

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

Advance Ruling No. KAR ADRG 55 / 2020

Date : 7-11-2020

Present:

1. Dr. Ravi Prasad M.P.
Additional Commissioner of Commercial Taxes Member (State Tax)
2. Sri. Mashhood Ur Rehman Farooqui,
Joint Commissioner of Central Tax, Member (Central Tax)

1.	Name and address of the applicant	Sri. B.R. Sridhar, No.2328, 1st Floor, 20th Cross, Banashankari 2 nd Stage, K.R.Road, Bangalore-560070
2.	GSTIN or User ID	Un-registered
3.	Date of filing of Form GST ARA-01	12.03.2020
4.	Represented by	Smt. VANI H, Advocate & Authorised representative
5.	Jurisdictional Authority - Centre	-N A-
6.	Jurisdictional Authority - State	-N A-
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act and Rs 5,000/- under KGST Act vide CIN HDFC20032900019378 dated 03.03.2020

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER 98(4) OF THE KGST ACT, 2017**

Sri B.R. Sridhar (called as the 'Applicant' hereinafter), No.2328, 1st Floor, 20th Cross, Banashankari 2nd Stage, K.R.Road, Bangalore-560070, an un-registered person have filed an application for Advance Ruling under Section 97 of CGST Act,2017 read with Rule 104 of the CGST Rules, 2017 and under Section 97 of the KGST Act, 2017 read with Rule 104 of the KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant, being the owner of an immovable property bearing Sy. No.4, measuring 1 acre 2 guntas, situated at Bikasipura Village, Uttarahalli Hobli, Bangalore has entered into a Joint Development Agreement dated 19.05.2016 with

M/s Suprabhat Constructions, a partnership firm, authorizing them to construct residential flats by incurring the necessary cost together with certain common amenities and upon the development of the said property, the applicant gets 40% share of undivided right, title and interest in the land proportionate to super built up area and 40% of car parking spaces. In view of this, the applicant has sought advance ruling in respect of the following question.

Whether the total amounts received by the Owner towards the advances or sale consideration of the flats fallen to his share of 40% in terms of the Joint Development Agreement dated 19.05.2016 and the subsequent Area Sharing Agreement dated 03.01.2018, are not amenable for payment of GST, since Applicant has sold or agreed to sell or gifted, the flats after obtaining Occupancy Certificate dated 26.08.2019 and that Applicant has not received any part of the sale consideration prior to the said date of occupancy certificate, thus falling under Entry No.5 of Schedule III of CGST Act read with Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 and the corresponding provisions of SGST Act.

3. **Admissibility of the application** : The applicant, being an un-registered person, filed the instant application, in relation to the applicability of a notification, determination of liability to pay tax and whether the activity of the applicant amounts to or results in supply. Further the applicant has sought advance ruling in respect of the question on the issues covered under Section 97(2)(b), (e) & (g) of the CGST Act 2017 respectively and hence the application is admitted.

4. The applicant furnished the following facts relevant to the instant application.

4.1 The Applicant had given irrevocable license to the Developer to execute and complete the project and till the developer's share is entirely conveyed to the Developer or his nominees. The Developer shall at its sole cost, expense and responsibility, develop the schedule property in accordance with the specifications set out there in and the responsibility to obtain conversion orders, construction plans and other permissions from the respective authorities by the Developer.

4.2 The Developer was required to commence construction activities within 30 days from the date of receipt of the sanctioned plan and shall complete the project within 24 months from the date of receipt of the sanctioned plan, subject to the grace period of 6 months. The said project shall be deemed to be complete within stipulated period and the Developer has to furnish occupancy certificate / completion certificate from the respective statutory authorities.

4.3 The applicant is entitled to get allotted share of 40 % of undivided share of land in right proportionate to the super built up area with car parking space and developer share pertains to 60 % of undivided share of land in right proportionate to the super built up area with car parking space, title and interest as per clause 8.1 of sharing agreement dated 03-01-2018. Further the developer handed over

applicant's (Owner) undivided share of the land in right proportionate to the super built up area with car parking space after obtaining occupancy certificate from the statutory authorities on 26.08.2019.

4.4 The developer had sole and exclusive right of marketing the entire project. The applicant (owner) shall discharge VAT / service tax liability in respect of the owners share, if enters into agreement for sale of the allotted flats in terms of clause 9.3 prior to obtaining the occupancy certificate/completion certificate.

4.5 The developer had obtained sanctioned plan vide BBMP/ADDL.DIR/JD South/LP 016/16-17 on 21.2.2017 and commencement certificate on 16.6.2017, from the BBMP. The Sharing Agreement was entered between the applicant owner and the Developer vide Area Sharing Agreement dated 03.01.2018 i.e. during GST regime. Further, the Joint Director of Town Planning(South), Bengaluru has issued the occupancy certificate dated 26.8.2019 in respect of 74 units/flats in the said residential apartment.

4.6 The developer is liable to pay tax (GST) on construction service (Construction of complex) intended for sale to a buyer, wholly or partly, at the rate of 18% in terms of the Notification (Central tax rate) No. 11/2017 Central Tax (Rate) dated 28.6.2017 as amended by Notification No. 04/2018 Central Tax (Rate) dated 25.01.2018. Further the valuation of said services is to be determined in terms of paragraph 2 of the Notification No. 11/2017 Central Tax (Rate) dated 28.6.2017, prior to 1.4.2019

5. **Applicant's interpretation of law** : The Applicant submits their interpretation of law as under:

5.1 The applicant contends that the liability to pay GST by the applicant would not arise as the applicant has not entered any agreement with prospective buyers before receiving the completion certificate from the competitive authority i.e. BBMP. The Applicant further states that clause 1.7 of Area Sharing Agreement restricts the right of the Applicant to execute any sale agreements or any conveyancing deeds till the applicant takes over their units and the occupancy certificate is issued and hence the applicant had no occasion to enter into any transaction for transferring his right, title or interest in respect of his share of the flats till the occupancy certificate is issued by the concerned authority.

