

AUTHORITY FOR ADVANCE RULING, TAMILNADU

DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX

5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,

CHENNAI -600 003.

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Shri T.G.VENKATESH, I.R.S., Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt. K.LATHA, M.sc., (Agri) Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No. 34 /AAR/2022 Dated: 31.8.2022

GSTIN Number, if any / User id		33AAECV6446L1ZZ
Legal Name of Applicant		VGK Property Developers Private Limited.
Registered Address / Address provided while obtaining user id		No.5, Indira Garden, Kamaraj Salai, East Tambaram, Chengalpattu. 600 059.
Details of Application		Form GST ARA - 001 Application Sl.No.11/2022/ARA dated 24.03.2022.
Concerned Officer		Centre: Chennai (Outer) Commissionerate State: Selaiyur Assessment circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provision
B	Description (in brief)	Promoter/Developer of residential units.
Issue/s on which advance ruling required		Classification of any goods or services or both
Question(s) on which advance ruling is required		1. Whether the units in the Impugned Project with carpet area not exceeding 90 square meters and value not exceeding Rs. 45 Lakhs, be considered an Affordable Residential Apartment, based on its location within the revenue

	district of Kanchipuram, which is distinct and outside the jurisdiction of the revenue district of Chennai and hence considered as “Non-Metropolitan Cities” in terms of Notification No. 11/2017 – Central Tax (Rate), dated 28.06.2017 r/w Notification 3/2019 CT (Rate).
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Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

Tvl. VGK Property Developers Private Limited, No.5, Indira Garden, Kamaraj Salai, East Tambaram, Chengalpattu. 600 059 (hereinafter called the ‘applicant’ or ‘VGK’) is registered under the GST Vide GSTIN 33AAECV6446L1ZZ. The applicant have sought Advance Ruling on the following question:

Whether the units in the Impugned Project with carpet area not exceeding 90 square meters and value not exceeding Rs. 45 Lakhs, be considered an Affordable Residential Apartment, based on its location within the revenue district of Kanchipuram, which is distinct and outside the jurisdiction of the revenue district of Chennai and hence considered as “Non-Metropolitan Cities” in terms of Notification

No. 11.2017 – Central Tax (Rate), dated 28.06.2017 r/w Notification 3/2019 CT(Rate).

The applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that they are in the development and promotion of residential apartments. They are taking up projects especially in the extended Greater Chennai Corporation Limits., namely, Rajakilpakkam, Tambaram etc. The applicant has sought Advance ruling with respect to the Residential Real Estate project, the details of which are as follows –

- (i) Location of the Impugned Project: Plot no:10, New No;37, Berahcch Nagar, Rajakilpakkam, Pincode 600073
- (ii) Office of the Municipality issuing planning permit and collects Property Tax: Sembakkam Municipality
- (iii) Office of the sub-registrar: Sub-registrar of Selaiyur
- (iv) Office of TNEB: Chennai South
- (v) Jurisdictional Revenue Department:
 - Circle- Tambaram
 - Revenue village- Rajakilpakkam
 - District- Kanchipuram

2.2 The applicant has stated, *inter-alia* that, as per Notification No. 11/2017 - Central Tax (rate), dated 28-6-2017, as amended by Notification 3/2019 CT (Rate) (Sl. No. 3, item (i)) as amended, the rate of tax shall be 0.75% (equivalent 0.75% under Tamil Nadu SGST Act, therefore Total 1.5%), in case of Construction of affordable residential apartments by a promoter in a Residential Real Estate Project; that as per para 4(xvi) of the Notification 3/2019 CT (Rate), affordable residential Apartment is defined to mean a residential apartment 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; that for the purpose of this clause, Metropolitan City includes Chennai, with its geographical limits prescribed by an order issued by the Central or State Government in this regard.

2.3 Further, the applicant has stated that, different types of authorities such as Local body approving planning permit, Office of the Sub-Registrar, Office of the Revenue department, Greater Chennai traffic Police, Office of the TNEB and Postal Department, consider a particular area in the extended Greater Chennai Corporation Limits, differentially as

metropolitan or otherwise, for different purposes.

2.4 Hence, the applicant states that the authority who collects property tax is the basis on which to determine whether the project comes under metropolitan area for the purpose of Para 4(xvi) of the Notification 11/2017, being the proper authority entrusted with determination and collects revenue in respect of the said apartments in the Impugned Project; that in the instant case, Sembakkam Municipality collects the property tax, and therefore the impugned project be considered as a project in a Non-Metropolitan city as under Notification No. 03/2019-Central Tax (Rate); that accordingly, housing units up to 90 sq. meters of carpet area and within the value limit of Rs. 45 Lakhs, in the impugned project, can be classified as affordable residential apartment, as defined in Notification 11/2017 - Central Tax (Rate), as amended by Notification No. 03/2019 - Central Tax (Rate) and liable to GST Rate of 1.5% on the Value of Supply (and effective rate of 1% of the Total amount Charged).

