KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SMT RANJANA JHA, MEMBER

SMT. SHIKHA C., MEMBER

ORDER NO.KAR/AAAR/ 02/2023 **DATE: 14-02-2023**

1	Name and address of the appellant	Assistant Commissioner of Central Tax, Bangalore South Commissionerate, , Bangalore
2	Name and address of the person who had sought advance ruling.	Ms Rabia Khanum, No 19/2-6, Ranoji Rao Road, Basavanagudi, Bengaluru 560004
3	GSTIN or User ID of the person who had sought advance ruling.	User ID 292200000516ARU
4	Advance Ruling Order against which appeal is filed	KAR/ADRG 31/2022 dated 8th September 2022
5	Date of filing appeal	29-11-2022
6	Represented by	Shri. N. Sundaram, Assistant Commissioner, Bangalore South Commissionerate.
7	Jurisdictional Authority- State	-
8	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Not applicable

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as

CGST Act, 2017 and SGST Act, 2017) by the Assistant Commissioner of Central Tax, Bangalore South Commissionerate, (herein after referred to as Appellant/Appellant Department) against the Advance Ruling No. KAR/ADRG 31/2022 dated 8th September 2022.

Brief Facts of the case:

3. Ms. Rabia Khanum, No.19/2-6, Ranoji Rao Road, Basavanagudi, Bengaluru – 560 004 (hereinafter referred to as 'Respondent'), is an un registered individual who owns three acres of land at Sy.No.61/8 (old Sy.No.61/1), Bagganadu Village, J.G. Hali Hobli, Hiriyur Taluk, Chitradurga District and intends to convert this land for residential usage by forming small plots of land (residential sites) and sell the plots to individuals. The Respondent claims that they will be developing the land as per regulations of the District Town and Country Planning Act (DTCPA), The Karnataka Real Estate Regulation Act and other zonal regulations that would be applicable while obtaining sanction of the plan.

4. The Respondent filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 in respect of the following questions:

i. Whether GST is applicable for the consideration received on sale of sites? If yes, at what rate and on what value?

ii. Whether GST is applicable for the advance received towards sale of site? If yes, at what rate and on what value?

iii. Whether GST is applicable on sale of plots after completion of works related to basic necessities?

iv. If GST is chargeable on any of these transactions, can the applicant collect the GST from the prospective buyers?

v. If GST is chargeable on any of these transactions whether the applicant is eligible for claiming Input Tax Credit that they pay on the expenses they incur on development?

5 The Respondent submitted before the Authority for Advance Ruling that the development of land includes formation of roads, formation of rain water drains, laying of electricity cables, water pipes, sewerage lines, drilling of borewells for supply of water, construction of water tank for storage and supply of water, setting up of a power sub-station

and obtaining connection from Electricity board for supply of electricity etc., which are basically required for human inhabitation; that without providing these basic necessities, the concerned authorities will not grant permission to sell the plots to individuals for construction of houses; that they need to handover the works of roads, drains, parks, playgrounds, bus stops, places identified for construction of places of worship etc., to the DTCPA authorities; that from then, they will start collecting taxes from the owners for maintenance; that for all the unsold plots, the Respondent will have to pay taxes till they are sold; that the development works will then become the property of the authorities and is not sold or transferred to any individual; that the transfer of the ownership of the said plots will happen under The Transfer of Property Act. The Respondent also stated that they will not be entering into any agreement with any prospective buyer where consideration is separately identified between cost of the plot and cost of development; that they enter into agreement of sale with the prospective customers towards sale of individual sites and receive advances for the same and on receipt of full consideration, the sale deed will be executed; that all the prospective buyers are aware of the fact that they will be purchasing a plot worthy of constructing a house to live since the authorities will be maintaining and managing the amenities required for living. The Respondent has stated that all unsold plots will be put to sale after completion of the works related to basic necessities, handing over of works of the roads, drains, parks, playgrounds, bus stops, etc to the authorities.

6. The Authority for Advance ruling examined the case of the Respondent and vide ruling No. KAR/ADRG 31/2022 dated 8th September 2022 and after taking into consideration the CBIC Circular No.177, dated 3rd August 2022, has passed the ruling as under:

i. GST is not applicable for the consideration received on sale of site.

ii. GST is not applicable for the advance received towards sale of site.

iii. GST is not applicable on sale of plots/sites even when they are sold after completion of works related to basic necessities.

iv. In view of the ruling given at question (i), the questions (iv) and (v) of the application becomes redundant.

7. The jurisdictional CGST officer reviewed the impugned order passed by the Authority and being aggrieved by the ruling passed, filed an appeal before us on the following grounds:

7.1. The Appellant Department submitted that the clarification given in Circular No 177/09/2022 dated 3rd August 2022 is only regarding developed land; that the Circular is silent

about taxability of supply of development of land by the developer himself; that the Respondent has admitted that it is mandatory on their part to provide to the buyers of the plots, all the facilities such as formation of roads, formation of rain water drains, laying of electricity cables, water pipes, sewerage lines, drilling of borewells for water supply, construction of water tank for storage and supply of water, setting up of a power sub-station and obtaining connection from Electricity Board for supply of electricity. Therefore, the sale of land is not on 'as is where is' basis and that the development of land before the sale of land is a supply of service.

