M/s. Experion Developers Pvt. Ltd. (printed as Experion Developers Private Limited in the body)

Authority for Advance Ruling — Haryana

Advance Ruling No. HAR/HAAR/R/2018-19/41 (In Application No. 41/2018… Dated **27.02.2019**

Q Questions Before the Authority

- Whether grant of Development Rights in the current situation would attract the levy of GST?
- If liable to GST, what shall be the valuation modus operandi to tax in GST?

F Facts

The applicant, a real estate developer, entered into an MOU dated 23.07.2013 with M/s Ragnor Buildtech India Pvt. Ltd. and its associates (RBIPL), which owns land in District Panipat, Haryana. RBIPL offered the applicant Development Rights over that land, to be granted under a development agreement not yet executed, and the applicant argued that the grant was a sale of land outside GST.

H Ruling

Whether grant of Development Rights attracts GST	**Yes, currently taxable under the GST Act**	Liability arises under Notification 4/2018-Central Tax (Rate) when the developer transfers possession or the right in the constructed complex by conveyance deed or similar instrument such as an allotment letter.
Valuation modus operandi, if taxable	**As contained in Para 5 of the order**	Para 5 applies Sr. No. 3, Heading 9954 read with Para 2 of Notification 11/2017-Central Tax (Rate) dated 28.06.2017, read with Notification 4/2018-Central Tax (Rate) dated 25.01.2018.

The Authority ruled that the **grant of Development Rights is currently taxable** under the GST Act. It held that the applicant's characterisation of the transaction as a sale of land was **rejected** , because the MOU shows title remains with RBIPL and the rights transferred are not title. The valuation method is as set out in Para 5 of the order.

R Reasoning

The Authority relied on Section 7(1) and Schedule II, Para 5(b), which treat construction of a complex intended for sale to a buyer as a supply of services, and on Section 7(2) with Schedule III, Para 5, which excludes only the sale of land and not benefits arising out of land. The applicant's reading of Schedule III was rejected because the MOU shows RBIPL retains title, so the development rights confer no title on the applicant. Notification 4/2018-Central Tax (Rate) under Section 13 and Section 148 was treated as fixing the time of liability for transfers of development rights in exchange for constructed space. The Authority also rejected the applicant's reliance on the lease and licence analogies and on Schedule II, Para 2(a).

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

P Provisions Relied On

- Section 9, CGST Act, 2017 (levy on intra-State supply)
- Section 7(1) and 7(2), CGST Act, 2017
- Section 2(52), CGST Act (definition of goods)
- Section 2(102), CGST Act (definition of services)
- Section 2(119), CGST Act (definition of works contract)
- Section 13, CGST Act, 2017
- Section 148, CGST Act, 2017
- Schedule II, Para 5(b), CGST Act
- Schedule II, Para 2(a), CGST Act (as discussed by the applicant)
- Schedule III, Para 5, CGST Act
- Notification 4/2018-Central Tax (Rate) dated 25.01.2018
- Notification 11/2017-Central Tax (Rate) dated 28.06.2017, Sr. No. 3, Heading 9954, Para 2
- Section 54, Transfer of Property Act, 1882

! For the Practitioner

Development rights granted by a non-title holder to a developer are taxable under the current notification, with liability tied to the transfer of possession or rights in the constructed space, and the valuation route is in Para 5. This is useful for developers structuring land-sharing or development-rights arrangements who want to know the GST treatment before executing a development agreement. The ruling binds only the applicant and does not address transactions with different title or construction arrangements, nor the rate or the specific computation of value beyond the reference in Para 5.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> har_aar_41_2018-19_27.02.2019_edpl.pdf

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