

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**

**GST Bhavan, 8<sup>th</sup> floor, H-Wing, Mazgaon, Mumbai – 400010.**

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

**BEFORE THE BENCH OF**

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AAFCN5825Q1ZS
Legal Name of Applicant		M/s Nagpur Integrated Township Private Limited
Registered Address/ Address provided while obtaining user id		H.No.D, IInd Floor, 7 <sup>th</sup> Block, Bloomdale, Mihan SEZ Denotified Area, Nagpur, Maharashtra – 440001.
Details of application		GST-ARA, Application No. 107 Dated 07.01.2019
Concerned officer		State Tax Officer (NAG-BST-C-001) Nagpur Division.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service provision
B	Description (in brief)	It is into development of land and construction of flats to be given out on lease as per the Agreement of Lease entered by them with the customers
Issue/s on which advance ruling required		(i) classification of goods and/or services or both (v) determination of the liability to pay tax on any goods or services or both (vi) whether applicant is required to be registered under the Act (vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
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”] by **M/s Nagpur Integrated Township Private Limited**, the applicant, seeking an advance ruling in respect of the following questions.

- *Whether the transaction between Applicant and lessee is outside the purview of GST as a transaction in immovable property?*
- *If not, what is the appropriate classification and rate of GST?*

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 such 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, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the “GST Act”.

## **02 FACTS AND CONTENTION – AS PER THE APPLICANT**

The submissions, as reproduced verbatim, could be seen thus-

### **STATEMENT OF FACTS**

1.0 M/s Nagpur Integrated Township Private Limited (hereinafter referred to as NITPL), (hereinafter referred to as the “Applicant”) registered under GST at Nagpur with Registration number **27AAFCN5825Q1ZS**. It is into development of land and construction of flats to be given out on lease as per the Agreement of Lease entered by them with the customers which is enclosed to this application.

2.0 Maharashtra Airport Development Company Ltd.(hereinafter referred to as “MADC”), a Company registered under the Companies Act, 1956 & having its registered office at World Trade Centre, 8<sup>th</sup> floor, Cuffe Parade, Mumbai-400005, is a special planning authority under the Maharashtra Regional & Town Planning Act, 1966, for the Multi Modal International Hub Airport, Nagpur Project(MIHAN) which includes development of Nagpur Airport as an international Hub, development of a Special Economic Zone, & other facilities around the Nagpur Airport.

3.0 MADC is the owner of land situated at MIHAN admeasuring 31 acres. M/s Chourangi Builders and Developers Pvt. Ltd. (formerly known as M/s Reatox Builders & Developers Pvt. Ltd., hereinafter referred to as “Chourangi”) is having its registered office at 3/341, 1A, Rajiv CHSL, Madhusudan Kaleikar Marg, next to FDA, Bandra Kurla Complex, Bandra(E), Mumbai-50005. Chourangi constituted a Special Purpose Vehicle(hereinafter referred to as “SPV”) with IJM Realty Mauritius a company incorporated under the laws of Mauritius and an affiliate of IJM group of companies(hereinafter referred to as “IJM”). The SPV is referred as Nagpur Integrated Township Private Limited (Applicant). NITPL is a company incorporated under the Companies Act having its registered office at 1-89/1, Kavuri Hills, Madhapur, Hyderabad-81, Telangana.

4.0 Applicant will be entering into a lease agreement with customers for leasing of flats on payment of Consideration of lease as per the terms and conditions as laid down in the lease agreement to be entered with the prospective customers. Specimen Agreement for lease is being annexed to this application.

Para D and E of the specimen Agreement for Lease specifies the basis on which the development of land has been vested upon Applicant as a developer and have also specified the rights and limitation as mentioned in the agreement therein.



5.0 Applicant is developing the property by construction of Commercial & residential units and integrated facilities and is having exclusive rights to design, finance and develop the property and lease/assign/transfer same to prospective customers on lease basis on payment of amount referred to as 'lease Consideration' and as per Annexure "D" to the "Agreement to Lease".

