



**ADVANCE RULING NO. RAJ/AAR/2024-25/18**

Mahipal Singh Additional Commissioner	:	Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Castle Realtors, Shop No.1,6,Parwani Properties, Ajay Nagar, Ajmer-305003, Rajasthan
GSTIN of the applicant	:	08AAQFC5503J1Z9
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(a) Classification of goods and/or services or both (d) Admissibility of input tax credit paid or deemed to have been paid
Date of Personal Hearing	:	26.06.2024
Present for the applicant	:	Mr. Praful Gupta, C.A. and Advo. Kamal Patel
Date of Ruling	:	20.09.2024

**Note 1:** Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling, constituted under Section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

**Note 2:** At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST 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 SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s CASTLE REALTORS, Shop No 1,6, Parwani Properties, Ajay Nagar, AJMER-305003, Rajasthan (hereinafter "the applicant") is fit to pronounce advance ruling as they have deposited prescribed fee under GST Act and it falls under the ambit of the Section 97(2)(a) given as under:

- (b) Applicability of a notification issued under the provisions of the Act
- (d) Admissibility of input tax credit paid or deemed to have been paid

**A. SUBMISSION OF THE APPLICANT (in brief):-**

The M/s CASTLE REALTORS, SHOP NO 1,6, M/S CASTLE REALTORS, PARWANI PROPERTIES, Ajay Nagar, Ajmer, Rajasthan, 305003 (hereinafter referred to as the 'Applicant' or 'CASTLE REALTORS') is engaged in supplying services of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of affordable and other than affordable residential apartments under GSTIN 08AAQFC5503J1Z9.

The Applicant is supplying services of construction of affordable housing, non-affordable housing and commercial apartments under Real Estate Project (REP) in the name of M/S CASTLE REALTORS. The applicant filed Advance ruling for applicability of notification and applicability of provision under GST Act, 2017.



**B. INTERPRETATION AND UNDERSTANDING OF APPLICANT ON QUESTION RAISED (IN BRIEF)**

That the applicant would like to get Advance Ruling for the project CASTLE REALTORS which falls under **Notification No. CT(Rate) 03/2019 dated 29<sup>th</sup> March 2019** and **Notification No. CT(Rate) 06/2019 dated 29<sup>th</sup> March 2019**.

- The Notification CT(Rate) 03/2019 states that-

(ii) *in the Table, -(a) against serial number 3, for item (i), and the entries relating thereto in column (3), (4) and (5), the following items and entries shall be substituted, namely, -*

(3)	(4)	(5)
<p><b>(ic) Construction of affordable residential apartments by a promoter in a Real Estate Project (herein after referred to as REP) other than RREP, which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)</b></p>	<p><b>0.75</b></p>	<p>Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only;</p> <p>Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;</p> <p>Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;</p>
<p><b>(id) Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)</b></p>	<p><b>3.75</b></p>	<p>Provided also that where a registered person (landowner- promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, -</p> <p>(i) the developer- promoter shall pay tax on supply of construction of apartments to the landowner- promoter, and</p> <p>(ii) such landowner – promoter shall be eligible for credit of taxes charged from him by the developer promoter towards the supply of construction of apartments by developer- promoter to him, provided the landowner- promoter further supplies such apartments to his buyers before issuance of completion certificate or</p>

		<p>first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer-promoter.</p> <p>Explanation. -</p> <p>(i) "developer- promoter" is a promoter who constructs or converts a building into apartments or develops a plot for sale,</p> <p>(ii) "landowner- promoter" is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.</p> <p>Provided also that eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only;</p> <p>Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person;</p> <p>Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 per cent., tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of eighteen percent on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both;</p> <p>Provided also that notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on</p>
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		<p>reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017), shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement; (Please refer to the illustrations in annexure III)</p> <p>Explanation. -</p> <ol style="list-style-type: none"> <li>1. The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.</li> <li>2. Notwithstanding anything contained in Explanation 1 above, tax on cement received from unregistered person shall be paid in the month in which cement is received.</li> <li>3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)].</li> </ol>
<p>(if) Construction of a complex, building, civil structure or a part thereof, including, -</p> <p>(i) commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP,</p> <p>(ii) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item in the manner prescribed herein, but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) above intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p> <p>Explanation. -For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) in column (3) shall attract central tax prescribed against them in</p>	9	

column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry. (Provisions of paragraph 2 of this notification shall apply for valuation of this service	
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(xvi) the term “**affordable residential apartment**” shall mean, - (a) a residential apartment in a project which commences **on or after 1st April, 2019**, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, having carpet area not exceeding **60 square meter in metropolitan cities or 90 square meter** in cities or towns other than metropolitan cities and for which the gross amount charged is **not more than forty five lakhs rupees**.

