



# WIRC RERA STUDY GROUP MEETING for Aug 2022





**WIRC RERA STUDY GROUP MEETING for  
Aug 2022**

**23rd Aug 2022 - 6 pm to 8 pm**

**Intricacies and relativeness of RERA Vis-a-Vis GST**

**By CA Vinay Thyagaraj  
Bengaluru**



WIRC RERA STUDY GROUP MEETING for  
Aug 2022

RERA is not just a Act  
It is a  
Practice



## Points for the today session

1. Enactment and Jurisdiction
2. Definitions under GST and RERA
3. During Transition
  1. Anti profiteering
4. During the tenure of the project
  1. Quarter on Quarter
  2. Year on year
5. At the end of the project
  1. Completion Date and exit
6. Compliance Levels
  1. Group Level
  2. Entity Level
  3. Project with phases Level
  4. Phase Level
7. Few decided cases



## RERA and GST - The Game Changers for Real Estate



Details	RERA	GST
Enacted by	Central Government	Central Government
Effective Date	01.05.2017	01.07.2017
Powers Vested to Draft and Notify the Rules	State Government	Central and State Government
Officers to regulate the Act	State	Central and State
Amendment to Act / Rules	Negligible	Very Dynamic
Impacted	To all Real Estate stakeholders	To All Industries
Revenue earned belongs to	State Government	State and Central



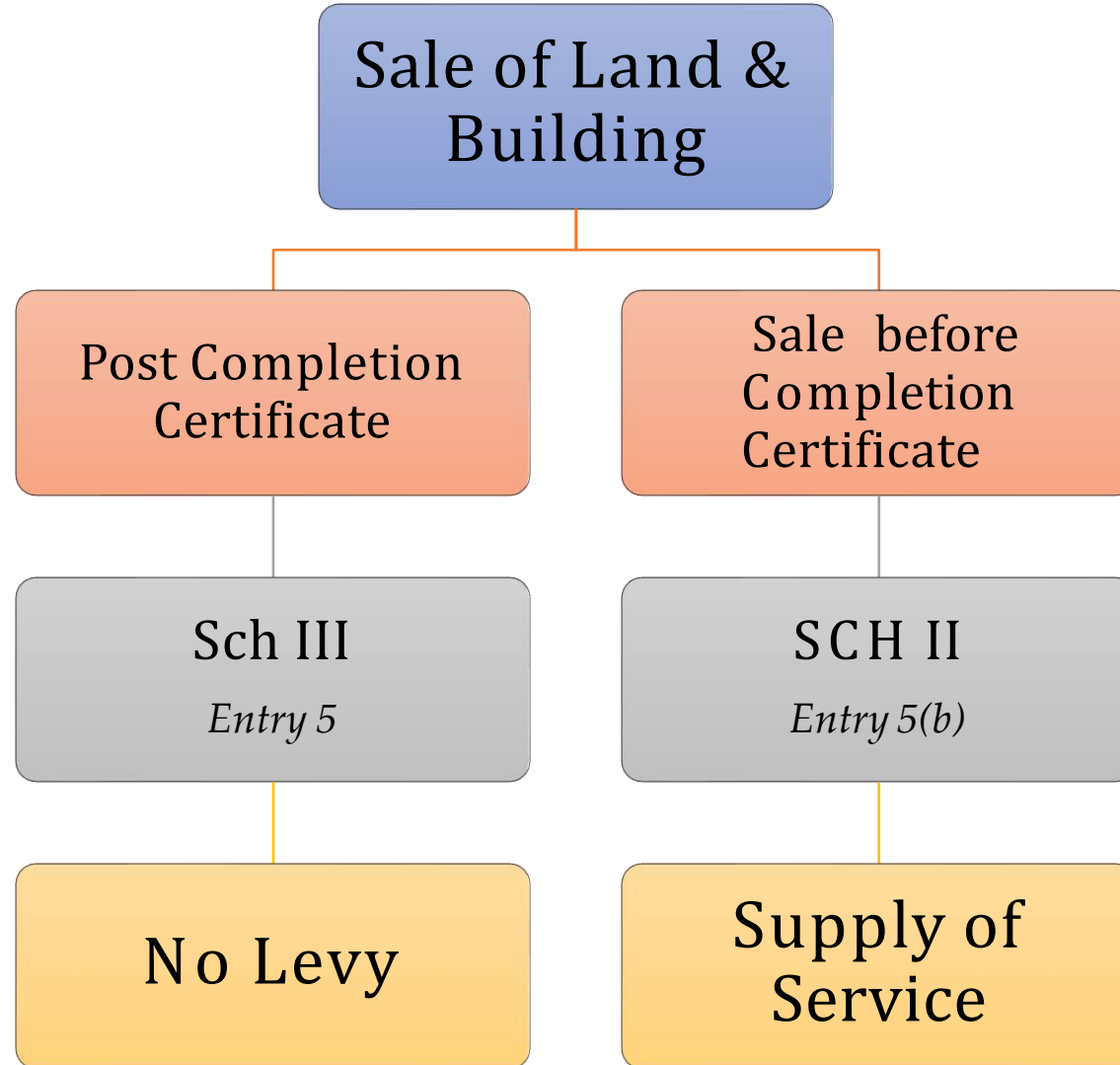
Note – I am not a GST practitioner.

