrive at the applicable GST liability in hands of the Company for such construction services.*

2.4 *Apart from consideration for the main construction activity, the Applicant also collects various other charges (hereinafter referred to as the 'Other Charges') from their customers at the time of entering into the Agreement and/or giving possession of residential apartments. Such charges are collected under the Agreement itself with their respective amounts separately identified in the Agreement. A list of such charges generally recovered by the Applicant for their various projects is provided in the table below:*

Sr. no.	Description of charges	Brief explanation
1.	Electric meter State installation and security deposit for meter	Paid by the Applicant to Maharashtra Electricity Board (MSEB) for each unit at construction stage and later, a reimbursement is claimed from the customer.
2.	Water connection charges	Paid by the Applicant for each unit at construction stage and later, a reimbursement is claimed from the customer.
3.	Share of municipal taxes	Pertains to property tax required to be paid for period post receipt of Occupancy Certificate. The amounts are used for paying such tax.
4	Advance maintenance	Collected on behalf of society yet to be formed. These amounts are used for maintenance till the time society is formed and upon formation of society, any unspent amount is transferred to the society
5	Club house maintenance	Collected on behalf of society yet to be formed. These amounts are used for maintenance till the time society is formed and upon formation of society, any unspent amount is transferred to the society
6	Development charges	Additional charges for development of the project computed based on premium paid to the Municipal Corporation for the project and various other factors.
7	Share money, application and entrance fee of the organization	Charges for making application for allotment, share money for future society of residents, etc.
8	Formation and registra	Charges in respect of formation of future society of residents and associated legal cost.
9	Infrastructure charges	Additional charges for development of common area infrastructure.
10	Legal fees	Charges for legal cost of the transaction of sale of residential apartments,

2.5 Presently, the Applicant has been collecting and discharging GST at the rate of 18% on the Other Charges collected from their customers in respect of sale of residential apartments.

B. Statement containing the Applicant's interpretation of law and /or facts:

POSITION OF LAW

2.6.1. As per Section 2 of the CGST Act, "Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply:

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply."

2.6.2 *As per Section 2(90) of the CGST Act, 2017, "Principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary"*

2.6.3 *Section 8 of the CGST Act provides manner of determining tax liability on a composite or a mixed supply. It states that:*

"8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax."

2.6.4 *As per the definition of 'Composite supply referred above, the term includes within its scope a supply consisting of two or more taxable supplies of goods or services which are: -*

- Naturally bundled and*
- Supplied in conjunction with each other in the ordinary course of business wherein*
- One of such supplies is a principal supply.*

2.6.5 *In the present case, Applicant receives the Other Charges under Agreements which are primarily for supply of construction services. The charges in question are received by the Applicant only from customers to whom construction services are supplied. The applicant never independently receives such amounts or provides such underlying services sans supply of the main construction services.*

2.6.6 *Considering the above, the services underlying the Other Charges may be treated as naturally bundled with supply of main construction services which are supplied in conjunction with each other in the ordinary course of business. In case these services are treated as Composite supply, construction services may be treated as principal supply of such composite supply since the same clearly constitutes predominant element of such transactions and is the primary supply giving rise to the associated or ancillary supplies.*

2.6.7 *Applicant refers to decision of the Allahabad Bench of CESTAT in the case of Logix Infrastructure Pvt. Ltd. vs Commissioner of C. EX. & S.T., Noida (2019 (25) G.S.T.L. 59*

(Tri. - All.)); wherein the issue was that, abatement provided to the Applicant on residential complex services was denied on Preference Location Charges, External Development Charges, Internal Development Charges, Electric sub-station charges, club membership charges, lawn charges, etc. collected from clients. The Applicant challenged such vivisection of services into individual components. The CESTAT held that the components such as preferred location charges, external development charges, etc. were part and parcel and for various elements of main service and thus entire consideration received was eligible for abatement.

2.6.8 Alternatively, in case such supplies are not treated as Composite supply, the same should be treated as supply of independent services of each head / description by the Applicant, taxability of which may be determined as per the nature of individual service head / description.

