

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)

BENCH

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX  
Mr JoyjitBanik, 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 thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	KAYAL INFRA
Address	3 <sup>RD</sup> floor, ASO-318 Astra Towers, Tower South, Action Area 2C, New Town, North 24 Parganas, 700156, West Bengal
GSTIN	19AAVFK6576C1ZP
Case Number	18 of 2021
ARN	AD190921003899L
Date of application	September 27, 2021
Order number and date	15/WBAAR/2021-22 dated 09.12.2021
Applicant's representative heard	Mr. Ritwik Khator, Authorized Representative

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 stated to be involved in construction of property used for residential purpose.

1.3 Presently, the applicant is constructing a property at Ghosh Hat, Madhaitala, P.S. & P.O. Katwa under Katwa Municipality, District-PurbaBardhaman, West Bengal.

1.4 The applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

- (i) Whether the property currently under construction is a Residential Real Estate Project (RREP) as defined under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 amended vide Notification No. 03/2019-Central tax (rate) dated 29.03.2019.
- (ii) Whether the said property under construction is an affordable residential apartment as defined under the aforesaid notification.
- (iii) Whether the GST rate to be charged from customers for sale of flats in the said property should be 1.5% (0.75% CGST and 0.75% SGST), as further reduced by 1/3 rd to factor in the value of land or it should be 7.5% (3.75% CGST and 3.75% SGST), as further reduced by 1/3 rd to factor in the value of land.

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

1.6 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

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

1.8 The application is, therefore, admitted.

## 2. Submission of the Applicant

2.1 Fact of the case as submitted by the applicant along with interpretation of law made by him is reproduced herein under:

- The applicant, as it has already been stated, is presently engaged in construction of a property located at Ghosh Hat, Madhaitala, P.S. & P.O. Katwa under Katwa Municipality, District-Purba Bardhaman, West Bengal.
- As per the municipality approved construction plan, the flats in the property are being sold as residential flats for dwelling purposes only and the project does not have any commercial space.
- The construction of the said project has commenced after 1st April, 2019 and the applicant has received advance amount from customers intending to purchase flats in the said project.
- The said project is having multiple apartments with minimum carpet area of an apartment of 30.492 Sqm.(excluding balcony of 1.576 Sqm) and maximum carpet area of an apartment of 45.393 Sqm (excluding balcony of 2.266 Sqm).
- The maximum amount charged for an apartment as of date is Rs. 23,35,594/- (Including Car Parking of Rs 2,50,000/-) which is exclusive of GST.

- The said property or the firm is not registered under any affordable housing scheme of the Central Government or the State Government or under any other similar scheme of the Governments.
- At least 80% of the inputs and input services have been purchased from registered persons only.

2.2 The applicant has submitted that as per Notification No. 11/2017- Central Tax (Rate) dated the 28<sup>th</sup> June, 2017 as amended vide Notification No. 03/2019- Central Tax (Rate) dated the 29<sup>th</sup> March, 2019 [corresponding West Bengal State Notification No.1135-F.T. dated 28.06.2019 as amended vide Notification No. 552-F.T. dated 29.03.2019 and herein after collectively referred to as, the relevant Notification],affordable residential apartment under GST is a residential apartment in a project which commences on or after 01-04-2019 or in an ongoing project in respect of which the promoter has opted for new rate of 1%(effective from 01-04-2019) having carpet area upto 60 square meter in metropolitan cities and 90 square meter in cities or towns other than metropolitan cities and the gross amount charged for which, by the builder is not more than 45 lakhs rupees.[ Cities or towns in the notification shall include all areas other than metropolitan city as defined, such as villages.]. Further, “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.

2.3 The applicant thus contends that GST rate to be charged from customers for sale of flats in the said property should be 1.5% (0.75% CGST and 0.75% SGST), as further reduced by 1/3 rd to factor in the value of land i.e. @ 1% (0.5% CGST and 0.5% SGST) on the following grounds:

- (I) construction of the said project is in a non- metropolitan area;
- (II) carpet area is below 90 Sqm of all the flats;
- (III) the carpet area of the commercial areas is also not more than 15 percent; and
- (IV) the consideration being charged from customers is below 45 lakh.

2.4 However, the applicant has submitted that since the said property or the firm is not registered under any affordable housing scheme of the Central or State Government, he is in confusion whether the property can still be considered to be an “affordable residential apartment” within the meaning of the said notification and accordingly whether a GST rate of 1% can be charged to customers instead of 5%.

### 3. Submission of the Revenue

3.1 The concerned officer from the revenue has expressed his view in writing which is reproduced as under:

3.2 Question no. 1: Whether the property currently under construction of Kayal Infra is a Residential Real Estate Project (RREP) as defined in the relevant Notification?

