

IMPORTANT GST UPDATES



Issued in case of Monalisa Cooperative Housing Society by Maharashtra bench of the Appellate Authority for Advance Rulings
Order No: MAH/AAAR/DS-RM/18/2022-23 | Date: 23-03-2023

Ruling

The appellate body upheld the earlier ruling that GST will be applicable on the "voluntary" contributions by an outgoing member of a Cooperative Housing Society.

Observations & Findings

It is a common practice for Cooperative Housing Society (CHS) to seek transfer fees on sale of a flat/house as stipulated in the bylaws. While some societies seek a higher transfer fee outright, others welcome an additional payment, which is set aside for future use like major repair work or modifications at a later date. The transfer fee which has a direct connection with services provided to the outgoing member, relating to transfer of a flat, is subject to GST at 18%.

However, some CHSs take a stand that no GST will apply on voluntary contribution as there is no connection with any supply of services to the outgoing member. It should be noted that only those Mumbai CHSs with annual turnover (including transfer fee) in excess of Rs 20 lakh are required to register under GST and comply with the tax obligations. However, given the high quantum of voluntary payments received, most Mumbai-based CHSs require GST registration and compliance.

In this case, the AAR had observed that a sum of Rs 17.7 lakh had been given to Monalisa CHS by an outgoing member, which was inclusive of GST. The housing society, in turn, reflected a net sum of Rs 15 lakh under the head 'major repair fund' in its accounts. The balance Rs 2.7 lakh was the GST component. In its 2022 ruling, the AAR held that it appears there is compulsion for an outgoing member to make a gratuitous/voluntary payment. This hints at a systematic approach to circumvent the GST structure. The accounting entry shows that the contribution is nothing but an advance amount for services to be availed by the society's members in the future.

MAAR has observed that considering Model Bye Laws of CHS, appellant cannot recover additional amount towards donation or contribution to any other funds. The bench concurred with MAAR's findings that the society cannot at all accept voluntary donations and that the appellant is trying to give a colour of 'voluntary and gratuitous' payment for amount received from outgoing member. The said contribution by the outgoing member is nothing but Advance amounts paid to the society for services carried out or to be carried out for the members of the society and is therefore taxable as per the GST laws. The MAAR advance ruling bearing No. GST-ARA030/2020-21/B-71 dated 31.05.2022 is confirmed and upheld and appeal filed by the Appellant is dismissed.