MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Dipak Gojamgunde, Joint Commissioner of State Tax, (Member)

(2) Smt. Himani Dhamija, Joint Commissioner of Central Tax, (Member)

ARN No.		**AD2708220068622**
GSTIN Number, if any/ User-id		**27AAAFV2926J1Z1**
Legal Name of Applicant		**M/s. VARDHAMAN HOMES**
Registered Address/Address provided while obtaining user id		40,41 VISHAL SHOPPING CENTER, SIR V.M. ROAD ANDHERI (EAST), MUMBAI-400 069, MAHARASHTRA
Details of application		GST-ARA, Application No. 54 Dated 24.08.2022
Concerned officer		**MUM-VAT-C-712, Nodal-7**
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Service Provision**
B	Description (in brief)	The Applicant has sold various flats to various persons by entering into a Registered Agreement for Sale/Deed of Conveyance with such Flat Owners.
Issue/s on which advance ruling required		➢ Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by **M/s. VARDHAMAN HOMES,** the applicant, seeking an advance ruling in respect of the following questions.

A. Whether in the light of the Judgment of the Hon'ble High Court of Bombay in the case of Commissioner of Service Tax v. Shri Krishna Chaitanya Enterprises and other two clubbed cases, decided on January 25, 2018, whether the maintenance of the Lotus Building done or provided

by the Applicant, which is his statutory duty and obligation under the Maharashtra Ownership of Flats (Regulation of Promotion of Construction, Sale, Management & Transfer) Act, 1963, (hereinafter referred to as MOFA for brief) which is nothing but rendering statutory service and not taxable service] can be considered as taxable service under the GST Act, when no Co-operative Housing Society (CHS) or a Company or Resident Owners Association RWA comprising of flat owners has been formed by the Applicant?

B. Whether the Applicant could levy & charge GST on the Advance Maintenance of 18 months collected or recovered by the Applicant from the Flat Owners at the time of entering into the Agreement for Sale with them?

C. Whether the Applicant can levy, charge and collect GST on monthly maintenance payable by the Flat Owners, when he is rendering statutory service and not a taxable service under the GST Act, as CHS, Company or RWA comprising of flat owners is yet to be formed, in the light of the principles laid down by the Hon'ble Bombay High Court in the case referred to in point A above?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

1. FACTS AND CONTENTION – AS PER THE APPLICANT FACTS:

1.1 The Applicant is in the business of development and building from the last several years and has completed various projects in different parts and locations at Mumbai and Thane. The Applicant has completed construction of LOTUS building at Gawand Baug, Thane (West). The Lotus Building has in all 152 flats out of which the Applicant has sold 95 flats to various flat owners and 57 flats are yet to be sold. The Applicant is providing maintenance to the Lotus

Building (without any consideration or without entering into any contract with the Flat Owners) by way of payment of electricity bills for common areas, sweeper & security charges, garden expenses, gym, solar water system, firefighting, intercom system, inverter & plumbing, water tank cleaning and other miscellaneous items.

1.2 The Applicant has sold various flats to various persons by entering into a Registered Agreement for Sale/Deed of Conveyance with such Flat Owners. The Agreements for Sale executed by the Applicant in favour of various flat owners specifically state that the provisions of MOFA shall be applicable and the Agreements shall be governed by the said Act. Clause 48 of the Agreements for Sale reads as under:

a. "This Agreement shall always be subject to the provisions of the Maharashtra Ownership Flats Act, 1963 and the rules made thereunder and all disputes between the Flat purchasers and the Developers are subject to thane Jurisdiction"

b. Thus, the Applicant is a promoter in respect of Lotus Building.

