

# Is it 1/3rd land cost deduction is logical in case of sale of flats under GST.

**A**s we know the sale of land is not taxable as per the provisions of Schedule III of the CGST Act 2017. However, arriving land cost is really a big challenge out of the total cost of a flat. Normally before the introduction of the GST, under service, tax people used to take a deduction based on agreement value. Normally the builders and developers used to make 2 agreements. One is for the sale of the undivided share of land and another one is for the construction agreement. It was there in the VAT regime also. However, there was a lot of litigation before the introduction of the GST (under both service tax as well as VAT law). to avoid all these litigations in GST, Government has fixed the cost of land is 1/3rd. But in metros and big cities, the land cost out of total cost is somewhere around 60-70% but in remote areas like in taluka place and villages, it is not even 10-15%. Hence, those who are buying flats in cities are paying higher GST than those who are buying other than in big cities.

Due to this builders are not happy with 1/3rd deduction of land cost. Hence, Gujarat high court clearly said the case of Manjaal Manishbhai Bhatt VS Union of India on 6 May 2022. This Hon'ble Court may be pleased to strike down and declare Entry 3(if) of Notification No. 11/2017-Central Tax (Rate) as well as Entry 3(if) of Notification No. 11/2017 - State Tax (Rate) along with paragraph no. 2 of both the notifications as being ultra-vires Section 7(2) of the GST Acts read with Entry No. 5 of Schedule III to the GST Acts as well as ultra-vires Section 9(1) and Section 15 of the GST acts;

Further, the court observed that mandatory deduction of 1/3rd for value of land is not sustainable in cases where the value of land is clearly ascertainable or where the value of construction service can be derived with the aid of valuation rules. Such 1/3rd deduction can be permitted at the option of a taxable person particularly in cases where the value of land or undivided share of land is not ascertainable.

“It should be understood by the buyers that developers cannot take this stand, till the GST Department synchronises itself with the judgment of the Hon'ble Court. In such a scenario, developers may continue to pay tax on 2/3rd consideration of flats under protest and thereafter, the Developers/Buyers may file the refund claim with the jurisdictional GST authority of the Developer,”

Fixing 1/3rd land cost is highly illogical. Still act is not amended. Hence, builders and developers are in a big dilemma whether they need to charge GST on 66% or they can claim a higher land cost deduction based on actuals. In this regard, people are waiting for the Supreme Court's decision. Up to that, there is no other option better to discharge GST on 66 %.



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