

**KERALA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX DEPARTMENT
TAX TOWER, THIRUVANANTHAPURAM**



BEFORE THE AUTHORITY OF: Dr S. L. Sreeparvathy, IRS &
: Shri Abraham Renn S., IRS

Legal Name of the applicant	Crescent Builders
GSTIN	32AADFC0379F1ZW
Address	6/12005, 1 st Floor, R.B.G. Arcade, Cherooty Road, Opposite Gandhi Park, Calicut, Kerala, 673032.
Advance Ruling sought for	Whether the rate of 0.75% under Item No. (i) of Entry No. 3 of Notification No. 03/2019 Central Tax (Rate) can be availed in respect of those units which qualify as "Affordable Residential Apartment" in a Residential Real Estate Project" when the project consists of both "Affordable Residential Apartments" as well as apartments other than Affordable Residential Apartments?
Date of Personal Hearing	05/11/2021
Authorized Representative	Mr Shameem Ahmed

ADVANCE RULING No. KER/142 /2021 Dtd 12.07.2022

1. M/s. Crescent Builders (**hereinafter referred to as the applicant**) is a Partnership firm engaged in the development and construction of residential apartments in the State of Kerala.
2. At the outset, it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are the same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.



3. The Applicant requested an advance ruling on the following:

3.1. Whether the rate of 0.75% under Item No. (i) of Entry No. 3 of Notification No. 03/2019 Central Tax (Rate) can be availed in respect of those units which qualify as “Affordable Residential Apartment” in a “Residential Real Estate Project” when the project consists of both “Affordable Residential Apartments” as well as apartments other than Affordable Residential Apartments?

4. Contentions of the Applicant:

4.1. The applicant submits that they are planning to execute a Joint Development Agreement for the development of a plot of land into Multi Storied Residential Apartment Project [Residential Real Estate Project]. A copy of the Draft Agreement is produced as Annexure -I.

4.2. The proposed residential project consists of 50 units out of which 14 apartments are to be given to the landowner towards the landowner’s area under the Joint Development Project. All the 50 units in the apartment complex are having the carpet area of less than 60 square metres and the total sale consideration including all charges in respect of 30 residential apartments will be above 45 lakhs and in respect of 20 residential apartments, the total sale consideration will be below 45 lakhs. Thus, the 20 residential units in the project would qualify as “Affordable Residential Apartments” as defined in Notification No. 11/2017 as amended by Notification No. 03/2019. The list of residential apartments showing the carpet area and the sale price of the units proposed to be sold is produced as Annexure -2. Thus, the project to be developed under the JDA comprises of both affordable residential apartments and also other than affordable residential apartments.

4.3. As per the Notification No.11/2017 CT (Rate) as amended by Notification No.03/2019 CT (Rate); 0.75 % CGST would be applicable on the construction of affordable residential apartments in a residential real estate project and the rate of 3.75 % would be applicable for the construction of



residential apartments other than affordable residential apartments by a promoter in a RREP. However, the notification is silent as to whether the rate of 0.75 % is applicable to RREP having only affordable residential unit or even to RREP consisting of both affordable residential apartment and other than affordable residential apartment. At the same time the reference under the notification is to construction of residential apartment and not to a project. They are seeking advance ruling in the above factual scenario to determine the applicable GST rate in respect of units which qualify as affordable residential apartments in a RREP and other than affordable residential apartments.

4.4. The concessional rate of GST for low-cost house up to a carpet area of 60 sq. m was first introduced by Notification No.20/2017 CT (Rate) dated 22.08.2017 by amending entry (iii) to Sl. No. 3 of Notification No.11/2017 CT (Rate) dated 28.06.2017. However, the concessional rate of GST for low-cost houses up to 60 sq. m was confined to those houses in a housing project approved by the competent authorities under the Affordable Housing in Partnership Component of Housing for All (Urban) Mission / Pradhan Mantri Awas Yojana and other housing scheme of a State Government. The benefit of concessional rate of GST for low-cost house up to a carpet area of 60 Sq. m was further extended to those housing projects that has been given infrastructure status by amending Notification No.11/2017 CT (Rate) dated 28.06.2017 by Notification No. 01/2018 CT (Rate) dated 25.01.2018 by adding clause (da) to entry (v) of Sl. No. 3 of Notification No.11/2017 CT (Rate) dated 28.06.2017. Thus, the benefit of concessional rate for low-cost houses were dependent on the status of the project; whether the housing project is approved by competent authority under the scheme of affordable housing or whether the housing project is part of any housing scheme of the State Government or whether the housing project is given the status of infrastructure project etc.



