
**SALE OF FLATS NOT EXIGIBLE TO GST, WHEN SOLD AFTER
ISSUANCE OF COMPLETION/ OCCUPANCY CERTIFICATE: AAR
KARNATAKA**

Overview

In a recent ruling, the Karnataka Authority for Advance Ruling in the case of Sri B.R Shridhar¹ (the ‘Applicant’) observed that the sale of flat when sold after the issuance of completion certificate would not qualify as supply in terms of Sec.7 of the Central Goods and Services Tax Act, 2017 (the ‘CGST Act’).

Facts

A Joint Development Agreement (‘JDA’) was entered into between the Applicant with M/s. Suprabhat Constructions (the ‘Developer’) under which the Developer was authorized to construct residential flats on immovable property owned by the Applicant. The cost, expenses, and responsibility to develop the property was of the Developer. Additionally, the Developer was responsible for obtaining conversion order, construction plans and other permissions from respective authorities. In terms of the JDA, the Applicant was entitled to 40% share of undivided right, title and interest in land area (proportionate to super built up area) and in parking space; the same was handed over by the Developer pursuant to obtaining occupancy certificate.

Additionally, an Area Sharing Agreement (‘ASA’) was signed between the Applicant and the Developer which restricted the Applicant from executing any sale agreement or conveyance deed until issuance of Occupancy/Completion Certificate.

In view of the above stated facts, the Applicant sought ruling on whether amount received towards sale of applicants share (i.e. 40%) of residential flats would be exigible to tax under the provisions of CGST Act.

Ruling

The Authority of Advance Ruling relied upon clause 5b of Schedule III CGST Act which provides that in cases of construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer shall be treated as supply except where the entire consideration has been received after issuance of completion certificate, or after its first occupation, whichever is earlier.

In the present facts, as the Applicant received their share after issuance of the Completion/Occupancy Certificate, the Authority for Advance Rulings ruled that such amount/share would not tantamount to ‘supply’ under the provisions of CGST Act thus, would not be amenable to tax.

VA Comments

The Ruling is clarificatory in nature and clears the ambiguity surrounding such transactions.

For any further information/ clarification, please feel free to write to:

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¹ AR No. KAR ADRG 55/2020 dt 07.11.2020