My presentation is based on the RERA, points to ponder or consider in GST in Real Estate

You are welcome to mention if i am not correct in any of the slide.

Give your inputs so that can include in the presentation

# Taxability under GST





## SCH II & SCH III

Para 5(b) of Sch-II : 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.

Para 5 of Sch-III : Activities neither a Supply of Goods nor a Supply of Services

Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.





## GST on Real Estate - Definitions

1. RERA Act being the statute for Real Estate Industry. Any statute subsequent to enactment of RERA Act, referring the definitions as per RERA.
2. Means, other statute shall consider RERA as the regulator for Real Estate, other statute definition cannot have conflict while defining the words.
3. We have experienced in GST, Income Tax viz., Apartment, Real estate project, promoter, Carpet Area etc



# RERA and GST - Definitions



Definition under GST	GST	RERA 2(e) of RERA Act apartment
Apartment	shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016)	whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, <b>means</b> a <b>separate</b> and <b>self-contained</b> part of any immovable property, including one or more rooms or <b>enclosed</b> spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified



# RERA and GST - Definitions



Definition under GST	GST	RERA Section 2(k)
Carpet Area	The term “carpet area” shall have the same meaning assigned to it in in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);	the <b>net usable floor area</b> of an apartment, <b>excluding</b> the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but <b>includes</b> 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, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and “exclusive open terrace area” means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;



# Affordable Residential Apartment



**a residential apartment in a project having carpet area not exceeding**

60 sq.mts(~645 SFT) in metropolitan cities or

90 sq.mts(~969 SFT) in cities or towns other than metropolitan cities and

for which the gross amount charged is not more than 45 Lakhs rupees.

**Gross Amount shall be the sum total of:**

Amount charged for Construction services

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

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.

What is the Carpet Area as reported in RERA Application or as per CA Certificates issued ?



# Carpet Area – U O M for Real Estate



## Carpet Area -

1. Carpet Area is the Unit of Measurement for Real Estate
2. All Transactions in a Real Estate shall be with reference to Carpet Area and Common Area
3. Carpet Area is Defined in RERA
4. GST and Income Tax directs to RERA Act for the Definition of Carpet Area
5. So, it is important for the promoters to arrive at correct carpet area of the units and total carpet area of the project.
6. Sale Agreements as notified by the states is now clear that any shortfall in carpet area, shall be compensated by the promoter
7. Excess Carpet Area if any shall be dealt as per the Sale Agreement (consider the model agreement notified by the respective states)

What is the Carpet Area as reported in RERA Application or as per CA Certificates issued ?



