



GST On Sale of Developed Plots - Gujarat AAR Opens “A Big Pandora Box” for Indian Real Estate Industry

GUJARAT AAR GST Decides in the Favour of Revenue that Sale of Developed Plots is Rendering of Service under CGST Act, 2017 and thereby liable to Levy of GST.

GST On Sale of Developed Plots – Gujarat AAR Opens “A Big Pandora Box” for Indian Real Estate Industry

Recently the Gujarat AAR - GST in case of **Shri Dipesh Anil Kumar Nayak In re Advance Ruling No. GUJ/GAAR/R/2020/11 dated 19-05-2020** surprisingly has held that **sale of developed plot** i.e. sale of land / plot after developing with common facilities like water line, telephone line, electricity line, Garden, common areas, water harvesting, system drainage, water pipelines, length of underground cables, demarcation of individual plots and other facilities as required by the development authority **is not equivalent to mere sale of land under GST but shall tantamount to rendering of services and would be subject to levy of GST.**

Now you would think that whether this is binding on all taxpayers or not. **Technically not because as per section 103 of the CGST Act, 2017** the ruling that is issued by AAR shall be only binding on the applicant **but in my view no doubt about this that department will issue show Cause Notice to all developers who are engaged in the sale of developed plots based on this advance ruling itself.**

Nonetheless first let's discuss about the issue and then try to see what can be the best upcoming Strategies for the developers to handle the Situation.

If You would remember that in the earlier 2013 there was one case law that came of Supreme Court in case of **M/s Narne Construction Private Limited** where the **consumer protection act** was referred to and it was held that **the sale of developed plot tantamount to rendering of services.**

Even back then in the service tax Regime of negative list it was a matter of Hue and cry, and now even in the present advance ruling this is the major case law that has been referred to by the authorities to suggest that the sale of developed plot is rendering of services and thereby liable to GST

GST On Sale of Developed Plots – Gujarat AAR Opens “A Big Pandora Box” for Indian Real Estate Industry

1. Summary of the Case

1. Brief Facts of Applicant

1. The applicant has submitted that he is having a vacant land outside the municipal area of town on which he has some proposed business activity. The applicant is having all the necessary approvals for the proposed project from the Plan Passing Authority (i.e. Jilla Panchayat).
2. The applicant has further submitted that as per the Plan Passing Authority, the seller of land is required to develop the primary amenities like Sewerage and drainage line, Water line, Electricity line, Land levelling for road, Pipe line facilities for drinking water, Street lights, Telephone line etc..
3. The applicant further submitted that they will sell the individual plots to different buyers without any construction on the same but by providing the primary amenities as mentioned above, which are mandatory requirement of the approved Plan Passing Authority (i.e. Jilla Panchayat)

2. Question Asked by Applicant

1. Whether GST is applicable on sale of plot of land for which, as per the requirement of approved by the respective authority (i.e. Jilla Panchayat), Primary amenities such as, Drainage line, Water line, Electricity line, Land levelling etc. are to be provided by the applicant?

3. Findings by AAR

1. The sellers charge the rates on super built-up basis and not the actual measure of the plot. The super built-up area includes the area used for common amenities, roads, water tank and other infrastructure on a proportionate basis.

Thus, in effect the seller is collecting charges towards the land as well as the common amenities, roads, water tank and other infrastructure on a proportionate basis. In other words, such common amenities, roads, water tank and other infrastructure is an intrinsic part of the plot allotted to the buyer.

2. The above indicates that sale of developed plot is not equivalent to sale of land but is a different transaction. Sale of such plotted development tantamount to rendering of service. **This view has also been taken by the Supreme Court in the case of M/s Narne Construction P Ltd. reported at 2013 (29) STR 3 (SC).**
3. **We find that the activity of the sale of developed plots would be covered under the clause 'construction of a complex intended for sale to a buyer'. Thus, the said activity is covered under 'construction services' and GST is payable on the sale of developed plots in terms of CGST Act / Rules and relevant Notification issued time to time**

2. Now coming to why this in my view is not the right interpretation that it is Case of Construction of Complex Service

GST On Sale of Developed Plots – Gujarat AAR Opens “A Big Pandora Box” for Indian Real Estate Industry

AAR has held that it is nothing but the case of construction of complex under the GST, now this is an argument which has a lot of Counter arguments which needs to be explained at the higher forums for some example of them are as under

1. **Firstly the trade parlance theory** - It is well settled that any commercial term has to be understood as per 'trade parlance'. Word used in taxing statutes in respect of items should be interpreted in the way in which it is understood by people conversant with the subject matter of the statute, unless statute prescribes a specific definition. Scientific and technical meaning should not be applied but popular meaning should be applied as legislature does not suppose the merchants to be geologists, botanists or naturalists. –