For the purpose of this clause, - (i) Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;

(xvii) the term “**promoter**” shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

#### **Which defines Promoter as-**

- a. *A person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
- b. *A person who develops the land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
- c. *any development authority or any other public body in respect of allottees of—*
  - *Buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*
  - *Plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*
- d. *An apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*
- e. *Any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*
- f. *Such other person who constructs any building or apartment for sale to the general public.*  
*Explanation—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sell apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;”*

(xviii) the term “**Real Estate Project (REP)**” shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

- The development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or
- The development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and
- Also includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

(xix) the term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;

Carpet area as per explanation 4(xxvi) of notification No. 3/2019 ibid, the definition would be as per

section 2(k) of the RERA which defines the term carpet area as:

The net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but **includes** the area covered by the internal partition walls of the apartment.

Explanation.— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;

### **SCOPE**

*The Applicant falls under the definition of Real Estate Project (REP) because it has carpet area for commercial apartments more than 15 percent out of total carpet area of project. That to suffice our explanation that commercial apartments areas are more than 15 percent of total carpet area we hereby attaching Approved map from Ajmer Development Authority which is also available to verify on <https://rera.rajasthan.gov.in/>. (Project Name- ATLANTIS)*

### **Applicant views on the Questions raised**

#### **1. GST Rate on supply of affordable and non-affordable apartments under REP.**

**Ans- For Affordable residential apartments-** The applicant falls under the heading serial no. (ic) of Notification No.03/2019 -Central tax (Rate) which states that construction of affordable residential apartments by a promoter in REP other than RREP is GST @1.5 percent less 1/3<sup>rd</sup> value of land as per Notification No. 11/2017 CT(rate) dated 28<sup>th</sup> June 2017 which is equivalent to GST @ 1% on the transaction value.

**For Non-affordable residential apartments-** The applicant falls under the heading serial no. (id) of Notification No.03/2019 -Central tax (Rate) which states that construction of residential apartments other than affordable residential apartments by a promoter in REP other than RREP is GST @7.5 percent less 1/3<sup>rd</sup> value of land as per Notification no. 11/2017 CT(rate) dated 28<sup>th</sup> June 2017 which is equivalent to GST @ 5% on the transaction value.

#### **2. Supply of Affordable housing and non-affordable housing under REP together.**

**Ans-** The notification heading (ic) and (id) did not specify that promoter can only supply affordable residential apartments or residential apartments because it bifurcated apartment by area of apartment, which means in single floor or in single wing affordable residential apartments and residential apartments both conjointly can be supplied. The only thing which prescribes the differentiation between GST rate between them in REP is size of apartment.

#### **3. GST Rate on supply of construction of a complex, building, civil structure or a part thereof, including, commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP.**

**Ans-** The applicant constructing commercial apartment (shops, hall, office, godowns etc.) in REP other than RREP which is approved under RERA Act. The applicant clearly falls under the heading no. (if) of Notification No.03/2019 – CT (Rate) and for the Commercial apartment the GST rate is @ 18 percent less 1/3<sup>rd</sup> value of land as per Notification no. 11/2017 CT(rate) dated 28<sup>th</sup> June 2017 which is equivalent to GST @ 12 percent of the transaction value.



4. Eligibility of Input Tax Credit which will be used in the course of business or for furtherance of business for Construction of Commercial apartments in a Real Estate Project (REP).