2.5 Personal hearing was held in digital platform on 19.04.2022. The Authorised representative (AR) for the appellant appeared for the hearing virtually and reiterated their submissions. AR stated that they had filed the application online in September 2020 and followed it by the hard copies as required which they came to know only later; that the project mentioned in the application is completed and only 1 or 2 units remain to be sold; when the AR was asked to furnish the construction commencement/ construction completion certificate of the mentioned project, AR stated that the project is not approved by RERA as hence the same is not applicable.

2.6 In furtherance to hearing held on 19.04.2022, the applicant submitted the following details/documents vide their letter dated 24.05.2022 and 10.06.2022. The AR has requested that though there was no certificate for completion from any authority, the date of deposit money for EB may be taken as appropriate documentation to ascertain the completion date and attached the EB connection details obtained from the website of TANGEDCO. AR had enclosed the receipt for the property tax demand for one of the units of the impugned project, Copy of the ordinance of when Tambaram became Municipal corporation as part of Greater Chennai as attached and the projects that are not governed by RERA.

2.7 The applicants were requested vide this office notice dated 24-6-2022 to submit the following documents in support of their application:

1. Copies of all the Agreements for sale of the UDS in the land and construction of the flats with allotment letters issued to the applicants.

2. Details of Payment collected from the applicants for the booking as well as construction of the apartments by all the applicants
3. Certificate of commencement of the construction project in question and other documents such as Receipt for payment of Electricity Deposit, Water connection and Sewerage connection for all the flats.
4. Details of price charged for sale of Flats and other charges collected towards parking, common area and other external and internal development charges.
5. Details of option exercised for payment of tax for construction of the project under GST Act.
6. Copies of the monthly returns filed for the same.
7. Certificate for completion of the project
8. They are also requested state whether the Sembakkam Municipality comes under the CMDA authority for the purpose of approval of the building plan.

2.8 The AR submitted alongwith their email dated 6-7-2022, the details of date of receipt of advance, Value of the apartment, Carpet area for each unit of the impugned project as under:

S.No.	Client Name	Build up Area	Carpet Area	UDS	Advance booking Date	Amount In Rs.	Total Agreement value
1.	R. Narayanan	1025	732	469	20.01.2020	30,000	60,25,000
2.	M. Srikanth	844	612	386	13.10.2020	1,00,000	53,00,000
3.	M. Badrinarain	1114	821	510	20-01-2020	12,80,000	63,80,000
4.	Ramya	949	697	435	21.03.2020	1,00,000	58,40,000
5.	Arumugam	844	612	383	31.12.2020, 01.01.2021	101 and 9900	37,50,000
6.	R. Jayagomathi	928	678	424	17.09.2020	1,00,000	44,00,000
7.	S. Karthick	949	697	435	01.10.2020	1,00,000	57,75,000

Further, vide their letter dated 5.8.2022 the applicant has stated that “VGK Sakshi” was a new project (other than affordable housing project) commenced after 1st April 2019 and the

rate of GST charged is at 5%.

3 The State Jurisdictional authority who has the administrative jurisdiction over the applicant vide his letter Rc.No.411/2022/A4, dated 29.04.2022 has submitted that the project area mentioned by applicant comes under Tambaram Corporation and as well as the CMDA approved area and due to this reason it is not suitable under affordable Residential Apartment. They had further submitted that there was no pending proceedings against the applicant.

4. The Central Jurisdictional Authority Chennai Outer Commissionerate has not offered any remarks on the questions raised by the applicant in the Advance Ruling Application. Hence, it is construed that there is no proceedings pending on the questions raised by the applicant in the Advance Ruling Application.

5. We have carefully examined the statement of facts, supporting documents filed by the applicant along with application, submissions made at the time of Virtual hearing and thereafter the comments of the State Jurisdictional Authority. The applicant are in the business of development and promotion of residential apartments. They are taking up projects especially in the extended Greater Chennai Corporation Limits., namely, Rajakilpakkam, Tamabram etc. The applicant is before us seeking ruling on the following question:

Whether the units in the Impugned Project with carpet area not exceeding 90 square meters and value not exceeding Rs. 45 Lakhs, be considered an Affordable Residential Apartment, based on its location within the revenue district of Kanchipuram, which is distinct and outside the jurisdiction of the revenue district of Chennai and hence considered as “Non-Metropolitan Cities” in terms of Notification No. 11.2017 – Central Tax (Rate), dated 28.06.2017 r/w Notification 3/2019 CT(Rate).