2.6.9 If the supplies pursuant to the Other Charges and the main construction services of the Company are treated as Composite supplies, as per Section 8 of the CGST Act, in such a situation, the entire value of the Other Charges should attract the effective rate of GST, as applicable on the main construction services of the Company supplied under the same Agreement. In this case, the amounts pertaining to the Other Charges will be added in the total value of construction services of the Company and the 1/3rd deduction from total value applicable as per Sr. No. 2 of the said Notification will be applied on such entire total value.

2.6.10 In case these supplies are not treated as composite supplies, the applicable rate of GST on services underlying the Other Charges would have to be determined with respect to individual description of each of the supply. In such a case, applicant believes that individually applicable rate of services for each of the service head / description covered in the Other Charges would be 18%. In such a case, the 1/3rd deduction from total value as per Sr No. 2 of the Notification will not be applied on the Other Charges.

03. CONTENTION – AS PER THE CONCERNED JURISDICTION OFFICER:
SUBMISSIONS DATED 09.08.2021 ARE AS UNDER:-

3.1 Electricity, Water, Society Formation, Legal Service and Documentation Charges, infrastructure charges (Drainage, Sewerage) 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. 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.

3.2 Above are all the common amenities that are offered by the builder to the customer. These 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. Like Society Formation Charges; club house development charges; Water, Electricity, Drainage, Sewerage Charges; Legal Service Charges and Documentation Charges collected.

3.3 Municipal taxes are paid on actuals and are not related to the principal supply or supply of common amenities if the tax bill comes in the name of the flat owner then it's a service provided but if it comes in the name of the builder and will be taxed @18%. Same in case of Advance Maintenance Charges are charges collected in advance from the purchasers of flats and are used for maintenance of flats during the transition period when possession is given to the buyers and before the society is formed. Both above are not related to the supply of apartments. Hence, these charges cannot be considered as a part of composite supply where the principal supply is construction. Hence GST @ 18% will be charged on such amounts



POSITION OF LAW

3.5 **COMPOSITE Supply [Section 2(30)]**: Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply,'

3.5.1 **Principal Supply [Section 2(90)]** : "Principal supply/" means the supply of goods or services which constitute the predominant element of a composite supply and to which and other supply forming part of that composite supply is ancillary"

3.5.2 Section 8 of the CGST Act provides manner of determining tax liability on a composite or a mixed supply. It states that:

“8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely.’—

- (a) A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.”

3.6 Referred to Advance ruling order passed in M/s. Joyville BUILDERS.

04. HEARING

4.1 Preliminary hearing in the matter was held on 07.01.2020. Sh. Gaurav Sogani, Advocate appeared, and requested for admission of the application. Jurisdictional Officer Smt. Rupmati Manere, Dy. Commissioner, THA-VAT-E-005, Thane City also appeared.

4.2 The application was admitted after examination of the facts of the case and facts whether questions asked are covered under section 97(2) and after checking proper payment of fees.

Applicant was called for online final e-hearing on 10.08.2021. Sh. Gaurav Sogani learned Advocate, Authorized representative, appeared and made oral and written submissions. Learned Jurisdictional Officer Smt. Rupmati Manere, DC, THA-VAT-E-005, Thane City also appeared and made oral and written submissions.

4.3 Both sides are heard.

05. OBSERVATIONS AND FINDINGS:

5.1 We have perused the records on file and gone through the facts of the case and the submissions made by the applicant as well as the department. The issue is related to the classification of services and applicable tax rate thereon under the GST Act.

5.2 The applicant, registered under GST ACT and engaged in the business of construction and sale of residential apartments, discharges GST in respect of such supply for which, consideration is received before receipt of Occupancy / Completion Certificate. The terms of under-construction sale of residential apartments by the Applicant are governed by an 'Agreement for Sale' made and entered into, between the Applicant and their customers, which after the completion of construction may be supplemented by a sale deed.

