

THE WEST BENGAL AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX

14 Beliaghata Road, Kolkata – 700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Shafeeq S, Joint Commissioner, CGST & CX

Jaydip Kumar Chakrabarti, Senior Joint  
Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Ms. SRIPSK Developers LLP
Address	36/1A, Elgin Road, Bhawanipur, Kolkata – 700 020
GSTIN	19AEFFS1929H1ZS
Case Number	WBAAR 08 of 2025-26
ARN	AD1906250071539
Date of application	June 25, 2025
Jurisdictional authority (State)	Bhabanipur Charge
Jurisdictional authority (Centre)	Ballygunge Division, Kolkata north Commissionerate
Order number and date	11/WBAAR/2025-26 dated 17.10.2025
Applicant's representative heard	Mr. Vikram Khaitan, CA

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression “GST Act” would mean the CGST Act and the WBGST Act both.

1.2 The applicant is engaged in a construction activity and a multi storied apartment is being constructed by them.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under seeking an advance ruling in respect of following questions:

Classification of construction services being rendered to customers on account of construction of proposed B+G+31 Storey **Service Apartment** Building at 27, Matheshwartola Road, Kolkata – 700 046 in terms with Notification No. 03/2019-Central Tax (Rate) dated 29-03-2019 (as amended). Whether the Service Apartment being constructed would fall under construction services of multi-storied residential buildings or construction services of commercial buildings?

1.4 The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (a) & (b) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the questions raised in the application have neither been decided by nor are pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

## 2. Submission of the Applicant

2.1. A Deed of Conveyance was made on 27<sup>th</sup> day of August 2013 between Ms. Park Leather

Company of the First Part, Ms PS Group Realty Limited & Others of the Second Part and Kolkata Municipal Corporation, a statutory body under West Bengal Act, LIX of 1980 of the Third Part with respect to land measuring in aggregate an area of 5 (Five) Bighas and 4 (Four) Cottahs more or less comprised in Premises No. 26, Matheswartala Road, Kolkata (Assessee No.11-058-07-0089-5) and 1.65 acres (equivalent to 5 Bighas) comprised in Premises No. 27, Matheswartala Road, Kolkata (Assessee No. - 11-05-80-7C0883) aggregating to 10 Bighas and 4 Cottahs both situated within the limits of Kolkata Municipal Corporation (hereinafter jointly referred to as "the entire project land").

2.2 Ms. Park Leather Company was the absolute owner of the entire project land and was carrying on business of tannery and manufacturing of leather products from the entire project land. The Government of West Bengal issued certain notices/directions for shifting of all tanneries situated in the vicinity of E. M. Bye Pass to Kolkata Leather Complex at Bantala due to environmental reasons and pursuant to such notices/ directions of the Government of West Bengal, Ms. Park Leather Company was unable to carry on its tannery and leather product manufacturing business from the said project land.

2.3 By virtue of the captioned Deed of Conveyance was made on 27<sup>th</sup> day of August 2013, the said property was sold by Ms. Park Leather Company to Ms PS Group Realty Limited & Others with restrictions from KMC and West Bengal Trade Promotion Organisation, inter alia, that the said land shall be used for setting up the Hotel Cum Convention Centre and other commercial venture/ enterprise excluding residential units and for no other purpose.

2.4 By a Deed of Gift dated 18-07-2014, Ms PS Group Realty Limited & Others [here-in-after referred to as 'Land Owners'] gifted land measuring 12.71 cottah more or less corresponding to 21 decimal on a portion of the said entire complex to the KMC for construction of an access road.

2.5 Now, a Development Agreement with Related Power of Attorney has been executed on 19<sup>th</sup> June, 2024 between the Land Owners and Ms. SRIPSK Developers LLP [here-in-after referred to as 'Developer' or 'Applicant'] granting the development rights to the Developer for construction of three building blocks, wherein the PHASE-1 will comprise the Service Apartment & the Multi-Level Car Parking and PHASE-2 will comprise the Hotel and both together shall constitute the "Complex" and thereafter market, promote and sell/transfer and otherwise deal with the Service Apartment Units by executing necessary Definitive Agreements.