4.5. The GST Council in its 33rd meeting held on 20.02.2019 and 24.02.2019 had detailed discussions regarding the GST rate changes for boosting Real Estate Sector which also included the need for redefining “Affordable Houses”. The following decisions were approved by the Council; (a) GST to be levied at effective rate of 5% without ITC on residential properties outside affordable segment; (b) GST to be levied at effective GST rate of 1% without ITC on affordable housing properties; (c) the new rate to become applicable from 1st of April 2019; (d) Definition of affordable housing shall be a residential house / flat of carpet area of up to 90 sq m in non-metropolitan cities / towns and 60 sq m in metropolitan cities having value up to Rs. 45 lakhs; (e) Tax on TDR, long term lease, FSI to be exempted for such residential property on which GST was payable. For properties sold after obtaining the completion certificate, tax on TDR / long term lease / FSI etc shall be payable at the rate applicable to that segment; i.e., affordable or other than affordable category.

4.6. Thus, it could be seen from the above discussions and minutes of the meeting that the concessional rate of GST for the affordable houses was not based on the project but was based on the individual house. There was no reference to the project, but it was based on the apartment unit. Based on the recommendations of the GST Council, Notification No. 03/2019 CT (Rate) dated 29.03.2019 was issued for amending Notification No. 11/2017 CT (Rate) dated 28.06.2017 and Item No. (i) of entry at Sl. No. 3 was substituted with a new entry for giving effect to the concessional rate as per the decision of the Council.

4.7. The Item Nos (i), (ia), (ib), (ic) and (id) of Sl. No.3 of Notification No. 11/2017 CT (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 CT (Rate) dated 29.03.2019 which prescribes the concessional rate of tax nowhere makes a reference to the project, but it only talks about the construction of residential apartments or commercial apartments. The full



text of the Notification No. 03/2019 CT (Rate) dated 29.03.2019 is produced as Annexure -3.

4.8. The said notification allows the concessional rate of tax for affordable residential unit even when the project contains commercial units which do not exceed 15% of the total units. Similarly, even the residential units in a Real Estate Project which is not Residential Real Estate Project is also given the concessional rate of GST. All these factors make it clear that for the purpose of applying tax rate, what is to be looked in to is the individual residential apartment and not the project. If the residential apartment unit qualifies as affordable residential unit, it should be qualified for the concessional rate of GST under the notification irrespective of whether the project consists of apartments which are not affordable residential apartments. In the absence of any express conditions restricting the benefit of concessional rate of tax under the notification to projects having exclusively affordable residential apartments the rate of 0.75% is applicable to all those residential apartments that qualifies as affordable residential apartments even if the project contains apartments that are not affordable residential apartments.

5. Comments of the Jurisdictional Officer:

5.1. The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The jurisdictional officer has not offered any comments and hence it is presumed that the jurisdictional officer has no specific comments to offer. It is also construed that no proceedings are pending on the issue against the applicant.

6. Personal Hearing:

6.1. The applicant was granted an opportunity for a personal hearing on 05.11.2021. The authorised representative of the applicant represented the applicant in the personal hearing. The representative reiterated the



contentions made in the application and requested to issue a ruling based on the submissions in the application.

7. Discussion and Findings:

7.1. The matter was examined in detail. The applicant is engaged in the development and construction of residential apartments. The question to be answered is regarding the rate of GST applicable in respect of the construction of “Affordable Residential Apartments” in a Residential Real Estate Project [RREP] having both “Affordable Residential Apartments” and “Other than Affordable Residential Apartments” as per the rate Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No.03/2019 Central Tax (Rate) dated 29.03.2019 with effect from 01.04.2019.

7.2. A new tax structure for the real estate sector was introduced with effect from 01.04.2019 onwards by amendment of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 by Notification No. 03/2019 - Central Tax (Rate) dated 29.03.2019. Admittedly, the services of construction of apartments are being rendered by the applicant after 01.04.2019 and hence the rate as notified under the new tax structure is applicable in respect of the construction services rendered by the applicant.

