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Schedule II

- **ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

2. Land and Building

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

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Deemed Supply of Services

(a) **renting of immovable property;**

(b) **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 authorised 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 (20 of 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 remodelling of any existing civil structure;

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Sale of Flats/Buildings

Receipt of Consideration

Before Issuance of CC*

* CC – Completion Certificate issued by Competent Authority

After Issuance of CC*

Supply of Services (Schedule – II)

Neither a Supply of Goods nor Supply of Services (Schedule – III)

Construction of a complex, except where entire consideration has been received after issuance of BCC, where required, by the competent authority or before its first occupation, whichever is earlier

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Works Contract

- **2(119) Work Contract:** means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any **immovable property wherein transfer of property in goods** (whether as goods or in some other form) is involved in the execution of such contract

Considered as supply of service-Schedule II

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Time of Supply

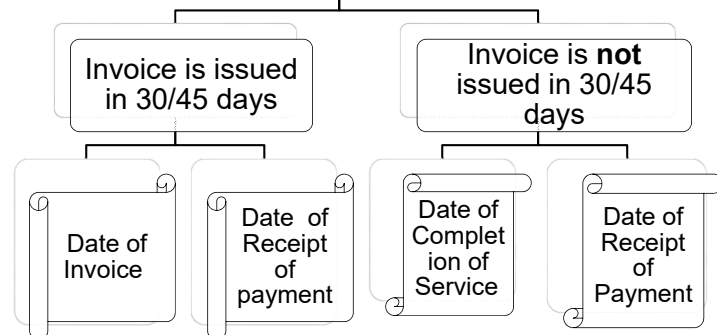


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Time of Supply of Services at the Earliest of

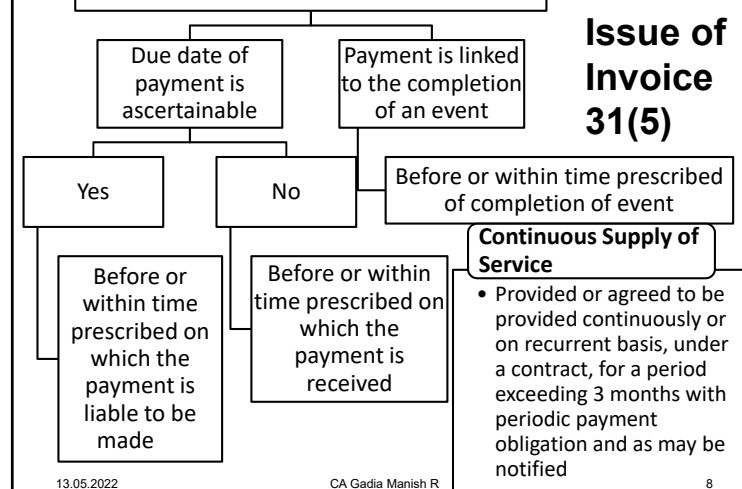


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Continuous Supply of service



Issue of Invoice 31(5)

Continuous Supply of Service

- Provided or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with periodic payment obligation and as may be notified

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Entered into a Contract for
Sale of an Under-Construction
Flat on 10th July, 2021


Developers → **Customer**

Stages of Payment	Amount to be Paid	Due Dates
Stage 0 – Entering into Contract	Rs.25,00,000/-	15 th July, 2021
Stage I – Completion of 5 Floors	Rs.50,00,000/-	30 th September, 2021
Stage II – Completion of 20 Floors	Rs.75,00,000/-	30 th December, 2021
Stage III – After Issuance of CC/OC	Rs.1,00,00,000/-	31 st March, 2022
Stage IV- Possession	Rs. 2,00,00,000/-	7 th June, 2022

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Value of Supply



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- Transaction Value shall include:**
- Taxes levied other than GST Acts, if charged separately.
 - Amount that supplier is liable to pay in relation to such supply but incurred by recipient and not included in the price.
 - Incidental expenses such as commission & packaging and charged by the supplier to the recipient including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, supply of the services
 - interest or late fee or penalty for delayed payment of any consideration for any supply
 - subsidies ...
 - Stamp Duty ,Property Tax in case of Rent,
 - Steel or cement supplied to construction contractor
 - Subvention scheme
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Time of Supply for Additional Value of supply

Amount Due	: Rs. 75,00,000/-
Interest due to late payment	: Rs. 1,10,958/-
Total amount	: Rs. 76,10,958/-

<p>Rs. 75,00,000/-</p> <p>↓</p> <p>As per Continuous supply</p>	<p>Time of Supply</p>	<p>Rs. 1,10,958/-</p> <p>↓</p> <p>At the time of receipt of Interest Amount</p>
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Value Shall not include discount

Before or at the time of supply

- Discount has been recorded in the invoice

After the supply has been effected

- Such discount is as per the terms of **Agreement** entered into at or before the time of supply and specifically **linked to relevant invoices**; and
- ITC has been reversed by the recipient of the supply as is attributable to the discount

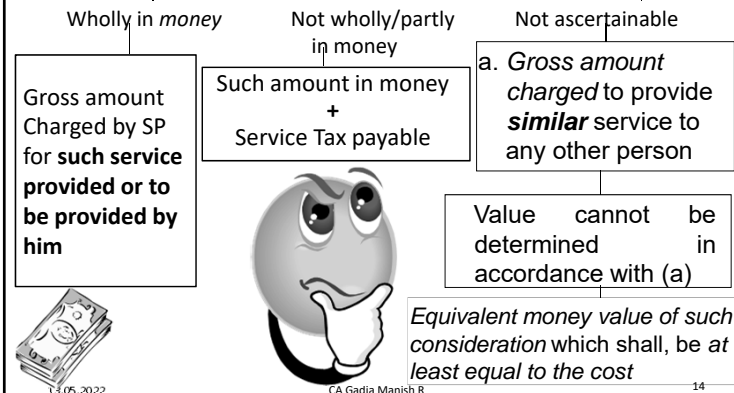
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VALUE OF TAXABLE SERVICES under Service Tax

Consideration for service is



Transaction Value

Consideration wholly in money

Such consideration



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Consideration not wholly in money

Open market value of such supply

Total of money & money equivalent of consideration in kind

Value of supply of like kind and quality

110% of cost / other reasonable amount

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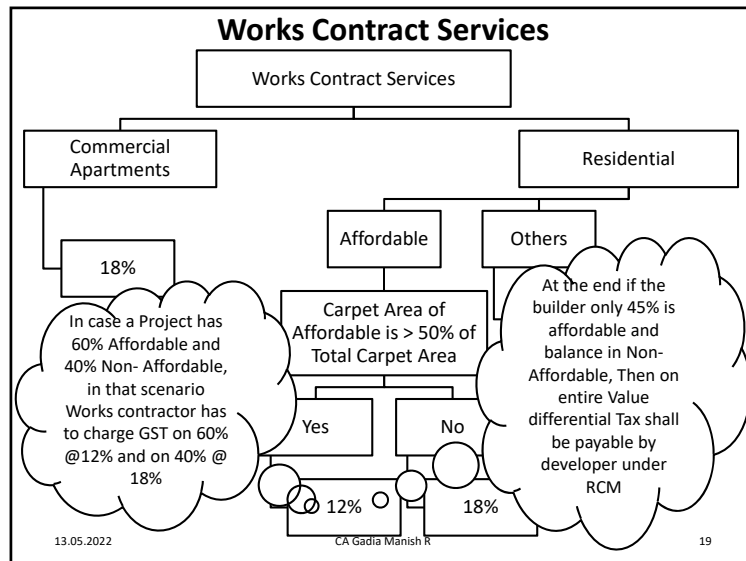
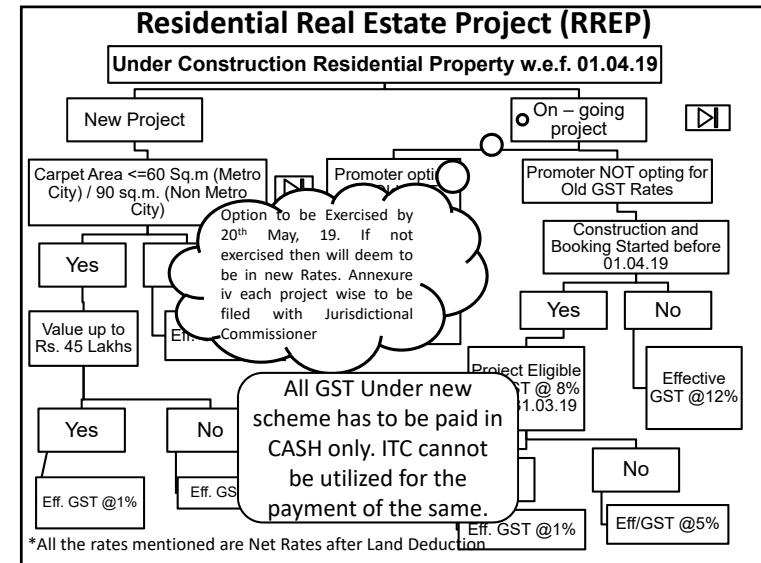
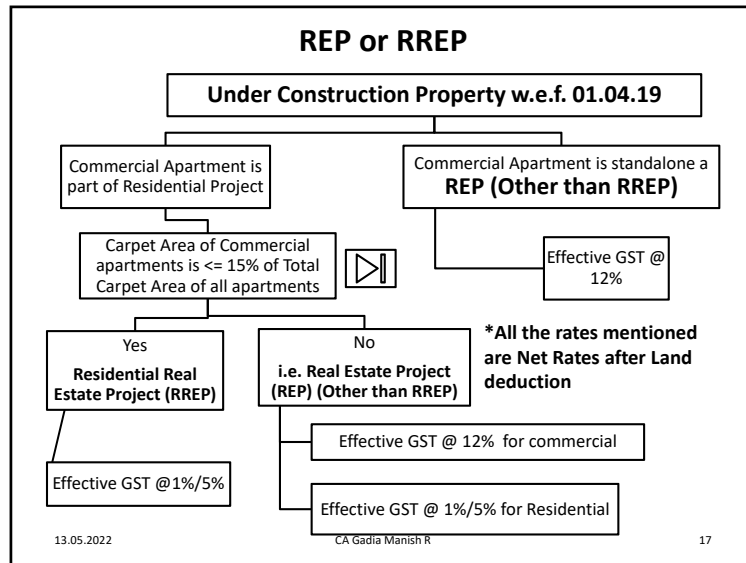
Rate of Tax

Particulars	Service	VAT	Total	GST ITC	GST No ITC
Sale of under-construction flats / units	4.50%	1%	5.50%	12% / 8%	5% / 1%
Joint development – Owner's Area	4.50% or 6%	Nil	4.50% or 6%	Cont: 12% / 8% or WCT: 18%	Exempt or RCM
Redevelopment of society – Rehab flats	6%	Nil	6%	WCT: 18%	Exempt or RCM
Sale of under Construction Commercial Units	4.50%	1%	5.50%	12%	NA

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- ### TDR / FSI / Long Term Lease Premium
- Exemption granted in respect of development rights, TDR, FSI and leasehold premium (upfront only) =p-(Lease period of 30 years or more) used for **construction of residential properties liable to GST**. No such Exemption in case of Commercial.
 - Exemption to apply to transfer of development rights pursuant to Joint Development Agreement (whether area share or revenue share) for residential complex for sale allotted to Landowner.
 - Development rights, TDR, FSI, Leasehold land used for following will still be liable to GST @ 18%:
 - Construction of commercial premises
 - Construction of factory, corporate house, malls, commercial complex for letting out, etc. (for own use)
 - Construction of Residential Complex intended for sale after completion.
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TDR / FSI / Long Term Lease Premium

- In JDA/Redevelopment Agreement, transfer of development right by land owner/society is exempt but Rehab construction services provided by developers to Land owner/Society/SRA will still be taxable at 12% or 18%.
- In JDA owner purchase TDR liable to pay GST on the same. His output is either exempt or developer will pay under RCM. Double taxation?
- In case of JDA, builder shall pay tax on owner's (landlord) area:-
 - Time of Supply:** At the time of completion certificate or first occupation, whichever is earlier
 - Value of Supply:** On the value of total amount charged for similar apartments in the project to independent buyers nearest to the date of transfer of development right [Para iv of Notification No. 3/2019 – CT(R)]

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Landowner Promoter and Developer Promoter

Eligible for ITC

Transfer of TDR / FSI / Additional FSI

Constructed Apartments

Developer Promoter **Land owner Promoter**

Charge GST

- Before CC / 1st Occupation
- Pays GST not less than the GST charged by Developer Promoter

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Landowner Promoter and Developer Promoter - Issue

Eligible for ITC

Developer Promoter **Land owner Promoter**

Charge GST

- Before CC / 1st Occupation
- Pays GST not less than the GST charged by Developer Promoter

GST Payable at the Time of Possession

Sale before possession

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TDR/ FSI/ Additional FSI - RCM

Transfer of TDR / FSI / Additional FSI / Long Term Lease Premium

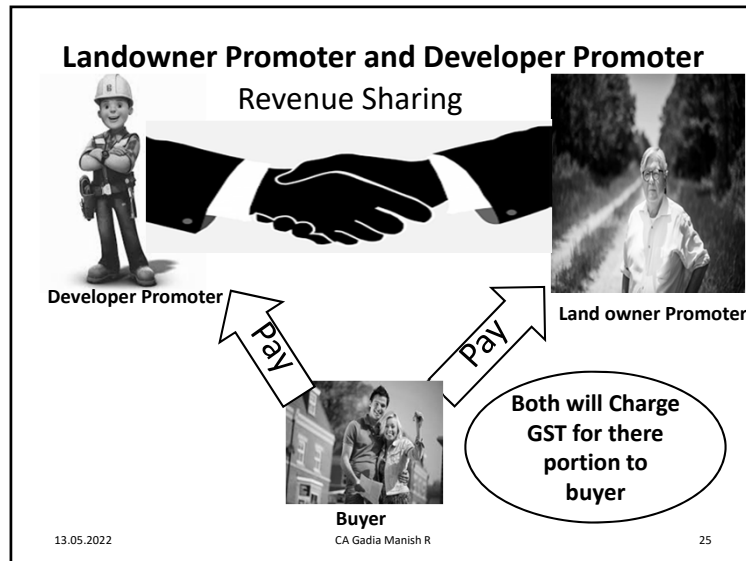
Total No. of Flats 100

Shall Arise on or 1st Occupation whichever is earlier.

Value of Supply of Services by way of transfer of development rights or FSI by a person to the promoter against consideration in the form of residential or commercial apartments shall not exceed to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter.

GST on Additional FSI / Long Term Lease Premium on unsold Flats @ 18%. Hence GST payable on the same would be Rs.5,40,00,000/- However not exceeding 5%. Actual Payable = Rs.1,50,00,000/-

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Issues

- What is the significance of term “One time option”?
 - Whether option once exercised, does it become irrevocable?
 - Can one amend option selected inadvertently?
- Whether option is to be exercised qua:
 - Unit? Financial Year? Project? Entity?
- Whether different options can be exercised in respect of different buildings in same plan layout?
- Whether one can exercise different options in respect of flats sold before 31st March 2019 and flats to be sold thereafter?


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Issues

- Builder was selling affordable house and charging 8% tax till 31.03.2019. Due to cap of Rs.45 lakhs, the houses in the project does not fall in definition of ‘Affordable Residential Apartment’ on or after 01.04.2019. Builder intends to opt for old scheme of taxation as there is huge ITC accumulation for this project. What will be applicable tax rate in such case?
- In case builder does not opt for old scheme, what will be tax rate applicable to erstwhile affordable houses?
- Rent not paid by tenants due to Covid-19?

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Registration




Head office - Pune


Has a Property which is Rented

→

Not required to take Separate GST Registration in Rajasthan. IGST can be Charged.




Rented Property - Jaipur



Head office - Pune

There would be various Local Purchases the Credit for which has to be claimed. Hence it is advisable to take Separate Registration and claim the same.

▶



Construction Site - Jaipur

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Navbharat Times, Mumbai 15th March, 2019

से जुड़े सवाल-जवाब
सीए-मनीष गाडिया
 जीएसटी सवालों को ई-मेल करें।
 helpnbt@gmail.com

सवाल : हम महाराष्ट्र में जीएसटी के तहत रजिस्टर हैं। हम यह जानना चाहते हैं कि अगर हम नीलापी में निजी पार्टी से बहुत सारा स्क्रैप खरीदते हैं और इसे दूसरी पार्टी को जैसा है वैसा ही स्क्रैप महाराष्ट्र में बेचते देते हैं, तो क्या इसे जीएसटी के तहत सीजीएसटी और एसजीएसटी चार्ज करने के बचने की अनुमति है? अगर हमें कर्नाटक में कुछ खरीद कर और बहुत से या अलग-अलग टुकों से अलग-अलग खरीदारों के पास पहुंचाना है, तो क्या हमें दूसरे जीएसटी रजिस्ट्रेशन की जरूरत है?

-पुन जैन

जवाब : अगर माल की सव्दाई नहीं की गई है- उदाहरण के लिए आपके गोदान में माल पड़ा है और खरीदारी ने सीधे आपके गोदान से खरीद लिया या इसे किसी अन्य को

सीधे बेच दिया, तो इसमें माल की आवाजाही नहीं होगी। बावजूद इसके यह एक इंट्रा-स्टेट सव्दाई होगी और आपको इसके लिए CGST और SGST देना होगा।

सवाल : मैं मध्य प्रदेश में जीएसटी के तहत रजिस्टर हूँ। मेरे पास आन्ध्र प्रदेश में एक कमर्शियल प्रॉपर्टी है, इससे मुझे किराया मिल रहा है। क्या मुझे आन्ध्र प्रदेश में जीएसटी के तहत रजिस्टर होने की जरूरत है?

-अशोक जैन

जवाब : अचल संपत्ति के किराए के मामले में, आपूर्ति का स्थान हमेशा वह स्थान होगा, जहां संपत्ति स्थित है। आप मध्य प्रदेश जीएसटी के तहत रजिस्टर हैं, इसलिए आपको IGST चार्ज करना होगा, क्योंकि आपूर्तिकर्ता की जगह मध्य प्रदेश में है और आपूर्ति की जगह आन्ध्र प्रदेश में है। इसलिए, आपको मध्य प्रदेश में जीएसटी फंजीकरण लेने की आवश्यकता नहीं है।

Registration

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Stock Transfer

Bricks,Cement etc. Transferred (Intra-State)
 Consignment Value=Rs 75,000/-



Site A-Pune



Site B-Mumbai

- Whether this is a Supply?
- Whether E-way bill is required to be issued? If Yes, How?

This will not be treated as Supply

- Whether this is a Supply?
- Whether E-way bill is required to be issued? If Yes, How?

This will be treated as Supply

E-way Bill will have to be issued since the Consignment Value is above Rs. 1,00,000/-



Site C-Ahmedabad

E-way Bill will have to be issued since the Consignment Value is Above Rs. 50,000/-

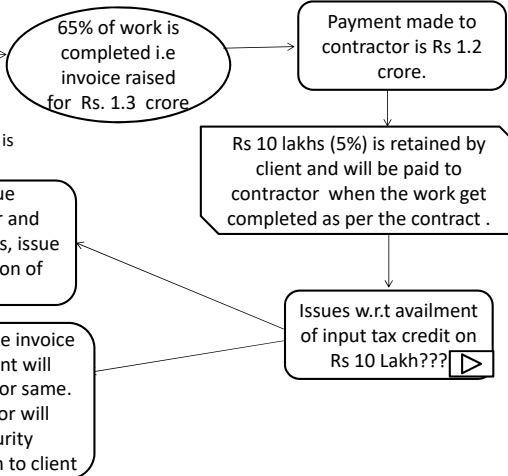
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Retention



Construction site-contract is of Rs 2 crore.



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Maarq Spaces Private Limited Karnataka AAAR

- **Facts:**

- The applicant has entered into a Joint Development Agreement with Landowners for development of land into residential layout along with specifications and amenities.
- The consideration was agreed on revenue sharing basis in the ratio of 75% for Landowner and Agreement Holder and 25% for Applicant.
- Cost of the development shall be borne by Applicant.
- Pursuant to JDA, Applicant had entered into an agreement with customers for sale of developed plots for consideration.

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- **Issue:**

- Whether the activity of development and sale of land attract tax under GST?
 - If the answer to the question no.1 is yes, for the purpose of taxable value, whether provision of rule 31 can be made applicable in ascertaining the value of land and supply of service?
- **Applicants Interpretation:**
 - It is a Composite Supply and predominant supply is sale of land and covered under Schedule III, hence neither supply of goods or service.
 - law requires the applicant to transfer the ownership on the developmental works such as roads, drains, water supply mains, parks and open spaces, civic amenity areas, therefore the applicant cannot have agreement for supply of service but can only enter agreement for sale of land.

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- **Judgement:**

- the landowners give the rights of using the land to the developer in exchange for which, the developer gives the service of developing the land of the owners.
- there is a clear rendering of a service by the developer to the landowner in developing the land which belongs to the landowner.
- Rule 31 applies in the instant case and the value of the supply is equal to the total amount received by the applicant, which is equal to 25% of the market value of each plot.
- **A combination of 2 activities 1 of which is not a supply under GST cannot be said to Composite Supply.**
- **a transaction shall be out of GST net only if the activity is exclusively dealing with transfer of title or transfer of ownership of land.** If the transaction of sale of land is coupled with another activity such as infrastructure works, then this exclusion will not apply.

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Sale of Plotted Land

Shree Dipesh Anilkumar Naik – Guj AAR



- **Facts :**

- The applicant is having a vacant land outside the municipal area on which he has some proposed business activity. The applicant is having all the necessary approvals for the proposed project from the Plan Passing Authority (i.e. Zilla Panchayat).
- As per the Plan Passing Authority, the seller of land is required to develop the primary amenities like Sewerage and drainage line, Waterline, Electricity line, Land levelling for road, Pipeline facilities for drinking water, Street lights, Telephone line etc.
- The applicant will sell the individual plots to different buyers without any construction on the same but by providing the primary amenities as mentioned above, which are a mandatory requirement of the approved Plan Passing Authority.

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- **Issue:**

- Whether GST is applicable on sale of a plot of land for which, as per the requirement of approved by the respective authority (i.e. Zilla Panchayat), Primary amenities such as, Drainage line, Waterline, Electricity line, Land levelling etc. are to be provided by the applicant?

- **Judgement:**

- The sellers charge the rates on the super built-up basis and not the actual measure of the plot.
- The super built-up area includes the area used for common amenities, roads, the water tank and other infrastructure on a proportionate basis. In other words, such common amenities, roads, the water tank and other infrastructure is an intrinsic part of the plot allotted to the buyer.
- GST is applicable on sale of plotted land.

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Issues for Composite/ Mixed Supply

Items given FOC/ as part of sale of flats

- Air Conditioner
- Fridge
- Modular Kitchen
- TV
- Car
- Items given as gift/free for First few bookings, Lucky Draw Scheme, etc.

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Valuation of Flats For GST Rates

Total Value of Flat :	Rs. 90,00,000
Less: <i>Deemed</i> value of land :	Rs. 30,00,000
Taxable Value :	Rs. 60,00,000
Rate :	18%
<u>GST Payable</u>	
CGST @9%	Rs. 5,40,000
SGST @9%	Rs. 5,40,000

**Can Actual Value of Land be claim as deduction?
The immovable property part is to be excluded in terms of the decision of the Supreme Court in case of L&T (2014) (303) ELT (003) in para 115**

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Munjaal Manishbhai Bhatt vs. Union of India - on 6 May 2022 - Guj HC

- **Issue**
- Deduction of 33% value of Land is Constitutional?
- **Held**
- Ad-hoc rate of 33% cannot be applied for ascertaining the value of land for calculating goods/service portion in the sale of under construction flat. More so when the actual value of the land is available in the contract
- Government cannot rewrite the contract which is already entered by the two independent parties and try to find the value of supply when it is specifically provided in the contract
- GST law has prescribed Valuation Rules which are comprehensive enough to take care of various situations where the taxable value cannot be determined from the transaction value
- Ad-hoc deduction of 33% towards the value of land should be given as an option and not as a compulsion

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What next...

- Agreement shall be drafted very carefully.
- Deduction of 33% toward value of land is optional.
- Give value of land and service separately in the contract.
- Balance value shall be Work Contract Service.
- ITC shall be available to developers.

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open market value

- means
- the full value in money,
- excluding the integrated tax, central tax, State tax, Union territory tax and the cess
- payable by a person in a transaction,
- where the supplier and the recipient of the supply are not related and
- price is the sole consideration,
- to obtain such supply at the same time when the supply being valued is made



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supply of goods or services or both of like kind and quality

- means
 - any other supply of goods or services or both
 - made under similar circumstances
 - that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned,
 - is the same as, or closely or substantially resembles,
 - that supply of goods or services or both.
- If more than one value of identical goods is available, then the lowest of such value should be taken [Resina Combination vs CC 1999 (114) E.L.T 860 (Tri.)]
- Comparison of goods must be of identical goods at the same commercial level [Sandip Agarwal vs CC 1992 (62) E.L.T 528 (Cal)]

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E.L.T 528 (Cal)

Determination of REP or RREP

- Whether the area of Club House, Gym, Community Hall, Parking, etc. are to be considered as area for residential or Commercial Use for the purpose of calculating 15% area of commercial Apartment.
- other name, it is a separate and self-contained part of any immovable property including one or more rooms or enclosed spaces, located on a plot, roof, in a building or on a plot, residential or commercial room or godown or for any other purpose specified;
- As declared to RERA Authority.
FAQ 3 Dtd. 14th May, 2019
- **“Residential apartment”** shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;
 - **“Commercial Apartment”** shall mean an apartment other than Residential Apartment.

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Explanations to Rate

- **Carpet Area** means Carpet Area as per RERA.
 - **Metro Cities** are Bengaluru, Chennai, Delhi NCR (Limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (Whole of MMR)
 - For the purpose of calculating **Value** the Gross Amount shall be sum total of:-
 - Consideration charged for Flats
 - Amount charged for the transfer of land or undivided share of land, as the case maybe including by way of lease or sub-lease
 - Any amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.
- Shall not include Stamp duty, Maintenance or deposit for maintenance, maintenance for common area
- FAQ 4 Dtd. 4.5.19
- **Promoter** means Promoter as per RERA.

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“Ongoing Project”

- (a) **commencement certificate** in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is **certified** by any of the following **that construction of the project has started on or before 31st March, 2019:-**
 - (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 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.
 - (b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub-clause (a) above that construction of the project has started on or before the 31st March, 2019;
 - (c) **completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;**
- Part OC eligible for ongoing FAQ 34 Dtd. 7.5.19
- (d) **apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.**
- Explanation.- For the purpose of sub- clause (a) and (b) above, construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.**

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Definitions

- **"commencement certificate"** means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan;
- **"competent authority"** as mentioned in definition of "commencement certificate" and "residential apartment", means the local authority or any authority created or established under any law for the time being in force by the CG or SG or UT Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;
- **an apartment booked on or before the 31st March, 2019** shall mean an apartment which meets all the following three conditions, namely-
 - part of supply of construction of which has time of supply on or before the 31st March, 2019 and
Incuse of Redevelopment Etc. Deemed to be satisfied FAQ 35 Dtd. 7.5.19
 - at least one instalment has been credited to the bank account of the registered person on or before the 31st March, 2019 and
 - an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the 31st March, 2019

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RERA Definitions

1. **"carpet area"** means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.
Explanation.— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be.
2. **"promoter" means,—**
 - (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
 - (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
 - (iii) any development authority or any other public body in respect of allottees of—
 - (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or 9 of 1932. 6 of 2009.
 - (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or
 - (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or
 - (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or
 - (vi) such other person who constructs any building or apartment for sale to the general public.
Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sell apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

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Explanation for TDR

- "an apartment booked on or before the date of issuance of completion certificate or first occupation of the project" shall mean an apartment which meets all the following three conditions, namely-
 - (a) part of supply of construction of the apartment service has time of supply on or before the said date; and
 - (b) consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date; and
 - (c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.
- **"floor space index (FSI)"** shall mean 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."

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What is Place of Business?

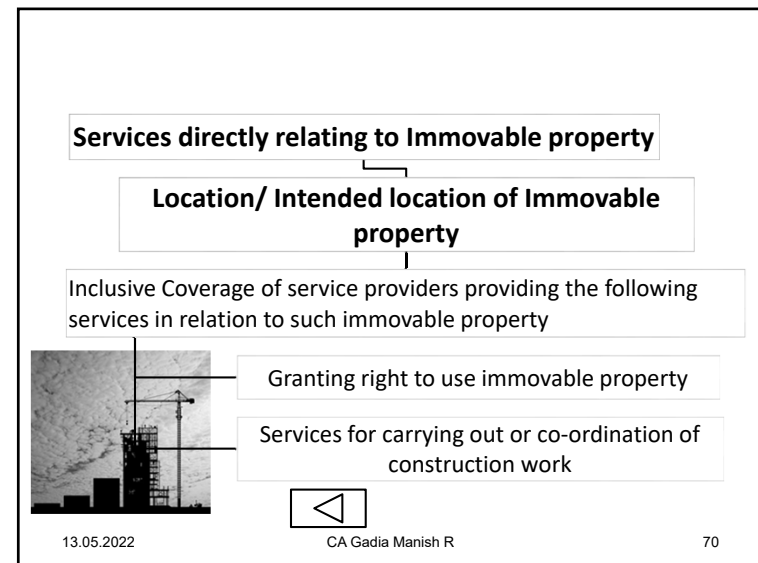
- a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both
- a place where a taxable person maintains his books of account
- a place where a taxable person is engaged in business through an agent, by whatever name called

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Place of Supply of goods other than export and Import	
Where the supply involves movement of goods	
Whether by the supplier or the recipient or by any other person	Location of the goods at the time at which the movement of goods terminates for delivery to the recipient.
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Provided that
<ul style="list-style-type: none"> • Where the goods against an invoice are received in lots or instalments, the registered taxable person shall be entitled to the credit upon receipt of the last lot or instalment • Payment not made to supplier of goods/service/both within 180 days from the date of issue of invoice: Reverse the credit along with interest (Interest Shall be Applicable from the Date of Invoice) <ul style="list-style-type: none"> - If Part payment is made and part not made beyond 180 days only the proportionate credit in respect of payment not made has to be reversed - In Case of Supplies without Consideration Payment to Supplier is deemed to be made
<p>13.05.2022 CA Gadia Manish R 71</p>