



GST on Real Estate Sector

WIRC of ICAI

13th May 2023

CA. Amish Khandhar

Khandhar Mehta & Shah


Potential impact on various Businesses



DECODING THE ECONOMICS OF COVID-19 POTENTIAL WINNERS & LOSERS IN THE SHORT TERM



Source: Dcode EFC Analysis



- Taxability under GST till 31.03.2019**
- Taxability under GST from 01.04.2019 onwards**
- Taxability of TDR/FSI and Long-Term Lease**
- ITC Reversal Norms as per Rule 42**
- Works Contract Services**

Basic Understanding of Construction Sector under GST

Coverage under definition of Goods and Services

➤ “goods” means –

- *every kind of movable property*
- *other than money and securities*
- *but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.*

➤ “services” means –

Anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination for which a separate consideration is charged; [Explanation : For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities;]

➤ **Schedule III** provides the list of transaction which should be treated neither supply of goods nor supply of service, which includes:

- a) Sale of Land [in service tax “immovable property” was excluded, which means land and its rights]***
- b) Sale of Building, i.e., residential or commercial units where completion certificate is received***

Hence, where completion certificate is not received in case of residential or commercial units, GST will be applicable.

Transaction	Whether GST is payable ?	
Sale of Land	NO	
Sale of Building	Where entire consideration is received after issuance of Completion Certificate	NO
	Where full or part consideration is received before issuance of Completion Certificate	YES
Works Contract Services	YES	

Example:

Payment Received Before BU	Payment Received After BU	GST will be levied on
-	Rs. 50,00,000/-	-
Rs. 30,00,000/-	Rs. 20,00,000/-	Rs. 50,00,000/-
Rs. 50,00,000/-	-	Rs. 50,00,000/-

CHANGES IN WORKS CONTRACT SERVICES
47TH GST COUNCIL MEETING



Increase in GST rates of Works Contract Service

- ▶ GST Rates increased from **12% to 18%** on Works Contract Services:
 - Of roads, bridges, railways, metro, effluent treatment plant, crematorium etc.
 - To Central and State governments, Local authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & sub-contractor thereof.
- ▶ GST Rates increased from **5% to 12%** on Works Contract supplied to Central and State governments, Union territories & Local authorities involving **predominantly Earthwork** and sub-contracts thereof.



Sr.	Service Description	Service Recipient	GST Rate up to 31-12-2021	GST Rate from 01-01-2022	GST Rate from 18-07-2022
1.	Composite supply of works contract by way of construction, repairs, maintenance, etc. of roads, bridges, railways, metro, effluent treatment plant, crematorium etc.	Government or Local Authority	12%	12%	18%
		Governmental Authority or Government Entity	12%	18%	18%
		Other Recipient	18%	18%	18%
2.	Composite supply of works contract provided by a sub-contractor to the main contractor where the main contractor is providing services as specified above (Sr. 1 above) to the specified service recipient.	Government or Local Authority	12%	12%	18%
		Governmental Authority or Government Entity	12%	18%	18%
		Other Recipient	18%	18%	18%
3.	Composite supply of works contract involving predominantly earth work (more than 75% of total contract value)	Government or Local Authority	5%	5%	12%
		Governmental Authority or Government Entity	5%	18%	18%
		Other Recipient	18%	18%	18%
4.	Composite supply of works contract provided by a sub-contractor to the main contractor where the main contractor is providing services as specified above (Sr. 3 above) to the specified service recipient.	Government or Local Authority	5%	5%	12%
		Governmental Authority or Government Entity	5%	18%	18%
		Other Recipient	18%	18%	18%

Clarification on taxability of Preferential Location Charges (PLC):

- ▶ Location Charges or Preferential Location Charges (PLC) forms part of consideration charged for long term lease of land and shall get the same treatment under GST. The classification of long-term lease is as follows:



HSN	Description	GST Rate
9972	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business , provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area	Nil
9972 11	Rental or leasing services involving own or leased residential property	18%
9972 12	Rental or leasing services involving own or leased non-residential property	18%

Clarification on taxability on Plotting:

- ▶ Sale of developed plot with basic amenities like drainage lines etc. shall be considered as a sale of land and hence **not taxable under GST.**



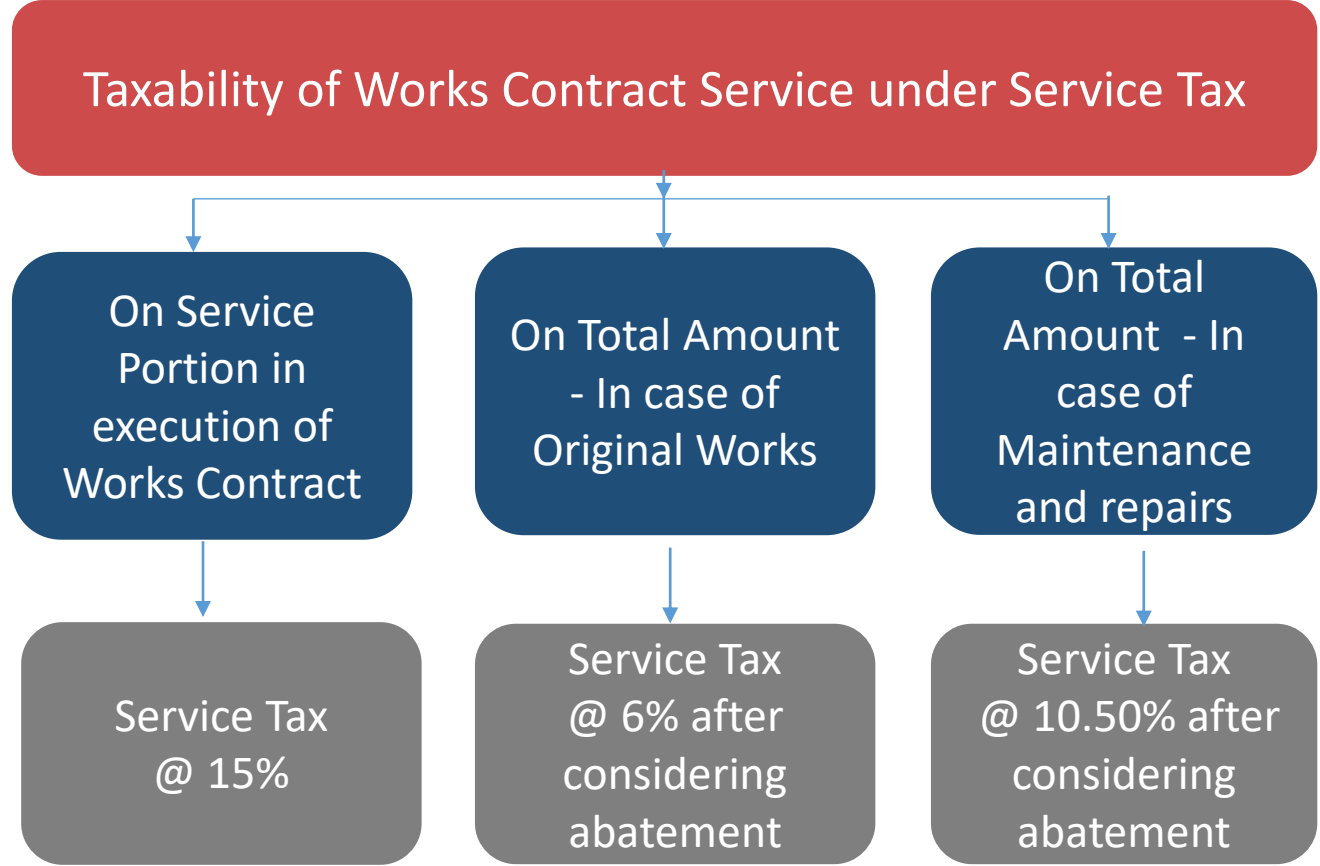
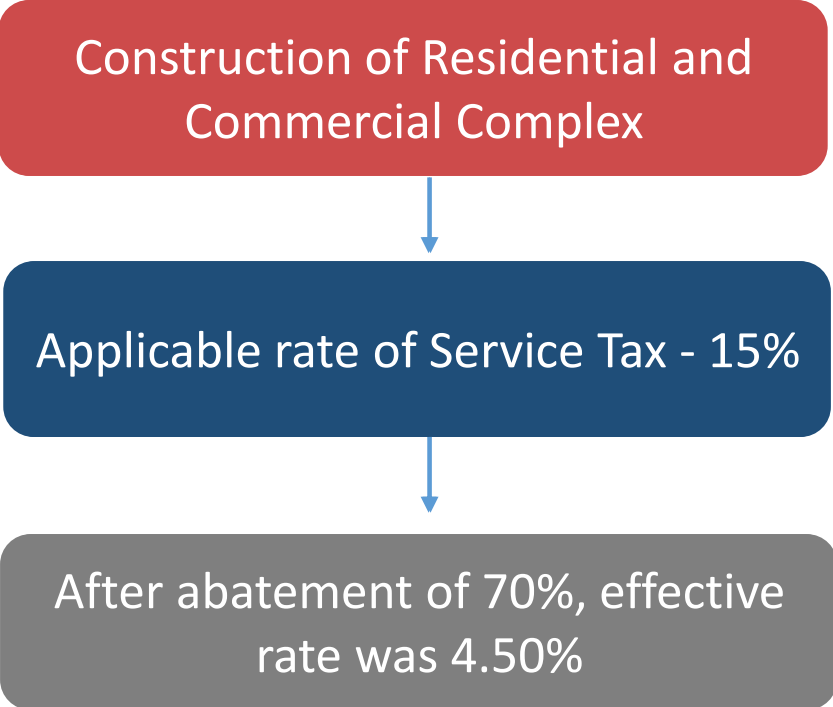
Clarification on taxability of Additional fee/Toll Charges

