

Detail Analysis of GST on Developed Plot.



By CA Umesh Sharma



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on Development of Plots.**

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Introduction.



The sale of 'developed plots' with primary amenities is not equivalent to 'sale of land' and, accordingly, it will attract Goods & Services Tax (GST), the Authority for Advance Rulings (AAR) says.

This very important topic of debate, whether all transactions falls under GST Laws, such as sale of plots. Everyone should refer Agreements, RERA, TRANSFER OF PROPERTY ACT, LAND ACQUISITION ACT AND provision of GST to properly under the exact nature of tax liability.

Let's understand and study the whole story of "Encroachment of GST on Plot"?

Two Type of transactions:

- 1) Landlord on his own account develops plot and Sale to Customer. (Before final layout (OC) or After Final Layout (OC)).
- 2) Landlord enters in JDA with developer and Sale Plot to Customer. (Before final layout (OC) or After Final Layout (OC)).



History of past SC case of under The Consumer Protection Act, 1986 vis a vis Service Tax Act.



Narne Construction P. Ltd. Vs UOI 2013 (29) S.T.R. 3 (S.C.) Facts:

The company was engaged in the promotion of ventures for development of lands into house-sites and invited the intending purchasers through paper publication and brochures to join as members. The intending purchasers responded and joined as members on payment of fees. The sale and allotment of plots were subject to terms and conditions.

" Issue: Whether the company was, in the facts and circumstances of the case, offering any "service" to the purchasers within the meaning of the Consumer Protection Act, 1986 so as to make it amenable to the jurisdiction of the for an established under the said Act.

Held by the Supreme Court that- It was not a case of **mere sale of property** with all advantages and/or disadvantages on "as is where is" basis and **it is service within the meaning of section 2(1)(c) of Consumer Protection Act, 1986** and any deficiency/defect therein was amenable to jurisdiction of forum established there under. ***It is a case where a clear cut assurance was made to the purchasers as to the nature and the extent of development that would be carried out by the company as a part of the package under which sale of fully developed plots with assured facilities was to be made in favour of the purchasers for valuable consideration. To the extent the transfer of the site with developments in the manner and to the extent indicated earlier was a part of the transaction, the company had indeed undertaken to provide a service.***



Possible Implications of this decision under Service Tax Law-



The definition of service in section 65B(44) of Act, under the negative list based taxation, as extracted below-

Section 65B(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall **not include**—

(a) an activity which constitutes **merely**, —

(i) a transfer of title in **goods or immovable property, by way of sale**, gift or in any other manner; or
...

However, whether we could extend the definition as understood under the consumer protection act to service tax is doubtful. May not be directly used as the Theory of dominant intention versus Aspect Theory plays a very important role under service tax.



History under VAT Act:



In the landmark judgement of L&T, SC has held that **By virtue of sub section (b) of Article 366 (29A), transfer of property (as in a joint development contract) would be deemed as sale of goods in the execution of a works contract. The term 'or in some other form' in Article 366 (29A)(b) has certainly proved to be a game changer, expanding its applicability.** Accordingly, states can levy such taxes not only on transfer of just conventional goods (movables), **but also on those goods that have become part of an immovable property.** In other words, transfer of immovable property in a works contract is termed as a 'sale' for levying sales tax, even if the said 'sale' does not come within the purview of definition provided under Sale of Goods Act, 1930.

SC has used Aspect theory over Dominant Intention theory to levy Vat and Service Tax both on works contract of under construction property. According to Aspect theory, Statute has power to distinguish three aspect of a transaction i.e., Value of Land, Value of Goods and Value of Services in a transaction, and levy tax on each aspect according to the applicable laws thus excluding the value of land, Vat on Goods value and Service tax on Services Value was levied in L&T Case. Here the Dominant Intention theory fails that the Dominant Intention of the customer is to buy an immovable property.

Under VAT, issues of taxation of development of plots was never discussed in works contract schemes.