2.6 In terms with the Development Agreement, necessary sanction was obtained by the

Applicant from Kolkata Municipal Corporation under Section 393 of KMC Act, 1980 read with 69(I)(B) of KMC Building Rules, 2009 vide BP No. 2024070124 dated 20-12-2024, valid upto 19-12-2029, for “*proposed B+G+31 storey **Service Apartment Building**, with B+G+10 Storey Assembly Building (Hotel) & B+G+2 Storey MLCP at 27, Matheshwartola Road, Kolkata – 700046, Ward – 58, Borough – VII, P.S. – Pragati Maidan, Mouza – Tangra, C.S./R.S. Dag No. – 356 & 356/380 (P), 353, J.L. No. 5*”.

2.7 The Project containing Service Apartments was called ‘**PALLADINA**’ for the purpose of identification and marketing. The West Bengal Real Estate Regulatory Authority [here-in-after referred to as ‘WBREERA’] issued Registration Certificate of Project in Form ‘C’ under Rule 6(1) of RERA Rules bearing **Project Registration No. WBREERA/P/KOL/2025/002336**. Since, there is no option available under WBREERA Registration to register a Project as ‘**Service Apartment**’, the Registration by WBREERA was granted as ‘**Residential Project**’. **Further, please note that The Real Estate (Regulation And Development) Act, 2016 read with West Bengal Real Estate (Regulation and Development) Rules, 2021, nowhere defines the term ‘Residential Project’ or ‘Commercial Project’.** However, the RERA Authorities have classified the captioned project as ‘Residential Project’, since, people would be residing in the captioned project and that the unit would not be used as office or shops, which is generally envisaged as ‘Commercial Project’ by RERA Authorities.

2.8 Kindly note that the perception of service apartment is different from that of residential apartment. **The service apartments, unlike residential apartments, can be given on rent for long term as well as for short term, as per requirement.** The service apartments are generally treated akin to hotel rooms and hence, these apartments are classified as commercial in nature, in common parlance.

2.9 From GST perspective, the taxability of construction of **residential** complex, building, civil structure or a part thereof is different to that of construction of **commercial** complex, building, civil structure or a part thereof, which is elucidated in **Notification No. 11/2017- Central Tax (Rate), dated 28<sup>th</sup> June, 2017** read with **Notification No. 03/2019-Central Tax (Rate) dated 29<sup>th</sup> March, 2019** issued under CGST Act, 2017 and Rules issued thereunder.

2.10 We are stating here-in-below the GST Rate applicable for construction of residential complexes vis-à-vis commercial complexes along with associated conditions thereto, in summarised form, for kind perusal –

Heading	Description of Service	Rate of GST	Condition
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		(After abatement)	
9954	Construction of residential apartments which commences on or after 1st April, 2019	5%	(i) No ITC is available - Tax has to be paid through Electronic Cash Ledger; and  (ii) 80% of purchases to be made from Registered Persons.
9954	Construction of commercial apartments which commences on or after 1st April, 2019	12%	-

2.10 Sl. No. 4 (xxix) and 4 (xxx) of **Notification No. 11/2017- Central Tax (Rate), dated 28<sup>th</sup> June, 2017** read with **Notification No. 03/2019-Central Tax (Rate) dated 29<sup>th</sup> March, 2019** defines "Residential apartment" and "Commercial apartment" respectively, which is elucidated here-in-below for ease of reference –

*4(xxix) "Residential apartment" shall mean an apartment **intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;***

*4(xxx) "Commercial apartment" shall mean **an apartment other than a residential apartment.***

2.11 Kindly note that in the instant case –

(a)The said land on which the captioned service apartments project being Palladina is being set up has been restricted to be used solely for commercial venture/enterprise and that the same cannot be used for residential units;

(b)Accordingly, the Sanction Plan bearing No. BP No. 2024070124 dated 20-12-2024 has been received from Kolkata Municipal Corporation under Section 393 of KMC Act, 1980 read with Rule 69(I)(B) of KMC Building Rules, 2009 for the project to be constructed as 'Service Apartments' instead of 'Residential Apartments'; and

(c)Since, there is no option available under WBRERA Registration to register a Project as 'Service Apartment', the Registration by WBRERA was granted as 'Residential

Project' bearing Project Registration No. WBRERA/P/KOL/2025/002336.

