



# HANDBOOK ON IMPACT OF GST ON REAL ESTATE



**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

Statutory Body under an Act of Parliament

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"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

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"The Cost and Management Accountant professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting"

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3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
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HANDBOOK ON

# IMPACT OF GST ON REAL ESTATE



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12, Sudder Street, Kolkata - 700016

**Delhi Office**

CMA Bhawan

3, Institutional Area, Lodhi Road, New Delhi – 110003

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## **President's Message**

As our Country celebrates the fourth anniversary of Goods and Services Tax rollout, it is also an appropriate occasion to analyse how things worked out and to map the way forward.

At the time of GST implementation on real estate in July 2017, the industry as a whole was witnessing a slump attributed mainly to Demonetization and RERA (Real Estate Regulation and Development Act, 2016) implementation. However, early in 2018, demand and supply for real estate witnessed an increase primarily driven by strong growth in affordable and mid-income housing. Today, the Real Estate is going through a slump due to the adverse impact of corona virus pandemic but the real estate industry is not new to challenges. Be it the slowdown of 2008 or the infamous NBFC crisis, the real estate sector has dealt with the challenges head-on.

This publication intends to satisfy the knowledge needs of the people who would like to read about the changes that GST has brought about in real estate in the last four years, through the ups and downs in the economy.

Congratulations to Tax Research Department for being proactive to think about the needs of the readers and bringing out such a valuable publication.

A handwritten signature in black ink that reads "Biswarup Basu". The signature is written in a cursive style and is positioned above a horizontal line.

**CMA Biswarup Basu**  
President

Date 01.07.2021



## **Vice - President's Message**

The Goods and Service Tax Act was passed in the Parliament on 29th March 2017. The Act came into effect on 1st July 2017; Goods & Services Tax Law in India is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. In simple words, Goods and Services Tax (GST) is an indirect tax levied on the supply of goods and services. GST is single indirect tax for the entire country that replaced many indirect tax laws that previously existed in India. Today when GST embarks on its four year journey, we are happy to pay a tribute by releasing different publications pertaining to GST.

One special point of the GST regime for the Real estate sector is the availability of Input Tax Credits (ITC) paid on inputs, capital goods and input services. Under the erstwhile regime, developers would be liable to pay a multitude of taxes such as VAT, Central Excise, Entry Tax, LBT, Octroi, Service Tax, etc., the credits of which were not freely available against the output tax liability. However, the GST regime provides for ITC eligibility on construction and other services procured, thereby eliminating the inefficiency ushered in by the cascading effect of taxes. Reforms such as the GST and 'RERA', would impact the investment scenario in real estate positively by bringing much-needed transparency, compliance and corporate governance into the system.

This publication of the Tax Research Department, 'Impact of GST on Real Estate' aims to highlight in detail how GST has impacted the business of real estates. I appreciate the efforts of Team – Tax Research and the Taxation Committee and the Resource Contributors.

**CMA P Raju Iyer**

Vice President

Date 01.07.2021



## **Chairman's Message**

Real Estate has historically been a preferred investment choice for many Indians and the sector has been driven to a large extent through investments made in the residential property segment. Real Estate simply means property in form of land in isolation or Land and Building taken together.

GST has a two-fold impact on property prices – from the point of view of the buyers as well as the seller, For the buyer under GST, a single tax rate of 12% (also 5% in case of non-availment of input tax credit by the builder) is applicable on properties under construction that raises the cost of such property while GST is not applicable on completed or ready to sale properties where completion certificate has been obtained from the prescribed authorities.

The entire GST structure in real estate underwent a fundamental change in 2019 with the introduction of a series of notifications that embraced the principles and regulations under other laws governing the real estate sector and the concept of charging lower rate of GST without availing input tax credit and special rates for affordable housing projects. Therefore, having regard to individual requirements and the price structure of the property inclusive of GST will need a detailed understanding for the right choice to purchase a property.

This publication of the Tax Research Department on the Real Estate sector, addresses the various facets of impact of GST in real estate with detailed analysis. Congratulations Team – Tax Research, the Resource Pool and the mentors for their invaluable contributions in the publication of this Handbook.

A handwritten signature in blue ink, appearing to be 'CMA Chittaranjan Chattopadhyay', with a stylized flourish at the end.

**CMA Chittaranjan Chattopadhyay**  
Chairman – Indirect Taxation Committee

Date 01.07.2021



## **Chairman's Message**

GST is India's biggest tax reform in the post-independence era. Prior to the introduction of GST, a heterogeneous indirect tax structure existed in India which included levy of taxes by the centre and states under different tax laws. The earlier indirect tax framework had challenges of multiplicity and cascading of taxes, apart from other issues and complexities, both technical as well as from the perspective of ground-level practices.

At the 33rd GST Council Meeting held on 24th February 2019; new GST rates have been introduced for residential real estate which has come into effect from the 1st of April 2019. The new GST rates on residential real estate transactions have been proposed as; GST to be charged at 5% without Input Tax Credit (ITC) on residential properties that are not part of the affordable housing segment and GST to be charged at 1% without ITC on residential properties that are included in the affordable housing segment. This has really been a relief to the middle-class segment of house buyers.

We are optimistic that this publication has addresses all the aspects of Impact of GST on Real estate as well as this being a revised edition has also highlighted the recent changes which has been brought about by the Government. I acknowledge the efforts of Team – Tax Research and the Taxation Committee and the Resource Contributors and wish them the success they are well deserving of.

Jain Hind

**CMA Rakesh Bhalla**

Chairman – Direct Taxation Committee

Date 01.07.2021



## Preface

While the government has already slashed the GST rates for real estate and there might be no scope for further lowering of rates for the sector, industry experts are of the view that lowering of rates on other goods and services, may trigger investments in real estate at a time when home sales have dipped, because of the economic crisis following the Coronavirus pandemic.

This handbook would like to address the various impact of GST on housing and real estate like - GST on maintenance charges for housing societies; GST on rent; GST on home loan; GST on govt housing schemes; GST on affordable property; GST on luxury property; GST as a tool to revive sales to name a few.

Through this publication, the tax Research Department intends to deal with the intricacies of the impact of GST on real estates and also the changes that have been made in this crisis situation of the global pandemic. We are thankful to **Advocate Tapas Majumder** for his guidelines which helped us in bringing about this new and revised edition of this handbook.

Thank You.

**Tax Research Department**

Date 01.07.2021

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# CHAPTER 01

## BASIC UNDERSTANDING OF REAL ESTATE SECTOR

**Real Estate.** We all have heard the term Real Estate, now we will go in detail of this term and will understand the different perspectives of Goods and Services Tax associated with this term.

Since inception there has been a lot of changes in Goods and Services Tax for the sector of Real Estate specially in the last one year significant changes are noticed. Several Notifications were issued by the Government along with the FAQs. As a result of the occurrence of multiple changes, several speculations are going on in decoding the exact implication of such changes.

This Comprehensive note is an attempt to clarify the intricate points of this subject matter.

### **Firstly let's understand the Real Estate Sector**

The real estate sector is one of the most globally recognized sectors. Real estate sector comprises four sub sectors - housing, retail, hospitality, and commercial. The growth of this sector is well complemented by the growth of the corporate environment and the demand for office space as well as urban and semi-urban accommodations.

The Indian real estate sector has witnessed high growth in recent times with the rise in demand for office as well as residential spaces. Between 2009-20\*, Indian real estate sector attracted institutional investments worth US\$ 42 billion. Private Equity

and Venture Capital investments in the sector reached US\$ 4.47 billion in 2018 and US\$ 546 million in Jan-Feb 2019.

According to data released by Department of Industrial Policy and Promotion (DIPP), the construction development sector in India has received Foreign Direct Investment (FDI) equity inflows to the tune of US\$ 24.91 billion in the period April 2000-December 2018.

Real estate is a property made up of land and the buildings on it, as well as the natural resources of the land, including uncultivated flora and fauna, farmed crops and livestock, water and mineral deposits.

Real Estate can be categorised into:

- Residential real estate - includes undeveloped land, houses, condominiums, and townhouses. The structures may be single-family or multi-family dwellings and may be owner occupied or rental properties.
- Commercial real estate - includes non-residential structures such as office buildings, warehouses, and retail buildings. These buildings may be free standing or in shopping malls.
- Industrial real estate - includes factories, business parks, mines, and farms. These properties are usually larger in size and locations may include access to transportation hubs such as rail lines and harbours.

### **Now, let's know how the Real Estate Market work**

In the current market scenario, the Real Estate market has mainly two participants,

1- The Developers

2 - The Land owners

The Land Owners and The Developers comes in collaboration to construct a building. There are multiple steps that needs to be covered, before a building gets constructed. Let's take that route and understand the fundamentals in a practical way.



Mr. X has a land of 100 Acres in South Kolkata and he wants to make some money out of it. So, he decided to use the land for construction of building. Since, the construction of a building is a time taking and expensive affair, Mr. X decides to share the project with a developer (Company Y).

Mr. X and Company Y discussed on the terms and finally the project was taken by Company Y. The term was Company Y will pay 35% of Revenue out of the Total Revenue earned from selling of Flats.

Once the percentage of revenue sharing is finalized, a **Joint Development Agreement** is made between the two parties which gives development rights to Company Y, along with this a Power of Attorney is also given to the developer. Power of Attorney is required as a reason of authority to be given by the landowner for signing the relevant documents.

Another lookout is the funding required for construction of Buildings. The Real Estate business requires huge fund and the funding is acquired from Financial Institutions, mostly Banks. For acquiring such fund, the Budgeted Expenditure and the Budgeted Income are calculated and are reported and submitted to the Financial Institution, based on the submitted report funds are released.

Since, we have developed a basic understanding of the structure of Real Estate Business, now we can go for some technical terms.

After the process of Joint Development Agreement and Power of Attorney is done, several approvals are to be taken from various Departments of the Government.

### Approvals for obtaining License

S. No.	Type of approval	Approving Authority
1.	Land use conversion (if the land is not a Vastu land)	BLRO
2.	Sanction of Building Plan	Development Authority/ Municipality
3.	Non Encumbrance	Registration Department

4.	Certificate of Clearance	Forest Department
5.	NOC from Pollution Control Board/ Environment Clearance	State Pollution Control Board & Ministry of Environment, GoI.
6.	Approval from State/Central Development Authority	Department of Urban Development Authority or Metropolitan development Authority
7.	NOC for CRZ (if near coastal area)	Coastal Zone Management Authority
5.	Development License	Development Authority/ Municipality

### **Approval of Building Plans and other Clearances before Start of Work at site**

<b>S. No.</b>	<b>Type of approval</b>	<b>Approving Authority</b>
1.	Ancient Monument distance Clearance (if required) before building plan approval	Archaeological Survey of India
2.	Road Access Clearance before building plan approval	NHAI/PWD
3.	AAI Height NOC (before building plan approval)	Civil Aviation Deptt.
4.	Building Layout Approval	Development Authority/Municipality
5.	Intimation of Disapproval (IOD) (wherever applicable)	Development Authority
6.	Infrastructure Layout Approval	Development Authority/ Municipality
7.	Other Common facilities Approval	Development Authority/Municipality
8.	Commencement Certificate	Development Authority/ Municipality



## Approvals before construction – independent of Building Plan approval.

S. No.	Type of approval	Approving Authority
1.	Tree cutting	Forest Deptt.
2.	Environment Clearance (for 125 acres project with built up area above 20,000 sq. metres)	Ministry of Environment
3.	NOC from Labour Cess Department	Office of labour Commissioner
4.	Borewell Registration Certificate	Central Groundwater Authority

## Approvals During Construction

S. No.	Type of approval	Approving Authority
1.	Electrical Load / Electric connection,	Electricity Distribution Company
2.	Permission for Sewer connection	Municipal Authority
3.	Permission for Water Connection	Municipal Authority
4.	Consent to Establish work at site	Pollution Control Board

## Occupation Certificate

First building should be complete in all respects including internal/external works, drive ways, street lights, aviation lights, installation of STP, water tank, harvesting pit, installation of lifts and their operation, common area & common toilet, external fire hydrants, firefighting system etc before applying for Occupation Certificate with following documents:

1.	Approved Building Plans,
2.	Approved Service Estimate/ Plans
3.	N.O.C. of Airport authority,
4.	N.O.C. From Pollution Board & M.O.E.,
5.	The application for Swimming Pool License is submitted to competent authority after occupation certificate is obtained.
6.	Fire, Lifts, Gen sets, S.T.P.

All the above mentioned approvals depends upon the nature of construction and requirement of registration under the act of Real Estate Regulatory Authority. RERA was established to enhance accountability and transparency with respect to housing transactions and real estate.

Lets, get to know some of the relevant terms definitions/ meanings:

### **What is Real Estate?**

Real estate is the property, land, buildings, air rights above the land and underground rights below the land. The term real estate means real, or physical, property. "Real" comes from the Latin root res, or things. Others say it's from the Latin word rex, meaning "royal," since kings used to own all land in their kingdoms. The U.S. Constitution initially restricted voting rights to only owners of real estate. Hence Real Estate implies tangible physical assets and estates thereon.

### **What is the meaning of Joint Development Agreement?**

An agreement between a landowner and a real estate developer to construct new projects is called a Joint Development Agreement. In a joint development the capital, the builder carries out construction and legal work whereas the landowner provides the land. There are two common types of JDA. They are as follows:

- Area Sharing JDA
- Revenue Sharing JDA

The key feature of JDA is that the landowner contributes land and developer undertakes the responsibility of obtaining approvals, property development, launching and marketing the project with his financial resource. Hence, Joint Development Agreements are very common in the real estate industry in India. In this article, we look at the applicability of GST on Joint Development Agreement in detail.

### **Who are the Real Estate Developers?**

A person who involves in construction or development of building and appurtenant thereto as well as selling them to the customers.



# CHAPTER 02

## **WORKFLOW OF GOODS AND SERVICES TAX IN THE REAL ESTATE SECTOR**

From the introduction of GST in our economy till date, there has been a lot of speculations going on around the execution of provisions of Goods and Services Tax in the Real Estate Sector, the sector has also witnessed multiple changes in GST provisions. Through this booklet we will try to get into the theoretical as well as practical segments.

In the month of March, 2019 Real Estate Sector witnessed a revolutionary change in the GST Rate Structure.

### **Value of Supply of Works Contract**

The value of a works contract service is determined by whether the contract includes a land transfer as part of the works contract. In the case of a service supply involving the transfer of property in land or an undivided share of land, the value of the service and commodities element of the supply shall be equal to the entire amount charged for the supply less the value of the land or undivided share of land, as the case may be.

One third of the entire price paid for such supply will be deemed to constitute the value of land or an undivided share of land, as the case may be.

### **Place of Supply of Works Contract**

Immovable property would be required for a GST works contract. As a result, where both the supplier and the recipient are located

in India, Section 12(3) of the IGST Act, 2017 governs the location of supply. The location of the immovable property would be the source of supply.

If the immovable property is located outside of India but both the supplier and the recipient are in India, the place of supply will be determined by the proviso to Section 12(3) of the IGST Act, 2017.

When either the Supplier or the Recipient is located outside India, the place of supply is the place where the immovable property is located or planned to be located, according to Section 13(4) of the IGST Act, 2017.

#### GST Rate Comparison before and after 1st April 2019

<b>Type of Project</b>	<b>GST Rate (Upto 31<sup>st</sup> March, 2019)</b>	<b>GST Rate (From 1<sup>st</sup> April, 2019 onwards)</b>
Affordable Housing Project	8% (With ITC)	1% (Without ITC)
Non Affordable Housing Project	12% (With ITC)	12% (With ITC) 5% (Without ITC)
Commercial Project	12% (With ITC)	12% (With ITC)

The Rates for the Housing Projects given above are the effective rates of GST i.e. GST Rates after giving 1/3<sup>rd</sup> Abatement for value of Land. But in respect of composite flat rate without ITC no abatement is allowed.

The changes of the GST Rates came under the Notification No. 03/2019 (Central Tax Rate) Dated: 29<sup>th</sup> March, 2019.

#### **GST Council Definition of Affordable Housing Segment**

The GST Council has announced the applicable criteria for eligibility of a residential property in the affordable housing segment as part of the 33<sup>rd</sup> GST Council Meeting press release.



The following are the key affordable housing segment qualifying criteria for a residential property in India:

- Total carpet area of the residential property cannot exceed 60 square meters in metropolitan areas.
- Total carpet area of residential property cannot exceed 90 square meters in non-metropolitan cities and towns.
- Total value of property cannot exceed Rs.45 lakh in either metropolitan or non-metropolitan areas.

For purposes of this definition, metropolitan areas in India include Delhi NCR (limited to Delhi, Noida, Gurgaon, Faridabad, Ghaziabad and Greater Noida), Kolkata, Chennai, Hyderabad, Bengaluru and Mumbai (entire Mumbai Metropolitan Region) and all other includes greater of that particular city herein.

### **GST Rates for Construction Materials**

There are two key aspects of GST applicability in real estate. The first is the goods aspect i.e. applicable GST on various construction material and the second is the services aspect i.e. the service of construction itself. Both of these contribute to the final cost of the property for the end user (owner) and different rates are applicable at different stages. The following is a snapshot of how GST rates **on real estate construction materials is applicable:**

GST on Key Construction Material*	
Building bricks	5%
Crude Granite/Marble Rubble	5%
Fly Ash blocks	5%
Roof tiles	5%
Natural Sand	5%
Marble/Granite blocks	12%
Refractory bricks/tiles	18%

Glass for construction purposes	18%
Prefabricated structural components for building	18%
Marble/Granite (other than blocks)	18%
Portland/Slag Cement	28%

\*The list is indicative. Rates are correct as of 01.04.2021 and till date it is applicable subject to periodic change.

## GST on Construction Services

GST on Key Construction Services*	
Labour Supply Services	12%
Exclusive Labour Services/Charges	5%
Rent of DC Generator Services	18%
Goods Transport Agency Services	5%/ 12%

\*The above list is indicative and rates are subject to periodic change. GST rates are correct even if as of 01.10.2019.

GST is not applicable to the following construction-related transactions/activities:

- Sale of complete ready to move in flats after obtaining the Completion Certificate from the Local Authority.
- Resale of property
- Sale/purchase of land

In all the above cases, the sale-purchase activity does not include the supply of goods or services as per the GST Act, Practically its not covered under the definition of 'Goods' as per Sale of Goods Act hence no GST is applicable to these transactions. Since the complete flat ready to move after obtaining the Completion Certificate from the Local Authority does not generate any services the sale of such types of flat is beyond the jurisdiction of Sales as well as Service

As of now, we have developed a basic knowledge on the prevailing GST Rates in the Real Estate Sector.



Let's put some lights on the workings as well.

- When Demand is raised

After construction of a project is initiated, booking of the apartments are also made open. Hence, the Real Estate Company start collecting Booking Amounts and Advances from the customers. Demands are raised after completion of certain segments and this process continues, till the Construction Process gets completed and the Complete Consideration of sold unit is received.

On raising of each demand, an Invoice is sent to the customer stating the amount payable.

Once the demand is raised, customer pays the stated amount and Real Estate Company deposits the GST Collected through GSTR 3B. Sometimes Customer pays excess amount i.e. advance is received. GST is deposited on such advance amount as well in the month of receiving.

Below mentioned is an illustrative example:

Suppose an Unit was booked in the month of April, 2021 and booking amount of Rs. 24,00,000.00 was demanded.

Assessable Value = 24,00,000.00

Taxable Value = 16,00,000.00 (2/3 of Assessable Value)

CGST @ 6% = 96,000.00

SGST @ 6% = 96,000.00

Total payable = 5,92,000.00

The Total amount received at the time of booking was 25,92,000.00. This amount includes advance of Rs. 2,30,500.00

After completion of flooring of the unit another demand was raised.



## Copy of Demand is as follows:

**TAX INVOICE**

Supply Type : Service  
 Whether Tax is payable under Reverse Charges : No  
 Invoice Type : B2C  
 Invoice No. : [REDACTED] 359/B  
 Invoice Date : 02/05/2019  
 Due Date : 17/05/2019  
 PAN : [REDACTED]  
 GSTIN : [REDACTED]  
 Applicant Code No. : [REDACTED] 89/18-19  
 Project Name : [REDACTED]  
 Tower : BLOCK-4  
 Unit No. : 4

Co-Applicant Name : [REDACTED]  
 Customer GSTIN : Unregistered

Place of Delivery State : WEST BENGAL  
 Code : 19

Sub : Payment of Installment

Dear Sir / Madam

With reference to above, given below is the invoice now due for payment:

New Payment Stage	Nature of Charges	HSN	Services Description	This Invoice Payable (₹)					
				(A)	(B)	(C)		(D)	
				Charge Amount	Taxable Value	%	Amount	%	Amount
ON COMPLETION OF FLOORING OF THE UNIT	Basic(Unit Charge)	8964	Construction	20,81,780	13,74,607	3.75	51,544	3.75	51,544
Less: Amount Received in Advance									2,30,118.00
Net Payable (A)									19,34,729.00

Note: As per the amendment in the provisions of Sec. 194-1A of Income Tax Act & notified by CBDT vide Notification No. S.O. 1404-E dated 31st May 2013 applicable w.e.f. 1st June 2013, the buyer/customer have to deduct TDS @ 1% out of the instalment which is to be paid to us and to pay that TDS amount to the credit of Central Govt. The credit of the same will be reflected in your account once you submit the proof of payment of TDS on purchase of property and issue us TDS Certificate in Form - 16E.