Under GST, both the goods and services are now taxed. Let us analyse the above legal position on the subject matter of our discussion of "GST on Developed Plots".



Important Definitions:

Under CGST Act, 201, RERA, etc related to:

Sr.No.	Section No.	Particulars
1	Section 2(52) definition	“goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;
2	Section 2(102) definition	“services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged; [Explanation. —For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities;]
3	Definition of Immovable Property	Not defined under GST Act. 1) As per RERA Act U/s 2(z): “immovable property” includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass; 2) As per Section 3(26), The General Clauses Act, 1897 , defines, “immovable property” shall include land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth
4	Section 2(119)	“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;
5	Section 7: Scope of “Supply”	1) For the purposes of this Act, the expression “supply” includes— (a) all forms of supply of goods or services or both such as sale, transfer , barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
6	Section 7: Scope of “Supply” <u>Schedule-II</u> Clause (b) of paragraph 5:	<i>Supply of Service:</i> (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.

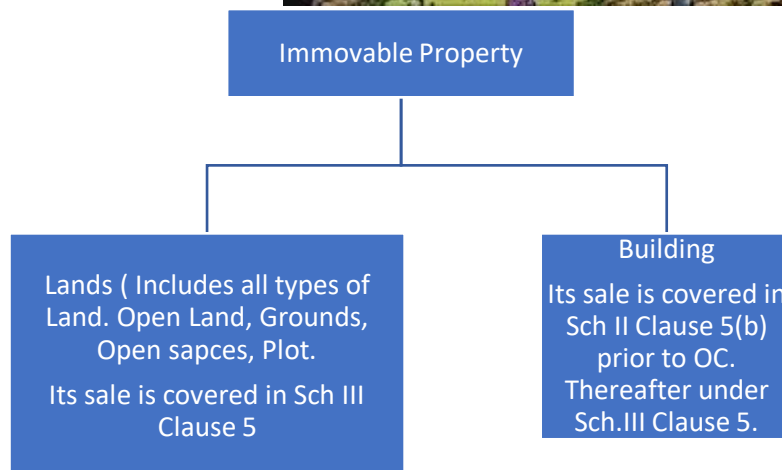
Related to Complex, Building, Civil structure only.



		<p>Explanation. -for the purposes of this clause-</p> <p>(1) the expression "competent authority" means,</p> <p>(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;</p>
7	Section 7: Scope of "Supply" <u>Schedule-III</u> Serial 5:	<p>ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES</p> <p>"5. Sale of land and , subject to clause (b) of paragraph 5 of Schedule-II, sale of building"</p>
8	Definition of "Complex"	Not defined under GST
9	Definition of "Building"	<p>Not defined under GST.</p> <p>As per RERA Act U/s 2 (j) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;</p>
10	Definition of "Civil Structure"	Not defined under GST, RERA Act.
11	Definition of "Land"	<p>Not defined under GST, RERA Act.</p> <p>As Land Acquisition Act, 1894: U/s 3</p> <p>(a) the expression" land" includes benefits to arise out of land, and things attached to the earth or permanently fastended to anything attached to the earth.</p>
12	Definition of Plot?	<p>Not defined under GST, RERA Act.</p> <p>As per Cambridge Dictionary:</p> <p><u>a small piece of land that has been marked or measured for a particular purpose:</u></p>
12	Definition of "Development"	<p>Not defined under GST; As per RERA Act U/s 2(s) "development" with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any immovable property or land and includes re-development;</p>
13	Definition of "Real Estate Project"	<p>In GST, its referred to RERA Act U/s 2 (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;</p>

Divided in two parts:
Sale of a Land & Sale of Building

How to resolve the encroachment of GST on Developed Plots?



In transaction of Construction of Building, which is already a subject matter of GST under Sech II Clause 5(b), have different aspects and steps like:

- 1) It's a Land (Immovable Property) (No Tax on Sale)
- 2) Construction of Building. (Tax as service)
- 3) It's a Building after Completion. (Immovable Property but a **building as per definition**) (No Tax on Sale)

Here form is changed from Land to Building.