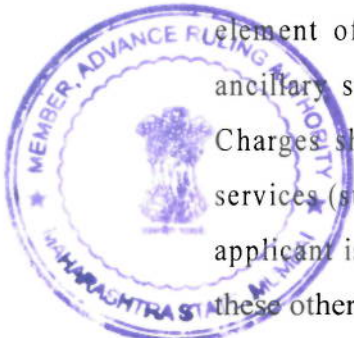
5.3 Applicant submits that apart from consideration for the main construction activity, they also collect various other charges from their customers at the time of entering into the Agreement

and/or before giving possession of residential apartments. Such charges are collected under the Agreement itself with their respective amounts separately mentioned in the Agreement. A list of such charges recovered are provided in the application, which includes, Electric meter installation and security deposit for meter, Water connection charges ,municipal taxes, Advance maintenance, Club-house maintenance, Development charges, share money, entrance fee of organization, legal charges, legal fees, and Infrastructure charges on which, applicant is presently discharging GST at the rate of 18%.

- 5.4 Applicant feels that the 'Other Charges' mentioned in the Agreement are primarily for supply of construction services since they are received only from the customers to whom construction services are supplied and therefore the services underlying the 'Other Charges' may be treated as naturally bundled with supply of main construction services which are supplied in conjunction with each other, in the ordinary course of business. Hence, in case these services are treated as 'Composite supply', construction services may be treated as principal supply of such composite supply; since the same clearly constitutes predominant element of such transactions and is the primary supply giving rise to the associated or ancillary supplies. As per the applicant, in such a situation, the entire value of the Other Charges should attract the effective rate of GST, as applicable on the main construction services (supplied by the Company supplied under the same Agreement). In other words, the applicant is contending that 1/3rd of the value of land is available to them as rebate even on these other charges.

- 5.5 We observe that the question before us is whether the 'Other Charges' received by the applicant will be treated as consideration for 'construction services' and classified under SAC 9954 along with the main residential construction services or whether the same will be treated as consideration for independent service(s) under the respective head. And consequently, what would be the applicable GST rate on such Other Charges collected.

- 5.6 We find that the applicant has provided on record, a sample copy of the deed/agreement for deciding the present issue. On perusal of the said 'sale deed agreement', it seen that the charges for the construction of residential property and the other charges for providing different services are mentioned separately, which (according to applicant) are supplied during the construction of residential flat. The question before us is whether the services by way of construction of residential property is supplied along with the supply of 'other



services' as a 'composite supply of services'. Or the 'Other charges' which are being collected separately, are to be treated as an independent supply other than the supply of construction service (basic sale price of flat) as above.

- 5.7 To decide the issue, it is important to examine the concept of 'Composite Supply' as provided under the CGST Act, 2017. The relevant definitions in this regard, as provided under Section 2 of the CGST Act, are as under:

Composite Supply [Section 2(30)] :- "Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply:

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply."

Principal Supply Section 2(90):- "Principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary".

- 5.7.1 Section 8 of the CGST Act which provides the manner of determining tax liability on a composite supply or a mixed supply, is reproduced as under:

"8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax."

- 5.7.2 In order to be held as 'Composite supply' as per Section 2 (30) of the CGST Act, 2017, there must be two or more taxable supplies of goods or of services or both or any combination thereof, which are naturally bundled and are supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.
- 5.7.3 In the present case, we observe from said sale deed agreement that, the applicant has mentioned the value of supply of construction of residential unit and the value of other services separately. As per para no.3 and para 4 of page 27 of the impugned sale agreement,

the applicant has collected the value of construction of residential unit supply (having 59.156 sq. mt area), for an amount of Rs. 86,58,000/- + taxes extra separately from the customer on which stamp duty is payable. And para no. 11 of page 41 shows that certain charges are collected separately for 'other services' provided by the applicant viz. *Electric meter installation and security deposit for meter, Water connection charges ,municipal taxes, Advance maintenance, Clubhouse maintenance, Development charges, share money, entrance fee of organization, legal charges , legal fees, and Infrastructure charges.* etc. The relevant portions of 'other charges' collected separately as per the agreement are reproduced as below:

Page No. 41 of the sale deed agreement:

11. a) the purchaser, on execution of this Agreement of before taking possession of the said Flat, shall pay the following amount to Swapnadhara Projects Private Limited.

(i) Rs.68, 400/-

towards electric meter installation and security Deposit for the meter payable to MSEB and election of transformer, cable laying etc.