## Agreement of Sale as notified – K RERA / TS RERA



*[Applicable in case of an apartment]* The Promoter shall confirm to the final carpet area that has been allotted to the Allottee after the construction of the Building is complete and the occupancy certificate\* is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area. **The total price payable for the carpet area shall be recalculated upon confirmation by the Promoter.** If there is any reduction in the carpet area then the Promoter shall refund the excess money paid by Allottee within sixty days with annual interest at the rate prescribed in the Rules, from the date when such an excess amount was paid by the Allottee. If there is any increase in the carpet area, which is not more than three percent of the carpet area of the apartment, allotted to Allottee, the Promoter may demand that from the Allottee as per the next milestone of the Payment Plan as provided in **Schedule-C**. All these monetary adjustments shall be made at the same rate per square feet as agreed in para 1.2 of this Agreement.



## Eg., on Carpet Area and Impact on GST



### Facts –

1. Client has entered into agreement with the promoter for a apartment with less than 60 Sq Meters (i.e, 59 Sq Meters of Carpet Area + 20 Sq Meters of share in Common Area - totaling to 79 Sq Mtr of Saleble Area/Super builtup Area) for Rs. 44 Lacs
2. As per the Agreement of Sale the promoter has mentioned 1.5 % as GST as applicable to Affordable Housing
3. During the construction the promoter has changed the construction specification from Brick to Mivan for a faster delivery.
4. On Completion of the Project, physical area of the unit is 62.5 Square meters.
5. Promoter has sent the demand along with revised GST of 7.5 % (instead of 1.50%)
6. Allottee declined to pay the consideration for 3.5 Square Meters and differential GST due to increase in Carpet Area





## Impact on profits due to Carpet Area



Consideration per unit	44,00,000	44,00,000	
GST Net 1%	44,000		
GST Net 5%		2,20,000	
Difference per unit			1,76,000
100 Units			1,76,00,000





## Project under GST

“project” shall mean a Real Estate Project or a Residential Real Estate Project

“Real Estate Project (REP)”

shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016)

“Residential Real Estate Project (RREP)”

shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;

**REP where Commercial apartment is  $\leq 15\%$  of Total Carpet Area**



# RERA and GST - Definitions



Definition under GST	GST	RERA Section 2(zn)
Real Estate Project (REP)	shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016)	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 apartment, 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



## What to consider for this 15 %

### **REP where Commercial apartment is $\leq 15\%$ of Total Carpet Area -**

Generally, in every residential apartment complex, there will be a area for commercial activity viz., convenient store, supermarket, community hall etc

Most of the time these are part of the complex and handover to the association at free of cost. If so, these 15 % shall be consider as Commercial apartment for the purpose of GST and suffer tax at higher rate or

Only those apartment considered as commercial and available for sale shall be considered for the purpose of GST to consider higher rate



What to consider for this 15 %



**REP where Commercial apartment is  $\leq 15\%$  of Total Carpet Area**

Instead of handing over to the association, the promoter continue to retain these and monetise himself on annuity basis by leasing to 3<sup>rd</sup> parties.

What would be the impact on GST / GST Rate for the project



## Scheme of Registration with RERA

1. It is important to understand the scheme of the project before filing the application for grant of registration.
2. It may be financially feasible considering the GST impact to register the project in phases as per Explanation to Sec 3
3. Read the Sanction plan issued by the planning authority, understand the mix of development and discuss the same with the promoter, explain the impact of the same.



## Saving on taxes and reduced litigation



### Facts -

1. In a Real Estate project, the total commercial area was more than 15 % of total carpet Area
2. On study of the scheme of the project, we assessed the impact of the GST, it was advised to register -
  1. Residential portion as separate project and
  2. Commercial portion as separate project -
3. Recommended to maintain separate books of accounts and avail ITC for commercial portion.
4. Otherwise, reversal of ITC, profits allocation etc are few challenges



F. No. 354/32/2019-TRU (Part 2) dated the 7th May,2019

Sl No	GST Question	Answer
3	<p>Residential Real Estate Project (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 (Clause xix) “Carpet area” shall have the same meaning as assigned to it in clause (of Section 2 of the RERA, 2016 Whether non saleable areas such as society office, club house, etc are to be taken into consideration for determining 15 for deciding whether the project is RREP or not?</p>	<p>The term “Residential Real Estate Project (has been defined in the notification to mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent of the total carpet area of all the apartments in the REP Apartments shall be taken as commercial or residential apartments as declared to RERA authority</p>