1.3 The Applicant while entering into the said Agreements for Sale/Deed of Conveyance in favour of the various Flat Owners has recovered 18 months Advance Maintenance with GST @ 18% and is also levying and charging GST on monthly maintenance to each flat owner @ 18% on the amount of maintenance per month. Some of the Flat Owners have raised objections to the effect that since the Applicant has not yet formed a CHS or a Company or RWA comprising of the Flat Owners, and since the Applicant is not rendering any taxable service but is only discharging his statutory obligation by rendering statutory service, the Applicant could not have levied and recovered GST on 18 months Advanced Maintenance collected or recovered by him at the time entering to Agreements for Sale with flat owners and for the same reason GST cannot be levied on the monthly maintenance which is paid by the Flat Owners.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

2.1 The basis for the contentions raised by some of the Flat Owners to the effect that GST cannot be levied either on 18 months Advance Maintenance or on the

monthly maintenance is the decision of the Hon'ble Bombay High Court in the case of Commissioner of Service Tax v. Shri Krishna Chaitanya Enterprises and other two clubbed cases, decided on January 25, 2018, wherein the Hon'ble Bombay High Court has specifically held that the maintenance and upkeep provided by the promoter till the time the promoter forms a society or resident welfare association, is the statutory service provided by the promoter and cannot be treated as a taxable service under the Service Tax mechanism. The relevant observations in the above-mentioned case are extracted hereunder for ready reference and a complete copy of the Judgment is annexed hereto and marked as Exhibit "A":

"The arguments of the Revenue fail to take note of this back drop and in which terms the obligations and duties under the MOFA to be rendering of Taxable service. The definition in the Finance Act, pure and simple, alone has been looked at for the purpose of advancing this argument. The backdrop in which the promoter comes on the scene is totally lost sight of and that is precisely noted by the Tribunal." (Para 26 of the Hon'ble Bombay HC judgment).

"Therefore, a complete mechanism till conveying of the property is put in place. Prior thereto, it is the promoter who must form the legal entity, namely a co operative society or a company. It is towards that end that he has to hold on to the property and the money for complete discharge of his eventual duty and function. Until that stage is reached, he has to maintain, safeguard and protect the property. He has to look after the day-to-day wear and tear. Therefore, when he maintains the structure or repairs it, he is not rendering a taxable service in the sense envisaged by the Financial Act, 1994. If one looses complete focus or sight of the backdrop in which the so called service is rendered, then, the conclusion as erroneous and suggested by the Revenue will be reached." (Para 26 of the judgment).

"The building and the Flats therein has to stand intact till all the Flats or units are sold and the statutory obligations are fully discharged. This is not a service of the nature understood by Section 65 (64) of the Finance Act, 1994. It is not a contractor simplicitor of maintenance of immovable property. It is not as if there is a existing building comprising of Flats, fully occupied, the maintenance and upkeep of which is handed over under a contract. It is a statutory obligation superimposed on a contract to sell a Flat/unit in a building to be constructed on a piece or parcel of land. That cannot be confused with a taxable service as defined under the Finance Act, 1994. The day-to-day upkeep, maintenance and repair is till the statutory duty is fully performed as noted above" (Para 27 of the judgment)

"We are concerned here with a taxable service. The service of maintenance, management or repair, rendered by any person to any other person is a taxable service but in the context and backdrop in which the issue arises before us, we do not think that a taxable service is rendered. The Revenue does not wish to take into consideration the background in which buildings are maintained and till they are conveyed with complete title to even the land beneath. Thus, the provisions of Sections 5 and 6 and eventually the further provisions right up to Section 13 of the MOFA would make it clear that builder and developer maintains and repairs the property till it is conveyed or the title in the same is conveyed to the Flat purchasers or the legal entity which would ultimately be formed by him. Thus, a cooperative housing society or a company would have to be formed of all those Flat purchasers who have purchased the Flats prior to or under construction, namely, subsequently purchased Flats. The completion of the building or it being rendered fit for occupation is one of the duties and obligation of the builder and promoter under this law. For them to be conveyed he has to maintain the property. His liability is in terms of the statute itself. It is towards that end that money is collected and paid over to the statutory authorities in the form of charges and taxes as it is the builder's obligation to collect these amounts from individual Flat takers and make it over to these authorities. After formation of the legal entity, the obligation ceases and it is taken over by the cooperative housing society or the company. Until that takes place, the promoter continues to be liable. If this aspect is ignored, then, the narrow or restricted construction placed on the provision by the Revenue can be accepted. The tax then can be justified on the ground that it is a taxable service provided by the builder. However, if all this has been seen not de hors the MOFA by the Tribunal, then, it has not committed any error of law apparent on the face of the record, or perversity. It has construed the definition of the above provision consistent with the provisions of MOFA and mindful of the same. When such is the exercise undertaken by the Tribunal, we do not think that its conclusions are so vitiated or perverse so as to enable us to interfere therewith in our further appellate jurisdiction."