**Total Payable Now**

This Invoice (A)	(₹)	19,34,729.00
Previous Dues (B)	(₹)	0.00
Total Payable Now (A + B)	(₹)	19,34,729.00

This payment shall be made through Cheques/Pay Order/Bank Draft/NEFT/RTGS in favour of PS BRIJAN ESTATE LLP

RTGS / NEFT Details :	A/c. No. :	[REDACTED]	Bank Name :	[REDACTED]
	IFSC Code :	[REDACTED]	Branch :	[REDACTED]

You are requested to kindly send the above payment within 15 days from the date of generation of this demand notice. No outstation cheques and cash payment shall be accepted. Any delay would affect the progress of construction. Kindly ignore this letter if you have already paid the above said dues.

Note: (i) In case of delayed payments, Delayed Payment Charges shall be levied as applicable.

(ii) It may be noted that the delayed payment charges would be subject to Goods & Service Tax (GST) as applicable and to be paid additionally over and above the delayed payment charges.

## Plotting in GST Returns:

## 1. GSTR 3B – April, 2021:–

Taxable Value = 16,23,667.00 (2/3 of 24,35,500.00)

CGST @6% = 97,420.00

SGST @6% = 97,420.00

## 2. GSTR 1 :– Amount of Rs. 16,23,667.00 (Taxable Value) and Tax Amount – 1,94,840.00 Shown in B2C Column.

In the Month of May, 2021, when another demand was raised.



3. Taxable Value = 12,89,819.00 (2/3 of 19,34,729.00)

CGST @6% = 77,389.00

SGST @6% = 77,389.00

4. GSTR 1:- B2C Column - Amount of Rs.14,44,597.00 (Taxable Value) and Tax Amount – 1,54,778.00 Shown in B2C Column.

5. Advance Adjustment Col. - Amount of Rs. 1,53,413.00(Taxable Value) and Tax Amount – 17,258.00 (The amount excess paid in previous demand now, being adjusted with the current demand)

- When a booked flat gets cancelled

This is a very common phenomenon, where a flat sold earlier gets cancelled. This is a scenario of mere a Sales Return. However, this sales return gets complicated if the transactions hits in the transition phase of GST.

This part has been resolved in the FAQs on Real Estate released by CBIC:

<p>How to compute adjustment of tax in a Credit Note to be issued u/s 34 by Real Estate Developer in case unit was booked prior to 1st April, 2021 on which GST was paid on part consideration received at the time of booking, but <b>cancelled</b> after 1st April, 2021.</p>	<p>Developer shall be able to <b>issue a Credit Note</b> to the buyer as per provisions of section 34 in case of change in price or cancellation of booking provided that the amount received in excess if any, consequent to issuance of Credit Note, is refunded to the Buyer by the Developer before September following the end of the financial year. Developer shall be able to take adjustment of tax paid in respect of the amount of such Credit Note. For example, a Developer who paid GST of Rs. 1,20,000 at the rate of 12% (effectively) in respect of a gross amount of booking of Rs. 10,00,000 before 1st April, 2019 shall be entitled to take adjustment of tax of Rs. 1,20,000 upon cancellation of the said booking on or after 1st April, 2019 against other liability of GST including liability arising at the rate of 5% / 1% provided that the entire amount received from the buyer is refunded by the Developer.</p>
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	Further, in case apartments booked prior to 1.04.2019 on which GST has been paid till 31.03.2019 at the old rates of 8%/ 12% with ITC, are cancelled and rebooked at the new rates of 1% / 5% without ITC or sold after issuance of completion certificate, the credit taken in respect of such apartments for supply of service till 31.03.2019 on which tax was paid @ 8%/ 12% with ITC shall be required to be reversed.
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In case a flat is booked after 01.04.2021 and gets cancelled, the amount collected by the customer is returned after deducting the cancellation charges as per the Agreement. The portion of GST Collected by the Customer also needs to be returned to the Customer and a Credit note needs to be raised of such amount which is returned to customer.

- Input Tax Credit claims.

For the amount of purchases that are made by paying Goods and Services Tax, Input Tax Credit can be taken within a period of 1 year from the date of purchase.

The following points needs to be taken into consideration, before claiming Input Tax Credit in the Real Estate Industry:

1. In case the construction of the project is completed and Completion Certificate has been received by the Competent Authority, neither GST can be charged on the selling of flats of flats nor Input Tax Credit can be claimed any further. Also, the remaining balance of Input Tax in the Credit Ledger has to be reversed
2. 1<sup>st</sup>, April, 2019 and onwards, where it has been decided to charge GST @ 5% /1 %, no Input Tax Credit can be charged on the purchases or receiving of services.

## **GST Provisions under Real Estate**

1. Indirect taxation and the Real Estate Sector have an unusual bond right from the earlier days when the tax on the said sector was imposed for the first time. The bond is unusual





due to the fact that it involves the supply of goods, services as well as immovable property. Carving out the taxable event and carrying out the valuation thereof has always been debatable. Miserly is further increased when one considers the extent of the **input tax credit ("ITC")** which can or cannot be availed/utilized by the said sector.

2. From 1<sup>st</sup> July, 2017 with the implementation of GST, it was thought that the misery of the sector would be reduced to a greater extent given the fact that now goods as well as services shall be taxed under a single legislation. Hence the expectation was that the earlier disputes related to the identification of the taxable event as well as valuation thereof would be done away with. Grant of ITC to the sector was also expected to keep the prices of the property unchanged even if the rate of tax was much higher than the cumulative rate in the earlier regime.
3. The uncertainty towards the ITC which would be allowable coupled with the outward tax on the total value less 1/3<sup>rd</sup> land deduction (which was highly inadequate especially in metro cities) did not lead to the situation which the Government expected. With regard to the ongoing projects, a one-time option has been granted to either continue to pay the tax under the old scheme or to shift to the new scheme w.e.f. 01.04.2019 and pay the tax at the lower rates (i.e. 1%/5%). If option to continue to pay the tax under the old scheme for the ongoing projects was not exercised by 10<sup>th</sup> May, 2019 it was deemed that the new scheme has been opted. For the new projects it is mandatory to pay the tax as per the new scheme. Number of conditions have been imposed for the tax payer desired (for ongoing project) or mandated (for new project) to pay the tax as per the new scheme.

## CONDITIONS RELATED TO ITC

4. Notification No. 03/2019 – Central Tax (Rate) dt. 29.03.2019 has substituted certain entries in the parent rate notification No. 11/2017 – Central Tax (Rate) dt. 28.06.2017 dealing with the applicable rates on supply of various services. Against Sr. No. 3 of the said parent notification, entry no. (i), (ia), (ib), (ic) &

(id) has been inserted which provides for the reduced effective rate of 1%/5% in case of residential apartments in any Real Estate Project ("REP") as well as commercial apartments in case of Residential Real Estate Project ("RREP"). Said lower rates shall be mandatory for any new project on or after 01.04.2019. For ongoing projects, an option has been granted to either continue to pay the tax under the old scheme or to shift to the new scheme w.e.f. 01.04.2019 and pay the tax at the lower rates (i.e. 1%/5%). Thus if the promoter exercises the option to pay the tax as per the new scheme, then the conditions stipulated against the referred entries providing for the lower rates have to be abide. Two such conditions, to be analysed in the present article, dealing with ITC reads as under:

"Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;

Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1<sup>st</sup> April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;"

5. The first proviso referred above thus provides that the ITC in respect of goods and services used in supplying the services (taxed at the effective rates of 1%/5%) has not been taken except to the extent permissible. Hence the promoter shall be required to calculate the ITC which shall be permissible. Said permissible amount shall be calculated as per Annexure I (in case of REP other than RREP) and Annexure II (in case of RREP).

6. Second proviso referred above further provides that the amount of ITC attributable to construction in a project time of supply of which is on or after 1<sup>st</sup> April, 2019 (referred as ineligible ITC) shall also be calculated as per the referred Annexures and the said amount needs to be debited in the electronic credit ledger (if credit is available to the said extent) or to electronic cash ledger



(i.e. the balance amount to be paid by cash). It must also be noted that the calculations shall be done separately for each tax type (i.e. separate calculations for CGST, SGST & IGST). Further the working shall be done project-wise.

7. With the above background let us now understand the calculations provided in both the Annexures. It must also be noted that the below referred calculations shall also aid in deciding whether to continue under the old scheme or shift to the new scheme for the ongoing projects. We shall first deal with Annexure I and then shall go to Annexure II.

### **ANNEXURE I**

8. Said annexure applies to a Real Estate Project which is not a Residential Real Estate Project. As per clause (xix) of the NN 03/2019 – CT (R) a REP wherein the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments shall be construed as a RREP. Annexure I applies to only such projects which are not RREP. In other words, it applies to projects wherein the carpet area of commercial apartments exceeds 15% of the total carpet area of all the apartments. Further the said Annexure applies only in the context of the construction of residential portion in the said non-RREP project. Hence a fully commercial project shall not be covered by the said Annexure. This is because such project shall be continue to be taxed as per the normal rates (i.e. 12%) with ITC (subject to reversal as per Rule 42 & 43).

9. Said Annexure is further sub-divided into two parts. Hence we shall deal with each part separately.

#### **ANNEXURE I – PART 1**

10. Methodology prescribed in the Part 1 applies only when the % completion as on 31<sup>st</sup> March 2019 is not zero or where there is inventory in stock. In other words said part applies to such non-RREP projects wherein some % of work has already been done as on 31<sup>st</sup> March 2019 or there is inventory in stock (i.e. procurement has happened on or before 31<sup>st</sup> March).

11. Essentially the objective of the working is to arrive at the ITC in respect of the construction of residential portion which has time of supply on or before 31<sup>st</sup> March, 2019. This is because only the said amount of ITC attributable to residential apartments shall be eligible as the corresponding supply has been taxed at the earlier higher rates (8%/12%). Further since the project is a non-RREP, the under-constructed commercial apartments supplied even on or after 01<sup>st</sup> April, 2019 shall continue to be taxed at the higher effective rate of 12%. Hence even ITC in respect of commercial area shall be eligible. Thus eligible ITC (Te) shall be as under:

$Te = Tc$  (ITC attributable to the construction of the commercial portion) +  $Tr$  (ITC attributable to the construction of residential portion which has time of supply on or before 31<sup>st</sup> March, 2019)

12. Hence the ineligible ITC denoted by  $Tx$  shall be derived as under:

$$Tx = T - Te$$

### **WHAT SHALL "T" INCLUDE**

13. In the above equation  $T$  is the total ITC availed (utilized or not) on inputs and input services used in construction of the non-RREP from 1<sup>st</sup> July, 2017 to 31<sup>st</sup> March 2019 including transitional credit taken on 1<sup>st</sup> July, 2017. Following observations can be made while computing the amount of  $T$ :

- a) ITC to be considered shall be the ITC availed irrespective of the fact as to whether the same has been utilized or not.
- b) Said ITC has to be calculated project-wise and not entity-wise.
- c) Only ITC in respect of inputs and input services is to be considered. Hence ITC in respect of capital goods are not to be considered.
- d) Even transitional credit availed for the project in question needs to be considered.

14. Above observations will surely lead to the difficulty of the identification of the availed ITC (including transitional credit) attributable to the particular project. This is because Sec. 35(1)



of the CGST Act, 2017 read with Rule 56 of the CGST Rules, 2017 do not provide for maintaining records project-wise of the ITC availed. Further in cases where the credit on such transaction has been claimed of the balance available in the last return, such balance is of the amount remaining after the utilization thereof and not of the credit availed. Hence bifurcating the said balance project-wise would be very difficult especially considering the fact that the FIFO rule (Rule 14(2)) for CENVAT utilization was abolished. Hence unless such rule is applied, the attribution of such transitional credit to a particular project shall be a challenge.

15. Now  $T_e$ , which is eligible ITC, is the sum total of the (a) ITC attributable to the construction of the commercial portion ( $T_c$ ) and (b) ITC attributable to the construction of residential portion which has time of supply on or before 31<sup>st</sup> March, 2019 ( $T_r$ ).

### **CALCULATION OF “ $T_c$ ”**

16.  $T_c$  as stated above is the ITC attributable to the construction of the commercial portion. Said ITC is calculated by applying the proportion of the carpet area of commercial apartment to total carpet area of the commercial and residential apartment. Same can be illustrated as under:

No. of apartments in the project	100	units
No. of residential apartments in the project	75	units
Carpet area of the residential apartment	70	sqm
Total carpet area of the residential apartments	5250	sqm
No. of commercial apartments in the project	25	units
Carpet area of the commercial apartment	30	sqm
Total carpet area of the commercial apartments	750	sqm
Total carpet area of the project (Resi + Com)	6000	sqm
ITC Availed (T)	1	crore
$T_c = T \times (\text{carpet area of commercial apartments in the REP} / \text{total carpet area of commercial and residential apartments in the REP})$	0.125	crore

Hence as seen above, ITC attributable to the commercial apartment shall be INR 0.125 crore. Said ITC shall be eligible

because in the case of a non-RREP, the applicable effective rate on commercial apartments shall continue to be 12% and hence ITC attributable to such units shall be admissible. It remains to be seen as to how Rule 42 can come into play on completion of the said project to the extent of the un-booked commercial apartments.

## CALCULATION OF “Tr”

17. Tr stands for the ITC attributable to the construction of the residential portion which has time of supply on or before 31<sup>st</sup> March, 2019. Similar to Tc, even Tr shall be eligible since the same relates to construction of residential portion which has time of supply on or before 31<sup>st</sup> March, 2019 and hence tax has been paid at the earlier higher rates (12%/8%). Tr shall be calculated as under for the above referred example:

Value of each residential apartment	0.60	crore	–
Percentage completion as on 31.03.2019	20%		As declared to RERA or determined by registered architect or a chartered engineer
No of residential apartments booked before transition	40	units	–
Total carpet area of the residential apartments booked before transition	2800	sqm	40 (apartments) * 70 sqm
Value of booked residential apartments	24	crore	40 (apartments) * 0.6 (value of each apartment) – It may be noted that value of each apartment may not be same and hence total of the value of all booked apartment shall be considered.



Percentage invoicing of booked residential apartments on or before 31.03.2019	20%		Figure to be derived by dividing the value of invoicing done on or before 31 <sup>st</sup> March from the total booked value.
Total value of supply of residential apartments having t.o.s. prior to transition	4.8	crore	As the percentage invoicing is 20%, TOS shall be 20% of the total booked value i.e. $24 \times 0.2$ .
ITC Availed (T)	1	crore	It shall include transitional credit.
$Tr = T \times F1 \times F2 \times F3 \times F4$			
F1	0.875		Carpet area of residential apartments/total carpet area of commercial + residential apartments.
F2	0.533		Total carpet area of residential apartments booked on or before 31 <sup>st</sup> March, 2019/Total carpet area of residential apartments.
F3	0.200		Such value of supply of construction of residential apartments booked on or before 31 <sup>st</sup> March, 2019 which has time of supply on or before 31 <sup>st</sup> March, 2019/Total value of supply of construction apartments booked on or before 31 <sup>st</sup> March, 2019
F4	5		1/% completion of construction as on 31 <sup>st</sup> March, 2019.
$Tr = T \times F1 \times F2 \times F3 \times F4$	0.467	crore	Amount of eligible ITC.

19. Above working can be easily understood as under:

**1<sup>st</sup> Step:** Gross up the ITC for determining the eligible amount for the entire project. In the above case, ITC availed is INR 1 crore and the work completed is 20%. Hence if the entire project is completed, pro-rata ITC would have been INR 5 crores (i.e.  $1 \times 5 (1/20\%)$ ). This is F4.

**2<sup>nd</sup> Step:** From the grossed up ITC, the amount attributable to the residential apartment needs to be worked out. This is because the ITC attributable to the commercial apartment shall continue to remain available. In the above case, 87.5% of the area in the project is for residential apartment. This is F1. Hence the ITC of INR 4.375 crore out of the total grossed up ITC of INR 5 crores shall be now considered for further steps as the said amount relates to the residential apartments.

**3<sup>rd</sup> Step:** From the grossed up ITC attributable to the residential apartments, ITC attributable only to the booked apartments shall be available. This is because the un-booked apartments shall now suffer tax at the lower rates of 1%/5% or no tax when booked on or after 01.04.2019. In the above case the area of the booked residential apartments to the total area of residential apartments is 53.3%. This is F2. Hence of the grossed up ITC of residential apartments, only 53.3% shall be admissible. Hence only INR 2.33 crore ( $4.375 \times 53.3\%$ ) shall be admissible.

**4<sup>th</sup> Step:** Even in respect of booked residential apartments, ITC shall be available only in respect of that construction which has time of supply on or before 31<sup>st</sup> Marc, 2019. This is because the time of supply arising on or after 01<sup>st</sup> April, 2019 shall be subjected to lower rates of 1%/5%. In our case the time of supply in respect of booked apartments has arisen only to the extent of 20% of the value of apartments booked as invoicing to the extent of only 20% has been done. This is F3. Hence 80% of the value of booked apartment shall suffer tax at the reduced rates on or after 01.04.2019. Hence only INR 0.467 crore ( $2.33 \times 20\%$ ) shall be admissible. It may be noted that if percentage of invoicing done is more than the work completed (let us say 30% of invoicing is done when work completed is 20%), such 30% shall be considered in the present step (however please see 25% rule discussed later in this regard).





## TOTAL ADMISSIBLE ITC

20. Now the total admissible ITC shall be ITC attributable to the commercial portion ( $T_c$ ) which is INR 0.125 plus ITC attributable to residential portion which has time of supply on or before 31<sup>st</sup> March, 2019 ( $T_r$ ) which is INR 0.467 crore. Hence eligible ITC ( $T_e$ ) shall be INR 0.592 crore ( $0.125 + 0.467$ ). Hence the ITC attributable to the construction of the residential portion which has time of supply on or after 1<sup>st</sup> April, 2019 ( $T_x$ ) shall be total ITC ( $T$ ) which is INR 1 crore less  $T_e$  which is INR 0.592 crore. Hence  $T_x$  shall be INR 0.408 crore.

21. Second proviso mentioned earlier provides that the said amount needs to be paid, by adding the same as part of the output tax liability, either by debiting the electronic credit ledger, if balance is available, or to be paid by cash by debiting the electronic cash ledger. Said amount needs to be paid by the due date for filing the return for the month of September, 2019. A registered person may also seek monthly instalment for payment of such dues which may be granted by the Commissioner. However such instalment period cannot exceed 24 months and the said instalment shall be paid with interest. Application has to be made in FORM GST DRC – 20 and the order to pay in instalment shall be granted in FORM GST DRC – 21.

22. Annexure – I further provides that if the amount of  $T_x$  is negative i.e. ITC eligible is more than the ITC availed till 31<sup>st</sup> March, 2019, the registered person shall be eligible to take ITC to the extent of the difference, on the goods or services received for the said project on or after 1<sup>st</sup> April, 2019.

23. Further registered person can calculate  $T_c$  (i.e. ITC attributable to commercial apartments) and utilize the same for paying the tax on the commercial apartments till the complete calculation for  $T_x$  is carried out and submitted.

24. In case where the percentage completion is zero and only goods or services have been procured on or before 31<sup>st</sup> March, 2019 the ITC attributable to the residential portion which has time of supply on or after 1<sup>st</sup> April, 2019 shall also be done as per the above formula only. The percentage completion (for calculating  $F_4$ ) in the said case shall be the percentage completion as

certified by the registered Architect or Chartered Engineer which can be achieved with the inputs services received and the inputs in stock as on 31<sup>st</sup> March, 2019.

## **ANNEXURE I – PART 2**

25. Methodology prescribed in the Part 2 shall apply where % completion is zero as on 31<sup>st</sup> March, 2019 but invoicing has been done having time of supply before 31<sup>st</sup> March, 2019 and no input services or inputs have been received as on 31<sup>st</sup> March, 2019.