## RERA and GST - Definitions



<b>Definition under GST</b>	<b>GST</b>	<b>RERA Section 20(1)</b>
Real Estate Regulatory Authority	shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government	shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government





## RERA and GST - Definitions



Definition under GST	GST	RERA Section 2(m)
Commencement Certificate	Relevant for old scheme upto 31.3.2019  i.e., project must have commenced prior to 1.4.2019 to consider the 18 % with ITC	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



## Explanation to Section 3 of the RERA Act

For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately



F. No. 354/32/2019-TRU (Part 1) dated the 7th May,2019



SI No	GST Question	Reply
30	<p>a) In case of a single building registered as 2 (two) separate projects under the provisions of RERA viz 1st to 10th floor as one Project and 11th to 20th floor as another project, whether the Developer can consider the entire building as single ongoing project, since all the three conditions to be complied with for classifying a project as an ongoing project can be satisfied only if the entire building is considered as a single project?</p> <p>b) Furthermore, if different towers in a single layout are registered as separate projects under the provisions of RERA but where the approvals are common for all the towers, whether the Developer can consider entire layout as a single Ongoing project?</p>	<p>(a) Both the projects registered as separate projects under RERA, 2016 shall be treated as distinct projects for the purpose of Notification No 11 2017 Central Tax ( dated 28 06 2017 as amended by Notification No 3 2019 Central Tax ( dated 29 03 2019 Both the projects will have to independently satisfy the requirements of the definition of ongoing projects</p> <p>(b) No All the towers registered as different projects under RERA shall be treated as distinct projects Only such towers registered as distinct projects for which commencement certificate has been issued on or before 31 03 2019 construction has started on or before 31 03 2019 and for which apartments have been booked on or before 31 03 2019 but completion certificate has not been issued or first occupation has not taken place by the said date shall be treated as ongoing projects</p>



# RERA and GST - Definitions



Definition under GST	GST AS per GST -03/2019	RERA Section 2(zk)
Promoter	<p>(i) “developer- promoter” is a promoter who constructs or converts a building into apartments or develops a plot for sale,</p> <p>(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.</p>	<p>A person who construct or causes to be constructed</p> <p>An independent building or building consisting of apartments -----</p> <p>Clause (i) to clause (vi)</p>



## Promoter – GST and RERA

1. Under GST – Liability of taxes are on Developer Promoter
2. Under RERA – Landowner and Developer are called Promoter. both are liable under RERA. However, Development agreement defines the roles, responsibilities, limitations etc.
3. In various orders passed by various forums that landowner to complete the remaining development of the project in case of developer to fail to complete the works in the project



# RERA and GST - Definitions



Definition under GST	GST Means a project which meets <b>ALL</b> the 3 conditions	RERA Proviso to Sec 3
Ongoing Project	<p><b>Commencement certificate</b> received before 31st March, 2019+ and it is certified by any of the following that construction started on or before 31st March, 2019:-</p> <p style="padding-left: 40px;">an architect registered / a chartered engineer registered / a licensed surveyor of the respective local body of the city or town or village or development or planning authority.</p> <p>Note: where commencement certificate is <b>not</b> required to be issued by the competent authority, it is certified by any of the authorities specified above</p> <p><b>Completion certificate</b> has NOT been issued or <b>First occupation</b> of the project has not taken place on or before the 31st March, 2019;</p> <p>Apartments being constructed under the project have been, <b>partly or wholly, booked</b> on or before the 31st March, 2019</p>	Projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued



## Completion of development works in the Project



Sec 2(q) of the RERA Act defines the completion certificate – means the completion certificate or such other certificate by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan layout plan and **specifications** as approved by the competent authority under the local laws.