(ii) Rs.1, 24,260/-

towards proportionate share of Development charges and including premium payable to Thane Municipal Corporation.

(iii) Rs. 20,000/-

towards water Connection charges and Deposit.

(iv) Rs.600/-

towards share money, application and entrance fee of the Organisation.

(v) Rs. 5,000/-

towards Formation and Registration of the Organisation and Legal Charges in connection there with.

(vi) Rs.27, 360/-

towards proportionate share of Municipal Taxes, N.A. Taxes, assessments and other charges.

(vii) Rs 25000 /-

towards Legal Fees.



(viii) Rs. 72,000/-

towards advance maintenance charges of the premium and common areas for 2 years.

(xi) Rs. 2, 28,000/-

towards infrastructure Charges.

(x) Rs. 12,000/-

towards Club House Maintenance Charges for 2 years.

(xi) Rs. 1, 00,372/-

towards Services Tax, presently @ 15% as per Finance Act, 2016.

5.7.4 As per the provisions of the Bombay Stamp Act 1958, stamp duty is payable on sale of immovable property. From the receipt of the stamp duty paid by the applicant, it is seen that the applicant has paid stamp duty on the value of sale of flat having an amount of Rs.86, 58,000/-only. The Applicant has not considered the value of other services supplied as above (i.e. other charges collected for which present ARA has been filed) for the payment of stamp duty to the government implying that, **when the question of payment of stamp duty arises, the applicant treats these Other charges not as a part of supply of main construction service, but when question of payment of GST arises, the applicant tries to contend that the value of other charges collected is part and parcel of value of that main construction service. It is a legal principle that a party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands.**

5.7.5 Further, para no. 15 (c) of Page No. 50 of the impugned agreement is as under:-.

Para (15) The Purchaser hereto specifically declares and confirms that: -----,

c) This agreement is not to be or is not intended to be construed as conveyance or perpetual lease nor is it intended by the parties and no interest in the said larger property or part thereof, is or is intended to be created and transferred to or vested in the Purchaser/s.

5.7.6 on page 52 of the impugned agreement, is an express, essential, vital and integral term and condition of this Agreement that: ----

g) The Developer are desirous of selling, transferring or otherwise allotting or disposing of Flat, and other areas including gardens/ terraces appurtenant to or adjoining or abutting and/or above certain Flat in or around the said buildings on what is popularly known as

ownership basis and/or otherwise and they are entering into separate agreement for sale, transfer and/or disposal thereof with various purchasers or transferees thereof.

Thus, the applicant has not transferred those other areas or other amenities to the customers nor any right is created thereon in favor of the customers.

5.7.7 Further clause 17 of the said agreement is reproduced as under:-

The Purchaser/s hereby agree that. -----,

c) The Purchaser shall have no claim or right on any part of the said Property and also to any part or parts or the said Building other than the said Flat agreed to be taken by him. All open spaces, road club house, garden utility areas and common amenities, lobbies, staircases, terraces shall remain the property of the Developer unit the whole property is assigned and transferred to the Organization or Apex body as the case may be as herein mentioned but subject always to the rights, reservations, covenants and easements in favour of the Developer as herein provided.

5.7.8 Para 9 b of the agreement at Page No. 36 of Sale deed Agreement is as under:-



Para 9. b):- *The purchaser shall actively assist & co-operate for formation and registration of such Organization & for the purpose from time to time sign all applications, letters, writings, documents, bye laws and return the same to the Developer within seven days of receipt thereof without objecting to any changes, modifications as may have been in the mode bye law by the Developer and also do all other acts, deeds, matters and things as the Developer may reasonable require for registration of the Organization of the said Flat purchaser.*

e) Only upon the construction of the said complex being completed all respects as envisaged herein by the Developer by utilizing full development potential of the said Larger property as per the Development Regulation by use of FSI or TDR or any additional FSI by payment of premium or in any other manner and upon the Developer selling /transferring/allotting all the Flats constructed in the said complex, and upon the Developer receiving the entire payment (towards the consideration, deposits, outgoings or otherwise) due and payable to it under all Agreements for Sales executed with all Purchaser of the Flat, in the said Complex. If only Organization is formed of the said Complex, then said property will be transferred by Conveyance or Lease to the said Organization. In case of more than one Organization is formed. Developer will convey the super structure of

