

GST IMPLICATION IN CASE OF JOINT DEVELOPMENT AGREEMENT

GST on construction contracts, also known as works contracts, falls under CGST Act- Section 2 (119). 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.” In this article we will cover only construction relating to Joint Development Agreements.

A Joint Development agreement (otherwise known as JDA) is a contract between a landowner and real estate developer to build a new project on the land of owner. The real estate builder constructs the building and other things. On the contrary, the owner of the land will provide the land to construct the building. There are 2 kinds of Joint Development Agreement (JDA) and they are:

1. Area Sharing Joint Development Agreement (JDA)
2. Revenue Sharing Joint Development Agreement (JDA)

Parties involved in the Joint Development Agreement (JDA)

1. The Land Owner
2. Developer/ Builder

Under this Joint Development Agreement (JDA) the landowner has to transfer its development right to the developer. In return, the landowner gets a continuous supply of construction service from the developer over a period of time. Moreover, the GST is applicable at the time of supplying such construction services.

If it is a commercial project or a residential project (JDA entered before 01-04-2019), the landowner must pay the



CMA Vishwanath Bhat
Practicing Cost Accountant



GST for the transfer of development rights and finally GST on flats to be discharged by developer on construction services provided to the landowner by developer.

If it is a residential project (JDA entered after 31-03-2019), the treatment will be different. Developer has to discharge tax liability under RCM. But at the time of agreement no need discharge the liability if the developer is going to sell the property. But at the time of completion developer has to discharge the liability on unsold flats relating his (Developer) share.

Developer to End Consumer

To provide construction services, the real estate developer enters into construction agreements with homebuyers. On such construction services, the GST is applicable. If the property is under construction, then the GST is applicable on the property transaction otherwise, if the property is fully constructed then no GST is applicable on it. As per 5(b) second schedule of GST 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.

Taxable events under joint development.

1. Transfer of development rights (TDR) from the landowner to the developer.
2. Service provided by the developer to the landowner in the form of construction of area or flats in lieu of land development rights given.
3. Sale of under-construction flats to the ultimate buyer by the developer.
4. Sale of under construction flats by the landowner to the buyers out of his own share.
5. Services by Contractor (third party/ external contractor)

to Developer for constructing the project.

1. Transfer of development rights (TDR) from the landowner to the developer: GST on TDR – GST on TDR @ 18% (9% CGST plus 9% SGST/UTGST) is payable on –

- (a) commercial apartments and
- (b) unbooked residential apartments as on date of issue of completion certificate or first occupation of the project – FAQ (Part II) No. 7 issued by CBI&C vide circular F No. 354/32/2019-TRU dated 14-5-2019.01-Sept-2022

2. Service provided by the developer to the landowner in the form of construction of area or flats in lieu of land development rights given.

Developer has to discharge the tax liability on or before transferring the property or first occupation whichever is earlier. The rate of tax is 18% on ongoing project & 1% or 5 % depending upon affordable and other than affordable project.

3. Sale of under construction area or flats to the ultimate buyer by the developer

The rate of tax is 18% on ongoing project & 1% or 5 % depending upon affordable and other than affordable project at the time of receipt of advances. (new Scheme).

4. Sale of under construction area or flats by the landowner to the buyers out of his own share.

Land owners sells his share during the construction it is tax taxable. If he sells after completion, it is immovable not in the purview of GST. The rate of tax is 18% on ongoing project & 1% or 5 % depending upon affordable and other than affordable projects at the time of receipt of advances. (new Scheme).

5. Services by Contractor to Developer for constructing the project.



Taxable at 18%.

Taxation Rates for Residential and Commercial Properties (GST on Construction)			
Sr No	Nature of Service	Gross Rate	Effective Rate
1	Affordable residential apartment in an RREP (Commenced on or after 01.04.2019 or ongoing projects opted for new rates) intended for sale	1.5 Percent	1 Percent
2	Residential apartments (other affordable residential apartments) in an RREP (commenced on or after 01.04.2019) or ongoing projects opted for new rates), intended for sale	7.5 Percent	1 Percent
3	Commercial Apartments in an RREP (commenced on or after 01.04.2019 or ongoing projects opted for new rates) intended for sale	7.5 Percent	5 Percent
4	Affordable residential apartment in REP, other than in a RREP (commenced on or after 01.04.2019, or ongoing projects opted for new rates), intended for sale	1.5 Percent	1 Percent
5	Residential apartment (other than affordable residential apartments) in REP other than in a RREP (Commenced on or after 01.04.2019, or ongoing projects opted for new rates) intended for sale	7.5 Percent	5 Percent
6	Ongoing projects in specified schemes (of lower rate of tax) where the promoter has not opted for new rates	12 Percent	8 Percent
7	Commercial Apartments in REP other than in RREP	18 Percent	12 Percent
8	Ongoing Residential apartments as on 31.03.2019 , other than affordable residential apartments, where promoter has chosen to pay at old rates (other than mentioned from 1 to 6 above)	18 Percent	12 Percent

RREP- Residential Real Estate Project.	Notification No.20/2019 CT(Rate)	30.09.2019	In NN 3/2019
REP - Real Estate Project.	Related circulars.		
Related notification.			
Notification 3/2019 CT (Rate)	29.03.2020	GST	F. No. 354/32/2019-TRU(FAQs) 07.05.2019 Clarifying various issues.
Notification 4/2019 CT (Rate)	29.03.2020		F. No. 354/32/2019 (FAQs-II) 14.05.2019 Clarifying various issues.
Notification 5/2019 CT (Rate)	29.03.2020	RCM	
Notification 6/2019 CT (Rate)	29.03.2020		Conclusion:
Notification 7/2019 CT (Rate)	29.03.2020		As a whole while, dealing with GST of builders better analyze whether they are dealing with residential project or commercial project & project is started before or after 1/4/2019. Because if the residential project is started after 1/4/2019 taxpayers has go for new scheme only. However, if the project started before 1/4/2019 (Ongoing project) Taxpayers is having option to go for old scheme with input tax credit.
RDO No.04/2019-Central Tax	29.03.2019		
Notification 5/2019 Central (Rate)	30.09.2019	NN.4/2018	