**What is Completion Means - as discussed with various professionals and stakeholders - whatever be the promises made by the promoter to the allottees shall be completed in all aspects**



## Impact of receipt of Completion Certificate

As per GST Laws - GST on Real Estate not applicable -

1. On receipt of completion certificate
2. First occupancy





## Other Aspects

### **Compensation adjudged by RERA – in case of individual allottees receives compensation from promoter –**

- 1) Will that attract GST -
- 2) Many a time, promoter may not pay to the allottee, is allottee liable to pay GST based on the order (if allottee has other taxable / supply under GST)



# RERA and GST – Impact on DLP – Sec 14



Details	RERA	GST
The Cost Factor	<p>RERA's 5 Year warranty clause,</p> <ol style="list-style-type: none"><li>1. contractors may charge extra premium towards operation and maintenance and prices will go up.</li><li>2. Five-year warranty clause has another implication too, where due to competition and to keep warrantee cost low, quality of work will eventually improve.</li><li>3. At the same time, due to tight regulations of RERA and limited project launch, competition among contractors will go up and hence eventually prices may go down.</li></ol>	<p>Due to GST, prices of will go down as avoids various cascade and by bringing transparency</p>
Quality Gains	<p>Five year warranty clauses may force manufactures to give back to back warranty and eventually product quality would improve. The big players of the trade may take advantage of their technological edge and can eventually increase the market share due to warrantee strength and thereby try and reduce the price gap with the local players</p>	<p>GST tax benefit will mean that the effective price of better quality material will be marginally higher than current prices. We may expect big façade players to take advantage of this opportunity. Hence, it is expected that the quality will improve.</p>

