

AUTHORITY FOR ADVANCE RULING, TAMILNADU
DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI -600 003.
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri B.Senthilvelavan, I.R.S., Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Thiru.Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A., Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No. 13 /ARA/2021 Dated: 28.04.2021

GSTIN Number, if any / User id		33AADCA9093P1Z4
Legal Name of Applicant		Ashiana Housing Limited
Trade Name of the Applicant		Ashiana Housing Limited
Registered Address / Address provided while obtaining user id		First Floor, Door No.10, G J Complex, First Main Road, CIT Nagar, Chennai-600035
Details of Application		Form GST ARA – 001 Application Sl.No.20/2020 dated 04.08.2020
Concerned Officer		Centre: Chennai South Commissionerate State:
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Works Contract
B	Description (in brief)	Developer of residential properties
Issue/s on which advance ruling required		1. Classification of services 2. Determination of the liability to pay tax on any services
Question(s) on which advance ruling is required		Whether the activities of construction carried out by the applicant for its customer under the Construction Agreement, being composite supply of works contract are appropriately classifiable under Heading 9997, and chargeable to CGST @ 9% under S.No.35 of Notification No.11/2017- CT(Rate) dated 28.06.2017.

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

Ashiana Housing Limited, First Floor, Door No.10, G J Complex, First Main Road, CIT Nagar, Chennai-600035(hereinafter called the 'Applicant') is registered under the GST Vide GSTIN 33AADCA9093P1Z4.They have sought Advance Ruling on the following question:

"Whether the activities of construction carried out by the applicant for its customer under the Construction Agreement, being composite supply of works contract are appropriately classifiable under Heading 9997, and chargeable to CGST @ 9% under S.No.35 of Notification No.11/2017- CT(Rate) dated 28.06.2017".

The Applicant has submitted the copy of application in Form GST ARA -01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The Applicant has stated that they are a company registered in India and are real estate developer. They have stated that the present application pertains to development of a residential project by them under a defined arrangement. In the said arrangement, they hold the development rights to develop a particular parcel of land. They enter into two agreements with their customer. The First agreement is an Agreement for Sale of undivided share in land (for short 'UDS') to the customer (for short 'UDS Agreement'). The Second agreement is an Agreement for Construction (for short 'Construction Agreement'), whereby the customer appoints the Applicant for construction of units on the said UDS. Such arrangement is under an umbrella 'Indenture of undertaking' (for short 'IOU') recording the understanding of both the UDS Agreement and Construction Agreement. On completion of the construction, a Sale Deed will be executed for sale of UDS to the customer, on which appropriate

Stamp Duty will be paid. The Construction Agreement is registered separately on payment of appropriate Stamp Duty.

2.2 On interpretation of law, the applicant has stated that the activities of construction carried out by them for their customer under the Construction Agreement on UDS agreed to be sold to the customer are classifiable as works contract service falling under Heading 9997, and chargeable to CGST @ 9% under S. No. 35 of Notification No. 11/2017-CT (Rate), dated 28.06.2017. The applicant has made references to Section 9, Section 7 and Schedule II of CGST Act 2017. They have stated that Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017 prescribes the rate of CGST payable on intra-state supply of services. Sl. No. 3 of this notification covers Heading 9954 (Construction Services) comprising of various activities. S. No. 35 of this notification covers Heading 9997 (being the residual heading) comprising, inter-alia, of services nowhere else specified.

2.3 The applicant has submitted that under the arrangement, they enter into UDS Agreement with customer for purposes of sale of UDS. As a result of UDS Agreement, there is a transfer of title in UDS to the customer, i.e. transfer of title in immovable property. Such transfer of title in immovable property is not chargeable to GST and is not a subject-matter of the present application. Vide the Construction Agreement, the customer appoints the Applicant for purposes of undertaking construction of the specified unit on the UDS agreed to be sold to the customer. They accordingly undertake construction activities for the customer. In the course of such construction activities, there is a transfer of title in goods (whether as goods or in some other form) from the Applicant to the customer. The activities carried out by the Applicant under the Construction Agreement are subject-matter of the present application.

2.4 They have stated that in the above background, the question arises as to what is the nature of activities undertaken by the Applicant for the customer. In this regard, they have made reference to the definition of 'works contract' under Section 2(119) of the CGST Act. They have stated that a contract for building or construction of any immovable property involving transfer of property in goods (whether as goods or in some other form) in the course of its execution, qualifies as 'works contract' under Section 2(119) of the CGST Act. In the instant case, they undertake activity of construction of unit, being immovable property, for the customer, which involves transfer of property in goods such as cement, steel,

mortar, etc. to the customer. Such activities of the Applicant answer the description of definition under Section 2(119) of the CGST Act and thus, qualify as 'works contract'. They have placed reliance on the judgement of the Hon'ble Supreme Court in the case of State of Madras v. Gannon Dunkerley & Co.(Madras) Limited, 1955 SCR 379.

2.5 The applicant has referred to 46th Constitutional Amendment Act, wherein a new clause (29A) was introduced in Article 366 of the Constitution. After the 46th Amendment, the works contract, which was an indivisible one, was altered, by a legal fiction created in Article 366(29A) (b), into a contract which was divisible into one for sale of goods and the other for supply of labour and services. Thus, it has become possible for the States to levy Sales Tax on the value of goods involved in a works contract in the same way in which the Sales Tax was leviable on the price of the goods and materials supplied in a building contract which had been entered into in two distinct and separate parts. They have also referred to the following case laws

- Hon'ble Supreme Court in K Raheja Development Corporation v. State of Karnataka, 2005 (5) SCC 162 wherein the apex court held that such building contracts are works contract by nature
- Hon'ble Supreme Court in Larsen & Toubro Limited v. State of Karnataka, 2014 (303) ELT 3 (SC) held that works contracts also include building contracts and therefore without any fear of contradiction it can be stated that building contract are species of works contract.
- Hon'ble Punjab & Haryana High Court in CHD Developers Limited v. State of Haryana, 2015 (81) VST 344 (P&H) held that the activities of construction have all attributes, elements and characteristics of works contracts though essentially it may be a transaction of sale of flat.