5.1 Before proceeding further, the statutory provisions related to the applicant's question are examined as under:

Sl. No. 3, item (i) of Notification No. 11/2017 - Central Tax (rate), dated 28-6-2017, as amended by Notification 3/2019 CT (Rate), specifies that the rate of tax shall be 0.75% (equivalent 0.75% under Tamil Nadu SGST Act, therefore Total 1.5%), in case of –

“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 1st 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.”

Consequently Para 2 of the said notification, specifies that the Value of the Land shall be excluded from the Value of Supply, and the value of the Land shall be deemed to be one third of the total amount charged for such supply thereby bringing the effective GST Rate to 1% of the Total Amount Charged (i.e. 1.5% as in Para 1 above on 66.67% of the Total Amount charged) -

“2. In case of supply of service specified in column (3), in item (i); 1y[(i) (ia), (ib), (ic), (id), (ie) and (if)] against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer 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.”

Further, Para 4(xvi) of the Notification 11/2017 Central Tax (rate), dated 28-6-2017, as amended by Notification 3/2019 CT (Rate), explains that for the purposes of this notification,—Affordable Residential Apartment is defined to mean -

“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”

5.2 To summarise, housing units, up to 90 sq. meters of carpet area and within the value limit of Rs. 45 Lakhs, in cities or towns **other than metropolitan cities** can be classified as affordable residential apartment, as defined in Notification 11/2017 - Central Tax (Rate), as amended by Notification No. 03/2019 - Central Tax (Rate). Such units are liable to GST Rate of 1.5% on the Value of Supply (and effective rate of 1% of the Total amount Charged).

5.3 Therefore, the short question that arises for our decision is-

Whether the impugned project falls within the ambit of "Non-Metropolitan City", as prescribed in the Notification 11/2017 - Central Tax (Rate), as amended by Notification No. 03/2019 - Central Tax (Rate).

5.4 In this connection, the following documents submitted by the applicant are examined:

1. Planning permit order in No.80805 issued by Sembakkam Municipality under Section 48 of T&C.P.Act, 1971 on 19.7.2019
2. Building Plan Approval order in No.001/CP/19-20/0000972 issued by the Sembakkam Municipality
3. Property Tax demand notice dated 29-4-2021 issued by the Sembakkam Municipality
4. Challan copy for an amount of Rs.19140/- deposited in the State Bank of India, Tambaram branch on 14-05-2019 under the following head of account:

Account Heading No.021760800AU0009

Head of Account No.0217

"Developments-60 other urban developments Schemes-800 other Receipts AU Receipts under Regularization Charges of Unapproved Lay Out and Plots of CMDA"

5. Receipt No.001/01/1/19-20/0001959 for Payment of Rs.43500/- on 14-5-2019 issued by the Sembakkam Municipality towards collection of Unapproved Plot Regularization Fees.
6. Receipt No.001/01/1/19-20/000128 for payment of Rs.8723/- dt.30.4.2019 towards Vacant land Tax from 2013-14 to 2019-20 issued by the Sembakkam Municipality.
7. Copy of Challan for deposit of Rs.5000/- towards Development charges and Rs.340/- on 18-7-2019 in the State Bank of India towards scrutiny charges to Chennai Metropolitan Development Authority (CMDA) which the payment was authorized by Sembakkam Municipality.
8. Receipt No.001/01/1/19-20/0005821/dt.18-7-2019 for Rs.89900/- issued by

Sembakkam Municipality towards the cost of True Copy Rs.500/-, Garbage Removal Fee Rs.6000/- and Building Licence Rs.83400/-

9. Copy of Challan for deposit of of Rs.3100/- towards Development charges and Rs.340/ towards scrutiny - on 18-7-2019 in the State Bank of India towards scrutiny charges to Chennai Metropolitan Development Authority (CMDA) which the payment was authorized by Sembakkam Municipality.

10. Receipt No.001/01/1/19-20/0005820/dt.18-7-2019 for Rs.89900/- issued by Sembakkam Municipality towards the cost of True Copy Rs.500/-, Scrutiny fees Rs.3000 and Sub-division fees Rs.9800/-

11. Receipt No.001/01/1/19-20/0005820/dt.10.6.2019 for Rs.89900/- issued by Sembakkam Municipality towards the cost of True Copy Rs.500/-, Garbage Removal Fee Rs.5000/- and Building Licence Rs.65400/-

12. Copy of Challan for deposit of of Rs.1500/- towards Development charges and Rs.340/ towards scrutiny - in the State Bank of India towards scrutiny charges to Chennai Metropolitan Development Authority (CMDA) which the payment was authorized by Sembakkam Municipality.