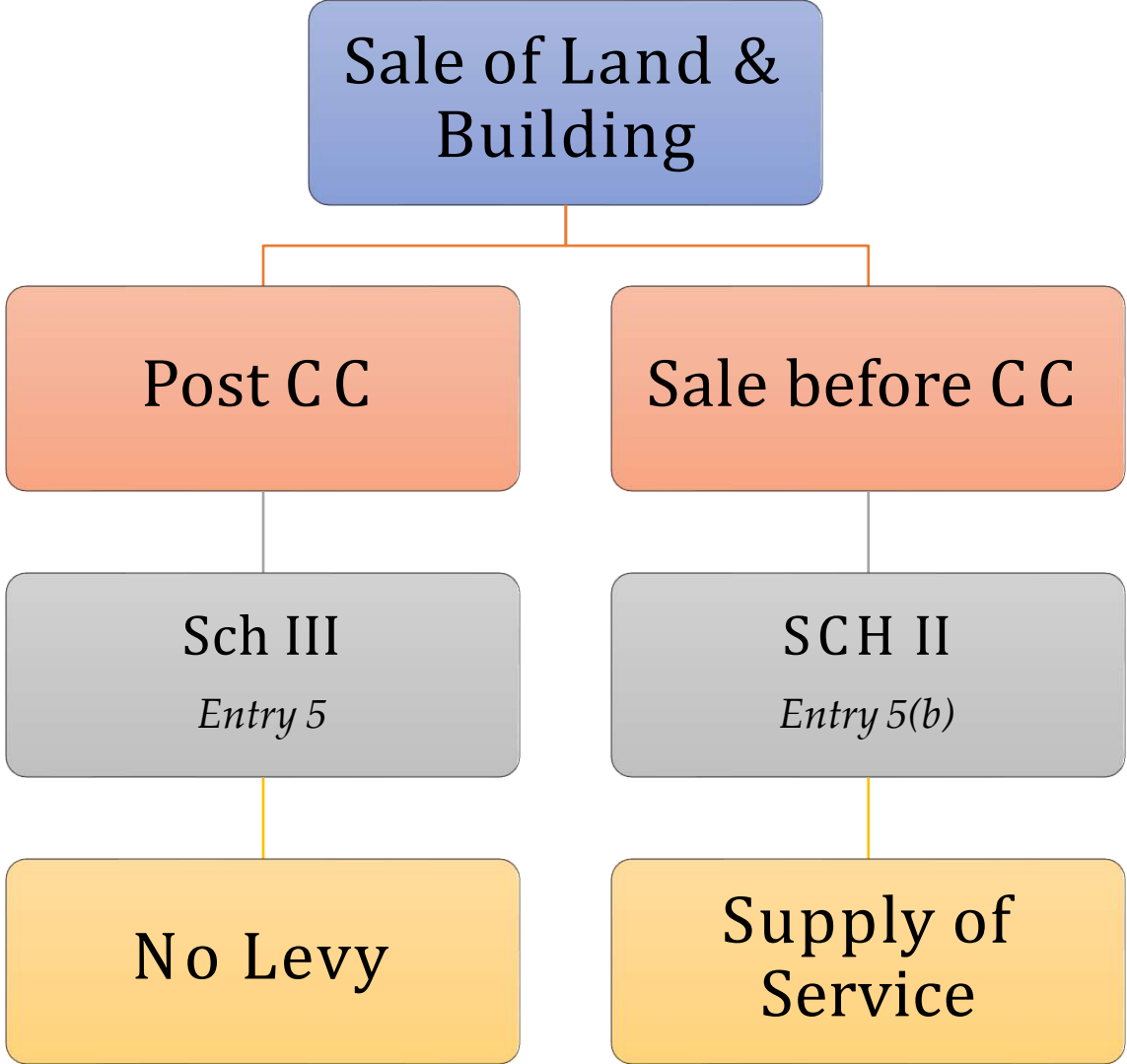


# Quarterly Updates



1. Quarterly updates are the powerful tool in the hands of the regulator / tax department / bankers / financial institutions etc
2. As along with promoter, professionals like Engineer, Architect and Chartered Accountant in Practice issue certificate by certifying the –
  - a) Status of development work
  - b) % of Completion
  - c) Cost Incurred towards construction
  - d) Other Costs incurred
  - e) No of units sold / balance available
  - f) Date of agreement
  - g) Amount realized from the allottees / deposited /withdrawn
  - h) Status of completion of the project
  - i) Along with photographs

# Taxability under GST



How are we reported in Quarterly filing under RERA ?



## Quarterly Updates

1. Who are all involved in the organization for preparation of data for quarterly updates.
2. How serious while preparation and submission to RERA Authority
3. What caution and working prepared and kept by the professionals while issuing the certificates under RERA
4. Wrong or mis reporting has a direct impact on other statutes like – IT, GST, labour etc
5. In order to withdraw the money realized from the allottees, % of completion may show as more, however same shall holds good for GST and income Tax Etc



## % of Completion

1. What is % of Completion
2. Who issue the % of Completion
3. Is % of completion as per AS and Tax Standards are same as that of RERA
4. What is the % of completion for the purpose of GST
5. Any RERA authorities have issued any directions with respect to % of Completion
6. Is financial % of completion be the % completion for RERA. As many a times borrowing cost increase the % of completion if we consider financial % (incurred cost)



# Audit of Accounts under RERA



*Understand the scheme of the project first*

Group –  
multiple  
entities

Entity –  
multiple  
Projects

Project -  
multiple  
Phases / tower

RERA  
Project



# Understand before start

Understand the scheme of the project first – one cannot issue the RERA audit certificate in isolate without understanding project details -

1. Start with RERA Application and details available there on
2. Understand what is mentioned in RERA Application about the project
3. Note down financial aspects of project as per RERA Application
  - a. Ascertain on what basis the financial details are give /declared
    - i. Estimated Cost of the Project
      - a) Estimated Cost of Land
      - b) Estimated Cost of Development (Construction + Other Costs)
    - ii. Amount collected from Allottees
    - iii. Amount Spent as on date of application
    - iv. Amount remaining with promoter, if any





## Understand before start

4. Note down project bank account declared in the RERA Application
5. Collect list of bank accounts maintained by promoter for a project
  - a. Is Single Promoter or Multiple (Bank Account's)
6. policy of promoter in managing the finance of a project –
  - a. Collection account and transfer viz., 30/70
  - b. Lender / JV / JD Escrow account ,if any
  - c. Passthrough charges bank account
  - d. GST / taxes bank account



## National Anti Profiteering - Orders



1. Facts - Promoter developing large residential development consisting of various phases.
2. The project was started in 2014, while RERA is introduced, the promoter has registered the project in various phases as per Expl to Sec 3 of the RERA Act.
3. The promoter has registered project as ongoing and obtained the RERA Registration from the RERA Authorities



## National Anti Profiteering - Orders



4. While obtaining the registration, the promoter has mentioned 53 % as completed and 47 % is the pending work in one of the phase.
5. However, the promoter has collected 72 % of the money from the customers based on the Sale agreement.
6. The promoter has passed only 2 % of future demand as Anti profiteering benefits under GST (i., on 28%)
7. The Allottees have filed complaint before NAA



## National Anti Profiteering - Orders



The Applicant has made oral submissions and requested to supply Annexures mentioned in the Investigation Report of the DGAP. Request allowed. Therefore, all the Annexures (Annex-1 to Annex-22) be supplied to him.