2.6 They have stated that it is evident from the above case laws that there is a transfer of property in goods (whether as goods or in some other form) from the applicant to the customer in the course of execution of construction activities by the applicant. Such activities of the applicant qualify as 'works contract', as defined in Section 2(119) of the CGST Act. The activity of works contract is, by nature, a composite supply comprising of transfer of property in goods and provision of services in the form of construction, building etc. By virtue of deeming fiction under Clause (a) of Paragraph 6 of Schedule II, the composite supply of works contract is treated as a supply of service. In other words, while works contract, by nature, is a

composite supply, it is treated as supply of services for purposes of the CGST Act. Further, in respect of the appropriate classification of the said supply so as to determine the appropriate rate of GST payable thereon, they have referred to the Heading No. 9954, Sl. No. 3 of Notification No, 11/2017-CT(R), dated 28.06.2017 and stated that the description of service corresponding to this heading in Column 3 of table therein refers to services of different nature in various clauses from Clause (i) to (xii). They have stated that the Scheme of Heading No. 9954, Sl. No. 3 clearly distinguishes supply of construction services from composite supply of works contract. Clause (i) to Clause (if) refer to various specified construction services, Clause (iii) to Clause (X) refer to various specified composite supplies of works contract; clause (xi) refers to certain specified services by way of housekeeping; Clause (xii) is a residual clause referring to construction services other than those covered under earlier clauses.

2.7 The applicant has made reference to Clause (i), which covers construction of affordable residential apartments by a promoter in a Residential Real Estate Project, subject to certain conditions, 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 and stated that this clause is similar to Clause (b) of Paragraph 5 of Schedule II to the CGST Act. The next clauses, being Clause (ia), (ib), (ic), (id), (ie) and (if) are worded in similar manner. Similar is the case with residual Clause (xii), which also covers only construction services. In distinction to the aforesaid clauses, Clause (iii) refers to certain specified composite supplies of works contract, as defined in Section 2(119). The next clauses, being Clause (iv), (v), (va), (vi), (vii), (viii), (ix) and (x) are worded in similar manner. The difference in the aforesaid clauses, i.e. [a] from Clause (i) to Clause (if) & Clause (xii) and [b] from Clause (iii) to Clause (x), thus lies in the nature of supplies covered therein. While the first category covers plain supplies of construction (not being composite in nature), the second category covers only composite supplies of works contracts. This is particularly evident from Clause (va), which covers composite supply of works contract supplied by way of construction etc. of affordable residential apartments. As noted, Clause (i) to Clause (if) & Clause (xii) also refer to construction of affordable residential apartments; however, reference to affordable residential apartments in Clause (va) is limited in its scope to composite supply of works contract. The evident conclusion from the above discussion, thus, is that the coverage of Clause (i) to

Clause (if) & Clause (xii) is limited to plain supply of specified construction services (not being composite in nature), while the coverage of Clause (iii) to Clause (x) extends to composite supplies of works contract. To substantiate above, they have referred to Schedule-II to the CGST Act, which specifies activities, which will be treated as supply of either goods or services. Clause (b) Paragraph 5 of Schedule II treats construction of complex as a supply of services. The purpose of this is to avoid any kind of confusion, which had been prevailing jurisprudentially. Further, Paragraph 6 refers to certain composite supplies; it establishes that the scope of Paragraph 5 does not extend to cover composite supplies.

2.8 In view of the above, the applicant has submitted that the supplies made by them are composite supplies of works contract. The said supplies cannot be classified under Clause(i) to Clause(if) & Clause (xii) of Sl. No. 3 of the cited notification as it is limited to supply of specified construction services (not being composite in nature), while the coverage of clause (iii) to clause(x) extends to composite supplies of works contract, if at all their supplies are covered under Clause (iii) to (x), the scope of the clause is limited to works contract of specified nature, which does not cover the supplies made by them. Also Clause (xi) refers to housekeeping services, which is not relevant to their case.

2.9 The applicant has also submitted that Clause(i) to Clause(if) of Sl.No.3 of the Notification which refers to various construction services, wherein the Promoter/ Developer constructs apartments in a project, intended for sale to buyer. The requirement for construction of apartments intended for sale to buyer is inherent for classification under Clause (i) to Clause (if) of S. No. 3 of the notification. This is also evident from Clause (b) of Paragraph 5 of Schedule II, which also mandates that the construction of complex must be intended for sale to the buyer. Similarly, Clause (xii) refers to construction services, in contrast to composite supplies of works contract. They have also submitted that, in the instant case, the UDS has already been agreed to be transferred by them to the buyer. The construction undertaken by them thereafter, thus, is on the UDS agreed to be sold to the buyer. In such a case, though the applicant undertakes construction for the buyer, there is no question of construction of apartment being intended for sale to the buyer, in as much as the apartment belongs to the buyer only pursuant to sale of the UDS. For this reason, also the activities of construction by the Applicant cannot be covered under Clause (i) to Clause (if) & Clause (xii) of Sl. No. 3 of the notification.