6.0 The developed units will be transferred to prospective customers through an agreement wherein the allotment is given to customer referred to as lessee. The lessee agrees to take on lease from Developer(Applicant) & Applicant agree to lease out to respective buyer the respective flat as mentioned specifically in the agreement. The lessee is not having any option to suggest any changes to the plan as approved. The prospective buyer would make an advance payment followed by instalments as prescribed. The buyer is liable to pay all applicable taxes including GST on the lease Consideration as applicable. The buyer is also liable to pay stamp duty and registration charges as applicable. The lease of property shall be registered in the name of buyer on payment of consideration as scheduled. The deed is registered with right of inheritance of lease for the remaining period of lease as is dependent on the situation. The agreement also contains conditions as the property should be maintained in good condition, should not be used for storing hazardous substances, pay maintenance as prescribed etc. The payments from the buyers are described as lease Consideration. Authenticated copies of certificates showing nature of title of MADC and Developer is made available to the prospective buyer. Copy of sanctioned plan on basis of which construction is undertaken is also made available to the buyer.

7.0 Whether the transaction is outside the purview of GST as a transaction in immovable property? If not, what is the appropriate classification and rate of GST?

are the issues on which advance ruling is sought by the applicant.

8.0 Since provisions of CGST and SGST are identical mostly, any reference to provisions shall be taken as applicable to both CGST and SGST Acts. The relevant provisions of CGST Act are being reproduced below for ready reference and sake of clarity-

Section 7 of the CGST Act, 2017 states

"7. (1) For the purposes of this Act, the expression "supply" includes—

(a) **all forms of supply** of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) **Notwithstanding anything contained in sub-section (1),—**

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, **shall be treated neither as a supply of goods nor a supply of services.**

(3) Subject to the provisions of sub-sections (1) and (2), the Govt. may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

## **SCHEDULE II**

[Section 7]

### **ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

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#### **2. Land and Building**

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

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#### **5. Supply of services**

The following shall be treated as supply of service, namely:—

(a) renting of immovable property;

(b) 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.

## **SCHEDULE III**

[Section 7]

### **ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES**

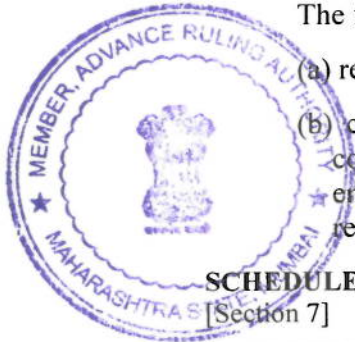
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#### **5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.**

#### **TRANSFER OF PROPERTY ACT**

#### **Section 54 in The Transfer of Property Act, 1882**

54. "Sale" defined.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made.—Such transfer, in the case of tangible





immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

### **Section 105 of The Transfer of Property Act, 1882**

105. Lease defined.—A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.”

The parallel provisions of MGST being identical to the provisions of CGST mentioned herein above, any reference to provisions shall be taken as applicable to both CGST and MGST Acts.

### **STATEMENT CONTAINING THE APPLICANT’S INTERPRETATION OF LAW AND FACTS IN RESPECT OF THE ABOVE QUESTION**

9.0 As per sub Section (2) of Section 7, Activities specified in Schedule III shall be treated as neither supply of goods nor supply of services. Clause (5) of Schedule III treats the following transactions as neither supply of goods, nor services.

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

9.1 The clause exempts two transactions (i) Sale of land and (ii) sale of building subject to Clause (5) paragraph 5 of Schedule II.

9.2 The expression ‘sale’ is not defined under GST. Since the expression is used in relation to immovable property, the provisions of Transfer of Property Act, would be relevant in this context. As per Section 54 of Transfer of Property Act, Sale” is a **transfer of ownership** in exchange for a price paid or promised or part-paid and part-promised. The word 'owner' is not defined under Transfer of Property Act. Therefore, reliance is placed on the common parlance meaning of “ownership”. “Ownership” denotes relation between a person and an object forming the subject matter of his ownership. It consist in a complex of rights, all of which are rights in rem, being good against all the world and not against specific persons (Salmond on Jurisprudence 12<sup>th</sup> edition, Chapter 8).



9.3 The ownership therefore grants rights in the subject matter to the exclusion of the whole world. The nature of transaction as is evident from the agreement does not involve transfer of ownership and hence there is **no sale of land** as contemplated with in meaning of either Transfer of Property Act or GST is happening in the present case.