**Ans-** Section 17(5)(d) of GST Act, 2017 state that goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation. —For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, **to the extent of capitalization**, to the said immovable property;

Explanation. - For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

A summary of the eligibility of ITC as per the provisions of section 17(5)(c) and (d) is given in the following Table:

Type of property	Construction of	Treatment in books	ITC eligibility
Immovable	Other than plant and machinery	Capitalized	Not eligible
Movable	P&M or otherwise	Capital Revenue or	Eligible
Movable or Immovable	Plant and machinery	Capital Revenue or	Eligible
Movable or Immovable	P&M or otherwise	Revenue	Eligible

**ITC FOR ACTIVITIES OF REPAIR, RE-CONSTRUCTION, RENOVATION, ALTERATION, ETC.**

The concept of "construction" has been widened to include the activities of re-construction, renovation, additions or alterations or repairs. The term 'construction' generally refers to the act of making or creating the immovable property for the first time. On the other hand, the activities of repair, renovation, alteration, etc. would involve carrying out the works on an existing immovable property. It must be noted that generally the process / steps which are done during the construction are repeated during its repair.

For example, wall plastering will be done for the first-time during construction by applying cement mixture and when such wall plaster needs repair, then similar processes of applying wall plaster will be done for undertaking the repairs. Even though similar processes are employed the latter activity would be treated as repair since the same is done on an already constructed structure and with an intent to rectify / cure the defects.

Therefore, the eligibility of ITC need not be decided with reference to the processes / treatment carried out but with reference to the purpose for which such processes / treatment is done.

Further, in terms of explanation to section 17(5), ITC is not allowed in case of re-construction, renovation, additions or alterations or repairs to the said immovable

property, to the extent it is capitalized. Hence, it is imperative to understand the term 'capitalized'.

### Meaning of the term 'Capitalized'

As per section 17(5) (d) of the CGST Act one of the pre-conditions for denial of ITC on activity of repair, renovation, alteration, re-construction, etc. is that such expense should have been capitalized in the books of accounts. If the expense is part of the revenue account for such activities, then ITC on the same cannot be denied under section 17(5)(d) of the CGST Act.

The question as to what is to be treated as capitalized has been answered through the definition of 'inputs' and 'capital goods' provided under sections 2(59) and 2(19) of the CGST Act respectively. These definitions have been reproduced hereunder:

"Section 2(59): "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

Section 2(19): "capital goods" means goods, the value of which is **capitalized** in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;"

From the above, it can be stated that capital goods refer to the goods which have been capitalized 'in the books of accounts' of the relevant person.

To fortify the stand that capitalization refers to the treatment as per the books of accounts itself, the same has been clarified in **Para 62 of the Circular No. 125/44/2019-GST, dated 18-11-2019** as follows:

*"It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in net ITC, even though the value of these goods has not been capitalized in his books of account by the applicant. It is clarified that the ITC of the GST paid on inputs, including inward supplies of stores and spares, packing materials etc., shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under Section 17(5) of the CGST Act. Further, capital goods have been clearly defined in Section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods"*

The above circular provides a clear inference that if any item has not been capitalized in the books of account, then the same cannot be capital goods and **ITC cannot be restricted under section 17(5) of the CGST Act**. Hence, it is important to determine the treatment of invoices pertaining to repair, renovation, alteration, etc. in the books of accounts for determining whether it has been capitalized or not.

That the applicant would like to explain that the promoter will **supply commercial apartments**. The Commercial apartments will be supplied to recipients, therefore the input, input service used in the course of business for construction of commercial apartments which will **not be capitalized** in books of accounts should be eligible as per section 16(1) and 16(2) of GST Act, 2017.

Furthermore, the applicant would like to state that the Plant & Machinery (apparatus, equipment, and machinery) which will be used in those commercial apartments such as Lifts, Generator, solar panels, electrical pole sare eligible as an exception provided in 17(5)



of GST Act, 2017. Furthermore, the Plant & Machinery mentioned will not be capitalized in books of accounts.