7.2. The Appellant Department submitted that the Respondent is the owner of the land who develops the land with the required infrastructure and after this development, she sells the developed land as plots; that the sale price includes the cost of the land as well as the cost of common amenities; that the activity of sale of developed plots would be covered under the clause 'construction of a complex intended for sale to a buyer'; that the activity of the Respondent is covered under 'construction services' and GST is payable on the sale of developed plots in terms of CGST Act/Rules and relevant Notifications issued. The Appellant Department contended that a plain reading of the submissions made by the Respondent makes it clear that the transaction involves dividing the vacant land into multiple plots, construction or development of common facilities and selling such developed plots of land along with the common facilities to individual buyers; that the Respondent has admitted that the development activities are required for human inhabitation and all prospective buyers are aware of the fact that they will be purchasing a plot worthy of constructing a house; that the Agreement with the prospective buyers will include the development of basic amenities and that the Respondent makes a clear assurance to the purchasers regarding the nature of development. The Appellant Department contends that to the extent the transfer of the site with developments in the manner specified is a part of the transaction, the Respondent indeed provides a service; that the sale of developed land referred to in paragraph 5 of Schedule III of the CGST Act, is different from the sale of developed plots; that the sale of land referred to in Schedule III refers to sale of undeveloped land. Since the Respondent is going to undertake substantial development of the land before giving it out for sale to end customers, these development activities are covered in clause (b) of para 5 of Schedule II and will be a supply of service which is taxable.

7.3. The Appellant Department argued that the AAR has erred in holding that the sale of developed land by the Respondent is not taxable in terms of entry 5 of Schedule III of the CGST Act; that when the transaction involves a mere sale of land, the said transaction will be

out of the scope of supply and will be covered in entry No 5 of Schedule III. However, in this case, common facilities are being developed by the Respondent and this activity will make it a taxable service under clause (b) of para 5 of Schedule II i.e 'construction of civil structure or a part thereof, intended for sale to a buyer'. The Appellant Department also contends that the Respondent charges the rate on super built-up basis and not on the actual measure of the plot; that the super built-up area includes the area used for common amenities and other infrastructure on a proportionate basis; that in effect, the Respondent is collecting charges towards the land as well as the common amenities and all these are an intrinsic part of the plot allotted to the buyer; that the sale of developed plot is not equivalent to sale of land and that sale of developed plots amounts to rendering a service.

7.4. The Appellant Department pointed out that the Respondent has admitted that all unsold plots will be put to sale after completion of development works related to basis necessities; that the transactions initiated after completion of development of land do not attract GST whereas transactions initiated before completion of development of land attracts GST; that if an agreement is entered into by the Developer with the prospective buyer for sale of plot before completion of development work, the same is taxable as 'Construction service' under Heading 9954 and the rate of tax will be 18%. The Appellant Department relied on the following decisions/rulings in support of their contention:

a) Judgment of the Hon'ble Supreme Court in the case of M/s Narne Constructions Pvt Ltd vs UOI – 2013 (29) STR 3 (SC)

b) Gujarat AAAR order in respect of Shri Dipesh Anil Kumar Naik – 2022 (61) GSTL 454 (App.AAR – GST- Guj)

c) Karnataka AAR order in respect of M/s Maarq Spaces Pvt Ltd – 2019 (31) GSTL 554 (AAR-GST)

d) Karnataka AAAR order in respect of M/s Maarq Spaces Pvt Ltd – 2020 (37) GSTL 109 (App.AAR-GST-Kar)

e) Madhya Pradesh AAAR order in respect of Bhopal Smart City Development Corporation Ltd – MP/AAAR/01/2022 dated 13th April 2022.

7.5. In view of the above, the Appellant Department prayed that the order of the lower Authority be set aside and hold that GST is applicable for consideration received on sale of

sites wherein sale transaction is initiated before completion of development activity. The activity is classifiable under Heading 9954 (Construction service) attracting 18% tax on the gross value received from the buyers. GST is not applicable on sale of plots after completion of all development works provided the sale transaction is not initiated before completion. In other words, GST is payable on entire consideration received by the developer even after completion, if agreement is entered into before completion. GST is also payable on the advance received towards sale of site in terms of Section 12 (b) of CGST Act @18% on the gross value of advance.

8. The Respondent filed a counter to the grounds of appeal vide letter dated 8th Dec 2022 wherein they submitted that they own 3 acres of land which they propose to convert for residential usage by forming small plots and sell to individuals; that as per the regulations, the land will have to be developed in order to obtain plan sanction; that without developing the land with basic amenities such as formation of roads, drains, laying of electrical cables, water pipes, sewerage lines, drilling borewells and constructing water tanks, the concerned authorities will not grant permission to sell the plots; that the development of basic amenities on the land will be handed over to the concerned authorities on completion and the same is not transferred to any individual; that the authority issues work order specifying the details of work that need to be done and thereafter the authority gives permission to sell . Typically, this is called release of plots for sale by the sanctioning authority. The Respondent has argued that the Appellant Department has assumed that the sale price includes the cost of land as well as the cost of common amenities; that the price is an agreement between the seller and the buyer and it cannot be assumed that the price includes price towards common amenities. They further submitted that land cannot be considered a complex or building and just for the purpose of taxation, a land cannot be called as complex or building and artificially brought under clause (b) of Schedule II of the CGST Act.