9.4 Clause (b) /Paragraph 5 of Schedule II provides that 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 shall be treated as service. It is therefore important that the building should be intended for sale to buyer. In the present case, since the terms of agreement is affirming the relationship as builder and lessee, the construction is not intended for sale to buyer and hence transaction will not fall under clause (b). As the transaction is not falling under clause (b), all the related concessions/abatements available in respect of such transaction also is not applicable.

9.5 The transaction also will not constitute sale of building since the conditions as stipulated for sale is not satisfied in the present case. Therefore the transaction as undertaken is not falling outside the purview of GST as per Schedule III.

9.6 Section 105 of Transfer of Property Act is relevant wherein it has been specifically provided that a lease of immoveable property is a **transfer of a right to enjoy such property**, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. A lease is defined as TRANSFER OF RIGHT to enjoy property which is clearly distinct from TRANSFER OF PROPERTY. Therefore lease transactions are not recognized as transfer of property but is only transfer of right in property.

10.0 GST liability on the transaction:

10.1 The definition of supply under Section 7 of CGST/SGST applies to **all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business**. The transaction is therefore to be identified in the first place as supply of 'goods' or 'services'. Goods have been defined under Section 2 (52) of GST 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. Therefore the definition of goods is restricted mainly to movable property. The definition of 'Service' as per Clause (102) is as follows: "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. Therefore anything other than goods is service. Therefore the transaction of leasing is a 'service'. A doubt will arise whether such services in relation to immovable property is treated as 'service'. To clarify this, specific provisions has been made in Schedule II to GST Act. Sch. II classifies transactions as either supply of goods or supply of services. Sl.No. 2 and 5 of Sch. provides that:

**“ 2. Land and Building**

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.”

**“5. Supply of services**

The following shall be treated as supply of service, namely:—

- (a) renting of immovable property;.....”

10.2 Clause (a) of Sl. No. 2 treats lease, tenancy or easement or license to occupy land as provision of service. The transaction between Applicant and MADC falls under this clause. But the same is not applicable to transaction between Applicant and buyer since the premium collected is not just for lease of land but for land with constructed unit. Clause (b) deals with lease or letting out of building for business or commerce. The list of buildings mentioned includes commercial, industrial or residential complex. The residential complex in present case is not let out or leased for business or commerce since the buyer is not occupying it for the purpose of business or commerce. Therefore the transaction is not falling under Sl.No. 2.

10.3 Clause (a) of Sl. No .5 of Schedule treats renting of immovable property as service. This clause is more specific to the transaction between Appellant and prospective lessee. In order to clarify whether renting and leasing are synonymous , reliance is placed on Classification of services Heading No. 9972. The services classified under this heading is extracted below:

Heading		Real estate services
Group		Real estate services involving owned or leased property
	997211	Rental or leasing services involving own or leased residential property
	997212	Rental or leasing services involving own or leased non-residential property
	997213	Trade services of buildings
	997214	Trade services of time-share properties
	997215	Trade services of vacant and subdivided land

10.4 It is observed from the above that the expressions rental or leasing are both covered with in the scope of SAC 9972. Therefore the services are classifiable under SAC 9972.

10.5 The Government, has granted exemption to certain services vide Notification No. 12/2017 -Central Tax (Rate)dated 28.06.2017. As per Sl. No. 12 of said notification, GST on following service is NIL:

**Sl.No. 12 : Heading 9963 or Heading 9972**

**Services by way of renting of residential dwelling for use as residence.**

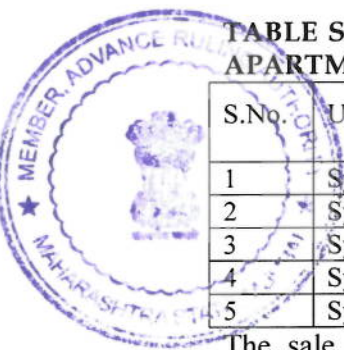
10.6 The applicant based on the facts above needs clarity regarding the fact that the service provided by Applicant is renting of residential dwelling and the purpose of such renting being used as residence will attract GST in respect of the transaction between Applicant and lessee.