The Respondent has filed written submissions dated 25.02.2020. He is directed to submit following details before next hearing:

- i. Tower-wise details of CENVAT/ITC availed, Turnover, Buyers list, number of sold and unsold units during the Period from April, 2016 to April, 2019 for all the five towers.
- ii. RERA registration certificates of each tower.
- iii. Status of construction of each tower whether OC/CC received or not, if yes, details of reversal of credit for respective tower.



## Calculation Submitted by Customers to N A A

### Anti Profiteering Workings

Work Completed by 1st June	51%
Total Payment Due	1,83,33,261
Paid till 30th Jun	1,31,43,132
% Paid	72%
Extra Paid for work not done	37,93,169
Parkwest not delivered work	37,93,169
Allocated to	
Land	12,64,390
Material	15,17,268
Service	10,11,512
	<b>37,93,169</b>
Expected GST Benefit Credit on Material	1,53,259
Actual Credit Given	15,911
Shortfall in giving Credit	1,37,348

Note : This is taken on Conservative Side; Actual credit should be higher since Land Payments would have been already made by the parkwest long back. Even after giving benefit of doubt this basic credit should have been paid





## Conclusion

40. From the above discussion, it appears that the benefit of additional input tax credit has in fact, accrued to the Noticee and the same was required to be passed on to the Applicant No 2 and the other eligible recipients. Section 171 of the Central Goods and Services Tax Act, 2017 appears to have been contravened by the Noticee, inasmuch as the benefit of additional input tax credit on the demand raised by the Noticee during the post-GST period from 01.07.2017 to 30.04.2019, has not been commensurately passed on to the Applicant and the other recipients. On this account, the Noticee have realized an excess amount to the tune of ₹ 74,929/- from the Applicant No 2 which includes both the profiteered amount in the basic price to the tune of ₹ 66,900/- and GST on the said profiteered amount. Further, the investigation reveals that the Noticee have realized an excess amount of ₹ 3,13,61,443/- which includes both the profiteered amount in the basic price and GST on the said profiteered amount. All of these recipients are identifiable as the Noticee have provided their names and addresses along with unit no.

allotted to them. Therefore, this additional amount of ₹ 3,13,61,443/- is required to be returned to such other eligible recipients. As observed earlier, the Noticee have supplied construction services in the State of Karnataka only.

NAA Order



# Refund of GST to the Allottees



IN THE KARNATAKA REAL ESTATE APPELATE TRIBUNAL, BENGALURU  
APPEAL (K-REAT) NO. 347/2020

DATED THIS THE 08TH DAY OF OCTOBER 2021 in the case of  
M/s Mahendra Homes Private Limited - APPELLANT  
Mrs Potluri Mounica – RESPONDENT

## **Facts**

1. Allottee has cancelled the unit and requested for the refund of the money paid
2. Promoter has refunded by withholding the GST amount
3. RERA Authority has passed order directing the promoter to refund the GST
4. Promoter preferred the Appeal before K REAT



## Refund of GST to the Allottees

The promoter has not made sincere attempt to claim refund of GST as well as the price paid for stamp papers during relevant period and simply with held the said amount due to the allottee on the pretext that the **allottee shall have to approach the concerned authority for refund of the amount.** Hence, the finding of the learned Adjudicating Officer on this issue is well founded.

Accordingly, we are of the considered view that the appellant-promoter cannot withhold the GST amount and the stamp paper amount while refunding the booking amount on cancellation of the transaction.

*Directed promoter to refund the GST*





# Thank you

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