2.2 It is also relevant to refer to Sections 5 & 6 of MOFA and hence for ease of reference text of Sections 5 & 6 of MOFA is extracted hereunder: -

"Section 5 : Promoter to maintain separate account of sums taken as advance or deposit and to be trustee therefor and disburse them for purposes for which given:

The promoter shall maintain a separate account in any bank of sums taken, by him, from persons intending to take or who have taken flats, as advance or deposit including any sums so taken towards the share capital for the formation of cooperative society or a company, or towards the outgoings (including ground rent, if any, municipal or other local taxes, taxes on

income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any); and he shall hold the said moneys for the purposes for which they were given and shall disburse the moneys for those purposes and shall on demand in writing by [1] [a Competent Authority], make full and true disclosure of all transactions in respect of that account.

Section 6: Responsibility for payment of outgoings till property is transferred. A promoter shall, while he is in possession, and where he collects from persons who have taken over flats or are to take over flats sums for the payment of outgoings even thereafter, pay all outgoings (including ground rent, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any), until he transfers the property to the persons taking over the flats, or to the organization of any such persons [1] [Where any promoter fails to pay all or any of the outgoings collected by him from the persons who have taken over flats or are to take over flats, before transferring the property to the persons taking over the flats or to the organization of any such persons, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges (if any) to the authority or person to whom they are payable and to be responsible for any legal proceedings which may be taken therefor by such authority or person."

2.3 Though the Judgment rendered by the Hon'ble Bombay High Court has dealt with "maintenance" under the provisions of the Service Tax, even though GST has replaced the Service Tax, the principles laid down by the Hon'ble Bombay High Court regarding statutory duty & obligation of the promoter to maintain and upkeep the building as well as surrounding premises amount to statutory service and not taxable service, would still be applicable under the CGST Act for the simple reason that notwithstanding switchover from Service Tax regime to CGST regime, the obligation of the promoter to provide statutory service for maintenance and upkeep of the building including surrounding areas till the time he forms CHS or a Company or RWA comprising of flat owners has not undergone any change as the Applicant (Promoter) is still bound by the provisions of MOFA. Therefore, the Applicant could not have levied GST on the 18 months' Advance Maintenance collected by him at the time of entering into Agreement for Sale and also cannot levy and collect GST on the monthly maintenance which is being paid by the various Flat Owners of the Lotus

Building. At the cost of reiteration, it is stated that the Applicants obligation to provide statutory service for maintaining the Lotus Building has not undergone any change and hence the Applicant is not rendering any taxable service.

2.4 The concept of maintenance under the Service Tax regime and under the CGST regime continues to be the same and therefore, the dictum of law laid down by the Hon'ble Bombay High Court in the above mentioned case would also govern levy of GST on maintenance under CGST regime also. It is also pertinent to mention that the Applicant has not entered into any contract with the Flat Owners nor there is any consideration which is paid by the Flat Owners to the Applicant for providing maintenance and upkeep of the Lotus Building. Thus, the maintenance provided by the Applicant who is a Developer/ Promoter under MOFA Act is without any consideration and hence can not be treated as a taxable service under the GST regime also. CGST can get attracted and levied only after formation of a CHS or a Company or RWA by the Applicant as a Promoter and then only levy of GST would be governed by the CGST Act.

2.5 The Applicant submits that the Questions raised in this Application including the supporting contentions raised herein have never been raised before this Hon'ble Authority in any of the matters and this Hon'ble Authority has not decided on the core issue of exigibility of GST on maintenance provided by the Applicant as a Promoter/Developer, as a statutory service and obligation under MOFA (which cannot be termed or considered as a Taxable Service, which in any case is without any consideration) before formation of a Co-operative Society or a Company or RWA comprising of flat owners and therefore, needs a detailed consideration on the questions framed for Advance Ruling by this Hon'ble Authority.

3. CONTENTION – AS PER THE CONCERNED OFFICER:

3.1 Reply to Question A:

3.1.1 The Applicant has sought a ruling on the taxability under the GST regime of maintenance services carried out in respect of a residential building ("Lotus Building"), in the absence of a CHS or RWA. The Applicant relies on the judgment of the Hon'ble Bombay High Court in Commissioner of

Service Tax v. Shri Krishna Chaitanya Enterprises and others, dated 25.01.2018, contending that such maintenance work is carried out as a statutory obligation under MOFA and therefore does not constitute a taxable service.

3.1.2 Under the GST Act, 2017, the term "supply" is defined under Section 7(1)(a) as "all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business."

3.1.3 Under MOFA, the promoter is statutorily obligated to maintain the property until such time a CHS or RWA is formed. These duties include maintenance of common areas, supply of essential services, and upkeep of the premises, for which the promoter is permitted to collect reasonable charges from flat purchasers.

3.1.4 While the Bombay High Court in the Shri Krishna Chaitanya case held that services performed by a builder in the capacity of a promoter under MOFA are statutory obligations and not taxable services under the Finance Act, 1994 (i.e., pre-GST regime), it is respectfully submitted that:

1. The GST regime follows a supply-based framework, not a service-specific one, and is more expansive.
2. Statutory obligation does not negate taxability under GST if the activity involves supply of services for a consideration.
3. The maintenance service provided by the Applicant is for a consideration, i.e., recoveries made from flat buyers, and in the course of business.
4. As per CBIC Circular No. 109/28/2019-GST dated 22.07.2019, maintenance charges collected by RWA/CHS beyond Rs. 7,500 per member per month are taxable.
5. In this case, while the RWA is not formed, the promoter acts in the capacity of a service provider, maintaining the premises and collecting charges from residents.

3.1.5 The Jurisdictional Officer is of the opinion that:

1) The services provided by the Applicant for the maintenance of the Lotus Building constitute a "supply" under Section 7 of the GST Act.
2) These are taxable services, even though they may arise from statutory obligations under MOFA, because they are rendered for a consideration.
3) The High Court judgment in Shri Krishna Chaitanya Enterprises was delivered in the context of the Finance Act, 1994 and does not override the definition of supply under the GST Act.
4) Therefore, GST is applicable on the maintenance charges collected by the Applicant from the flat owners, subject to applicable exemptions (e.g., threshold exemption, if any).

3.2 Reply to question B:

3.2.1 The advance maintenance amount collected by the Applicant is not a refundable deposit but an advance against identifiable services to be provided-such as security, housekeeping, electricity for common areas, water supply, and repairs during the interim period before a CHS or RWA is formed.

3.2.2 Such services, even if rendered under a statutory obligation under MOFA, are provided in exchange for consideration, making them a "supply" under GST. Since the amount is appropriated periodically for maintenance, it becomes taxable as and when collected, in accordance with Section 13 of the GST Act.

3.2.3 The Bombay High Court's ruling in Commissioner of Service Tax v. Shri Krishna Chaitanya Enterprises (2018) pertains to the pre-GST regime (under the Finance Act, 1994), and the interpretation of "service" under that regime. It does not override the comprehensive and consideration-based definition of supply under the GST law.

CBIC Circular No. 109/28/2019-GST, dated 22 July 2019, clarifies that advance maintenance charges collected by RWAs/CHS are taxable if:

a) They exceed Rs. 7,500 per month per member, and
b) The aggregate turnover of the society exceeds Rs. 20 lakhs.

Though in this case no RWA is formed, the same principle applies-the promoter is acting in place of the RWA and is collecting these charges for providing maintenance services.

3.2.4 Entry 77 of Notification No. 12/2017-Central Tax (Rate) provides exemption to maintenance charges collected by RWAs up to Rs. 7,500 per month per member. Since the Applicant is a promoter and not an RWA or CHS, this exemption is not directly available. Hence, unless any specific exemption is notified for the promoter's collection of maintenance, GST shall apply.

3.2.5 The Jurisdictional Officer is of the opinion that:

1) Yes, the Applicant is liable to charge and pay GST on the advance maintenance of 18 months collected from flat buyers at the time of execution of the Agreement for Sale.
2) The collection is advance consideration for future supply of services (i.e., maintenance).
3) The transaction qualifies as taxable supply of service under Section 7 of the GST Act, and GST is payable as per Section 13 (time of supply).

3.3 Reply to question C:

Submission provided in Point A above is same here.

3.3.1 The Jurisdictional Officer is of the opinion that:

1) Yes, The Applicant can and is required to levy, charge, and collect GST on the monthly maintenance charges recovered from flat owners even though the services are statutory under MOFA, and despite the absence of a CHS, Company, or RWA.
2) The fact that maintenance is a statutory duty under MOFA and that no CHS/RWA has been formed does not exempt the Applicant from GST liability.
3) The principles laid down by the Hon'ble Bombay High Court in the Shri Krishna Chaitanya Enterprises case under the pre-GST law cannot be applied to exempt such services under GST.

4. HEARING

Virtual Preliminary hearing in the matter was held on 16.07.2025. Mr. Kelkar, Advocate and The Jurisdictional Officer Mr. Nilesh Jayram Mahajan, Assistant Commissioner of State Tax also appeared.

The application was admitted and called for final hearing on 26.11.2025. Mr. Kelkar, Advocate authorized representative appeared and made oral & written submissions. Jurisdictional Officer Mr. Nilesh Jayram Mahajan, Assistant Commissioner of State Tax appeared. We heard both the sides.

5. OBSERVATIONS AND FINDINGS:

5.1 We have gone through the facts of the case, documents on record, oral and written submissions made by the applicant as well as the written submissions made by the jurisdictional officer.

5.1.1 The applicant is registered under Goods and Services Tax ('GST') Act and the present application is filed under Section 97 of the CGST Act, 2017 and the MGST Act, 2017. This advance ruling application is relating to the taxability of maintenance charges collected by a promoter prior to formation of a Co-operative Housing Society (CHS)/Company/Resident Welfare Association (RWA).

The provisions of the CGST Act and MGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act.

5.1.2 The Applicant is a developer and has constructed a building named 'Lotus' at Gawand Baug, Thane (West). The Applicant provides maintenance of the building such as common area electricity, sweeper & security charges, garden, gym, firefighting system, intercom, water tank cleaning, plumbing, etc. without any formal maintenance agreement with the flat owners.

5.1.3 Each Agreement for Sale incorporates Clause 48, explicitly making the provisions of the Maharashtra Ownership Flats Act, 1963 (MOFA) applicable to the transaction. The Applicant collected 18 months advance

maintenance with GST @ 18%, and also charges monthly maintenance with GST @ 18%. Some flat owners dispute GST applicability on grounds that the Applicant is providing only statutory services under MOFA until formation of CHS/RWA.

5.1.4 The Applicant relies heavily on the judgment of the Hon'ble Bombay High Court in Commissioner of Service Tax v. Shri Krishna Chaitanya Enterprises (2018), which held that a promoter's maintenance obligations prior to CHS formation are statutory in nature.

5.1.5 Applicant submits that the statutory obligation under MOFA remains unchanged even under GST; therefore, GST cannot be levied on maintenance (advance or monthly) until CHS/RWA formation. Under Sections 5 & 6 of MOFA, the promoter is statutorily responsible for maintaining the property, paying outgoings, and managing the building until the property is conveyed to the CHS/Company.

5.1.6 The Applicant asserts that maintenance during this period is not a "taxable service" but a statutory duty, and therefore the principles laid down in the Bombay High Court judgment apply even under GST. The Applicant claims that no independent consideration exists for maintenance since these are statutory outgoings collected and disbursed under MOFA. According to the applicant, under GST also, the promoter's maintenance remains statutory and without consideration, as no contract for maintenance exists with flat owners. Thus, the applicant contends that GST cannot apply to:

- 18 months advance maintenance, or
- Monthly maintenance collected from flat owners.

5.2 The Jurisdictional Officer has contended that under Section 7 of GST Act, "supply" includes services provided for consideration in the course of business, regardless of whether they arise out of statutory obligation or not. Maintenance charges collected from flat owners constitute consideration for the maintenance services actually provided. The statutory nature of the obligation under MOFA does not bar the activity from being treated as a supply under GST. The Bombay

High Court judgment was delivered under Service Tax Law (Finance Act, 1994) and cannot override the broader GST principle of "supply". Advance maintenance is taxable at the time of receipt as per Section 13 (Time of Supply). Exemption under Notification 12/2017 (Rs. 7,500 limit for RWAs) is not available to promoters. Thus, GST is correctly levied on:

- 18 months advance maintenance,
- Monthly maintenance thereafter.

5.3 After considering submission of applicant and contention of jurisdictional officer, the core issue is whether maintenance services undertaken by a promoter pursuant to statutory obligations under MOFA amount to "supply" under Section 7 of the GST Act.

5.3.1 GST is a supply-based tax. Whether an activity is mandated by law is irrelevant if the promoter's activity falls into the definition of 'supply' u/s. 7 of GST Act. Section 7 of CGST Act is reproduced as below.

"(1) For the purposes of this Act, the expression "supply" includes- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a *consideration by a person in the course* or *furtherance of business*;

(*aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.*

Explanation. For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or *authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;*

(b) import of services for a *consideration whether or not in the course* or *furtherance of business*; *and*

(c) the activities specified in Schedule I, made or agreed to be made without a consideration

[*(1A) Where certain activities or transactions constitute* a *supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services* as *referred to in Schedule II.*

(2) Notwithstanding anything contained in sub-section (1),—

(a) activities or transactions specified in Schedule III; or

(b) such activities or *transactions undertaken* by *the Central Government,* a *State Government or any local authority in which they are engaged as public authorities*, as *may be notified by the Government on the recommendations of the Council*, *shall be treated neither as* a *supply of goods nor a supply of services*.

(3) Subject to the provisions of *40[sub-sections (1), (1A) and (2)*], *the Government may*, *on the recommendations of the Council, specify, by notification, the transactions that are to be treated as-*

(a) a *supply of goods and not as a supply of services; or*

(b)a supply of services and not as a *supply of goods*.."

From a perusal of the above definition of the expression 'supply', it can be seen that for a transaction to qualify as supply under Section 7(1), the following conditions are required to be met:

- Supply should be of goods and services; and
- There must be a consideration for supply; and
- The activity should be in the course of furtherance of business.

The promoter maintains common areas, utilities, facilities and incurs recurring expenses. These activities fall under 'management, maintenance or repair services'. Thus, the promoter is supplying services of maintenance, which is in the course of his business. Advance or the monthly maintenance charges collected from flat purchasers clearly constitute consideration. Under Section 2(31) of GST Act, "consideration" covers payments made in respect of a supply. Advance maintenance is consideration for future services; therefore, taxable at the time of receipt under Section 13 of the CGST Act. The amount collected is not a refundable security deposit. It is advance consideration for

identifiable future services. Monthly charges are recurring consideration for maintenance services.

Thus, the promoter's activity of provision of maintenance services against advance or monthly charges constitute supply u/s 7 of CGST Act, 2017. Even if maintenance obligation arises from statutory duty under MOFA, it still amounts to supply of services under GST Act.