**Additional submissions dated 18.03.2019**

**SUBMISSION MADE PURSUANT TO THE HEARING BEFORE HON'BLE AUTHORITY FOR ADVANCE RULINGS (GST), MAHARASTRA, MUMBAI**

- 1.0 The final hearing in respect of the application filed by the applicant was held on 6" March, 2019, wherein the applicant has made his submission which has been taken on record.
- 2.0 During the course of personal hearing, Hon'ble Member AUTHORITY FOR ADVANCE RULINGS (GST) had requested the applicant to provide the details of lease amount charged to the customers towards the leasing of residential apartment/flats in the proposed project covered in the application filed by the applicant before the Hon'ble Authority for Advance Ruling and also some other residential projects in the vicinity of the project of the applicant where flats are available for sale.
- 3.0 Accordingly, the applicant is herewith submitting the details of the lease amount proposed to be charged/recovered from the customers. Also, the sale price per sq.foot of some other residential projects in the vicinity of the project of the applicant is also being submitted for ready reference.

**TABLE SHOWING LEASE AMOUNT IN THE PROPOSED PROJECT OF RESIDENTIAL APARTMENT FOR LEASE OF THE APPLICANT**



S.No.	Unit No.	Type	Area in Sq. Ft.	Lease value of unit	Lease price Rs/sq.Ft. (booking price)
1	Symphony 1C0301	1 BHK	970	25,22,000	2,600
2	Symphony 1A0302	2 BHK	1,332	28,30,500	2,125
3	Symphony 1C0101	2.5 BHK	1,684	35,36,400	2,100
4	Symphony 1A1001	3 BHK	1,760	45,76,000	2,600
5	Symphony 101202	3 BHK	2,371	47,21,937	1,992

The sale market price per square feet of residential flats in the vicinity of the proposed residential apartment project of the applicant is about Rs.4208 per sq. feet as per 99 acres.com, a real estate database website.

- 4.0 The lease rate per sq.foot for 1BHK flat is Rs.2600/- per sq.foot whereas the lease rate per sq.foot for a 3BHK is Rs.1,992/- per sq.foot. The variation in the lease amount in the table above is on account of the demand of the residential dwelling in the proposed residential project of the applicant. As the demand for 1 BHK is more, the lease amount per square feet is comparatively on a higher side as compared to 3BHK apartment on lease wherein the demand is not much in that particular locality.



- 5.0 Based on the application, submissions made during the course of hearing, it is submitted that the transactions being undertaken by the applicant being in the nature of long term lease of residential apartment to individual customers, will construe a supply of service in view of the principles laid down by the Hon'ble High Court in the case of Builders Association of India Vs VOI - 2018-TIOL-24-HC as emphasized in our submission during the course of final hearing. Accordingly, Applicant submit that such supply is exempted from payment of GST, vide S.No. 12 of Notification 12/2017.
- 6.0 Applicant pray that the Hon'ble Authority for Advance Ruling, Maharashtra may kindly issue a ruling to the above effect and thus render justice.

### **03. CONTENTION – AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

Maharashtra Airport Development Company Ltd (MADC) is a special planning authority under the Maharashtra Regional and Town Planning Act 1966, for the Multi Modal International Hub Airport, Nagpur Project (MIHAN) which includes development of Nagpur Airport as an international Hub, development of a Special Economic Zone, and other facilities around the Nagpur Airport.

MADC is the rightful owner of the land situated at MIHAN, admeasuring about 31 acres situated within the Registration Division & District Nagpur, Sub Division & Taluka Nagpur (Rural) Revenue Village Khapri (Rly)

M/s Chourangi Builders and Developers Pvt. Ltd., (formerly known as M/s. Reatox Builders & Developers Pvt. Ltd., hereinafter referred to as "Chourangi"), having its registered office at 3/341, 1A, Rajiv CHSL, Madhusudan Kaleikar Marg, Next to FDA, Bandra Kurla Complex, Bandra (E), Mumbai 400051, formed a Special Purpose Vehicle (SPV), under the name and style of 'M/s Nagpur Integrated Township Pvt. Ltd.' (NITPL), with IJM Realty (Mauritius) Ltd., a company incorporated under the laws of Mauritius.

IJM, on behalf of NITPL has deposited through MADC and Chourangi a Onetime Settlement (OTS) amount to M/s Vijaya Bank towards the Settlement of loan amount, availed by Chourangi in respect of the development of the said Land.

