

Taxation of Plotted Development



27th May 2020

Bangalore Branch of ICAI

CA. Rajesh Kumar T R

B'com, LLB, FCA, DISA

Chartered Accountant

Different Types- Broadly

- Land owner develops on his own land and sells plots
- Joint Development – Area Sharing
- Joint Development – Revenue Sharing

CA. Rajesh Kumar T. R.

Parties involved

- Contractor
- Land Owner
- Developer
- Prospective Buyer

CA. Rajesh Kumar T. R.

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;
 - (b) import of services for a consideration whether or not in the course or furtherance of business;
 - (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

Supply

- 2(102) “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;
- Scope of ‘Anything’ ?
- Can it cover transaction in immovable property as well. – Requires Judicial examination.

Supply

- (1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.
 - 2. Land and Building
 - (a) any lease, tenancy, **easement, licence to occupy land** is a supply of services;
 - (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.
- Whether developer getting right to operate within land is covered in 2(a)?

Supply

- (2) Notwithstanding anything contained in sub-section (1),— (a) activities or transactions specified in Schedule III; - shall be treated neither as a supply of goods nor a supply of services.
- Schedule III –
 - 5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
 - Sch.II, 5(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.
 - Explanation - the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

Stages in Plotted Development

- Conversion of Land to Non-Agricultural Use
- Prepares plan for development
- Obtains NOCs from different authorities
- Apply for Sanctioning Authorities
- On approval, relinquishment of title of road, drains, park etc., to Local Authority
- Registration of project under RERA

CA. Rajesh Kumar T. R.

Stages in Plotted Development

- Entering into agreement to sell with the prospective buyer
- Creation of infrastructure and amenities
- Verification of development by authorities
- Release of sites for registration
- Registration of sites

CA. Rajesh Kumar T. R.

Definition of works contract

- (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;

CA. Rajesh Kumar T. R.

Preliminary

- Whether Notification No. 4/2018 applies to Plotted Development.
- Applicability of Notification No. 3/2019, No. 4/2019, No. 5/2019 and No. 6/2019 to Plotted Development- Wordings of Explanation (i) in Column 5 to be considered- Developer – Promoter is a promoter who constructs or converts a building into **apartments or develops a plot for sale.**
- Only amendment made to RCM notification can be said to be applicable. However in plotted development whether there is transfer of Joint Development.

CA. Rajesh Kumar T. R.

Elements of supply – Contractor to LO/Dvpr

- Construction of Roads and infrastructure on relinquished land;
- Constructions within the plots
- Construction of Amenities agreed to be provided
 - Consolidated contract
 - Separate contracts

CA. Rajesh Kumar T. R.

Issues

- Whether GST payable by LO/Dvpr can be paid under Work Contract
- Whether LO/Dvpr is eligible to avail ITC on the same
- Is there a possibility of maximizing credit by LO/Dvpr by treating development activity is separate from sale of land?

CA. Rajesh Kumar T. R.

Elements of Supply – by land owner

- Title to land
- Development cost
 - Common areas
 - Within the site
- Amenities in the layout
 - Consolidated Price
 - Break-up values

CA. Rajesh Kumar T. R.

Issues

- Is it mandatory to segregate the values in to land cost and development cost?
- Whether GST is to be charged to end buyers of sites?
- Whether development activity is carried for and on behalf of the prospective buyer or for and on behalf of LO?
- If GST is said to be payable can it be argued to say it is payable only on the constructions or other works carried out within site and not common area? (Ref. Continental Builders & Developers case in VAT)

CA. Rajesh Kumar T. R.

Elements of Supply – JD – Area Sharing

- Similar to Land owner –
 - From Land Owner - to buyer
 - From Developer – to buyer
- From Developer to Land owner –
 - Conversion of land
 - Obtaining Approvals
 - Building Infrastructure on relinquished land
 - Building amenities
- From Land owner to Developer – development rights?

CA. Rajesh Kumar T. R.

Issues

- Whether the developer is owner of his share of area?
- If it is not, is he required to charge GST on the end customer on entire value?
- Whether developer is liable to GST on the activity carried out as per JDA?
- If there is liability on developer, what value i.e.
 - On the value of work proportionate to land owner only?
 - On the entire value of work in the project?
 - On the sale value of his area? If remains unsold?

Issues

- Whether there is transfer of development right from LO to Dvpr.
- If yes whether RCM applies?

CA. Rajesh Kumar T. R.

Elements of Supply – JD – Revenue Sharing

- All transactions are supposed to have been done by Land Owner
- Developer only operates on behalf of Land owner
- Gets consideration on behalf of land owner
- Gets portion of consideration for the activities undertaken
 - Maarq Spaces Pvt. Ltd (AAR & AAAR)

CA. Rajesh Kumar T. R.

Issues

- Whether GST is payable by buyer to developer/LO ?
- Whether GST is payable by developer on sale consideration received from customers?
- If payable as per AAAR decision on which value?
- Whether it can be charged and collected from buyers?

Common Issues

- If AOS is and sale deed is made only after final release order whether GST is applicable to LO/Dvpr?
- Can ITC be availed by LO/Devpr. Of taxes paid on construction of Drains, Culverts, Bridges, Roads they being immovable property.
- When for stamp duty value of Development cost is to be added, why it is not to be treated as part of sale of land?
- If ITC is being availed, what happens to the Plots remains unsold as on date of final release of sites?

CA. Rajesh Kumar T. R.

Any Queries???

THANK YOU

For any clarification

rajeshtr77@gmail.com