- ▶ Additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and shall be given the same Tax treatment as given to toll charges. **This clarification equates additional fees for not having Fastag at par with toll charges (which is exempt) and not as a service of toleration of an act or penalty etc.**

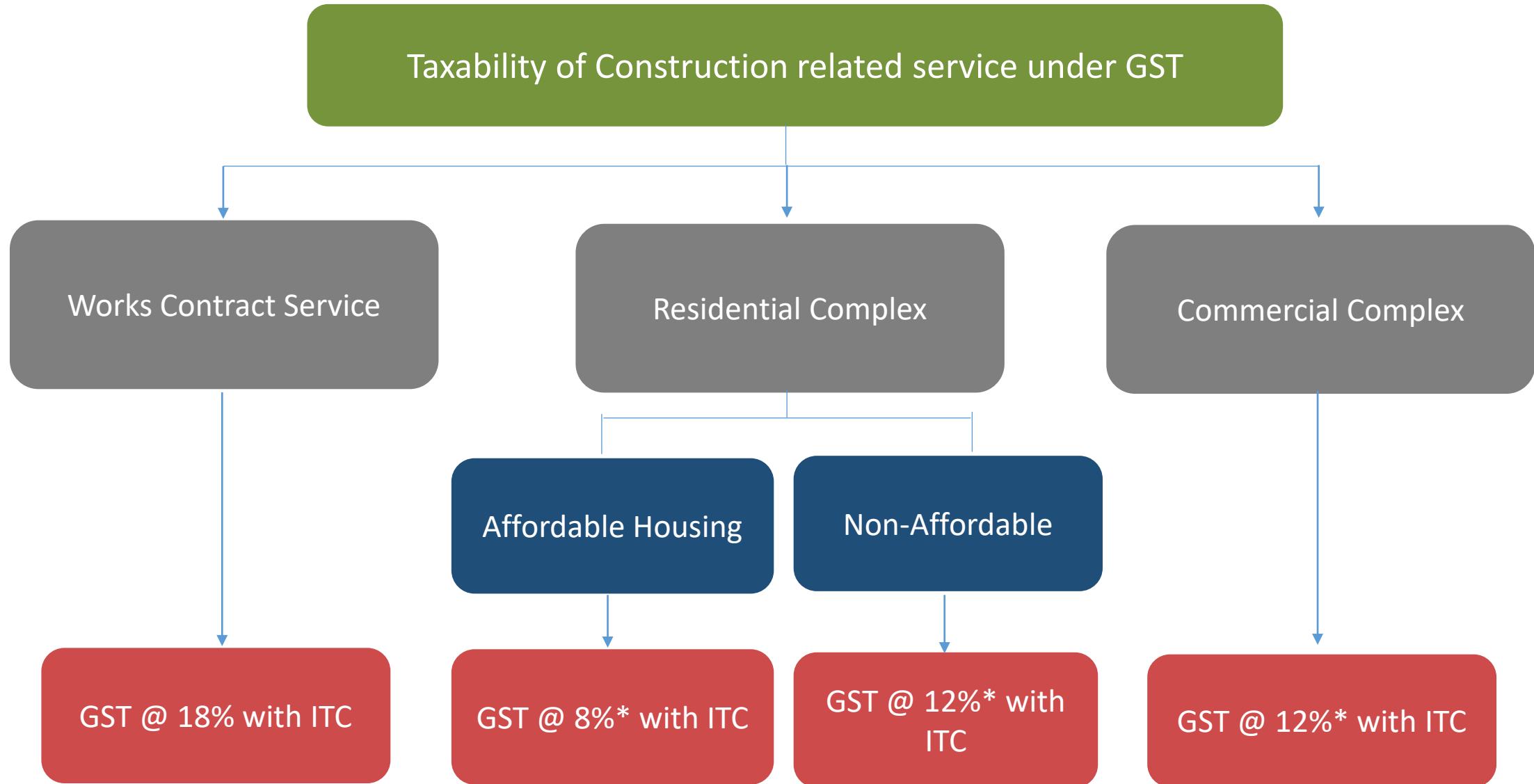
HSN	Description	GST Rate
9967	Service by way of access to a road or a bridge on payment of toll charges.	Nil

Construction Sector under GST (From 01.07.2017 to 31.03.2019)

Rate of Tax under Service Tax



Taxability under GST – From 01-07-17 to 31-03-19



*8% and 12% are effective rates of GST after deduction of 1/3rd of value on account of land value included in the consideration

Applicability of GST on various charges collected by Builder

Component	GST Applicable	GST Rate for Resi Unit Befor 01-04-19 & for old option after 01-04-19 and Commercial Units	GST Rate after 01-04-19 under new option for Non Affordable Residential Units	GST Rate after 01-04-19 under new option for Affordable Residential Units
Subscription Charges, Booking Fees, Administration Fees	Yes	12%	5%	1%
PLC/Floor Rise/ Parking Charges/Legal Charges	Yes	12%	5%	1%
Customer Advances for Flat / Office	Yes	12%	5%	1%
Other Miscellaneous Charges	Yes	12%	5%	1%
Common Infrastructure Development Charges (Road, Fire Safety, Street Light, Play Ground, Garden etc.)	Yes	12%	5%	1%
Club Development Charges / Internal Development Charges / External Development Charges	Yes	12%	5%	1%
Electricity, Sewerage and Water Connection Charges	Yes	12%	5%	1%
Maintenance Deposit	No	-	-	-
Stamp Duty and Registration Charges	No	-	-	-
Membership of Club	Yes	18%	18%	18%
Charges for Cancellation of Booking	Yes	18%	18%	18%
Extra Civil Work Charges	Yes	18%	18%	18%
Interest on Late Payment (Only if actually collected)	Yes	12%	5%	1%

Applicability of GST on Various Charges collected by Society

Various Charges	Residential Society	Commercial Society
Maintenance Charges less than Rs. 7500 per unit per month	Not Taxable	Taxable @ 18%
Maintenance Charges more than Rs. 7500 per unit per month	Taxable @ 18%	Taxable @ 18%
Maintenance Deposit	Not Taxable	Not Taxable
Transfer Fees	Taxable @ 18%	Taxable @ 18%
Other Miscellaneous Charges	Taxable @ 18%	Taxable @ 18%

Note:

- (1) Basic Exemption limit of Rs. 20 Lacs shall be applicable to both, Residential as well as Commercial Society
- (2) In case of Residential Society, exemption of Rs. 7,500 per month per unit is available over and above the basic exemption limit of Rs. 20 Lacs