In transaction of Development of Plots, which is already a now a subject matter of GST under Sech II Clause 5(b), have different aspects and steps like:

- 1) It's a Land (Immovable Property) (No Tax on Sale)
- 2) Construction of Building. (Tax as Service?)
- 3) It's a **PLOT** after Completion. (**Immovable Property but included in LAND definition**)

Here form is Not changed from Land to Building, but it is a Land (being Plot is Land).

Thus, a question of law arises, whether tax authorities have power to treat a Land as a building for carrying on process and again treat it as Land at the end of process?

Refer SC Case of Hindustan Shipyards.



AAR related to Transaction 1:



Landlord enters in JDA with developer and Sale Plot to Customer. (Before final layout (OC) or After Final Layout (OC)).

Maarq Spaces Private Limited. Dt: 30-09-2019.

Sr.No.	Particulars	Facts of the AAR	Held by AAR
1	Nature of Agreement	The Applicant (Maarq hereafter referred as Developer) engaged in the business of property development. It entered into a Joint Development Agreement with Landowners for development of land into residential layout along with specifications and amenities.	As agreement Developer is only providing "Services" to landlord of developing land with specification and amenities. Held by AAAR: No Interfere in the finding of lower authority
2	Role of Landlord	Transfer of Development Rights on Land to Developer. Title in Land is not transferred. To get all sanctions related to Land by Landlord.	<u>Thus, Developer cannot be seller of land, whereas Landlord is seller of Land/Plots.</u>
3	Role of Developer	To Develop the Open Land and enter into Sale agreement of developed Plots to Customers.	Observed that, the core competence and the activity carried out by the applicant is that of development of land <u>and not the sale of land.</u>
4	Consideration between landlord and developer against Development agreement.	The consideration was agreed on revenue sharing basis in the ratio of 75% for Landowner and 25% for Developer.	Observed that Consideration as share of Landlord, it's a sale of Land. Whereas Consideration as share of Developer, it's a Service. Further the amount received on the sale of the plots is credited to an escrow account and then only the same is divided. This further shows that the applicant is not the owner of the plots and consequently cannot claim sale of the plots as his supply.



5	Cost of Development Expenses like Amenities, Site Development, etc.	Cost of all development exps to be borne by Developer. Whereas Charges for sanction, permissions, etc by landlord.	<i>This shows that the applicant is engaged in the activity of providing a certain service to the landowners and the landowners will compensate the applicant for the same in accordance with the terms of the agreement.</i>
6	Sale to Customer of Plots	Pursuant to JDA, Landlord and Developer had entered into an agreement with customers for sale of developed plots for consideration.	No Comments.
7	Developers Interpretation of Law:	<ol style="list-style-type: none"> 1. Under Scope of Supply U/s 7, As per entry 5 of the Schedule III relating to “Activities or transactions which shall be treated neither as a supply of goods nor a supply of services” which reads as under “Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building”. 2. Further the applicant submits that expressions “composite supply” & “Principal Supply” have been defined under sub-section (30) & (90) of Section 2. 3. Applicant further submitted that applying the same principle to the facts of the Applicant where the predominant supply is land and development activity is incidental to the sale of land. Moreover, the development activity is naturally bundled with sale of land in other words it is integrally connected with sale of land, therefore Applicant is of the view that, sale of Developed Plot is nothing but sale of land, which fall under Entry 5 	<ol style="list-style-type: none"> 1. Here are a good number of provisions in the agreement which indicate that the applicant has no right over the land and consequently the applicant cannot claim to be engaged in the activity of sale of land as envisaged in the provisions of entry at Serial number 5 of said Schedule III. 2. <u>The provisions of this entry will apply only to those persons who are the owners of the land and not to persons who are incidental to the sale of land.</u>