Supporting Judgements :- CCE v. Krishna Carbon Paper Co. - (1989) 72 STC 280 (SC) = 37 ELT 480 = (1989) 1 SCC 150 = AIR 1988 SC 2223 *Mukesh Kumar Aggarwal v. State of MP - (1988) 68 STC 324 (SC) = 178 ELT}

1. Second as already discussed previously also the other at definition including the **consumer protection act cannot be referred to either in service tax on GST Regime since both the Acts are not in parimateria** (Relating to same person or thing)
 1. There a plethora of judgement which are actually very clearly saying all this effect - Hari Khemu Gawali v. Dy. Commissioner of Police, Bombay - AIR 1956 SC 559 * Board of Muslim Wakfs, Rajasthan v. RadheKishan - AIR 1979 SC 289 = (1979) 2 SCC 468
 2. In MS Company (P.) Ltd. v. UOI - AIR 1985 SC 76 = (1985) 1 SCC 51 = 19 ELT 15 (SC), it was observed :
"While construing a word which occurs in a statute, in the absence of any definition given in the very document, it must be given in the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of statute understand it. It is hazardous to interpret a word in accordance with its definition in another statute and more so when such statute is not dealing with any cognate subject."
2. Whenever there is any ambiguity in the law it is assume that it will be resolved in the favour of the taxpayer itself
3. In case of sale of developed plot there is no requirement of any completion certificate as prescribed in case of construction services under GST Regime this is a clear-cut example of why the sale of developed plots cannot be treated status ko the construction services under GST

Note :- Taking plea of Unconstitutionality shall not be correct Since 'Taxes on lands and buildings' is a State subject as per entry 49 of List II, but GST can be imposed as Article 246A in Constitution of India, as inserted w.e.f. 16-9-2016 overrides Article both Article 246 & Article 254.

1. **Sale of Developed Plot is Composite Supply of Sale of Land**

GST On Sale of Developed Plots – Gujarat AAR Opens “A Big Pandora Box” for Indian Real Estate Industry

It is clear that it is nothing but a case of composite supply of land where the ultimate intent of the buyer is the to obtain the principal supply of the land it is not the principal supply of the road or of any facility but the principal supply is of land so it should be a case of composite supply

1 Why MAARQ Spaces and this AAR are Contextually Different

Coming to the earlier case of **MAARQ Spaces wherein Karnataka AAR** held that revenue share received by the developer shall be subject to levy of GST being supply of services to the landowner, we believe that that case is separate from this case because in that case it was decided by the authorities that that activity of development in itself shall be liable to GST so in my personal view also if there is separate activity of development that is being billed then there is no doubt about that that is liable to GST.

But when the development is done along with the sale of land that the sale of land is principally the major Activity the principal supply and in that case the development should always be treated as a part of the major principles applied thereby not attracting any GST on sale of developed plots

1 What Should Developer Do.

1. No Doubt, more litigation will appear if Department Pursues against Developers.
2. Commercial Real Estate Associations viz CREDAI and NAREDCO shall immediately seek clarifications from CBIC and MoF.
3. All Existing Transaction for sake of safety shall include a Resort to Clause in Agreement with Customers.
4. GST Clauses in Plot Sales shall be drafted in a Similar way to Sale of Flats etc to at least keep the space of collection open later if Judicial Precedents decides in revenues favour.
5. Care should be taken in drafting agreements for sale of plot by (a) not showing development charges separately and (b) not offering other services like gym, club house, swimming pool, security services etc.

2. Conclusions

This will have a lot of negative impact on all the developers and industries of real estate across the country. Further at Higher forums it is a high probability that this can get overruled in the favour of the industry because essentially sale of developed plot is nothing but sale of land. **Don't Forget, All along history of Indian Stamp Act and Registration Act, sale of plot has been treated as sale of land for purposes of stamp duty and Registration.**

GST On Sale of Developed Plots – Gujarat AAR Opens “A Big Pandora Box” for Indian Real Estate Industry

DISCLAIMER:

This paper is provided purely for your information only and you should check other information sources before taking any action based on any of the content in this paper. Neither the authors nor website hosting the paper make any warranty as to the quality or currency of the information contained in any of the site's articles. This paper is meant for informational purpose only and does not purport to be advice or opinion, legal or otherwise, whatsoever. Author does not intend to advertise its services through this update. Author or its associates are not responsible for any error or omission in this update or for any action taken based on its contents.