

# IMPORTANT GST UPDATES



Issued by: Appellate Authority For Advance Ruling, Karnataka | Order No: KAR/AAAR/02/2023 | 14-02-2023

## Ruling

**AAAR upholds the 8<sup>th</sup> Sept'22 Ruling that:**

- 1) GST is not applicable for the consideration received on sale of site**
- 2) GST is not applicable for the advance received towards sale of site**
- 3) GST is not applicable on sale of plots/sites even when they are sold after completion of works related to basic necessities.**

**Any third party services taken by owner for work over and above the mandate of local authorities for 'sale of land' will be considered as a service rendered to the buyer and GST on the same will apply.**

## Observations & Findings

The advertisement or marketing strategy of the owner for selling land cannot be taken into account for interpreting a taxing statute and to determine whether an activity is subject to tax. The owner of the land is developing the land because it is required of him by law (KTCPA, 1961) to develop the land in order to sell the plots and not at the behest of the buyer and not because the purchaser has requested for any service from him. In the case of plotted development, the law mandates that a certain level of development activity is undertaken. The sites can only be released for sale unless the development activity is completed. This release of sites for transfer of title by registration happens only when the development work is complete and a completion certificate is obtained from the concerned Authority / Agency / Department.

The development of land undertaken by the owner is an activity incidental to the sale of land. Any consideration received by the owner, whether during the course of the development or after the completion of the development works and release of sites by the Planning Authority, is received only for the sale of the land and as such there is no service provided by the owner / developer. The consideration received from prospective buyers whether as advance or full consideration are only towards obtaining a transfer in the title of the plot of land and hence not taxable under GST in terms of entry 5 of Schedule III of the CGST Act

However, if the owner of the land engages third party services to carry out the development activity then that transaction between the owner and the third party will undoubtedly be taxable to GST as a service. Authority makes it clear that any service received by the owner from third parties for undertaking the development work is taxable under GST at rates applicable for such service - If the owner is found to be providing any development work over and above what is mandated by the KTCPA and the local authorities, the same will be considered as a service rendered to the buyer and tax on the same will apply.