**IN RE : MINDRILL SYSTEMS AND SOLUTIONS PVT. LTD Order No. 08/WBAAR/2023-24 in Case No. WBAAR 21 of 2022, decided on 26-6-2023 BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, WEST BENGAL SARTHAK SAXENA AND JOYJIT BANIK, MEMBERS**

*Input tax credit - Construction of warehouse - Capitalised immovable property - Warehouse was constructed and leased on rent - Petitioner contended that construction was not on his own account as warehouse was used by different person and that ITC of supplies used for construction would be available - Petitioner contended that warehouse was constructed by use of pre-engineered steel structures which could be easily dismantled and re-erected in another site and, hence, could not be termed as immovable property - HELD: Section 17(5)(d) denies ITC in respect of inward supplies received to construct immovable property for "own use" by taxable person - Warehouse was constructed by applicant and same was accounted for in his books of account and ownership was retained by applicant - Construction was on own account in this case - Warehouse construction involved cement, marble, paver block etc., and, hence, warehouse could not be moved after construction without damage - ITC of GST charged on inward supply of goods and services related to construction of warehouse which was capitalized in books of account was not available - **ITC would be available if such expenses were not capitalized [Section 17 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017]. [paras 4.10 and 4.11]***

The above judgment of Hon'ble High Court clearly specifies that ITC is available for construction if expenses are not capitalized in books of accounts. That we also hereby declare that all the expenses which we will incur for construction of commercial apartments will be treated as revenue expenditure in Financial Statements.

The applicant should be **eligible for Input Tax Credit** of Input, Input Service and Capital goods which will be used in supply of Commercial Apartments in REP other than RREP for in the course of business and for furtherance of business. The GST rate of Supply of Construction of Commercial apartments is 12 percent without any condition for eligibility of ITC for this rate as per Notification No. 03/2019- CT.

**C. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:**

**Whether the following services provided by the supplier falls under Notification No. 03/2019 CT (rate) dated 29<sup>th</sup> March , 2019.**

- 1. GST Rate on supply of affordable and non-affordable apartments under REP.*
- 2. Supply of Affordable residential apartments and residential apartments under REP conjointly.*
- 3. GST Rate on supply of Construction of a complex, building, civil structure or a part thereof, including, commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP,*
- 4. Eligibility of Input Tax Credit which will be used in the course of business or for furtherance of business for Construction of Commercial apartments in a Real Estate Project (REP).*

**D. PERSONAL HEARING**

In the matter, personal hearing was granted to the applicant on 26.06.2024. Mr. Praful Gupta, C.A. and Advocate Kamal Patel Authorized Representatives appeared for personal hearing. They reiterated the submission already made by them.

**E. COMMENTS OF THE JURISDICTIONAL OFFICER: -**

Comments received from the Assistant Commissioner State Tax Circle –B, Ward-II, AJMER Divisional Kar Bhawan, Rajasthan vide letter NO. 461 dated-31.05.2024 are as under: -

1. GST Rate on supply of affordable and non-affordable apartments under REP.
2. Supply of Affordable residential apartments and residential apartments under REP conjointly.
3. GST Rate on supply of Construction of a complex, building civil structure or a part thereof, including, commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP.
4. Eligibility of Input Tax Credit which will be used in the course of business or for furtherance of business for Construction of Commercial apartments in a Real Estate Project (REP).

उपर्युक्त बिन्दुओं के संदर्भ में श्रीमान द्वारा टिप्पणी चाही गई है।

बिन्दुसंख्या 1 में REP में Affordable & Non- Affordable residential apartments सप्लाई पर अधिसूचना संख्या 03 / 2019 Central Tax Rate दिनांक 29.03.2019 (तदनुसूच State Tax Notification) Serial No 3 के कालम संख्या 3 की प्रविष्टि (ic) के अनुरूप Affordable Residential Apartment @ 0.75 Central Tax & @ 0.75 State Tax टैक्स रेट अधिसूचित है, तथा Non-affordable Apartment पर कालम संख्या 3 की प्रविष्टि (id) के अनुरूप @ 3.75 Central Tax & @ 3.75 State Tax टैक्स रेट अधिसूचित है। जो कि उक्त अधिसूचना के कालम 5 की शर्तों के अधधीन होगी।

बिन्दु संख्या 2 में Supply of Affordable residential apartments and residential apartments under REP की संयुक्त सप्लाई अर्थात् एक ही प्रोजेक्ट में दोनों तरह के आवास सप्लाई किये जा सकते हैं, उक्त सप्लाई पर जीएसटी एक्ट तथा रूल्स में किसी प्रकार के प्रतिबंध का उल्लेख दृष्टिगोचर नहीं होता है।