		of Schedule III to the Act, therefore does not attract tax under GST.	
8	Transfer of Roads, drains, etc to the Municipal Authority.	Further the applicant submits that, as per sub-section (5) of Section 32 of Karnataka Urban Development Authorities Act, 1987, wherein it provides that, person who forms layouts is required to transfer the ownership of the roads, drains, water supply mains, parks and open spaces, civic amenity areas to the authority, permanently without claiming any compensation thereof. Perusal of the above provisions, the applicant is of the view that, where law requires the applicant to transfer the ownership on the developmental works such as roads, drains, water supply mains, parks and open spaces, civic amenity areas, <u>therefore the applicant cannot have agreement for supply of service but can only enter agreement for sale of land.</u>	No reference to Developer services.
9	When plot sold to Customer, Value of Services to be taxed not the cost of land?	Applicant submits that, though the price agreed with customers include cost of land as well as cost of development, there shall be levy of tax only on supply of service or goods or both but not on sale of land. The applicant refers to section 7 and clause 5 of Schedule III to the CGST Act. For the purposes of ascertaining the value of land and supply of service the Applicant refers to Rule 31 of CGST Rules, which reads as under;	No Mention in AAR.
10	1 st Question for AAR	The Developer sought Advance Ruling on the question as: 1) Whether the activity of development attract tax under GST?	On the basis of the aforementioned provisions of the agreement it would be in order to conclude that activities undertaken by the applicant are not qualified to be covered under entry number 5 of Schedule III of the said Act. Thus



			<p>the activities undertaken by the applicant amount to a supply of service and we answer the first question in the affirmative, i.e. the activities undertaken by the applicant, as envisaged in the agreement placed before the Authority, amount to a supply of service to the landowners and is liable to be taxed appropriately under the provisions of the CGST/KSGST Acts.</p> <p>(No Comments given on Classification of services)</p> <p>Held by AAAR: that, there is a clear rendering of a service by the developer to the landowner in developing the land which belongs to the landowner. Therefore, we hold that the activity of developing the land is a supply of service by the Appellant.</p>
11	2nd Question for AAR	2)Whether the Sale of land attract tax under GST.	<p>Not clearly answered.</p> <p>As per agreement Landlord only to be engaged in the activity of sale of land as envisaged in the provisions of entry at Serial number 5 of said Schedule III.</p> <p><u>The provisions of this entry will apply only to those persons who are the owners of the land and not to persons who are incidental to the sale of land.</u></p> <p><u>Thus, the 75% Share of revenue received by Landlord only can be covered by Entry 5 Sch. III of Section 7.</u></p>
12	Third Question on Valuation	<p>If the answer to the question no. 1 is yes, for the purpose of taxable value:</p> <p>3) whether provision of Rule 31 can be made applicable in ascertaining the value of land and supply of service?</p>	<p>The applicant receives consideration equal to 25% of the value at which each of the plots is sold. This amount constitutes the consideration for the services provided by the applicant. Rule 31 provides that where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and</p>



			<p>the general provisions of Section 15. <i>Thus, the market value of Plot and share of 25% of developer shall be the value of services provided.</i></p> <p>Section 15 of the CGST Act, 2017 provides that the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply where the supplier and the recipient are not related, and the price is the sole consideration. <i>Thus, no deduction of land cost from the 25% share of Developer.</i></p> <p><i>The contention of the applicant, as mentioned in Para 5.3, that the land cost should not be included in the value and only the cost of the services should be considered for levy of tax is not acceptable.</i></p>
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Vidit Builders. AAR MP. Dt:06-01-2020.

