

# **PANEL DISCUSSION ON ISSUES UNDER REAL ESTATE**

## **CASE STUDIES NO.1**

### **FACTS OF THE CASE :**

1. Mr. Abhishek Land Owner granted Development Right in respect of piece of land held as Capital Asset , to M/S. Surana Construction in Oct 2016 by execution of Registered Development Agreement.
  - Total 30000 sq ft FSI ( which includes TDR loading of 5000 sq ft by developer in future ) to be explored for development of residential Project.
  - Possession of land to the Developer was given in August 2017 for land levelling work.
  - Plans were approved for January 2018 for 25000 sq ft and for balance 5000 sq ft plans were approved in May 2019.
  - The Development Agreement was on Revenue Sharing basis wherein Land Owner will get 38 % of revenue.
  - It was agreed that in the event of unsold units on the date of completion of Project , the said unsold unit area shall be divided between the Land Owner and Developer in the ratio of 38 : 62.
  - M/s. Surana Construction started the work but on account of financial difficulties arising from revenue sharing , there was renegotiation between both of them in May 2019 by way of registered supplementary deed .
  - Revenue Sharing Mode was changed to Area Sharing Mode in the ratio of 38 : 62 in respect of unsold units.

- Earmarking of allotment to land owner in respect of unsold units was done in May 2019 by execution of Registered Supplementary Deed after loading TDR portion.
- For sold units Revenue sharing arrangement continued.
- Till January 2019 , Developer has booked some apartment totaling 5000 sq ft with sales consideration of Rs. 10 crores with some Registered Agreement and some Allotment letter.
- Land Owner has sold 4500 sq ft for consideration of 9 crores in June 2019 & Developer sold 9500 sq ft out of his quota .
- The Completion Certificate for the Project was delayed by one year and received on 30<sup>th</sup> June 2022 and unsold units position is

Land Owner portion	5000
Developer portion	6000

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### **ISSUES UNDER GST :**

- a. Whether law on the date of execution of Development Agreement will apply for taxation of development Right ?
- b. If yes , on 30000 sq ft OR on 25000 sq ft + 5000 sq ft in May 2019 ?
- c. Initially it was Revenue Sharing arrangement – time of supply for taxation of supply of Development Rights would be
  - i. On execution of Agreement for Sales with customers OR
  - ii. On proportionate due basis or receipt basis
- d. Whether exemption can be availed for supply of Development Rights in respect of area sharing arrangement done in May 2019 subject to RCM liability ?
- e. If there are credits even after reversal under Rule 42 , can the same be utilized against other output taxable services of entity?

### **ISSUES UNDER INCOME TAX :**

- a. Taxability aspect of Original Development Agreement under Revenue Sharing arrangement ?
- b. The provisions of Section 45 ( 5 A ) of Income Tax are qua execution of Development Rights or qua receipt of completion certificate ?

- c. In respect of revised arrangement of Development Agreement for shift to area sharing , can Land Owner opt for taxation u/s 45 ( 5 A ).
- d. Whether proportionate benefits still available u/s 45 (5 A ) for unsold units or will it be governed by normal provisions ?

**ISSUES UNDER RERA :**

- a. There is delay in possession by one year and customers are asking for interest for delayed possession u/s 18.

Whether liability of payment of interest would be joint and several or otherwise under following situations ?

- i. Developer sold units under Revenue Sharing arrangement.
  - ii. Developer sold his portion of units under Area sharing
  - iii. Land Owner sold his portion of units under Area sharing
- b. Whether position will change if Agreement for Sales are executed under MOFA ?
  - c. Developer has offered possession by obtaining Part OC to some customers but they are refusing to accept possession on the plea that project is not completed . Can Customer still ask for interest for delayed possession u/s 18 of RERDA, 2016 ?