



## What's New

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### Karnataka Appellate Authority for Advance Rulings issues two orders on services provided by a developer under a revenue-share JDA and temporary housing rentals earned by a religious trust

Recently, the Karnataka Appellate Authority for Advance Ruling (AAAR) issued two orders –

- a. on services provided by a developer to a landowner while undertaking sale of plots under a joint development agreements (JDA) on revenue-share basis; and
- b. temporary rental of rooms on a shared basis by a charitable body.

#### ***Ruling on Joint Development Agreements<sup>1</sup>***

##### **Facts**

The appellant, engaged in the business of real estate development and construction, executed a JDA with landowners for development of land into residential layouts. The appellant bore the cost of development. The consideration agreed to be paid to landowners in the JDA was on a revenue-share basis at 75% of the sale consideration earned from customers. Pursuant to the JDA, the appellant entered into contracts with customers for the sale of developed plots of land at the agreed prices.

The appellant had sought a ruling on whether the development and sale of land attracts tax under GST, and if so, the related valuation mechanism.

##### **AAAR's order**

- While stating that the sale of developed plots to customers does not attract GST, the AAAR has upheld the underlying decision of the Authority of Advance Ruling (AAR), holding that the development of land for a landowner under a JDA constitutes a [separate] supply of services on which GST is leviable. In addition, the applicable GST on such service should be valued under Rule 31 of the Central GST Rules, 2017 (CGST Rules), which was determined at 25% of the market value of each plot.
- The AAAR observed that the JDA indicates that the primary purpose of the arrangement is for the appellant to develop the land based on a revenue-share model. The transaction between the landowner and the appellant is not a sale of land simpliciter but coupled with obligations/ responsibilities for development of the land and provision of infrastructure/ amenities. There is an element of service rendered by the appellant in the form of development of plots in the land, which is the dominant activity under the JDA.
- The AAAR held that while the parties entered the JDA to reap the benefits of sale of land to customers jointly, there is a service provided by the appellant to the landowner in developing the land.

#### ***Ruling on rental of housing units<sup>2</sup>***

##### **Facts**

The appellant, a religious trust registered under section 12AA of the Income-tax Act, 1961, conducted certain events over a five-month period in 2019. For the attendees to this event, the appellant erected temporary residential rooms and facilities for boarding and lodging, which could be divided into six categories, depending on various criteria such as size, number of rooms, cooking facilities, etc.

The appellant had earlier sought an advance ruling on whether GST is payable on the renting of –

- Various categories of temporary residential rooms and facilities from the devotees who attended the event, and whether the exemption under Entry no. 13(b) of Notification No. 12/ 2017 dated 28 June 2017 (the Notification) would be available, when a rental below INR 1,000 per bed is charged.
- Space for stalls, where the predominant objective was not to undertake business but the advancement of religion.

In appeal before the AAAR, the liability to pay tax on only two categories was further questioned in the context of the Notification for –

- Renting of a 2-bedroom hall and kitchen (2-BHK) (430 sq. ft.) space with certain facilities with a daily rental per bedroom of less than INR 1,000.
- Dormitory with a capacity of 12 beds with certain facilities for a daily rent of INR 250 per bed.

### AAAR's order

The AAAR observed that the appellant was not renting out “rooms” [within the 2BHK unit including restrooms] *per se* but rather renting out the entire unit of accommodation along with facilities (such as water, electricity, cot bed, pillow, bedspread, air-conditioner and cooking facilities). Similarly, the renting of beds in the dormitory with similar facilities is also not akin to renting of beds *per se*.

On this basis, the AAAR upheld the AAR order. It stated that renting of 2-BHK units and the dormitory will be chargeable to GST, as it is necessary to examine the entitlement of the exemption at the “unit” level. Here, the value of supply will be the charges for both bedrooms in a 2-BHK unit/ all beds in the dormitory, and not the charges for each room in the 2-BHK unit/ each bed in the dormitory. Resultantly, such accommodations cannot qualify for the exemption under Entry 13(b) of the Notification and would in turn be subject to GST.

### PwC comments

- The order on the JDA departs from the established industry practice that activities undertaken by a developer under a revenue-share model of a JDA are for its own benefit to enable sales of real estate, and that no “service” is rendered back to the landowner (as opposed to the area-share model in which a construction service is rendered to the landowner). However, here the AAR has read into the development related obligations (e.g. start and completion dates, etc.) built into the JDA to construe that a separate service is rendered by the developer to the landowner. GST on this service would need to be computed under Rule 31 of the CGST Rules — pegged at 25% of the market value of each plot, which in effect is equivalent to the revenue earned by the developer. This will add an additional layer of tax on the sale of plots which is GST free.

It will be interesting to see if the principle adopted in this order is applied to other JDAs where constructed residential or commercial property is sold, which could pose a challenge to the sector.

- The order on the rental charges earned by the religious trust is relevant, as it is necessary to view the term “renting of room” for the INR 1,000 per day exemption from the perspective of the entire unit (i.e. 2-BHK flat or dormitory) along with facilities conjointly, and not on “per bed” or “unit of sale” perspective. This order has potential implications for businesses ranging from student housing/ co-living facility providers to emerging hostel-type hotel service providers.

<sup>1</sup> Order No. KAR/AAAR-19/ 2020-21 dated 4 May 2020

<sup>2</sup> Order No. KAR/AAAR-16/ 2019-20 dated 2 March 2020

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