Construction Sector under GST

From 01.04.2019 onwards

Types of Project – 01-04-2019 onwards

Project Types

Real Estate Project (REP)

Carpet Area (as per RERA) of Commercial apartment more than 15% of the Total Carpet Area

1. Entirely Commercial Project
2. Commercial + Affordable Housing
3. Commercial + Non-affordable Housing
4. Affordable Housing + Non-affordable Housing + Commercial

Residential Real Estate Project (RREP)

Carpet Area (as per RERA) of Commercial apartment is not more than 15% of the Total Carpet Area

1. Affordable Housing
2. Non-Affordable Housing
3. Affordable Housing + Non-Affordable Housing
4. Affordable Housing + Commercial
5. Non-affordable Housing + Commercial
6. Affordable Housing + Non-affordable Housing + Commercial

GST Rates w.e.f. 01-04-2019 – Ongoing Projects

Sr.	Type of Project	Referred as	If Old rate Option is Exercised*	If Old rate Option is not Exercised*
1	Affordable Housing Project	RREP	8%	1%
2	Non-Affordable Housing Project (Normal Residential Project)		12%	5%
<u>Carpet Area of Commercial Apartments is upto 15% of total carpet area</u>				
3	a) Affordable Housing	RREP	8%	1%
	b) Non-Affordable Housing		12%	5%
	c) Commercial Units		12%	5%
<u>Carpet Area of Commercial Apartments is more than 15% of total carpet area</u>				
4	a) Affordable Housing	REP	8%	1%
	b) Non-Affordable Housing		12%	5%
	c) Commercial Units		12%	12%

*The Value of transfer of land or undivided share of land, as the case may be shall be deemed to be one third of the total amount charged for such supply

GST Rates w.e.f. 01-04-2019 – New Projects

Sr.	Type of Project	Referred as	Effective Rate of Tax*
1	Affordable Housing Project	RREP	1%
2	Non-Affordable Housing Project (Normal Residential Project)		5%
3	<u>Carpet Area of Commercial Apartments is upto 15% of total carpet area</u>		
	a) Affordable	RREP	1%
	b) Non-Affordable		5%
	c) Commercial Part		5%
4	<u>Carpet Area of Commercial Apartments is more than 15% of total carpet area</u>		
	a) Affordable	REP	1%
	b) Non-Affordable		5%
	c) Commercial Part		12%

*The Value of transfer of land or undivided share of land, as the case may be shall be deemed to be one third of the total amount charged for such supply

Affordable Housing Scheme

Affordable Residential Apartment means



Project description	Conditions
New project commences on or after 01.04.2019	a) For Metropolitan cities (Bengaluru, Chennai, Delhi NCR, Hyderabad, Kolkata and Mumbai), area of residential unit must be less than or equal to 60 Square Meters;
Ongoing project where builder has not exercised option to pay Tax @ 8%	b) For Non-Metropolitan cities area of residential unit must be less than or equal to 90 Square Meters; <u>AND</u> c) Total Value of residential unit (whether in metro or non-metro must be less than or equal to Rs. 45 Lacs)
Ongoing projects covered under any affordable scheme as per earlier Notification	<p><u>Old Schemes also covered under Affordable Housing:</u></p> <ul style="list-style-type: none"> ➤ Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana ➤ Works pertaining to “In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban) ➤ works pertaining to the “Beneficiary led individual house construction / enhancement” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana ➤ works pertaining to the “Economically Weaker Section (EWS) houses” constructed under the Affordable Housing in partnership ➤ works pertaining to the “houses constructed or acquired under the CLSS for EWS/LIG/MIG-1/MIG-2 ➤ a single residential unit otherwise than as a part of a residential complex ➤ low-cost houses up to a carpet area of 60 square meters per house in an affordable housing project which has been given infrastructure status ➤ a residential complex predominantly meant for self-use or the use of their employees

➤ **Example related to Affordable Housing Project:**

Area (sqm)	Value (In Lacs)	City	Affordable Housing or not	Concessional rate	ITC availability
60	45	Ahmedabad	Yes	1%	No
50	50	Surat	No	5%	
100	40	Nagpur	No	5%	
90	45	Mumbai	No	5%	
55	35	Noida	Yes	1%	
50	50	Hyderabad	No	5%	

Total value includes:

Sr. No.	Particulars
1.	Consideration charged for residential apartment
2.	Charges towards share of land
3.	Any other charges by builder such as preferential location charges, development charges, parking charges, common facility charges etc.

Conditions for New Rates – for Ongoing Projects or New Projects

Conditions to be fulfilled for New Rate

Tax to be paid through **CASH ONLY**. No ITC balance can be used for payment of reduced rates of GST.

ITC attributable to installments due on or after 01.04.2019 shall be reversed in the manner prescribed* either by utilizing ITC Balance or by Cash.

80% of value of input and input services (excluding TDR, Long term lease, Electricity, HSD, Motor spirit, natural gas) to be received from **REGISTERED SUPPLIER ONLY**. #

Project wise account of inward supplies is to be maintained for supplies received from registered and unregistered supplier.**

ITC not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B
[Row No .4(D)(2)].

The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability up to June of every FY.

* Explained in later slides

Explained in later slides

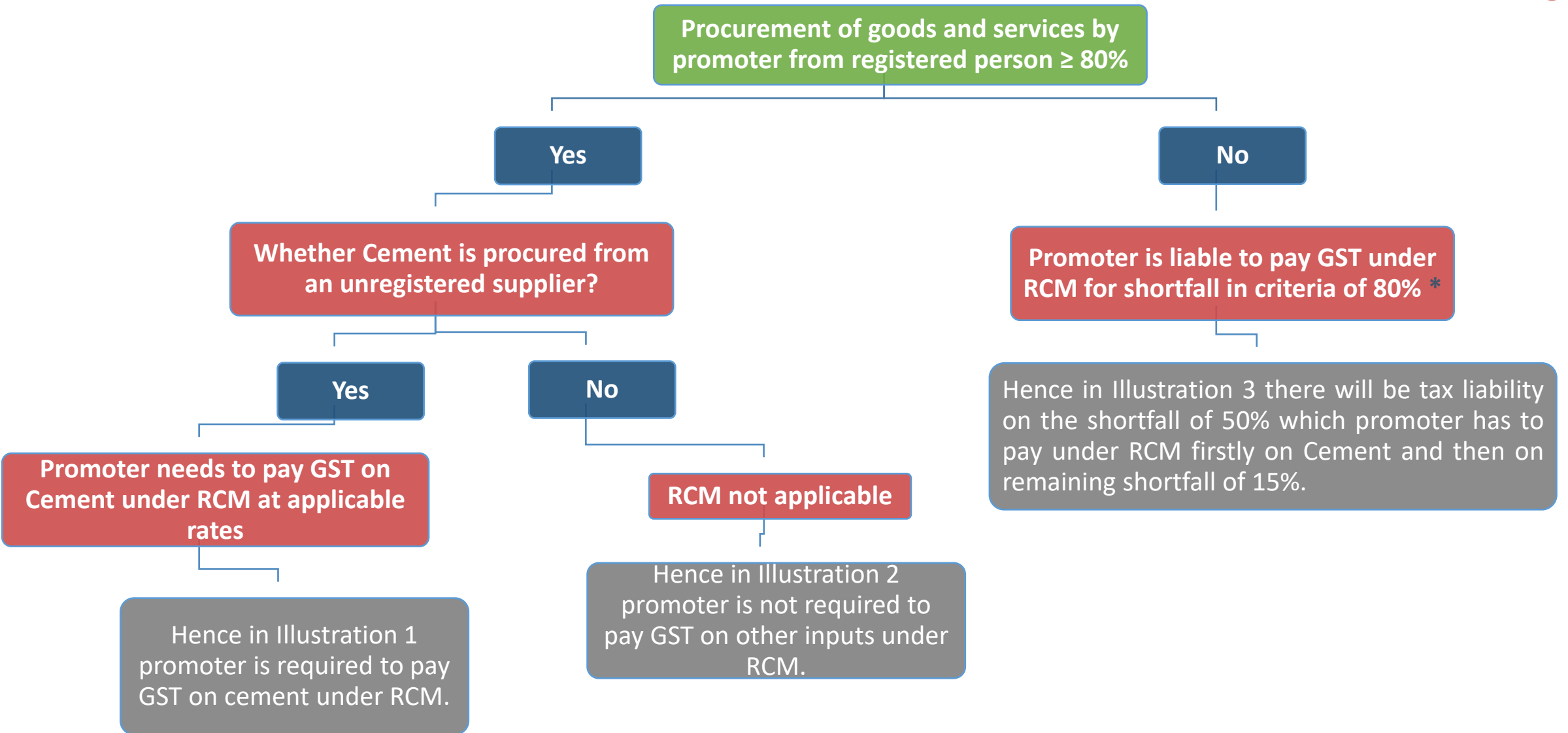
** It needs to be submitted in a prescribed form on GSTN by end of the quarter following the financial year i.e. 30th June after end of the financial year