2.10 In view of the aforesaid submissions, they have submitted that the supplies made by them under the Construction Agreement are classifiable under Heading 9997, Sl. No. 35 of Notification No. 11/2017-CT (Rate), dated 28.06.2017, which covers other miscellaneous services nowhere else specified and the applicable rate of CGST being 9%.

3.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the appellant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing for admission of the application was held on 10.12.2020. The authorised representative participated in the hearing and stated that the project is yet to be undertaken. He stated that the activity is a construction service and it is a works contract. They undertook to furnish a synopsis on the submissions made. They were asked to furnish the details of:

- i. Specific residential project for which ruling is sought.
- ii. When the service supplied is one of 'Construction' as a 'Works contract' a write-up on as to how they interpret their services not falling under SAC 9954.
- iii. Sample copies of live agreements from similar projects.

3.2 The applicant vide their letter dated 14.12.2020 furnished the following documents:

- Written submissions, wherein inter-alia they stated that
 - The applicant has launched a senior-living gated community project called 'Ashiana Shubham' in Maraimalai Nagar Chennai by acquiring development rights from Escapade Real Estate Pvt Ltd (Landowner) back in 2014. The project is divided in the 5 phases. phase I was completed in pre-GST regime, Phase II completed in GST regime, Phase III commenced prior to 01.04.2019 and is scheduled to be completed in 2022. Phase IV is scheduled to be launched soon and Phase V will be launched in future. All the phases of Ashiana Shubham qualify as Residential Real Estate Project (RREP).
 - They are seeking Advance Ruling in respect of its future Phase IV and V of the project 'Ashiana Shubham'. As regards Phase I to Phase III they have been complying with legal requirements and remitting the

applicable taxes on the construction services rendered to customers in respect of the said phases.

- The Modus operandi they intend to follow in respect of Phase IV and V of the project for provisions of construction services to customers is as follows:
 - They will enter into a tripartite IOU with all their prospective customers wherein the customer will agree to enter into an Agreement for purchase of Undivided interest/share in the land(UDS) from the landowner and the Applicant in their capacity of Power of Attorney(PAO) holder and a subsequent Construction Agreement will be executed with the Applicant
 - Pursuant to IOU, UDS agreement will be executed between the Applicant, landowner and customer wherein the landowner will agree to sell UDS proportionate to the residential unit sought to be owned by the customer in the real estate project & the customer will further agree to purchase such UDS from the land owner
 - Further, the customer will also enter into a 'construction agreement' with the applicant, appointing the applicant to construct the residential unit on the acquired UDS. The landowner will not be a party to this agreement
 - The tripartite IOU, tripartite UDS Agreement and Construction Agreement will be executed only subject to the customer paying 10% of the total consideration for owning a residential unit in the real estate project
 - Lastly a Sale Deed for the sale of the UDS by the Landowner to the customer will be executed prior to handing over possession of the developed residential unit
- Sample copies of the proposed agreements and contracts were enclosed along with the application and a Sample copy of the similar agreements entered with the customers for the earlier phase is enclosed
- On the question sought to be answered, they have stated that the application has been filed for determining the appropriate classification and corresponding rate of tax payable towards the activities of construction proposed to be carried out by them for prospective customers in Phase IV and V of the Project

- On the Nature of Supply they have stated that their understanding is that the activities proposed to be undertaken by them constitutes a composite supply of works contract which is not a contract for services simpliciter; The activities of works contract is, by nature, a composite supply involving both goods and services and by virtue of the deeming fiction under Clause (a) of Paragraph 6 of the Schedule II, the composite supply of works contract is treated as a supply of service under GST.
- On their understanding on the classification of their supply, they have stated that the Entries of Rate Notification pertaining to Composite supply of works contract are specific in nature and Applicant's supply does not fall under any of those entries. They have tabulated clauses (iii) to (x) of Sl.No. 3 of Heading 9954 pertaining to various specified composite supplies of works contract and demonstrated how they do not apply to them
- There is no other entry in the Rate Notification which mentions works contract and, in such scenario, their supply would be classifiable under residual entry heading 9997 and chargeable to CGST @ 9% under Sl. No. 35 of the Rate Notification
- The composite supply of works contract is not classifiable under Heading 9954, clause (i) to (if) or (xii) against S.No.3 These entries are specific to construction services and do not intend to take within its scope those contracts involving composite supplies of both goods and services. It is for this reason that the GST Act and the Rate Notification distinctly recognize pure services of construction vis-à-vis composite works contracts. Therefore, once it is apparent that the activities proposed to be performed by them qualifies as a 'Works Contract' and is not a contract for construction service simpliciter, clause (i) to (if) or (xii) against Sl.No. 3 of Heading 9954 are inapplicable.
- Further, since separate sale of Land and Construction agreements are entered, the transaction is not a "Construction of building intended for sale" and rather is a works contract of construction for the Customer
- Thus, in summary,
 - clauses(i) to (id) deals only with Construction and whereas the present case is one of the Works Contract and also the said clauses deal with Construction intended for sale whereas, the

present transaction is a Construction for the Customer and consequently not applicable to the present case

- For clauses (ie) and (if) deals with again mere Construction and also it deals with ongoing projects which has commenced before 31.03.2019 and accordingly not applicable to the present case
- For clauses (iii) to (ix) deals with specific works contract transaction which do not cover construction of the apartments accordingly not applicable to the present case
- Clause (xii) deals with mere construction service and not a works contract service and consequently this clause also do not apply
- The services proposed to be rendered to customers in respect of Phase IV and V qualifies as a composite supply of works contract service which is classifiable under Heading 9997 and chargeable to CGST @9% under Sl. No. 35 of the Rate Notification since it is not covered in any of the clauses in S. No. 3 of the Rate Notification under 9954
- Acknowledgement receipt of submission of application to Tamilnadu RERA
- Director of town planning approval for Phase IV
- Indenture of understanding entered with the customer
- Agreement for sale of UDS entered with the customer
- Construction agreement entered with the customer
- Sale deed for the sale of the UDS entered with the customer

4. The applicant is under the administrative control of the Central Jurisdiction. The central jurisdictional authority has submitted that there are no proceedings pending in the case of the applicant. They had offered the following remarks in respect of the issue raised by the applicant in their application.

