



# **GST**

**IN REAL ESTATE**

**Compiled by  
CMA Dr. Sanjay R Bhargave**



# Supply under GST

- As per Sl. No.5 of Schedule III to CGST Act 2017, following activities shall be treated neither as a supply of Goods nor a supply of Services.

Sale of Land and , subject to clause (b) of paragraph of Schedule II, Sale of Building.

# Supply under GST



Following is '**supply of service**' as per para 5(b) of Schedule II of CGST Act.

‘Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.’

*Explanation - For the purposes of this clause-*

- (1) *the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely –*
  - (i) *an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or*
  - (ii) *a chartered engineer registered with the Institution of Engineers (India); or*
  - (iii) *a licensed surveyor of the respective local body of the city or town or village or development or planning authority.*
- (2) *the expression "construction" includes additions, alterations, replacements or re-modelling of any existing civil structure. ( Redevelopment is subject to GST).*

# Provisions Applicable w.e.f. 01.04.2019



The GST Structure on real estate services relating to residential and commercial apartments has been thoroughly altered w.e.f. 01.04.2019.

- ✓ The revised scheme applies to residential and commercial apartments which are covered under RERA [Real Estate (Regulation and Development) Act, 2016].
- ✓ The provisions do not apply to construction of single houses or works contracts not covered under RERA.

**Residential Complex** - "Residential complex" means any complex comprising of a building or buildings, having more than one single residential unit -(Ref - para 2 of Notification No. 12/2017-C.T. (Rate) and No. 9/2017-I.T. (Rate) both dated 28-6-2017).

**Single Residential Unit** - "Single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family. ( Ref - para 2 of Notification No. 12/2017-C.T. (Rate) and No. 9/2017-I.T. (Rate) both dated 28-6-2017)



# REAL ESTATE PROJECT

- As per clause (xviii) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019. The term "Real Estate Project (REP)" shall have the same meaning as assigned to it in section 2(zn) of the Real Estate (Regulation and Development) Act, 2016 [RERA]
- As per section 2(zn) of the Real Estate (Regulation and Development) Act, 2016 [RERA], **“Real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.**

# RESIDENTIAL REAL ESTATE PROJECT (RREP)



As per clause (xix) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019. : **The term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP.**

## COMMERCIAL APARTMENT

As per clause (xxx) of par 4 of Noti. No. 11/2017-CT(Rate) and 8/2017-IT (Rate) both Dated 28.06.2017 - **Commercial apartments shall mean an apartment other than a residential apartment.**

Each project is a separate project and all accounts are to be maintained project wise.

# Real Estate - Provisions (Scheme) w.e.f.01.04.2019



## Salient Features

- ✓ The new scheme is compulsory for projects commenced on or after 1-4-2019.
- ✓ Under new scheme, the GST rates are as follows –
  - a. CGST 0.5% plus SGST/UTGST 0.5% (total 1%) or IGST 1% (without ITC) for affordable residential apartments
  - b. CGST 2.5% plus SGST/UTGST 2.5% (total 5%) or IGST 5% (without ITC) for other residential apartments and commercial apartments in RREP Projects.
  - c. For Commercial apartments ( Shops , Offices, Godowns) , other than RREP –  
CGST 6% plus SGST 6% (Total 12%) or IGST 12%.
- ✓ These rates apply where supply of services involves transfer of land or undivided share of land and its charges are included in the amount charged to customer. ( Value of land is taken as one third of total amount charged).

*[Discuss case of Munjaal Manish Bhai Bhatt Vs Union of India (Gujarat HC-DB) – land value - one third of total consideration is ultra virus. ]*

# Real Estate - Provisions (Scheme ) w.e.f.01.04.2019



- ✓ No GST is payable where entire consideration has been received after issuance of completion certificate by the competent authority or after its first occupation whichever is earlier.

# AFFORDABLE RESIDENTIAL APARTMENT



As per para 4 clause (xvi) to Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019, the term "affordable residential apartment" shall mean, -

- (a) a residential apartment in a project which commences on or after 1- 4-2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, having **carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.**

# AFFORDABLE RESIDENTIAL APARTMENT



For the purpose of this clause, -

- i. Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard.
- ii. Gross amount shall be the sum total of: -
  - A. Consideration charged for the services
  - B. Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sub lease; and
  - C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.



# APPLICABILITY OF ITC

- ✓ In respect of residential projects commenced on or after 01.04.2019, the service provider is not entitled to avail Input Tax Credit on Inputs, Input Services and Capital Goods.

GST is to be paid in cash by debiting the electronic cash ledger only [without utilizing Input Tax Credit].

- ✓ In case of ongoing projects as on 01-04-2019, the promoter has option to opt for earlier provisions of tax i.e. with utilization of ITC. If promoter intends to continue under old scheme, he has to submit declaration in specified form to jurisdictional Commissioner before 10-05-2019.
- ✓ If the promoter does not submit such declaration, he is deemed to have opted for the new scheme.
- ✓ In case of ongoing projects, if opted for new scheme, reversal of proportionate ITC is mandatory.
- ✓ ITC is admissible for the commercial apartments projects

# REVERSE CHARGES MECHANISM



- ✓ 80% of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only.
- ✓ the value of services by way of grant of development rights, long term lease of land, floor space index, or the value of electricity, high speed diesel, motor spirit and natural gas used in construction of residential apartments in a project shall be excluded for the purpose of calculating 80% of value of input and input services
- ✓ Cement, Steel and Capital Goods to be procured from registered supplier only.
- ✓ If not so received, the promoter is required to pay GST under reverse charge to the extent of difference. The tax rate is 18% in case of purchase of cement and 18% for other goods and services.

# GST on Floor Space Index (FSI) and Transferable Development Rights (TDR)



- ✓ As per clause (xxxi) of para 4 of Noti. No. 11/2017-CT(Rate) and 8/2017-IT(Rate) both Dtd. 28.06.2017 inserted w.e.f. 01.04.2019 - **Floor Space Index (FSI) means the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.**
- ✓ As per para 2.1.46 of Consolidated FDI Policy Circular dated 28-08-2017- **Transferable Development Rights means certificate issued in respect of category of land acquired for public purpose either by the Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferrable in part or whole.**

# GST on Floor Space Index (FSI) and Transferable Development Rights (TDR)



**Transferable Development Rights (TDR) is different from Transfer of Development Rights**

- ✓ In TDR ( Transferable Development Rights), Government or local authority gives any instrument to landowner for surrender of his right/ to either use it or sale it.
- ✓ In Transfer of Development Rights, the owner of land allows promotor to develop land and construct apartment in the said land.

**GST is payable on following Services-**

- a. Transfer of Development Rights (by landowner or society or tenant to promotor)
- b. Transfer of Development Rights by Government (in case of slum rehabilitation projects)
- c. Transferable Development Rights (transfer of FSI)
- d. Upfront amount of granting long term lease of land for 30 years or more

**Service Accounting Code: 99721**

# GST on Floor Space Index (FSI) and Transferable Development Rights (TDR)



## **EXEMPTION:**

Exemption has been granted only to the extent of services of Transfer of Development rights or FSI or payment of long-term lease amounts, relating to residential apartments where sale is made before completion or occupation (i.e. where GST is payable @ 1% or 5% without ITC)

In most of the cases, GST on these transactions is payable by promotor under Reverse Charge Mechanism.

# GST on Floor Space Index (FSI) and Transferable Development Rights (TDR)



## GST RATE:

- a) 12% on unsold commercial apartments on the date of issuance of completion certificate or first occupation
- b) 1%/5% on unsold residential flats on the date of issuance of completion certificate or first occupation

GST is not payable on TDR, FSI or upfront amount for long term lease of land if apartment is sold before completion. However, if some apartments remain unsold on date of completion, proportionate GST is payable on TDR, FSI or long-term lease of land by promoter under reverse charge.



# WHEN TO PAY GST

## ❑ WHEN TO PAY GST ON TDR

The liability to pay GST on development rights shall arise on the date of completion or first occupation of the project, whichever is earlier. Therefore, promoter shall be liable to pay tax on reverse charge basis, on supply of TDR on or after 01-04-2019, which is attributable to the residential apartments that remain unbooked on the date of issuance of completion certificate, or first occupation of the project.

## ❑ WHEN TO PAY GST ON SUPPLY OF LONG TERM LEASE

In case of supply of long term lease of land for construction of commercial apartments, tax shall be paid by the promoter immediately. However, for construction of residential apartment, liability to pay tax on the upfront amount payable for long term lease shall arise on the date of issuance of Completion Certificate



# WHEN TO PAY GST

## ❑ WHEN TO PAY GST ON FSI (including additional FSI):

On FSI received on or after 01.04.2019, the promoter should discharge his tax liability on FSI as under:

- i. In case of supply of FSI wherein consideration is in form of construction of commercial or residential apartments, liability to pay tax shall arise on date of issuance of Completion Certificate.
- ii. In case of supply of FSI wherein monetary consideration is paid by promoter, liability to pay tax shall arise on date of issuance of Completion Certificate only if such FSI is relatable to construction of residential apartments. However, liability to pay tax shall arise immediately if such FSI is relatable to construction of commercial apartments.



# VALUATION- TDR and FSI

- ✓ If the transferor of development rights or FSI transfers development rights or FSI and receives consideration in form of cash, the value of such supply will be amount of money received by him.
- ✓ As per Para 1A of Notification No. 12/2017-CT (rate) and 09/2017-IT (Rate) both dated 28-06-2017 inserted w.e.f. 01-04-2019, **Value of supply of service by way of transfer of development rights or FSI by a person to the Promotor against consideration in the form of residential or commercial apartments shall be deemed to be equal to the value of similar apartment charged by the promotor from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promotor.**
- ✓ As per para 1B of Notification No. 12/2017-C.T. (Rate) and 9/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019, Value of portion of residential or commercial apartments remaining un- booked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be.



# VALUATION- TDR and FSI

- ✓ As per para 2 of Notification 11/2017-CT (Rate) dated 28-06-2017, If the landowner transfers development rights and receives consideration in form of constructed apartments, the value of such supply will be value of constructed apartment, less value of land which will be taken as one-third of total amount charged for such supply.
- ✓ If landowner receives partly in cash and partly in form of construction of apartments, the value will be sum of two. [ Value should not exceed than the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate ]



# Valuation- Other Cases

## **Valuation of Apartments given free to Landowner, Transferor of TDR or Owners of Old Flats at Same Place**

- ✓ In many projects of construction of residential or commercial complexes, the owner of land gives development rights to the promoter. Similarly, in some cases, owner of TDR (Transferable Development Rights) transfers TDR rights to promoter. In some cases, joint development agreement is entered into between promoter and landowner/transferor of TDR.
- ✓ In all such cases, if payment is made by cheque/DD/cash by promoter to the landowner or transferor of TDR, question of valuation does not arise and GST @ 18% (9% CGST plus 9% SGST/UTGST) is payable on such amount by the recipient, less the value of land which is taken as one-third of total amount charged.



## Valuation- Other Cases

- ✓ However, often, instead of making cash payment to the owner of land or transferor of TDR, the promoter offers to give some flats/shops to the owner of land or transferor of TDR (so called) free of cost. Of course, the supply of apartments is not 'free', it is only consideration given by builder/developer to landowner or transferor of TDR in form other than cash.
- ✓ In case of old residential/commercial complexes, normal practice adopted by promoter is to re-locate the tenants or owners of such old complexes to another place for some time, demolish the earlier building and construct new residential/commercial complex.
- ✓ In that case, the earlier tenant or owner is often given equivalent built up area in new residential/commercial complex without any charge. Here also, there is no free supply but only consideration given by builder/developer to the earlier tenant or owner in form other than cash [If the earlier tenant or owner wants extra built-up area, it is offered by builder/developer to him on payment of commercial price].



## Valuation- Other Cases

- ✓ After giving such so called 'free' apartments, remaining apartments are sold by promoter to others for cash.
- ✓ There is no doubt that the promoter is providing construction service to the landowner, transferor of TDR or earlier tenant/owner of apartments. The consideration is paid to them in form other than cash.
- ✓ GST is payable in respect of free apartments given to the landowner.  
( Refer CBI&C circular dated 10-2-2012 and Para 6.2.1 of CBI&C's 'Taxation of Services : An Education Guide' published on 20-6-2012, where the same view has been expressed.)



# Valuation- Other Cases

- ✓ It is clear that GST is payable on value of supply of construction services. This value cannot include value of land, while open market value of similar apartments include value of land also.

# JOINT DEVELOPMENT BY LANDOWNER AND PROMOTER



## **Joint Development Agreement Model:**

Under this model, land owner and builder/developer join hands and may create either a new entity or otherwise operate as incorporated association on partnership/joint venture/collaboration basis with mutuality of interest and to share common risk and profit together.

## **Definition:**

**"Developer-promoter"** is a promoter who constructs or converts a building into apartments or develops a plot for sale.

**"Landowner-promoter"** is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.

# JOINT DEVELOPMENT BY LANDOWNER AND PROMOTER



- ✓ If landowner sells his shares of Apartments, the landowner - promoter will be required to pay GST on apartments sold by him.
  
- ✓ As per fourth proviso to Sr No. 3(i) of Noti. No. 11/2017-CT (Rate) dtd. 28-06-2017: Where a registered person (landowner- promoter) transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, -
  - i. the developer-promoter shall pay tax on supply of construction of apartments to the landowner-promoter, and
  
  - ii. such landowner-promoter shall be eligible for credit of taxes charged from him by the developer promoter towards the supply of construction of apartments by developer-promoter to him. If the landowner-promoter further supplies such apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer-promoter.

# GST liability in case of Joint Development Agreement



- ✓ If a separate legal entity (like company or partnership firm) is constituted, then obviously GST would be payable by such firm or company. Even If it is unincorporated joint venture, it can come under definition of 'person', as per Section 2(84) of CGST Act states that 'person' includes an association of persons or body of individuals, whether incorporated or not. In such cases, the AOP should obtain PAN and have separate registration.
- ✓ In some cases, the agreement provides that some apartments will be sold directly by the landowner and some by the promoter (builder/developer). In such cases, the landowner may pay GST on apartments sold by him and promoter on apartments sold by him directly to customers. The Joint Development Agreement should be very clear and specific on these aspects.
- ✓ Option to enter into Tri-partite agreement with buyer.

# GST ON SLUM REHABILITATION PROGRAMMES



- In slum Rehabilitation programmes, Government transfer TDR/FSI to promotor.
- The Promoter supplies apartments to slum dwellers without monetary consideration. The Apartment constructed in addition to apartments given free to the slum dwellers are sold.
- As per CBI&C Circular F No. 354/32/2019-TRU dated 14-05-2019-FAQ (Part II) Nos. 8 and 9, in both the cases, GST is payable.

# Anti-Profiteering in case of Real Estate



- ✓ Promoter / Developers must pass on benefits of reduced tax rates and Input Tax Credit (ITC) to buyers through price reduction.
- ✓ Section 171 of CGST Act, 2017 governs anti-profiteering measures, with investigations by DGAP and enforcement by GST Tribunal.
- ✓ Method: Compare ITC-to-cost ratio pre- and post-GST; any excess benefit not passed is treated as profiteering.
- ✓ Consequences: Reduction in Rate, Refunds to buyers, deposits into Consumer Welfare Fund, penalties, and litigation risks.

# AUDIT ISSUES IN REAL ESTATE SECTOR



## 1. GST on Development Rights

- ✓ Under Joint Development Agreement [JDA], Irrevocable rights to enter into and do development of project is given to developer by landowner. In exchange for the DR, the developer do construction and hand over the constructed area in residential/commercial project to Landowner. Demand of GST could be done by GST department on Development Rights from developer under reverse charge as recipient vide notification 13/2017-CT as amended.
- ✓ In **Prahitha Constructions Private Limited v. UOI** [Writ Petition No. 5493 of 2020 dt. 09.02.2024] Hon. High Court held that transfer of development rights would be considered as service and is, therefore, subject to levy of GST. The matter is pending before Hon. Supreme Court.

# AUDIT ISSUES IN REAL ESTATE SECTOR



## 2. Construction done for Landowners share under area share JDA:

Department may contend that the GST is leviable since the constructed area is being done under Joint Development Agreement against the non money consideration of development rights by developer and demand tax.

## 3. ITC availed post completion

In case of Construction of Commercial Apartments, Input Tax Credit availed post completion of construction which is pertaining to units sold prior to completion may be denied.

# AUDIT ISSUES IN REAL ESTATE SECTOR



## **4. ITC related to leased commercial premises of share of developer of commercial project:**

If developer leases out the commercial premises such as offices, shops, warehouse instead of sale to end customer in course of construction, ITC can be denied under the provision of Sec 17(5) (c)/ or 17(5) (d ) of the CGST Act 2017.

## **5. Reconciliation of GST paid as per time of supply.**

## **6. Reconciliation of GST paid under reverse charge.**

## **7. Registration of additional place business**



*Thank you!*

*S R Bhargave & Co.*

*Contact us on:*

*[sanjaybhargave@bhargaves.com](mailto:sanjaybhargave@bhargaves.com)*

*9822045215*

*020-25283344*