Sr.No.	Particulars	Facts of the AAR	Held by AAR
1	Nature of Agreement	The applicant (Developer) is partnership firm and engaged in the business of real estate developer and is developing a colony by executing joint development agreement on 14.03.2019 with the landowner M/s. Star Construction.	
2	Role of Landlord	Transfer for Development Rights to developer. Sale of Plots to customers jointly.	<i>The seller can claim that he is engaged in the supply of land by way of sale only if he himself enjoys the title of the land.</i>
3	Role of Developer	In this project developer will develop and provide the following common facilities in the colony.	It has already been emphasized and held that the applicant has no right in the title of the land and therefore the applicant cannot be considered as the sellers of the plots. Their role is limited to aiding and assisting the landowners in the sale of the plots.
4	Consideration between landlord and developer against Development agreement.	The revenue accruing from the sale of the plots is shared as per the agreement. In the instant case what the applicant receives as their remuneration for the provision of the services of development of the land and their subsequent activities related to the sale of the plots is an amount equal to 40% of the open market value of each plot.	This shows that there are no fixed earmarked plots to which the applicant can claim an entitlement. Further the amount received on the sale of the plots is credited to an escrow account and then only the same is divided. This further shows that the applicant is not the owner of the plots and consequently cannot claim sale of the plots as his supply.
5	Cost of Development Expenses like Amenities, Site Development, etc.	To be borne by developers as per JDA. Further it provides that the applicant recovers the cost from the purchasers of the plots.	The service provided by the applicant is regarding development of the site which includes civil construction and amenities regarding the site in order to make it for the purpose of residence. The services provided by the applicant are based on an agreement signed between the land owner and the applicant which comes under works contract.
6	Sale to Customer of Plots	Jointly by Developers and Landlord.	Here it becomes evident that the core competence and the activity actually carried out by the applicant is that of development of land and not the sale of



			land. The land owner still remains the land owner till the property is transferred in the name of purchaser.
7	Developers Interpretation of Law:	The main argument of the applicant is that they are primarily engaged in the sale of land and the said activity is not liable to be taxed in terms of the provisions contained in serial number 5 of Schedule III of the GST Act, 2017. Therefore, nearly by developing common facilities like drainage, electricity, road facilities, garden development etc should not attract GST.	The core contention of the applicant is that they are engaged in the sale of land. <u>The sine qua non for any sale of land is the ownership of the land sold.</u>
8	Transfer of Roads, drains, etc to the Municipal Authority.	After development of all the above-mentioned common facilities, local municipal corporation will review and provide completion certificate to the developer and developer will hand over the colony to the municipal corporation for further maintenance.	
9	When plot sold to Customer, Value of Services to be taxed not the cost of land?	Value of Services of Applicant.	Rule 31 applies in the instant case and the value of supply is equal to the amount received/receivable by the applicant which is equal to 40% of the amount on which the plots are sold.
10	1st Question for AAR	Whether it is covered in para 5 of Schedule III (Sale of Land) or classified under works contract?	That applicant (Developer) has no right over the land and consequently the applicant cannot claim to be engaged in the activity of sale of land as envisaged in the provisions of entry at Serial number 5 of said Schedule III. The provisions of this entry will apply only to those persons who are the owners of the land and not to persons who are incidental to the sale of land.
11	2nd Question for AAR	If it is covered under works contract, how the valuation would be done? Residual Rules i.e. Rule 30/31 provided under GST Valuation Rules can be considered or not?	Rule 31 applies in the instant case and the value of supply is equal to the amount received/receivable by the applicant which is equal to 40% of the amount on which the plots are sold. The applicant receives consideration equal to 40% of the value at which each



			<p>of the plots is sold. This amount constitutes the consideration for the services provided by the applicant. Section 15 of the CGST Act, 2017 provides that the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply where the supplier and the recipient are not related and the price is the sole consideration.</p>
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AAR related to Transaction 2:



Landlord on his own account develops plot and Sale to Customer. (Before final layout (OC) or After Final Layout (OC))

PPD Living Spaces Pvt. Ltd

Sr.No.	Particulars	Facts of the AAR	Held by AAR
1	Nature of Transaction	<ol style="list-style-type: none"> The applicant (Landlord) is executing a layout development project 'Emerald Hills'. They have converted eleven acres of property into residential plots with the facility of paved roads up, water and electricity supply to each plot, water drains, trees, party hall, health club, play courts, compound wall etc. 	
2	Role of Landlord	Landlord on own developing plots.	
5	Cost of Development Expenses like Amenities, Site Development, etc.	Total cost of plot is divided as cost of land and cost of development. Land component consists of cost of actual area of each plot and cost of undivided share of land in common area.	
6	Sale to Customer of Plots	<ol style="list-style-type: none"> Before Completion Certificate, they have collected 18% GST on the development charge And Cost of Land Separately. After Completion Certificate, wish to collect, by fixing the land cost by absorbing the development charges? 	Question 2 is answered.



