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Mayur Shah

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Harish Patel
Nainesh Shah
Domnic Romell

ADDL. VICE PRESIDENT
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Bandish Ajmera

TREASURER
Mukesh Patel

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Sandeep Raheja
Jayesh Shah
Sanjay Chhabria
Rasesh Kanakia

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Sandeep Runwal
Shailesh G. Puranik
Dhaval Ajmera
Pratik Patel

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Munish Doshi

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Shailesh Sanghvi
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Jitendra Jain
Deepak Gundecha

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Paras Gundecha
Pravin Doshi
Moham Deshmukh
Mofatraj Munot
Rajnikant Ajmera
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Late Lalit Gandhi
Late Babubhai Majethia

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Ajay Ashar

PRESIDENT, KALYAN-DOMBIVLI
Deepak Mehta

PRESIDENT, MIRA VIRAR CITY
Ashit Shah

PRESIDENT, RAIGAD
Kiran Bagad

PRESIDENT, NAVI MUMBAI
Prakash Baviskar

Ref. No. MCHI/PRES/19-20/074

November 12, 2019

To,
Shri Rajiv Jalota (I.A.S)
Commissioner
State Tax, Maharashtra State
GST Bhavan, Mazgaon,
Mumbai - 400 010.

कर सहायक,
राज्य मंडळ, मुंबई,
वस्तु व सेवा कर विभाग,
महाराष्ट्र राज्य मुंबई,
वांचे कार्यालय

Sub: Request for clarification on the applicable rate of GST

Respected Sir,

This is with reference to the recent amendments in the GST rates applicable for the real estate sector, with effect from April 1, 2019, whereby the following category of residential apartments are subject to 1% GST Rate (without considering the deduction for the value of land / undivided interest in land):

Residential apartments in a project which commences on or after April 1, 2019

- having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and
- for which the gross amount charged is not more than Forty five lakhs rupees.

In this connection, we would like to seek clarification from your goodself as to whether the interest that is generally charged as part of the normal industry practice for the delayed payment of consideration need to be considered for the purpose of calculating the limit of Forty Five Lakhs, as is the requirement for charging 1% GST Rate.

We request your attention to the Notification No. 11/2017 - CT (R) (as amended), which provides for the following definition of the expression "Gross Amount Charged" for the purpose of determining the Forty Five Lakh Rupee limit, as mentioned above:

Gross amount shall be the sum total of; -

A. Consideration charged for the services specified at item (i) and (ic) in column (3) against sl. No. 3 in the Table;

B. Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sub lease; and

C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.

Before deciding as to whether the interest for delayed payment of consideration is to be included within the limit of Forty Five Lakh Rupees, we

wish to draw your attention to the definition of the term 'Consideration' as per CGST Act, which is as under:

"consideration" in relation to the supply of goods or services or both includes--

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government: Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Also, the provisions with reference to the taxability of interest for delayed payment of consideration, as contained in Section 15 are as under:

(2) The value of supply shall include---

(d) interest or late fee or penalty for delayed payment of consideration for any supply;

Basis the above, in our view, the interest charged for delayed payment of consideration cannot be equated to be an inclusion in definition of consideration itself and the interest for delayed payment of consideration is merely an addition to the value of taxable supply.

Therefore, if we analyse the definition of the term 'gross amount charged,' for the purpose of seeing what is required to be considered for the purpose of Forty Five Lakh limit and whether interest is covered to be included therein, the following are the observations:

- Interest for delayed payment of consideration is not a consideration in itself and hence, not covered in clause (a) of the definition
- Clause (b) is not relevant in the context of interest and hence, not required to be analysed
- Clause (c) mentions about other charges in relation to supply of flat which are construction service related and considering the principle of ejusdem generis, interest cannot be regarded as included in this clause as well. Also, interest is always a financing cost which is different from the construction services that are provided.

Basis this, in our view, it can be said that for calculating the Forty Five Lakh Rupees limit to determine the applicable GST Rate, interest collected for delayed payment of consideration should not be considered.

We request you to kindly provide your views in the form of a clarification basis the aforementioned understanding. We wish to be heard in person once for taking you through all this analysis and explaining the matter as well

Thanking you,

Yours Sincerely,
For CREDAI-MCHI



Nayan Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv S. Chaudhary MRICS
Chief Operating Officer