बिन्दु संख्या 3 में REP में complex, building civil structure or a part thereof, including, commercial apartments (shops, offices, godowns etc.) की सप्लाई पर अधिसूचना संख्या 03 / 2019 Central Tax Rate दिनांक 29.03.2019 (तदनुसूच State Tax Notification) के Serial No 3 के कालम संख्या 3 की प्रविष्टि (if) के अनुरूप Commercial Apartment @ 9% Central Tax & @ 9% State Tax टैक्स रेट अधिसूचित है। जो कि उक्त अधिसूचना के कालम 5 की शर्तों के अधधीन होगी।

बिन्दु संख्या 4 में Eligibility of Input Tax Credit which will be used in the course of business or for furtherance of business for Construction of Commercial apartments in a Real Estate Project (REP) इस पर निर्भर करेगा की अधिसूचना क्रमांक 03/2019 Central Tax Rate दिनांक 29.03.2019 के Annexure-IV में करदाता द्वारा उक्त अधिसूचना के Serial No - 3 के Item No- (ie ) or (if) के तहत या (i), (ia), (b), (c) & (id) के तहत कर चुकाने के विकल्प का चुनाव किया है।

**F. FINDINGS, ANALYSIS & CONCLUSION:**

**F.1** The M/s CASTLE REALTORS is engaged in supplying services of Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of affordable and other than affordable residential apartments, non-affordable housing and commercial apartments under Real Estate project (REP) under GSTIN 08AAQFC5503J1Z9. Admittedly, the services of construction of affordable and non-affordable apartments under REP are being rendered by the applicant after 1-4-2019 and hence the rate as notified under the new tax structure is applicable in respect of the construction services rendered by the applicant.

**F.2** We have considered the submission made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative at the time of personal hearing. We have also considered the issue involved on which advance ruling is



sought by the applicant. The matter was examined in details in the light of Notification No.11/2017 CT(R) dated 28.06.2017 as amended by Notification No. 3/2019 CT(R) dated 29.03.2019. We will analyze the question asked by the applicant one by one.

The first questions to be answered is regarding GST Rate on supply of affordable and non-affordable apartments under REP. The contention of the applicant is that as per provisions of Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 as amended by Notification No. 3/2019-Central Tax (Rate) dated 29-3-2019, the rate of GST applicable is 1.5% for affordable residential apartments and 7.5% for other than affordable residential apartments and the provisions of Paragraph 2 of the said notification apply for valuation of the service and accordingly one-third of the total amount charged for the supply is eligible as deduction as the value of transfer of land or undivided share of land involved in the supply in determining the taxable value irrespective of the actual value of land or undivided share of land.

F.3 A new tax structure for real estate sector was introduced with effect from 1-4-2019 onwards by amendment of Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 by Notification No. 3/2019-Central Tax (Rate) dated 29-3-2019.

The Notification CT(Rate) 03/2019 states that-

(ii) in the Table, -(a) against serial number 3, for item (i), and the entries relating thereto in column (3), (4) and (5), the following items and entries shall be substituted, namely, -

(3)	(4)	(5)
<p><b>(ic) Construction of affordable residential apartments by a promoter in a Real Estate Project (herein after referred to as REP)</b> other than RREP, which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p>	<p><b>0.75</b></p>	<p>Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only;</p> <p>Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;</p> <p>Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;</p>
<p><b>(id) Construction of residential apartments</b> other than affordable residential apartments by a promoter in a REP other than a RREP which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p>	<p><b>3.75</b></p>	<p>Provided also that where a registered person (landowner- promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, - (i) the developer- promoter shall pay</p>

		<p>tax on supply of construction of apartments to the landowner-promoter, and</p> <p>(ii) such landowner – promoter shall be eligible for credit of taxes charged from him by the developer promoter towards the supply of construction of apartments by developer- promoter to him, provided the landowner-promoter further supplies such apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer-promoter.</p> <p>Explanation. -</p> <p>(i) “developer- promoter” is a promoter who constructs or converts a building into apartments or develops a plot for sale,</p> <p>(ii) “landowner- promoter” is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.</p> <p>Provided also that eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only;</p> <p>Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person;</p> <p>Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 per cent., tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of eighteen percent on reverse charge basis and</p>
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		<p>all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both;</p> <p>Provided also that notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017), shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement; (Please refer to the illustrations in annexure III)</p> <p>Explanation. -</p> <ol style="list-style-type: none"> <li>1. The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.</li> <li>2. Notwithstanding anything contained in Explanation 1 above, tax on cement received from unregistered person shall be paid in the month in which cement is received.</li> <li>3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)].</li> </ol>
<p>(if) Construction of a complex, building, civil structure or a part thereof, including, -</p> <p>(i) commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP,</p> <p>(ii) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay central tax on construction of</p>	9	

