



SECTION 80IBA RENTAL HOUSING PROJECT



CMA Harsh Satish Udeshi
Cost Accountant

In order to encouraging the developers in affordable housing sector government initiative several incentives for developers like subsidies, tax benefits and most importantly institutional funding was provided.

The real estate sector plays a very important role influencing the need and demand for housing and infrastructure in the country.

The growth of this sector is well complemented and improving the growth in the corporate environment. In new India as a developing country, Government has come up the innovative ideas of creating and maintaining growth of real estate projects.

This section has provided benefits to the owner and the Government in the forms of subsidies and helps the user to claim tax benefits.

The main intent for introducing this section was to incentives affordable housing sector as a part of larger objective of the government of 'Housing for All'.

House project which are approved between 1-1-16 to 31-12-2021 by the competent authority and if the below conditions are satisfied then 100% deduction of the profits and gains derived from the business of developing housing projects under section 80IBA of Income Tax 1961.

To help migrant labourer and to promote affordable rental it is proposed to allow deduction under section 80 IBA of the Act also to such rental housing project which is notified by the Central Government in the official Gazette and fulfills such conditions as specified in the said notifications.



In section 80 IBA of the Income Tax Act, with effect from the 1st day April 2022.

The project is completed within period of five years from the date of approval by the competent authority:

Provided that,

- with approval in respect of a housing project is obtained more than once, the project shall be deemed to have been approved on the date on which the building plan of such housing project was first approved by the competent authority; and
- the project shall be deemed to have completed when a certificate of completion of project as a whole is obtained in writing from the competent authority;

From 01-09-2019 to 31-03-2022

- project should be completed within 5 years from date of approval.



- Carpet area of shops and other commercial established less than 3% of aggregate carpet areas.
- Project is on plot of land not less than
 - a) 1000 sqm (if project located within the metropolitan cities and (limited to Delhi, Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai metropolitan Region)
 - b) 2000sqm (if project in other places).
- The project is the only housing project on the plot of land.
- The carpet area of the residential unit comprised in the housing project does not exceed
 - a) 60 sqm (if project located within the Metropolitan cities of Bengaluru, Chennai, Delhi National Capital Region (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai, whole of Mumbai Metropolitan Region).
 - b) 90 sqm (if project in other places).
- Where a residential unit in the housing project is allotted to an individual, no other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual.
- The project utilizes not less than;
 - a) 90% of the floor area ratio permissible in respect of the plot of land under the Rules to be made by the Central Government / State Government / Local Authority, where such project is located within the metropolitan cities of Bengaluru, Chennai, Delhi National Capital Region (limited to Delhi, Noida , Greater Noida , Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai metropolitan Region),or
 - b) 80% of such floor area ratio where project is located in any other place.
- The assessee maintain separate books of accounts in respects of the Housing Project.
- The Stamp Duty value (value adopted for the purpose of payment of stamp duty) of a residential unit in the housing project does not exceeds Rs 45 Lakhs.

For the purpose of this sections,-

Carpet area shall have the same meaning as assigned to it clause (k) of section 2 of the Real Estate (Regulations and Development) Act, 2016(16 of 2016).

- (a) “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, 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;

- (b) competent authority means the authority empowered to approve the building plan by or under any law for the time being in force;
- (c) Floor area ratio means the quotient obtained by dividing the total covered area of plinth area on all the floors by the area of plot of land.
- (d) “Rental Housing Projects” means a project which is notified b y the Central Government in the official gazette under this clause on or before the 31st day of march 2022 and fulfills such conditions as may be specified in the said notifications



Key Points

- 1) Where the project approval is obtained more than once, date of first approval shall be considered for this purpose.



- 2) This section not applies to any assessee who execute the housing projects as a work contract awarded by any person(including the Central Government or State Government).
- 3) Where the housing projects is not completed within 5 years then deduction claimed under this section shall be deemed to be the Profit And Business Profession Income of the assessee in the previous year in which the 5 years completed
- 4) Deduction to the extend claimed under this section shall not be allowed under any other provisions of the Act.