In consideration of NITPL paying the OTS amount and agreed dues in respect of the development of the said Land, MADC had entered in to Development Agreement (DA) with NITPL on 08th December 2017 along with a Power of Attorney (POA) dated 08th December 2017 and thereby entrusted to NITPL the rights to design, finance and develop a township project, on the said Land comprising apartment units, commercial space and allied infrastructure thereof and to lease the same to the prospective lessees (hereinafter referred to as "Township Project / First City Project") and by virtue of the said DA and POA the Developer named herein above is now therefore entitled to complete the said Township Project and to lease, assign and transfer the various residential and non-residential units proposed to be constructed therein to the prospective lessee/s. Therefore, the Developer alone has the sole and exclusive right to allot on lease the residential and residential-cum commercial apartment (service apartments) units

(hereinafter referred to as "Flats"), commercial space and allied infrastructure thereof in the said buildings to be constructed in the Township Project and to enter into agreement/s with the prospective lessee/s of the Flats in the said buildings and to receive the lease consideration in respect thereof.

The Developer is desirous of developing the entire Township Project in a phased manner and accordingly the Developer is presently developing under Phase-1A, 2 buildings comprising of 384 flats in Symphony 1 & 2 along with a club house on the part of the said land, situated within the Registration Division & District Nagpur, Sub Division & Taluka Nagpur (Rural) Revenue Village Khapri (Rly) bearing Khasra Nos. 12, 20(Part) and 22 (Part) total admeasuring to acres 5.50 cents, The remainder of the development on the balance of the said Land shall be made in future phases as the Developer may deem fit and proper, with necessary approvals from the concerned authorities.

The Prospective Lessee is interested to take the said Property in the said FCP Phase-1A with the knowledge that the said Property is a Leasehold Property and not a Freehold Property, and pursuance of the same the Prospective Lessee has thoroughly inspected/verified all the documents of title relating to the said FCP-Phase-1A and the Township Project under the existing law applicable to the said FCP-Phase-1A and Township Project, including the relevant orders, and the approval of plans, designs and specifications prepared by the Developer's Architects and all other documents to his/her own satisfaction, for which the Developer had extended all possible co operation to verify the rights of the Parties as well as the title of the said Property agreed to be taken on lease by the Prospective Lessee. The Developer has also granted inspection of all relevant building plans, including that of common areas as defined in section 2 (n) of the Real Estate (Regulation and Development) Act 2016.

The Prospective Lessee, by agreeing to the terms and conditions as set out in the application for booking/allotment, has applied to the Developer for the allotment of the said Property

The developed units will be transferred to prospective customers through an agreement wherein the allotment is given to customer referred to as lessee. The lessee agrees to take on lease from Developer(Applicant) and Applicant agree to lease out to respective buyer the respective flat as mentioned specifically in the agreement. The lessee is not having any option to suggest any changes to the plan as approved. The prospective buyer would make an advance payment followed by instalments as prescribed. The buyer is liable to pay all applicable taxes including GST on the lease Consideration as applicable. The buyer is also liable to pay stamp duty and registration charges as applicable. The lease of property shall be registered in the name of buyer on full payment of consideration as scheduled. The deed is registered with right of inheritance of lease for the remaining period of lease as is dependent on the situation. The payments from the buyers are described as lease Consideration. Authenticated copies of certificates showing nature of title of MADC and Developer is made available to the prospective buyer. Copy of sanctioned plan on basis of which construction is undertaken is also made available to the buyer.

From the above mentioned facts and paras of sample copy of lease agreement, it is reveal that developer is going to construct the said property for prospective lessee, which will be leased out as per agreement of lease.





This entire transaction is verified in the light of provisions of Goods and Service Tax Act 2017 as under:

As per statutory provisions of GST ACT-2017 Section 7 (1) (a) which is reproduced as under –

*Supply 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 of furtherance of business.*

As per Schedule II (section 7) i.e. Activities (or transactions ) to be treated as supply of goods or supply of services.

Schedule II (5) Supply of services:

*(b) Construction of 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.*

From the above facts it is clear that it is a composite supply i.e. works contract as per Section 2(119) of GST Act-2017.