Illustrations



A promoter has procured following goods and services for construction of a residential real estate project during the financial year

Sr.	Name of Input Goods and Services	Illustration 1		Illustration 2		Illustration 3	
		% of Input Goods/services received during the Financial Year	Whether inputs received from registered supplier?	% of Input Goods/services received during the Financial Year	Whether inputs received from registered supplier?	% of Input Goods/services received during the Financial Year	Whether inputs received from registered supplier?
1	Sand	10	Yes	10	Yes	10	No
2	Cement	15	No	15	Yes	15	No
3	Steel	20	Yes	20	Yes	15	Yes
4	Bricks	15	Yes	15	Yes	10	Yes
5	Flooring Tiles	10	Yes	10	Yes	10	Yes
6	Paints	5	Yes	5	No	5	Yes
7	Architect Designing/ CAD drawing etc.	10	Yes	10	Yes	10	Yes
8	Aluminum windows, Ply, Commercial wood	15	Yes	15	No	25	No



** In case of shortfall in criteria of 80% where inputs procured from an unregistered dealer includes cement, promoter has to pay under RCM firstly on Cement and then on remaining shortfall.*

RCM in case of supplies from unregistered person



Category of supply of goods and services	Supplier	Recipient	Rate of tax	Time of Supply
Supply of such Goods and Services or both (other than services by way of TDR, Long term lease of land or FSI) which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project from the registered person.	Unregistered Person	Promoter	18%	Tax is to be calculated for the full financial year or part thereof (up to date of BU) and to be paid till June of next FY.
Supply of Cement which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project from the registered person.			28%	Tax is to be paid on monthly basis in which it is Procured
Capital Goods supplied to a promoter for construction of a project.			Applicable Rates	

New Insertion in Rate Notification for Works Contract Service

Nature of Service	GST Rate	Conditions
Works Contract Service provided for Construction of Residential Affordable Apartments	12%	<ol style="list-style-type: none">1. Builder of such affordable residential apartment will have to pay <u>GST @ 1%</u> on such apartments.2. If in case of a Mixed Project; carpet area of the affordable residential apartments must <u>not be less than 50% of the total carpet area</u> of the entire project.3. For the purpose of determining whether the apartments at the time of construction are affordable residential apartment or not, value of the apartment shall be the value of similar apartments booked nearest to the date of signing of the contract for supply of Construction service.4. In case if finally the condition of affordable housing is not met then the recipient of the service, that is the builder shall be liable to pay tax on RCM basis on difference amount.

Example – Where % Completion as on 31.03.2019 is not Zero - RREP

Basic Project Details	
Total Residential Apartment in the Project	100 units
Carpet Area per unit (in Sq.Mtr.)	100
Total Carpet Area (in Sq.Mtrs)	10,000
% Completion as on 31.03.2019 as declared to RERA	80%
Value of Apartment (per unit)	70 Lakhs

Booking Details	
No. of Units Booked till 31.03.2019	70
Value of Units Booked till 31.03.2019	49 cr.
% invoicing of Booked units on or before 31.03.2019	60%
Amount received towards booked units before 31.03.2019/ Value of Supply whose Time of Supply prior to transition	29.40 cr.

Calculation		
F1	Carpet Area of Residential + Commercial/ Total Carpet Area in RREP (i.e. 10000/10000)	1
F2	Carpet Area of Units Booked on or before 31.03.2019/Total Carpet Area in RREP [i.e. (70*100)/10000]	0.70
F3	Value of Supply of Construction on or before 31.03.2019 / Total Value of Supply of units Booked on or before 31.03.2019 (29.4/49.0)	0.60
F4	1/% Completion of Construction as on 31.3.2019 (i.e. 1/80%)	1.25

ITC Reversal as on 31.03.2019	
Total ITC availed on Inputs and Input Services (including TRAN Credit) from 01.07.2017 to 31.03.2019 - T	8.00 Cr
Te = T * F1 * F2 * F3 * F4 (Eligible ITC)	4.20 cr.
Tx = T - Te (Ineligible ITC)	3.80 cr.

Example – Where % Completion as on 31.03.2019 is not Zero - RREP

Basic Project Details

Total Residential Apartment in the Project	100 units
Carpet Area per unit (in Sq.Mtr.)	100
Total Carpet Area (in Sq.Mtrs)	10,000
% Completion as on 31.03.2019 as declared to RERA	20%
Value of Apartment (per unit)	70 Lakhs

Calculation

F1	Carpet Area of Residential + Commercial/ Total Carpet Area in RREP (i.e. 10000/10000)	1
F2	Carpet Area of Units Booked on or before 31.03.2019/Total Carpet Area in RREP [i.e. (25*100)/10000]	0.25
F3	Value of Supply of Construction on or before 31.03.2019 / Total Value of Supply of units Booked on or before 31.03.2019 (5.25/17.50)	0.3
F4	1/% Completion of Construction as on 31.3.2019 (i.e. 1/20%)	5.0

Booking Details

No. of Units Booked till 31.03.2019	25
Value of Units Booked till 31.03.2019	17.50 cr.
% invoicing of Booked units on or before 31.03.2019	30%
Amount received towards booked units before 31.03.2019 or Value of Supply whose Time of Supply prior to transition	5.25 cr.

ITC Reversal as on 31.03.2019

Total ITC availed on Inputs and Input Services (including TRAN Credit) from 01.07.2017 to 31.03.2019 - T	8.00 Cr
Te = T * F1 * F2 * F3 * F4 (Eligible ITC)	3.00 Cr
Tx = T - Te (Ineligible ITC)	5.00 Cr

Example – Where % Completion as on 31.03.2019 is not Zero - RREP

Basic Project Details

Total Residential Apartment in the Project	100 units
Carpet Area per unit (in Sq.Mtr.)	100
Total Carpet Area (in Sq.Mtrs)	10,000
% Completion as on 31.03.2019 as declared to RERA	20%
Value of Apartment (per unit)	80 Lakhs

Calculation

F1	Carpet Area of Residential + Commercial/ Total Carpet Area in RREP (i.e. 10000/10000)	1
F2	Carpet Area of Units Booked on or before 31.03.2019/Total Carpet Area in RREP [i.e. (70*100)/10000]	0.70
F3	Value of Supply of Construction on or before 31.03.2019 / Total Value of Supply of units Booked on or before 31.03.2019 (16.8/56)	0.3
F4	1/% Completion of Construction as on 31.3.2019 (i.e. 1/20%)	5.0