- As per Sl.No.3 of Notification 11/2017 Central Tax (Rate) as amended "Construction Services" are classified under heading No.9954 and further divided into (i) (ia) (ib) (ic) (id) (ie) and (if) attracting different rates of GST depending upon the types of the projects. Further para 2 of the said notification explains how the valuation of the supplies under these categories is to be arrived at and as per which in case of supply of service specified in column (3) in item (i), (ia), (ib), (ic), (id), (ie) and (if) against Sl.No.3 of the above notification, involving transfer of land or undivided share of land, as the case may be and the value of such transfer of land or undivided share of land, as

the case may be in such supply shall be deemed to be one third of the total amount charged for such supply.

- Sl.No.35 of the aforementioned notification, under which the applicant sought to classify their services, covers the categories "Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified) attracting GST @9%.
- As the supplies for which the applicant has sought advance ruling is squarely covered under SL.No.3 of the said notification under heading 9954 which is further subdivided into different categories attracting different rates of GST depending upon the types of projects, the plea of the applicant to classify their service under Heading 9997 under Sl.No.35 may not be acceded to.

5. The State jurisdictional authority has not furnished any comments and it is construed that there are no proceedings pending on the issue raised by the applicant.

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral submissions made at the time of Virtual hearing, submissions subsequent to the hearing and the comments of the Jurisdictional Authority. The applicant is a real estate developer who has launched a senior-living gated community project called 'Ashiana Shubham' in Maraimalai Nagar Chennai by acquiring development rights from Escapade Real Estate Pvt Ltd (Landowner) back in 2014. The project is divided in the 5 phases. Phase I was completed in pre-GST regime, Phase II completed in GST regime, Phase III commenced prior to 01.04.2019 and is scheduled to be completed in 2022. Phase IV is scheduled to be launched soon and Phase V will be launched in future. It is stated that they have initiated the process of acquiring the necessary approvals from Tamil Nadu RERA, required for launching Phase IV and the applicant has furnished the acknowledgement receipt of submission of application to Tamilnadu RERA dated 19.10.2020 and the Director of Town Planning's approval for Phase IV. The applicant has sought ruling in respect of its future Phase IV and V of the project 'Ashiana Shubham' on the following question:

"Whether the activities of construction carried out by the applicant for its customer under the Construction Agreement, being composite supply of works contract are appropriately classifiable under Heading 9997 and

chargeable to CGST @ 9% under S.No.35 of Notification No.11/2017- CT(Rate) dated 28.06.2017".

The ruling is sought on the classification and the applicable rate for the proposed supply and therefore the application is admissible under Section 97 of the GST Act, before this Authority.

7.1 The applicant has stated that they propose to enter into a tripartite Indenture of Understanding ('IOU') with the Land Owners & the prospective customers, wherein the customers will enter into an agreement for purchase of undivided share(UDS) in the land from the landowner & the applicant (in the capacity of holder of Power of Attorney) and a construction agreement with the applicant(Construction Agreement) subject to payment of 10% of the total consideration for owning a residential unit in the real estate project developed by them. Finally, a sale deed will be executed for the proportionate undivided share of land by the Landowner to the customer prior to handing over possession of the developed residential unit which will be registered on payment of appropriate stamp duty along with the construction agreement entered by the buyer with the applicant for construction of the Unit. The applicant has furnished the acknowledgement issued by TNRERA for their application under the RERA Act; letter of approval for Phase IV by the Town Planning authorities, sample copies of the proposed agreements and contracts (along with the application) and sample copy of the similar agreements entered with the customers for the earlier phases.

7.2 The letter of approval and the application for RREP in respect of Phase IV of the project is furnished before use to establish that they propose to undertake the said project and therefore, the ruling is restricted to Phase IV proposed to be launched by the applicant as no such documents are placed before us in respect of Phase V, which they had stated will be launched in future. On going through the proposed IOU, UDS agreement, Construction Agreement and sale deed, the following are seen:

Agreement for sale:

- The Land Owner, The Developer and Buyer/s are the parties to the agreement
- Clause J- According to the prevailing laws in the State of Tamilnadu, any person desirous of owning a Unit in the Project is required to purchase undivided interest/share in the land and for the same purpose, such person requires to enter into an agreement for sale for purchase of un-divided share

in land(UDS) along with a right to put up construction by entering into Construction Agreement with the Developer and the Land Owner

- Clause L- The Buyer herein is desirous of purchasing_____ of Undivided share in phase....land and the Land Owner and the Confirming Party has agreed to sell to the Buyer____ of undivided share in Phase____ Land more fully described in the Schedule B hereof free from all encumbrances so as to enable the Buyer to get a Unit Constructed as per the Scheme formulated by the Developer, subject to the terms and conditions herein contained;
- Clause O- Simultaneously with the execution of this Agreement, the Buyer is required to execute a Construction Agreement for construction of the Unit on the undivided share in Phase ____ Land. The terms and conditions set out therein would be read as part and parcel of this Agreement
- Article 1.1 Construction Agreement shall mean the agreement to be executed between the Buyer and The Land Owner and the Developer simultaneously with this Agreement relating to the construction of a corresponding Unit on undivided share in Phase____ land being part/portion of the Phase____ Land wherein the project is being proposed and more particularly described in Schedule B.....
- Article 2.2- The consideration shall be paid by the Buyer as and in the manner set out in Part II of Schedule C ; Part II of the Schedule "C" gives the following particulars:

Particulars	UDS	Const Cost	Amount in Rs.
At the time of Booking			
Within 45 days of Booking			
Total Price			

- Article 3.1- The time is the essence with respect to the Buyer's obligation to pay the consideration as provided in Part II of Schedule C along with other payments and other charges stipulated under this agreement to be paid on or before due date or as and when demanded by the Developer as the case may be and also to perform or observe all other obligation of the Buyer under this Agreement
- Article 3.7- Cancellation/Termination of this Agreement for Sale of Undivided Share in the Phase____ land would automatically deem

cancellation/Termination of Construction Agreement, to be entered into with the Developer and the Land Owner..... The Buyer/s shall not have any right to seek specific performance of this agreement alone, as it would affect the scheme of construction formulated by the Developer and on such on such cancellation/termination, the rights of the Buyer in this Agreement and/or the Construction Agreement shall vest with the Developer and/or the Land Owner..

- Article 4.1 The Land Owner and the Developer agree to execute this Agreement along with Construction Agreement with Buyer and Buyer is obliged to register both the agreements with the sub-registrar office as and when called upon by the Land Owner and/or the Developer to do so and shall be solely
- Article 4.7 – Upon complete compliance of all the terms and conditions of this Agreement including Construction Agreement, the Developer shall duly hand over physical and vacant possession of the Unit to the Buyer/s by way of separate letter of handing over of possession
- Article 6.2- The Buyer/s shall simultaneously enter into a Construction Agreement with the Land Owner and the Conforming Party along with this Agreement for sale executed by the Conforming Party and the Land Owner. The Buyer shall have no right to enter into construction agreement with any person other than the Conforming Party

Construction Agreement:

- The Developer and the Buyer are parties to the Agreement
- Clause K – The Developer have informed the Buyer that according to the market practice in Chennai, Tamilnadu and as per the prevailing laws in the State of Tamilnadu any person desirous of owning a Unit in the Project is required to enter into an agreement for un-divided share in land (UDS) with the Land Owner and enter a Construction Agreement separately with the Developer for construction of the Unit. Further the Buyer are also required to execute and get Construction Agreement and Sale Deed for Proportionate undivided share in land registered as and when called upon by the Developer and/or Land owner to do so
- Article 1.18- “Project” shall mean housing project known as “_____” to be developed on the phase__ land comprising of all the Units/flats, Parking facility, etc constructed/to be constructed in several buildings on the Phase__ Land

- Article 1.19 "The Building Plan" shall mean the plans and designs of buildings constructed/to be constructed on the Project Land which has been duly approved/to be approved by the authority including any variations therein which may subsequently be made by the Developer and/or Architects
- Article 1.21 "Unit" shall mean the flat to be constructed.....
- Article 2.1 The Developer shall develop and construct Project comprising of several Units, parking facilities and other common facilities in accordance with the master plan/layout plan/map/drawings sanctioned by the Competent Authority(ies) under the name and style of _____
- Article 10.1 The Developer has nominated and/or appointed _____ as the Management Agency for operation, maintenance and management of the common areas and for providing common and essential services in _____ and for organizing activities for the residents in _____
- Article 10.4 For the purpose as detailed in Para 10.1 and 10.3 above, the Buyer agrees to enter into a separate operation and management agreement with the Developer or its assignee which would clearly spell out scope and schedule of management works, operation of the services and charges for operation and management and charges towards capital repairs and replacements etc
- Article 11.1 The Buyer agrees to pay, at the time of possession, a reducible interest free management deposit to be determined or fixed by the Developer from time to time, to the Developer or its assignee.....
- Article 13.1 The Buyer agrees to become a member of the _____ Owners' Association (as and when formed) and abide by the rules of the Association. If the Developer and/or the Land Owner decide not to form a new association for _____ under such circumstances the Buyer shall become member of the existing "_____". In this regard the decision of the developer shall be final and binding. The Buyer agrees to pay any fees, subscription charges etc for membership of the association and to complete such documentation and formalities as may be required and deemed necessary by the Developer for this purpose

Indenture of Understanding

- The Developer, Confirming Party and the Buyer are parties to the agreement
- Clause M The Developer has informed the Buyer that according to the market practice in Chennai, Tamilnadu and as per the prevailing laws in the State of Tamilnadu any person desirous of owning a Unit in the Project is required to

enter into an Agreement for un-divided share in land (UDS) and a Construction Agreement separately with the Developer and/or Confirming party simultaneously with this IOU. Further the Buyer are also required to execute and get Construction Agreement and Sale Deed for Proportionate undivided share in land registered as and when called upon by the Developer and/or Land owner to do so

Sale Deed:

- Executed by the Land Owner and Developer/Confirming Party in favour of the Buyer
- Article 1.4 – “Undivided Share in Land(UDS)” shall mean the proportionate undivided share in _____ land more particularly described in Schedule”_” as annexed herewith
- Article 1.5 – “Project” shall mean a theme based Senior Living Project being developed in _____ Land comprising of several Units, Parking facility, etc to be developed in a phased manner under the name and style of “_____”
- Article 1.6 Construction Agreement shall mean the registered agreement executed between the Buyers, the Developer and the Land Owner herein which relating to the construction of a corresponding Unit on undivided share.....
- Part II (e) – Both the Developer/Confirming Party and the Land Owner herein obtained Planing Permit from the Commissioner, _____, vide its _____ bearing _____ of the Project Land for development of a group housing project
- Part II (l) Whereas the Buyer have entered into a Construction Agreement with the Confirming Party to construct the unit for the Buyer and the said Construction Agreement is executed on __ duly registered the same on _____ vide Doc. No. _____ in the office_____