2.12 The dilemma in the instant case is that the captioned project being Palladina has been classified differently by two competent authorities namely –

(a) Sanction Plan bearing No. BP No. 2024070124 dated 20-12-2024 issued by Kolkata Municipal Corporation (KMC) classifying the captioned project being Palladina as 'Service Apartments', which is deemed commercial in nature coupled by the restriction contained in usage of the land on which the captioned service apartments project being Palladina is being set up; and

Certificate of Registration granted by WBRERA bearing Project Registration No. WBRERA/P/KOL/ 2025/002336 classifying the captioned project being Palladina as Residential.

2.13 Owing to aforesaid difference in classification of project by two different competent authorities, being KMC and WBRERA Authorities, the Applicant is susceptible to the dispute being raised by the GST Departmental Officials on the classification of the project i.e. Residential vis-à-vis Commercial project in as much as the taxability under GST varies significantly upon the nature of the project.

2.14 Accordingly, the Applicant has sought for an advance ruling as to whether the captioned project being Palladina, sanctioned as 'service apartments' by Kolkata Municipal Corporation and 'Residential Project' by WBRERA Authorities would fall under Residential Project or Commercial Project in terms with Notification No. 11/2017- Central Tax (Rate), dated 28<sup>th</sup> June, 2017 read with Notification No. 03/2019-Central Tax (Rate) dated 29<sup>th</sup> March, 2019 issued under CGST Act, 2017 and Rules issued thereunder, to avoid unnecessary dispute arising in the future.

2.15 At the outset, please note that while interpreting a taxing statute, the principle and the object of the Act has to be kept in mind and it has to be seen in the light of the scheme of the Act and the context thereof. If the words of the statute are clear, plain, unambiguous, the courts are bound to give effect to that meaning. To find out the exact connotation of a word in a statute, the context in which it is used is to be looked into. The context would quite often provide the key to the meaning of the word and the sense it should carry. It's settling would give colour to it and provide clue to the intention of the legislature in using it. However, all such interpretation is to be done only in case of ambiguity.

2.16 Further, the captioned advance ruling as to whether the captioned project being Palladina, sanctioned as 'service apartments' by Kolkata Municipal Corporation and 'Residential Project' by WBRERA Authorities would fall under Residential Project or Commercial Project in terms with Notification No. 11/2017- Central Tax (Rate), dated 28<sup>th</sup> June, 2017 read with Notification No. 03/2019-Central Tax (Rate) dated 29<sup>th</sup> March, 2019 issued under CGST Act, 2017 and Rules issued thereunder, has been sought just to avoid unnecessary dispute arising in the future. The Applicant would be indifferent with the judgment of this Advance Ruling Authority on the classification of the captioned project in as much as GST, being an indirect tax, has to be collected from the customers and paid to Government Exchequer, having no financial impact on the Applicant. For the initial few units sold, the applicant has collected GST from its customer at higher rate of GST being 12% and deposited it to the Government Exchequer to avoid any additional financial liability accruing on the applicant. However, the Applicant has filed this application to obtain clarity on the GST rate applicable to the captioned project to avoid any disputes from the GST Department as well as the customers.