respective building and grant perpetual lease of the plinth area of respect building to the respective Organization and all other residual area i.e. area covered by all infrastructure viz. road, electric substation, STP etc. and amenities viz. playground, garden, club house (if any) to the Apex Body Such Deed of Conveyance/ Lease shall be in accordance with the terms, conditions, covenants, stipulation and provisions of the Agreement, and shall be in such form and shall contain such terms, conditions, covenants, stipulation and provisions as may be decided and determined by the Developer in its sole, absolute and unfettered discretion. Thus Apex Body will hold residual part of the said property i.e. garden, playground, open space, road, infrastructure viz. STP, sub-station (if any), common electricity or any amenities for the benefit of all user and occupier of the said property and also for the benefit of any other property as per the Agreement with the owner of the adjoining property.

5.7.9 A combined reading of the above clauses and the agreement as a whole, reveals that, there are more than two supplies in the subject transaction, which are independent supplies and so taxable separately. From the above terms and conditions of the sale deed agreement, it is seen that the applicant has collected the basic flat sale price separately for the supply of residential unit and the charges are collected separately for supply of different services which are called as 'other charges'. Merely because the agreement is common will not make it a supply of bundled services.

5.7.10 Therefore, in the present case, we find that there are more than two supplies which are independent supplies and so taxable separately, the supply of construction services of residential unit and the other supply of 'other services', viz. '*Electric meter installation and security deposit for the meter, Water connection charges and security deposit, municipal taxes, Advance maintenance, Clubhouse maintenance, Development charges, share money, entrance fee of organization, legal charges, legal fees, and, Infrastructure charges*'. Services supplied in respect of the 'other charges' are different from the service of construction of residential flats. Therefore, it is observed that the 'other services' provided cannot be said to be naturally bundled and supplied in conjunction with each other in the ordinary course of business with main supply of residential flat in the subject case.

5.8.1 We find that Heading 9954, Entry No. 3 covers 'construction services' of Notification No.11/2017 CT (R) dated 28.6.2017. The entry no. 3 is reproduced as below:

'3 (i) 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. (Provisions of paragraph 2 of this notification shall apply for valuation of this service).

5.8.2 The above entry is specifically related to 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.

5.9.1 Further, as per the explanatory note published by the Government, for the purposes of the CGST Act, 2017, the 'other services' provided by the applicant can be said to be classified under different SAC as under:-

Sr No	Description of charges	Brief explanation	Group of SAC	SAC
1.	(a) Electric meter State installation and (b) security deposit for meter	Paid by the Applicant to Maharashtra Electricity Board (MSEB) for each unit at construction stage and later, a reimbursement is claimed from the customer.	(a) Installation services (b) Other Misc. services	(a) 995461 (b) 999799
2.	Water connection charge	Paid by the Applicant for each unit at construction stage and later, a reimbursement is claimed from the customer.	Support services to water distribution	995425
3.	Share of municipal taxes	Pertains to property tax required to be paid for period post receipt of Occupancy Certificate. The amounts are used for paying such tax.	Other Misc. services	999799
4	Advance maintenance	Collected on behalf of society yet to be formed. These amounts are used for maintenance till the time society is formed and upon formation of society, any unspent amount is transferred to the society	Other Misc. services	999799
5	Club house maintenance	Collected on behalf of society yet to be formed. These amounts are used for maintenance till the time society is formed and upon formation of society, any unspent amount is transferred to the society	Other Misc. services	999799
6	Development charges	Additional charges for development of the project computed based on	Other Misc. services	999799



		premium paid to the Municipal Corporation for the project and various other factors.		
7	Share money, application and entrance fee of the organization	Charges for making application for allotment, share money for future society of residents, etc.	Other Misc. services	999799
8	Formation and registration of the organization and legal charges in connection therewith	Charges in respect of formation of future society of residents and associated legal cost.	Legal Services	998214
9	Infrastructure charges	Additional charges for development of common area infrastructure.	Other Misc. services	999799
10	Legal fees	Charges for legal cost of the transaction of sale of residential apartments,	Legal Services	998216