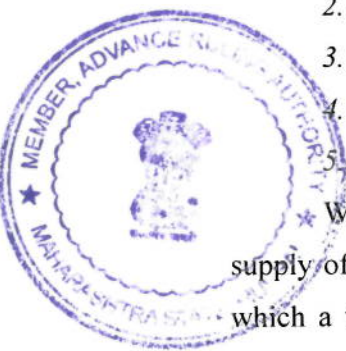
The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

- 1. Supply of goods or services. Supply of anything other than goods or services does not attract GST.*
- 2. Supply should be made for a consideration*
- 3. Supply should be made in the course of furtherance of business*
- 4. Supply should be made by a taxable person*
- 5. Supply should be a taxable supply*

While these five parameters describe the concept of supply. Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration. Further import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

From the facts of the case & paras of proposed lease agreement, transaction between developer and prospective lessee covers the concept 'supply' as it is for supply of construction services for a consideration. Basically it is a works contract service and As per judgment of Hon'ble Apex Court in case of Larsen & Toubro Vs. State of Karnataka (2014) 1 SCC 708

The term works contract is broad and includes all obligations and all types of contract. Works contract is a contract for undertaking or bringing into existence some works. Hence, lease agreement between applicants and prospective lessee is for works contract service.



A perusal of the above authorities leads us to the conclusion that "Works" means the carrying out of construction activities involving labour along with the supply of materials. Further, there appears to be a close nexus between "works contract" and construction activities.

1. *"Works" is largely interpreted as a building or a structure which has emerged as a result of labour;*
2. *Works contract is a contract for executing of any works along with the right to sue for breach;*
3. *There should be a transfer of property in goods involved in the execution of works contract.*

From the final definition of "works contract" it becomes clear that to qualify as a "works contract", a contract shall not be a contract for mere supply of goods or supply of services; that is to say, the nature of contract executed shall be a composite supply involving supply of both goods and services which results in the creation or repair / maintenance/ renovation /improvement etc. of an immovable property as a whole.

The answer to the above lies in the Schedule II appended to the CGST Act. This schedule categorically specifies whether a particular supply is a supply of goods or services.

The entry under this Schedule are relevant:

1. Entry 5(b) which stated that - " The following shall be treated as supply of services, namely:

*(b)" construction of a complex, building, civil structure or a part thereof, including a complex or building 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"*

*Explanation- For the purposes of this clause -*

*(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:*

*(1) an architect registered with the Council of Architecture constituted under the Architects Act, 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;*

*(2) the expression "construction" includes additions, alterations, replacement or remodeling of any existing civil structure.*

- I. Entry 6 Composite supply



The following composite supplies shall be treated as a supply of services, namely:

(a) Works contract as defined in clause (119) of section 2

Under GST, the whole works contract is treated as a composite supply of Services and leviable to GST as Supply of Services. As per entire consideration will be paid by the prospective lessee before issuance of completion certificate or prior to occupation GST will be applicable. From the facts of the case entire construction service is provided to prospective lease in compliance of agreement lease hence it is squarely covers in the ambit of GST Law.

#### 04. HEARING

Preliminary Hearing in the matter was held on 07.02.2019. Sh. Natrajan Ganesh, Advocate, appeared and requested for admission of application as per contentions made in their application. Jurisdictional Officer Sh. Rahul Ganveer, State Tax Officer ((NAG-BST-C-001) Nagpur appeared and made written submissions.

The application was admitted and called for final hearing on 06.03.2019. Sh. Natrajan Ganesh, Advocate, appeared made oral & written submissions. During final hearing Sh Natrajan Ganesh was asked to submit details such as area of a unit that is to be leased the amount of lease received phase wise and sale price of similar unit as per ready reckoner or as the case may be transaction value in the ordinary course of business. Jurisdictional Officer Sh. Rahul Ganveer, State Tax Officer ((NAG-BST-C-001) Nagpur appeared.

#### 05. OBSERVATIONS

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

The applicant has obtained development rights from Maharashtra Airport Development Company Ltd. (MADC) in respect of land owned by MADC and situated at Multi Modal International Hub Airport, Nagpur Project (MIHAN) which includes development of Nagpur Airport as an international Hub, development of a Special Economic Zone, & other facilities around the Nagpur Airport.

