

IMPORTANT GST UPDATES



Issued in case of NBER Developers LLP By Odisha AAR
Advance Ruling No – 03/ODISHA-AAR/2023-2024 | Date: 12-01-2024

Ruling

Sale Of Land And Duplex Construction Taxable At 7.5% GST, No ITC Eligibility

Observations & Findings

The applicant, M/s NBER Developers LLP, is actively involved in the real estate and construction sector and was incorporated in 2018. They have initiated a land plotting project in Jatni, Odisha, and have plans to construct duplex houses on the same land. Two separate agreements are expected to be made with customers - one for the sale of residential land and another for the construction of duplex houses on the same plot. Notably, the duplexes in question do not fall under the category of "affordable residential apartments."

The "Works Contract" as defined in Section 2(119) of the CGST Act, 2017, encompasses contracts involving building, construction, fabrication, and more in connection with immovable property, with the transfer of property in goods as a component. It is subject to an 18% GST rate (CGST 9% + SGST 9%). According to Schedule III of the CGST Act, the sale of land is neither considered a supply of goods nor a supply of services. Consequently, GST does not apply to the sale or transfer of land.

The applicant's perspective is that both the land sale and construction contracts should be treated separately. Once a customer enters into a land purchase contract and registers the land in their name, they become the landowner without any obligation to have their house constructed by the same developer. Separate approvals are needed from relevant authorities for the construction of individual houses. Developers may enter into sale agreements with prospective buyers before, during, or after land development, which may encompass various development activities such as electricity, drainage, water facilities, parks, and clubhouses.

Upon reviewing the case, the Authority for Advance Ruling (AAR) found that the issue at hand primarily revolves around determining the GST rate applicable to the sale of land and construction of duplex houses on the same land through two separate agreements. It also considers the admissibility of input tax credit (ITC) for tax paid or deemed to be paid.

The AAR carefully considered the applicant's business activities, including land procurement and construction of multi-storied buildings or duplexes. It noted that the applicant had not been authorized by the landowner to sell plots of land; instead, their authorization was focused on constructing duplexes or multi-storied buildings on the land. The applicant, however, had entered into two separate agreements with customers - one for the sale of land and the other for constructing duplexes or multi-storied buildings on the same land. The applicant had also obtained the necessary approvals and registered the project with RERA.

Based on the analysis, the AAR concluded that the applicant's activities involving the sale of land and construction of duplexes/flats on the same land constitute a taxable service under GST, as per Schedule II, Para 5 Clause (b) of the CGST Act. The effective GST rate, as per Notification No. 03/2019-C.T. (Rate) dated 29.03.2019, is 7.5% (CGST @ 3.75% + SGST @ 3.75%), after deducting 1/3rd of the land cost from the total consideration. Importantly, the applicant is not eligible for ITC on any inward supply of goods and services in this context.