**Comments:** Definition of Residential Real Estate Project (RREP) as given in the relevant Notification is as follows:

The term "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;

Now, a real estate project (REP) is defined in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 as below:

(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 apartment, 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.

*In the opinion of this office, the property currently under construction of Kayal Infra can only be treated as a Residential Real Estate Project (RREP) if the same satisfies the above definitions. It appears that if the disclosures in Para 15 of the GST ARA-01 made by the applicant are true and correct, including the disclosure that the carpet area of the commercial apartments in the project is zero per cent, the same should be treated as a Residential Real Estate Project (RREP).*

3.3 Question No.2: Whether the said property under construction is an affordable residential apartment as defined in the relevant Notification?

**Comments:** The definition of affordable residential apartment is given in the relevant Notification as:

The term "affordable residential apartment" shall mean, -

(a) a residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, 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.

For the purpose of this clause, -

- ✓ Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;
- ✓ Gross amount shall be the sum total of; -
  - (i) Consideration charged for the services specified at item (i) and (ic) in column (3) against sl. No. 3 in the Table;
  - (ii) 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

- (iii) 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.
- (b) an apartment being constructed in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table above, in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be.

*Now, if the disclosures in Para 15 of the GST ARA-01 made by the applicant are true and correct, the instant project is not an ongoing project as defined in paragraph 4 (xx) of the relevant Notification. It is also located at a town other than a metropolitan city and, as per disclosure, does neither plan to construct an apartment exceeding carpet area of 90 square meter or of gross amount chargeable for more than Rs 45 lakh.*

*Hence, in the opinion of this office the said property under construction is to be considered as a construction project of affordable residential apartments provided it satisfies all the criteria as embodied in the above quoted definitions.*

3.4 Question No.3: Whether the GST rate to be charged from Customers for sale of Flats in the said property should be 1.5% (0.75%-CGST and 0.75%-SGST), as further reduced by 1/3<sup>rd</sup> to factor in the value of land or it should be 7.5% (3.75%of CGST and 3.75% of SGST), as further reduced by 1/3<sup>rd</sup> to factor in the value of land?

**Comments:** *From the disclosures in Para 15 of the GST ARA-01 made by the applicant it appears that the project under consideration is an Affordable Residential Apartment coming up in a non-metro area with apartment units each having carpet area not exceeding 90 sq meters, and value not exceeding Rs 45 lakh. It is not clear from the application whether the project involves transfer of property in land or undivided share of land. It is also not expressly mentioned whether the applicant is undertaking the project as a 'promoter' as defined in clause (zk) of Section 2 of the Real Estate (Regulation and Development) Act, 2016 or not; however, it is assumed to be so. In such a scenario, as a construction project of affordable residential apartments in an RREP commencing after 01.04.2019, where the promoter is not availing any input tax credit, the rate of tax should be 0.75% of CGST and 0.75% of SGST, the total being 1.5% on the value of supply of service and goods, in terms of the relevant Notification. In the event of the applicant being a developer-promoter also transferring the land share rights, the value of such supply of service and goods shall be equivalent to the two-thirds of the total amount charged for such supply [vide Para 2 of the notification no. 11/2017-Central Tax (Rate) dt 28.6.2017]. In other words, the rate of tax would effectively become 1% (0.5% of CGST and 0.5% of SGST) on the total value of supply of service and goods effected by the promoter in case the supply involves transferring the land share rights also.*

#### 4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representative of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the Revenue.

4.2 The issue involved in the instant case is to decide whether the project which is currently under construction by the applicant shall be regarded as a Residential Real Estate Project (RREP) and whether the same shall qualify as affordable residential apartment as defined in the relevant Notification and what would be the applicable rate of tax.

4.3 Definition of 'Real Estate Project' (REP), 'Residential Real Estate Project' (RREP) and "affordable residential apartment" as given in the relevant Notification has already been given in para 3.2 and 3.3 respectively.

4.4 At the outset, we like to refer to the submission of the applicant (at Para 2.2) in respect of affordable residential apartment. The applicant has stated that "*affordable residential apartment under GST is a residential apartment in a project which commences on or after 01-04-2019, or in an ongoing project in respect of which the promoter has opted for new rate of 1%(effective from 01-04-2019) .....*"

4.5 In this context, we observe that the relevant Notification requires a promoter or a builder, intending to pay tax at old rates of 8% or 12% in respect of an ongoing project with the benefit of availing input tax credit, to exercise one time option in the prescribed form before the jurisdictional Commissioner. Where the promoter or builder does not exercise such option, it shall be deemed that he has opted for new rates in respect of ongoing projects.

4.6 The activities undertaken by the applicant, as it appears from the available records, is development of a building consisting of apartments for the purpose of selling all or some of the said apartments. The instant project, therefore, can be termed as a 'real estate project'. Further, a REP shall be treated as RREP if 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. Here, from the submitted documents, we find that the instant project doesn't have any commercial apartment. As a result, the instant project falls under the category of RREP.