The Applicant, having exclusive rights to design, finance and develop the property is developing the property by construction of Commercial and residential units and integrated facilities. The Applicant also has rights to lease/assign/transfer same to prospective customers on lease basis on payment of certain agreed amounts (a certain percentage in advance and the balance in installments). Applicant will be entering into a lease agreement with customers for leasing of flats on payment of Consideration of lease as per the terms and conditions as laid down in the lease agreement to be entered with the prospective customers. On construction work being completed and after receipt of OC/NOC from the authorities, the flats would be



transferred to their customers by way of an agreement wherein the allotment is given to their customer as a 'lessee'. The buyer is liable to pay all applicable taxes including GST, stamp duty and registration charges as applicable, on the lease Consideration and also maintenance charges.

From the submissions made by the applicants we find as under:-

- i. The applicant having developmental rights on the property also has rights to lease out the flats/commercial units to their customers.
- ii. The customers will be paying them an advance amount of 10% of the cost of the so called lease amount and the balance will be paid in instalments slab-wise as the construction progresses. The final 5 % will be paid on possession. The Payment Schedule finds mention in Schedule D of the Draft Agreement of Lease submitted by them.
- iii. The maintenance of the said flats will also be borne by the customers (lessees).

While the applicant has mentioned that they will be constructing both, residential and commercial units, the query raised by them is only in respect of "*transaction in immovable property*". In normal circumstances flats are generally taken on lease only when the lessee intends to stay therein. The lease rent/amount is paid monthly by the lessee with an advance amount paid as deposit which is generally refundable. Thus flats given on lease would mean completed construction of units with OC. It may be possible in some cases that flats may also be occupied without OC but that would not be a matter of concern to this authority. Thus we have no hesitation in stating that lessee customers who take flats on lease would generally prefer to use the same. We may also mention here that generally the rent/lease amount, as is prevalent on the Mumbai market, would be around 2% to 3% of the property value, per month.

The situation in the subject case is very much different. First of all the applicant says that they are receiving the lease amounts from their customers during the construction process. The applicant keeps paying instalments on completion of slabs and this type of payment is only made when a person has entered into an agreement with a builder/developer to purchase flats in an ongoing project. Such payments are generally liable tax under GST Laws but in the subject case the applicant is showing such payments as towards lease amount paid under a lease agreement. We may mention at this stage that rental income from residential properties is not liable to GST.

During the course of hearings the applicant was requested to provide details of lease amount charged to the customers towards the leasing of residential apartment/flats in the proposed project covered in the subject application and also some other residential projects in the vicinity of the project of the applicant where flats are available for sale. The applicant made submissions details of the lease amount proposed to be charged/recovered from their customers and also, the sale price per sq.foot of some other residential projects in the vicinity of the subject project.





S.No.	Unit No.	Type	Area in Sq. Ft.	Lease value of unit	Lease price Rs/sq.Ft. (booking price)	sale market price psf of residential flats in the vicinity Rs./sq. ft.
1	Symphony 1C0301	1 BHK	970	25,22,000	2,600	4208
2	Symphony 1A0302	2 BHK	1,332	28,30,500	2,125	4208
3	Symphony 1C0101	2.5 BHK	1,684	35,36,400	2,100	4208
4	Symphony 1A1001	3 BHK	1,760	45,76,000	2,600	4208
5	Symphony 101202	3 BHK	2,371	47,21,937	1,992	4208

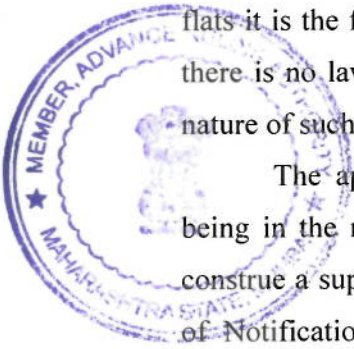
It may not be proper to compare the price of under construction flats with prices of flats ready to be sold and occupied but we would just like to study the comparison in the subject case. In respect of flats in buildings mentioned at 2 and 3 of the Table we find that the lease amount payment over a certain time period without having possession of the flats is around 50% of the prices of ready to move in flats. In respect of flats in buildings mentioned at 1 and 4 of the Table we find that the lease amount payment over a certain time period without having possession of the flats is in excess of 60% of the prices of ready to move in flats. Such kind of lease amounts would tend to be a bit high. Probably the sale price of Rs 4,208 could translate into an under construction price of around Rs. 3400 approx. (with a reduction of around 20%). We find that these lease amounts are going to be paid without using the flats and therefore we conclude that the said transaction is only being given a colour of a lease transaction.

