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**CONSULTANTS:**

GST, CUSTOMS, FOREIGN TRADE LAWS,  
FOREIGN EXCHANGE MANAGEMENT ACT.

## OPINION

**1. Queriest :**

Shri. A V SIVARAMAN,  
F2, Navin Manasarovar,  
86<sup>th</sup> Street, 18<sup>th</sup> Avenue,  
Ashok Nagar,  
Chennai – 600 083.

**2. Facts :**

2.1 The queriest is a General Power of Attorney holder representing son and daughter of the deceased elder brother, 3 other brothers and 2 sisters.

2.2 The family members as stated above have got their share in the property situated at Ashok Nagar, Chennai from their mother through a settlement done by her during August 2019. All of them have decided to develop the property under Joint Development Agreement (JDA) with M/s.Cinthamani Housing & Properties, a registered Partnership firm (The Developer-promoter) on the following basis.

i. The JDA will be entered into in the form of area sharing basis in the ratio of 62.5% for the land owners and balance 37.5% for the developers.

ii. The landowners and developers have full liberty to sell their share of flats to prospective buyers.

iii. All the flats constructed are of non - affordable category.

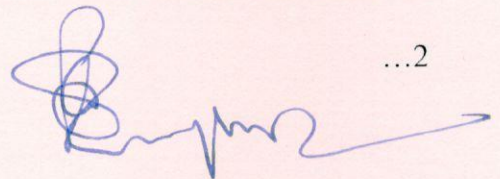
iv. The developer-promoter will pay additional consideration of Rs.40 lakhs to the landowners.

2.3 Further the queriest is a partner in M/s.Cinthamani Housing & Properties with 25% share in its profit.

**3. Query :**

3.1 As per the revised new rate of GST as per Notification 3/2019, what rate of GST will the developer-promoter will collect from the land owners towards construction charges when he hands over the flats before the issue of completion certificate.

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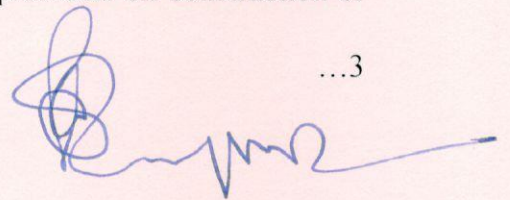


- 3.2 In case the land owners intend to sell their share of property to prospective buyers before the issue of completion certificate, are they entitled to take input tax on the GST charged by the developer-promoter as per query 3.1.
- 3.3 In case the land owners intend to sell the property to the prospective buyers, in order to comply with GST law is it sufficient that the querist takes a single GST registration as GPA holder or each one of his family members should get registered under GST.
- 3.4 As the time of supply is before obtaining the completion certificate from the competent authorities, when should the querist / land owners get registered under GST. As the prospective buyers will be making progressive payment to the land owners based on agreed terms, they can collect GST on the progressive payment and remit the same to the government (**or**) is it sufficient that the land owners issue GST invoice to their buyers before obtaining the completion certificate and after they get the GST invoice from their developer-promoter towards construction charges. In case the land owners are eligible for taking the input whether they can adjust the input tax credit (i.e. the GST charged by the developer) and pay the balance, if any, to the government.
- 3.5 Under JDA arrangement, is the developer-promoter is entitled to any input tax credit.

**4. Opinion :**

For 3.1: In terms of Notification 11/2017-Central Tax (Rate) dated 28.6.2017, as amended, GST payable will be 7.5% (CGST 3.75% and SGST 3.75% - total 7.5%). In this connection, Sl.No.3(i)(d) of the above Notification along with the relevant proviso can be seen in this regard.

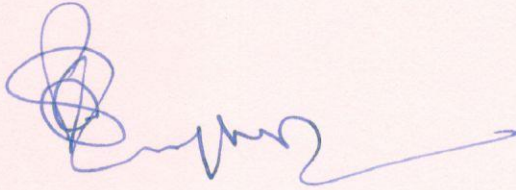
For 3.2: The land owner-promoter will be entitled to take input tax credit in case of subsequent sale of the flats by the land owner-promoter to third parties. It is to be seen that the tax liability on the developer-promoter to pay tax on the construction services provided will arise based upon receipt of payments in advance / stages. As far as land owners are concerned, as per the proviso to S.No.3 of the above notification, the developer-promoter shall pay tax on supply of construction of apartments to the land owner-promoter. Thus when supply is effected to the land owner-developer, the builder needs to pay tax. Such tax paid by the developer-promoter in such cases can be availed as input credit by the land owner-promoter, when such constructed flats are to be sold to third parties. Otherwise no credit is available. Also it is to be noted that the tax payable in such cases should not be less than the amount of tax charged from the land owner-promoter by the developer-promoter on construction of such apartments.



For 3.3: Since there is more than one individual with interest in the land, the undivided share of the land will be available to each individual separately and subsequent title to successors/heirs will be restricted to such undivided share of land and the flats constructed. As such, each individual will be making available the development rights to the developer-promoter to the extent of his ownership and in return will be entitled to receive construction services (with additional payments to the developer-promoter or otherwise). In such a situation, it will be necessary that each individual is registered under the provisions of GST to enable availment of input tax credit and its utilisation, in case, his share of constructed flat is sold subsequently to a third party. In this background, registration of the power of attorney alone will not be sufficient.

For 3.4: Construction services will be split over a time and depending upon the contract and agreements periodical payments will be due depending upon different stages of construction. In cases of continuous supply of services receipts are to be issued whenever advance payments are received and depending upon the stages specified in the contract and the payment schedule, invoices are to be issued at each such stage. In this connection, Section 31(5) of CGST Act 2017 may be referred to. Mostly, in respect of construction services single payment is not resorted to and therefore when progressive payments are made, invoices need to be raised and consequently, GST also becomes liable to be paid. In view of the above, it is not possible to issue a single invoice to the third party buyer. Any sale to third party has to be done before first occupation or obtaining of completion certificate in case input credit of the tax paid is required to be utilised. Otherwise, tax paid will become cost to the land owner.

For 3.5: Developer-promoter is entitled to take input tax credit in respect of JVA also.



**S. MURUGAPPAN**

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**Disclaimer:-** The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.