4.7 Now we proceed to decide whether the apartments in the project can be regarded as 'affordable residential apartment' or not. The applicant has contended that the apartments shall be treated as affordable residential apartment since it fulfils following criteria:

- (I) construction of the said project is in a non- metropolitan area;
- (II) carpet area is below 90 Sqm of all the flats;
- (III) the carpet area of the commercial areas is also not more than 15 percent; and
- (IV) the consideration being charged from customers is below 45 lakh

4.8 The Commissioner of State Tax, West Bengal vide order No. 04/WBGST/PRO/2019 dated 12.04.2019 has prescribed that the metropolitan city of Kolkata as referred to in item (a) to clause (xvi) of Paragraph 4 of Notification No. 1135-F.T. dated 28.06.2019 as amended vide Notification No. 552-F.T. dated 29.03.2019 shall have the same meaning as assigned to it in clause (9) of section 2 of the Kolkata Municipal Corporation Act, 1980 (West Ben. Act LIX of 1980).

4.9 According to clause (9) of section 2 of the Kolkata Municipal Corporation Act, 1980, "Kolkata" means the area described in Schedule I. The instant project, being located in the district of Purba Bardhaman, is undisputedly in the towns other than Kolkata metropolitan cities. It therefore qualifies for carpet area not exceeding 90 square meter for the purpose of affordable residential apartment.

4.10 The question which is now left with us is to determine the applicable rate of tax to be charged from customers for sale of flats in the said property. Initially, construction services under Heading 9954 were taxable @ 18% [ CGST @ 9% + WBGST @ 9%] vide entry serial number 3 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 [corresponding West Bengal State Notification No. 1135 F.T. dated 28.06.2017]. The said entry read as follows:

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
3	Heading 9954 (Construction services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.  (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	
		(iii) construction services other than (i) and (ii) above.	9	

Para 2 of the Notification stood as under:

In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. – For the purposes of paragraph 2, “total amount” means the sum total of, -  
(a) consideration charged for aforesaid service; and

(b) amount charged for transfer of land or undivided share of land, as the case may be.

4.11 The aforesaid notification has been amended from time to time. As per item number (i) and (ic) against Sl.No.3 of the relevant Notification, the Central Tax rate of 0.75% (effective tax rate being 0.5% without ITC) is applicable for the following:

- ✓ *Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1<sup>st</sup> April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*
- ✓ *Construction of affordable residential apartments by a promoter in a Real Estate Project (herein after referred to as REP) other than RREP, which commences on or after 1<sup>st</sup> April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*

4.12 The aforesaid entries thus prescribe that a promoter shall pay tax @1.5% w.e.f. 01.04.2019 (effective rate of 1% after allowing 1/3<sup>rd</sup> abatement for land) on intra-state supply of:

- Construction of affordable residential apartments in a Residential Real Estate Project which commences on or after 1<sup>st</sup> April, 2019; or
- Construction of affordable residential apartments in an ongoing RREP in respect of which he has not exercised option to pay central tax and state tax on construction of apartments at the rates as specified for item (ie) or (if); or
- Construction of affordable residential apartments in a Real Estate Project other than RREP, which commences on or after 1<sup>st</sup> April, 2019; or
- Construction of affordable residential apartments in an ongoing REP other than RREP in respect of which he has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if).

4.13 On the other hand, as per item number (ia) and (id) against Sl.No.3of the relevant Notification, the Central Tax rate of 3.75% (effective tax rate being 2.5% without ITC) is applicable for the following:

- ✓ *Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which commences on or after 1<sup>st</sup> April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*



- ✓ *Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP which commences on or after 1 st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*

4.14 The aforesaid entries thus prescribe that a promoter shall pay tax @7.5% w.e.f. 01.04.2019 (effective rate of 5% after allowing 1/3<sup>rd</sup> abatement for land) on intra-state supply of:

- Construction of residential apartments other than affordable residential apartments in a RREP which commences on or after 1 st April, 2019; or
- Construction of residential apartments other than affordable residential apartments in an ongoing RREP in respect of which he has not exercised option to pay central tax and state tax on construction of apartments at the rates as specified for item (ie) or (if); or
- Construction of residential apartments other than affordable residential apartments in a REP other than a RREP which commences on or after 1 st April, 2019; or
- Construction of residential apartments other than affordable residential apartments in an ongoing REP other than RREP in respect of which he has not exercised option to pay central tax and state tax on construction of apartments at the rates as specified for item (ie) or (if);

4.15 Since it is noticed that rate of tax in respect of an ongoing project depends on whether the promoter has exercised option to pay central tax and state tax at old rate (12% or 18%, wherever applicable) or not, we find it relevant to reproduce herein under the description of services and the rate of tax as specified for item (ie) and (if):