Further, we find that the customers of the applicants also have to pay maintenance charges. In normal case in the State of Maharashtra in all the lease transactions of residential flats it is the flat owners who pay maintenance charges and not the lessee. We understand that there is no law to state that the maintenance should not be paid by the lessee but the general nature of such transactions where the flat owner pays the maintenance cannot be ignored.

The applicant has submitted that the subject transactions being undertaken by them, being in the nature of long term lease of residential apartment to individual customers, will construe a supply of service but such supply is exempted from payment of GST, vide S.No. 12 of Notification 12/2017. The Government, has granted exemption to certain services vide Notification No. 12/2017 -Central Tax (Rate)dated 28.06.2017. As per Sl. No. 12 of said notification, GST on following service is NIL:

Sr.No. 12 : Heading 9963 or Heading 9972 : *Services by way of renting of residential dwelling for use as residence.*

We find that the applicant has in their application mentioned that *"Applicant is developing the property by construction of Commercial & residential units and integrated facilities and is having exclusive rights to design, finance and develop the property and lease/assign/transfer same to prospective customers on lease basis on payment of amount referred to as 'lease Consideration'".* Thus, they are going to construct both commercial and residential units. However, it appears that their query is only limited to residential units. It also



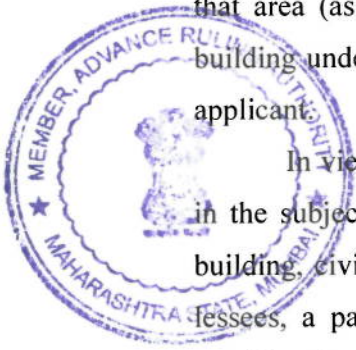
appears from the submissions made by the applicant that they are is going to construct the said property for their prospective lessees.

We have no doubt whatsoever that in the subject case there is a supply as defined under Section 7 of the CGST Act, 2017. As per Schedule II (2), in respect of Land and Building : (a) *any lease, tenancy, easement, licence to occupy land is a supply of services; (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.* As per Schedule II (5)(a), *renting of immovable property shall be treated as a supply of services* and as per Schedule II (5)(b), *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, shall be treated as a supply of services.*

In the subject case we find that there is a composite supply of works contract in relation to construction of a complex, building, etc. which is intended to be handed over to the buyer, where the transaction is shown as a lease transaction and not, sale. The entire consideration will be received by the applicant before issuance of completion certificate by a competent authority which does not generally happen in a lease transaction. We are of the opinion that there is not a very large difference between the lease price and the ready reckoner rates of the properties in that area (as submitted by the applicant). We find that the transaction of sale of flats in a building under construction is being projected as a lease transaction of residential units by the applicant.

In view of the discussions made above we are of the view that there is a taxable supply in the subject case, which is a supply of services in the form of construction of a complex, building, civil structure or a part thereof, including a complex or building to their prospective lessees, a part of which i.e. flats are intended to be handed over to the buyer, for which consideration is received by the applicant in installments, on completion of work, slab wise viz. the developed units will be transferred to prospective customers through an agreement wherein the allotment is given to their customers. We therefore agree with the submissions made by the jurisdictional office that in the form of construction service, a composite supply of works contract as defined in clause 119 of Section 2 of the CGST Act, 2017, is provided to prospective lessee in compliance of an agreement and the same is taxable under GST Laws.

05. 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- 107/2018-19/B-

35

Mumbai, dt. 02/04/2019

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

*Question :- Whether the transaction between Applicant and lessee is outside the purview of GST as a transaction in immovable property?*

*Answer :- The transaction between Applicant and lessee is taxable under GST. It is not a transaction in immovable property.*

*Question :- If not, what is the appropriate classification and rate of GST?*

*Answer :- The transaction is a composite supply of works contract as defined in clause 119 of Section 2 of the CGST Act, 2017 and classifiable under C H 9954 (ii) and will attract tax @ 18%.*



—sd—  
B. TIMOTHY  
(MEMBER)

—sd—  
B. V. BORHADE  
(MEMBER)

**CERTIFIED TRUE COPY**

**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.

**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, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai - 400021.