

GST for Real Estate Sector

(including Joint Development Agreements)

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GST and Real Estate Sector

Highlights of Revised Scheme from 1st April, 2019

- The revised scheme **applies to residential and commercial apartments.**
- The new scheme is **compulsory for projects commenced on or after 1-4-2019.** In respect of **ongoing projects as on 31-3-2019, the promoter has option** to shift to new scheme w.e.f. 1-4-2019 (without ITC) or continue under earlier scheme (with ITC)
- Under new scheme, the GST rates for **residential apartments** are as follows - (a) CGST 0.5% plus SGST/UTGST 0.5% (total 1%) **(without ITC) for affordable residential apartments** (b) CGST 2.5% plus SGST/UTGST 2.5% **(total 5%) (without ITC) for other residential apartments.**
- In respect of **commercial apartments** (shops, offices, godowns etc.) **in RREP**, the GST rate is CGST 2.5% plus SGST/UTGST 2.5% **(total 5%) (without ITC).** In respect of construction of commercial apartments **(other than RREP)**, the GST rate is CGST 6% plus SGST/UTGST 6% **(total 12%) (with ITC).**
- In case of ongoing projects, if the promoter intends to shift to new scheme (of 1%/5%) w.e.f. 1-4-2019, he is required to **reverse excess ITC availed as on 31-3-2019** or get credit of ITC less claimed as on 31-3-2019.

- **RREP (Residential Real Estate Project)** means Real Estate Project (REP) of residential apartments with commercial apartments not more than 15% of total carpet area of REP.
- **Affordable Residential Apartment** means apartment 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 Rs. 45 lakhs.**
- **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.
- **In respect of new projects, the tax (CGST, SGST/UTGST as applicable) shall be paid in cash by debiting the electronic cash ledger only** [without utilising Input Tax Credit].
- **In case of ongoing projects** as on 1-4-2019, 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 20-5-2019.
- **If the promoter does not submit such declaration, he is deemed to have opted for the new scheme.**

- If 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, the **developer- promoter shall pay tax on supply of construction of apartments to the landowner-promoter. The landowner - promoter can take credit of taxes charged from him by the developer promoter, if the landowner-promoter further supplies such apartments to his buyers.**
- **No GST is payable 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.
- **All cement for the project must be purchased from registered supplier only.** If not so received, the promoter is required to pay GST @ 28% under reverse charge by promoter (even if total value of supplies received from unregistered suppliers is less than 80%).
- **After considering payment of GST on cement under reverse charge, at least 80% of the procurement of inputs 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 real estate project service shall be received from registered supplier only.** [In case of interest received, it can be considered as received from registered supplier, if Bank/FI/company giving loan are registered under GST].
- If there is **shortfall in procurement from registered suppliers**, i.e. if still requirement of procurement of 80% from registered suppliers is not achieved, **GST @18% is payable on value to the extent of shortfall. This adjustment is to be done financial year wise and not project wise.**

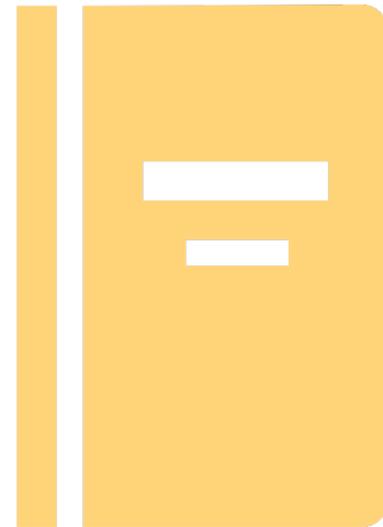
- In case of **capital goods procured from unregistered person, the promoter is liable to pay GST under reverse charge.**
- In respect of development rights or FSI transferred or payment of upfront amount for long term lease of land on or after 1-4-2019 proposed to be used for residential apartments, **GST is not payable on TDR, FSI or payment of upfront amount for long term lease of land if residential apartment is sold before completion. However, if some residential 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.**
- **In case of commercial apartments,** GST is payable on development rights or FSI transferred or payment of upfront amount for long term lease of land after 1-4-2019, whether or not commercial apartments are sold before obtaining completion certificate. **The tax is payable by promoter under reverse charge.**
- **Where promoter opts to pay tax at full rate (8%/12%) after availing ITC, proportionate reversal of Input Tax Credit is required in respect of apartments remaining unsold as on date of completion or first occupation, whichever is earlier.**
- The **reversal is required to be made on date of completion of project.** Reversal should be as per **rule 42** of CGST Rules in respect of inputs and input services and **rule 43** of CGST Rules in respect of capital goods.
- Such reversal will be on **basis of carpet area** and not on basis of value.

- In many projects containing more than one buildings, **partial completion** certificate/occupancy certificate is often obtained for each building. As per FAQ (Part I) No. 29 issued by CBI&C vide circular F No. 354/32/2019-TRU dated 7-5-2019, if partial completion/occupancy certificate has been obtained before 31-3-2019, the first occupation shall not be considered to have taken place. It will be considered as ongoing project as on 1-4-2019. **Promoter can opt to pay tax @ 1%/5% on such project.**
- **All accounts are to be maintained project-wise. Each project can be treated differently** e.g. for some projects, promoter may opt for 1%/5% scheme and for some projects 8%/12% scheme - FAQ (Part I) No. 24 issued by CBI&C vide circular F No. 354/32/2019-TRU dated 7-5-2019.
- If project is big, it is advisable to have separate GST registration for each project and even sub-project.
- As per FAQ (Part I) No. 30 issued by CBI&C vide circular F No. 354/32/2019-TRU dated 7-5-2019, **even within same building, two separate projects can be registered e.g. 1st to 10th floor for one project and 11th to 20th for another project. These will be considered as distinct projects.**
- **If apartment was partially completed as on 1-4-2019, and if promoter opts for 1%/5% scheme, the customer will be liable to pay GST @ 1%/5% on remaining portion.** For example, if 40% amount was paid before 1-4-2019, GST at earlier rate [8% or 12% as applicable] will be payable. On balance 60%, 1%/5% as applicable will be payable - FAQ (Part I) No. 17 issued by CBI&C vide circular F No. 354/32/2019-TRU dated 7-5-2019.

Is Development Rights

leviable for

GST ?



Notification

4/2018

Dated

25th January 2018



Clarifications by CBIC

- **All conditions mentioned in notification No. 3/2019** ibid against S. No. 3(i) to 3(id) (i.e. opting for new scheme) **are mandatory** i.e. payment of tax through Cash Ledger, payment of tax under RCM subject to 80% limit, non-availing of Input Tax Credit, reversal of credit, maintenance of project wise account, reporting of ITC not availed in corresponding GSTR-3B etc.
- **Rate of tax on supply of TDR or FSI or long term lease of land, used for the construction of residential apartments would be liable at 18% but the amount of tax shall be limited to 1% or 5%, as applicable, of value of apartment in the new projects where new rate of 1% or 5% is applicable.**
- **TDR or FSI or long term lease of land, used for construction of commercial apartments shall attract GST of 18%.** Hence, for such supplies the provisions as applicable prior to 1st Apr '19 would continue to apply and the **notification No. 4/2019-CT(R)** dated 29th Mar '19 would not be applicable as the same is w.r.t. residential apartments.
- **GST on supply of FSI relating to commercial apartments where consideration is in monetary terms, the liability to pay GST would arise immediately,** as notification 6/2019-CT(R) dated 29th Mar '19 does not cover such FSI.

- **GST on supply of long term lease of land relating to commercial apartments (whether consideration is in monetary terms or construction service), the liability would arise immediately as notification 6/2019-CT(R) ibid does not cover such long term lease.**
- **Upfront amount paid as long term lease for residential apartment exempt to the extent of apartments sold prior to CC, but license fee, etc. other than in the nature of upfront fee liable to GST.**
- **Credit notes issued for adjustment of tax paid on flats that are cancelled on or after 1st Apr '19, can be adjusted against output tax liability of 1% or 5%, or any other GST liability, provided entire amount received from buyer is refunded by the Developer before September following the end of the financial year.**
- **JDA entered prior to 1st Apr '19 and allotment done (in area share agreement) in ongoing project on or after such date, GST liability would be on the allotment date in terms of notification No. 4/2018-CT(R) dated 25th Jan '18.**
- **Rate of tax applicable to a contractor to a developer or promoter would be 12% or 18% for affordable and non-affordable housing, respectively.**

- **Deduction of actual value of land cannot be taken and only 1/3rd deduction will have to be claimed** in terms of para 2 of notification 11/2017-CTR dated 28th Jun '17.
- The activity of transfer of development rights by a land owner, whether an individual or not, to a promoter is a supply of service as it would fall within the ambit of **'business'** which is defined in a wide sense under GST.
- **No modification / amendment of the option is allowed in the Form to choose option, once submitted**
- **The landowner would be eligible for the credit of the tax charged by the developer. However, the landowner would not be eligible for credit in respect of any other goods or services.**
- **In case of a project with both residential and commercial apartments** [where the 80% criteria (i.e. 80% of procurements shall be from registered persons) is required to be fulfilled only w.r.t. the residential apartments], the procurements pertaining to the residential apartments shall be ascertained by proportioning on the basis of the carpet area in the project of the residential and commercial apartments.

- Projects in respect of which completion certificate has been received prior to 1st Apr '19 and in respect of which the **time of supply (ToS) of the service falls prior to such date**, but certain **demands are still pending** to be received from customers on or after 1st Apr '19, would be liable at the effective rate of 12% only. This is a scenario where the amounts as per the agreement with the customer are due prior to 1st Apr '19 itself and thereby ToS being prior to such date would be liable at the effective rate of 12% only irrespective of when such amounts are received.
- **While computing the limit of 80% of procurements from registered persons, the supplies which are neither a supply of goods nor supply of service as per Schedule III of CGST Act,2017 (For Example: salaries and wages, purchase of land, etc) shall not be considered.**
- **The rate of 12% (in terms of entry 3(va) of above referred notification) which is applicable for a contractor or a sub-contractor executing works contract in respect of affordable housing can charge so on the basis of a declaration by the promoter to the contractor that the project meets the conditions prescribed for concessional rate of GST on works contract service prescribed under the said entry.**

Practical Examples

Question - A promoter has a real estate project of apartments commenced after 1-4-2019, with total carpet area of 10,000 Sq M, comprising of following - (a) Affordable residential apartments - 4,000 Sq M (b) Residential apartments other than affordable residential apartments - 4,500 Sq M (c) Commercial Apartments (Office, shops, godowns) - 1,500 Sq M. State the GST rates applicable in each case.

Answer - Since carpet area of commercial apartments does not exceed 15% of total carpet area, the project qualifies as 'Residential Real Estate Project'. Hence, GST rates are as follows (assuming that the total amount charged includes value of land) - (a) Affordable residential apartments - 1% (b) Residential apartments other than affordable residential apartments - 5% (c) Commercial Apartments (Office, shops, godowns) - 5%. Input Tax Credit cannot be availed.

Question - A promoter has a real estate project of apartments commenced after 1-4-2019, with total carpet area of 10,000 Sq M, comprising of following - (a) Affordable residential apartments - 4,000 Sq M (b) Residential apartments other than affordable residential apartments - 4,400 Sq M (c) Commercial Apartments (Office, shops, godowns) - 1,600 Sq M. State the GST rates applicable in each case.

Answer - Since carpet area of commercial apartments exceeds 15% of total carpet area, the project does not qualify as 'Residential Real Estate Project'. It is 'real estate project'. Hence, GST rates are as follows (assuming that the total amount charged includes value of land)- (a) Affordable residential apartments - 1% (b) Residential apartments other than affordable residential apartments - 5% (c) Commercial Apartments (Office, shops, godowns) - 12%. Proportionate Input Tax Credit in respect of commercial apartments can be availed.

Question - A promoter has a real estate project of apartments commenced after 1-4-2019, with total carpet area of 10,000 Sq M, comprising of following - (a) Affordable residential apartments - 1,000 Sq M (b) Residential apartments other than affordable residential apartments - 2,000 Sq M (c) Commercial Apartments (Office, shops, godowns) - 7,000 Sq M. State the GST rates applicable in each case.

Answer - Since carpet area of commercial apartments exceeds 15% of total carpet area, the project does not qualify as 'Residential Real Estate Project'. It is 'real estate project'. Hence, GST rates are as follows (assuming that the total amount charged includes value of land)- (a) Affordable residential apartments - 1% (b) Residential apartments other than affordable residential apartments - 5% (c) Commercial Apartments (Office, shops, godowns) - 12%. Proportionate Input Tax Credit in respect of commercial apartments can be availed.

Question - A promoter opting to pay GST at 1%/5% GST rate without availment of ITC received following input and input services during financial year 2019-20 - (a) From registered supplier - 65% (b) Cement received from unregistered person - 5% (c) Bricks, tiles and labour services received from unregistered person - 30%. Explain liability of promoter for payment of GST under reverse charge.

Answer - Promoter is liable to pay GST on cement @ 28% received from unregistered person under reverse charge. Further, he is also liable to pay GST @ 18% on 10% of other goods and services received from unregistered persons.

Question - A promoter opting to pay GST at 1%/5% GST rate without availment of ITC received following input and input services during financial year 2019-20 - (a) From registered supplier - 85% (b) Cement received from unregistered person - 5% (c) Bricks, tiles and labour services received from unregistered person - 15%. Explain liability of promoter for payment of GST under reverse charge.

Answer - Promoter is liable to pay GST under reverse charge on cement @ 28% received from unregistered person, even if he has purchased 85% of supplies from registered person.

Question - A promoter opting to pay GST at 1%/5% GST rate without availment of ITC received following input and input services during financial year 2019-20 - (a) From registered supplier - 70% (b) Services received from unregistered suppliers on which tax is payable by promoter under reverse charge - 4% (c) Cement received from unregistered person - 6% (c) Bricks, tiles and labour services received from unregistered person - 15%. Explain liability of promoter for payment of GST under reverse charge.

Answer - While calculating limit of 80%, inputs and input services on which tax is paid by promoter under reverse charge shall be deemed to have been procured from registered person. Promoter is liable to pay GST under reverse charge on cement @ 28% received from unregistered person. Thus, promoter as received 80% of inputs and input services from registered persons [70 + 4 + 6]. Hence, there is no further liability for payment of GST under reverse charge.

Question - A promoter opting to pay GST at 1%/5% GST rate without availment of ITC received following input and input services during financial year 2019-20 - (a) From registered supplier paying tax at normal rate - 70% (b) From registered suppliers paying tax under composition scheme - 15% (c) Cement received from unregistered person - Nil (d) Bricks, tiles and labour services received from unregistered person - 15%. Explain liability of promoter for payment of GST under reverse charge.

Answer - The supplies received from registered suppliers are 85%. All cement has been received from registered suppliers. Hence, there is no liability on promoter to pay GST under reverse charge.

Question - A promoter opting to pay GST at 1%/5% GST rate without availment of ITC received following input and input services **(A)** during financial year 2019-20 - (a) From registered supplier paying tax at normal rate - 70% (b) From registered suppliers paying tax under composition scheme - 20% (c) Cement received from unregistered person - Nil (d) Bricks, tiles and labour services received from unregistered person - 10%. **(B)** during financial year 2020-21 - (a) From registered supplier paying tax at normal rate - 60% (b) From registered suppliers paying tax under composition scheme - 10% (c) Cement received from unregistered person - Nil (d) Bricks, tiles and labour services received from unregistered person - 30%. Explain liability of promoter for payment of GST under reverse charge.

Answer - In financial year 2019-20, the supplies received from registered suppliers are 90%. All cement has been received from registered suppliers. Hence, there is no liability on promoter to pay GST under reverse charge.

In respect of financial year 2020-21, there is short fall of 10% in supplies received from unregistered person. Hence, the promoter is liable to pay GST on 10% of value @ 18% under reverse charge.

The calculations are to be done financial year-wise. Hence, excess amount received from registered suppliers in financial year 2019-20 cannot be adjusted in financial year 2020-21.

Question - A promoter opting to pay GST at 1%/5% GST rate without availment of ITC received following input and input services during financial year 2019-20 - (a) From registered supplier making taxable supplies - 70% (b) From registered suppliers making exempted supplies (like interest) - 10%. (c) Cement received from unregistered person - Nil (c) Bricks, tiles and labour services received from unregistered person - 20%. Explain liability of promoter for payment of GST under reverse charge.

Answer - Promoter has received 80% supplies from registered suppliers. There is no requirement that the supplies received should be taxable. Hence, there is no liability under reverse charge.

Question - A promoter opting to pay GST at 1%/5% GST rate without availment of ITC received following input and input services during financial year 2019-20 - (a) From registered supplier - 80% (b) Cement received from unregistered person - 5% (c) Bricks, tiles and labour services received from unregistered person - 10% (d) Capital goods received from unregistered supplier - 5%. Explain liability of promoter for payment of GST under reverse charge.

Answer - Promoter is liable to pay GST under reverse charge on cement @ 28% received from unregistered person and on capital goods received from unregistered supplier at rate applicable to capital goods received.

Question - A promoter has entered into agreement to sale a residential apartment with carpet area of 120 Sq M, to customer on 1-5-2019. The breakup of his charges are as follows –

(a) Price of flat - Rs 100 lakhs

(b) Prime Location Charges (PLC) (extra charges to select preferred location for better view, Vastu etc.) - Rs 2 lakhs

(c) Charges for providing space for covered parking - Rs 2.5 lakhs

(d) Club membership fee (for club to be formed after construction is complete) - Rs 3 lakhs. This amount will be held by promoter and handed over to club after formed

(e) Charges for carrying out modifications as required by customer - Rs 1 lakh

(f) Stamp duty for executing sale deed on actual basis - Rs 4 lakhs

(g) Documentation charges - Rs 50,000

(h) Maintenance charges to maintain building after completion, till the Real Estate Project is handed over to Resident Welfare Association (or Housing Society of members) - Rs 2 lakhs.

The promoter received payment of Rs 10 lakhs before construction was complete and balance amount was received after obtaining completion certificate from the Corporation. The promoter had used cement, steel and building material during construction, on which SGST paid was Rs 70,000 and CGST - Rs 70,000. While providing maintenance services, the promoter had used input goods and services on which tax paid was as follows - CGST - Rs 2,000 SGST - Rs 2,000.

Compute the tax payable by promoter.

Answer - The main service is construction of apartment for Rs 100 lakhs. Some other services are provided which are normally provided while providing this service. This is termed as 'composite supply'. The service of construction of apartment will include these naturally bundled services. These are - PLC - Rs. 2 lakhs, Charges for covered parking - Rs. 2.5 lakhs, Modification charges - Rs. 1 lakh, Documentation charges - Rs. 50,000. Thus, total value of service for construction of apartment is Rs 106 lakhs.

Tax payable by promoter through electronic cash ledger on Rs 106 lakhs- SGST @ 2.5% Rs 2.65 lakhs and CGST @ 2.5% - Rs 2.65 lakhs. Total Rs 5.30 lakhs.

No input tax credit is available.

Maintenance charges of Rs 2 lakhs not part of construction service of apartment. These are not part of 'composite service' of construction.

Hence on maintenance charges - SGST @ 9% - Rs 18,000. CGST @ 9% - Rs 18,000.

ITC of SGST of Rs 2,000 and CGST of Rs 2,000 is available to promoter.

Hence, tax payable by promoter on maintenance charges through electronic cash ledger is - CGST - Rs 16,000 and SGST - Rs 16,000.

Club membership fee of Rs. 3 lakhs is only a deposit to be handed over to club when formed. At that stage, the club will be liable to pay GST on this amount.

Stamp duty is not a part of service. It is only reimbursement of expenses incurred on behalf of customer.

Tax is payable on entire amount even if only part amount was received prior to completion of construction of apartment.

Question - A customer 'A' who had booked the residential apartment and paid Rs 10 lakhs, subsequently cancelled his booking. The promoter refunded Rs 9 lakhs and kept Rs one lakh as cancellation charges. Another customer who had booked an apartment sold the apartment to third person and requested promoter to transfer the apartment in name of new buyer. The builder charged Rs 50,000 as transfer charges. Is tax payable on these amounts? Compute tax liability, if any.

Answer - Both the charges fall within the definition of 'tolerating an act or situation', which is defined as a 'deemed service'. Hence, these charges will be subject to tax @ 18%.

Tax payable - SGST @ 9% of Rs 1,50,000 - Rs 13,500. CGST @ 9% - Rs 13,500.

GST payable by promoter under reverse charge

Question - A promoter entered into agreement with land owner for transfer of development rights on 15-5-2019. As per the agreement, promoter was allowed to develop a real estate project on the land. The promoter had agreed to give apartments consisting of 40% of the carpet area to land owner as consideration for granting development rights to promoter. The real estate project was of 100 apartments of same size. Out of these 100 apartments, 40 apartments were to be given by promoter to land owner. It was agreed that promoter will make all the bookings and sales, even of apartments given to land owner. The project was registered under RERA and construction commenced in August 2019.

The promoter started booking of apartments in September 2019. The rate offered was Rs 75 lakhs per apartment and first two apartments were booked at that rate.

The construction was completed on 20-11-2021. Five apartments were sold in October, 2021 for Rs 102 lakhs each.

Calculate value of transfer of development rights on which the promoter is liable to pay GST under reverse charge (without considering the exemption available in respect of residential apartments booked prior to 20-11-2021) and the GST payable.

Answer - The development rights were transferred in May, 2019. The booking rate at that time was Rs 75 lakhs. Hence, value of supply of service is Rs 50 lakhs (two-third of Rs 75 lakhs). Since 40 apartments were to be given to land owner, the total value of transfer of development rights - $40 \diamond 50 = \text{Rs } 2,000$ lakhs.

GST payable of transfer of development rights = 18% of Rs 2,000 lakhs = Rs 360 lakhs.

The value of un-booked apartments is to be considered on basis of value of similar apartments booked nearest to date of completion. The apartments were booked by promoter for Rs 102 lakhs in October 2021. Hence, value of the apartment nearest to date of completion is Rs 68 lakhs (two-third of Rs 102 lakhs).

Since 30 residential apartments remained un-booked on date of completion certificate, the value of un-booked apartments = $68 \diamond 30 = \text{Rs } 2,040$ lakhs.

Question - In the aforesaid example, out of 100 apartments, 30 were commercial apartments and 70 were residential apartments. Carpet area of each is 100 Sq M. Out of these, 20 commercial apartments and 40 residential apartments were booked prior to date of completion certificate. Value and carpet area of commercial and residential apartments are same. Calculate the exemption available to promoter in respect of GST on development rights and GST payable by promoter under reverse charge on transfer of development rights.

Answer - The calculations are as follows -

GST payable on transfer of development rights is Rs 360 lakhs (as above).

Carpet area of residential apartments of project = $70 \times 100 = 7,000$ Sq M

Total carpet area of residential and commercial apartments = $100 \times 100 = 10,000$ Sq M

Carpet area of residential apartments which remain un-booked on date of completion = $30 \times 100 = 3,000$ Sq M.

(A) *GST on transfer of development rights/FSI attributable residential apartments* = GST payable on TDR or FSI (including additional FSI) or both or on upfront amount payable in respect of service by way of granting of long term lease of thirty years, or more for construction of the project] x (carpet area of the residential apartments in the project) ~ (Total carpet area of the residential and commercial apartments in the project).

Hence, (A) GST on transfer of development rights/FSI attributable residential apartments = $360 \text{ lakhs} \times 7,000/10,000 = \text{Rs } 252 \text{ lakhs}$.

(B) GST payable on residential apartments remain un-booked on date of completion = [GST payable on development rights or FSI (including additional FSI) or both or upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation ~ Total carpet area of the residential apartments in the project) - first proviso to Sr Nos. 41A and 41B of Notification No. 12/2019-CT (Rate) dated 28-6-2017 inserted w.e.f. 1-4-2019.

Hence, (B) GST payable on residential apartments remain un-booked on date of completion = $252 \times 3,000 / 7,000 = \text{Rs } 108 \text{ lakhs}$.

The tax payable shall not exceed 0.5% of CGST (plus 0.5% SGST/UTGST) of value of affordable residential apartments remaining un-booked and 2.5% of CGST (plus 2.5% of SGST/UTGST) of value of residential apartments (other than affordable residential apartments) remaining un-booked on date of completion.

The value nearest to date of completion is Rs 2,040 lakhs (as in above example). Since area of each residential apartment is 100 Sq M, these are residential apartments (other than affordable residential apartments). Hence, 2.5% of Rs 2,040 lakhs is Rs 51 lakhs.

Thus, GST payable on un-booked residential apartments is Rs 51 lakhs of CGST plus Rs 51 lakhs of SGST/UTGST due to the ceiling.

Hence, (B) = Rs 102 lakhs.

Exemption available on development rights pertaining to residential apartments which were booked prior to date of completion = (A) - (B) = $252 - 102 = \text{Rs } 150 \text{ lakhs}$

GST payable by promoter on transfer of development rights under reverse charge = Total GST Rs 360 lakhs - Exemption available on transfer of development rights pertaining to residential apartments transferred prior to completion certificate 150 lakhs = Rs 210 lakhs.

Thus, the developer is liable to pay Rs 210 lakhs under reverse charge as GST on transfer of development rights.

Check - This can be checked by making same calculations in different way.

GST on transfer of development rights/FSI attributable commercial apartments = GST payable on TDR or FSI (including additional FSI) or both or on upfront amount payable in respect of service by way of granting of long term lease of thirty years, or more for construction of the project] x (carpet area of the commercial apartments in the project) ~ (Total carpet area of the residential and commercial apartments in the project).

Thus, (i) *GST on transfer of development rights/FSI attributable commercial apartments* = 360 lakhs x 3,000/10,000 = Rs 108 lakhs.

Add (ii) GST payable on un-booked residential apartments - Rs 51 lakhs CGST plus Rs 51 lakhs SGST/UTGST (or Rs 102 lakhs IGST) (due to the limit of 2.5% of CGST plus 2.5% of SGST/UTGST of value)

Total GST payable by promoter under reverse charge = (i) + (ii) = 108 + 102 = Rs 210 lakhs.

Land owner developer

Where a registered person (landowner- promoter) who 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, provided 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.

Explanation.—

(i) "developer- promoter" is a promoter who constructs or converts a building into apartments or develops a plot for sale,

(ii) "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.

Sale by land owner developer

Question - XYZ is land owner. He transfers development rights of land to PQR Co. Ltd. The PQR Co. Ltd. agrees to supply 20 duly constructed apartments to XYZ. PQR Co. Ltd. identifies 20 apartments in the building plan, which will be handed over to XYZ after completion. PQR Co. Ltd. is entering into contract with other independent buyers to sale the apartment @ Rs 120 lakhs. XYZ enters into agreement with a buyer to sale one of the identified apartments @ Rs 123 lakhs. Explain how the transaction should be effected.

Answer - PQR Co. Ltd. is charging Rs 120 lakhs for an apartment. After deducting land value equal to one third of Rs 120 lakhs, the value of taxable service is Rs 80 lakhs. PQR Co. Ltd. will charge CGST @ 3.75% and SGST @ 3.75% on Rs 80 lakhs (which is same as CGST @ 2.5% and SGST @ 2.5% on Rs 120 lakhs).

Thus, PQR Co. Ltd. will raise tax invoice on XYZ charging CGST of Rs 3,00,000 and SGST of Rs 3,00,000 (total Rs 6 lakhs).

XYZ will raised tax invoice on his buyer charging 2.5% CGST and 2.5% SGST on Rs 123 lakhs. Thus, he will charge CGST Rs 3,07,500 and SGST Rs 3,07,500. He will take credit of CGST and SGST charged to him and pay Rs CGST of Rs 7,500 and SGST of Rs 7,500 through electronic credit ledger.

Question - In aforesaid case, if PQR sales the apartment at Rs 117 lakhs, what will be the tax implications?

Answer - PQR Co. Ltd. will issue tax invoice charging CGST of Rs 3,00,000 and SGST of Rs 3,00,000 (total Rs 6 lakhs).

XYZ will issue tax invoice charging CGST of Rs 3,00,000 and SGST of Rs 3,00,000 (total Rs 6 lakhs), as the tax charged by him cannot be less than the amount of tax charged from him on construction of such apartments by the developer-promoter.

Thus, PQR will not be liable to pay any tax through electronic cash ledger but there will be no balance in his electronic credit ledger.

Case1

M/s ABC Private Limited has executed a contract on 13.11.2019 with Mr. XYZ for the purchase of land situated at Pune for the purpose of construction of residential complex.

The consideration for the said agreement has been decided partly in the form of monetary consideration and partly by way of constructed area to the landowner as follows:

Rs. 1.0 Crore/- (Rupees One Crore) to be paid before the execution of the agreement. And 4000 Sq.ft. (RERA Carpet) Residential Constructed area as Balance consideration.

Qs:

Whether there are any GST implications in the hands of the Mr. XYZ on account of development rights or transfer of land to M/s ABC Private Limited (Builder)?

Whether there are any GST implications in the hands of M/s ABC Private Limited as the consideration for land includes partly monetary consideration and partly in the form of 4000 Sq.ft. Residential constructed area?

What are the GST implications for the landowners in following situations –

If land owner sells constructed area (all/some flats) received from builder before completion of the project?

If land owner sells constructed area (all/some flats) after completion of the project or retains flats for himself?

Case2

M/s ABC, a proprietary concern of Mr. ABC, is engaged in the activity of construction of residential and commercial complex.

M/s XYZ, a registered partnership firm, is engaged in the activity of construction of residential and commercial complex having development and sale rights of land admeasuring area of 28 Acres (2800.00 Sq. mtr) at Pune acquired through development agreement dated 31.12.2006. The entire consideration for the said development agreement has been fully paid in the monetary form to the landowners.

Further, M/s XYZ has obtained plan approvals and commencement certificate from PMC for the construction of project. The firm, being unable to complete the project, **intends to assign** all development rights related to above project to M/s ABC for the further development of the project.

The consideration for transfer of development rights by M/s XYZ to M/s ABC has been finalised as follows –

The lumpsum monetary consideration of Rs. 5,46,55,000/- (Rupees Five Crores Forty Six Lakhs Fifty Five Thousand only) to be paid in stages as mentioned in the development agreement.

The share of 33.92% in the Sale proceeds of the entire project. (Revenue Sharing Agreement). The sales proceeds shall be transferred to M/s XYZ as and when received.

Qs:

What are the GST implications for the M/s XYZ while receiving the consideration as share in sales proceeds time to time?

Whether there are any GST implications in the hands of M/s ABC for the lumpsum consideration and for the revenue proceeds given to M/s XYZ?

Liability in case of transfer of development rights or FSI or long term lease of land

Description	Development rights/FSI transferred or long term lease executed on or after 1-4-2019	Development rights/FSI transferred or long term lease executed on or before 31-3-2019
<p>Person liable for payment of GST on transfer of development rights or FSI or long term lease of land (30 years or more) for construction of project [commercial or residential apartments]</p>	<p>Promoter under reverse charge [Sr Nos. 5B and 5C of Notification No. 13/2017-CT (Rate) dated 28-6-2017 as inserted w.e.f. 1-4-2019]</p>	<p>Transferor of development rights/FSI or lessor giving land on lease under forward charge</p>
<p>Time when liability of GST on transfer of development rights arises when consideration is given by promoter in form of construction of commercial or residential apartments</p>	<p>Date of completion certificate of project or its first occupation, whichever is earlier [Sr No. (a) of Notification No. 6/2019-CT (Rate) dated 29-3-2019] Payable by Promoter under reverse charge</p>	<p>when the developer, builder (now promoter) transfers possession or the right to the person supplying the development rights by entering into a conveyance deed or similar instrument [Notification No. 4/2018-CT (Rate) dated 25-1-2018] Payable by transferor under forward charge</p>

Description	Development rights/FSI transferred or long term lease executed on or after 1-4-2019	Development rights/FSI transferred or long term lease executed on or before 31-3-2019
Time when liability of GST on transfer of development rights arises when consideration is paid by promoter in cash (monetary consideration)	<p>(i) In respect of residential apartments - Date of completion certificate of project or its first occupation, whichever is earlier [Sr No. (b) Notification No. 6/2019-CT (Rate) dated 29-3-2019]</p> <p>(ii) In respect of commercial apartments - Date of when payment is made by promoter for transfer of rights or FSI to supplier of service or within 60 days from contract (whichever is earlier) [section 13(3) of CGST Act providing for time of supply]</p> <p>Payable by Promoter under reverse charge</p>	<p>When agreement is executed or payment received, whichever is earlier [section 13(1) of CGST Act providing for time of supply]</p> <p>Payable by transferor under forward charge</p>
Time when liability for payment of GST arises in case of upfront amount paid by promoter for long term lease of land	<p>(i) In respect of residential apartments - Date of completion certificate of project or its first occupation, whichever is earlier [Sr No. (c) Notification No. 6/2019-CT (Rate) dated 29-3-2019]</p> <p>(ii) In respect of commercial apartments - Date of when payment is made by promoter to supplier of service or within 60 days from contract (whichever is earlier) [section 13(3) of CGST Act providing for time of supply]</p> <p>Payable by Promoter under reverse charge</p>	<p>When agreement is executed or payment received, whichever is earlier [section 13(1) of CGST Act providing for time of supply]</p> <p>Payable by lessor under forward charge</p>

Description	Development rights/FSI transferred or long term lease executed on or after 1-4-2019	Development rights/FSI transferred or long term lease executed on or before 31-3-2019
Exemption available on transfer of development rights/FSI to promoter or payment for long term lease	<p>(i) transfer or payment for construction of residential apartments is exempt [Sr No. 41A and 41B of Notification No. 12/2017-CT (Rate) dated 28-6-2017 inserted w.e.f. 1-4-2019]</p> <p>(ii) Supply of land on long lease for industrial plots by Government or Government under-takings is exempt [Sr No. 41 of Notification No. 12/2017-CT (Rate) dated 28-6-2017 inserted w.e.f. 13-10-2017]</p>	Supply of land on long lease for industrial plots by Government or Government undertakings is exempt [Sr No. 41 of Notification No. 12/2017-CT (Rate) dated 28-6-2017 inserted w.e.f. 13-10-2017]
Liability of payment of GST on construction service provided to transferor of development rights or FSI	Promoter [as supplier of service]	Developer/Builder (now termed as Promoter) [as supplier of service]

Description	Development rights/FSI transferred or long term lease executed on or after 1-4-2019	Development rights/FSI transferred or long term lease executed on or before 31-3-2019
Time when liability of promoter to pay GST on construction service provided to transferor of development rights or FSI arises	Date of completion certificate of project or its first occupation, whichever is earlier [Sr No. (d) of Notification No. 6/2019-CT (Rate) dated 29-3-2019]	when the developer, builder (now promoter) transfers possession or the right to the person supplying the development rights by entering into a conveyance deed or similar instrument [Notification No. 4/2018-CT (Rate) dated 25-1-2018]
Value of construction service when registered person transfers development rights to promoter against consideration of construction of apartments	<p>Total amount charged for similar apartments nearest to date on which development rights are transferred less one third of total amount charged as value of land [Para 2A of Notification No. 11/2017-CT (Rate) dated 28-6-2017 inserted w.e.f. 1-4-2019]</p> <p>If value is calculated on aforesaid basis, the 'value' will be much higher than that provided in section 15 of CGST Act, which is legally impermissible.</p>	<p>Total amount charged for similar apartments nearest to date on which development rights are transferred less one third of total amount charged as value of land [Para 2A of Notification No. 11/2017-CT (Rate) dated 28-6-2017 inserted w.e.f. 1-4-2019] [Though inserted w.e.f. 1-4-2019, the provision should apply to valuation of construction services provided after 1-4-2019, even if agreement for transfer of development rights or FSI was executed prior to 1-4-2019]</p>

Description	Development rights/FSI transferred or long term lease executed on or after 1-4-2019	Development rights/FSI transferred or long term lease executed on or before 31-3-2019
<p>Value of service of transfer of development rights or FSI to promoter against consideration in form of residential or commercial apartments</p>	<p>Value of similar apartments charged by promoter from independent buyers nearest to the date on which development rights or FSI is transferred to promoter - para 1A of Notification No. 12/2017-CT (Rate) dated 28-6-2017 inserted w.e.f. 1-4-2019.</p> <p>As per paragraph 2 of Notification No. 11/2017-CT (Rate) dated 28-6-2017, the value will be equal to total amount charged less one third of total amount as value of land.</p> <p>In fact, if value is calculated on aforesaid basis, the 'value' will be much higher than that provided in section 15 of CGST Act, which is legally impermissible.</p>	<p>Even earlier, as per CBI&C Instruction No. 354/311/2015-TRU dated 20-1-2016, the value of similar flats was to be considered.</p> <p>If value is calculated on aforesaid basis, the 'value' will be much higher than that provided in section 15 of CGST Act, which is legally impermissible.</p>
<p>Value of portion of residential or commercial apartments remaining un-booked on date of issuance of completion certificate or first occupation</p>	<p>Value of similar apartments nearest to date of issuance of completion certificate or first occupation, whichever is earlier - para 1B of Notification No. 12/2017-CT (Rate) dated 28-6-2017 inserted w.e.f. 1-4-2019]</p>	<p>Not applicable as there was no exemption to transfer of development rights or FSI in respect of residential apartments.</p>

Description	Development rights/FSI transferred or long term lease executed on or after 1-4-2019	Development rights/FSI transferred or long term lease executed on or before 31-3-2019
Time when liability of promoter to pay GST under reverse charge on transfer of development rights or FSI or long term lease relating to unsold residential apartments as on date of completion certificate	Date of completion certificate or first occupation of the project [second proviso to Sr Nos. 41A and 41B of Notification No. 12/2017-CT (Rate) dated 28-6-2017 inserted w.e.f. 1-4-2019]	Not applicable

Anti Profiteering

GST: Where respondent builder had not reduced prices to be realised from buyers of flats, commensurate with benefit of ITC received by him, and also compelled them to pay more GST on additional amount realised, he would be liable for profiteering

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NATIONAL ANTI-PROFITEERING AUTHORITY

Varun Goel

v.

Eldeco Infrastructure & Properties Ltd.

B.N. SHARMA, CHAIRMAN

J.C. CHAUHAN, MS. R. BHAGYADEVI AND AMAND SHAH, TECHNICAL MEMBER

CASE NO. 34 OF 2019

MAY 24, 2019

Illustrative Example

Table (Amount in Rs.)

Sl.No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	July, 2017 to March, 2018	April, 2018 to August, 2018	Total (Post-GST)
(1)	(2)	(3)	(4)	(5)=(3)+(4)	(6)	(7)	(8)=(6)+(7)
1	CENVAT of Service Tax Paid on Input Services as per ST-3(A)	61,03,173	21,45,334	82,48,507	-	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs as per VAT Returns (B)	-	-	-	-	-	-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	61,03,173	21,45,334	82,48,507	-	-	-
4	Input Tax Credit of GST Availed as per GST Return (D)	-	-	-	95,05,178	37,35,163	1,32,40,341
5	Total Taxable Turnover as per Returns (E)	12,82,89,436	7,02,77,743	19,85,67,179	7,21,61,576	5,85,73,391	13,07,34,967
6	Total Saleable Area of Villas in the project (Square Mtr) (F)			1,01,795.90			1,01,795.90
7	Area Sold relevant to Taxable turnover as per returns (G)			14,843.33			34,646.89
8	Relevant CENVAT/Input Tax Credit (H)= [(C)*(G)/(F)] or [(D)*(G)/(F)]			12,02.753			45,06,436
9	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover [(I)=(H)/(E)]			0.61%			3.45%

Sl. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April,2016 to June,2017	July,2017 to August, 2018
2	Output tax rate (%)	B	5.50%	12.00%
3	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover as per Table - D above (%)	C	0.61%	3.45%
4	Increase in tax rate post-GST (%)	D= 12% less 5.50%	-	6.50%
5	Increase in input tax credit availed post-GST (%)	E= 3.46% less 0.61%	-	2.84%
6	Analysis of Increase in input tax credit:			
7	Base Price raised during July, 2017 to August, 2018	F		11,67,79,389
8	Other than Base Price raised during July, 2017 to August, 2018	G		1,39,55,578
9	Total Taxable Value raised during July, 2017 to August, 2018	H=F+G		13,07,34,967
10	GST Collected @ 12% over Basic Price	I= F*12%		1,40,13,527
11	GST Collected @ 18% over other than Basic Price	J = G*18%		25,12,004
12	Total GST Collected	K = I+J		1,65,25,531
13	Total Demand collected	L=H+K		14,72,60,498
14	Recalibrated Basic Price	M= F*(1-E) or 97.16% of F		11,34,62,854
15	GST @ 12%	N = M*12%		1,36,15,543
16	Recalibrated other than Basic Price	O = G*(1-E) or 97.16% of G		1,35,59,240
17	GST@18%	P = O*18%		24,40,663
18	Commensurate demand price	Q = M+N+O+P		14,30,78,300
19	Excess Collection of Demand or Profiteering Amount	R=L-Q		41,82,198

Provision relating to anti-profiteering measure has been introduced vide section 171 of CGST Act.

The idea is that the taxable person should pass on benefit of reduction in rate of tax on any supply of goods or the benefit of input tax credit to the customer as reduction in prices - section 171(1) of CGST Act.

Penalty for profiteering - If the Authority finds that there was profiteering, the person shall be liable to pay penalty equivalent to 10% of the amount profiteered. If amount profiteered is deposited within 30 days, penalty shall not be imposed – section 171(3A) of CGST Act, inserted vide Finance (No. 2) Act, 2019

For the purposes of section 171 of CGST Act, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both – explanation to section 171(3A) of CGST Act inserted vide Finance (No. 2) Act, 2019

No profiteering if there was no reduction in GST rate after 1-7-2017

There is no profiteering if there was no reduction in GST rate after 1-7-2017

- State Level Screening Committee on Anti-Profiteering, Kerala v. Zeba Distributors [2018] 100 taxmann.com 327 (NAA) * State Level Screening Committee on Anti-Profiteering, Kerala v. Sudarsans [2019] 72 GST 224 = 102 taxmann.com 86 (NAA) * Kerala State Level Screening Committee on Anti-Profiteering, v. Emke Silks [2019] 72 GST 481 = 103 taxmann.com 28 (NAA) *
- * State Level Screening Committee on Anti-Profiteering, Kerala v. Sudarsans [2019] 72 GST 493 = 103 taxmann.com 68 (NAA).

Works contract service of renewable energy plant and equipment

Renewable energy devices and parts for their manufacture falling under chapter 84, 85 or 94 are subject to GST @ 5% [IGST 5% or CGST 2.5% + SGST/UTGST 2.5%] as per Sr. No. 234 of Schedule I of Notification Nos. 1/2017-CT (Rate) and 1/2017-IT (Rate) both dated 28-7-2017.

However, if composite contract of supply of goods plus service of construction, installation, commissioning is executed, it becomes works contract and GST rate becomes 18% on whole contract. Thus, basic purpose of promoting renewable energy sources gets defeated.

Hence, it is now provided w.e.f. 1-1-2019 that in case of such composite contract, value of goods will be taken as 70% (attracting 5% GST) and value of services 30% (attracting 18% GST).

The details are explained below.

Specific provisions have been made w.e.f. 1-1-2019 for GST on service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following,

(a)	Bio-gas plant
(b)	Solar power based devices
(c)	Solar power generating system
(d)	Wind mills, Wind Operated Electricity Generator (WOEG)
(e)	Waste to energy plants/devices
(f)	Ocean waves/tidal waves energy devices/plants.

Thank You !



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