Incentives under Goods and Service Tax

A concessional rate of 1% is applicable for construction services provided by suppliers with respect to the affordable residential apartment under goods and services tax laws. The normal rate of tax applicable for supply of construction services pertaining to residential apartments is 5%. However, if such residential unit falls under the definition of affordable residential apartment, the same is reduced by 4%, making the effective rate of tax at 1%..

Hence, if assessee is contemplating the project with commercial space which is not more than 15% of the total carpet area of all the apartments in REP, then such project would be called as RREP and tax rate of 1% is applicable vide Entry 3(i). Further, the rate of tax applicable to such commercial space in a RREP is 5% as notified vide Entry 3(ib). Except for this difference, there is no other difference between RREP and REP. All other conditions equally apply to RREP and REP.

If a residential apartment having carpet area not exceeding 90 square meters in cities or towns other than metropolitan cities and for which the gross amount charged is not more than Rs 45 lakhs.

Hence, in order to fall under the definition of affordable residential apartment under the CT Act and to be eligible for concessional rate of 1% for residential apartments and 5% for commercial apartment in RREP, assessee has to satisfy twin conditions. One, the carpet area of residential apartment should not exceed 90 square meter and two, gross amount charged should not be more than Rs 45 lakhs. On satisfaction of both the conditions, the said residential apartment would fall under the definition of 'affordable residential apartment' and accordingly eligible for concessional rate. Further the assessee should also satisfy additional condition that no credit of input tax can

be claimed, 80% of the value of input and input services shall be procured from registered supplier (else, tax has to be paid by assessee on shortfall at 18% excluding cement purchased from unregistered supplier).

THE CERTIFICATE OF COMPLETION IS COMPULSORY AND SHOULD BE OBTAINED BY THE COMPETENT AUTHORITY. AS THE RELATED CASES MENTIONED BELOW

Sigma Constructions (2013) HYDERABAD ITAT

Clarifications have been sought by various Chief CITs on the issue whether the deduction under s. 80IB(10) would be available on a year-to-year basis where an assessee is showing profit on partial completion or if it would be available only in the year of completion of the project under s. 80- IB(10).

The above issue has been considered by the Board and it is clarified as under :

- (a) The deduction can be claimed on a year-to-year basis where the assessee is showing profit from partial completion of the project in every year.
- (b) In case it is late and it is found that the condition of completing the project within the specified time-limit of 4 years as stated in s. 80-IB(10) has not been satisfied, the deduction granted to the assessee in the earlier years should be withdrawn.

• If the Return is filed belated whether deduction under section 80IBA can be claimed.

Sec 80 AC provides that deduction under section 80 IBA is not available if return of income is submitted by the assessee after the due date of submission of return of Income specified under section 139(1).

This burden is not cast upon assesses claiming deductions under several other similar provisions.

• Whether deduction under section 80-IBA will be eligible for dwelling or duplex units or row houses?

Section 80-IBA clearly mentioned the definition of residential house property, which state that the residential house property means an independent housing unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building.

Dwelling or duplex units or row houses are satisfying the conditions stated above and hence they are

eligible for deduction under section 80-IBA.

● ***One person is making housing project for another person, will deduction be allowed?***

Section 80IBA is housing project for general public not for personal purpose. It will be considered as works contract, and works-contract awarded by any person (including the Central Government or the State Government) will not be allowed as deduction.

● ***What if project is not completed within 5 Years?***

The total amount of deduction so claimed and allowed in one or more previous years, shall be deemed to be

the income of the assessee chargeable under the head “Profits and gains of business or profession” of the previous year in which the period for completion so expires.

Conclusion

With the above provisions and related situations it is considered that development of Rental housing project is under the process of expansion, growth for the new India and provided employment basis to many skill employee and labourer. It's a process to make strong pillars for real estate companies from sinking to its top. ●