5.2 In view of the above there is no liability upon the applicant Owner to pay GST in respect of the 40% of super built area received by the applicant, in terms of Notification No. 11/2017 Central Tax (Rate) dated 28.6.2017 as it stood prior to 1.4.2019 and in terms of Notification No. 4/2018 Central Tax (Rate) dated 25.1.2018.

5.3 The applicant, in support of their contention, have furnished copies of some of sale deed pertains to sale of flats and consolidated statement of the agreements and receipts of statement showing that all the advances /sale

consideration have been received after issuance of occupation certificate from the competitive authority i.e. BBMP.

5.4 The applicant contends that the transaction of sale of residential flat amounts to "sale of land" and the same is neither a supply of goods nor supply of services, in terms of Entry No 5 of Schedule III, which is appended below.

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

5.5 The applicant further contends that time of supply of service as per section 13(2) (c) is receipt of the service from the developer reflected in his books of accounts based on contractual obligations mentioned at JDA and Area sharing agreement and the date on which developer made an application for issue of occupancy certificate.

6. FINDINGS & DISCUSSION

6.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Smt. VANI. H. appeared as Authorized representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant and relevant facts.

6.2 At the outset, we would like to state that the provisions of both the CGST Act, 2017 and the KGST Act, 2017 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 corresponding similar provisions under the KGST Act.

6.3 The applicant has sought advance ruling in respect of question at para 2 supra, with regard to the exigibility of the amounts to GST, received towards sale of applicant's share (40%) of residential flats, consequent upon the Joint Development Agreement with developer to construct 74 residential units as per sharing agreement dated 03-01-2018, after the issuance of Occupancy/completion certificate dated 26.8.2019, by the Joint Director of Town Planning (South), Bengaluru.

6.4 We observed on examination of the records that the applicant has entered into JDA, along with irrevocable general power of attorney, on 19.05.2016 with the Developer M/s Suprabhat Constructions; Developer obtained necessary plan approval dated 21.02.2017, Commencement Certificate dated 16.06.2017 and the Completion / Occupancy Certificate dated 26.08.2019, from the competent authority BBMP.

6.5 The applicant contends that their share of residential flats have been handed over by the Developer to them only after the issuance of Occupancy

certificate dated 26.08.2019 and the applicant has executed the sale deeds for sale of the said flats after the occupancy certificate dated 26.08.2019 and thus the transaction is not exigible to GST in terms of clause 5 to Schedule III of the CGST Act 2017, which specifies certain transactions to be treated neither as a supply of goods nor a supply of services and the same is appended below:

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

6.6 Further Schedule II to the CGST Act 2017 specifies certain activities / transactions to be treated as supply of goods / services. Clause 5(b) of the said schedule stipulates that *“Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly”* shall be treated as supply of service 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.

6.7 In the instant case the applicant stated that that their share of residential flats have been handed over by the developer after the issuance of completion / occupation certificate dated 26.08.2019 and also clause 1.7 of the Area Sharing Agreement restricts the right of the applicant to execute any sale agreement or any conveyancing deeds till the issuance of completion certificate and taking over of their share of units / flats. Thus the sale of said flats is not exigible to GST, if and only if they are sold after issuance of Completion / Occupancy certificate, in which case the said transaction is to be treated neither as supply of goods nor supply of services, in terms of clause 5 of Schedule III.

6.8 It is an admitted fact that the developer had the sole and exclusive right of marketing the entire project. The applicant is silent about the fact that whether the developer had executed any sale deeds on behalf of the applicant in respect of the applicant's share of units/flats. Thus if the applicant themselves or the developer on behalf of the applicant have sold the applicant's share of units/flats prior to issuance of completion certificate, then the transactions amount to supply of “Works Contract Service” are liable to GST.

6.9 The value of the aforesaid supply is to be ascertained from open market and would be equal to open market value as per rule 27 of the CGST/SGST rules 2017. Further it is also clarified vide Notification No. 4/2019 Central Tax (Rate) dated 29-03-2019 at paragraph (iii) 1B, which states that *“Value of portion of residential or commercial apartments remaining un-booked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be.”*

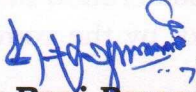
6.10 The time of supply in the instant case would be the time at which the constructed flats are handed over by the developer to the applicant. In the instant case the applicant claims / contends that they have received their share of

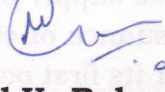
units/flats after the issuance of Completion/Occupancy certificate by Bruhat Bengaluru Mahanagar Palike (BBMP) Vide number JDTR(S)/ADTP/OC/32/19-20 Dated 26-08-2019 for 74 units (11609 Square feet).

7. In view of the foregoing, we pass the following

R U L I N G

The amounts received by the applicant, either by himself or through his agents, towards sale of their share of flats are not exigible to GST, if and only if the entire consideration related to such sale of flats is received after the issuance of Completion Certificate dated 26.08.2019, as the said activities are treated neither supply of goods nor supply of service in terms of schedule III of the CGST Act 2017 subject to Clause 5(b) of the Schedule-II of the CGST Act, 2017.


(Dr. Ravi Prasad M.P.)
Member MEMBER
Karnataka Advance Ruling Authority
Place : Bengaluru, Bengaluru - 560 009


(Mashhood Ur Rehman Farooqui)
Member MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Date : 7-11-2020

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Tax, Bangalore West Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-120, Bengaluru.
5. Office Folder.