2.17 Considering the Deed of Conveyance made on 27<sup>th</sup> day of August 2013 entered between Ms. Park Leather Company of the First Part, Ms PS Group Realty Limited & Others of the Second Part and Kolkata Municipal Corporation of the Third Part containing restriction of usage of land to be used solely for commercial venture/enterprise and accordingly, commercial venture in the nature of 'Service Apartments' have been envisaged by the Applicant, **we are of the view that the captioned project should be classified as 'Commercial Project'** irrespective of the fact that the Applicant would be exposed to higher rate of GST.

2.18 The intention behind Rate Notification No. 11/2017- Central Tax (Rate), dated 28<sup>th</sup> June, 2017 read with Notification No. 03/2019-Central Tax (Rate) dated 29<sup>th</sup> March, 2019 is that Residential Project needs to be taxed at 5% GST and Commercial Project needs to be taxed at 12% GST. Sl. No. 4 (xxix) and 4 (xxx) of Notification No. 11/2017- Central Tax (Rate), dated 28<sup>th</sup> June, 2017 read with Notification No. 03/2019-Central Tax (Rate) dated 29<sup>th</sup> March, 2019 defines "Residential apartment" and "Commercial apartment" respectively, which is elucidated here-in-below for ease of reference –

*4(xxix) "Residential apartment" shall mean an apartment **intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;***

*4(xxx) "Commercial apartment" shall mean **an apartment other than a residential apartment.***

2.19 In the instant case, the captioned project being Palladina, has been categorised as

'Service Apartments' being in the nature of Commercial Project by Kolkata Municipal Corporation, being one of the competent Authority, and the same project being Palladina, has been categorised as 'Residential Projects' by WBRERA, another competent Authority.

2.20 We are of the view that the RERA Authorities have classified the captioned project as 'Residential Project', since, people would be residing in the captioned project and that the unit would not be used as office or shops, which is generally envisaged as 'Commercial Project' by RERA Authorities. However, with conflict in determination of classification of project between competent authorities, we are of the view that one should see the nature of the project and the conditions &/or restriction contained thereto.

2.21 Please note that it is a settled law that while interpreting a taxing statute, the principle and the object of the Act has to be kept in mind. In the instant case, the service apartments, unlike residential apartments, can be let out for short term as well as long term and thus these apartments are generally treated akin to hotel rooms and hence, these are classified as commercial in nature.

2.22 We are of the view that just because the Registration being granted by WBRERA does not contain a classification of 'Service Apartments', such fact would not change the nature of the project, which is governed by the restriction contained in the land on which construction is being carried out and further, has to be constructed in terms with the building sanction plan sanctioned by Kolkata Municipal Corporation.

2.23 Though the payment of GST would be higher in case of Commercial Units, such classification appears to be more relevant and appropriate considering the nature of the project and restriction contained in the land on which construction is being carried out.

### 3.Submission of the Revenue

3.1 The concerned officer from the revenue has not expressed any view on the merit of the issue raised by the applicant.

### 4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized representatives of the applicant during personal hearing.



4.2 According to the facts narrated by the applicant, M/S Park Leather Company being the absolute owner of Ten bighas and Four cottas of land at premises no. 26 and 27 Matheswartala Road, Kolkata was carrying on business of tannery and manufacturing of leather products from the entire land. Due to certain environmental issues, the said company was directed by the Government of West Bengal to shift the tannery (along with all other tanneries in that area) to Kolkata Leather Complex at Bantala.

Pursuant to the directions of the Government, M/S Park Leather Company by a deed of conveyance dated 27.08.2013 signed between the company (being the owner), M/S PS Group Realty Limited and Kolkata Municipal Corporation (in short KMC) sold the entire land to M/S PS Group Realty Limited. There was restriction on the part of KMC and West Bengal Trade Promotion Organisation that the said land should be used for setting up Hotel-cum-Convention Centre and other commercial venture/ enterprise excluding residential units and for no other purpose.

Vide development agreement (along with related power of attorney) dated 19.06.2024 the owners of the land has given the development right of the land to the applicant being the developer. The agreement is for construction of three building blocks. The Phase 1 will comprise of Service Apartments and Multi-level Car Parking and Phase 2 will comprise Hotel. All the three buildings will constitute the entire 'Complex'.

Accordingly the applicant obtained sanction from KMC for proposed 'B+G+31 storey Service Apartment Building', 'B+G+10 storey Assembly Building (Hotel)' and 'B+G+2 storey Multi-level Car Parking'. The sanction was given by KMC vide sanction plan bearing no. BP 2024070124 dated 20.12.2024 which is valid till 19.12.2029.

The project containing service apartments is named as 'Palladina' for the purpose of identification and marketing. The West Bengal Real Estate Regulatory Authority (in short WBRERA) has issued Registration Certificate bearing no. WBRERA/P/KOL/2025/002336 and the same has been granted as 'Residential Project'.

Under this fact and circumstance the applicant has raised the question as under:

'Whether the Service Apartment being constructed would fall under construction services of multi-storey residential buildings or construction services of commercial buildings?'

4.3 The applicant believes and states that the perception of service apartment is different from that of residential apartment in as much as service apartments, unlike residential one, can be given on rent for short terms as well as for long term according to the requirement. According to the applicant, service apartments are generally treated akin to hotel rooms and hence, these apartments are classified as commercial in nature in common parlance.

In the opinion of the applicant the project 'Palladina' should be classified as commercial

project if the terms of usage of the land as per agreement dated 27.08.2013 between M/S Park Leather Company, M/S PS Group Realty Limited and Kolkata Municipal Corporation is considered. The applicant is of the view that just because the registration granted by WBRERA does not contain the classification of 'Service Apartments', such fact will not change the nature of the project. The project is governed by the restriction imposed by the KMC and has to be constructed in terms with the building sanction plan approved by KMC.

4.4 The present application for Advance Ruling centres round the concept of 'Service Apartment' or 'Serviced Apartments' (as it is called sometimes). This is a relatively new and upcoming concept in the world of real estate. A service apartment in a real estate project refers to a fully furnished apartment offered for both short-term and long-term stays, providing hotel-like amenities and services within the rental cost. It combines the space and privacy of an apartment with the convenience and services of a hotel, making it a popular choice for travelers, business professionals, and those relocating.

4.5 Key Features of Service Apartments are as under:

**Fully Furnished:**

Unlike traditional apartments, service apartments come fully furnished with essential furniture, appliances, and often a fully equipped kitchen.

**Hotel-like Services:**

They offer services such as housekeeping, laundry, and concierge assistance, which are typically included in the rental price.

**Flexibility:**

They are available for both short-term and long-term stays, catering to various kinds of needs.

**Added Amenities:**

Service apartments often include amenities like Wi-Fi, gym access, and community areas, enhancing the living experience.

**Privacy and Space:**

Service apartments provide more space and privacy, making them suitable for families or individuals needing more room to work or relax.

**Cost-Effectiveness for Longer Stays:**

While the initial cost might be higher than a regular rental, serviced apartments, they can be more economical for longer stays due to the included services and amenities.

**Suitable for Various needs:**

They are popular among business travelers, expatriates, tourists, and families seeking a comfortable and convenient accommodation option.

4.6 However, conceptually a service apartment is different from both hotel and residential apartment *per se*. It is different from a residential apartment so far as the tenure of the stay is concerned. Usually residential apartments are associated with longer period of stay. Residential apartments are, in most of the cases, unfurnished or semi-furnished. They do not offer hotel-like facilities.

Service apartments share some similarities with hotels, such as the provision of services. But they differ in terms of space, amenities, and the overall living experience. Service apartments offer more space, privacy, and a more home-like environment, making them ideal for extended stays.

So from a common parlance service apartment cannot be equated with residential apartment.

4.7 The point of confusion that the applicant has highlighted is that the real estate project called 'Palladina' has been categorised as 'Service Apartments' being in the nature of commercial project by Kolkata Municipal Corporation as one of the competent authority. The same project has been categorised as 'Residential Project' by WBRERA as another competent authority.

