GST Implications of Plotted Development

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on 17 September 2018

**Background:**

Plotted development is a scheme which involves forming land into layout after obtaining necessary plan approval from the Development Authority, get all other permission required to take up, commence and complete what would be the layout, comprised of individual sites. Such plotted development could be done under JDA-joint development model by developer on land belonging to landlord. It could also be done by developer/any special purpose vehicle-SPV/ entity on own land.

In the activity of plot development, the following are done-levelling the land, construction of boundary wall, construction of roads, laying of underground cables and water pipelines, laying of underground sewerage lines with sewer treatments plant, development of landscaped gardens, drainage system, water harvesting system, demarcation of individual plots, construction of overhead tanks, other infrastructure works. Sale of such sites is done to end customers who may construct houses/villas in the plots.

Coming to GST, tax is levied on supply of goods/services. Schedule III to GST Law sets out the activities or transactions which are treated as neither a supply of goods nor as supply of services. Therein entry 5 covers sale of land, which is excluded from GST levy.

In this backdrop, the paper writer has examined the common models whereby plotted development and sale of land is done and coverage in Third Schedule entry under GST.

**Sale of land and GST:**
The word “sale” and “land” has not been defined under the GST law. In the absence of definition in the Act, we could look under other enactments and into dictionary meaning [similarly held in Star Paper Mills case [1989 (43) ELT 178 (SC)] by Apex Court].

Sale: In the Transfer of Property Act, 1882 Section 54, “Sale” is defined. “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Definition of land:

Black’s Law Dictionary (Seventh Edition) defines that ‘land’ means an immovable and indestructible three-dimensional area consisting of a portion of the earth’s surface, the space above and below the surface, and everything growing on or permanently affixed to it.

P. Ramanatha Aiyar’s Law Lexicon (Second Edition) observes that the word ‘land’ is a comprehensive term, including standing trees, buildings, fences, stones, and waters, as well as the earth we stand on. Standing trees must be regarded as part and parcel of the land in which they are rooted and from which they draw their support. The word ‘land’, in the ordinary legal sense, comprehends everything of a fixed and permanent nature and therefore embraces growing trees.

From the above definitions, it is clear that the transaction shall be out of GST net only if the activity is exclusively dealing with transfer of title or transfer of ownership of land, which is immoveable property or earth. Here the substance of agreement between the parties is important. Where the nature of activity is that of ONLY sale of immoveable property of plot, it is excluded from GST levy.

This would also be in line with L&T decision [2013 TIOL 46 SC- CT-LB], as per which immoveable property is not liable to service tax or VAT under erstwhile law.

**GST and development works done post 1.7.2017:**

If the transaction of sale of land is coupled with another activity such as infrastructure works, then this exclusion may not apply and in such scenario we need to examine whether the transaction shall be subject matter of GST.

Further, when the amount towards infrastructure/development costs is being received in stages, under contract with buyer, prior to completion of construction from the buyers, it could be treated as a works contract liable to GST. This is supported by the similar view expressed in L&T supra where held amount received after entering construction agreement with buyer is works contract.

In a relevant matter, in Narne Constructions case (2013 (29) S.T.R. 3 (S.C.) 3 it involved development of lands into house-sites and invited the intending purchasers through paper publication and brochures to join as members. Members joined on payment of fees. Developer had undertaken the obligation to develop the plots and the plots were developed by
spending huge amounts and subsequent to the amounts paid by the members also plots were developed. The transaction between the parties was coupled with obligations for development and provision of infrastructure.

Held it involved much more than a simple transfer of a piece of immovable property, it is clear that the same constituted ‘service’. This decision has persuasive value under GST as well.

Further under GST, when two independent supplies namely land and development services are provided in combination for single price, it maybe treated as mixed supply. In such a scenario, tax could be demanded at the highest rate of tax i.e 18% applicable to the development works. This could be the aggressive view, which maybe favoured by revenue.

In paper writers view, erring on caution, GST could be paid at 18% of infrastructure works. The value of infrastructure development works to be arrived at based on a chartered engineer certificate.

**GST implications on Sale of Plots under various models**

**Plotted development-models:**

In normal course the sale of the individual plots [developed/ in progress] could be under the following options:

a) Direct Registration of plot: This may be done only for unsold completed plots. It is sale of land which is covered in Third Schedule to GST law, which is neither supply of goods nor a supply of services and is not liable to GST. Example sale deed done for Rs. 500 per sft.

b) Agreement of Sale of completed Plots: Only one agreement to sell the plots normally providing for enough time for the buyer to arrange his finances, say through bank. Then go for the registration of the plot. It is sale of land which is covered in Third Schedule to GST law. Example agreement of sale of developed land for Rs. 500 per sft and sale deed also done for Rs. 500 per sft [At times the value in sale deed and agreement value- there could be a difference, which may lead to issue]

c) Agreement of sale of Completed Plots while development of sites under progress: Where the site is not complete, a single agreement for sale of plot in future with specified facilities such as roads, park, clubhouse. [There may be clear recital to this effect in agreement for sale]. Once complete go for registration of the plot. [At times there could be a difference in value]. At the same time, the risk is that when development is in progress citing decision in L&T mentioned at supra, GST could be demanded on sums received after entering the agreement. Based on documentary evidence to prove what was transferred was immovable property of developed land. It would not be liable to GST.

Conservative view to avoid future disputes maybe to determine value of infrastructure works based on chartered engineer certificate and GST paid on same.

d) Two Separate Agreements for sale + development: One agreement to sell land and another to recover development costs.[These maybe cases where there is a difference between the guidance value and market value and registration is
done at a lower value but the money/finance raised from the bank]. Though there is no clarity at present on taxing on transactions involving immoveable property + recovery of service costs, the revenue could demand GST on the charges nomenclated as development charges vide agreement, if any.

Example agreement of sale of land for Rs. 500 per sft, Rs. 100 per sft development charges and sale deed also done for Rs. 500 per sft.

In the view of the paperwriter, when certain portion of amount is not accounted as sale of land, instead it is called as development charges, there could be demand of GST alleging why and how the same can be considered as sale of land when it is not forming part of the value of sale deed as registered with registering authorities. GST could be demanded on the development agreement. Pay GST only on the value of the infrastructure development works.

In this article, paper writer has examined the GST implications of plotted development.

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Recommended Read

- Clarification on GST on Maintenance Charges paid by Members to RWA
- Applicability of GST on Freelancers

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Hello sir. meri ek partnership firm thi uska stock only mene do registered dealer ko transfer kr diya h. ab iske liya kya mujhe invoice jari krna padega aur gst charge krna h ya nhi. kaise hoga.... pl batayega...

Pl confirm if firm business is continued by the do registered dealers jisko aapne stock transfer kara th Based on details given, agar aapne stock mein se goods sale kare, then invoice zari karna padega usse GST collect karke pay karna padegakarna