8.1 The Respondent further submitted that the Department is of the wrong notion that land referred to in Schedule III is undeveloped land; that the development activities undertaken by the Respondent are as per statutory requirement as prescribed by the local authority; that these are not intended to be sold to anybody but are handed over to the local authority; that the Department has wrongly assumed that the development activities are sold to prospective purchasers. They submitted that the development activities are done at the behest of the local authorities and handed over to them; that the only assurance given to the purchaser of the plot is that the plot is free of any legal hassles and that the land owner is the absolute owner and has

the legal right to sell the plots. They submitted that the Department has assumed without any basis that the rate charged is on super-built up basis and not on the actual measure of the plot. As regards the decisions relied upon by the Department, they submitted that the Supreme Court decision in the case of M/s Narne Constructions Pvt Ltd is in the context of the Consumer Protection Act, 1986 and is not relevant for interpreting a taxing statute; that the Gujarat High Court in the case of Munjaal Manishbhai Bhatt vs UOI has held as above and set aside the advance rulings which proposed to tax sale of land. As regards the reliance placed on the decision in the case of M/s Maarq Spaces Pvt Ltd, they submitted that the Authority had rightly held that the applicant (developer) has no right over the land and consequently cannot claim to be engaged in the activity of sale of land developed by them; that the purview of entry No 5 of Schedule III is applicable to persons who are owners or who have the right to sell the land; that in the present case, the Respondent is the rightful owner of the land and hence the plots sold by her after development of basic amenities is not taxable in terms of entry 5 of Schedule III of the CGST Act. The Respondent also relied on the advance ruling given by Haryana AAR in the case of M/s Informage Realty Pvt Ltd and Goa AAR in the case of Shantilal Real Estate Services wherein it has been held that sale of developed plots is not taxable in terms of entry 5 of Schedule III. In view of the above, the Respondent prayed that the appeal by the Department be dismissed.

9. The Appellant Department filed additional submissions vide letter dated 4th Jan 2023 wherein they submitted that the contention of the Department is regarding taxability of the activity of development of land and its sale before completion of development or before receipt of completion certificate from the concerned authorities. If the buyer enters into a contract/agreement with the developer, when the development of land is in progress, the activity of development is taxable. Once the land is developed and completion certificate is obtained from the relevant authorities, the property becomes a 'developed land' and the contents of Para 14.3 of the CBIC Circular 177/2022 dated 3rd August 2022 will apply. Even if the development activities are carried out at the behest of the local authorities, the same will be taxable and there will be no immunity for payment of tax. Once agreement is entered into with the prospective buyer and consideration received by the developer, in the course of development of plot, it would be works contract and GST will be payable. The Appellant Department reiterated their reliance on the Supreme Court decision in the case of Narne Constructions Pvt Ltd and Larsen & Tubro Ltd. The Department distinguished the Gujarat High Court decision in the case of Munjaal Manishnhai Bhatt vs UOI, which was relied upon by the

Respondent and stated that the case before the Gujarat High Court was the applicability of GST on the entire consideration payable for land as well as construction of bungalow after deducting 1/3rd of the value towards land; that in the case before the High Court the booking agreement was entered into after the land was fully developed and no further activity was required to be done by the landowner/developer in respect of the land and hence the only service which is supplied by the supplier to the recipient is the construction undertaken for the buyer and it is such supply alone which can be taxed. The Appellant Department contended that if the buyer enters into a contract/agreement with the developer, when development of land is in progress, as is the case in the instant appeal, the activity of development is taxable; that even if the development activities are carried out at the behest of a local authority under any law, it will not provide immunity from payment of tax. The Appellant Department's contention is, once agreement is entered into with the prospective buyer and consideration received by the developer, in the course of development of plot, it would be works contract and GST is payable.

PERSONAL HEARING:

10. The Appellant-Department and the Respondent Company were called for a virtual personal hearing on 9th December 2022 which was adjourned on the request of the Appellant Department. Another opportunity for hearing was given on 17th Jan 2023. The hearing was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant Department was represented by Shri. N. Sundaram, Assistant Commissioner, Bangalore South Commissionerate and Shri. Prashant, Superintendent, Bangalore South Commissionerate. The Respondent was represented by Shri. Santosh S., Authorized representative.

