

**GIB/DL/Premium Real Estate Developers/27.11.2018/OTHERS-27****Others Category :** Classification**State :** Delhi**Order No.:** GIB/DL/Premium Real Estate Developers/27.11.2018/OTHERS-27**Name of Entry :**

Premium Real Estate Developers

**Date :** 27-11-2018**Breif Issue :****Facts of the case are as under:**

1. Sahara India Commercial Corporation Ltd. ('Sahara India' for short) was interested in acquiring large parcels of land for setting up townships. Accordingly, Sahara India entered into three separate but similar memorandum of understanding with the appellant firm for acquiring three large parcels of land at three different locations as follows;

Name of Place/Sites Date of the Area of the Average the MOU land(in acre rate per Associate intended to acre (in acquire Rs.) M/s Kanpur 09.08.2003 100 8,50,000/-

Premium

Real Estate

Developers

|            |            |     |            |
|------------|------------|-----|------------|
| Lalitpur   | 15.11.2003 | 100 | 5,75,000/- |
| Raeberalli | 16.05.2005 | 125 | 7,50,000/- |

2. Under the MOU, Sahara India, had agreed to pay an average rate per acre of land to be purchased by Sahara India, which land would be identified, divided and demarcated by the appellant firm together with necessary documents and other formalities. The MOU for each site specifically provided the obligations of both the parties. It specifies that Sahara India had agreed to procure land at the aforementioned locations, at the fixed average rate per acre, which included all the cost of land, development expenses (items). The obligations of the appellant under the MOU were- (a) divide and demarcate the entire land into the blocks of 20 to 30 acres, (b) purchase the land in contiguity block wise, (c) furnish title papers and other necessary documents for the land to be purchased (d) obtain the permission and approval from the concerned authority for transfer of land and the expenses incurred in this regard, would be borne by the appellant firm, (e) bring the owners of the land for the purposes of negotiating, registration, etc., to the relevant places and bear all the expenses involved on these. The MOU further provided that the other expenses like stamp duty/registration charges, mutation charges would be borne by Sahara India. On satisfaction by Sahara India about the fitness of deal(s) for the land, appellant firm shall organise the registration in the name of Sahara India, after making the payment to the owners of land, from the advance amount given to them for the purchase of land. The

difference, if any, between the amount actually paid to the owners of land and the average rate per acre settled between the parties as indicated, would be payable to the appellant firm, as their margin or profit. Further Sahara India had reserved its right to withhold 50 per cent of the amount (out of margin) to ensure that the obligations on the developer/appellant are fully discharged in terms of the MOU, and in case there was any serious default on the part of the appellant, the same could be made good by way of forfeiture of such amount, so withheld.

3. Pursuant to the MOU, the appellant firm received advance amount from Sahara India for each site. Substantial part of such amount was used by the appellant to pay to the seller or the prospective seller of the land, for agreeing to sell land to Sahara India. The details of such amount based on the payment made by Sahara India, are as follows;

| Place/Site  | Amount paid   | Area of land | Amount as per | Amount under land transferred in sale deeds in |
|---|---------------|--------------|---------------|--|
| under purchase head the name of Rs. development to appellant Sahara (in head acres) |               |              |               |  |
| Kanpur  | 8,98,00,000/- | 38.85        | 2,66,99,800/- | NIL  |
| Lalitpur  | 5,50,00,000/- | 77.96        | 4,22,01,779/- | NIL  |
| Raebarelli  | 6,75,00,000/- | 89.91        | 1,69,20,822/- | NIL  |

4. For the purpose of reference we refer to Memorandum of Understanding (MOU) dated 15th November 1983, related to Lalitpur town, entered between Sahara India and the appellant, wherein Sahara India was interested to purchase 100 acres of land for developing residential township in and around the city of Lalitpur. The appellant assured to make available 100 acres of land situated in the village Rora, Distt. Lalitpur U.P., with direct opening or access of at least 1000 feet on the National highway. The salient features of the agreement are;

(a) The process of land purchase shall be in a compact contiguous, adjacent and plot wise or block wise manner starting from the roadside.

(b) The appellant shall furnish the title papers and all other necessary documents with reference to the land proposed, within 15 days from the date of signing of the MOU.

(c) Thereafter the appellant shall obtain and furnish, each and every other necessary permission/ approval from the Government body/competent authority, or other regulatory authority, required for transfer of the land proposed, and further arrange for the purchase of land proposed under the MOU, at the average agreed rate per acre, within two months or within such further time at the discretion of Sahara India.

(d) All expenses for obtaining proof of title and approval (except for ULC clearance) required for the transfer of title in the land shall be borne by second party, that is the appellant, and all the supporting documents furnished in respect thereof shall reflect the latest position of the ownership of land.

(e) Thereafter scrutinising the papers relating to title, the first party- Sahara India shall enter into an agreement of sale with the owners of the land, after payment of advance/signing amount, in favour of the cultivators/owner of the land.

(f) Thereafter having completed and covered the entire land(area) under the MOU through agreement(s) to sell, the appellant shall thereafter get the sale deed(s) executed by the cultivators/owners of land in favour of Sahara India or its nominees, after payment of remaining

amount towards purchase. Where there are several coowners in a 'Khata' (entry in the land record) the second party/appellant shall ensure that all the co owners execute the document (sale deed) at one time. In no case shall any document be executed by part co owners. That in the case the land is owned by minor, lunatic or an insane person, appellant will get appropriate guardianship certificate from the competent court/authority and agreement to sell shall be executed only with such guardian. In case any dispute is pending before any civil court or revenue Court, regarding title, share or for partition of the property, the appellant will try its best to get the settlement arrived among the co sharers/co owners and agreement to sell shall be executed accordingly.

(g) That it is the responsibility of the appellant for bringing the cultivators/land owners to the Registrar office along with the necessary documents and photograph and to witness execution/registration of the documents.

(h) That all payments to the Kashtkar/land owners, shall be made through pay orders/demand drafts/account payee cheques. That the difference, if any, of the amount being actually paid to the cultivators /owner of land and the average rate, shall be payable to the appellant. Such payment of difference to the appellant shall be regulated in such amanner so as to ensure the performance of the terms and conditions of the MOU. The first party Sahara India may under discretion withhold maximum up to 10 per cent of the amount payable to the second party/appellant to ensure peaceful/proper demarcation and possession, mutation and construction of the boundary wall of the entire land. In case, the appellant fails to fulfil its obligations as stipulated in the terms of the contract/MOU, the same can be terminated by Sahara India and the withheld amount is liable to be forfeited. All expenses for registration of documents relating to the transfer or agreement of sale, etc., shall be borne by Sahara India. Further all expenses of mutation of land in the office of the concerned Revenue authority shall be borne by Sahara India and the appellant shall be required to coordinate and to do the work of Pairvi in respect thereof in the concerned offices and shall provide to Sahara India all necessary help so as to get the work of mutation completed.

### **Decision of Advance Ruling Authority :**

#### **Decision of the Case:**

As discussed above, since the exact amount of remuneration for providing any service, if any, has not been quantified at the same time since most of the MoU remained to be fully executed and therefore the exact amount of remuneration, which was the difference in amount paid to the seller of land and average price decided in MoU, could not be finalized and therefore we feel that taxable value has not reached finality and therefore demanding service tax on the entire amount paid to the appellant for acquisition of land is not sustainable in law in view of the discussion in the preceding paras.