13. Copy of Challan for deposit of of Rs.2100/- towards Development charges in the State Bank of India towards scrutiny charges to Chennai Metropolitan Development Authority (CMDA) which the payment was authorized by Sembakkam Municipality.

14. Receipt No.001/01/1/21-22/000444 for payment of Rs.2684/- dt.19-4-2021 towards Vacant land Tax from 2019-2020 to 2021-22 issued by the Sembakkam Municipality.

15. Building Plan Approval order in No.001/CP/19-20/0000983 dated 19/7/2019 issued by the Sembakkam Municipality

5.5 The **Census** Commission of India defines Metropolitan cities as those Indian cities having a population of **more than 4 million**. The 74th Amendment to the Indian Constitution defines a metropolitan area as An area having a **population of 10 Lakh or 1 Million** or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area. The Metropolitan city is, therefore by inference, defined by the metropolitan area, and whose land use and development etc., are regulated by the Metropolitan Development Authority.

5.6 The Chennai Metropolitan Development (CMDA) administers the Chennai Metropolitan Region, spread over an area of 1,189 km² (459 sq mi) and covers the districts of Chennai, Thiruvallur, Chengalpattu and Kancheepuram. The applicant has got his unapproved vacant housing plots approved by the Sembakkam Municipality by collecting necessary fees. Regularisation of Plot is of two stages. In the first stage, the layout is to be regularised by

CMDA/LPA/Regional Deputy Directors, of Town and Country Planning Department concerned who will examine and issue an in-principle approved layout framework plan to the concerned local body. In the second stage, the local body concerned will issue regularization order and regularization plan for the plot as per the in-principle approved layout framework plan after confirming the ownership of the plot and collection of the balance regularization charge including other applicable charges.

5.7 As per the TamilNadu Town and Country Planning Act, 1971 the relevant provisions regarding development on any land or building are as under:

*Section 49. Application for permission.- (1) Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any **development** on any land or building on or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.*

Section 59. Levy of development charges: (1) Subject to the provisions of this Act and the rules made thereunder, every planning authority including a local authority, where such local authority is the planning authority, shall levy charges (hereinafter called the development charges) on the institution of use or change of use of land or building or development of any land or building for which permission is required under this Act in the whole area or any part of the planning area within the maximum rates specified in section 60.

5.8 From the above, it is evident for any development of any land or building, the **planning authority** shall levy charges (called the development charges) as per the rates prescribed in the Act. The Chennai Metropolitan Development Authority (CMDA) is authorised to regulate real estate development within the Chennai Metropolitan Area (CMA) via the issue of Planning Permissions (PP) issued under Section 49 of the 1971 Tamil Nadu Town and Country Planning Act. Also, from the documents submitted by the applicant, it is inferred that though the Sembakkam Municipality is the 'appropriate local body' for issuing approval order for the building plan, necessary fees towards '**development charges**' were collected by the Chennai Metropolitan Development Authority (CMDA). Therefore, the planning authority for the impugned project is CMDA and by extension, the impugned project falls within the ambit of Metropolitan City of Chennai.

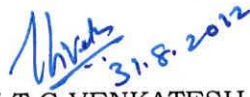
5.9 In view of the above, the units in the impugned Project is **NOT** considered as located in city or town "other than **Metropolitan Cities**" in terms of Notification No. 11/2017 – Central Tax (Rate), dated 28.06.2017 r/w Notification 3/2019 CT(Rate).

We therefore rule as under:

RULING

It is ruled that the units in the impugned Project is within the Chennai Metropolitan area and hence the same cannot be considered as located in city or town "**other than Metropolitan Cities**" in terms of Notification No. 11/2017 – Central Tax (Rate), dated 28.06.2017 r/w Notification 3/2019 CT(Rate).


Smt. K.LATHA
(Member SGST)


Shri T.G.VENKATESH
(Member CGST)



To
Tvl. VGK Property Developers Private Limited,
No.5, Indira Garden, Kamaraj Salai,
East Tambaram,
Chengalpattu District 600 059.
//BY RPAD//

Copy Submitted to:

- ✓ 1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Additional Chief Secretary/Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

-Copy to:

3. The Commissioner of GST & Central Excise,
Chennai (Outer) Commissionerate,
Newry Towers, No. 2054, I Block IIInd Avenue,
12th Main Road, AnnaNagar,
Chennai-600 040.
4. The Assistant Commissioner (ST),
Selaiyur Assessment circle,
Integrated Building for Commercial Taxes and Registration Department,
3rd floor, Room No 341, Nandanam,
Chennai 600 035.
5. Master File/ Spare-2