10.1 The Assistant Commissioner of Central Taxes representing the Appellant Department stated that the Department is aggrieved by the ruling given by the lower Authority holding that GST is not applicable on the consideration received for the sale of sites and on the advance received towards sale of site. The Appellant submitted that the lower Authority has relied on the Board's Circular No 177/09/2022 dated 3rd August 2022 to hold that the sale of developed land is not taxable to GST; that the lower Authority has erred in not taking note of the fact that the land sold by the Respondent is not on 'as is where is' basis but is sold by undertaking certain development activities on the land; that only when land is sold as it is or after development on receipt of the completion certificate,

it is not liable to GST as it is clearly covered within the scope of entry 5 of Schedule III of the CGST Act. He submitted that the clarification given at Para 14.3 of the impugned Board's Circular is applicable to the sale of fully developed land where completion certificate is received; that the said Circular does not apply to a situation where the land is sold before completion of development or before receipt of the completion certificate or advance is received during the course of undertaking the development activity. He submitted that under the Real Estate Regulation and Development Act, 2016 (RERA Act), 'real estate project' has been defined to mean the development of land into plots and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto; that if a buyer enters into a contract/agreement with the developer when the development of land is in progress, the activity of development is a service supplied which is taxable. He relied on the decision of the Supreme Court in the case of Narne Constructions Pvt Ltd wherein it was held that the assurance given by the developer to the purchaser as to the nature and extent of development that would be carried out on the land and the transfer of the site with developments amounts to a service rendered by the developer. He reiterated the grounds of appeal and the additional submissions made subsequently and emphasised that sale of plots is taxable under GST if agreement is entered into with a prospective buyer and consideration received during the course of development of plot; that this activity would be treated as works contract. He relied on the decision of the Supreme Court in the case of L&T to substantiate this argument. In view of the above submissions, the Appellant prayed that the order of the lower Authority be modified to the extent that GST is applicable for consideration received on sale of sites wherein sale transaction is initiated before completion of development; that the activity be classifiable under Heading 9954 (Construction services) attracting GST at 18% on the gross value received from the buyer; that GST is applicable on the advance received towards the sale of site in terms of Section 12(b) of the CGST Act at the rate of 18% on the gross advance received; that GST is not applicable on the sale of plots after completion of all development works undertaken to be provided by the Developer to the buyer.

10.2. In his rebuttal, Shri. Santosh S, Authorised representative of the Respondent supported the ruling passed by the lower Authority and submitted that the Respondent is

the land owner who is selling the land and the development activities are undertaken by her at the behest of the local authorities; that the developed infrastructure is handed over to the local authority on completion of development; that the infrastructure is not sold to the purchaser of the land; that the legislature never intended to impose tax on the sale of land in any form and it is for this reason that Schedule III specifies that sale of land will neither be a supply of goods or service; that the Circular No 177/09/2022 also confirms this intention of the legislature not to tax land whether developed or undeveloped. On a specific query by the Bench to comment on Para 14.4 of the Board's Circular wherein it is stated that any service provided for development of land, like levelling, laying of drainage lines shall attract GST, he submitted that the said para relates to the services received by the developer of the land; that on such services received by the Respondent from contractors who undertake the development work, GST is payable since it a service supplied by the contractors to the developer. However, the Respondent as owner and developer of the land is not rendering any service to the purchasers other than sale of the land as plots. He submitted that the reliance placed by the Department on the Supreme Court decision in the case of Narne Constructions is misplaced as the said decision was rendered in the context of Consumer Protection Act and this is the view expressed by the Gujarat High Court in the case of Munjaal Manishbhai Bhatt vs UOI. In view of the above submissions, the Respondent stated that the ruling given by the lower Authority is in line with the spirit of the law and does not merit any interference.

DISCUSSION & FINDINGS:

11. We have gone through the records of the case. This is an appeal filed by the Department against the ruling given by the Authority for Advance Ruling in the case of Ms Rabia Khanum. We have considered the submissions made by the Appellant Department in their grounds of appeal and at the time of personal hearing. We have also heard the Respondent and gone through the written submissions filed by her through her authorized representative.

12. Briefly stated the facts are the Respondent is the owner of three acres of land in Hiruyur Taluk, Chitradurga District. The Respondent intends to convert the land for residential usage and form small plots and sell them to individuals after obtaining necessary permission from the concerned government authorities. In order to obtain sanction of the

plan, and as per the regulations of the Town and Country Planning Act, the Respondent will develop the land with basic amenities which are required for human inhabitation. The Planning authorities issue a work order detailing the work that needs to be completed before the plots are ready for sale. The development work includes formation of roads, formation of rain water drains, laying of electricity cables, water pipes, sewerage lines, drilling of borewells for supply of water, construction of water tank for storage and supply of water, setting up of a power station and obtaining connection from Electricity Board for supply of electricity etc. On completion of the development activity, plots will be released for sale by the sanctioning authority. On receipt of the full consideration, the ownership of the residential plot will be transferred to the buyer under the Transfer of Property Act.

13. In this context, the Respondent had approached the lower authority to seek a ruling on whether the consideration received for the sale of sites is taxable; whether the advance received towards the sale of site is liable to GST and whether GST is applicable on sale of plots after completion of development works. The lower authority referred to entry 5 of Schedule III of the CGST Act and the clarification given by the CBIC vide Circular No 177/09/2022 dated 3rd August 2022 and held that the activity of sale of land by the Respondent, the receipt of advances towards the sale of sites and the sale of plots after completion of development works, are all not leviable to GST. Aggrieved by this ruling, the Department is before us in appeal.