SI No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
	Heading 9954 (Construction services)	(ie) Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and subitem (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table, in respect of which the promoter has exercised option to pay State tax on construction of apartments at the rates as specified for this item.	6	Provided that in case of ongoing project, the registered person shall exercise one time option in the Form at Annexure IV to pay central tax on construction of apartments in a project at the rates as specified for item (ie) or (if), as the case may be, by the 10th of May, 2019#;  Provided also that where

		(Provisions of paragraph 2 of this notification shall apply for valuation of this service)		the option is not exercised in Form at annexure IV by the 10th of May, 2019#, option to pay tax at the rates as applicable to item (i) or (ia) or (ib) or (ic) or (id) above, as the case may be, shall be deemed to have been exercised;
		<p>(if) Construction of a complex, building, civil structure or a part thereof, including, –</p> <p>(i) commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP,</p> <p>(ii) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay State tax on construction of apartments at the rates as specified for this item in the manner prescribed herein,</p> <p>but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) above intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p> <p>Explanation. -For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry.</p> <p>(Provisions of paragraph 2 of this notification shall apply for valuation of this service</p>	9	<p>Provided also that invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019# before exercising the option, but such invoices shall be in accordance with the option to be exercised.;</p>
				# The date has been extended to 20 <sup>th</sup> of May,

				2019 vide Notification No. 10/2019-Central Tax (Rate) dated 10.05.2019 [ West Bengal State Notification No. 771 F.T. dated 10.05.2019]
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4.16 Now, for the sake of convenience, rate of tax effective from 01.04.2019 as notified vide the aforesaid entries may be summarised in a tabular form as under:

Sl No.	Type of project	Type of residential apartment	Whether qualifies as ongoing project	Whether date of commencement of the project is on or after 01.04.2019	Effective tax rate (CGST+SGST)	Condition
1	RREP	affordable	No	Yes	1% (without ITC)	
2	RREP	affordable	Yes	No	1% (without ITC)	Not exercised option to pay tax at 12% or 18%, as applicable
3	RREP	Other than affordable	No	Yes	5% (without ITC)	
4	RREP	Other than affordable	Yes	No	5% (without ITC)	Not exercised option to pay tax at 12% or 18%, as applicable
5	REP other than RREP	affordable	No	Yes	1% (without ITC)	
6	REP other than RREP	affordable	Yes	No	1% (without ITC)	Not exercised option to pay tax at 12% or 18%, as applicable
7	REP other than RREP	Other than affordable	No	Yes	5% (without ITC)	
8	REP other than RREP	Other than affordable	Yes	No	5% (without ITC)	Not exercised option to pay tax at 12% or 18%, as applicable

4.17 In the instant case, we have already discussed that the project which is currently under construction by the applicant falls under the category of RREP. Further, the applicant has stated that the project has commenced after 01.04.2019 and in support of his submission, the applicant has produced following documents before us:

- (i) Photocopy of Development Agreement made on 15.03.2020;

- (ii) Photocopy of a letter dated 26.08.2020 addressed to the Chairman, Katwa Municipality in the matter of commencement of construction of project under Katwa Municipality as per approved on Permit No. 65/BP dated 27.02.2020. The said letter is found to be received in the office of Katwa Municipality on 02.09.2020.

4.18 The applicant has also raised his doubt towards applicability of new tax rate of 1% effective from 01.04.2019 on the ground that the said property or the firm is not registered under any affordable housing scheme of the Central or State Government. In this context, we find that the schemes which are notified as affordable residential apartment are applicable only for an ongoing project in respect of which the promoter has not exercised option to pay tax on construction of apartment at the rates specified for items (ie) or (if) against SI No, 3 of the relevant Notification. As the instant project has commenced after 01.04.2019, it cannot be termed as ongoing project. Hence, we are of the opinion that affordable housing scheme of the Central or State Government, as pointed out by the applicant is not applicable for the instant project.

In view of the above discussions, we rule as under:

#### RULING

- (i) The project referred to in the instant application which is currently under construction by the applicant is a Residential Real Estate Project (RREP) as defined under Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and amended vide Notification No. 03/2019-Central tax (rate) dated 29.03.2019[corresponding West Bengal State Notification No.1135-F.T. dated 28.06.2019 as amended vide Notification No. 552-F.T. dated 29.03.2019]
- (ii) The apartments in the said project qualify as affordable residential apartment as defined under the aforesaid notification.
- (iii) GST rate to be charged from customers for sale of flats in the said project, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier, shall be 1.5% (0.75% CGST and 0.75% SGST), as further reduced by 1/3 rd to factor in the value of land.

(BRAJESH KUMAR SINGH)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling