

2021

# GST

FOR APARTMENT OWNERS'  
ASSOCIATION

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## **Guidance Note on GST for Apartment Owners' Association**

Apartment Owners Association is a collective body that manages and operates all common resources and amenities. The onus lies on the residents that they enrol themselves as members of their apartment owners association or cooperative housing society to safeguard their rights and titles.

In GST Parlance, Apartment Owners Association is covered under Residential Welfare Association(RWA).

### **Applicability of GST for RWA-**

#### **Legal Provision:**

The taxable event under GST is "supply". Section 9 of the CGST Act, 2017 prescribes levy of GST is on supply of goods and services. Thus, the service provided by a resident welfare association or a housing society to its members is to be treated as service provided by one person to another is liable to GST.

As per section 2(17)(e) of the CGST Act, 2017, provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members is deemed to be a business. The activities of the housing society would thus attract the levy of GST and the housing society would be required to register and comply with the GST Law.

#### **Threshold limit of Registration:**

Section 22 of the CGST Act, 2017 prescribed that a supplier of services is required to take registration, if his aggregate turnover in the previous financial year exceeds Rs 20 lacs. Accordingly, if the **aggregate turnover** of a Residence welfare association or a housing society is above Rs.20 lakhs, it needs to take registration and discharge tax liability on services so supplied to the members.

### Snapshot of GST Applicability:

Case	Annual Aggregate Turnover	Monthly Contribution/ Flat	GST Registration	GST Applicability
1	> 20 Lakhs	> 7500	Required	Applicable
		<= 7500		Exempt
2	< =20 Lakhs	> 7500	Not required	Exempt
		<= 7500		Exempt

Aggregate Turnover- As per section 2(6) of CGST Act, 2017 “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

Aggregate Turnover is the total of the following amounts collected or received by the RWA in a financial year:

1. Maintenance Charges collected from Members
2. Non-refundable contribution from Members against Corpus / Sinking Fund
3. Interest Income on SB & FD
4. Other Income like Rentals from Club House / Common Amenities / Canteen / Dhobi/ Stores / Parking Space, Moving In / Moving Out Charges, Revenues from Hoardings, Sponsorship Income and any other revenue receipts
5. Any refundable deposits collected from Members are excluded from Aggregate Turnover.

### GST Tariff & Exemption:

Sl. No.	Particulars	Tariff
1	Maintenance Charges collected from Members <=7500/flat/month	Exempt
	> 7500/flat/month	18%, if RWA is registered under GST
2	Non-refundable contribution from Members against Corpus / Sinking Fund	18%
3	Interest Income on SB & FD	Exempt
4	Other Income like Rentals from Club House / Common Amenities / Canteen / Dhobi/Stores / Parking Space, Moving In / Sponsorship Income, Moving Out Charges, Revenues from Hoardings and any other revenue receipts	18%
5	Any refundable deposits collected from Members	Exempt

### Calculation of GST on Maintenance Charges:

1. The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs.9000/- and not on [Rs. 9000 - Rs. 7500] = Rs.1500/-[Refer Circular No. 109/28/2019- GST dated 22-07-2019]
2. The electricity charges paid to BESCOM for power consumed towards common facilities and separately recovered from members is liable to GST as consideration received for the supply of maintenance services to the members [ Refer M/s Prestige South Ridge Apartment Owners' Association (GST AAR Karnataka)]. However, if Association collects electricity charges of Individual units and pay it on behalf of the owner, it is a pure agency transaction and the same need not be included for calculating exemption limit of Rs.7500.

### Relevant Notifications & Circulars:

1. Maintenance charges upto Rs.7500/month/flat(Earlier Rs.5000) collected from members of RWA in a housing society is exempt from GST [Refer clause (p) to the notification No. 2/2018- Central Tax (Rate) dated 25.01.2018]
2. Circular No. 109/28/2019- GST dated 22-07-2019 states that as per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential

apartment owned by him separately. The ceiling of Rs. 7500/- per month per member is applied separately for each residential apartment owned by him.

### **Time of Supply- When GST liability to be discharged?**

As per Section 13(2)(a), Earliest of the following dates-

1. If the invoice is issued within the legally prescribed period under section 31(2) of the CGST Act, 2017 read with Rule 47 of CGST Rules, 2017 (which is thirty days from the date of the supply of service), then the date of issue of invoice by the supplier or date of receipt of payment, whichever is earlier.
2. If the invoice is not issued within the legally prescribed period under section 31(2) of the CGST Act, 2017 then the date of provision of service or date of receipt of payment, whichever is earlier
3. Date on which recipient shows the receipt of service in his books of account, in a case aforesaid two provisions do not apply.

From the above, it is clear that if GST is applicable, then RWA should discharge GST liability as follows:

For the month of April 2021-

<b>Due Date for Invoice</b>	<b>Date of Invoice</b>	<b>Date of Receipt</b>	<b>Time of Supply</b>
31-May-21	30-Apr-21	30-Apr-21	April
31-May-21	01-May-21	30-Apr-21	April
31-May-21	31-May-21	31-May-21	May
31-May-21	01-Jun-21	01-Jun-21	May
31-May-21	30-Apr-21	31-May-21	April

If any RWA is collecting Maintenance charges in advance for the entire year,

GST has to be discharged at the time of receipt of maintenance charges only.

This leads to immediate cash outflow on account of GST liability and moreover, RWA will not be able to adjust eligible Input tax credit of the remaining months towards Output GST.

To avoid this, RWA should account advance maintenance charges received at the beginning of the year as Deposit collected from member and respective monthly maintenance charges are to be adjusted every month against the deposit and raise invoice on a monthly basis.

### GST Input Tax Credit:

RWA is entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services and this is subject to the restrictions as enumerated in Section 17(2) of the CGST Act read with Rule 42 of the CGST Rules

As per Section 17(2), Where the goods and/or services are used by the registered person partly for effecting taxable supplies including zero-rated supplies under CGST or IGST Act and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies

From the above, it is very clear that RWA can avail and utilise Input Tax credit (ITC) attributable to the taxable supplies and reverse the remaining available ITC.

### Illustration of GST Computation of RWA-

Outward Supplies	Amount(Rs.)	Tax(Rs.)
Maintenance Charges		
>7500	5,00,000	90,000
<=7500	2,00,000	-
Interest Income	2,00,000	-
Other Income (Rentals from Club House / Common Amenities / Canteen / Dhobi/Stores / Parking Space, Moving In / Sponsorship Income, Moving Out Charges, Revenues from Hoardings and any other revenue receipts)	6,00,000	1,08,000
<b>Total</b>	<b>15,00,000</b>	<b>1,98,000</b>

Inward Supplies	Amount(Rs.)	Tax(Rs.)
Amount paid to Facility Management Company	6,00,000	1,08,000
Repairs & Maintenance	4,00,000	72,000
Capital Goods	3,00,000	54,000
Professional Charges	1,00,000	18,000
<b>Total</b>	<b>14,00,000</b>	<b>2,52,000</b>

### Eligible ITC

Available ITC		2,52,000	
Taxable Outward Supplies		11,00,000	(1)
Exempt Outward Supplies*		2,00,000	
Total Outward Supplies		13,00,000	(2)
Eligibility Ratio- 1 divided by 2		0.85	
Eligible ITC		<b>2,13,231</b>	
Net GST Payable/(Carried Forward)		<b>(15,231)</b>	

\* Interest income is excluded from exempt supplies.

An **explanation** given in the **Rule 43 of CGST Rules, 2017** which states that: For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances.

Hence, if the registered person is a banking company or a financial institution including a non-banking financial company then the reversal of Common ITC will be done as per the provisions stated in section 17(2) of CGST Act, 2017. For all other registered persons interest income will not be considered as exempt supply and therefore no reversal of common ITC required.

### **Sinking Fund/Corpus Fund- Deposit or Advance?**

**Consideration** in GST is the basis for deciding upon the value of supply of goods or supply of services.

Section 2(31) 'consideration' in relation to the supply of goods or services or both includes--

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

*Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.*

**The above proviso clearly states that if any Deposit is accepted towards future supply, shall not be considered as payment made for such supply until the supplier applies such deposit as consideration for the said supply. Therefore, the amounts collected towards Sinking Fund/Corpus Fund do not form part of consideration towards supply of services at the time of collection and hence is not liable to GST at the time of collection. However, the amounts so utilised in for provision of service are liable to tax at the time of actual supply of service.**

**[Refer In re M/s Prestige South Ridge Apartment Owners' Association (GST AAR Karnataka)]**

## **Recent Advance Rulings:**

### Olety Landmark Apartment Owner's Association (GST AAR Karnataka)

**Issue:** Whether the Applicant is liable to pay GST on amounts which it collects from its members for setting up the 'Sinking Fund' / Corpus Fund?

### **Findings & Discussion:**

The applicant furnished copy of resolution dated 22.01.2021, of the Management Committee, to collect Rs.10,000/- every year towards the sinking fund. Also there exists no bye law to state that the balance amount of the sinking fund will be refunded to the members after utilizing the same in future.

In view of the above the issue before us to decide is whether the amounts collected towards sinking fund amounts to advances for supply of future services or deposits. There are certain distinguishable features of both advance and deposit and advances defer from the deposits. The amounts that are not returnable can be termed as advances. Also, the bye laws of the applicant association are silent on this issue and hence the amounts collected are indubitably advances but not the deposits.

Section 13(2)(a) stipulates that the time of supply of services shall be the earliest of the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under Section 31 of the CGST Act 2017 or the receipt of payment, whichever is earlier. In the instant case the applicant receives the payment earlier and hence the time of supply is the date of receipt of amount towards the sinking fund. Therefore the said amounts are liable to GST as they are advances towards future supply of services but not the deposits.

### **Ruling:**

The amounts collected by the applicant towards Sinking Fund amount to advances meant for future supply of services to members, covered under SAC 9995 as "Services of Membership Association" and are taxable to GST @ 18% in terms of Sl.No.33 of Notification No.11/2017-Central Tax (Rate) dated 28/06/2017 as amended, as the time of supply is receipt of the advance amounts in terms of Section 13(2)(a) of the CGST Act 2017.

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