To understand the issue we have to refer to the following concepts as found in Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 read with Notification No. 03/2019 - Central Tax (Rate) dated 29.03.2019.

**Apartment:** It is stipulated in the above noted notifications that the term 'apartment' shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016). Section 2(e) of the said act has defined "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.

**Residential and Commercial Apartment:** The definitions of these two terms can be found in Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 read with Notification No. 03/2019 - Central Tax (Rate) dated 29.03.2019. There we find in clause 4(xxix) that a residential apartment shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority.

As per clause 4(xxx) a commercial apartment shall mean an apartment other than a residential apartment.

Thus we find that the term commercial apartment has a wider meaning. Any apartment which is not intended for residential purpose should be classified into a commercial apartment.

**Real Estate Project (REP):** The notifications as noted above refers to the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) for understanding the concept. As per section 2(zn) Real Estate Project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

On the other hand, according to Clause 4(xxx) of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 read with Notification No. 03/2019 - Central Tax (Rate) dated 29.03.2019, **'Residential Real Estate Project' (RREP)** shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.

**Competent Authority:** According to Section 2(p) of the Real Estate (Regulation and Development) Act, 2016, 'Competent Authority' means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property. We find the same definition in the above noted notifications vide clause 4(xxv).

Local authority has been defined in Section 2(zc) as the Municipal Corporation or Municipality or Panchayats or any other Local Body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction

4.8 As we have already noted, the applicant's project called 'Palladina' is a project for construction of 'Service Apartments' as Phase 1 of the total construction of the Complex according to the Development Agreement dated 19.06.2024. It will be B+G+31 storey construction. The KMC being the competent authority for sanction of building plan has accorded sanction vide BP No. 2024070124 dated 20.12.2024 for construction of 'Service Apartments Building' as is evident from the said sanctioned plan.

We have to keep in mind that the KMC has already imposed restriction in respect of construction

works to be done on the referred land vide agreement dated 27.08.2013 between M/S Park Leather Company, M/S PS Group Realty Limited and Kolkata Municipal Corporation. The restriction as provided in clause 9 of the agreement is that 'the said property shall be used for setting up the Hotel Cum Convention Centre and other commercial venture/ enterprise **excluding residential units** and for no other purpose'. So it is clear that when KMC has sanctioned the plan specifically for 'Service Apartments Building', the apartments in the project is anything but residential apartments.

According to Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 read with Notification No. 03/2019 - Central Tax (Rate) dated 29.03.2019, a commercial apartment shall mean an apartment other than a residential apartment. On this count, 'Palladina' should be considered as a project for construction of commercial apartments.

4.9 At this point of discussion we have to examine whether KMC can be termed as 'competent authority' in respect of the issue involved in the application for advance ruling.

In paragraph 4.7 we have already discussed the concept of competent authority. We find there that 'Competent Authority' means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property.

The Kolkata Municipal Corporation is a local authority as defined in the RERA Act. The history of Kolkata Municipal Corporation as local authority can be traced back as early as September 1726. Then after a series of evolutions and enactments the current structure and functions of the corporation found its consolidation and modern form in the year 1980 through the Calcutta Municipal Corporation Act, 1980. The act became operative in the year 1984 when the West Bengal Legislature passed the Calcutta Municipal Corporation Act, 1984 (West Bengal Act XIII of 1984).

The Calcutta Municipal Corporation Act, 1980 as amended has clearly stated the powers and functions of the Corporation in Section 28 and 29 of the act. For the purpose of better understanding the relevant portions of the sections are reproduced as under:

*'28. General powers of the Corporation — Subject to the provisions of this Act and the rules and the regulations made thereunder, the municipal government of Kolkata shall vest in the Corporation.*

*29. Obligatory functions of the Corporation — The Corporation shall, having regard to the available resources, provide civic services including water supply, sewerage and drainage, solid waste management, and construction and maintenance of streets, and **shall enforce the provisions of this Act and if so required by any other law in force for the time being, the***

***provisions of such law relating to town planning, land use, controls regarding regular lines of streets, control of overground and underground building operations and protection of environment against pollution and noise pollution and community health,.....'*** (emphasis added).