26. Hence the methodology prescribed in the said Part 2 shall apply wherein no procurement of inputs or input services have happened and hence no construction has started but apartments have been booked in respect of which time of supply has arisen before 31<sup>st</sup> In other words as per the agreement, in respect of booked apartments, the liability to pay the instalment has arisen before 31<sup>st</sup> March, 2019.

27. In the above referred methodology only following changes may be noted. Rest shall remain the same.

28. Since no inputs or input services have been procured, the amount of ITC (Tn) which is to be taken as the base shall be the ITC on such inputs and input services received in FY 2019-20. F4 as stated above shall not be taken into account since no construction has begun as on 31<sup>st</sup> March, 2019. It is surprising to note that the law expects the promoter to calculate the eligible amount before the due date for furnishing the return for the month of September, 2019. The same cannot be calculated for Part 2 since the ITC (Tn) to be considered for the calculation can only be known after the end of FY 2019-20.

## **ANNEXURE II**

29. Methodology given under Annexure II shall apply in case of a Residential Real Estate Project. In case of RREP it may be noted that even the commercial apartments shall be taxed at 5%. Hence even ITC in respect of commercial apartments which have time of supply on or after 01<sup>st</sup> April, 2019 shall not be admissible. Hence as opposed to Annexure I wherein eligible ITC



Te comprised of Tc (ITC attributable to commercial apartments irrespective of the time of supply) and Tr (ITC attributable to residential portion which has time of supply before 31<sup>st</sup> March, 2019), eligible ITC for RREP ("Te") as per Annexure II shall only comprise of the ITC attributable to commercial as well as residential portion which have time of supply on or before 31<sup>st</sup> March 2019. This is because any supply of service in respect of commercial as well as residential portion on or after 01<sup>st</sup> April, 2019 shall be taxable at the reduced effective rate of 1%/5%.

30. Similar to Annexure I, even Annexure II comprises of two parts. Part I applies to cases where % completion as on 31<sup>st</sup> March, 2019 is not zero or where there is inventory in stock. Part II applies in cases where % completion as on 31<sup>st</sup> March is zero but invoicing has been done having time of supply before 31<sup>st</sup> March, 2019 and no input services or inputs have been received as on 31<sup>st</sup> March, 2019.

31. Working for both the parts shall be similar to the working done under Annexure I. Only difference would be that working for Tc shall not be required and Tr of Annexure I (here referred only as Te) shall comprise of residential as well as commercial apartments.

## **25% RULE**

32. The stated rule applies to both the annexure's discussed above. Where percentage invoicing is more than the percentage completion and the difference between percentage invoicing (per cent points) and the percentage completion (per cent points) of construction is more than 25 per cent points; the value of percentage invoicing shall be deemed to be percentage completion plus 25 per cent points. Hence let us say percentage invoicing is 60% whereas percentage completion is only 20%. Since the difference is of more than 25 per cent points, the percentage invoicing shall be deemed to be only 45% (i.e. percentage completion (20%) + 25%). It may be noted that the difference is to be measured in per cent points (which is absolute) and not a relative difference by applying 25% to the percentage of completion.

33. Similarly where the value of invoices issued on or prior to 31st March, 2019 exceeds the consideration actually received on or prior to 31st March, 2019 by more than 25 per cent of consideration actually received; the value of such invoices for the purpose of determination of percentage invoicing shall be deemed to be actual consideration received plus 25 percent of the actual consideration received.

34. Also where, the value of procurement of inputs and input services prior to 1<sup>st</sup> April, 2019 exceeds the value of actual consumption of the inputs and input services used in the percentage of construction completed as on 31st March, 2019 by more than 25 percent of value of actual consumption of inputs and input services, the jurisdictional commissioner or any other officer authorized in this regard may fix the Te based on actual per unit consumption of inputs and input services based on the documents duly certified by a chartered accountant or cost accountant submitted by the promoter in this regard, applying the accepted principles of accounting.

35. In a nutshell the logic behind the above provisions seems to be that the variance to the extent of 25% points between completion vis-à-vis invoicing, invoicing vis-à-vis actual receipts & value of procurements vis-à-vis value of actual consumption shall be considered as within the normal range and in this case the actual figures shall be considered for determination of the eligible ITC. However if the variance is more than the 25% points, then in case of difference between completion vis-à-vis invoicing and invoicing vis-à-vis actual receipts, only figures upto the 25% points variance shall be considered. Excess is to be ignored. In case of difference between the value of procurement vis-à-vis value of actual consumption exceeds 25% points, the jurisdictional commissioner to determine the Te based on the documents certified by a Chartered Accountant or Cost Accountant.

36. Perhaps the intention seems to be that the variation exceeding 25% points is unusual and hence can only be on account of some tax planning to claim higher ITC and hence is sought to be ignored. Author submits that applying the said rule



without seeing the underlying reasons for variance exceeding the said 25% points is unjust and needs to be relooked by the Government.

## WHAT HAPPENS TO ITC OF CAPITAL GOODS

37. It may be noted that ITC availed on capital goods do not form part of the above calculations. Hence a clarification is required as to whether the ITC attributable to capital goods to the extent of the unexpired period (out of 60 months) shall require any reversal or not. Plain reading of the notification do not suggest such reversal.

## WHAT HAPPENS TO NEW PROJECTS

38. A new project can be either a REP which is a RREP or a non-RREP. If time of supply has arisen on or before 31<sup>st</sup> March, 2019 but input services or inputs have not been received, calculation of eligible ITC shall be as per Part 2 of the Annexure I (in case of non-RREP) or Annexure II (in case of RREP). Hence ITC only to the extent of supply taxed at the higher rates shall be available. In all other new projects (i.e. where time of supply has not arisen on or before 31<sup>st</sup> March, 2019) the above referred Annexures shall not apply.

**However w.e.f. 01.04.2020 the conditions have been amended and as implemented are being analysed as under for the Real Estate inclusive of all apartments.**

### **Before and After Amendment in 2020 on GST Rates under construction**

1. Construction of affordable residential apartments by a promoter in a RREP/REP.

Before April 20 – 12% (after 1/3rd abatement allowed for land value), with full ITC.

After April 20 – 1% and no ITC

2. Construction of residential apartments other than affordable residential apartments by a promoter in RREP/REP.

Before April 20 – 12% (after 1/3rd abatement allowed for land value), with full ITC.

After April 20 – 5% and no ITC

3. Construction of commercial apartments (shops, offices, godowns etc.) by a promoter in a RREP.

Before April 20 – 12% (after 1/3rd abatement allowed for land value), with full ITC.

After April 20 – 5% and no ITC

4. Construction of commercial apartments (shops, offices, godowns etc.) by a promoter in REP.

Before April 20 – 12% (after 1/3rd abatement allowed for land value), **with full ITC.**

After April 20 – 12% (after 1/3rd abatement allowed for land value), **with full ITC.**

### Conditions of New Tax Rates

- a) No Input Tax Credit.
- b) Reverse ITC should be based on carpet Area for supply of construction services.
- c) 80% of value of inputs and inputs services other than TDR, Electricity, HSD, Motor Spirit and Natural Gas should be purchased from registered supplier.
- d) Total ITC to be shown as Ineligible ITC in GSTR 3B every month.
- e) RCM should be charged on two rates:-
  - i) 18% – for all inputs and input services.
  - ii) 28% – for cement.

However in the 43<sup>rd</sup> GST council meeting in May 2021 it is held and decided that the land owner is eligible to avail the ITC charged by the Developer even if the property is sold after obtaining the Completion Certificate.

# CHAPTER 03

## **RULING ON REAL ESTATE BY ADVANCE AUTHORITIES TILL 31<sup>st</sup> DAY OF MAY 2021**

### **WEST BENGAL AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX**

14 Beliaghata Road, Kolkata – 700015

(Constituted under section 96 of the West Bengal Goods and  
Services Act, 2017) BENCH

Mr Sydney D'Silva, Joint Commissioner, CGST & CX Mr  
Parthasarathi Dey, Senior Joint Commissioner, SGST

#### **Preamble**

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Bengal Peerless Housing Development Company Limited
Address	6/1A, Moira Street, Mangaldeep Building Ground Floor, Kolkata- 700017
GSTIN	19AABCB3038P1ZE
Case Number	07 of 2019
ARN	AD190219000271H
Date of application	08/02/2019
Order number and date	01/WBAAR/2019-20 dated 02/05/2019
Applicant's representative heard	Amit Agarwal, Dy. General Manager

## 1. Admissibility of the Application

1.1 The Applicant is a joint venture of The West Bengal Housing Board and The Peerless General Finance and Investment Company Limited for developing real estate projects in West Bengal. It is developing a residential housing project named 'Avidipta II' and supplying construction service to the recipients for possession of dwelling units in the year 2023. The Applicant is enjoying abatement, prescribed for construction service under SI No. 3(i) read with Paragraph 2 of Notification No 11/2017 - CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1135-FT dated 28/06/2017), as amended from time to time; hereinafter collectively called the Rate Notification. In addition to the construction service, the Applicant provides services like preferential location service, which includes services of floor rise and directional advantage. It seeks a ruling on whether the supply of these services constitutes a composite supply with construction service as the principal supply, and if so, whether abatement is applicable on the entire value of the composite supply.

1.2 The question raised is admissible for an advance ruling under section 97(2)(a) & (b) of the GST Act.





1.3 The Applicant declares that the issues raised in the Application are not pending nor decided in any proceedings under any provisions of the GST Act. The officer concerned from the revenue has raised no objection to the admissibility of the application.

1.4 The Application is, therefore, admitted.

## **2. Submissions of the Applicant**

1.1 'Avidipta II' is being developed on about 2.63 acres of land as a residential complex. There will be dwelling units for different income groups. The prices of residential units offered to the lower income groups (LIG) and the middle-income groups (MIG) categories are regulated by the State Government. In the case of the high-income group (HIG) category, the price is determined by the Applicant. According to the brochure containing the General Terms of Conditions (hereinafter the GTC) and the prototype of the agreement with a buyer for a HIG unit (hereinafter the Agreement), the Applicant is offering at a single consolidated price construction service based on Standard Built-up Area (SBUA) and the right to use the allotted car parking space. It also includes services associated with preferential location, which means charges, if any, for directional advantage and floor rise. Charges for the right to use the common areas and recreational facilities are also included in the above single consolidated price. Other charges, deposits and taxes are separately recovered. The Applicant's question is limited to what is being offered to the buyers of the HIG category offplots.

1.2 In its Written Submission the Applicant makes out a case for treating the supply of services of directional advantage and benefit of floor rise as integral to supply of construction service. The Applicant provides construction service to a recipient only after the Agreement is signed and other terms and conditions laid down in the Agreement are fulfilled. It is, therefore, absolutely clear from the context that the construction service is being provided only with respect to the dwelling unit allotted and after the allotment money paid. Supply of construction service cannot, therefore, be separated from the supply of the services of directional advantage and benefit of floor rise associated with

the unit allotted to the recipient. Supply of construction service is, therefore, naturally bundled with the supply of the services of directional advantage and benefit of floor rise, and all of them are being supplied in conjunction with one another in the ordinary course of business. It is, therefore, a composite supply with construction supply, being the dominant element, as the principalsupply.

1.3 The Applicant then draws attention to section 8(a) of the GST Act, which provides that a composite supply, for the purpose of taxation, shall be treated as supply of the principal one. The abatement, as prescribed for construction service in Paragraph 2 of the Rate Notification, should, therefore, be available on the value of the entire composite supply.

### **3. Submission of the Revenue**

3.1 The concerned officer from the Revenue submits that the buyer of a flat pays for the construction of the flat, floor rise and directional advantage. All such services are supplied as a whole in the ordinary course of business. Out of these services the construction service is the main supply and the other ones are incidental or ancillary to the construction service. The Applicant is, therefore, providing composite supply to the buyer of the flat wherein the construction service is the main supply. Hence, abatement for construction in terms of SI No. 3 of the Rate Notification may be considered for the purpose of taxation.

### **4. Observation & Findings of the Authority**

1.1 The Agreement refers to the sale of an immovable property. It is relevant so far as construction service (SAC 9954) is offered, assuring coming into being of the immovable property. The buyer also agrees to pay in advance for certain other services that he will enjoy after obtaining possession of the property. They include inter alia the service of preferential location (SAC 9985), right to use the car parking space and the common areas and facilities (SAC 9972). The buyer agrees to pay a single consolidated amount for all these supplies (refer to clause 2.1 of the Agreement). The question that needs to be examined is whether they are naturally bundled and are supplied in conjunction with one another in the



ordinary course of business and whether the construction supply is the dominant element and all other services in the bundle are ancillary or incidental to the supply of the construction service.

1.2 Actual enjoyment of the construction service and the other services mentioned in the above bundle are separated by time. The other services can be enjoyed only after the supply of construction service is complete. In fact, the buyer of a completed dwelling unit can pay for and enjoy the other services like preferential location and right to use the parking space and the common areas and facilities without having been provided with the construction service.

1.3 Although actual provisioning of the construction and other services are made at different points of time, they can be supplied in a bundle because supply, as defined under section 7(1) of the GST Act, includes agreement to supply even if actual supply is to be made at a future date, provided and to the extent the recipient pays in advance. There is no straight jacket formula to examine whether they are naturally bundled and supplied in conjunction with one another in the ordinary course of business. The term 'naturally bundled' is not defined in the GST Act. But the concept has been taken from the previous service tax regime, and the Education Guide that CBEC published in 2012 throws valuable light on this issue.

1.4 In contrast to other combinations, the services that are naturally bundled can be treated as provisioning of a single service that lends the bundle its essential character (Section 9.2.1 of the Education Guide). The Education Guide illustrates with the example of convention service that a star hotel provides to the delegates when it charges a lump sum for a package of services, including accommodation, breakfast, conference facility, business centre, gym etc. All these services can be separately provided. However, they can also be combined together while charging for convention service, which describes the essence of the package. It is the predominant element of the combination of services being supplied. Another example is works contract service, which is the predominant element in the combination of goods and services supplied in construction, repair etc of an

immovable property, where all other supplies in course of such construction are ancillary to supply of the works contract service.

1.5 Whether the services so bundled are provided in conjunction with one another *in the ordinary course of business* would depend upon the normal or frequent practices adopted in a business and can be ascertained from several indicators. For example, if a large number of service receivers reasonably expect such services to be provided as a package, such a package could be treated as naturally bundled in the ordinary course of business. Similarly, if a majority of the service providers in a particular area of business provide these services in a bundle, such packaging of services may be treated as the ordinary business practice (Section 9.2.4 of the Education Guide).

1.6 Section 2(30) of the GST Act draws upon these concepts to define composite supply as supply by a taxable person of a combination of taxable goods or services or both, which are naturally bundled and supplied in conjunction with one another in the ordinary course of business, where one of the supplies can be identified as the principal supply. Section 2(90) of the GST Act defines principal supply as the predominant element of such a composite supply where all other supplies in the bundle are ancillary to the principal supply.

1.7 There is no doubt that the Applicant is a taxable person and the services offered in the bundle described in para 3.1 are taxable services. It is also clear from the context that construction service is the dominant element in the bundle described in para 3.1 above. Moreover, the recipient, while agreeing to buy these services as a bundle, cannot enjoy the other services unless he agrees to buy the service of constructing the allotted dwelling unit. Furthermore, developers of residential complexes usually offer these services in a bundle. Although one has the option not to pay for the right to use car parking space, he cannot buy it, or for that matter any other service in the bundle, separately. The recipient has to buy these services only as a package, where the construction service remains the predominant element. The buyers of the service of constructing dwelling units in such upscale residential complexes like Avidipta II expect, apart from the preferential location of the dwelling unit, right to use car parking space and enjoyment of common areas and facilities like



landscaped gardens, gym, conference hall, a club with swimming pool etc. They usually buy them as a bundle while booking a flat in such a complex. It is, therefore, reasonable to conclude that the services described in para 4.1 above are naturally bundled and offered in conjunction with one another in the ordinary course of business, and the other services of the bundle are ancillary to the supply of the construction service, which describes the essential character of the bundle of services being supplied. It appears that the concerned officer from the Revenue holds similar view in the matter.

1.8 The Applicant, therefore, is providing a composite supply of the bundle of services described in para no. 3.1 above, construction service being the principal supply. Entire value of the composite supply is, therefore, to be treated, for the purpose of taxation, as the supply of construction service, taxable under SI No. 3(i) read with Paragraph 2 of the Rate Notification.

In view of the foregoing, we rule as under

## **RULINGS**

The Applicant is providing service of construction of a dwelling unit in a residential complex, bundled with services relating to the preferential location of the unit and right to use car parking space and common areas and facilities. It is a composite supply, construction service being the principal supply. Entire value of the composite supply is, therefore, to be treated, for the purpose of taxation, as supply of construction service, taxable under SI No. 3(i) read with Paragraph 2 of Notification No 11/2017 - CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1135-FT dated 28/06/2017), as amended from time to time.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

(SYDNEYD'SILVA)

Member

(PARTHASARATHIDEY)

Member

West Bengal Authority for Advance Ruling West Bengal Authority  
for Advance Ruling

## **Shri Sanjeev Sharma (AAR Delhi)**

In the case of supply of services by way of 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, the GST would be payable on two-third of the total amount consisting of amount charged for transfer of land or undivided share of land, as the case may be, and whole of the consideration charged for the supply of goods and service.

Hence, the value of land, or the undivided share of land, as the case may be, would be deemed to be one-third of the total amount, which is excluded from the value for the purposes of payment of GST. Even if agreement between the applicant and the buyer is entered after part of the construction is already completed, whole of the consideration would be added for payment of GST. The applicable rate of GST on the said two-third of total amount is 9% (CGST) and 9% SGST under S. No. 3(i) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and parallel SGST notification.

## **FULL TEXT OF ADVANCE RULING**

### **Statement of Facts as per the Applicant:**

The applicant plans to engage itself in the development and sale of residential houses, generally floors/ flats in India.

### **Acquisition of Land**

2. The proposed modus operandi shall be that the applicant shall either purchase land or it shall enter into collaboration agreements with various land owners whereby the applicant shall acquire the right to develop the property and further sell the units developed thereon.

- a. In case of purchased land: the applicant shall be entitled to sell all the units developed thereon,



- b. In cases of development and sale rights: the applicant shall be entitled to sell the flats/ unit falling to the applicant's share, in terms of the collaboration agreement.

### **Development and construction of Project**

- 3. Post purchase of land/ acquisition of land rights:
  - a. The applicant shall apply for the requisite approvals.
  - b. The applicant plans to get the construction work done by contractors as well as on its own.
- 4. Following agreements would be entered into by the Applicant:
  - a. One for sale of undivided and impartible share in land; and
  - b. Another agreement for sale of superstructure.

### **Details of Question on which Advance Ruling is requested:**

- 5. In case where there are two transactions each represented by a separate Agreements i.e.
  - i. One for sale of undivided and impartible share in land @ say Rs. 100; and
  - ii. Another agreement for sale of superstructure @ say Rs. 15
- 6. Following are the questions on which the applicant is seeking advance ruling
  - a) Whether GST will be applicable on the sale of undivided and impartible share of land represented by Agreement to sell the land?
  - b) Whether GST shall be applicable on sale of superstructure (which is under construction)?
  - c) If yes:-
    - i. What will be the value on which tax is payable?
    - ii. What would be the applicable rate for charging GST?

## Views of The Applicant:

7. Sale of land is out of the scope of the definition of Supply under GST, as the same has been prescribed under Entry 5 of Schedule III of the CGST Act, 2017. Consequently, transfer of undivided and impartible share in land would not be leviable to GST.

8. For the purpose of analysing the above transaction, it is of importance to have a perusal of the relevant portion of the provisions providing for the scope of 'supply', which reads as under:

"7. (1) For the purposes of this Act, the expression "supply" includes-

....

....

(2) Notwithstanding anything contained in sub-section (1), -

(a) activities or transactions specified in Schedule III: or

(b) shall be treated neither as a supply of goods nor a supply of services."

9. A perusal of the above extracted provision shows that all transactions provided under Schedule III of the CGST Act are out of the purview of GST and no GST is leviable on the said activities/ transactions.

10. The relevant Entry under the said Schedule, for the purpose of instant application, reads as under

### "SCHEDULE III

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES.

1. ....

2. ....

3. ....

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



6. ....

11. From a conjoint reading of Section 7 and Entry 5 of Schedule III of CGST Act, any activity/ transaction which is in the nature of 'sale of land' is not covered within the purview of GST. Consequently, no GST is payable on the transactions resulting in the sale of land.