7	Transfer of Roads, drains, etc to the Municipal Authority.	Undivided share in common areas including roads and common facilities will be transferred to the Association through a sale deed.	
8	When plot sold to Customer, Value of Services to be taxed not the cost of land?	They have collected 18% GST on the development charge. And Cost of Land Separately.	
9	Applicants other facts:	Now Completion Certificate dated 31.05.2018 for layout development has been issued. Therefore, they intend to structure future agreements by fixing land cost, fully absorbing development charge. Entire payment made for a plot will be shown in the sale deed and stamp duty and registration fee will be paid.	As per Paragraph 5 of Schedule III of the GST Act, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building shall be treated neither as a supply of goods nor as a supply of service. As per Paragraph 5 (b) of Schedule II , construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required by the competent authority or after its first occupation, whichever is earlier shall be treated as a supply of services.
10	1st Question for AAR	Is it correct to structure agreement by fixing the land cost by absorbing the development charges?	In the instant case, the Completion Certificate in respect of the project has been issued on 31.05.2018 and the proposed transaction is in respect of sale of developed plots/land with civil structures after the issuance of Completion Certificate. Therefore the transaction is covered by Paragraph 5 of Schedule III of the GST Act. Hence the sale deed executed for plot as well as undivided share in common area attracts only stamp duty and registration charge. It is lawful to structure agreement by fixing the land cost after absorbing the development charges.



11	2nd Question for AAR	Whether the ITC availed has to be paid back on pro rata basis, on plots sold after completion?	The Input Tax Credit availed in respect of the GST paid on goods and/or services used/consumed for the development of the land, in respect of the plots sold after the issuance of Completion Certificate is liable to be reversed on pro rata basis.
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Satyaja Infratech, AAR Gujarat, Dt: 20-9-2019.

Sr.No.	Particulars	Facts of the AAR	Held by AAR
1	Nature of Transaction	The Applicant is engaged in purchase of land and selling the said land by converting in to integrated residential sub plots of varying sizes under name of "Bliss Homes" with basic facilities and amenities with membership for enjoyment of other facilities.	
2	Role of Landlord	The applicant purchases Land, develop on his own and sale plots.	
3	Role of Developer	Not Applicable	
4	Consideration between landlord and developer against Development agreement.	Not Applicable	
5	Cost of Development Expenses like Amenities, Site Development, etc.	Incurred by Landlord.	
6	Sale to Customer of Plots	From landlord to Customers	
7	Transfer of Roads, drains, etc to the Municipal Authority.	Not mentioned in AAR	
8	When plot sold to Customer, Value of Services to be taxed not the cost of land?	Not mentioned in AAR	
9	Applicants other facts:	<i>1. It is to be noted that the firm, who purchases land and it develops the land with an infrastructure such as drainage system, roads, and plantation of plants as mentioned above.</i>	Not considered word "After..."? while answering Question 1.



