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ADVANCE RULINGS

Olety Landmark Apartment Owner's Association



KAR ADRG 12/2021 - Olety Landmark Apartment Owner's Assoc.

Facts:

Olety Landmark Apartment Owner's Association is a not-profit making residents welfare association, constituted by individual apartment owners. It collects certain amounts from members towards the Sinking Fund, under the bye-laws, for meeting planned/unplanned capital expenditure in **future** such as upkeep of the structure, repair/ replacement of the lift, etc.

Question Raised:

Whether GST is leviable on amounts collected by the applicant towards the Sinking Fund?

Analysis and Conclusion:

Section 2(31) defines "Consideration". Proviso to the same reads as "*Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment for such supply unless the supplier applies such deposit as consideration for the said supply*." This implies that any deposit received should not be treated as consideration until and unless the same is adjusted towards consideration. In the given case, for the amounts collected towards the sinking fund, the bye-laws remain silent as to the treatment of the same i.e. whether the same will be refunded. Thus, the amounts collected will be **treated as Advance** rather than deposit and **be subjected to GST**. Advance means the amounts which are not returnable. Further, time of supply for the same will be determined as per section 13(2)(a) whereby time of supply happens to be earlier of date of issue of invoice if the same is issued within time or date of receipt of payment. In the given case, consideration is received in advance. Hence, **date of payment receipt is time of supply**.