12. Construction of superstructure would attract tax on Rs. 15. Further, even in respect of superstructure, GST should be imposed only on the value of construction on or after the agreement with the buyer i.e. after deducting the value of construction already completed till the date of agreement

13. Relevant **Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017**:

S. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
2	Section 5	Construction services		
3	Heading 9954 (construction services)	(i) 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. (Provisions of paragraph 2 of this	9	



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		notification shall apply for valuation of this service)		
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) construction services other than (i) and (ii) above.	9	-

Paragraph 2: In case of supply of service specified in column (3) of the entry at item (i) against serial nb. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods

portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation.— For the purposes of paragraph 2, “total amount” means the sum total of,-

- (a) consideration charged for aforesaid service; and
- (b) amount charged for transfer of land or undivided share of land, as the case may be.

### **Discussion:**

14. The issue for decision in this case is regarding value and rate of tax for payment of GST on the service of 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.

15. It is observed that as per Section 7(2)(a) of the CGST Act, 2017, activities or transactions specified in Schedule III of the said Act shall be treated neither as a supply of goods nor a supply of services. Further, Paragraph 5 of the said Schedule III specifically covers sale of land. Hence, sale of land is not covered under the scope of supply under GST hence on the sale of land, no GST is payable. Similarly, sale of undivided portion of land on outright sale of immovable property and hence outside the scope of GST.

However, the Section 7(1)(d) of the CGST Act, 2017 read with Paragraph 5(b) of Schedule II of the said Act specifically provides that supply of goods or supply of services Include “construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a 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". Hence, if construction activity is done on behalf of the buyer i.e. as a supply of goods or services to the buyer, GST is payable.

17. It is also observed that during the construction of a complex, building etc., the land and its superstructure becomes inseparable and hence, separate sale of land and its superstructure does not appear to be permissible. During the hearings, the applicant was asked to submit a sample copy of 'Registered Sale Agreement' in Delhi where sale of land and sale of its superstructure have been separately registered. However, they could not produce any such registered agreements.

18. The applicant has submitted that laws in India recognises "land" and "super-structure" as separate and independent immovable properties. The applicant has referred to provision of General Clauses Act, Indian Contract Act, 1872, Specific Relief Act, Transfer of Property Act, The Indian Evidence Act, Registration Act, Stamp Act, Income Tax Act etc. to claim that land and building are two different assets or immovable property and that land and superstructure can be independently sold and purchased. However, under GST, the valuation of supply of goods and services has to be done in accordance with Section 15 of the CGST Act, 2017.

19. Further, even if separate values would be available for land and goods & services, the paragraph 2 of the Notification No. 11/2017 — Central Tax (Rate) dated 28.06.2017 would be applicable for ascertaining value of goods and services for levy of GST, as discussed below.

20. The supply in this case is a composite supply consisting of three components, namely (i) land on which the complex or building is constructed, (ii) goods which are used in construction activities and (iii) services undertaken by the applicant directly or through other contractors.

21. While admitting that GST cannot be levied on the value of land or value of undivided share of land, the question which needs to be answered is how the value of the said land needs to be ascertained.

22. In this case, the measure of tax should be the value of goods and services supplied by excluding the value of land. However, since land cannot be separately ERT sold, IFIED COPY a deemed value of land need to be ascertained on which GST would not be payable.

23. The applicant wants the value of land to be ascertained by him on the basis of Rule 30 of CGST Rules, 2017, as the said Rules, do not provide any other specific provision to ascertain the value of land for exclusion.

24. It is also observed that a similar issue under Service Tax was decided by Hon'ble High Court of Delhi under W.P. (Civil) No. 2235/2011 in the case of Shri Suresh Kumar Bansal V/s Union of India. The Hon'ble High Court held in its judgement dated 03.06.2016 that in the case of sale of complex, which is a composite contract, the levy of service tax would be restricted to the service element of the contract, after excluding the value of goods as well as the value of land from such contracts. It was also held that statutory framework must provide for machinery provisions to ascertain the value of such service element which are charged to Service Tax. In Service Tax, the Section 67 of the Finance Act, 1994 and by virtue of Section 67(1)(iii) of the said Act, Rule 2A of the Service Tax (Determination of value) Rules, 2006 provided mechanism to ascertain the value of services and goods in a composite works contract. However, the said Rule did not cater to determination of value of services in case of a composite contract which also involves sale of land. Further, circulars or other instructions could not provide the machinery provisions for levy of tax, which must be provided in the statute or the Rules framed under the statute. In Service Tax, the provision to exclude the value of land was sought to be provided by exemption Notification No. 26/2012 — ST dated 20.06.2012 which had been issued under Section 93 (1) of Finance Act, 1994. The scope of the said Section 93 of the said Act, was limited to grant of exemption provided the service tax was leviable under Section 66/66B of the Finance Act, 1994. It was held that the abatement to the extent of 75% or 70% by a notification or a circular cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract.



25. However, under GST **Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017** – S. No. 3 r/w Paragraph 2, the deemed value of land or undivided share of land has been fixed at one-third of the total amount charged. Hence, in GST, the machinery provisions to ascertain the value of land is available in the notification which has been issued under Sub-Section (5) of Section 15 of the CGST Act, 2017 regarding value of taxable supply. The said sub-section (5) of Section 15 of CGST Act, 2017 reads as under:

“Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.”

26. Thh. The said Notification has been issued under Section 15(5) of the CGST Act, 2017 by the Government on the recommendation of the GST Council and hence, no separate Rule was required to be issued. Hence, Paragraph 2 of the **Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017** is fully authority Section 15(5) of the CGST Act, 2017 to provide machinery provisions to ascertain the value of land for exclusion and to measures the value of supply of goods and services for levy of GST. The said machinery provisions cannot be equated with exemption Notification issued under Section 93(1) of the Finance Act, 1994 which were held to be insufficient by the Hon’ble High Court, as mentioned above.

## **Ruling**

27. In the case of supply of services by way of 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, the GST would be payable on two-third of the total amount consisting of amount charged for transfer of land or undivided share of land, as the case may be, and whole of the consideration charged for the supply of goods and service. Hence, the value of land, or the undivided share of land, as the case

may be, would be deemed to be one-third of the total amount, which is excluded from the value for the purposes of payment of GST. Even if agreement between the applicant and the buyer is entered after part of the construction is already completed, whole of the consideration would be added for payment of GST. The applicable rate of GST on the said two-third of total amount is 9% (CGST) and 9% SGST under S. No. 3(i) of **Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017** and parallel SGST notification.

**GST: Rate of tax to be levied is 12 per cent (8 per cent GST after deducting value of land) in case of Affordable Housing Project**

**GST : Where concessional rate of tax of 12 per cent on affordable housing project is levied by GST Council, builder or developer having paid GST of 18 per cent or 28 per cent on inputs and capital goods used in construction of flats, will not be required to pay GST on construction service of flats, etc., as they would have enough ITC (input tax credits) in their books to pay output GST**

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**[2018] 97 taxmann.com 316 (AAR - MAHARASHTRA)**

**AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA**

**The Ideal Construction, *In re***

**B.V. BORHADE AND PANKAJ KUMAR, MEMBER**

**NO. GST-ARA-01/2018-19/B-109**

**SEPTEMBER 5, 2018**

**Classification of services - Construction services (NR) - Applicant, a partnership firm of builders and developers is to undertake an affordable housing project on their land - It seeks advance ruling on what is rate of tax to be levied on sale of flats/units to prospective buyers - According**



**to sub-item (da) of item (v) of Notification No. 1/2018 - Central Tax (Rate) 25-1-2018, low-cost houses up to a carpet area of 60 square metres per house is an affordable housing project which has been given infrastructure status vide notification of Government of India - Whether since project undertaken by applicant falls under definition of 'Affordable Housing project' concessional rate of taxes to be levied is 12 per cent (8 per cent GST after deducting value of land) - Held, yes [Para 5]**

**Section 16 of the Central Goods and Services Tax Act, 2017 - Input tax credit - Eligibility and condition for taking credits (NR) - GST Council has extended concessional rate of 12 per cent (8 per cent GST after deducting value of land) to services by way of construction of low cost houses up to a carpet area of 60 sq. mtrs. in a affordable housing project - Whether, consequently, builder or developer having paid GST of 18 per cent or 28 per cent on inputs and capital goods used in construction of flats, will not be required to pay GST on construction service of flats, etc., in cash as they would have enough ITC (input tax credits) in their books to pay output GST; further, they should not recover any GST payable on flats from buyers - Held, yes [Para 5]**

**Circulars and Notifications: Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, Notification No. 13/6/2009, dated 30-3-2009 and Notification No. 1/2018 - Central Tax (Rate) 25-1-2018**

## **FACTS**

- |   |  |
|---|--|
| ■ | The applicant-firm of builders and developers is desirous to undertake an affordable housing project in Kolhapur. The land required for the project is already possessed by the firm. The units to be constructed in the said project will be of upto 30 sq. mtrs. (EWS) or upto 60 sq. mtrs. (LIG). It seeks advance ruling as to what is the rate of tax to be levied on the sale of Flats/Units to the prospective buyers? and whether full ITC is allowable or it will be restricted to out put GST liability? |
|---|--|

## RULING

	<p>According to sub-item (da) of item (v) of Notification No. 1/2018 - Central Tax (Rate) 25-1-2018, low-cost houses up to a carpet area of 60 sq. mtrs. per house in an affordable housing project which has been given infrastructure status <i>vide</i> notification of Government of India, would attract a tax rate of 12 per cent. This clause will be applicable to the applicant if the project undertaken by them is an affordable housing project which has been given infrastructure status <i>vide</i> Government of India notification.[Para 5]</p>
■	<p>Department of Economic Affairs notification issued <i>vide</i> F. No. 13/6/2009 -INF, dated 30-3-2017 has included Affordable Housing under the column 'Infrastructure sub-sector' against the housing project using at least 50 per cent of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 sq. mtrs. and 'Carpet Area' shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.</p>
■	<p>One of the recommendations made by the GST Council in its 25th meeting held on 18-1-2018 at Delhi was to extend the concessional rate of 12 per cent (8 per cent GST after deducting value of land) to services by way of construction of low cost houses up to a carpet area of 60 sq. mtrs. in a housing project which has been given infrastructure status under Notification No. 13/06/2009, dated 30-3-2009. The said notification of Department of Economic Affairs provides infrastructure status of Affordable Housing. The recommendation of the Council would extend the concessional rate to construction of flats-houses of less than 60 sq. mtrs. in projects other than the projects covered by any scheme of the Central or State Government also. The GST Council has also observed that 'it may be recalled that all inputs used in and capital goods deployed for construction of flats, houses, etc. attract GST of 18 per cent or 28 per cent. As against this, most of the housing projects in the affordable segment in the country would now attract GST of 8 per cent (after deducting value of land). As a result, the builder or developer will not be required to pay GST on the construction service of flats etc. in cash but would have enough ITC (input tax credits) in his books to pay the output GST, in which case, he should not recover any GST payable on the flats from the buyers. He can recover GST from the buyers of flats only if the recalibrates the cost of the flat after factoring in the full ITC available in the CGT regime and reduces the ex-GST price of flats'. The GST Council has also mentioned that the builders/developers are expected to follow the principles laid down under section 171 of the GST Act (Anti-Profiteering Rules) scrupulously.</p>





■	In response to a request for clarification to enable availing 8 per cent GST on Affordable Housing made by the builders association, namely, CREDAI <i>vide</i> their letter No. CREDAI/MoF/2018/14, dated 19-3-2018, the Commissioner <i>vide</i> F. No. 354/52/2018-TRU, Government of India Ministry of Finance Department of Revenue (TRU), dated 7-5-2018 has clarified that 'Low cost houses up to a carpet area of 60 sq. mtrs. per house is an affordable housing project, which has been given infrastructure status under Notification F. No. 13-6-2009 - INF, dated the 30-3-2017 of MOF (DEA), attract concessional GST of 8 per cent (the value of the undivided share of land is included in the price of the house). Whether the housing project qualifies as affordable housing project or not, shall be determined by the builder/developer as per the definition of affordable housing given in the abovementioned notification ( <i>i.e.</i> affordable housing has been defined as a housing project using at least 50 per cent of FAR/FSI for dwelling units with carpet area of not more than 60 sq. mtrs., No certificate from any authority is required.
■	The applicant in their submission have stated that the entire FSI of 26055.00 sq. mtrs. are consumed in flats having an area less than 60 sq. mtrs. Hence, from a reading of the above clarification, notification and the clause ( <i>da</i> ) of item (v) of Notification No. 11/2017 -Central Tax (Rate), dated 28-6-2017, the applicant's case is covered under the tax rate of 12 per cent, under Heading 9954 (Construction Services), (v) ( <i>da</i> ) of abovementioned Notification No. 11/2017, as amended since the project undertaken by them falls under the definition of 'Affordable Housing' as stated by them in the application (Whether the housing project qualifies as affordable housing project or not, shall be determined by the applicant as per the definition of affordable housing given in the abovementioned notification). The benefit of reduced rate would be available to them only in the cases of supply effected after 25-1-2018 <i>i.e.</i> the date on which Notification 1/2018-Central Tax (Rate) was issued. (RT) [Para 5]
■	The applicant will be eligible for ITC subject to fulfilment of conditions as prescribed under the GST Act.

## PROCEEDINGS

1. The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act”] by THE IDEAL CONSTRUCTION, the applicant, seeking an advance ruling in respect of the following questions:

1.	What is the rate of tax to be levied on the sale of Flats/Units to the prospective buyers? And whether registration of project under Pradhan Mantri Awas Yojana is required?
2.	What is the rate of tax to be levied by the supplier from whom we will received Composite works contract service (Inward Supply of composite works contract)? Will it be 12% or 18%?
3.	Admissibility of Input tax credit. Whether full ITC is allowable or it will be restricted to output GST liability?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act/MGST Act would be mentioned as being under the “GST Act”.

## 2. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus—

### **Statement of relevant facts having a bearing on the question(s) raised**

The dealer *i.e.* The Ideal Construction is a partnership firm duly registered under GST. The nature of business of the firm is that of builders and developers. The said firm is desirous to undertake an affordable housing project in Kolhapur. The land required for the project is already possessed by the Firm. The firm is currently



in the process of designing and planning for the said project. The units to be constructed in the said project will be of upto 30 sqmtrs (EWS) or upto 60 sqmtrs (LIG). The firm is considering following two options regarding the activities of the project.

1.	To undertake construction activity on its own. In this case the required material, labour etc. and all other ancillary activities will be undertaken by the firm itself. In that case the majority of tax rate on inward supplied will be of the rate 18% or 28%.
2.	To sublet the entire construction activity to a third party contractor. In this case our inward supply will be in the form of a composite works contract service.

Since the impact of GST on costing of the project will be of major amount, we are coming before your honor to get the clarity about the taxation/ITC etc.

**Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought)**

**1. What is the rate of tax to be levied on the sale of Flats/ Units to the prospective buyers?**

Dealer is undertaking a Affordable Housing project. The consolidated notification 11 of 28/6/2017 is again amended by Notification No. 1/2018 Central Tax (rate) dated 25/1/18. A combined reading of both the notifications give two different possible situations for applying concessional rate of tax of 12% for affordable housing projects (and after claiming 1/30 deduction for Land effective rate will be 8%).

**First Scenario: Wide Notification 1/2018 following amendment was made:**

Against serial number 3, in column (3), - after sub-item (d), the following sub-items shall be inserted, namely: -

- (da)** a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses"

constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);

- (db)** a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/Lower Income Group (LIG)/Middle Income Group-1 (M1G-1)/Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);';

As regards insertion of clause (db) above, flats/units in our project may be some times acquired by persons coming under EWS/LIG/MIG-1/MIG-2 etc. So in that case what is the rate of tax to be applied? What documents to be collected from prospective buyers in order to make them eligible for concessional rate as per said notification? And whether it is mandatory to get the project registered under Pradhan Mantri Awas Yojana (Urban) in order to levy the concessional rate to the prospective buyers. In our opinion registration of project under Pradhan Mantri Awas Yojana is not required.

### **Second Scenario:**

Wide Notification 1/2018 following amendment was also made:

in item (v), after sub-item (d), the following sub-item shall be inserted, namely: - "(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017;

In this case as regards insertion of clause (da) above, notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, the affordable housing projects are given "Infrastructure" status under the category of "Social and Commercial Infrastructure"



by adding a new sub-sector - "Affordable Housing". In the same notification affordable housing is defined as 10 "Affordable Housing" is defined as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area a of not more than 60 square meters.

@ "Carpet Area" shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

Thus as per our interpretation we will be covered by the above said notification issued by Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated 30th March. And our project will be covered in clause (da) under item (v) of serial No. 3 of the amended Notification 11/2017 dated 28/6/17. And the rate of tax applicable will be 12% (i.e. CGST 6% and SGST 6%) irrespective of the status of the prospective purchaser i.e. whether or not he is EWS/LIG/MIG-I/MIG-II and after claiming 1/3rd deduction for Land effective rate will be 8%).

## **2. What is the rate of tax to be levied by the supplier (who is registered under GST) from whom we intend to receive composite works contract service (Inward Supply of Composite works contract)? Will it be 12% or 18%?**

The firm is considering option of subletting the entire construction activity to a different contractor who will also be registered under the GST Act. In this case the said Contractor will be procuring the all the material, Labour and other ancillary goods and services on his own account and will be issuing his Tax Invoice to us. Thus the firm will be having inward supply of "works contract service". As per our interpretation of Law and notification mentioned above, the services supplied by the said contractor will be covered under Sr. 3 Column No. 3 item No. (iv) (db) or Item No. (v) (da). In this case since the other contractor is providing the works contract service to the affordable housing project the rate of tax which he will be levying in his tax invoice will have to be 12% and not 18%.

### **3. Admissibility of Input tax credit. Whether full ITC is allowable or it will be restricted to output GST liability?**

If the rate of tax to be levied on our outward supply of works contract service is 12% (Effective rate after land deduction 8%). In this case our purchases or inward supplies will be of the rate 12% or 18% or 28% as the case may be. Thus there will be a considerable amount of ITC (Input Tax Credit) available in our electronic credit ledger. Section 16 of CGST Act specifies the Eligibility and conditions for taking input tax credit subject to conditions and restrictions mentioned in section 49. Section 17 lets the conditions for Apportionment of credit and Blocked credit. In our opinion we are not covered under sub-section 5(c) of section 17 as the inward works contract service will be input service for further supply of works contract service. Section 49(6) states The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be refunded in accordance with the provisions of section 54.

However as per the booklet "Rate of GST on services published by GST council at page No. 23 under the list of services at 12% rate against Sr. No. 7 entry is as follows:

<b>Sr No.</b>	<b>Description or services</b>	<b>Rate</b>
7.	Construction of a complex, building, civil structure or a part thereof, intended for sale to a buyer, wholly or partly (the value of land is deemed to be one-third of the total amount charged for such supplies)	12% with no refund of accumulated ITC

But since the project is of affordable housing the above entry rate will not be applicable to the same. Thus as per our interpretation of provisions of law full ITC is allowable to us and balance amount in our electronic credit ledger can be claimed as refund.

*Vide* further communication the applicant has submitted the Area Statement as follows:—



Area of Plot	16090.00 sq. mtrs.
Loss- Amenity Space	810.00 sq. mtrs.
Net Plot Area	15280.00 sq. mtrs.
Total consumed FSI of the plot	26055.00 sq. mtrs.
FSI Area consumed in flats having carpet area below 60 sq. mtrs.	26055.00 sq. mtrs.
FSI Area consumed in flats having carpet area above 60 sq. mtrs.	NIL
FSI consumed	1.7

### 3. CONTENTION - AS PER THE CONCERNED OFFICER

No contentions has been filed by the department in the matter.

### 4. HEARING

The Preliminary Hearing was held on date 24.04.2018. Shri Kedar P Hasabnis, Chartered Accountant, duly authorized appeared along with Shri Atul Powar, partner and Shri Anand Bhogle, Accountant. They orally contended for admission of their application in view of detailed submissions made by them. They were informed that in respect of Question No. 2, the question could only be raised by their supplier, and they agreed to the same. Shri B. R. Patil, STO, State GST appeared on behalf of the department and stated that submissions would be made in due course and that the department had no objection to the application being admitted.

The Final Hearing was held on 06.06.2018. Shri Kedar P Hasabnis, Chartered Accountant, duly authorized appeared along with Shri Sagar Paul, Accountant and made oral submissions as per their application. They were further requested to submit documents relating to PMAY and Housing for All (Urban) Scheme guidelines. Nobody was present from the department's side.

### 5. OBSERVATIONS

We have gone through the facts of the case, documents on record and the submissions made by the Applicant. The applicant has

posed three questions for which they are seeking responses from this authority. We shall deal with each question as under:—

**Question No. 1: What is the rate of tax to be levied on the sale of Flats/Units to the prospective buyers? And whether registration of project under Pradhan Mantri Awas Yojana is required?**

This issue is with respect to the affordable housing projects to be undertaken by the applicant in Kolhapur. The applicant has submitted that on the land already in possession with them, they are proposing to construct units which will be of upto 30 square meters [Economically Weaker Section (EWS) houses] or upto 60 sq.mtrs. [Lower Income Group (LIG) houses].

Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, has specified the rate of central tax to be levied on Intra State supply of services of description specified in Column 3 of the Table in the said Notfn, falling under scheme of classification of services mentioned therein. The relevant clauses of the said Notfn as amended by Notfn No. 20/2017-Central Tax (Rate) dated 22.10.2017 is reproduced below:—

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
3	Heading 9954 (Construction services)	(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,— (a) ..... .....;	6	-]





		<p>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;</p> <p>(c) a civil structure or any other original works pertaining to the "In-situ rehabilitation of existing slum dwellers using land as a resource through private participation" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana, only for existing slum dwellers;</p> <p>(d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction/ enhancement" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana;</p> <p>(e) ..... .....; or</p> <p>(f) ..... .....</p>		
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		<p>(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,—</p> <p>(a) ..... .....;</p> <p>(b) ..... .....;</p> <p>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;</p> <p>(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under—</p> <p>(1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p>		
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		(2) any housing scheme of a State Government; (e)..... .....or; (f)..... .....;		
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Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 has made amendments to Sr. No. 3, column No. 3, item No. iv & v the above Notfn No. 11/2017 as follows:—

*In the said notification,*

*(i) in the Table, -*

*(a) against serial number 3, in column (3), -*

*(A) in item (iv), -*

*(I) for sub-item (c), the following sub-item shall be substituted, namely:—*

*'(c) a civil structure or any other original works pertaining to the "In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);';*

*(II) after sub-item (d), the following sub-items shall be inserted, namely: —*

*'(da) a civil structure or any other original ivorks pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union territory/or local authority or urban development authority under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);*

*(db) a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/Middle Income Group-1 (MIG-1)/Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);';*

(III). \*\*

\*\*

\*\*";

(B) in item (v),

(I) in sub-item (a), for the word "excluding", .....  
.....;

(II) after sub-item (d), the following sub-item shall be inserted, namely: —

"(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017;"

According to sub-item (da) of item iv, "a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban) would attract a tax rate of 12%. This clause will not be applicable to the applicant because the same envisages partnership by State or Union territory or local authority or urban development authority

According to sub-item (db) in item v "a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/Lower Income Group (LIG)/Middle Income Group-1 (MIG-I)/Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban). This clause also shall not be applicable to the applicant since this clause states that the houses should be constructed or acquired under the Credit Linked Subsidy Scheme of the Government.

According to sub-item (da) of item (v), "low-cost houses up to a carpet area of 60 square metres per house in an affordable



*housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017 would attract a tax rate of 12%. This clause will be applicable to the applicant if the project undertaken by them is an affordable housing project which has been given infrastructure status vide Government of India notification mentioned above.*

Department of Economic Affairs' notification issued vide F. No. 13/6/2009-INF, dated the 30th March, 2017 has included Affordable Housing under the column "Infrastructure sub-sector" against the category of Social and Commercial Infrastructure and has further defined "*Affordable Housing*" as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters and "Carpet Area" shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

One of the recommendations made by the GST Council in its 25th meeting held on 18th January, 2018 at Delhi was to extend the concessional rate of 12% (8% GST after deducting value of land) to services by way of construction of low cost houses up to a carpet area of 60 sqm in a housing project which has been given infrastructure status under Notification No. 13/06/2009 dated 30<sup>th</sup> March, 2009. The said notification of Department of Economic Affairs provides infrastructure status to Affordable Housing. The recommendation of the Council would extend the concessional rate to construction of flats/houses of less than 60 sqm in projects other than the projects covered by any scheme of the Central or State Government also. The GST Council has also observed that "It may be recalled that all inputs used in and capital goods deployed for construction of flats, houses, etc. attract GST of 18% or 28%. As against this, most of the housing projects in the affordable segment in the country would now attract GST of 8% (after deducting value of land). As a result, the builder or developer will not be required to pay GST

on the construction service of flats etc. in cash but would have enough ITC (input tax credits) in his books to pay the output GST, in which case, he should not recover any GST payable on the flats from the buyers. He can recover GST from the buyers of flats only if he recalibrates the cost of the flat after factoring in the full ITC available in the GST regime and reduces the ex-GST price of flats.” The GST Council has also mentioned that the builders/developers are expected to follow the principles laid down under Section 171 of the GST Act (Anti-Profiteering Rules) scrupulously.

In response to a request for clarification to enable availing 8% GST on Affordable Housing made by the builders association namely, CREDAI *vide* their letter no. CREDAI/MoF/2018/14 dated 19th March, 2018, the Government *vide* F.No. 354/52/2018-TRU, Government of India Ministry of Finance Department of Revenue (TRU) dated 7th May, 2018 has clarified that “Low cost houses up to a carpet area of 60 square metres per house in an affordable housing project, which has been given infrastructure status under Notification F. No. 13/6/2009-INF, dated the 30th March, 2017 of MOF (DEA), attract concessional GST of 8% (the value of the undivided share of land is included in the price of the house). *Whether the housing project qualifies as affordable housing project or not, shall be determined by the builder/developer as per the definition of affordable housing given in the abovementioned notification (i.e., affordable housing has been defined as a housing project using at least 50% of FAR/FSI for dwelling units with carpet area of not more than 60 SQM). No certificate from any authority is required.*”

The applicant in their submissions have stated that the entire FSI of 26055.00 sq. mtrs. are consumed in flats having an area less than 60 sq. mtrs. Hence, from a reading of the above clarification, notification and the clause (da) of item (v) of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017, we find that that the applicant’s case is covered under the tax rate of 12%, under Heading 9954 (Construction Services), (v) (da) of abovementioned Notification No. 11/2017, as amended



since the project undertaken by them falls under the definition of “Affordable Housing” as stated by them in the application (Whether the housing project qualifies as affordable housing project or not, shall be determined by the applicant as per the definition of affordable housing given in the abovementioned notification.) The benefit of reduced rate would be available to them only in the cases of supply effected after 25.01.2018 i.e. the date on which Notification 1/2018-Central Tax (Rate) was issued.

**Q No. 2.** What is the rate of tax to be levied by the supplier (who is registered under GST) from whom we intend to receive composite works contract service (Inward Supply of Composite works contract)? Will it be 12% or 18%?

At the time of hearing it was communicated to them that this question can only be raised by the supplier and not by them and they agreed to the same and the question is therefore not answered in this case.

**Q No. 3.** Admissibility of Input tax credit. Whether full 1TC is allowable or it will be restricted to output GST liability?

As rightly submitted by the applicant, Section 16 of the GST Act, 2017 specifies the eligibility and conditions for availing input tax credit. Section 16 to Section 20 of the GST Act deals with Input Tax Credit. The GST Council in its 25th meeting held on 18th January, 2018 at Delhi has extended concessional rate of 12% (8% GST after deducting value of land) to services by way of construction of low cost houses up to a carpet area of 60 sqm in a housing project which has been given infrastructure status under notification No. 13/06/2009 dated 30th March, 2009. The GST Council has also observed that “It may be recalled that all inputs used in and capital goods deployed for construction of flats, houses, etc. attract GST of 18% or 28%. As against this, most of the housing projects in the affordable segment in the country would now attract GST of 8% (after deducting value of land). As a result, the builder or developer will not be required to pay GST on the construction service of flats etc. in cash but

would have enough ITC (input tax credits) in his books to pay the output GST, in which case, he should not recover any GST payable on the flats from the buyers. He can recover GST from the buyers of flats only if he recalibrates the cost of the flat after factoring in the full ITC available in the GST regime and reduces the ex-GST price of flats.”

The applicant will be eligible for ITC subject to fulfilment of conditions as prescribed under the GST Act.

**6.** In view of the deliberations as held hereinabove, we pass an order as follows:

## ORDER

*For reasons as discussed in the body of the order, the questions are answered thus —*

**Question 1.** What is the rate of tax to be levied on the sale of Flats/Units to the prospective buyers? And whether registration of project under Pradhan Mantri Awas Yojana is required?

**Answer:** The rate of tax to be levied is 12% (8% GST after deducting value of land) in case of Affordable Housing Project. If the project qualifies as an Affordable Housing Project, then registration under Pradhan Mantri Awas Yojana is not required to avail this benefit.

**Question 2.** What is the rate of tax to be levied by the supplier from whom we will receive Composite works contract service (Inward Supply of composite works contract)? Will it be 12% or 18%?

**Answer:** Not answered as per detailed discussions under ‘Observations’.

**Question 3.** Admissibility of Input tax credit. Whether full ITC is allowable or it will be restricted to output GST liability?

**Answer:** The applicant will be eligible for ITC subject to fulfilment of conditions as prescribed under the GST Act.





**GST : Where applicant constructed residential units on land belonging to flood victims under a rehabilitation project awarded to it by a charitable trust, activity squarely falls within scope of works contract under section 2(119) and is liable to GST at rate of 12 per cent as per Sl. No. 3(v) of Notification No. 11/2017 - Central Tax (Rate), dated 28-6-2017**

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**[2020] 119 taxmann.com 9 (AAR - KERALA)**  
**AUTHORITY FOR ADVANCE RULINGS, KERALA**  
**Habitat Technology Group, In re**

SIVAPRASAD S. AND B.S. THYAGARAJABABU, MEMBER

ADVANCE RULING NO. KER OF 93 OF 2020

MAY 20, 2020

**Classification of services - Kerala State Goods and Services Tax Act, 2017 - Construction services - Heading No. 9954 [Construction services] - Section 2(119) of the Central Goods and Services Tax Act, 2017/Section 2(119) of the Kerala State Goods and Services Tax Act, 2017 - Works contract - A charitable organisation 'S' engaged in various charitable activities across Kerala has awarded a rehabilitation project to applicant for providing affordable shelter to 2018 flood victims - Applicant constructed 45 residential units in different locations on land belonging to flood victims identified by Trust - Whether activity undertaken by applicant cannot be construed as construction of affordable residential apartments by a promoter in a residential real estate project intended for sale to a buyer and, hence, rate of GST prescribed under Sl. No. 3(i) of Notification No. 11/2017 Central Tax (Rate), dated 28-6-2017, is not applicable in respect of said activity - Held, yes - Whether activity undertaken by applicant is construction of 45 individual residential**

**houses at different locations on land belonging to individual beneficiaries and activity squarely falls within scope of works contract as defined in section 2(119) - Held, yes - Whether services provided by applicant to 'S' for construction of low cost housing units falls within ambit of Sl. No. 3(v) of Notification No. 11/2017 - Central Tax (Rate), dated 28-6-2017 and is liable to GST at rate of 12 per cent - Held, yes [Paras 11 and 15]**

**Circulars and Notifications : Sl. Nos. 3(i) and 3(v) of Notification No. 11/2017 - Central Tax (Rate), dated 28-6-2017**

**(NR)**

## **FACTS**

■	The applicant is a non-governmental organization in the shelter sector having sustainable building solutions and green and humane architecture.
■	It is providing services in the field of construction of residences and affordable housing, architectural advisory services, execution of government contracts etc. with special focus on environment friendly construction.
■	A charitable organisation 'S' engaged in various charitable activities across Kerala has awarded a rehabilitation project to the applicant for providing affordable shelter to the 2018 flood victims.
■	The applicant is awarded the work of construction of 45 residential units ad-measuring approximately equal to or less than 450 Square feet in different locations each along with residential facilities on the land belonging to the flood victims identified by the Trust. The applicant shall design the houses, obtain the statutory permits and construct the houses and hand them over on a turnkey basis.



□	The applicant has sought advance ruling on the question as to whether the services provided by the applicant to 'S' for construction of low cost housing units for flood-affected individuals in Kerala fall within the ambit of Serial Number 3 (i), (v) or (va) of Notification No. 11/2017 - Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 03/2019 Central Tax (Rate), dated 29-3-2019 and whether services by the applicant are otherwise exempt from whole or part of GST leviable thereon by Notification 12/2017 Central Tax (Rate), dated 28-6-2017 as amended.
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## HELD

■	The rate of GST prescribed under Sl. No. 3(i) of Notification No. 11/2017 Central Tax (Rate), dated 28-6-2017 applies to construction of affordable residential apartments by a promoter in a residential real estate project intended for sale to a buyer except where the entire consideration is received after issuance of completion certificate. Further, the rate under this entry applies where the supply of the services involves transfer of land or undivided share of land and its value is included in the amount charged from the buyer. [Para 8]
■	The activity undertaken by the applicant for 'S' as per the agreement dated 16-11-2019 cannot by any stretch of imagination be construed as construction of affordable residential apartments by a promoter in a residential real estate project intended for sale to a buyer and, hence, the rate of GST prescribed under Sl. No. 3(i) of the Notification No. 11/2017 Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 03/2019 Central Tax (Rate), dated 29-3-2019 is not applicable in respect of the activity. The activity undertaken by the applicant is construction of 45 individual residential houses at different locations on the land belonging to the individual beneficiaries and the activity squarely falls within the scope of works contract as defined in section 2(119). [Para 11]
■	The rate of GST applicable as per the Sl. No. 3(v) of Notification No. 11/2017 Central Tax (Rate), dated 28-6-2017 is 12 per cent [6 per cent CGST and 6 per cent SGST]. [Para 13]

■	Therefore, the activity of construction of 45 individual residential houses at different locations on the land belonging to the individual beneficiaries undertaken by the applicant as per the agreement dated 16-11-2019 is rightly classifiable as composite supply of works construct as defined in section 2(119) of the CGST Act, 2017 supplied by way of construction of single residential units otherwise than as a part of a residential complex and is liable to GST at the rate of 12 per cent [ 6 per cent CGST and 6 per cent SGST] as per Sl. No. 3(v) of Notification No. 11/2017 Central Tax (Rate), dated 28-6-2017 as amended. [Para 14]
■	Thus, the services provided by the applicant to 'S' for construction of low cost housing units falls within the ambit of Sl. No. 3(v) of Notification No. 11/2017 - Central Tax (Rate), dated 28-6-2017 as amended and is liable to GST at the rate of 12 per cent [6 per cent CGST and 6 per cent SGST]. The services by the applicant are not exempt from whole or part of GST leviable thereon by Notification 12/2017 - Central Tax (Rate), dated 28-6-2017 as amended. [Para 15]

**Mohankumar**, FCA *for the Applicant.*

## PROCEEDING

**1.** Habitat Technology Group (hereinafter referred to as the "applicant") is a nongovernmental organization in the shelter sector having sustainable building solutions and green and humane architecture. They are registered as a charitable society. They are providing services in the field of construction of residences and affordable housing, architectural advisory services, execution of government contracts etc. with special focus on environment friendly construction. M/s. Sri Sathya Sai Trust, Kerala a charitable organisation engaged in various charitable activities across Kerala has awarded a rehabilitation project to the applicant for providing affordable shelter to the 2018 flood victims.

**2.** The applicant has sought advance ruling on the following;

- Whether the services provided by the applicant to Sri Sathya Sai Trust for construction of low cost housing units for flood-affected individuals in Kerala fall within



the ambit of Serial number (i), (v) or (va) of Notification No. 11/2017-CT(R) dated 28-6-2017 as amended by Notification No. 03/2019 - CT (R) dated 29-3-2019.

- ii. Whether services by the applicant are otherwise exempt from whole or part of GST leviable thereon by Notification 12/2017- CT (R) dated 28-6-2017 as amended.

**3.** The authorized representative of the applicant was heard. M/s. Sri Sathya Sai Trust, Kerala is a charitable organization engaged in various charitable activities across Kerala. They have received a grant from M/s. J.R.D Tata Trust for Rs. 299.70 Lakhs exclusively for construction of housing for individuals in Kerala who have lost their homes in the severe floods of 2018. The trust is desirous of awarding the entire rehabilitation project in Ambalapuzha for providing affordable shelter to the flood victims. The applicant submits that the identification of the flood victims eligible for support has been done by the volunteers of the Sathya Sai Trust and the applicant has been entrusted with the activity of constructing the housing units on the land belonging to such individuals after getting all the statutory permits required for construction from the various authorities. Accordingly, the trust has identified 45 individuals whose houses have been eroded by the floods. The applicant will construct 45 low cost affordable housing units on the land belonging to such individuals as per the agreement dated 16-11-2019 entered by them with the Sri Sathya Sai Trust. The plinth area of the standard housing unit will be 450 Square feet and the estimated cost of constructing one such affordable low cost house shall be Rs. 6, 30,000/-excluding applicable taxes; if any. The project proposed to be implemented by the applicant for Sri Sathya Sai Trust is part of "Rebuild Kerala" Project and is with the sole intention of giving relief to the flood victims in the State.

**4.** It is contended by the applicant that the houses being constructed by them meet the definition of affordable housing as per Notification No. 11/2017 Central Tax (Rate) dated 28-6-2017 as amended and accordingly the concessional rate of GST of 1.5% as per SI No. 3 (i) of Notification No. 11/2017 Central Tax (Rate) dated 28-6-2017 is applicable for the services rendered by them.

**5.** The matter was examined in detail. As per the agreement dated 16-11-2019 entered by the applicant with Sri Sathya Sai Trust the applicant is awarded the work of construction of 45 residential units ad-measuring approximately equal to or less than 450 Square feet in different locations each along with residential facilities on the land belonging to the flood victims identified by the Trust. The applicant shall design the houses, obtain the statutory permits and construct the houses and hand them over on a turnkey basis.

**6.** The contention of the applicant is that the activity undertaken by them as per the agreement dated 16-11-2019 attracts GST at the rate of 1.5% as per SI No. 3 (i) of Notification No. 11/2017 Central Tax (Rate) dated 28-6-2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29-3-2019.

**7.** SI No. 3 (i) of Notification No. 11/2017 Central Tax (Rate) dated 28-6-2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29-3-2019 reads as follows;

“3 (i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, 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. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)”

**8.** On a plain reading of the above entry, it is evident that the rate of GST prescribed under this entry applies to construction of affordable residential apartments by a promoter in a residential real estate project intended for sale to a buyer except where the entire consideration is received after issuance of completion certificate. Further, the rate under this entry applies where the supply of the services involves transfer of land or undivided share



of land and its value is included in the amount charged from the buyer.

**9.** Para 4 of the Notification No. 11/2017 Central Tax (Rate) dated 28-6-2017 as amended provides the definition of the different terms used in the above entry. The relevant definitions are reproduced below;

(xiv) the term —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;

(xv) the term — project shall mean a Real Estate Project or a Residential Real Estate Project;

(xvi) the term —affordable residential apartment shall mean,  
- (a) a residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in dues or towns other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.

(xvii) the term —promoter shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016

(xviii) the term —Real Estate Project (REP) shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(xix) the term —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.

**10.** The relevant clauses of Section 2 of the Real Estate (Regulation and Development) Act, 2016 which contains the definition of the terms; “apartment”; “promoter” and “real estate project” are reproduced below;

(e) “apartment” whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed 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.

(zk) “promoter” means,— (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or (iii) any development authority or any other public body in respect of allottees of— (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its members or in respect of the allottees of such apartments or buildings; or (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or (vi) such other person who constructs any building or apartment for sale to the general public.





(zn) “real estate project” means 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.

**11.** On a conjoint reading of the above provisions, it is evident that the activity undertaken by the applicant for Sri Sathya Sai Trust as per the agreement dated 16-11-2019 cannot by any stretch of imagination be construed as construction of affordable residential apartments by a promoter in a residential real estate project intended for sale to a buyer and hence the rate of GST prescribed under SI No. 3 (i) of the Notification No. 11/2017 Central Tax (Rate) dated 28-6-2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29-3-2019 is not applicable in respect of the activity. The activity undertaken by the applicant is construction of 45 individual residential houses at different locations on the land belonging to the individual beneficiaries and the activity squarely falls within the scope of works contract as defined in Section 2 (119) of the CGST Act, 2017 which reads as follows;

“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.”

**12.** Further, SI No. 3 (v) of Notification No. 11/2017 Central Tax (Rate) dated 28-6-2017 as amended reads as follows;

“(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax

Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, including monorail and metro; (b) a single residential unit otherwise than as a part of a residential complex; (c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India; (d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under- (1) the —Affordable Housing in Partnership component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government; (da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status *vide* notification of Government of India, in Ministry of Finance, Department of Economic Affairs *vide* F. No. 13/6/2009-INF, dated the 30th March, 2017; (e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or (f) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages."