5.9.2 Considering the above, in our opinion, the 'Construction services' and the 'other services' provided by the applicant are not naturally bundled and are not supplied in conjunction with each other in the ordinary course of business with main supply. These are the facilities/amenities provided by the applicant to its customers for the limited period because, for these facilities created the customers have not been given perpetual rights as per the said agreement (please refer to clauses cited supra). The amount or consideration is charged separately for different services. And even the stamp duty is also not paid on full amount collected from the customer along with the said other charges. Therefore, the other charges collected for the other services provided is not covered under the scope of 'Composite supply of services'. Therefore, the contention of the applicant is found not acceptable.

5.9.3 In view of above, the 'other charges' mentioned as above are held taxable as per their SAC under the GST Act, at 18% in terms of the respective and appropriate entries (against the SAC mentioned in the Table at para 5.9.1 above) in Notification No.11/2017 CT (R) dated 28.6.2017 as they are covered under services, other than construction services.

5.10 The jurisdictional officer has not properly appreciated the terms of agreement, particularly the clauses cited supra. It is mentioned in the said agreement that customers have no right to claim any title, interest or any ownership in respect of facilities getting created in the

project. We further find from the aforesaid terms of sale agreement that, so far as the facilities getting created are concerned, the applicant has reserved the entire rights of the same with itself and the applicant can transfer or sell or lease assets to others also and the purchasers are not supposed to raise any objection to it and have no rights or claims over these facilities or benefits. Hence, the views of jurisdictional officer are not acceptable.

5.11 Further, in the case of other services such as those relating to the electrical meter deposit and the water connection (deposit), claim of deduction of pure supply could have been raised, but same has not been raised by the applicant and therefore is not considered.

5.12 Therefore, in our view, the consideration for providing the construction services by way of construction of residential unit and the consideration for the other services (i.e. other charges collected) are considerations against separate independent services being provided by the applicant. Considering the nature of supplies in question, the services for each of the service head / description are covered under Notification 11/2017 mentioned above and therefore, the Other Charges would attract GST @18%. Thus, the 1/3rd deduction from total value as per Sr. No. 2 of the Notification (as claimed by the applicant) cannot be allowed as deduction from the Other Charges. A plain reading of the items or the list of other charges itself shows that services supplied against the said charges have no connection with land and, therefore, question of considering the 1/3rd deduction or rebate towards land cost does not arise, particularly, as the entries applicable to both of the above services are different.

5.13 The applicant, in support of their contention has relied upon and referred to some case laws. We find that, the subject matter in the said case laws referred to, by the applicant, are on different facts and under different laws as compared to the subject issue. Further, the issue regarding payment of the stamp duty in those cases is also not clear. Thus the said case laws will not be applicable in the subject case.

06. In view of the extensive deliberations as hereinabove, we pass following order:

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- 68/2019-20//B- 52

Mumbai, dt. 27.08.2021

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

Question:- (i) Whether the Other Charges received by the company will be treated as consideration for construction services of the Company and classified under HSN 9954 along with the main residential construction services of the Company or

(ii) Whether the same will be treated as consideration for independent service(s) of the respective head?

Answer:- (i) “Other Charges” received will not be treated as consideration for construction services of the Company and is not classified under SAC 9954 along with the main residential construction services.

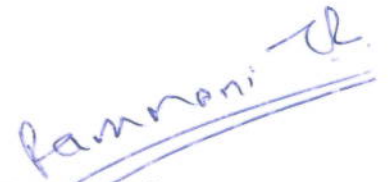
(ii) The ‘other charges’ will be treated as consideration received against supply of independent service(s) of the respective heads.

Question:- (b) Consequently, what will be the applicable effective rate of GST on services underlying the Other Charges?

Answer:- As per the above discussion, the applicable rate of GST on services underlying the Other Charges would be as per the SAC prescribed under Notification No. 11/2017 CT (R) dated 28.6.2017 and are liable to GST @ 18%. Further, the applicant has to pay GST on the entire consideration received as ‘other charges’, without any abatement.




RAJIV MAGOO
(MEMBER)


T.R. RAMNANI
(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. 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.