7.3 From the above, it is seen that the applicant is a developer of Residential Real Estate Project for which he has sought the necessary approvals with the relevant authorities. The applicant as a POA of the Land Owner, along with the Land Owner enters into ‘Agreement for Sale’ and ‘Indenture of Understanding” with the prospective buyer of a Unit of the developed Project and enters into a ‘Construction Agreement’ with such buyer exclusively. By the clauses of the Construction agreement, it is evident that the prospective buyer does not have a choice to enter into a construction agreement with anyone other than the applicant, i.e., the

developer of the project, who undertakes the Construction of the 'Units' and the infrastructure proposed for the project. Thus, it is clear and evident on all fours that the activity of the applicant is construction of a Residential Real Estate Project with the infrastructure as approved by the Tamilnadu RERA and the District Town Planning authorities. The applicant enters into construction agreement with the buyers for their 'Units' in the proposed project along with the agreement for sale and IOU. Thus, the Construction agreement entered into by the applicant with the prospective buyer is not a stand-alone agreement under which the applicant makes the supply to the customer. The various clauses of the different agreements entered into with the prospective buyer of a 'Unit', mentioned supra establishes that the applicant constructs the Residential Real Estate Project(RREP); they enter into a construction agreement of a 'Unit' of the said project with the prospective buyer of the said unit along with the agreement for sale, i.e., the construction agreement has been entered into for the 'Unit' with the agreement to sell the same and therefore, there is no merit in the claim of the applicant that the construction of the 'Unit' undertaken by them is not 'intended for sale'. Having established that the construction of the 'Unit' as per the agreements entered into by the applicant with the prospective customer, is to construct the 'unit', which is a part of the RREP developed by them and the construction is undertaken for 'intended sale' before the issue of completion certificate, the activity is a supply taxable under 'GST.

8.1 This being the fact, the contentions of the applicant that the activity proposed to be undertaken by them under the 'Construction agreement' entered in respect of the 'Unit' of the prospective buyer constitute a composite supply of works contract are taken up for consideration. They submit that the said activity will involve transfer of property in goods such as cement, steel, mortar etc to the customer and that the residential unit would qualify as an immovable property without doubt. Thus, they contend that the activity of works contract is by nature a composite supply involving both goods and service which is a *sine qua non* for a works contract and hence the subject activity is not a contract for services simpliciter. Further they submit that the subject activity would not fall under any of the description of the entry Sl. No. 3 corresponding to the Heading 9954 of the Notification no.11/2017-Central Tax (Rate) dt. 28.06.2017 and therefore would merit classification under the residuary entry, Heading 9997 and will be chargeable to CGST @9% under Sl.No.35 of the said Notification.

8.2 It is clear that the applicant is the developer of the project and is undertaking the construction of 'Group Housing Project' approved as 'Residential Real Estate Project'. As per the market practice in Chennai, Tamilnadu, the applicant enters into an 'agreement for Sale'; 'Construction Agreement'; 'Indenture of Understanding' and 'Sale Deed' with the buyer of 'Unit' of the Project. When a supply made by the provider to the receiver is based on more than one agreement, all such agreements are to be considered in a wholesome way to understand the intention of the supply made to the receiver and each agreement cannot be lineated and considered, as handed down by various Juris prudence. As stated by the applicant, in the case at hand, the Modus proposed to be followed is to enter into an agreement for sale and a construction agreement, both covered under an IOU all executed simultaneously, followed by registration of 'sale deed' executed for the UDS and 'construction agreement' for construction of the 'Unit'. The contention of the applicant is that

- they are providing 'Composite supply of Works Contract' which is a 'composite supply treated as service' under GST as per Para 6(a) of Schedule-II of the Act and not a 'construction Simpliciter' to the 'Unit' buyer
- Para 5(b) of Schedule II to the Act treats construction of complex as a supply of services while Para 6 refers to composite supplies and treats the same as supply of service, which establishes that the scope of Para 5 does not extend to cover composite supplies, i.e., any composite supply is not covered under Para 5 of Schedule II and
- the description of services against sl.no. 3 of Notification No. 11/2017-C.T.(Rate) as amended by Notification no. 3/2019, which describes the services covered under SAC 9954, does not cover the activity undertaken by them and therefore the services are classifiable under SAC 9997 and the applicable rate of tax is as per Sl. No. 35 of the Notfn ibid.

8.3 The relevant statutory provisions are examined as under:

Section 2(119) of the GST Act 2017 defines 'Works Contract' as

"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"

Composite Supply is defined under Section 2(30) of the GST Act as follows:

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any

combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply; Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

As per Schedule II to the Act, which provides whether the supply is to be treated as a 'Supply of Goods' or 'Supply of Service', under

Para 5(b) states as follows:

5. Supply of services

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 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.