7.3. The entries at Items (i) and (ia) of Sl. No. 3 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019 reads as follows;

“Heading 9954 – Construction services -

(i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (hereinafter referred to as RREP) which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or



partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)

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

7.4. The rate of GST applicable for entry at Item (i) is 1.5% [0.75% - CGST + 0.75% - SGST] and for the entry at Item No. (ia) is 7.5% [3.75% - CGST + 3.75% - SGST]. The above rate of GST is subject to the conditions mentioned therein.

The conditions that are common for both the entries are as extracted below;

“Condition: Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only;

Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;

Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1st April, 2019, which shall be calculated in the manner as prescribed in



the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;

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

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

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

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



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

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

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

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

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



7.5. Para 4 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019 defines the different terms used in the above entries. The relevant definitions are reproduced below:

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

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

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

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

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

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

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



7.6. The relevant clauses of Section 2 of the Real Estate (Regulation and Development) Act, 2016 which contains the definition of the terms; “apartment”; “promoter” and “real estate project” are reproduced below;

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

(zk) “promoter” means,— (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or (iii) any development authority or any other public body in respect of allottees of— (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its members or in respect of the allottees of such apartments or buildings; or (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the



land on which the building or apartment is constructed or plot is developed for sale; or (vi) such other person who constructs any building or apartment for sale to the general public.

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

7.7. On a combined reading of the entries at Item (i) and (ia) of Sl No. 3 of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 and the definitions as extracted above, it is evident that the rate of GST prescribed under the entry at Item (i) applies to the construction of affordable residential apartments and under the entry at Item (ia) applies to the construction of residential apartments other than affordable residential apartments by a promoter in a residential real estate project intended for sale to a buyer except where the entire consideration is received after issuance of completion certificate. Hence the rates are prescribed for the construction services of different categories of individual apartments in residential real estate and the rate as prescribed in Item (i) and (ia) shall apply to each apartment in the residential real project according to the category under which it is classified.

7.8. From the discussion above, it is clear that the project to be undertaken by the applicant falls within the definition of a real estate project and the applicant falls within the definition of "promoter". Further, on a conjoint reading of the above provisions of law, the facts as stated in the application and the terms and conditions in the draft agreement produced as Annexure 1 it is seen that the services of construction of apartments provided by the applicant in the residential real estate project squarely fall within the



description of services specified in Item (i) and (ia) of Sl. No. 3 of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019 and accordingly the tax rates as prescribed in the said entries shall apply to the said services supplied by the applicant. Accordingly, the applicant is liable to pay GST at the rate of 1.5% [0.75% - CGST + 0.75% - SGST] in respect of the services of construction of affordable residential apartments as per entry at Item (i) and the rate of 7.5% [3.75% - CGST + 3.75% - SGST] in respect of the services of construction of residential apartments other than affordable residential apartments in the project as per entry at Item No. (ia) of Sl No. 3 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 subject to the conditions prescribed under the respective entries.

Given the observations stated above, the following rulings are issued:

RULING

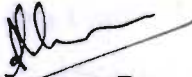
Question 1: Whether the rate of 0.75% under Item No. (i) of Entry No. 3 of Notification No. 03/2019 Central Tax (Rate) can be availed in respect of those units which qualify as “Affordable Residential Apartment” in a Residential Real Estate Project” when the project consists of both “Affordable Residential Apartments” as well as apartments other than Affordable Residential Apartments?

Ruling: The applicant is liable to pay GST at the rate of 1.5% [0.75% - CGST + 0.75% - SGST] in respect of the services of construction of affordable residential apartments as per entry at Item (i) and the rate of 7.5% [3.75% - CGST + 3.75% - SGST] in respect of the services of construction of residential apartments other than affordable residential apartments as per entry at Item No. (ia) of Sl No. 3 of Notification No. 11/2017 Central Tax (Rate) dated



28.06.2017 in the Residential Real Estate Project subject to the conditions prescribed under the respective entries.

~~Sreepanathy S.L.
Joint Commissioner of Central Tax
Member~~


Abraham Renn S
Additional Commissioner of State Tax
Member

To,

M/s. Crescent Builders
6/12005, 1st Floor,
R.B.G. Arcade, Cherooty Road,
Opposite Gandhi Park,
Calicut, Kerala, 673032.

Copy to,

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R. Building, I.S.Press Road, Cochin-682018. [E-mail ID: cccocchin@nic.in; ccu-cexcok@nic.in]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram - 695002.
3. The Assistant / Deputy Commissioner of Central GST, Kozhikode Urban Division, Kozhikode.
4. The Superintendent of Central GST, Kozhikode I Range, Kozhikode.