5.3.2 Here it is noteworthy that under the CGST Act, certain transactions, as elaborated in Section 7(2), shall neither be treated as goods nor services. These activities or transactions are listed under Schedule III. This Schedule III does not provide for any exemption for promoters discharging duties under MOFA.

5.3.3 The Applicant's reliance on the above Bombay High Court judgment is misplaced due to the structural and conceptual shift from the Finance Act, 1994 (Service Tax regime) to the GST regime. Under the Service Tax regime, tax was levied on "services", not on "supply."

The Bombay High Court judgment was rendered in the context of:

- Definition of "taxable service"
- Section 65(64) of the Finance Act, 1994
- Maintenance/management/repair service classification

Now, this statutory framework of taxation no longer exists. Under GST Act, as per definition of 'services', anything other than goods are services. As per section 9, tax is leviable on supply of services. Supply is defined in section 7 which covers the activities undertaken by the promoter. Only those supplies of services are exempt which have been notified by the Notification No. 12/2017 CTR dated 28.06.2017. The services supplied by the promoter are not covered by the said notification. Under the GST Regime, all goods & services are liable to tax unless specifically exempted under the GST Act. There is no exemption under CGST Act for, "Activities performed under statutory obligation". Therefore, the ratio cannot be applied to taxation under GST Act.

The applicant has also referred to Sections 5 and 6 of MOFA. These sections obligate promoter to collect and pay outgoings and create trustee-like responsibility. However, MOFA governs civil obligations and GST governs taxability of supply ie. both statutes operate in different fields. Therefore, MOFA obligation does not negate GST liability.

5.3.8 GST exemption as per Entry No. 77 of Notification 12/2017 for maintenance collection up to 7,500 per member per month is not applicable because the Applicant is a promoter and not an RWA or CHS.

6. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 54/2022-23/B- 157 Mumbai, dt. 28.09.2026

For reasons as discussed in the body of the order, the question is answered thus –

Question A: Whether in the light of the Judgment of the Hon'ble High Court of Bombay in the case of Commissioner of Service Tax v. Shri Krishna Chaitanya Enterprises and other two clubbed cases, decided on January 25, 2018, whether the maintenance of the Lotus Building done or provided by the Applicant, which is his statutory duty and obligation under the Maharashtra Ownership of Flats (Regulation of Promotion of Construction, Sale, Management & Transfer) Act, 1963, (hereinafter referred to as MOFA for brief) which is nothing but rendering statutory service and not taxable service] can be considered as taxable service under the GST Act, when no Co-operative Housing Society (CHS) or a Company or Resident Owners Association RWA comprising of flat owners has been formed by the Applicant?

Answer: - YES. The maintenance services provided by the Applicant to flat owners constitute "supply" under Section 7 of the GST Act. They are taxable services, even if undertaken pursuant to statutory obligation under MOFA.

Question B: Whether the Applicant could levy & charge GST on the Advance

Maintenance of 18 months collected or recovered by the Applicant from the Flat Owners at the time of entering into the Agreement for Sale with them?

Answer: - YES. Advance maintenance collected is advance consideration for supply of maintenance services, taxable under Section 13 of the GST Act. Liability of GST arises at the time of receipt of the advance.

Question C: Whether the Applicant can levy, charge and collect GST on monthly maintenance payable by the Flat Owners, when he is rendering statutory service and not a taxable service under the GST Act, as CHS, Company or RWA comprising of flat owners is yet to be formed, in the light of the principles laid down by the Hon'ble Bombay High Court in the case referred to in point A above?

Answer: - YES. Monthly maintenance charges collected by the promoter constitute consideration for supply of services and are liable to GST. The absence of CHS/Company/RWA and the statutory nature of the duty under MOFA does not affect taxability.

D.P. GOJAMGUNDE
(MEMBER)

HIMANI DHAMIJA
(MEMBER)

PLACE - Mumbai
DATE -

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.

Note: -An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on **gst.gov.in** for online appeal application against order passed by Advance Ruling Authority.