<p>apartments at the rates as specified for this item in the manner prescribed herein, but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) above intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p> <p>Explanation. -For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry.</p> <p>(Provisions of paragraph 2 of this notification shall apply for valuation of this service</p>	
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#### F.4 The relevant entries at

Items (ic), (id) and (if) of Sl. No. 3 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 3/2019-Central Tax (Rate), dated 29-3-2019 reads as follows;

*"Heading 9954 - Construction services -*

*(ic) Construction of affordable residential apartments by a promoter in a Real Estate Project (herein after referred to as REP) other than RREP, which commences on or after 1 st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay integrated tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service).*

*(id) Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP which commences on or after 1 st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay integrated tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)*

*(if) Construction of a complex, building, civil structure or a part thereof, including, - (i) commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP, (ii) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay integrated tax on construction of apartments at the rates as specified for this item in the manner prescribed herein, but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) above intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*

**F.5** The rate of GST applicable for entry at item No. (ic) is 1.5% [0.75% - CGST + 0.75% - SGST], for the entry at item No. (id) is 7.5% [3.75% - CGST + 3.75% - SGST] and for the entry at item No. (if) is 18% [9% - CGST + 9% - SGST]. The above rate of GST is subject to the conditions mentioned therein.

The conditions that are common for the entry at item (ic) and (id) are as extracted below;

*"Condition : Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only : Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP :*

*Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable*



to construction in a project, time of supply of which is on or after 1st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP :

Provided also that where a registered person (landowner-promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer-promoter) against consideration, wholly or partly, in the form of construction of apartments, - (i) the developer-promoter shall pay tax on supply of construction of apartments to the landowner-promoter, and (ii) such landowner-promoter shall be eligible for credit of taxes charged from him by the developer-promoter towards the supply of construction of apartments by developer-promoter to him, provided the landowner-promoter further supplies such apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer-promoter.

Explanation. - (i) - developer-promoter is a promoter who constructs or converts a building into apartments or develops a plot for sale, (ii) landowner-promoter is a promoter who transfers the land or development rights or FSI to a developer-promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently :

Provided also that eighty per cent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only :

Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person :

Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 per cent., central tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of nine per cent on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both :

Provided also that notwithstanding anything contained hereinabove, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement;

Explanation. - 1. The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.

2. Notwithstanding anything contained in Explanation 1 above, tax on cement received from unregistered person shall be paid in the month in which cement is received.

3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4(D)(2)]."

And conditions for both the entries entry at item (if) are as extracted below;

"Condition : Provided that in case of ongoing project, the registered person shall exercise one time option in the Form at Annexure IV to pay integrated tax on construction of apartments in a project at the rates as specified for item (ie) or (if), as the case may be, by the 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; Provided also that invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised.";

**F.6** Para 4 of the Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 as amended by Notification No. 3/2019-Central Tax (Rate) dated 29-3-2019 provides the definition of the different terms used in the above entries. The relevant definitions are reproduced below;

(xiv) the term - apartment shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(xv) the term - project shall mean a Real Estate Project or a Residential Real Estate Project;

(xvi) the term - affordable residential apartment shall mean, -

(a) a residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.

For the purpose of this clause, -

(i) Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;

(ii) Gross amount shall be the sum total of; -

A. Consideration charged for the services specified at item (i) and (ic) in column (3) against sl. No. 3 in the Table;

B. Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sub lease; and

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.;

(b) an apartment being constructed 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 above, in respect of which the promoter has not exercised option to pay integrated tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be."

(xvii) the term - promoter shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

(xviii) the term - Real Estate Project (REP) shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(xix) the term - Residential Real Estate Project (RREP) shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent of the total carpet area of all the apartments in the REP.

(xxix) "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority.