Booking Details

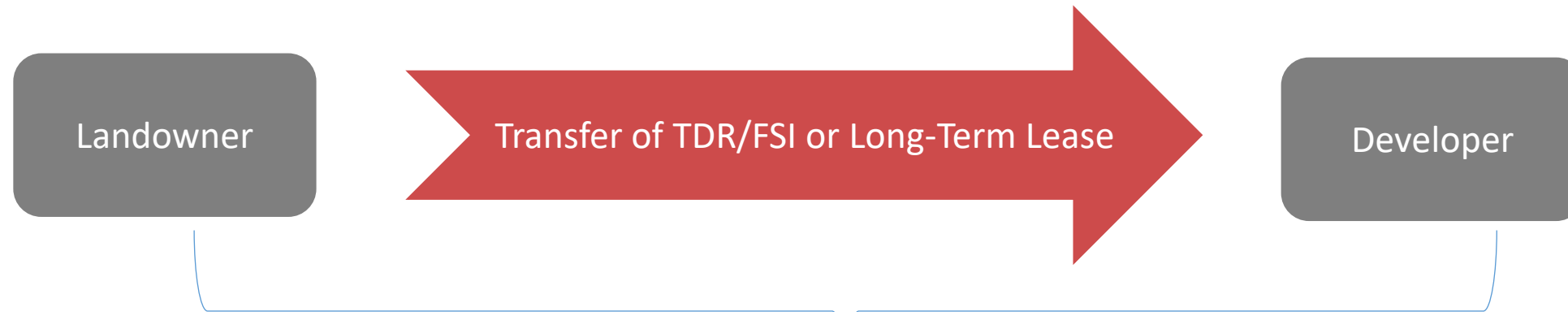
No. of Units Booked till 31.03.2019	70
Value of Units Booked till 31.03.2019	56 Cr.
% invoicing of Booked units on or before 31.03.2019	30%
Amount received towards booked units before 31.03.2019 or Value of Supply whose Time of Supply is prior to transition	16.8 Cr.

ITC Reversal as on 31.03.2019

Total ITC availed on Inputs and Input Services (including TRAN Credit) from 01.07.2017 to 31.03.2019 - T	5.00 Cr
Te = T * F1 * F2 * F3 * F4 (Eligible ITC)	5.25 Cr
Tx = T – Te (Ineligible ITC)	-0.25 Cr
Additional ITC to be claimed	0.25 Cr

Taxability of TDR / FSI & Long-Term Lease

Treatment of TDR/FSI and Long-Term Lease for new Residential projects



Exemption

The said transaction is exempted subject to the condition that the constructed Residential Units are sold before issuance of completion certificate and GST is paid on them.

Withdrawal of Exemption

In case of flats sold after issue of completion certificate, exemption of TDR, FSI, long term lease shall be withdrawn.

However, such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

Example – Only Residential – Implication of TDR

Particulars	Figures
Value of TDR supplied from Land Owner	10 Cr.
Total number of Flats in a Project	100 Flats
Date of starting of project	15.04.2019
Date of Receipt of Completion Certificate	15.04.2020
Number of Flats remain unsold after receipt of Completion Certificate	20 Flats
Value of Flats remain unsold	Rs. 40 Lakhs per Flat
Effect	
Value of TDR proportionate to the value of unsold Flats	2 Cr. (10 Cr. x 20/100)
Tax to be paid for unsold Flats	36 Lakhs* (2 Cr. x 18%)

** This amount can not exceed the applicable rate of 1% or 5% i.e. Rs. 40 Lakhs [5% of (20 Flats x Rs. 40 Lakhs per Flat)]*

Example – Mixed Project – Implication of TDR

Particulars	Figures
Value of TDR supplied from Land Owner	10 Cr.
Total number of Flats in a Project	90 Flats + 10 Shops
Date of starting of project	15.04.2019
Date of Receipt of Completion Certificate	15.04.2020
Number of Flats remain unsold after receipt of Completion Certificate	18 Flats
Value of Flats remain unsold	Rs. 40 Lakhs per Flat
Effect	
Value of TDR proportionate to the value of Commercial Shops (10%)	1 Cr.
Value of TDR proportionate to the value of unsold Flats	1.80 Cr. (9 Cr. x 18/90)
Tax to be paid for unsold Flats	32.40 Lakhs* (1.80 Cr. x 18%)
Tax to be paid for Commercial Shops TDR	18.00 Lakhs (1 Cr. x 18%)

* This amount can not exceed the applicable rate of 1% or 5% i.e. Rs. 36 Lakhs [5% of (18 Flats x Rs. 40 Lakhs per Flat)]

Treatment of TDR/FSI and Long-Term Lease for New Project

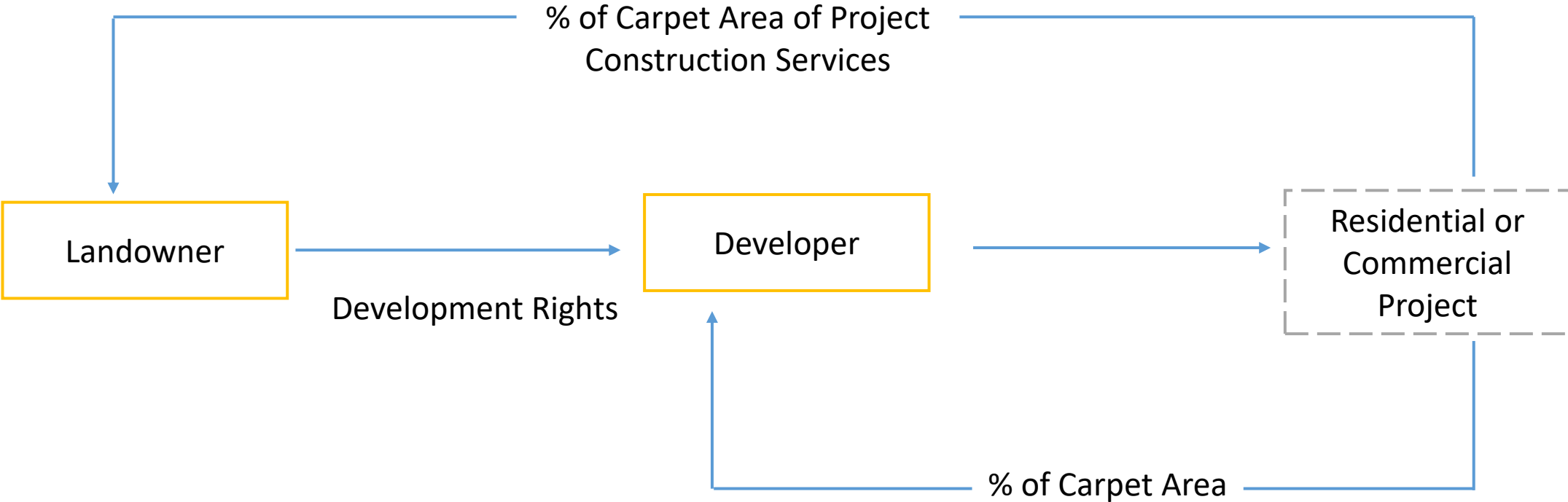
Nature of Project		Supplier of Service	Recipient of Service	Taxability	Tax payable by Recipient	Value	Time of Supply
Residential Projects		Any Person	Builder	Exempt*	Builder shall be liable to pay tax on reverse charge basis	On such proportionate value# of TDR/FSI/Upfront amount attributable to residential apartments sold after BU	Date of Completion of Certificate or first Occupation of the Project as the case may be, whichever is earlier
Mixed Projects	Residential	Any Person	Builder	Exempt*			
	Commercial			Taxable		Value of TDR/FSI/ Upfront amount attributable for Commercial apartments	
Commercial Projects		Any Person	Builder	Taxable		Value of TDR/FSI/ Upfront amount attributable for Commercial apartments	

* Purely residential project will get full exemption at the initial stage but Builder will have to pay tax under RCM on proportionate basis if some units remain unsold after receipt of BU.

Tax Payable shall not exceed 1%/5% of the value in case of residential apartment in case of affordable/non-affordable which remained unbooked on the date of BU or first occupation

Graphical Presentation – Area Sharing JDA

Area Sharing in Joint Development Agreement

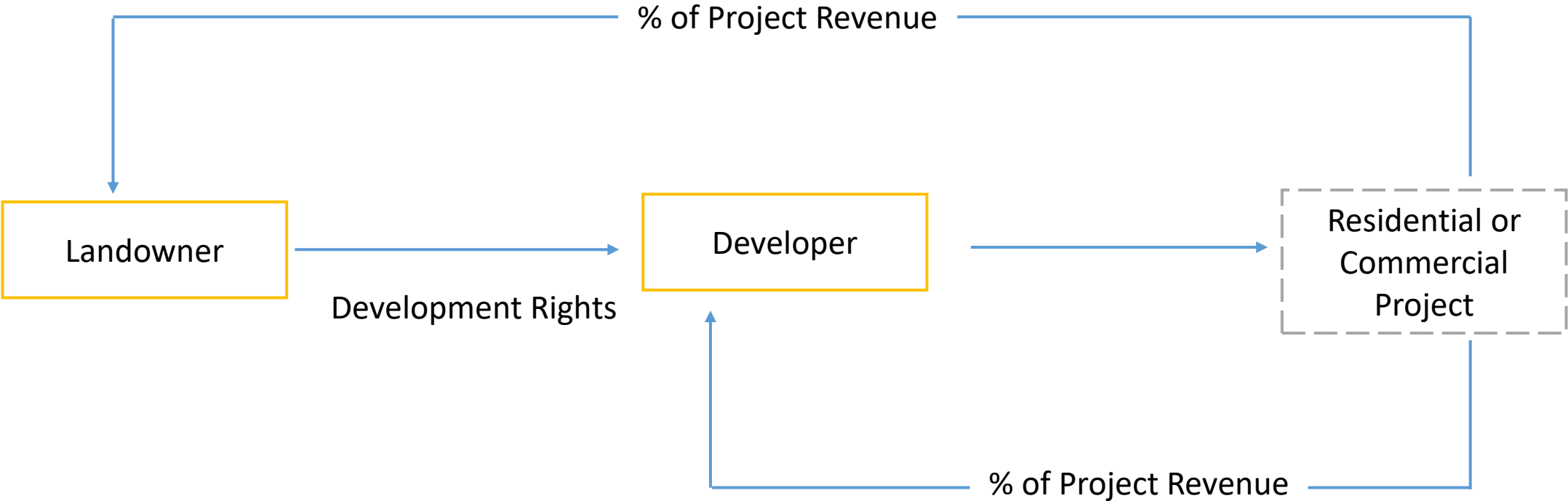


GST Applicability Area Sharing in Joint Development Agreement

#	Queries	Residential Project	Commercial Project
1	Who is liable to pay GST on TDR?	Developer under RCM	Developer under RCM
2	Exemption (if any)	Units booked upto BU - No Tax on TDR Units unbooked as on BU - Tax on TDR	NA
3	Who is liable to pay GST on Construction Services	Developer under FCM	Developer under FCM
4	Time of Supply / Point of Taxation 1. Tax on TDR under RCM by developer 2. Tax on Construction Services under FCM by Developer	In any month before BU or in the month of BU	In any month before BU or in the month of BU
5	Valuation of TDR	Equal to value of similar apartment nearest to date of TDR agreement	Equal to value of similar apartment nearest to date of TDR agreement
6	Valuation of Construction Services	Equal to value of similar apartment nearest to date of TDR agreement Less: 1/3 - Deemed value of land	Equal to value of similar apartment nearest to date of TDR agreement Less: 1/3 - Deemed value of land
7	GST Rate on TDR	18%	18%
8	GST Rate on Construction Services	1% / 5% (Effective Rate)	12% (Effective Rate)
9	Manner of Calculation of Tax on TDR	Lower of: 1. TDR x 18% x unbooked Carpet Area / Total Carpet Area 2. 1% / 5% of value of unbooked units	TDR x 18%
10	Valuation of unbooked units	Equal to value of similar apartments nearest to date of BU	NA
11	Eligibility of ITC - for Developer	ITC not allowed	ITC Allowed
12	Eligibility of ITC - for Landowner	ITC Allowed	ITC Allowed

Graphical Presentation – Revenue Sharing JDA

Revenue Sharing in Joint Development Agreement





Revenue Sharing in Joint Development Agreement

#	Queries	Residential Project	Commercial Project
1	Who is liable to pay GST on TDR?	Developer under RCM	Developer under RCM
2	Exemption (if any)	Units booked upto BU - No Tax on TDR Units unbooked as on BU - Tax on TDR	NA
3	Time of Supply / Point of Taxation (Tax on TDR under RCM by developer)	In any month before BU or in the month of BU	Immediately on date of agreement or payment
4	Valuation of TDR	Equal to monetary consideration paid by developer to landowner	Equal to monetary consideration paid by developer to landowner
5	GST Rate on TDR	18%	18%
6	Manner of Calculation of Tax on TDR	Lower of: 1. TDR x 18% x unbooked Carpet Area / Total Carpet Area 2. 1% / 5% of value of unbooked units	TDR x 18%
7	Valuation of unbooked units	Equal to value of similar apartments nearest to the date of BU	NA
8	Eligibility of ITC - for Developer	ITC not allowed	ITC Allowed
9	Eligibility of ITC - for Landowner	NA	NA

Case Study on TDR



- 1) Ahmedabad Municipal Corporation (AMC) issues work order to a contractor ABC Ltd for redevelopment of Slum.
 - 2) In consideration for redevelopment of Slum area, AMC will grant TDRs to ABC Ltd.
 - 3) Such TDRs are freely transferable and hence, ABC Ltd transfers such TDRs to DEF Ltd who in turn uses such TDRs to get plan passed for its own independent residential / commercial construction project
-
- What will be GST Implications on ABC Ltd for redevelopment of slum and receipt of TDRs from AMC – Taxability, classification, valuation and ITC availability.
 - Whether ABC Ltd is required to pay GST on receipt of TDRs from AMC
 - What will be GST implications on TDRs sold by ABC Ltd to DEF Ltd – Taxability, Point of Taxation

Input Tax Credit Reversal

Reversal as per Rule 42 in case of Units sold after BU

Till 31.03.2019

- Input Tax Credit was required to reverse ITC based on taxable and Exempt supplies achieved in a **particular Financial Year**. Accordingly Input Tax Credit in the year when the builder receives Completion Certificate / BU permission were only considered for ITC reversal calculations and not the entire project ITC.

On or after 01.04.2019

- With effect from 01.04.2019, criteria for ITC reversal for Builders is shifted from **Turnover basis to Area based**. ITC availed starting from 01.07.2017 or project started whichever is later during the entire project would have to be considered while calculating ITC reversal

Reversal as per Rule 42 in case of Units sold after BU

Basic Project Details	
Project Started	01.10.2017
Project Completion	01.12.2019
Total Carpet Area of the Project (in Sq.Mtrs.)	40,000
Unsold Carpet Area on the Date of Receipt of BU (in Sq. Mtrs.)	12,000

(Amt in Cr.)

Year	Total ITC Availed (a)	Taxable Supplies (b)	Exempt Supplies (c)	Total Supplies (d)	Carpet Area Sold (e)	ITC Reversal as per Rule 42	
						Prior 01.04.2019 (Turnover Basis)	Post 01.04.2019 (Carpet Area Basis)
2017-18	3.50	20.00	-	20.00	13,000	-	-
2018-19	4.50	20.00	-	20.00	15,000	-	-
2019-20	2.00	10.00	15.00	25.00	12,000	1.2	-
Total	10.00	50.00	15.00	65.00	40,000	1.2 (2*15/25)	3.00 (10*12000/40000)

Various Models of Joint Development Agreements

1. Area Sharing Agreements
2. Revenue Sharing Arrangements
3. Joint Venture Projects
4. Redevelopment of Societies
5. Slum Rehabilitation Projects
6. Joint Developments of Plotting of Land

GST Applicability w.e.f. 01.04.2019

Particulars	Whether taxable or not	Value	Time of Supply
Society to Developer (TDR)	Exempt*	On such proportionate value# of TDR/FSI/Upfront amount attributable to residential apartments sold to New Members after BU	Issuance of Completion Certificate
Developer to Society/Old Members	Taxable	Equal to the value of similar apartments sold nearest to the date of issuance of completion certificate [Less] Value of Land	
Developer to New Members	Taxable	Transaction Value	Amount received or milestone achieved; Whichever is earlier

* Purely residential project will get full exemption at the initial stage but Builder will have to pay tax under RCM on proportionate basis if some units remain unsold after receipt of BU

Activity undertaken by applicant

- ▶ Applicant is owner of the land, who develops the land with an infrastructure such as Drainage line, Water line, Electricity line, Land levelling etc. as per the requirement of the approved Plan Passing Authority.

Ruling sought for:

Whether GST is applicable on sale of plot of land for which, basic amenities such as Drainage line, Water Line, Electricity Line etc. are provided as per the requirement of approving authority?

Scope of work includes

- ▶ Vacant land to be sold as Individual plots to buyers after obtaining necessary plan approval
- ▶ Leveling the land
- ▶ Construction of boundary wall
- ▶ Construction of roads & tanks
- ▶ Laying of underground cables and water pipelines
- ▶ Laying of underground sewerage lines with sewer treatments plant
- ▶ Development of landscaped gardens, drainage system, water harvesting system
- ▶ Demarcation of individual plots
- ▶ Common amenities like garden, community hall, etc. are also offered in some schemes.

Sale of plot with Amenities

- ▶ Sale of such plots along with common amenities to end customers who may construct houses/villas in the plots.
- ▶ Charges includes rates on super built-up basis and not on the actual measure.
- ▶ The super built-up area includes the area used for common amenities, roads, water tank and other infrastructure on a proportionate basis.
- ▶ The seller charges towards land as well as common amenities on proportionate basis. Common amenity is intrinsic part of the plot.

Observations by Authority

- ▶ In effect the seller is collecting charges towards the land as well as the common amenities, roads, water tank and other infrastructure on a proportionate basis. Such common amenities are an intrinsic part of the plot allotted to the buyers.
- ▶ Sale of developed plot is not equivalent to sale of land but is a different transaction.
- ▶ Sale of such plotted development tantamount to rendering of service. This view has also been taken by Supreme Court in case of M/s. Narne Construction P Ltd reported at 2013 (29) STR 3 (SC).
- ▶ As per clause 5 (b) of Schedule-II of CGST Act, 2017, construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale of a buyer is a “Supply of service” and, hence, is liable to GST.

Ruling delivered by Authority

Nature of Supply	GST applicability as per Authority
Sale of Developed Plots i.e. sale of plots with common basic amenities	It will be considered as ‘construction service’ and GST shall be levied @ 5% without ITC.
Sale of Plots ONLY (without any amenities i.e. sale of land)	It will be considered as ‘sale of land’ & as per Schedule III of CGST Act, 2017, GST shall not be leviable.

- ▶ In our view, sale of land (plots are nothing but a smaller pieces of land demarcated from a larger piece as per regulations by the plan passing authority such as Jilla Panchayat) with certain basic amenities is not sale of land in accordance with clause 5 of Schedule-III of CGST Act. It must be noted that even though basic amenities are developed, the plot that is sold remains vacant and no construction activity whatsoever is carried out on such plots sold to buyers.
- ▶ It is also observed by the authority in para no. 11 that Sale of such sites is done for customers who may construct houses / villas in the plots. Hence, facts of the case is that certain basic amenities surrounding the plots are created by the applicant, whereas there is no construction activity undertaken on the plot. It must be noted that the transaction between seller and buyer is for sale of plot i.e. vacant land and basic amenities are not sold to the buyer.
- ▶ Further, the construction activity referred to in by the authority as mentioned in entry of Schedule-II is also not applicable in the instant case reproduced as under:

“(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.”

As per the said entry, there must be Construction of Complex or a part thereof, **intended for sale to the buyer; however, in the instant case, the constructed amenities are neither sold nor intended to be sold to the buyers.** Ownership of such amenities will not be transferred to any of the buyers of the plot.

- ▶ Merely developing certain amenities surrounding the plot sold by the applicant, doesn't alter the fact that there is sale of land. It is admitted and undisputed fact that residential complexes will be constructed by the buyers on such plots. Hence, a proper plan needs to be approved by the regulatory authority i.e. Jilla Panchayat or Municipal Corporation and it has been mentioned in the facts of the case that such basic amenities are developed as per the requirement of approval of regulatory authority, without which the applicant could not undertake residential plotting scheme.

- ▶ Reference of Supreme Court’s decision in case of Narne Construction by the Authority for Advance Ruling in this order is completely misplaced and unwarranted. Relevant text of order by Supreme Court is as under:

“7. In the light of the above pronouncement of this Court the High Court was perfectly justified in holding that the activities of the appellant-company in the present case involving offer of plots for sale to its customers/members with an assurance of development of infrastructure/amenities, lay-out approvals etc. was a ‘service’ within the meaning of clause (o) of Section 2(1) of the Act and would, therefore, be amenable to the jurisdiction of the fora established under the statute.”

It must be noted that Supreme Court has held that activity of sale of plots is a service as defined u/s. 2 (1) of The Consumer Protection Act, 1986 where definition of service is totally different as against defined under CGST Act reproduced as under:

Definition of Service as per GST Law	Definition of Service as per Consumer Protection Act
(102) “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;	(o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

- ▶ **Hence, in our view, Sale of Plots with certain amenities will be considered as a simpliciter transaction of sale of land and shall not be considered as Service or Goods in accordance with Clause 5 of Schedule-III of CGST Act, 2017 and there shall be no GST payable on sale of residential plots.**
- ▶ **Our view has been confirmed by the GST Council in its 47th Council Meeting**

MUNJAAL MANISHBHAI BHATT V/S. UNION OF INDIA

- ▶ The division bench of the Gujarat High Court comprising of Justice J. B. Pardiwala and Justice Nisha M. Thakore has read down Para 2 of Notification No. 11/2017 mandating 1/3rd deduction of Land as ultra-virus.
- ▶ In recent judgement of Munjaal Manishbhai Bhatt v/s. Union of India, it is held that mandatory adopting 1/3rd of total amount charged towards value of land in construction contracts in cases where land cost is ascertainable “is ultra-vires the provisions as well as the scheme of the GST Law.”
- ▶ Hon’ble Gujarat High Court opined that application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of Constitution of India.
- ▶ Hon’ble Gujarat High Court held that mandatory deduction of 1/3rd value of land in construction contracts is not sustainable in cases where the value of land is ascertainable or where the value of construction service can be derived with the aid of valuation rules.
- ▶ Hon’ble Gujarat High Court held that such deduction can be permitted at the option of the taxable person particularly in cases where the value of land or undivided share of land is not ascertainable.

Scenario	Total Value of Construction Service	Value of Land As per contract	Land Value as per para 2 of Notification	Land Value as held by Hon’ble Guj HC
A	1,20,00,000/-	60,00,000/-	40,00,000/-	60,00,000/-
B	1,20,00,000/-	50,00,000/-	40,00,000/-	50,00,000/-
C	1,20,00,000/-	30,00,000/-	40,00,000/-	30,00,000/-
D	1,20,00,000/-	Not ascertainable	40,00,000/-	40,00,000/-

Example Based on HC Judgement

Scenario	Total Value of Construction Service	Value of Land As per contract	Land Value as per para 2 of Notification	Land Value as held by Hon'ble Guj HC
A	1,20,00,000/-	60,00,000/-	40,00,000/-	60,00,000/-
B	1,20,00,000/-	50,00,000/-	40,00,000/-	50,00,000/-
C	1,20,00,000/-	30,00,000/-	40,00,000/-	30,00,000/-
D	1,20,00,000/-	Not ascertainable	40,00,000/-	40,00,000/-

#	Name of the applicant	Authority	Date	Ruling Given by Authority	GST Applicable?
1	Dipesh Anilkumar Naik	Gujarat AAR	19-08-2020	Sale of Developed Plots i.e., sale of plots with common basic amenities will be considered as 'construction service'.	Yes, GST @ 18%
2		Gujarat AAAR	22-12-2021		Yes, GST @ 18%
3	Shantilal Real Estate Services	Goa AAR	18-05-2021	Sale of Developed Plot is not a supply.	No
4	Circular 177	CBIC	03-08-2022	Sale of Developed Plot is not a supply.	No
5	M/s Rabia Khanum	KAR AAR	08-09-2022	Sale of Developed land does not attract GST referring to above circular	No
6		KAR AAAR	14-02-2023		

Works Contract Services under GST



Definitions

Under Service Tax Regime

“works contract” means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration **of any movable or immovable property** or for carrying out any other similar activity or a part thereof in relation to such property;

Under GST Regime

“works 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;

Sr.	Service Description	Service Recipient	GST Rate up to 31-12-2021	GST Rate from 01-01-2022	GST Rate from 18-07-2022
1.	Composite supply of works contract by way of construction, repairs, maintenance, etc. of roads, bridges, railways, metro, effluent treatment plant, crematorium etc.	Government or Local Authority	12%	12%	18%
		Governmental Authority or Government Entity	12%	18%	18%
		Other Recipient	18%	18%	18%
2.	Composite supply of works contract provided by a sub-contractor to the main contractor where the main contractor is providing services as specified above (Sr. 1 above) to the specified service recipient.	Government or Local Authority	12%	12%	18%
		Governmental Authority or Government Entity	12%	18%	18%
		Other Recipient	18%	18%	18%
3.	Composite supply of works contract involving predominantly earth work (more than 75% of total contract value)	Government or Local Authority	5%	5%	12%
		Governmental Authority or Government Entity	5%	18%	18%
		Other Recipient	18%	18%	18%
4.	Composite supply of works contract provided by a sub-contractor to the main contractor where the main contractor is providing services as specified above (Sr. 3 above) to the specified service recipient.	Government or Local Authority	5%	5%	12%
		Governmental Authority or Government Entity	5%	18%	18%
		Other Recipient	18%	18%	18%

Posers

Posers – Carpet Area

The affordable residential apartment should not have a carpet area exceeding 60 sqm in metropolitan cities and 90 sqm in other places. Will the internal walls of the apartment, balcony or verandah be included 60/90 sq meter?

- "Carpet area" is defined in clause (k) of section 2 of the RERA, 2016 and the same has been adopted in the notification.
- "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.

Posers – Actual or deemed value for land?

Can a developer take deduction of
(a) actual value of Land; or
(b) $1/3^{\text{rd}}$ of total value?

No. Valuation mechanism prescribed in paragraph 2 of the notification No. 11/2017- CTR dated 28.06.2017 clearly prescribes $1/3^{\text{rd}}$ abatement towards value of land. Hence, reduction of land value on actual cost is not permissible.

Posers – Inclusion for Threshold of Rs. 45 Lakhs

For the purpose of determining the threshold of Rs. 45 lakhs in case of “affordable residential apartment”, whether the following charges generally recovered by the developer from the buyer shall be included?

- Amenity Charges
- Society formation charges
- Advance maintenance
- Legal Charges

- For the purpose of determining the threshold of the gross amount of Rs.45.00 lakh for affordable residential apartments, all the charges or amounts charged by the promoter from the buyer of the apartments shall form part of the gross amount charged.
- However the value shall not include stamp duty payable to the statutory authority, maintenance charges / deposits for maintenance of apartment or maintenance of common infrastructure.

Posers – Point of time when Tax liability to be discharged

At what point of time, the promoter should discharge tax liability on TDR / FSI?

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

Posers – Point of time when Tax liability to be discharged

What shall be time of supply in case of construction services provided by a developer?

As per Section 13 (2) of CGST Act, Time of supply shall be earliest of below dates:

- (1) Date of issue of invoice; or
- (2) Date of receipt of payment;

Under Section 31 (5) of CGST Act, in case of continuous supply of service, date of issuance of invoice shall be earliest of below dates:

- (1) Due date of payment is mentioned in contract – then invoice shall be issued on or before such due date
- (2) Due date of payment is not mentioned in contract – then invoice shall be issued as and when payment is received.**
- (3) Payment is linked to completion of event – then invoice shall be issued on or before the completion of such event.

Posers – Determination of Tax rate

What will be the rate for Commercial Construction? 5% or 1% in the following scenario?

10% Commercial Construction

50% Affordable Residential Apartment

40% Non-Affordable Residential Apartment

Rate of Commercial Construction will be 5% as total area of commercial construction is less than 15% of the total area of the real estate project.

Posers – Determination of Tax rate



If there are three residential towers A, B and C and construction is given to a sub contractor. Percentage of type of construction is given below:

10 % Commercial

35% Non affordable

55% Affordable Residential.

What % sub contractor will charge to a builder? 12% or 18%?

Sub contractor will charge 12% to main contractor; if main contractor has opted to pay Tax at new rates.

Posers – 1%/5% with “No ITC”.

In case of ongoing project Builder has opted for new rates and whether the balance ITC lying in Electronic Credit ledger after making necessary reversals can be adjusted/utilized against the output liability of 5% / 1%?

- No. GST on services of construction of an apartment by a promoter at the rate of 1%/5% is to be discharged in cash only.
- ITC, if any, may be used for discharging any other supply of service.

Posers – RCM applicable if value of purchase from reg. person is less than 80%

If value of purchases as prescribed above from registered supplier is less than 80%, what would be the applicable GST rate on such purchases?

Promoter has to pay GST @ 18% on reverse charge basis on all such inward supplies (to the extent short of 80% of inward supplies from registered supplier) except cement on which tax has to be paid (by the promoter on reverse charge basis) at the applicable rate, which at present is 28% (CGST 14% + SGST 14%)

Posers – Valuation for calculating 80% threshold

Whether the inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold?

Yes. Inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold.

Posers – Valuation for calculating 80% threshold

Whether the purchase of Land from an unregistered person shall be required to be included in the value of Input and Input Services for the purpose of calculation of 80% threshold?

No. As per Schedule III, Entry No 5, of CGST Act, sale of land is not a supply. In addition, as per 5th proviso to entries at Sl. No. (i), (ia), (ib), (ic) and (id) against Serial No 3 in the Notification No.11 / 2017-CTR dated 28.06.2017 as amended by Notification No. 3 / 2019-CTR dated 30/03/2019, **transactions by way of grant of development rights, long term lease, FSI etc. are not required to be included in the value of Input and Input Services for evaluation of criteria of 80% from registered persons.**

Posers – 80% threshold in combined project

In case of a Real Estate Project, comprising of Residential Units (70%) as well as Commercial portion (30%), how is the minimum procurement limit of 80% to be tested, evaluated and complied with where the Project has single RERA Registration and a single GST Registration and it is not practically feasible to get separate registrations due to peculiar nature of building(s)?

The promoter shall apportion and account for the procurements for residential and commercial portion on the basis of the ratio of the carpet area of the residential and commercial apartments in the project.

Posers – Value of TDR

In an area sharing model, there is construction of 125 residential units. The promoter has to handover constructed 40 units to the landowner who supplied Development Rights for the project. On what value the promoter is required to pay GST on 40 units handed over to landowner?

Value of TDR, shall be equal to the amount charged by the promoter for similar apartments from the independent buyers booked on the date that is nearest to the date on which such development rights or FSI is transferred by the landowner to the promoter.

Posers – Maintenance Deposit and Advance Maintenance charges

What is taxability of GST on Maintenance Deposit and Advance Maintenance Charges?

GST will be applicable on Advance Maintenance charges @ 18%.

While there will be no GST on Maintenance Deposit; however, when this deposit is utilized against regular maintenance, GST will be applicable on such utilized amount @ 18%.

Posers – Value of construction service in lieu of TDR

How to determine value of construction services provided by the promoter to landowner in lieu of transfer of development rights, when landowner is not registered?

Value of construction services provided by the promoter to landowner in such cases shall be determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers, other than the landowner, nearest to the date on which such development right etc. is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 of Notification No. 11/2017-CT(R) dated 28.06.2017.

Posers – GST on Long Term Lease

AUDA has provided land on long term lease for 99 years for an upfront premium / sale value of Rs. 100 Crore. After 99 years it will be renewed for token price of Re. 1. What shall be GST liability on below 3 purposes:

- (1) Residential Project
- (2) Commercial Project
- (3) Own Business House

- The liability to pay tax on Long term lease of land (30 years or more) received against consideration in the form of upfront amount and periodic licence fee is on the promoter. The promoter has to discharge tax liability on the same on RCM basis. However, the upfront amount payable for the long term lease (known as premium, salami, cost, price, development charges etc.) is exempt to the extent it is used for construction of residential apartments that are booked before issuance of completion certificate or first occupation.
- Person constructing own business house is not covered under the definition of promoter.

Email : amish@kmsindia.in

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