14. We find that the Appellant Department is aggrieved only with respect to the advances received by the Respondent. It is the case of the Department that the advances received by the Respondent from prospective buyers before completion of the development works is liable to tax at the hands of the Respondent under the category of Works Contract since, carrying out the development activity before the sale of the site is akin to rendering a service to the purchaser. The Department has no grievance with the ruling that the sale of plots after completion of development works and after receipt of the completion certificate do not attract GST in terms of the entry 5 to Schedule III of the CGST Act. The sum and substance of the Appellant Department's contention is as follows:

- GST at 18%, under Heading 9954 (Construction service), is applicable on the consideration received on sale of sites wherein sale transaction is initiated before completion

- GST at 18% is applicable on the gross amount of advances received towards sale of site in terms of Section 12 (b) of CGST Act.
- GST is applicable on the entire consideration received by the developer even after completion, if agreement is entered into before completion.

15. It is seen from the records that the Respondent in this case is the owner of the large parcel of land. She intends to sell small sized plots to interested buyers. As owner of the large parcel of land, she is responsible for obtaining the necessary approvals from the government authorities to sub-divide the large parcel into smaller sized plots of land. The approval is granted subject to carrying out certain development works. Let us examine the legal provisions relating to plotted development of land in Karnataka. The sub-division of land into plots and formation of layout is regulated by the Karnataka Town & Country Planning Act, 1961. (KTCPA. Section 17 of the said Act which is relevant to this case is reproduced below:

17. Sanction for single plot or sub-division of plot or lay-out of private street.

(1) The State Government shall by rules prescribe the standards to be followed and minimum extent of Land to be considered for approval of Layout for sub dividing a plot and prescribe the minimum extent of area to be earmarked for park, open spaces and civic amenity sites and laying out roads. Every person who intends to develop a single plot or sub divide his plot by making a layout on or after the date of the publication of the declaration of Local Planning Area under section 4-A, shall submit detailed plan of the layout of his plot showing layout of roads, sub-divided plots and earmarking area for park and open spaces and civic amenities to such extent and in such manner, as prescribed.

(2) The Planning Authority may, within the prescribed period, sanction such plan either without modification or subject to such modifications and conditions as it considers expedient or may refuse to give sanction, if the planning authority is of the opinion that such plan is not in any way consistent with the proposals of the Master Plan.

Provided that where the Master Plans are not finally approved, in such cases the Planning Authority may sanction the layout plan as per the guidelines issued by the Government from time to time.

(2A) If the Authority decides to sanction the layout plans under sub-section (2), it shall sanction provisional layout plan in accordance with such rules as may be prescribed for demarcation and development purposes showing the sites, street alignment, park and play ground and civic amenity area and any other infrastructure facility including the arrangement to be made for leveling, paving, metalling, flagging, channeling, sewering, draining, street lighting and water supply to the satisfaction of the Planning Authority and local authority. One copy of such plan shall be marked to the jurisdictional local authority. The owner shall relinquish the roads, parks and play ground to the local authority and Civic Amenity areas to the Planning Authority through registered relinquishment deed free of cost without claiming any compensation.

(2B) The Planning Authority shall ensure the completion of all development works including all infrastructure facilities as mentioned in sub-section (2A) under the supervision of the concerned Authority/ Agency/Department. On obtaining the certificate of completion from the concerned Authority/Agency/Department on having completed all the development works and on relinquishment of the roads, parks to the local authority and Civic Amenity areas to the Planning Authority and handing over the same, the Planning Authority may issue the final layout plan affixing the seal of the Planning Authority for registration purpose.

Provided that no Commencement Certificate or licence shall be sanctioned or issued for buildings on sites in the layout unless the final layout plan is issued.

(2-C) The Planning Authority, if a person so desires, may also permit the release of sites in two stages. In such a case, the Planning Authority on approval of the provisional layout plan release forty percent of the sites in the layout in the first stage and shall release the remaining sixty percent of the sites on completion of all development works in the following manner, namely:-

(i) On approval of the provisional layout plan in the prescribed manner before releasing forty percent of sites, the Planning Authority shall,-

(a) obtain the registered relinquishment deed, in the prescribed form, from the applicant to relinquish the areas reserved and demarcated for park, playground and the roads in the layout to the Local Authority and the area

reserved and demarcated for civic amenities to the Planning Authority without claiming any compensation;

(b) shall also obtain the registered mortgage agreement of all the corner sites in the layout to the Planning Authority; and

(c) ensure that the project is registered under the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016).

(ii) After obtaining above documents the planning Authority shall release forty percent of the sites scattered in the layout showing the building sites released affixing the seal of the Authority on the provisionally approved layout plan which shall be sent to the Local Authority for issue of khata of such sites for registration purpose under the Karnataka Stamps Act, 1957 (Karnataka Act 34 of 1957) and the Registration Act, 1908 (Central Act XVI of 1908).

(iii) The Planning Authority shall ensure the completion of all development works including all infrastructure facilities as specified under sub-section (2-A), on conducting inspection by the concerned Authority or Agency or Department within three years from the date of approval of the provisional layout plan. In case the completion certificates for completion of all development works are not obtained within three years from the date of approval of the provisional layout plan, the Planning Authority may for the reasons to be recorded extend the period for completion of development by a further period of one year.

(iv) On completion of all development works and obtaining the completion certificates within three years or within the extended period and obtaining the certificate of completion from the concerned Authority or Agency or Department including the development of the park, playground and civic amenity sites, the Planning Authority shall approve the final layout plan releasing the remaining sixty percent of the sites along with the corner sites mortgaged to the Authority. A copy of the finally approved layout plan, affixing the seal of the Planning Authority, showing the building sites released shall be sent to the Local Authority for issue of khata of such sites for registration purpose under the Karnataka Stamps Act, 1957 (Karnataka Act 34 of 1957) and the Registration Act, 1908 (Central Act XVI of 1908):

Provided that, in case the development works are not completed within the period specified under clause (iii), the corner sites mortgaged to the Planning Authority shall be forfeited to the Planning Authority.

(2-D). In case of layout provisionally approved under sub-section (2-B), the development works specified under sub-section (2-A) shall be completed within a period of three years from the date of approval of the provisional layout plan:

Provided that, the Planning Authority may, on application made in this behalf, for reasons to be recorded in writing, extend the period for development of the layout to such further period not extending one year, as it considers necessary. In case the development works are not completed within such specified period, the permission granted by the Planning Authority shall lapse. The applicant shall thereafter seek fresh approval following due procedure.

(2-E). Any building site which has not been released by the Planning Authority under this Act shall not be issued any Khata or given property index number (e-khata) under the Karnataka Municipalities Act, 1964 (Karnataka Act 22 of 1964), the Karnataka Municipal Corporations Act, 1976 (Karnataka Act 14 of 1976), the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (Karnataka Act 14 of 1993)or the Bruhat Bengaluru Mahanagara Palike Act, 2020 (Karnataka Act 53 of 2020) as the case may be.

(3) No compensation shall be payable for the refusal or the insertion, imposition or modification or conditions in the grant of sanction.

(4) If any person does any work in contravention of sub-section (1) or in contravention of the modifications and conditions of the sanction granted under sub-section (2) or despite refusal for the sanction under the said sub-section (2), the Planning Authority may direct such person by notice in writing to stop any work in progress and after making an inquiry in the prescribed manner, remove or pull down any work or restore the land to its original condition.

(5) Any expenses incurred by the Planning Authority under sub-section (4) shall be a sum due to the Planning Authority under this Act from the person in default.

(6) Any person aggrieved by the decision of the Planning Authority under sub-section (2) or sub-section (4) may, within thirty days from the date of such decision appeal to such authority as may be prescribed.

(7) The prescribed authority may after giving a reasonable opportunity of being heard to the appellant and the Planning Authority, pass such order as it deems fit, as far as may be, within four months from the date of receipt of the appeal.

16. From the above provisions, it is clear that, every person who intends to develop a layout shall submit a detailed plan of the layout, showing the roads, plots and areas earmarked for civic amenities and parks any other infrastructure facility including the arrangements to be made for levelling, paving, metalling, flagging, channeling, sewering, drainage, street lighting and water supply. The owner shall relinquish the areas earmarked for roads, parks and play ground to the local authority and shall relinquish the civic amenity areas to the Planning Authority through registered relinquishment deed free of cost without claiming any compensation. The Planning Authority in terms of Section 17(2) of the KTCPA, then grants provisional approval of the layout and mandates that the project be registered with the Karnataka Real Estate Regulation Act (RERA). In terms of Section 17 (2-B) of the KTCPA, the Planning Authority shall ensure that all the development work including all infrastructural facilities as mentioned above are completed under the supervision of the concerned Authority/Agency/Department and a certificate of completion is obtained from the concerned Authority/Agency/Department. On obtaining the certificate of completion from the concerned Authority/Agency/Department as to having completed all the development works and on relinquishment of the roads, parks and playground to the local authority and civic amenity areas to the Planning Authority and handing over the same, the Planning Authority issues the final layout plan affixing the seal of the Planning Authority and releases the building sites for transfer of title to the allottee by the developer by registration and a copy of the final layout plan shall be sent to the local authority for issue of Khata to the sites. In terms of Section 17 (2-C) of the KTCPA, the Planning Authority may permit the development of the layout to be done in stages. In the 1st stage, 40% of the layout may be developed and on receipt of completion certificate for the development works from the concerned Authority/Agency/Department, the Planning Authority issues the 1st phase layout plan showing the sites which are released for transfer of title to the allottee by registration and a copy of the 1st phase layout plan is sent to the local authority for issue of Khata. Similarly, in the 2nd phase, 30% of the layout area will be released after obtaining a completion

certificate from the concerned Authority/Agency/Department regarding completion of development works. A copy of the 2nd phase layout plan will be issued by the Planning Authority for transfer of title of the sites by registration and issuance of Khata, In the 3rd phase, the remaining 30% of the layout area will be released for sale of sites after obtaining a completion certificate from the concerned Authority/Agency/Department regarding completion of development works. A copy of the final layout plan will be issued by the Planning Authority for transfer of title of the sites by registration and issuance of Khata by the local authority.

17. As can be seen from the above provisions, the transfer of title in the land to individual buyers can be done by the developer only after completion of the development works. The above provisions also make it clear that the owner of the land carries out the required development works under the supervision of the concerned Authority/Agency/Department and a certificate of completion is obtained from the concerned Authority/Agency/Department. The areas where the development works relating to roads, parks and play grounds are undertaken, are handed over by the owner to the local authority and the development works relating to civic amenities such as drainage, water supply, electricity, sewerage facilities are handed over by the owner to the Planning Authority. The ownership of the developed roads, drainage, electricity and other civic amenities is not transferred to the buyer but the ownership lies with the concerned Authority/Agency/Department. All that is available for the owner/developer to sell are the sites which are released by the Planning Authority. As such we are unable to see how the undertaking of the development works by the owner cum developer is a service rendered to the buyer when the buyer does not receive the ownership of the development works and infrastructure. The transfer of title in the land to the buyer is only limited to the dimensions of the plot being sold. The developed roads, drains, water supply lines and tanks, electricity lines and sewerage facilities are not sold to the purchasers of plots in the layout. The ownership of these facilities and infrastructure which are mandated by law lies with the local authority and the Planning authority. As such it cannot be said that the owner who has carried out the development of the land has rendered a service to the purchasers. The consideration that the buyer pays is with the intention of purchasing the plot. The consideration is not for receiving a service of development of land. The activity of developing the land is only incidental to the sale of land. The dominant intention here is the sale of land and not the provision of service of development.

18. We find that in the case of plotted development where a large parcel of land is sub-divided into small plots for sale to buyers, the development of land is a mandatory prerequisite to the sale of plots as per the Town & Country Planning Act. Where the parcel of land is being sold as is, such development work is not mandated by any law. In this case the Respondent is undertaking the development works as per the statutory requirement and any amounts received from interested buyers is only an advance for the purchase of land and not for the development works. The Appellant Department has drawn a parallel to the construction service provided by a developer to a purchaser of a flat and argued that any amounts received by the developer during the phase of construction of the apartment and before receipt of the completion certificate, will be taxable under GST under construction service. In the same way, the Appellant has argued that the amounts received by the developer of a plot before receipt of the completion certificate, will be subject to GST as a construction service to the purchaser. We do not agree with this line of argument. In the case of construction of an apartment, the developer is no doubt rendering a service to the buyer since the construction activity is done at the behest of the buyer. The buyer approaches the developer and pays advances with the intention of getting an apartment built for him. Therefore, until the completion certification is received from the competent authority, the developer is rendering a service of construction to the buyer. However, any buyer who approaches a developer for purchase of an apartment after receipt of the completion certificate, is not getting any service from the developer and is paying the consideration for the purchase of building which is the ready to move in apartment. This transaction is not subject to GST in terms of entry 5 of Schedule III of the CGST Act.

19. In the case before us the situation is very different. The owner of the land is developing the land not at the behest of the buyer and not because the purchaser has requested for any service from him but because it is required of him by law to develop the land in order to sell the plots. The development of land undertaken by the owner is an activity incidental to the sale of land. The transaction between the purchaser and the owner of the land is a transaction purely for 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. If the owner of the land engages the services of a third party to carry out the development activity, that transaction between the owner and the third party will undoubtedly be taxable to GST as a service.

20. The Appellant Department in their grounds of appeal have contended that the owner entices prospective buyers with information of all the development works which is being undertaken and as such the carrying out of the development works is a service rendered by the owner to the buyer. This contention cannot be appreciated. When interpreting a taxing statute and to determine whether an activity is subject to tax, one cannot rely on advertisement and marketing strategy of the owner to hold that a service has been rendered. As already stated in Para 16 above, in the case of plotted development, the law mandates that a certain level of development activity is undertaken. The sites will not be released for sale unless the development activity is completed. There can be no transfer in the title of a plot of land to the purchaser unless and until the same is released by the Planning Authority. 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. Therefore, any sale of a plot which is carved out of a large parcel of land can take place only after the development of the land.

21. The Board in it's Circular No 177/09/2022 dated 3rd August 2022 has clarified in Para 14.3 that land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc; that sale of such developed land is also sale of land and is covered by Sl.No 5 of Schedule III of the CGST Act. The relevant Para 14 of the Board's Circular No 177/9/2022 dated 3rd August 2022 is reproduced as under:

> ***14. Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST***
>
> *14.1 Representation has been received requesting for clarification regarding applicability of GST on sale of land after levelling, laying down of drainage lines etc.*
>
> *14.2 As per Sl no. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.*
>
> *14.3 Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr.*

No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

14.4 However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

It is a well settled law that Circulars are binding on the Department and the Department cannot go against what is already clarified in the Circulars. The Supreme Court in the case of Paper Products Ltd vs Commissioner of Central excise reported in 1999 (112) ELT 765, has held that Board's Circulars are binding on the Department and any action taken by the Department will have to be consistent with the Circular which is in force at the relevant point of time. We are therefore bound to follow the clarifications issued by the Board in Para 14 of the above-mentioned Circular. Therefore, we hold that the consideration received from prospective buyers whether as advances 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. We again make 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.

22. The Appellant Department has attempted to buttress their case by placing reliance on the Supreme Court decision in the case of Narne Constructions Pvt Ltd vs UOI (2013 (29) S.T.R 3 (SC) wherein it was held that to the extent the transfer of site with developments in the manner and to the extent indicated was a part of the transaction, the company had indeed undertaken to provide a service. This decision was rendered in the context of the Consumer Protection Act, 1886 and the Hon'ble Supreme Court was examining whether there was service rendered by the Company and any deficiency of service would make it amenable to the jurisdiction of the forum established under the said Act. In that context, the Supreme Court held that the assurance made by the Company to the purchasers as to the nature and extent of development as part of the package for sale of developed sites is indeed a service rendered by the Company. However, we are not inclined to import the decision of the Supreme Court in the Narne Construction case to this case before us for the simple reason that the Apex Court examined the matter in the light of the provisions of the Consumer Protection Act. The object of the said Act was to provide a mechanism to protect the rights of consumers and to provide a speedy and simple redressal to consumer disputes. The object

of the GST law is to tax transactions involving a supply of goods and services and entry 5 of Schedule III of the CGST Act declares that the sale of land is being neither a supply of goods or service. The objects of the two statutes being entirely different, it is trite law of interpretation of statutes that one cannot adopt the ratio of the decision given in the context of one statute to interpret another statute when both statutes are not pari materia.. We also note that this was the view taken by the Gujarat High Court in the case of Munjaal Manishbhatt vs UOI (2022 (62) G.S.T.L 262 Guj) wherein one of the issues examined by the High Court was the issue of taxability on transfer of developed plot to the customer.

23. The Appellant Department has also relied on the Supreme Court decision in the case of Larsen & Turbo Ltd and Anr vs State of Karnataka to drive home the point that amounts received after entering into contract with the developer would be treated as works contract. We have gone through this decision dated 26th Sept 2013 of the Supreme Court and are unable to appreciate its relevance to the present matter. In the L&T case, the Supreme Court was examining whether the definition of 'works contract' as defined in the Karnataka Sales Tax Act was wide enough to include within its fold the construction contract entered into by L&T. In its decision, the Hon'ble Supreme Court followed the judgement given in the case of Raheja Development and held it to be a good law and accordingly held that that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser; that the value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government. In the case before us, the issue is not with regard to a contract for construction of flat but regarding the sale of land and hence the Apex Court's findings in the L&T case do not support the case of the Appellant Department.

24. The Appellant Department has also contended that the Respondent charges the buyer based on the super built-up area and not on the exact measure of the plot. They contend that this evidences that the developer is collecting charges for land and services like land levelling, formation of roads, providing electricity facility, drainage line and water line, etc on a proportionate basis and all these are intrinsic part of the plot allotted to the buyer and such transactions are not relevant to the sale of land but are to the sale of developed plot, which amounts to rendering taxable supplies. This argument is unsubstantiated. No evidence has been placed on record by the Appellant Department that the Respondent collects charges for the development works undertaken. We find that the Appellant Department has not made out a convincing case in appeal. We agree with the ruling given by the lower Authority and

hold that the consideration received by the owner from interested buyers for the sale of sites is not subject to GST in terms of entry 5 to Schedule III of the CGST Act; that the advances received before completion of the development works is also not subject to GST in as much as the same is towards the sale of developed land. We make it abundantly clear that any services procured by the owner from third parties for undertaking the development activity will be subject to GST at the applicable rates. We also do not hesitate to mention that 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.

25. The Board's Circular No 177/09/2022 dated 3rd August 2022 at Para 14.3 (reproduced at Para 20 ante), clarifies that sale of developed land does not attract GST. The entry No 5 of Schedule III to the CGST Act states that 'sale of land' is neither supply of goods or services. The term "Sale" has not been defined in the GST law but has been defined in Section 54 of the Transfer of Property Act, 1882 as *"transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.'*. The said Section 54 also states that such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, can be made only by a registered instrument. Therefore, the term 'sale of land' as mentioned in entry 5 of Schedule III refers to the transfer of title in the land by way of registration as per the Registration Act, 1908. This transfer of title in the land/plot cannot take place before the land is developed with the required infrastructure and amenities, as the Planning Authority, in terms of Section 17 of the KTCPA (reproduced in Para 15 ante), will not issue the layout plan unless the development is complete. Further, without the layout plan issued by the Planning Authority, the local authority will not issue the Khata for the plot and in the absence of the Khata, the registration process for transfer of title from the seller to the buyer will not take place. On a co-joint reading of all the above provisions, we hold that sale of land developed by the Respondent is covered within the scope of the term 'sale of land' as mentioned in entry 5 of Schedule III.

26. In view of the above, we pass the following order:

ORDER

We reject the appeal filed by the Assistant Commissioner of Central Tax, Bangalore South Commissionerate and uphold the ruling given by the Authority for Advance Ruling in KAR ADRG 31/2022 dated 8th September 2022.

(RANJANA JHA)
Member
Karnataka Appellate Authority
For Advance Ruling

Member
Appellate Authority for Advance Ruling

(SHIKHA C)
Member
Karnataka Appellate Authority
For Advance Ruling

Member
Appellate Authority for Advance Ruling

To,

1) The Assistant Commissioner of Central Tax, Bangalore South Commissionerate, C.R. Building, Queens' Road, Bangalore 560001

2) Ms Rabia Khanum, No 19/2-6, Ranoji Rao Road, Basavanagudi, Bengaluru 560004

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. Office folder

APPELLATE AUTHORITY FOR ADVANCE RULING BANGALORE