**F.7** As mentioned in (xviii) the relevant clauses of Section 2 of the Real Estate (Regulation and Development) Act, 2016 which contains the definition of the terms; "apartment"; "promoter" and "real estate project" are reproduced below;

(e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.

(zk) "promoter" means, - (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or (ii) a person who develops land

*into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or (iii) any development authority or any other public body in respect of allottees of - (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its members or in respect of the allottees of such apartments or buildings; or (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or (vi) such other person who constructs any building or apartment for sale to the general public.*

*(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.*

**F.8.** On a plain reading of the entries at item (ic), (id) and (if) of Sl. No. 3 of the Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended by Notification No. CT(Rate) 03/2019 dated 29th March 2019 as extracted above, it is evident that the rate of GST has been prescribed under the entry at item (ic) applies to construction of affordable residential apartments, under the entry at item (id) applies to construction of residential apartments other than affordable residential apartments, and under the entry at item (if) applies to construction of complex, building, civil structure or a part including commercial apartments (shops, offices, godowns etc.) by a promoter in a real estate project other than Residential Real Estate Project (RREP) intended for sale to a buyer except where the entire consideration is received after issuance of completion certificate subject to certain conditions mentioned in the said notification.

**F.9.** On a conjoint reading of the above provisions of law, the facts as stated in the application, it is seen that the services of construction of affordable and other than affordable apartments under REP provided by the applicant fall within the description of services specified in serial no.(ic), (id) and (if) of Notification No. 3/2019-Central Tax (Rate), dated 29-3-2019 and accordingly the tax rates as prescribed in the said entries shall be applicable to the said services supplied by the applicant. Accordingly, the applicant is liable to pay GST at the rate of 1.5% [0.75% - CGST + 0.75% - SGST] in respect of the services of construction of affordable residential apartments as per entry at item No. (ic), at the rate of 7.5% [3.75% - CGST + 3.75% - SGST] in respect of the services of construction of residential apartments other than affordable residential apartments as per entry at item No. (id) and at the rate of 18% [9% - CGST + 9% - SGST] in respect of the services of construction of complex, building, civil structure or a part including commercial apartments (shops, offices, godowns etc.) as per entry at item No. (if) of Notification No. 3/2019-Central Tax (Rate), dated 29-3-2019 subject to the conditions prescribed under the respective entries.

**F.10.** The next question raised by the applicant is whether taxpayer can supply of Affordable residential apartments and residential apartments under REP conjointly. From the above discussion, it is clear that services provided by taxpayer is clearly fall under notification No. 03/2019 CT (rate) dated 29th March, 2019. As per the notification, residential apartment is bifurcated by the area and gross amount charged for the apartment, as below: -

*"(xvi) the term "affordable residential apartment" shall mean, -*

*(a) a residential apartment in a project which commences on or after 1 st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay integrated tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which*



the gross amount charged is not more than forty five lakhs rupees.

For the purpose of this clause, -

(i) Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;"

From the above, it is clear that the notification bifurcates affordable and non-affordable apartments by area and gross amount charge for the apartment. There appears no bar for a promoter to supply affordable residential apartments and residential apartments conjointly. The only thing is that the taxpayer has to pay the tax according to the size and gross amount charge for the apartment subject to the condition mentioned in the Notification No. CT(Rate) 03/2019 dated 29th March 2019.

F.11. Further, the taxpayer asked about eligibility of input tax credit which will be used in the course of business or for furtherance of business for Construction of Commercial apartments in a Real Estate Project (REP).

We find that Section 16 of the CGST Act, 2017 is in respect of eligibility and condition of taking input tax credit which is reproduced as under:-

**Section 16.** (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

*Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

*Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:*

*Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:*

*Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.*

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Further, we find that Section 17 of CGST Act, 2017 provides for apportionment of credit and blocked credit. It is pertinent to have a look at the relevant legal provisions under Section 17(5) of CGST Act. The same are given below:-

*(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—*

*(a)....*

*(b)...*

*(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;*

*(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.*

*Explanation.— For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;*

*.....*

*Explanation.—For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—*

*(i) land, building or any other civil structures;*

*(ii) telecommunication towers; and*

*(iii) pipelines laid outside the factory premises.*

According to section 16(1) of the CGST Act, 2017, every registered person is entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used by him in course or furtherance of his business. We further find that apart from conditions as laid down under Section 16 of the CGST Act, 2017, Section 17 ibid provides for restriction and factual position and situation where ITC would not be available.