As per Para 2 (zze) of Notification No. 12/2017 CT (Rate) dated 28-6-2017; "single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

**13.** The rate of GST applicable as per the above entry is 12% [6% CGST and 6% SGST]

**14.** Therefore, the activity of construction of 45 individual residential houses at different locations on the land belonging to the individual beneficiaries undertaken by the applicant as per the agreement dated 16-11-2019 is rightly classifiable as



composite supply of works contract as defined in Section 2 (119) of the CGST Act, 2017 supplied by way of construction of single residential units otherwise than as a part of a residential complex and is liable to GST at the rate of 12% [6%CGST and 6% SGST] as per SI No. 3 (v) of Notification No. 11/2017 Central Tax (Rate) dated 28-6-2017 as amended.

**15.** In view of the observations stated above, the following rulings are issued;

- i. Whether the services provided by the applicant to Sri Sathya Sai Trust for construction of low cost housing units for flood-affected individuals in Kerala fall within the ambit of Serial number (i), (v) or (va) of Notification No. 11/2017-CT(R) dated 28-6-2017 as amended by Notification No. 03/2019 - CT (R) dated 29-3-2019.

The services provided by the applicant to Sri Sathya Sai Trust for construction of low cost housing units falls within the ambit of SI No. 3 (v) of Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 as amended and is liable to GST at the rate of 12% [6% CGST and 6% SGST].

- ii. Whether services by the applicant are otherwise exempt from whole or part of GST leviable thereon by Notification 12/2017- CT (R) dated 28-6-2017 as amended.

**GST: Where applicant is engaged in construction of residential complex in two parts i.e. Part-A and Part-B, in view of fact that 50 per cent or more of FAR/FSI of entire housing project comprising of Part-A and Part-B has not been used for construction of dwelling units with carpet area of not more than 60 sq. meters., applicant is not eligible for benefit of reduced rate of tax as provided under Entry3(v)(da) of Notification No.11/2017 CT( Rate) dated 28-06-2017 as amended by Notification No.01/2018 CT(Rate) dated 25-01-2018**

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AUTHORITY FOR ADVANCE RULINGS, GUJARAT**

**Amba Township (P.) Ltd., *In re***

**SANJAY SAXENA AND MOHIT AGRAWAL, MEMBER**

**ADVANCE RULING NO. GUJ/GAAR/R/2020/14**

**MAY 19, 2020**

**Section 9 of the Central Goods and Services Tax Act, 2017/Section 9 of the Gujarat Goods and Services Tax Act, 2017 - Levy and collection of tax - Applicant is engaged in construction of residential complex in two parts i. e. Part-A and Part-B - It seeks advance ruling on question as to whether it is eligible for benefit of reduced rate of tax available in respect of houses constructed in Part-B with a carpet area of 60 not more than sq. meters per house - It is noted that Part-B of township can not be considered as a standalone housing projects since it shares common land, common facilities and common entrance with Part-A of township and 50 percent of FAR/FSI of entire housing project has not been used for construction of dwelling units with carpet area of not more than 60 sq. meters as per requirements of Notification No. 13/06/2009 dated 30-03-2017 of Government of India, Ministry of Finance, Department of Economic Affairs - Hence, housing project in question can not be considered as an "affordable housing project" - Whether in view of aforesaid, it can be concluded that applicant has not fulfilled condition as envisaged in Entry No. 3(v)(da) of Notification No.11/2017 CT (Rate) dated 28-06-2017 as amended by Notification No.01/2018 CT(Rate) dated 25-01-2018, and, consequently benefit of reduced rate of tax is not available to applicant in respect of houses constructed with a carpet area of 60 sq. meters - Held, yes [Paras 10.2 and 10.3] [In favour of revenue]**

**Circulars and Notifications : Notification No. 13/06/2009, dated 30-3-2017 of Government of India, Ministry of Finance, Department of Economic Affairs**

**Notification No.11/2017 CT (Rate), dated 28-06-2017 and Notification No. 01/2018 CT (Rate), dated 25-1-2018**

# CHAPTER 04

## KEY PRESS RELEASES, NOTIFICATIONS AND FAQs OF GST FOR THE REAL ESTATE SECTOR

### 1. Press Releases:

#### ***34<sup>th</sup> GST Council Meeting Press Release***

#### **Decisions taken by the GST Council in the 34<sup>th</sup> meeting held on 19<sup>th</sup> March, 2019 regarding GST rate on real estate sector**

GST Council in the 34<sup>th</sup> meeting held on 19<sup>th</sup> March, 2019 at New Delhi discussed the operational details for implementation of the recommendations made by the council in its 33<sup>rd</sup> meeting for lower effective GST rate of 1% in case of affordable houses and 5% on construction of houses other than affordable house. The council decided the modalities of the transition as follows.

#### **Option in respect of ongoing projects:**

2. The promoters shall be given a one -time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 01.04.2019) which have not been completed by 31.03.2019.

3. The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply.

### **New tax rates:**

4. The new tax rates which shall be applicable to new projects or ongoing projects which have exercised the above option to pay tax in the new regime are as follows.

- (i) New rate of 1% without input tax credit (ITC) on construction of affordable houses shall be available for,
  - (a) all houses which meet the definition of affordable houses as decided by GSTC (area 60 sqm in non- metros / 90 sqm in metros and value upto RS. 45 lakhs), and
  - (b) affordable houses being constructed in ongoing projects under the existing central and state housing schemes presently eligible for concessional rate of 8% GST (after 1/3<sup>rd</sup> land abatement).
- (ii) New rate of 5% without input tax credit shall be applicable on construction of,-
  - (a) all houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019.
  - (b) all houses other than affordable houses in new projects.
  - (c) commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

### **Conditions for the new tax rates:**

5. The new tax rates of 1% (on construction of affordable) and 5% (on other than affordable houses) shall be available subject to following conditions,-

- (a) Input tax credit shall not be available,
- (b) 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. On shortfall of purchases from 80%, tax



shall be paid by the builder @ 18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

### **Transition for ongoing projects opting for the new tax rate:**

6.1 Ongoing projects (buildings where construction and booking both had started before 01.04.2019) and have not been completed by 31.03.2019 opting for new tax rates shall transition the ITC as per the prescribed method.

6.2 The transition formula approved by the GST Council, for residential projects (refer to para 4(ii)) extrapolates ITC taken for percentage completion of construction as on 01.04.2019 to arrive at ITC for the entire project. Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined. Thus, transition would thus be on pro-rata basis based on a simple formula such that credit in proportion to booking of the flat and invoicing done for the booked flat is available subject to a few safeguards.

6.3 For a mixed project transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.

### **Treatment of TDR/ FSI and Long term lease for projects commencing after 01.04.2019**

7. The following treatment shall apply to TDR/ FSI and Long term lease for projects commencing after 01.04.2019.

7.1 Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but 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.

This will achieve a fair degree of taxation parity between under construction and ready to move property.

7.2 The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM).

7.3 The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate.

7.4 The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion. Decisions from para 7.1 to 7.4 are expected to address the problem of cash flow in the sector.

### **Amendment to ITC rules:**

8. ITC rules shall be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in real estate projects. The change would clearly provide procedure for availing input tax credit in relation to commercial units as such units would continue to be eligible for input tax credit in a mixed project.

9. The decisions of the GST Council have been presented in this note in simple language for easy understanding. The same would be given effect to through Gazette notifications/ circulars which alone shall have force of law.

## **33<sup>rd</sup> GST Council Meeting Press Release**

### **Press note on recommendations of the 33<sup>rd</sup> GST Council meeting held on 24<sup>th</sup> February, 2019**

Real estate sector is one of the largest contributors to the national GDP and provides employment opportunity to large numbers of people. "Housing for All by 2022" envisions that every citizen would have a house and the urban areas would be free of slums. There are reports of slowdown in the sector and low off-take of under-construction houses which needs to be addressed. To boost the residential segment of the real estate sector,





following recommendations were made by the GST Council in its 33<sup>rd</sup> meeting held today:

## **2. GST rate:**

- i. GST shall be levied at effective GST rate of 5% without ITC on residential properties outside affordable segment;
- ii. GST shall be levied at effective GST of 1% without ITC on affordable housing properties.

## **3. Effective date:**

The new rate shall become applicable from 1<sup>st</sup> of April, 2019.

## **4. Definition of affordable housing shall be:-**

A residential house/flat of carpet area of upto 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities having value upto Rs. 45 lacs (both for metropolitan and non-metropolitan cities).

Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).

## **5. GST exemption on TDR/ JDA, long term lease (premium), FSI:**

Intermediate tax on development right, such as TDR, JDA, lease (premium), FSI shall be exempted only for such residential property on which GST is payable.

6. Details of the scheme shall be worked out by an officers committee and shall be approved by the GST Council in a meeting to be called specifically for this purpose.

## **7. Advantages of the recommendations made:**

The new tax rate in principle was approved by the Council taking into consideration the following advantages:-

- i. The buyer of house gets a fair price and affordable housing gets very attractive with GST @ 1%.

- ii. Interest of the buyer/consumer gets protected; ITC benefits not being passed to them shall become a non-issue.
  - iii. Cash flow problem for the sector is addressed by exemption of GST on development rights, long term lease (premium), FSI etc.
  - iv. Unutilized ITC, which used to become cost at the end of the project gets removed and should lead to better pricing.
  - v. Tax structure and tax compliance becomes simpler for builders.
8. GST Council decided that the issue of tax rate on lottery needs further discussion in the GoM constituted in this regard.

The decisions of the GST Council have been presented in this note in simple language for easy understanding. The same would be given effect to through Gazette notifications/ circulars which alone shall have force of law.

## **25<sup>th</sup> GST Council Meeting Press Release**

### **Recommendations made by the GST Council in its 25<sup>th</sup> Meeting held on 18<sup>th</sup> January, 2018 at Delhi for the housing sector**

In the meeting held on 18<sup>th</sup> January, 2018, the GST Council has made several important recommendations for the housing sector. The recommendations are expected to promote affordable housing for the masses in the country. The recommendations are discussed below.

One of the important recommendations is to extend the concessional rate of GST of 12% (effective rate of 8% after deducting one third of the amount charged for the house, flat etc. towards the cost of land or undivided share of land, as the case may be) in housing sector to construction of houses constructed/ acquired under the Credit Linked Subsidy Scheme for Economically Weaker Sections (EWS) / Lower Income Group (LIG) / Middle Income Group-1 (MIG-1) / Middle Income Group-2 (MIG-2) under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban). Credit Linked Subsidy Scheme is one of the components of Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban). Under this component, subsidy would be provided on home loans taken by eligible urban poor (EWS/



LIG/ MIG-I/ MIGII) for acquisition, construction of house. Credit linked subsidy would also be available for housing loans availed for new construction and for addition of rooms, kitchen, toilet etc, to existing dwellings as incremental housing. The carpet area of houses constructed under this component of the mission would be upto 30 square meters for EWSA, 60 square meters FOR LIG, 120 sqm for MIG I and 150 sqm for MIG II. The benefit of Credit Linked Subsidy Scheme may be taken by the Economical Weaker sections or Low/Middle Income Groups for purchase of houses under any project. The maximum annual income for eligibility of beneficiaries under the scheme can be upto 18 lakhs. It covers a very large section of population which aspires to own a home.

2. So far, houses acquired under CLSS attracted effective GST rate of 18% (effective GST rate of 12% after deducting value of land). The concessional rate of 12% was applicable only on houses constructed under the other three components of the Housing for All (Urban) Mission/Pradhan Mantri AwasYojana (Urban), namely (i) In-situ redevelopment of existing slums using land as a resource component; (ii) Affordable Housing in partnership and (iii) Beneficiary led individual house construction/enhancement. The exemption has now been recommended for houses acquired under the CLSS component also. Therefore, the buyers would be entitled to interest subsidy under the scheme as well to a lower concessional rate of GST of 8% (effective rate after deducting value of land).

3. The Council has also recommended that the benefit of concessional rate of GST of 12% (effective GST rate of 8% after deducting value of land) applicable to houses supplied to existing slum dwellers under the in-situ redevelopment of existing slums using land as a resource component of PMAY may be extended to houses purchased by persons other than existing slum dwellers also. This would make the in-situ redevelopment of existing slums using land as a resource component of PMAY more attractive to builders as well as buyers.

4. The third recommendation of the Council is to include houses constructed for "Economically Weaker Section (EWS)" under the Affordable Housing in partnership (PMAY) under the concessional rate of GST of 8% (effective rate after deducting value of land). This will support construction of houses upto 30 sqm carpet area.

5. The fourth recommendation of the Council is to extend the concessional rate of 12% to services by way of construction of low cost houses upto a carpet area of 60 sqm in a housing project which has been given infrastructure status under notification No. 13/06/2009 dated 30<sup>th</sup> March, 2009. The said notification of Department of Economic Affairs provides infrastructure status to Affordable Housing. Affordable Housing has been defined in the said notification as a housing project using at least 50% of the FAR/FSI for dwelling units with carpet area of not more than 60 sqm. The recommendation of the Council would extend the concessional rate of 8% GST (after deducting value of land) to construction of flats/ houses of less than 60 sqm in projects other than the projects covered by any scheme of the Central or State Government also.

6. In addition to the above, in order to provide a fillip to the housing and construction sector, GST Council has decided to give exemption to leasing of land by government to governmental authority or government entity. [Government entity is defined to mean an authority or board or any other body including a society, trust, corporation, (i) set up by an Act of Parliament or State Legislature; or (ii) established by any Government, with 90% or more participation by way of equity or control, to carry out any function entrusted by the Central Government, State Government, UT or a local authority]. Also, any sale/lease/sub-lease of land as a part of the composite sale of flats has also been exempted from GST. Therefore, in effect, the government does not levy GST on supply of land whether by way of sale or lease or sublease to the buyer of flats and in fact, gives a deduction on account of the value of land included in the value of flats and only the value of flat is subjected to GST.

7. It may be recalled that all inputs used in and capital goods deployed for construction of flats, houses, etc attract GST of 18% or 28%. As against this, most of the housing projects in the affordable segment in the country would now attract GST of 8% (after deducting value of land). As a result, the builder or developer will not be required to pay GST on the construction service of flats etc. in cash but would have enough ITC (input tax credits) in his books to pay the output GST, in which case, he should not recover any GST payable on the flats from the



buyers. He can recover GST from the buyers of flats only if he recalibrates the cost of the flat after factoring in the full ITC available in the GST regime and reduces the ex-GST price of flats.

8. The builders/developers are expected to follow the principles laid down under section 171 of the GST Act scrupulously.

9. The above changes shall come into force with effect from 25 January 2018.

### **Dated 8<sup>th</sup> December 2018**

#### **Effective tax rate on complex, building, flat etc.**

It is brought to the notice of buyers of constructed property that there is no GST on sale of complex/ building and ready to move-in flats where sale takes place after issue of completion certificate by the competent authority. GST is applicable on sale of under construction property or ready to move-in flats where completion certificate has not been issued at the time of sale.

2. Effective rate of tax and credit available to the builders for payment of tax are summarized in the table for pre-GST and GST regime.

<b>Period</b>	<b>Output Tax Rate</b>	<b>Input Tax Credit details</b>		<b>Effective Rate of Tax</b>
Pre-GST	Service Tax: 4.5% VAT: 1% to 5% (composition scheme)	Central Excise on most of the construction materials: 12.5% VAT: 12.5 to 14.5% Entry Tax: Yes	No input tax credit (ITC) of VAT and Central Excise duty paid on inputs was available to the builder for payment of output tax, hence it got embedded in the value of properties. Considering that goods constitute approximately 45% of the value, embedded ITC was approximately 10-12%.	Effective pre-GST tax incidence: 15-18%

GST	Affordable housing segment: 8%, Other segment: 12% after 1/3 <sup>rd</sup> abatement of value of land	Major construction materials, capital goods and input services used for construction of flats, houses, etc. attract GST of 18% or more.	ITC available and weighted average of ITC incidence is approximately 8 to 10%.	Effective GST incidence, for affordable segment and for other segment has not increased as compared to pre-GST regime.
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3. Housing projects in the affordable segment such as Jawaharlal Nehru National Urban Renewal Mission, Rajiv Awas Yojana, Pradhan Mantri Awas Yojana or any other housing scheme of State Government etc., attract GST of 8%. For such projects, after offsetting input tax credit, the builder or developer in most cases will not be required to pay GST in cash as the builder would have enough ITC in his books of account to pay the output GST.

4. For projects other than affordable segment, it is expected that the cost of the complex/ buildings/ flats would not have gone up due to implementation of GST. Builders are also required to pass on the benefits of lower tax burden to the buyers of property by way of reduced prices/ installments, where effective tax rate has been down.

**Dated 15<sup>th</sup> June 2017**

**F. No.296/07/2017-CX.9**

**Govt. of India**

**Ministry of Finance**

**Department of Revenue**

**(Central Board of Excise and Customs)**

New Delhi, the 15<sup>th</sup> June, 2017



## OFFICE MEMORANDUM

Please find enclosed a press release issued by Central Board of Excise and Customs w.r.t. "Reduced Liability of Tax on complex, building, flat etc. under GST", for taking necessary action at your end.

**Encls:** As above

## PRESS RELEASE

The CBEC and States have received several complaints that in view of the works contract service tax rate under GST at 12% in respect of under construction flats, complex etc, the people who have booked flats and made part payment are being asked to make entire payment before 1<sup>st</sup> July 2017 or to face higher tax incidence for payment made after 1<sup>st</sup> July 2017. This is against the GST law. The issue is clarified as below:-

1. Construction of flats, complex, buildings will have a lower incidence of GST as compared to a plethora of central and state indirect taxes suffered by them under the existing regime.

2. Central Excise duty is payable on most construction material @12.5%. It is higher in case of cement. In addition, VAT is also payable on construction material @12.5% to 14.5% in most of the States. In addition, construction material also presently suffer Entry Tax levied by the States. Input Tax Credit of the above taxes is not currently allowed for payment of Service Tax. Credit of these taxes is also not available for payment of VAT on construction of flats etc. under composition scheme. Thus, there is cascading of input taxes on constructed flats, etc.

3. As a result, incidence of Central Excise duty, VAT, Entry Tax, etc. on construction material is also currently borne by the builders, which they pass on to the customers as part of the price charged from them. This is not visible to the customer as it forms a part of the cost of the flat.

4. The current headline rate of service tax on construction of

flats, residences, offices etc. is 4.5%. Over and above this, VAT @1% under composition scheme is also charged. The buyer only looks at the headline rate of 5.5%. In other cities/states, where VAT is levied under the composition scheme @2% or above, the headline rate visible to the customer is above 6.5%. What the customer does not see is the embedded taxes on account of cascading and sticking of input taxes in the cost of the flat, etc.

5. This will change under GST. Under GST, full input credit would be available for offsetting the headline rate of 12%. As a result, the input taxes embedded in the flat will not (& should not) form a part of the cost of the flat. The input credits should take care of the headline rate of 12% and it is for this reason that refund of overflow of input tax credits to the builder has been disallowed.

6. The builders are expected to pass on the benefits of lower tax burden under the GST regime to the buyers of property by way of reduced prices/ installments. It is, therefore, advised to all builders / construction companies that in the flats under construction, they should not ask customers to pay higher tax rate on instalments to be received after imposition of GST.

7. Despite this clarity on law position, if any builder resorts to such practice, the same can be deemed to be profiteering under section 171 of GST law.

## **Notifications**

### **Notification No. 11/2017-Central Tax (Rate) – Rate for supply of constructed units and WCS**

#### **Notification No. 11/2017-Central Tax (Rate)**

New Delhi, the 28<sup>th</sup> June, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 9, subsection (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do,





hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

**Table**

<b>Sl No.</b>	<b>Chapter, Section or Heading</b>	<b>Description of Service</b>	<b>Rate (per cent.)</b>	<b>Condition</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construction services)	(i) 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. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	–
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	–

...

[2. In case of supply of service specified in column (3), in item (i); sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of

such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. –For the purposes of this paragraph, “total amount” means the sum total of,-

- (a) consideration charged for aforesaid service; and
- (b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sublease.][24]

Notification No. 4/2018-Central Tax (Rate) – GST on TDR

Government of India

Ministry of Finance

(Department of Revenue)

**Notification No. 4/2018-Central Tax (Rate)**

New Delhi, the 25<sup>th</sup> January, 2018

G.S.R.....(E).- In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely :-

- (a) registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and
- (b) registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form



of transfer of development rights, as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).

