Date: 21.06.2019
Ref: 19/H/R/49

Note on various queries on JDA

Facts:

M/s Modi Properties Pvt. Ltd. (hereinafter referred to as **MP**) is engaged in the construction of residential and commercial apartments. MP and M/s. Villa Orchids LLP (hereinafter referred to as **Developers**) have entered into a Memorandum of Understanding (hereinafter referred to as **MOU**) dated 06.08.2018 with various Landowners to construct **residential** apartments at Sy.No. 196. Kowkur Village, Malkajigiri Mandal, R.R. District. As per the MOU the flats are shared between Landowners and Developers in the ratio 36:64 respectively. Further, as per clause 44 & 45 of the MOU the Landowners are liable to pay taxes, etc. in respect of their share of flats. The JDA in this regard is yet to be entered into.

In this background, MP has the following queries:

Query posed 1: Whether Landowners are liable to pay GST @ 5% on construction services for the value of flats allotted to them under the JDA?

1. The Developers would be liable to pay GST @ 5% on the construction services provided relating to the flats allotted to the Landowners, in terms of entry 3(ia), of notification No.11/2017-Central Tax (Rate) dated 28.06.2017. The value on which such GST is to be calculated is the booking value of the Developers' flat closer to the JDA date.

Query posed 2: Whether Landowners are liable to pay amount mentioned in query 1 to the Developer who will in turn remit it to the government?

2. GST being an indirect tax, the Developers (being the service providers) can collect the same from the Landowners (being the service recipient), which is also contractually agreed in the MOU in clause 44. Hence the Landowners would be required to pay the applicable GST relating to the construction services provided by the Developer for their share of flats.

Query posed 3: Whether Landowners can claim ITC of the tax charged by the Developers against the flats sold to the customers @ 5% GST, before the receipt of occupancy certificate (or first occupation)?

3. Yes, Landowners can claim ITC of the tax paid to the Developers, provided that the following conditions are fulfilled (as per proviso to S. No. 3(ia) of notification No.3/2019- Central Tax(Rate) dated 29.03.2019):
   - The Landowner should sell his share of flats before the issuance of CC or first occupation, whichever is earlier (hereinafter referred to as **Cut-off date).**
   - The tax paid by the Landowner on the sale of the flat to the customer, should not be less than the tax charged by the Developer for the flats.

4. Thereby, when flats are sold by the Landowners and applicable GST is collected from the customers, the Landowners can use the above mentioned ITC and pay off the liability to the Government and remit the GST amount so collected, to the Developer towards the construction services.

5. This would require early discharge of liability by the Developer to enable the Landowner to avail and utilize the ITC. Thereby, the Developer can consider issuing invoices to the Landowner for the construction services as per the milestones that would be mentioned in the JDA.

Query posed 4: Whether Landowners needs to remit 5% GST to Developers on flats which remain unsold at the time of receiving CC?

6. The liability @5% on the value of unsold units **with the Developer** as on the Cut-off date, is relating to the development rights given by the Landowner. This is to be paid by the Developer under reverse charge mechanism. The value on which such GST is to be calculated is the booking value of the Developers' flat closer to the Cut-off date.

7. Further, as per discussion in the query above, the Landowner will be required to reverse ITC w.r.t. to flats unsold flats with him on the Cut-off date, which would have

already been paid by him to the Developer as per the milestone invoices issued by the Developer in this regard.

Query posed 5: The Landowners cannot remit the said GST to the Government directly; instead they have to pay the same to the Developer who in turn will remit it to the Government. Whether the said payment cycle is appropriate?

8. No. As per the reply to the above query:
   a. The Landowners would be required to reverse ITC on the unsold units as on the Cut-off date. Whereby, the reversal will be done by them of the taxes that have already been paid to the Developer.
   b. The Developer will have to pay the GST on the unsold units as on the Cut-off date, under RCM.

   The above 2 are independent payments required to be made by each of them.

The above discussion is summarized below:

Activity	Legal liability	Contractual liability	Remarks	Valuation
Construction services to the Landowner i.e. **entire** Landowners' share of units	Developer	On the Landowner	Landowner to pay such liability to the Developer who will further remit to the Government.	Booking value of the Developers' flat closer to the **JDA date.**
Development rights given by Landowner to the Developer. Payable on the **unsold units with Developer** as on the Cut-off date.	Developer	Not mentioned	Developer to bear such amount and pay under RCM, being the service recipient.	Booking value of the Developers' flat closer to the **Cut-off date.**

ITC reversal for **unsold units with Landowner** as on the Cut-off date	Landowner	Landowner	From the ITC availed by Landowner, reversal to be done to the extent of the unsold units.	

(Disclaimer: This is only a note on the general statutory provision of Goods and Services Tax Law as applicable, this has been issued without in-depth examination of facts or records of M/s. Modi Properties Pvt. Ltd. which cannot be considered as legal opinion issued by Hiregange & Associates)