Pursuant to the aforesaid legal provisions, it can be concluded that ITC is restricted in case of construction undertaken on his own account. Clause (d) restricts input tax credit of goods and services used by a person for construction of immovable property (except plant and machinery) on his own account. Thus, if a person purchases construction material and engages a labour contractor to provide the construction services using the purchased material, ITC shall not be available of both the goods purchase and the services of the labour contractor procured.

As per Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 (“the CGST Act”) no input tax credit (“ITC”) is available in respect of any goods or services received by the taxpayer for construction of immovable property on its own account even if inputs and input services are used in course or furtherance of business.

Further, Section 17 of the CGST Act talks about “Apportionment of credit and blocked credit”. According to Section 17(5)(d) of the CGST Act, ITC shall not be available in respect of goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. Further, the explanation stated in Section 17(5) of the CGST Act, the credit is also blocked with respect to reconstruction, renovation, addition, alterations or repairs which are capitalized in the books of accounts. Section 16 of CGST Act, 2017 defines the eligibility and conditions for taking input tax credit wherein section 17 of CGST Act, 2017 deals in apportionment of credit and blocked credits hence these sections must be treated simultaneously. Thus, input tax credit is not available for construction of immovable property on its own account even if inputs and input services are used in course or furtherance of business.



In view of the above discussions, we unanimously rule as under:

### RULING

Q1. Whether the following services provided by the supplier falls under Notification No. 03/2019 CT (rate) dated 29th March, 2019. GST Rate on supply of affordable and non-affordable apartments under REP?

Ans.1- Yes, services provided by the applicant falls under Notification No. 03/2019 CT (rate) dated 29th March, 2019. The applicant is liable to pay GST at the rate of 1.5% [0.75% CGST + 0.75% SGST] in respect of the services of construction of affordable residential apartments under Real Estate Project (REP) as per entry at Item (ic) and at the rate of 7.5% [3.75% - CGST + 3.75% - SGST] in respect of the services of construction of residential apartments other than affordable residential apartments under REP as per entry at Item No. (id) of Notification No. 3/2019-Central Tax (Rate), dated 29-3-2019 subject to the conditions prescribed under the respective entries.

Q2. Supply of Affordable residential apartments and residential apartments under REP conjointly.

Ans.2- The applicant may supply affordable residential apartments and residential apartments conjointly subject to fulfillment of conditions specified in Notification No.3/2019-CT(R), dated 29-3-2019.

Q3. GST Rate on supply of Construction of a complex, building civil structure or a part thereof, including, commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP.

Ans.3- The applicant is liable to pay GST at the rate of 18% [9% - CGST + 9% - SGST] in respect of the services of construction of complex, building, civil structure or a part including commercial apartments (shops, offices, godowns etc.) as per entry at Item No. (if) of Notification No. 3/2019-Central Tax (Rate), dated 29-3-2019 subject to the conditions prescribed under the said entry.

Q4. Eligibility of input tax credit which will be used in the course of business or for furtherance of business for Construction of Commercial apartments in a Real Estate Project (REP).

Ans.4- Reply is negative as per discussed in para F.11 above.

*MS*  
20/09/2024

(Mahipal Singh)

MEMBER

CENTRAL TAX

F. No. AAR/SF/2024-25/151-156



*O/C*

*WKG*  
20/09/2024

(Mahesh Kumar Gowla)

MEMBER

STATE TAX

Date: 23/09/2024

**SPEED POST**

To,

M/s CASTLE REALTORS,

Shop No 1,6, M/s Castle Realtors Parwani properties,

Ajay Nagar, AJMER - 305003, Rajasthan



**Copy to: -**

1. The Chief Commissioner, CGST and Central Excise (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan-302005
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005
3. The Pr.Commissioner, CGST and Central Excise Commissionerate, Jaipur, Rajasthan. *→ [Statue Circle] NCRB Building*
4. Assistant Commissioner, CGST Division-J, Ajmer, Rajasthan
5. Assistant commissioner State Tax Circle -B, Ward-II, AJMER Divisional Kar Bhawan, Rajasthan