Para 6(a) states as follows :

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

From the above, Construction including a complex or building intended for sale to a buyer wholly or partly where the entire consideration is not received by the service provider after issuance of completion certificate for such building is stated as a supply of service as per Para 5(b) above.; Composite supply which involves supply consisting of two or more taxable supplies of goods or services or both or any combination thereof which are naturally bundled and when such supply is a 'Works contract' as defined in clause (119) of Section 2, it is to be treated as 'Supply of Service' as per Para 6 (a) above

8.4 The applicant relying on the decisions of the Hon'ble Supreme Court based on the taxation provisions that existed in the Pre-GST Era, has contended that any building contract is a works contract as held by the Courts and claim that the supply made by them to the 'Unit' buyer is a 'Composite Supply of Works Contract' as identified at Para 6(a) of Schedule-II and that Para 5 of Schedule -II does not cover Composite supplies. It is pertinent to note that the 46th amendment to the Constitution, which introduced 366(29A), created a legal fiction by which a contract was divisible into one for sale of goods and it was possible for the States to levy Sales Tax on the value of goods involved in a works contract. In the GST Law in order to avoid disputes, certain supplies were designated as supply either of goods or of

service in Schedule-II of the Act, which initially included 'Works Contract' and 'Supply of food...' . To avoid any legal challenge, works contract and restaurant which were treated as deemed sale of goods under Article 366(29A) of the Constitution, were decided to be considered as composite supply on which all provisions relating to services shall apply. This is clear from the following trail of decisions in the GST Council Meetings.

Minutes of the 5th GST Council Meeting, extracted below:

Section 3 (2) (Meaning and scope of supply): The Hon'ble Minister from West Bengal suggested that under Article 366 (29A) of the Constitution, works contract and restaurant were treated as deemed sale of goods whereas in the Draft Model GST Law, they were treated as supply of services as per paragraph 5 (f) and 5 (h) in Schedule II. He observed that this could lead to legal challenge. Commissioner (GST Policy Wing), CBEC clarified that this issue had been referred to the Union Law Ministry for clarification and if they suggested to keep these two categories of supply as that of goods, entry in Schedule II could be modified accordingly. Joint Commissioner, Commercial Taxes, West Bengal suggested that in order to avoid any legal challenge, these two categories of supply could be considered as composite supply on which all provisions relating to services shall apply. The Council agreed to this suggestion

Minutes of the 7th GST Council Meeting, extracted below:

xxxvi. **Schedule II (Matters to be treated as supply of goods or services):** The Secretary to the Council explained that in order to avoid dispute, in this Schedule, certain supplies were designated as supply either of good or supply of service. The CCT Gujarat pointed out that in the 5th Council meeting held on 2-3 December 2016, it was decided that supplies of works contract (Clause 5(f) of Schedule-II) and restaurant (Clause 5 (h) of Schedule-II) shall be treated as composite supply on which all provisions relating to services shall apply. He therefore suggested to revisit the need for Clauses 5(f) and 5(h) of Schedule II. The Council agreed to the suggestion and approved the rest of the Schedule.

Minutes of the 10th GST Council Meeting, extracted below:

(ii) To amend Section 3(2)(b) of the Model GST Law by adding a new Clause 6 in Schedule II (as indicated below in underlined portion in italics) and to delete the existing sub-clauses 5(f) and 5(h) of Schedule II of the Model GST Law:

6. The following composite supplies shall be treated as a supply of services-

(a) works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; and

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or

any drink (other than alcoholic liquor (or human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

From the above, it may be seen that 'Works Contracts' were subjected to Sales Tax on the Value of Goods involved in the works and on the labour and Service portion of the same contract, service tax was levied in the Pre-GST Era. These very contracts are treated as supply of service in the GST Era. Going by the extracts of the Minutes of the council meetings above, it is evident that the carve out of Para 6 of Schedule II to the Act was only to avoid any legal challenge in view of the same types of contracts considered for taxation under the provisions of Laws under PRE-GST and under GST. This, in no way can be said to establish that Para 5 does not extend to cover composite supplies as claimed by the applicant and this contention holds no merit. For these reasons, the decisions relied upon by the applicant do not have relevance to the proceedings in hand.

8.5 In the case at hand, the applicant supplies the prospective buyer, the construction service of the 'Unit' intended for purchase by the buyer in the RREP being developed/ constructed by the applicant and the contract, i.e., the construction agreement is entered into for construction of the said 'Unit' of the project developed by them. Undoubtedly, construction involves goods such as cement, steel, mortar etc as stated by the applicant and for this very reason, 'Construction of a complex or building or a part...' is specifically mentioned to be treated as 'Supply of Service' under Para 5 (b) of the Schedule-II of the ACT. Thus, in the facts of the case, the applicant being a Promoter of the approved RREP, the construction of a 'Unit' in the said RREP is an activity of Construction of part of the building with the intention for sale.

8.6 Coming to the classification of the service, the Scheme of Classification of Services under GST is as per the Annexure to Notification No. 11/2017-C.T.(Rate) and the applicable rates of GST are provided in the 'Table' of the Notification No. 11/2017-C.T.(Rate) which is based on the description of service given in Column (3) corresponding to the Heading specified in Column (2) of the Table of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended. 'Works contract' is not defined as a separate service in the Annexure to the Notification No. 11/2017-C.T.(Rate) but the service descriptions at Column (3) mentions 'Composite supply of Works Contract' in many of the entries. The classification of service may be Construction, erection, commissioning, etc of the immovable property and the contract for

execution may be a works contract, in which, while providing the service, there is a transfer of property in goods. The mode of supply does not determine the classification of Service. Classification of Service is to be done based on the Scheme of Classification and we find no reason to agree to the contention of the applicant that the service provided by them is not classifiable under SAC 9954. Heading 9954 covers all construction services and the same is as follows:

Annexure: Scheme of Classification of Services			
S.No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
1	Chapter 99		All Services
2	Section 5		Construction Services
3	Heading 9954		Construction services
4	Group 99541		Construction services of buildings
5		995411	Construction services of single dwelling or multi dwelling or multi-storied residential buildings
6		995412	Construction services of other residential buildings such as old age homes, homeless shelters, hostels and the like