		<p><u>After this development of the land, it will not do any building constructions and all. Its sales only developed land as plots.</u></p> <p>2. As per Applicant interpretation under CGST Act, it is considered as sale of land and the same is not supply of goods/services as stated in Schedule-III para 5. Hence, the sale of land is not taxable under GST law.</p>	
10	1 st Question for AAR	<p><i>Whether the activity of purchase of land and selling the said land by converting in to integrated residential sub plots of varying sizes under name of "Bliss Homes" with basic facilities prescribed is liable to GST or not?</i></p>	<p><i>The activity of purchase of land and selling the said land by converting in to integrated residential sub plots of varying sizes under the name of "Bliss Homes" with the basic facility is liable to GST.</i></p>
11	2nd Question for AAR	<p>If the same is liable for GST, then under which category of supply it will fall and what will be the rate of GST on it?</p>	<p><i>The activities of applicant will fall under the clause (b) of paragraph 5 of Schedule-II of Gujarat Goods and Services Tax Act and Central Goods and Services Tax Act. Hence the activities of the applicant attract 9% CGST and 9% SGST as per serial no 3 of Notification No. 11/2017 Central Tax (Rate) dated 28-06-2017.</i></p>



Dipesh Anilkumar Naik, AAR Gujarat. Dt: 19-5-2020.

Sr.No.	Particulars	Facts of AAR and What's held in AAR.
1	Nature of Transaction	The applicant (Landlord) has submitted that he is having a vacant land outside the municipal area of town on which he has some proposed business activity.
2	Role of Landlord	The applicant further submitted that they would sell the individual plots to different buyers without any construction on the same but by providing the primary amenities as mentioned above, which are mandatory requirement of the approved Plan Passing Authority.
3	Transfer of Roads, drains, etc to the Municipal Authority.	The applicant has further submitted that as per the Plan Passing Authority, the seller of land is required to develop the primary amenities like Sewerage and drainage line, Water line, Electricity line, Land levelling for road, Pipe line facilities for drinking water, Street lights, Telephone line etc..
4	Applicants other facts:	<p>Applicant states that, Serial Number 5 to Schedule III of the CGST Act: "5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building."</p> <p>From the above definition, it is clear that the transaction shall be out of GST net only if the activity is exclusively dealing with transfer of title or transfer of ownership of land, which is immovable property or earth. Here the substance of agreement between the parties is important. Where the nature of activity is that of ONLY sale of immovable property of plot, it is excluded from GST levy.</p> <p>As per the applicant, he is the owner of the land, who develops the land with an infrastructure such as Drainage line, Water line, Electricity line, Land levelling etc. as per the requirement of the approved Plan Passing Authority (i.e. Jilla Panchayat). After this development of the land, he will not do any building constructions and all. He sales only developed land as plots.</p>
5	1st Question for AAR	<p><i>Whether GST is applicable on sale of plot of land for which, as per the requirement of approved by the respective authority (i.e. Jilla Panchayat), Primary amenities such as,</i></p> <p>As per AAR: The above development activities indicates that sale of developed plot is not equivalent to sale of land but is a different transaction. Sale of such</p>



		<p>Drainage line, Water line, Electricity line, Land levelling etc. are to be provided by the applicant?</p>	<p><u>plotted development tantamount to rendering of service. This view has also been taken by the Supreme Court in the case of M/s Narne Construction P Ltd. reported at 2013 (29) STR 3 (SC).</u></p> <p><u>As per Schedule II of the CGST Act, 2017 pertains to activities or transactions to be treated as "Supply of goods or supply of services". As per clause 5(b) of the Schedule II of the CGST Act, 2017, construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer is a "Supply of service" and, hence, is liable to the Goods and Services Tax (GST).</u></p> <p><u>We find that the activity of the sale of developed plots would be covered under the clause 'construction of a complex intended for sale to a buyer'. Thus, the said activity is covered under 'construction services' and GST is payable on the sale of developed plots in terms of CGST Act / Rules and relevant Notification issued time to time.</u></p>



Frequently Asked Questions



Transaction 1:

Landlord on his own account develops plot and Sale to Customer. (Before final layout (OC) or After Final Layout (OC))

- 1) Whether Sale of developed Plot is taxable under GST before Occupancy Certificate/ Completion Certificate (final layout)?
Land is converted into Plots through development works, its change of usage of Land. Before OC it was Land, after OC it is a Plot, both are covered in definition of Land. Development work is carried to make it marketable as per norms of local authority. For e.g. Agricultural Produce, processing or making it marketable do not change the characteristic of Agricultural Produce. One Can refer SC Judgement of Hindustan Shipyard, where in construction of Ship as per order, is a sale of Ship, even provision of construction services of ship supplied to Customer. Thus, No GST is chargeable. However, AAR has taken different views and taxed as Building under Sch II Clause 5(b) which is challengeable. However, Maarq AAR referred that Sch III clause 5 is applicable to Landlord (Owner) thus no tax is applicable.
- 2) If yes, how to determine value of land?
Even if it taxed under Sch II 5(b), then how to calculate the value of land post 1st April 2019. There is no mechanism to calculate the value of land. Thus, levy fails. Suresh Kumar Bansal case applies here.
- 3) Whether Sale of developed Plot is taxable under GST after Occupancy Certificate/ Completion Certificate (final layout)?
After completion certificate it not taxed in AAR as per Sch III clause 5. As such it is a Land, its covered in 1st part of clause 5 i.e, SALE OF PLOT and not as SALLE OF BUILDING. Hence no tax is leviable.
- 4) What is the implication of Input Tax Credit on Landlord on his own as a (Developer)?
If tax is paid under Sch II clause 5(b), ITC is available till OC transactions, thereafter no ITC.



Transaction 2:

Landlord enters in JDA with developer and Sale of Plot to Customer. (Before final layout (OC) or After Final Layout (OC)).

- 1) Whether transfer of Development rights for development of plot as per JDA from Landlord to Developer is taxable under GST in Hands of Landlord?

According to past GST experience of TDR, FSI., Transfer of Development rights is taxable. Still it is a debatable issue.

- 2) Whether RCM on TDR is applicable to Developer in such cases?

As per RCM schedule entry, 5B: "Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter". The Development of Plot is a "Project" as per RERA, whereas Developer is also covered in Definition of "Promotor" as per RERA, thus RCM liability arises on Developer. Further it depends on conditions of Exemptions, like GST sale before OC, Residential, Commercial, etc all applies in such cases.

- 3) Whether Development Services provided as per JDA by the Developer to Landlord is taxable under GST?

Services provided by Developer to Landlord is taxed as per AAR of Maarg and Vidit. However, such services should be tax under Sch II 5(b) or 6(a) is a classification issue? Sch II 5(b) is for construction of building and intended to be sold as building which not the right of developer in such cases above. Whereas as per Sch II 6(a) "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; and". Thus, the services provided by the Developer to landlord may fall in 6(a). One may have to take note that rate of tax is 18% in both cases.

- 4) What is the implication of Input Tax Credit on Developer?

ITC will be available to Developer for inward supplies used in provision of services.

- 5) What is the tax impact on Sale to Plot by the Landlord and Developer jointly or individually?

Scenario One Revenue Sharing Arrangement:

Option A) In case of Revenue sharing arrangement, the share of Developer is towards service, add 10% mark up and taxed 18% by Landlord. Valuation issues are going to arise along with proper documentation. Subject to before OC and after OC and other aspects.

Option B): No tax being Sale of Land.

Scenario Two; In Case of Area Sharing

Option A) In case of the share of Developer and Landlord both separately pay tax, under Sch. II Clause 5(B). Subject to before OC and after OC and other aspects. Discussed already in transaction 1 cases.

Option B): No tax being Sale of Land.



CONCLUSION



It a very debatable matter of GST on Developed Plots. Following points needs to be taken care off:

- 1) Drafting of Agreement of Development.***
- 2) Type of facilities and amenities.***
- 3) Provision of RERA.***
- 4) Provision of GST.***
- 5) Mentality of landlord, developer, and customer.***
- 6) Go for AAR?***



A long way to go... on path of tax laws.....



Disclaimer: A Small attempt is made to update all on GST. This is for guidance purpose only. No legal action against writer/presenter can be taken. Refer relevant provision and facts of case. In case of any query please feel free to contact on fcaumeshsharma@gamil.com or on 9822079900 to join the WhatsApp group.