The referred land in the application for advance ruling belongs to Ward No. 58 which is included in Schedule II appended to the Calcutta Municipal Corporation Act, 1980 as area to be considered in Kolkata. On the south, the said Ward is bounded by Matheshwartala Road where the land is situated.

Section 392 of the Calcutta Municipal Corporation Act, 1980 provides that *no person shall erect or commence to erect any building or execute any of the works specified in section 390 except with the previous sanction of the Municipal Commissioner and in accordance with the provisions of this Chapter and of the rules and the regulations made under this Act in relation to such erection of building or execution of work.*

Section 390 *inter alia* includes assembly buildings, that is to say, any buildings or part thereof where groups of people congregate or gather for amusement or recreation or for social, religious, patriotic, civil travel, sports, and similar other purposes, such buildings shall include theatres, motion picture houses, drive-in-theatres, city halls, town halls, auditoria, exhibition halls, museums, skating rinks, gymnasium, restaurants, eating houses, hotels, boarding houses, [lodging or rooming houses, guest-houses, dormitories,] places of worship, dance halls, club rooms, gymkhana, passenger stations and terminals of air, surface and other public transportation services, recreation piers, and stadia in clause (d) of sub-section 2.

Section 393 provides that every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form together with such fees including Drainage Development fee and containing such information as may be prescribed.

From all the above provisions of the Calcutta Municipal Corporation Act, 1980 as amended, it is clear that KMC fits into the definition of 'competent authority' as per Section 2(p) of the Real Estate (Regulation and Development) Act, 2016 so far as the exercise of authority over land under its jurisdiction and the powers to give permission for development of such immovable property is concerned.

In addition to WBRERA, the KMC is also a 'competent authority' to sanction the project called 'Palladina' which the KMC has accepted as 'service apartment building' in the sanctioned plan, not as 'residential apartment building'.

As per Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 read with Notification No. 03/2019 - Central Tax (Rate) dated 29.03.2019, the use of a building either as residential or as commercial may be declared to the RERA or to the competent authority. Here the KMC is a competent authority so far as the applicant's project is concerned.

4.10 So far as the Real Estate (Regulation and Development) Act, 2016 is concerned, we find the definition of apartment. But the act does nowhere make any distinction between residential and commercial apartment. The definition of apartment includes both the purposes.

On the contrary, the Calcutta Municipal Corporation Act, 1980 has clearly made distinction between residential buildings and assembly buildings. We find both the entries in the clauses of Section 390(2) of the act.

4.11 In view of the above discussion we are of the considered view that simply because WBRERA has classified 'Palladina' (the proposed B+G+31 storey) Service Apartment as residential apartment, neither the nature and purpose of the project nor the classification made by the KMC as a 'competent authority' becomes redundant. It remains to be a project of building commercial apartments. On this count we are on the same page with applicant.

In view of the foregoing discussion, we rule as under:

### **RULING**

1. Whether the Service Apartment being constructed would fall under construction services of multi storey residential buildings or construction services of commercial buildings?

**Answer:** The Service Apartment being constructed by the applicant will fall under construction service of commercial buildings.

Sd/-

Sd/-

(SHAFEEQ S)

(JAYDIP KUMAR CHAKRABARTI)

Member

Member

The West Bengal Authority for Advance  
Ruling

The West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 17-10-2025

To,

Ms. SRIPSK Developers LLP

36/1A, Elgin Road, Bhawanipur, Kolkata – 700 020

Copy to,

(1)The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector,  
Kolkata-700107

(2)The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015

(3)The Commissioner, Kolkata North Commissionerate, 180, Shantipally, R.B.Connector,  
Kolkata-700107

(4)The Charge Officer, Esplanade Charge, 14, Beliaghata Road, Kolkata-700015

(5)Office Copy