The applicant contends that their activity is classifiable under SAC 9997, which is falling under Section 9 which constitutes activities relating to community, social and personal services and other miscellaneous services. SAC 9997 is as follows:

559	Section 9		Community, social and personal services and other miscellaneous services
700	Heading 9997		Other services
716	Group 99979		Other miscellaneous services
717		999791	Services involving commercial use or exploitation of any event
718		999792	Agreeing to do an act
719		999793	Agreeing to refrain from doing an act
720		999794	Agreeing to tolerate an act
721		999795	Conduct of religious ceremonies or rituals by persons
722		999799	Other services nowhere else classified

From the above, it can be seen that Heading 9954 under Section 5 of the scheme of classification covers 'Construction Services' and is a specific entry. Heading 9997 under Section 9 of the Scheme of classification covers 'Other services-Other Miscellaneous service' and in that Section, SAC 999799- other services nowhere else classified would naturally hold services in relation to the main heading which is community, Social or personal services. In the case at hand, the applicant develops RREP along with all the infra structures and constructs the 'Units' of the RREP, i.e., construction of single /multiple dwelling unit and as such it clearly falls under construction services and the contention of the applicant to classify the same under 9997 is thus not entertainable and not tenable under law. Further it may be noted that even when a service is capable of differential treatment for any purpose based

on its description, the most specific description shall be preferred over a more general description. In the case at hand, the most specific description being construction services, the subject activity falls under the SAC 9954 and therefore, the classification of service is 'Construction Service' only, for the purpose of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended.

8.7 In view of the above, we hold that, the supply of service of construction of a 'Unit' in the RREP- Phase IV, based on the 'Construction agreement' entered into by the applicant, engaged in the Development of the said RREP, with the prospective buyer intended for sale to the buyer, is a 'Supply of Construction service' and the classification of the service as per the 'Scheme of Classification of Service' is 'Construction Service under SAC 9954' and it will not be classified under SAC 9997 as claimed by the applicant.

9.1 The rate of tax applicable for the SAC 9954 is given under Sl.No.3 (i), (ia), (ib), (ic),(id),(ie), (if),(iii), (iv), (v), (va), (vi),(vii), (viii),(ix), (x),(xi) and (xii) of Notification No. 11/2017-C.T. Rate dated 28.06.2017 as amended by Notfn No. 03/2019 dated 29th March 2019. We find the applicant has stated to have considered the entries and concluded that their supply is not covered under 3(i) to 3(if) or 3(xii) as the supply made by them to the intended buyer is a composite supply of works contract and not a construction simpliciter and the other entries which provides for 'Composite supply of works contract' do not apply to them.

9.2 It has been established in Para 8 above, that the activity of the applicant based on the proposed 'Construction agreement' entered into with the prospective buyer of the 'Unit' of the proposed RREP developed by them is a Construction service of residential apartment in the said RREP. The applicant in their submissions, has further stated that the apartments being proposed to be constructed by them in the project do not satisfy the conditions stipulated to fall under 'affordable residential apartments' and therefore are 'other than affordable residential units'. It is seen that the rates are prescribed based on the description of the activity under Column (3) of the Notification. Effective 01.04.2019, for the Construction of residential apartments other than affordable residential apartments by a promoter in an RREP, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate where required, is provided under Sl.No. 3(ia) of the said Notification. The notification says that *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);

'Promoter' is defined under clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) as

(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—

.....or

(iv) an apex State level co-operative housing finance; 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.

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 person who sells apartments or plots are different person, 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;

The applicant has stated that he is the developer of the proposed RREP and as per the above definition, the applicant is 'Promoter' for the purposes of the said 'Notification'.

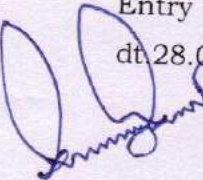
9.3 The applicant has stated that the ruling is sought for the project which is yet to be commenced. Therefore, we hold that the rate for construction of 'Other than

affordable residential apartments', i.e., 'Unit' in the proposed RREP - Ashiana Shubam - Phase IV', by the applicant, 'promoter' of the RREP, is as specified under Sl.No. 3(ia) which is 3.75% CGST and 3.75% SGST and the applicant has to satisfy the conditions stipulated in column (5) of the said entry.

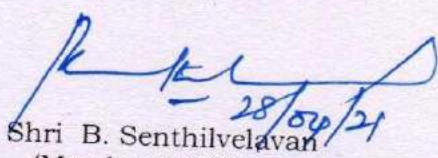
10. In view of the foregoing, we Rule as under:

RULING

The Proposed Modus operandi for construction of 'Unit' which is 'other than affordable residential apartments' by the applicant in the RREP promoted by them, namely, 'Ashiana Shubam -Phase IV' in Maraimalai Nagar Chennai is classifiable under SAC 9954 as 'Construction Service' and the applicable rate of tax is CGST @ 3.75% and SGST @ 3.75% as per Entry Sl.No. 3(ia) of the Notification 11/2017-Central Tax (Rate) dt.28.06.2017 as amended.


Shri Kurinji Selvaan
(Member SGST)




Shri B. Senthilvelavan
(Member CGST)

To

Ashiana Housing Limited
First Floor, Door No. 10, GJ Complex,
First Main Road, CIT Nagar, Chennai 600 035

//By RPAD/ By e-mail: tax_varun@ashianahousing.com //

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.

2. The Additional Chief Secretary/Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & Central Excise, Chennai South
Commissionerate, Chennai-600 035.
4. The Assistant Commissioner (ST), Nandanam Assessment circle,
66, Pasumpon Muthuramalingam Salai, Taluk Office Building, 4th floor,
RA Puram, Chennai 600 028

5. Master File/ Spare-2