[F. No.354/13/2018 -TRU]

(Ruchi Bisht)

Under Secretary to the Government of India

Further, list of Notifications relevant to Real Estate Sector:

Sl. No.	Notification No.	Gist of the Notification	Effective from
1	Notification No. 3/2019-CTR dt 29.03.2019	Changes in GST rates	01.04.2019
2	Notification No. 4/2019-CTR dt 29.03.2019	Exemption to TDR, FSI and land premium	01.04.2019
3	Notification No. 5/2019-CTR dt 29.03.2019	RCM for TDR, FSI and land premium	01.04.2019
4	Notification No 6/2019-CTR dt 29.03.2019	Time of Supply for JDA	01.04.2019
5	Notification No. 7/2019-CTR dt 29.03.2019	RCM for 80% criteria	01.04.2019
6	Notification No. 8/2019-CTR dt 29.03.2019	Rate for RCM	01.04.2019
7	RDO 4/2019-CT dt.29.03.2019	Credit attributable to be determined based on carpet area	01.04.2019

## FAQs –

### FAQs released on Real Estate Sector released by CBIC as on 7th May 2019

S. No.	Question	Answer						
1.	What are the rates of GST applicable on construction of residential apartments?	<div>With effect from 01-04-2019, effective rate of GST applicable on construction of residential apartments by promoters in a real estate project are as under:</div> <table><tr><th>Description</th><th>Effective rate of GST (after deduction of value of land)</th></tr><tr><td>Construction of affordable residential apartments</td><td>1% without ITC on total consideration.</td></tr><tr><td>Construction of residential apartments other than affordable residential apartments</td><td>5% without ITC on total consideration.</td></tr></table>	Description	Effective rate of GST (after deduction of value of land)	Construction of affordable residential apartments	1% without ITC on total consideration.	Construction of residential apartments other than affordable residential apartments	5% without ITC on total consideration.
Description	Effective rate of GST (after deduction of value of land)							
Construction of affordable residential apartments	1% without ITC on total consideration.							
Construction of residential apartments other than affordable residential apartments	5% without ITC on total consideration.							
		<div>The above rates are effective from 01-04-2019 and are applicable to construction of residential apartments in a project which commences on or after 01-04-2019 as well as in on-going projects. However, in case of on-going project, the promoter has an option to pay GST at the old rates, i.e. at the effective rate of 8% on affordable residential apartments and effective rate of 12% on other than affordable residential apartments and, consequently, to avail permissible credit of inputs taxes; in such cases the promoter is also expected to pass the benefit of the credit availed by him to</div>						
		the buyers.						



2.	What is an affordable residential apartment?	<p>Affordable residential apartment is a residential apartment in a project which commences on or after 01-04-2019, or in an ongoing project in respect of which the promoter has opted for new rate of 1% (effective from 01-04-2019) having carpet area up to 60 square meter in metropolitan cities and 90 square meter in cities or towns other than metropolitan cities and the gross amount charged for which, by the builder is not more than forty five lakhs rupees. [Cities or towns in the notification shall include all areas other than metropolitan city as defined, such as villages.]</p> <p>In an ongoing project in respect of which the promoter has opted for new rates, the term also includes apartments being constructed under the specified housing schemes of Central or State Governments.</p> <p>[Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their geographical limits prescribed by Government.]</p>
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3.	What is an on-going project?	<p>A project which meets the following conditions shall be considered as an ongoing project.</p> <p>(a) Commencement certificate for the project, where required, has been issued by the competent authority on or before 31<sup>st</sup> March, 2019, and it is certified by a registered architect, chartered engineer or a licensed surveyor that construction of the project has started (i.e. earthwork for site preparation for the project has been completed and excavation for foundation has started) on or before 31st March, 2019.</p> <p>(b) Where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is to be certified by any of the authorities specified in (a) above that construction of the project has started on or before the 31st March, 2019.</p> <p>(c) Completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019.</p> <p>(d) Apartments of the project have been, partly or wholly, booked on or before 31<sup>st</sup> March, 2019</p>
4.	Does a promoter or a builder has option to pay tax at old rates of 8% & 12% with ITC?	<p>Yes, but such an option is available in the case of an ongoing project. In case of such a project, The promoter or builder has option to pay GST at old effective rate of 8% and 12% with ITC.</p> <p>To continue with the old rates, the promoter/builder has to exercise one time option in the prescribed form and submit the same manually to the jurisdictional Commissioner by the 10<sup>th</sup> of May, 2019.</p>



		<p>However, in case where a promoter or builder does not exercise option in the prescribed form, it shall be deemed that he has opted for new rates in respect of ongoing projects and accordingly new rate of GST i.e. 5%/ 1% shall be applicable and all the provisions of new scheme including transitional provisions shall be applied.</p> <p>There is no such option available in case of projects which commence on or after 01.04.2019.</p> <p>Construction of residential apartments in projects commencing on or after 01.04. 2019 shall compulsorily attract new rate of GST @ 1% or 5% without ITC.</p>						
5.	What is the rate of GST applicable on construction of commercial apartments [shops, godowns, offices etc.] in a real estate project?	<p>With effect from 01-04-2019, effective rate of GST, after deduction of value of land or undivided share of land, on construction of commercial apartments [shops, godowns, offices etc.] by promoter in real estate project are as under:</p> <table><tr><th>Description</th><th>Effective rate of GST (after deduction of value of land)</th></tr><tr><td>Construction of commercial apartments in a Residential Real Estate Project (RREP), as explained in question no. 6 below, which commences on or after 01-04-2019 or in an ongoing project in respect of which the promoter has opted for new rates effective from 01-04-2019</td><td>5% without ITC on total consideration.</td></tr><tr><td>Construction of commercial apartments in a Real Estate Project (REP) other than Residential Real Estate Project (RREP) or in an ongoing project in respect of which the promoter has opted for old rates</td><td>12% with ITC on total consideration.</td></tr></table>	Description	Effective rate of GST (after deduction of value of land)	Construction of commercial apartments in a Residential Real Estate Project (RREP), as explained in question no. 6 below, which commences on or after 01-04-2019 or in an ongoing project in respect of which the promoter has opted for new rates effective from 01-04-2019	5% without ITC on total consideration.	Construction of commercial apartments in a Real Estate Project (REP) other than Residential Real Estate Project (RREP) or in an ongoing project in respect of which the promoter has opted for old rates	12% with ITC on total consideration.
Description	Effective rate of GST (after deduction of value of land)							
Construction of commercial apartments in a Residential Real Estate Project (RREP), as explained in question no. 6 below, which commences on or after 01-04-2019 or in an ongoing project in respect of which the promoter has opted for new rates effective from 01-04-2019	5% without ITC on total consideration.							
Construction of commercial apartments in a Real Estate Project (REP) other than Residential Real Estate Project (RREP) or in an ongoing project in respect of which the promoter has opted for old rates	12% with ITC on total consideration.							

6.	What is a Residential Real Estate Project?	A "Residential Real Estate Project" means a „Real Estate Project" 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 project.
7.	What is the criteria to be used by an architect, a chartered engineer or a licensed surveyor for certifying that construction of the project has started by 31 <sup>st</sup> March, 2019	Construction of a project shall be considered to have been started on or before 31 <sup>st</sup> March, 2019, if the earth-work for site preparation for the project has been completed, and excavation for foundation has started on or before the 31 <sup>st</sup> March,2019.
8.	Does a promoter/builder have to purchase all goods and services from registered suppliers only?	A promoter shall purchase at least eighty percent. of the value of input and input services, from registered suppliers. For calculating this threshold, the value of services by way of grant of development rights, long term lease of land, floor space index, or the value of electricity, high Speed diesel, motor spirit and natural gas used in construction of residential apartments in a project shall be excluded.
9.	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%)
10.	In case of new rate of 5% / 1%, whether the conditions of payment of tax through Cash Ledger, payment of tax under RCM subject to 80% limit, non- availing of Input Tax Credit, reversal of credit,	Yes. All the specified conditions against clause (i) to (id) of Sl. No 3 of Notification No. 11/2017- CTR are mandatory.





	<p>maintenance of project wise account, reporting of ITC not availed in corresponding GSTR-3B etc. are required to be complied mandatorily by the Developer ?</p>	
11.	<p>What is the rate of GST applicable on transfer of development rights, FSI and long term lease of land?</p>	<p>Supply of TDR or FSI or long term lease of land used for the construction of residential apartments in a project that are booked before issue of completion certificate or first occupation is exempt.</p> <p>Supply of TDR or FSI or long term lease of land, on such value which is proportionate to construction of residential apartments that remain unbooked on the date of issue of completion certificate or first occupation, would attract GST at the rate of 18%, but the amount of tax shall be limited to 1% or 5% of value of apartment depending upon whether the residential apartments for which such TDR or FSI is used, in the affordable residential apartment category or in other than affordable residential apartment.</p> <p>TDR or FSI or long term lease of land used for construction of commercial apartments shall attract GST of 18%.</p> <p>The above shall be applicable to supply of TDR or FSI or long term lease of land used in the new projects where new rate of 1% or 5% is applicable.</p>
12.	<p>Who is liable to pay GST on TDR and floor space index?</p>	<p>The promoter is liable to pay GST on TDR or floor space index supplied on or after 01-04-2019 on reverse charge basis.</p>

13.	At what point of time, the promoter should discharge its tax liability on TDR.	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.
14.	At what point of time, the promoter should discharge its tax liability on FSI (including additional FSI).	On FSI received on or after 1.4.2019, the promoter should discharge his tax liability on FSI as under: <ul style="list-style-type: none"> <li>(i) In case of supply of FSI wherein consideration is in form of construction of commercial or residential apartments, liability to pay tax shall arise on date of issuance of Completion Certificate.</li> <li>(ii) In case of supply of FSI wherein monetary consideration is paid by promoter, liability to pay tax shall arise on date of issuance of Completion Certificate only if such FSI is relatable to construction of residential apartments. However, liability to pay tax shall arise immediately if such FSI is relatable to construction of commercial apartments.</li> </ul>
15.	At what point of time, the promoter should discharge its tax liability on supply of long term lease.	On long term lease received on or after 1.4.2019, the promoter should discharge his tax liability on long term lease as under:



		In case of supply of long term lease of land for construction of commercial apartments, tax shall be paid by the promoter immediately. However, for construction of residential apartment, liability to pay tax on the upfront amount payable for long term lease shall arise on the date of issuance of Completion Certificate.
16.	Land development corporation of Orissa has provided land on long term lease for 99 years, for construction of a real estate project. As per the lease agreement, promoter has to pay an upfront amount of Rs. 10 Crore and annual/ monthly licence fee of 5 lakhs. Does the promoter has to pay GST on the sea-mounts?	<p>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 license 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.</p> <p>Annual/ monthly rent or licence fee payable for long term lease is taxable under GST.</p>

17.	<p>Someone booked a flat from XYZ Developers in June, 2018. As of 31-03-2019, he had paid 40% of the value of the flat. What shall be the GST rate applicable on the remaining portion of value of the flat?</p>	<p>GST on the remaining portion of the value of flat payable to the promoter on or after 01-04-2019 as per the contract between the promoter and buyer shall be payable at effective rate of 1% or 5%, subject to the condition that the builder has not exercised the option to pay tax on construction of apartments at the old rates of 12% or 18%. If the XYZ developer exercises option to continue to pay tax at old effective rate of 8% or 12% by 10<sup>th</sup> May, 2019, then GST has to be paid @ 8% or 12% on remaining portion of the value of the flat; in such cases, the promoter would be entitled to permissible credit of input taxes and, as such, the price that he charges from the buyer should appropriately reflect this credit.</p>
18.	<p>I am a beneficiary of PMAY- CLSS and carpet area of my house being constructed in an ongoing project is 150 sq m. Am I eligible for new rate of 1% on same?</p>	<p>You are eligible for new GST rate of 1%, subject to the condition that the developer-promoter with whom you have booked the house has not exercised option to pay tax on construction of apartments at the old rate of 8%.</p>
19.	<p>I am planning to purchase an apartment in a newly launched project. The project has been launched after 31.03.2019 by XYZ Developers at Noida. Price of the apartment having carpet area of 80 sqm is 48 lakhs. What is the rate of GST applicable on construction of this apartment?</p>	<p>The tax rate applicable on construction of the apartments in a project that commences on or after 01.04.2019 would be 5%.</p>



20.	I have already paid tax of 12% (effective) on installments paid before 01.04.2019. I wish to get the benefit of new rate of 1% or 5%. Whether it is the builder or the buyer who has the option to pay tax at the new or old rates?	The buyer cannot exercise option on pay tax at the new or old rates. It is the builder, who has to exercise the option to pay tax on construction of apartments at the old rate of 12% latest by 10 <sup>th</sup> May, 2019. If the builder doesn't exercise his option to continue to pay tax at the old rate by the said date, then the effective GST rate applicable on all your installments payable to the builder on or after 01.04.2019 as per the contract shall be either 1% or 5%, depending on whether the apartment is an affordable or other than affordable residential apartment.
21.	In respect of supply made in an ongoing Project covered by clauses (ie) and (if) of Entry 3 of Notification No. 3/2019, CT (R), an option is required to be exercised by the Promoter in Annexure IV by 10 <sup>th</sup> May 2019. At the same time, it is permissible for him to issue invoices between 1 <sup>st</sup> April 2019 to 9 <sup>th</sup> May 2019 which shall, however, be in conformity with the option to be exercised. Whether it is permissible for the Promoter to revise the invoice as provided in Section 34 of CGST Act, 2017, including by way of issuance of Credit/Debit Notes so as to bring the transaction in conformity with the option exercised by the Promoter ultimately by 10 <sup>th</sup> May 2019?	Where the GST rate at which tax has been charged in the invoices issued by the promoter prior to 10 <sup>th</sup> May, 2019 are not in accordance with the option required to be exercised by him on or before 10 <sup>th</sup> May, 2019 to pay GST on construction of apartments in an ongoing project at either the new or old rates, the promoter may issue debit or credit notes in accordance with Section 34 of CGST Act, 2017.

22.	How to compute adjustment of tax in a Credit Note to be issued u/s 34 by Real Estate Developer in case unit was booked prior to 1st April, 2019 on which GST was paid on part consideration received at the time of booking, but cancelled after 1st April, 2019.	<p>Developer shall be able to issue a Credit Note to the buyer as per provisions of section 34 in case of change in price or cancellation of booking provided that the amount received in excess if any, consequent to issuance of Credit Note, is refunded to the Buyer by the Developer before September following the end of the financial year. Developer shall be able to take adjustment of tax paid in respect of the amount of such Credit Note. For example, a Developer who paid GST of Rs. 1,20,000 at the rate of 12% (effectively) in respect of a gross amount of booking of Rs.10,00,000 before 1st April, 2019 shall be entitled to take adjustment of tax of Rs. 1,20,000 upon cancellation of the said booking on or after 1st April, 2019 against other liability of GST including liability arising at the rate of 5% / 1% provided that the entire amount received from the buyer is refunded by the Developer.</p> <p>Further, in case apartments booked prior to 1.04.2019 on which GST has been paid till 31.03.2019 at the old rates of 8%/ 12% with ITC, are cancelled and rebooked at the new rates of 1%/ 5% without ITC or sold after issuance of completion certificate, the credit taken in respect of such apartments for supply of service till 31.03.2019 on which tax was paid @ 8%/12% with ITC shall be required to be reversed.</p>
23.	Whether the option to pay tax at the applicable effective rate of 12% or 8% (with ITC) is available to the Promoter in respect of the New Project, which has been commenced on or after 1 <sup>st</sup> April 2019?	No, there is no option to pay tax at the effective rate of 12% or 8% with ITC on construction of residential apartments in projects which commences on or after 01-04-2019.



24.	<p>From the plain reading of the provisions and the definitions of the various terms as defined in the Notification No. 3/2019- CT(R), it appears that the one-time option is required to be exercised for the entire REP or RREP. Does this mean that a Promoter can opt for old rates or new rates, as the case may be, for different projects being undertaken by him under the same entity?</p>	<p>Yes. The option to pay tax on construction of apartments in the ongoing projects at the effective old rates of 8% and 12% with ITC has to be exercised for each ongoing project separately. As per RERA, 2016, project wise registration is allowed. So, the promoter may exercise different options for different ongoing projects being undertaken by him.</p>
25.	<p>In respect of the construction and supply of premises under specific schemes like PMAY, Housing for All (Urban), RAY etc. as mentioned in sub items (b), (c), (d), (da), (db) of item (iv) and sub items (c), (d), (da) of item (v) of Entry 3 of Notification 11/2017 – CT (R), whether the pre-existing effective rate of 8%, with ITC benefit continues to be available in case of any New Project that has commenced under any such scheme after 1/4/2019?</p>	<p>No. The rate of 8% and 12% with ITC is not available for construction of apartments in a project that commences on or after 01-04-2019. It makes no difference whether or not the apartments are being constructed under PMAY or any other housing schemes of the Central or State Government.</p>

26.	In respect of any ongoing project undertaken under the specific schemes like PMAY, Housing for All(Urban), RAY etc. as mentioned in items(iv) and (v) of Entry 3 of Notification 11/2017- CT (R), prior to 31/3/2019, whether an option is available to the Promoter to pay the tax at the new rates of 1% or 5% (without ITC) or at the existing rates of 8% (with ITC)?	Yes. The promoter has the option to pay tax either at the old rate of 8% (with ITC) or at 1% (without ITC) on construction of residential apartments in ongoing projects being constructed under PMAY and other specified housing schemes of the Central or State Governments in items (iv) and (v) of Entry 3 of Notification 11/2017- Central Tax (Rate) dated 28-06-2017. The option to pay tax on construction of apartments in the ongoing projects at the old rates of 8% with ITC has to be exercised by the promoter for ongoing project.
27.	In case where the Development rights are supplied by the Landowner to the Promoter, under an area sharing arrangement between 1 <sup>st</sup> July 2017 and 31/3/19, but the allotment of constructed area in an ongoing project is made by the Promoter to the Landowner on or after 1/4/2019, whether the tax liability, if any, is required to be discharged in terms of the Notification No. 4/2018 -CT (R)?	Yes. Tax liability on service by way of transfer of development rights prior to 01-04-2019 is required to be discharged in terms of Notification No. 4/2018-CentralTax (Rate) dated 25.01.2018.
28.	Whether the GST is leviable on the output supply of Transferrable Development rights by a developer (usually evidenced by TDR Certificate issued by the authorities). If yes, under which entry and at what rate?	Yes, GST is payable on transfer of development rights by a developer to another developer or promoter or to any other person under reverse charge mechanism @ 18% with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017 - Central Tax (Rate) dated 28-06-2017 (heading 9972).





29.	<p>What is the meaning of the term “first occupation” referred to in clauses (i) to (id) of Entry 3 of Notification No. 3/2019? Whether, in case of an ongoing project, where part occupation certificate has been received in respect of some of the premises comprised in the ongoing project, the Promoter is entitled to exercise the option of 1% / 5% (without ITC) or @ 8%/12% (with ITC) available in terms of Notification No. 3/2019 CT (R), in respect of the balance ongoing project?</p>	<p>The term “first occupation” appearing in Schedule II para 5 (b) and in notification No. 11/2017 – Central Tax (Rate) dated 29-03-2019 means the first occupation of the project in accordance with the laws, rules and regulations laid down by the Central Government, State Government or any other authority in this regard. Where occupation certificate has been issued for part (s) of the project but not for the entire project by 31-03-2019, the first occupation of the project shall not be considered to have taken place on or before 31-03- 2019 and the project shall be considered ongoing project provided it satisfies the other requirements of the definition of the term ongoing project. Promoter shall be entitled to exercise option to pay tax @ 1%/5% (without ITC) or @ 8%/12% (with ITC) on construction of apartments in such project.</p>
30.	<p>(a) In case of a single building registered as 2 (two) separate projects under the provisions of RERA viz. 1<sup>st</sup> to 10<sup>th</sup> floor as one Project and 11<sup>th</sup> to 20<sup>th</sup> 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>(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 (Rate) dated 28-06-2017 as amended by Notification No. 3/2019-Central Tax (Rate) dated 29-03-2019. Both the projects will have to independently satisfy the requirements of the definition of ongoing projects.</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>(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>
31.	<p>Whether TDR purchased on or after 1.4.2019 to be consumed by a developer-promoter in an ongoing project, in respect of which the promoter has opted for the new rate of tax, shall be liable to be taxed at the applicable rate, but limited to 1% or 5%, as the case may be, of the unsold area at the time of issuance of completion certificate?</p>	<p>Yes. Portion of such TDR transferred on or after 01-04-2019 which is used in a non going project in respect of which the promoter has opted for new rate of tax on construction of apartment @ 1% or 5% without ITC which remained un-booked on the date of issuance of completion certificate or first occupation of the project shall be liable to tax at the applicable rate not exceeding 1% of the value in case of affordable residential apartments and 5% of the value in case of other than affordable residential apartments.</p>
32.	<p>What shall be the classification of and rate of tax applicable to works contract service provided by a contractor to a developer or promoter under the new dispensation effective from 01-04-2019 for</p> <p>(a) New project after 1.4.2019 and ongoing projects where option has been exercised for new rate and</p>	<p>The rate of tax applicable on the work contract service provided by a contractor to a promoter for construction of a real estate project shall be 12% or 18% depending upon whether such work contract service is provided for construction of affordable residential apartments or residential apartments other than affordable residential apartments. Rate of tax applicable on such work contract service provided by a contractor to a promoter on construction of commercial apartments shall be 18%(irrespective of option exercised by developer- promoter).</p>



	(b) Ongoing projects where option has not been exercised for new rate?	The relevant entries of the notification are at items (iv), (v), (va) and (vi) against sl. no. 3 of the table in Notification No. 11/2017-Cenral Tax (rate) dated 28-06-2017 prescribing rate of 12% for works contract services of construction of affordable apartments/ apartments being constructed under schemes specified therein. In case of works contract services for construction of other apartments, rate of 18% as prescribed in item(xii) against sl. no. 3 of the table in Notification No. 11/2017-Cenral Tax (rate) dated 28-06-2017 shall be applicable.
33.	<p>A registered project has three blocks and Completion Certificate has been received for one block prior to 1st April, 2019 and for two blocks will be received after that date.</p> <p>Will such a project for which multiple completion certificates are received partly before 1st April, 2019 and partly after that date, constitute an ongoing project?</p>	Where more than one completion certificate is issued for one project, for the purpose of definition of ongoing project as defined in the clause (xx) in the paragraph 4 of the notification No. 11/ 2017- CTR, dated 28.06.2017, completion certificate issued for part of the project shall not be considered to have been issued for the project on or before 31-03-2019 unless completion certificate(s) have been issued for the entire project. Therefore, if completion certificate has not been issued for part of the project on or before 31-03-2019, the project shall still be considered as ongoing project provided other conditions of the definition of "ongoing project" are met.

34.	<p>It is a prevalent practice that more than one commencement certificate is issued by competent authority for single project. For example, in case of a single tower comprising of 50 floors and registered as single project, separate commencement certificates may be issued by the competent authority for (i) basement and parking which is common to entire building (ii) first twenty floors (iii) next thirty floors. If one or two commencement certificates are received by the Developer prior to 1st April, 2019 and remaining on or after that date, will such a project be considered as an ongoing project?</p>	<p>Where commencement certificate has been issued even for part of the project on or before 31-03- 2019, it shall be treated as an ongoing project provided other requirements of the definition of ongoing project are met.</p>
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35.	<p>There are many projects of redevelopment/ slum rehabilitation in pipeline as on 1st April, 2019. It is possible that in such projects the development rights have been conferred upon the developer and pursuant to which the development process has been initiated such as receipt of commencement certificate, excavation for foundation etc., but booking against units for sale has not been received prior to 1st April, 2019. However, allotment of units to the existing dwellers (in respect of free supply units) which will yield no monetary consideration has been done. Clause (xiii) of Para 4 of Notification No. 11/2017-CTR as amended by Notification No. 3/2019 -CTR requires credit of at least one installment in the bank account prior to 1st April, 2019 for a project to be considered as ongoing project. It may please be clarified whether in such cases, apartments being constructed in the project shall be deemed to have been booked prior to 1st April, 2019 in case development agreement is executed prior to that date and whether accordingly such projects shall be considered as an ongoing project?</p>	<p>In case of redevelopment or slum rehabilitation projects, the original inhabitants or the slum dwellers are not required to pay any monetary consideration to the promoter for the residential apartments allotted to them. Therefore, the residential apartments allotted to the original inhabitants in case of redevelopment project or slum dwellers in case of slum rehabilitation or redevelopment project, the requirement that at least one installment has been credited to the bank account of the promoter shall not be required to be met for such apartments to be considered as having been booked on or before 31-03-2019 provided other requirements for considering an apartment booked on or before 31.03.2019 have been met. The consideration for such apartments is receipt in the form of transfer of development rights from the original inhabitants in case of redevelopment projects or the government in case of slum rehabilitation projects.</p> <p>Hence, the condition relating to credit of at least one installment in the bank account of the promoter for the apartments being constructed in a slum redevelopment project to have been partly or wholly booked shall be deemed to have been satisfied in order to consider the project as an ongoing project, provided all other conditions for considering an apartment as booked are met in case of apartments allotted to slum dwellers; as there is no cash payment to be made by the slum dwellers.</p>
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36.	Can a developer take deduction of actual value of Land involved in sale of unit instead of taking deduction of deemed value of Land as per Paragraph 2 to Notification No. 11/2017-CTR ?	No. Valuation mechanism prescribed in paragraph 2 of the notification No. 11/2017- CTR dated 28.06.2017 clearly prescribes one- third abatement towards value of land.
37.	Para 3 of Annexure I and II to Notification No. 3/2019-CTR dated 29.03.2019, stipulate three different conditions. Clause (i) and (ii) of the said Para 3 are relating to percentage of invoicing. It is requested to clarify as to how and where the percentage of invoicing is to be taken into consideration while determining quantum of ITC reversal.	The illustrations given in the said annexure clearly explain how the provisions given in the clause (i) and (ii) of para 3 of the said annexure relating to percentage of invoicing shall operate. The same may be referred to.
38.	It may be clarified whether exemption granted on transfer of development right or FSI for residential construction and reverse charge mechanism prescribed for payment of tax on TDR, FSI or long term lease (premium) in the new dispensation is applicable where development rights were transferred by way of an agreement executed prior to 1st April, 2019 but consideration, whether in cash or other form, flowed to the land owner, in full or part, on or after 1st April 2019.	The new dispensation has been prescribed for real estate sector vide notifications issued on 29.03.2019. The same are effective prospectively from 01.04.2019. They shall apply only to development rights or FSI transferred on or after 01.04.2019. They shall not apply to development rights transferred by way of an agreement prior to 01.04.2019 even if the consideration for the same, in cash or kind, is paid in part or full on or after 01.04.2019.



40.	In certain projects, developers have started construction on or before 31-03-2019. However, bookings in the project have not started. One of the conditions prescribed for a project to qualify as an ongoing project is that apartments being constructed should have been partly or wholly booked. Whether such project where bookings have not started but construction has started, would be eligible for the new rates of 1% or 5% without ITC?	As per explanation in clause (xxviii) of para 4 of the notification No. 11/2017-CTR dated 28.06.2017, "project which commences on or after 01.04.2019" shall mean a project other than an ongoing project. A project, in which bookings for the apartments have not started, would not be covered under definition of "ongoing project". The same would accordingly be treated as a project which commences on or after 01.04.2019 subject to the new rates of 1% or 5% without ITC, as the case may be.
41.	Whether the Form as per Annexure IV of the Notification No. 3/2019-CTR is to be filed with both the jurisdictional commissioner i.e. Central Tax, State Tax.  Whether modification / amendments in such Form are allowed subsequent to filing of the form, after 10 <sup>th</sup> May, 2019?	No. The Form shall be filed manually with the office of the Commissioner in whose jurisdiction the registration of the promoter is assigned.  No modification / amendment of the option is allowed in the Form once submitted.

## FAQs released on Real Estate Sector released by CBIC as on 14th May 2019

Sl. No.	Question	Answer
1.	In case of an area sharing arrangement between a Landowner-Promoter and a Developer-Promoter, where the Project qualifies to be considered an "Ongoing Project", whether an option of 1% or 5% (without ITC) vis-à-vis 8% or 12% (with ITC) as prescribed in Notification No. 3/2019 can be exercised by the Developer- Promoter and Land owner-Promoter independently?	The legal and operational harmony necessitates that both the Landowner-Promoter and the Developer-Promoter exercise identical option for a project.
2.	<p>In case of an area sharing arrangement between a Landowner-Promoter and a Developer-Promoter in a New Project undertaken on or after 1/4/2019, whether the new rate of 1% or 5% is applicable in case of the Landowner-Promoter who sells the under-construction premises before completion of the project?</p> <p>Will the Landowner-Promoter be entitled to ITC in respect of tax charged to him by the Developer-Promoter on such supply?</p> <p>Whether the Landowner- Promoter shall be entitled to avail ITC on any other services or goods used by him in furtherance of his business(such as brokerage on sales etc.)?</p>	<p>The new effective rates of 1% and 5% without ITC are applicable to the apartments booked by the land owner promoter in an ongoing project as well as a new project which commences on or after 01- 04-2019. The land owner promoter shall be entitled to ITC in respect of tax charged to him by the developer promoter on construction of such apartments. However, the land owner promoter shall not be entitled to avail ITC on any other services or goods used by him.</p>





3.	<p>Residential Real Estate Project (RREP) 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 (k) 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 (RREP) 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.</p> <p>Apartments shall be taken as commercial or residential apartments as declared to RERA authority.</p>
4.	<p>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?</p> <ul style="list-style-type: none"> <li>• Amenity Charges</li> <li>• Society formation charges</li> <li>• Advance maintenance</li> <li>• Legal Charges</li> </ul>	<p>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. Clause xvi, sub-clause (a) (ii)(C) of paragraph 4 of notification No. 11/2017-CT(R) dated 28.06.2017, reproduced below, refers.</p> <p><i>"C. 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."</i></p> <p>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.</p>

5.	In case of a Real Estate Project, comprising of Residential as well as Commercial portion (more than 15%), 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.
6.	In an area sharing model, a promoter has to handover constructed flats/ apartments to the land owner who supplied TDR for the project. Value of TDR at the time when the landowner transferred it to the promoter is not known. How would the promoter determine GST on TDR?	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 land owner to the promoter.
7.	In the formula prescribed under first proviso to Entry 41A of the Notification 12/2017- CT (R), as amended by Notification 4/2019 CT (R), what rate shall be taken to determine the value to be ascribed to the "GST Payable on TDR or FSI or both for construction of the residential apartments in the project but for exemption contained therein" as no specific rate has been prescribed in Notification 11/2017 CT-Rate or any other notification?  What is the rate applicable to output supply of TDR or FSI?  Whether the quantum of TDR or FSI (including additional FSI) or both shall be taken only in respect of un-booked apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula?	The GST on transfer of development rights or FSI (including additional FSI) is payable at the rate of 18% (9% + 9%) with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017 - Central Tax (Rate) dated 28-06-2017 (heading 9972).  There is no exemption on TDR or FSI (Addl. FSI) for construction of commercial apartments. Therefore, GST shall be payable on TDR or FSI (including additional FSI) or both used in respect of (i) carpet area of commercial apartment and (ii) un-booked residential apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula.



8.	<p>In case of Redevelopment, Slum Rehabilitation or similar arrangements, the Developer will be constructing two types of units i.e. one which is allotted to existing occupiers for no monetary consideration and second which is sold in the market to outside buyer. Price at which the unit is being sold to the outsider is determined in a manner to factor cost of construction of both type of units so that the unit to existing occupiers may be allotted free of monetary consideration. It may be clarified whether the Input Tax Credit in relation to construction of units to be allotted to existing occupiers, in case of residential project opted for old rates or commercial projects, shall be allowed to the Developer.</p>	<p>The apartments given to the original inhabitants or the slum dwellers in redevelopment project or slum rehabilitation project are given by the promoter against consideration received by them in the form of TDR/ FSI/ monetary consideration from the original inhabitants in case of redevelopment projects and from the Government in case of slum rehabilitation projects. The supply of service by way of construction of such apartments against construction wholly or partly in the form of TDR/FSI is a taxable supply subject to GST.</p> <p>Wherever tax is paid on construction of such apartments at the effective rates of GST of 8%/12% with ITC, the promoters shall be eligible for ITC, including ITC in relation to construction of units to be allotted to the existing occupiers even though there may not be a monetary consideration but the consideration is in the form of grant of TDR/FSI.</p>
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<p>9.</p>	<p>In case of redevelopment or slum rehabilitation project, (new or an existing project) whether the constructed units supplied to existing occupiers by the developer free of monetary consideration are taxable?</p> <p>In case of ongoing project in respect of which the promoter has opted for new rates of 1% / 5%, it may be clarified whether the units being supplied free of monetary consideration to existing dwellers will fall within the definition of affordable housing when certain units being sold in the open market are eligible for concessional rates under the category of Credit Linked Subsidy Scheme i.e. sub- item (da) of item (iv) of Sl. No. 3 of notification No. 11/2017- CTR?</p>	<p>Yes, units supplied free of cost also attract GST as their consideration is not money but TDR/ FSI or rights relating to land on which construction takes place.</p> <p>In such an ongoing project, the units sold in open market would be eligible for GST rate of 1% (without ITC), if such units are covered under Credit Linked Subsidy Scheme, as provided in the definition of "affordable residential apartments" given in notification no 11/ 2017- CTR dated 28.06.2017 as amended by notification No. 3/2019- CTR dated 29.03.2019.</p> <p>The apartments being constructed in such ongoing project, for existing slum dwellers/ occupiers shall be eligible for 1% rate if they meet the definition of affordable residential apartment, as under-</p> <p>(a) They have carpet area of less than 60 sqm in specified metropolitan cities or 90 sqm in places other than the specified metropolitan cities and the gross amount charged for similar apartments from independent buyers is not more than rupees 45 lakhs. (Please refer to para 2A of notification No. 11/2017- CTR dated 28.06.2019 as amended vide notification No. 3/2019- CTR dated 29.03.2019), or</p>
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		(b) They are being constructed under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the said notification.
10.	What shall be the rate of GST applicable on projects in respect of which OC has been issued prior to 01.04.2019, but the balance demands are pending? Such projects are neither projects which commence on or after 01.04.2019 nor ongoing projects.	Time of supply of the service by way of construction of apartments in such projects falls prior to 01.04.2019 and accordingly the rates as existed prior to 01.04.2019 would apply to such balance demands.
11.	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 60/90sq meter?	"Carpet area" is defined in clause (k) of section 2 of the RERA, 2016 and the same has been adopted in the notification.
12.	If an un-registered person transfers development right to a developer-promoter, then it is apparently not covered by the fourth proviso applicable to clause (i) to clause (id) of serial 3 of Notification No. 11/2017 (as amended). Will the promoter be liable to pay GST on TDR received from an unregistered land owner?	Promoter shall be liable to pay GST on TDR transferred by any person whether registered or not on RCM basis.

13.	Whether the ITC availed as per the second proviso applicable to clause (i) to clause (id) of serial 3 of Notification No. 11/2017 (as amended) can be adjusted 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.
14.	If a developer-promoter opts to pay tax for the ongoing project of affordable residential apartment at the new rate, can he use the ITC available to him under the second proviso applicable to clause (i) to clause (id) of serial 3 of Notification No. 11/2017 (as amended) for payment of tax at 1%/5%?	Reply as in Q. No. 13 above.
15.	The condition in Notification No. 3/2019 specifies that 80% of inputs and input services should be procured from registered person. What about expenditure such as salaries, wages, etc. These are not supplies under GST [Sl. 1 of Schedule III]. Now, my question is, whether such services will be included under input services for considering 80% criteria?	Services by an employee to the employer in the course of or in relation to his employment are neither a goods nor a service as per clause 1 of the Schedule III of CGST Act, 2017. Therefore, salaries and wages paid by promoter to his employees will not be relevant for the minimum purchase requirement of 80%.
16.	A buyer has booked an apartment prior to 1st April, 2019 and paid part consideration to the developer. The developer decides to opt for the new scheme for this ongoing project.  Will the buyer be required to pay any additional tax for such payment he has made prior to 31st March, 2019?	No. For the past payments made before the transition date (01.04.2019), no additional GST is required to be paid.



17.	Whether the condition of receiving 80% of inputs and input services from the registered person shall be applicable if the developer opts to continue to pay tax at the old rates of 12%/8% in respect of an ongoing project?	No, if the developer opts to continue to pay tax at the old rates of 12%/8% in respect of an ongoing project, the condition of receiving 80% of inputs and input services from the registered person doesn't apply.
18.	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.
19.	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.

20.	When a developer prefers the option of paying tax at 1%/ 5%, without ITC, for an ongoing project, whether the apartments which were not considered as affordable in the earlier scheme (though certain apartments in such project were considered as affordable in the earlier scheme) will be considered as affordable after 1st April, 2019, if such apartments fit the definition of affordable residential apartments as provided in notification No. 3/2019-CT(R) dated 29.03.2019?	Yes, in case of an ongoing project in respect of which the promoter has not opted to pay GST at the old rate, he shall pay tax at the effective rate of 1% without ITC on apartments which meet the new definition of affordable residential apartment.
21.	Whether the amended rule 42 shall apply to all RREPs including ongoing projects?	In case of an ongoing RREP, in respect of which promoter opts for the new rates of 1% / 5% and which underwent transition of ITC consequent to change of rates of tax on 01.04.2019, ITC determined under sub- rule (1) of rule 42 shall not be required to be calculated finally on the completion or first occupation of the RREP.
22.	Whether separate Form (Annexure IV) shall be filed by the Developer in respect of each of the Ongoing Projects?	Yes. The promoter has to exercise the option for payment of tax at the old rates of 8%/ 12% with ITC for each of the ongoing projects separately.





23.	On what basis a Contractor/ Sub-contractor executing a composite supply of works contract in terms of clause (va) i.e. 12% for affordable residential apartments, shall satisfy himself as regards condition of 50% of the total carpet area?	The contractor may charge tax on the works contract service provided by him to a promoter at the concessional rate of 12% under notification No. 11/2017- CTR dated 28.06.2019, S. No.3, entry (va) on the basis of a declaration by the promoter to the contractor that the project meets the conditions prescribed for concessional rate of GST on works contract service prescribed under the said entry.
24.	Whether the condition to make payment within 180 days by Land Owner – Promoter to Developer – Promoter as provided in second proviso to section 16 (2), shall be applicable for reversal of input tax credit?	<p>The apartments given to the Land Owner – Promoter are given by the Developer – Promoter against consideration received by him in the form of TDR from the Land Owner – Promoter. Therefore, the payment by Land Owner – Promoter for service of construction of apartments received from the Developer – Promoter is made even before the service is provided.</p> <p>Therefore, Land Owner – Promoter shall not be required to reverse input tax credit of tax charged from him by the Developer – Promoter on the ground that he has not made payment for the service received from the Developer – Promoter.</p>
25.	Whether the exemption given by way of Entry 41A / 41B of Notification No. 12/2017-CTR shall be available in respect of development rights etc. transferred to a person other than promoter? Please clarify whether sub-clause (v) in clause (zk) in section 2 in RERA Act, 2016 covers a person who purchases TDR as developer?	The exemption is available only on TDR/ FSI transferred on or after 1 <sup>st</sup> April, 2019 for construction of residential apartments by a promoter in a real estate project.

26.	How to determine value of construction services provided by the promoter to land owner in lieu of transfer of development rights, when land owner is not registered?	Value of construction services provided by the promoter to land owner 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 land owner, 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.
27.	In case of a project, where completion certificate has been received prior to 31-03-2019 but some part of the consideration in relation to the apartment is due after 31-03-2019, it appears that such project will not qualify as ongoing project.  What will be the applicable tax rate on such amount received on or after 01.04.2019 – old rate or new rate?	Time of supply of service of construction of such apartments is prior to 01.04.2019 and the same shall be subject to tax at the old rates of 12%/8%.

## RELEVANT NOTIFICATIONS

03/2019 Central (Rate) dated 29/03/2019

04/2019 Central (Rate) 29/03/2019 Amended 12/2017 dated 28/06/2017

05/2019 Central (Rate) 29/03/2019 Amended 13/2017 dated 28/06/2017

07/2019 Central (Rate) dated 29/03/2019 Amended from 02/2017 dated 28/06/2017

03/2019 Integrated (Rate) dated 29/03/2019

06/2019 Integrated (Rate) dt.29/03/2019

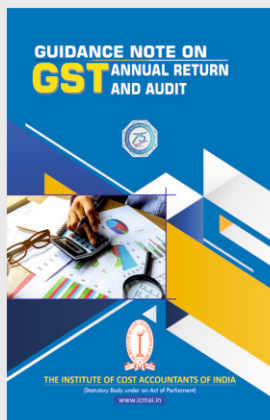
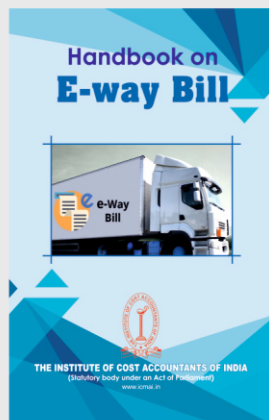
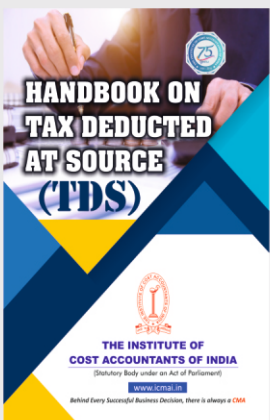
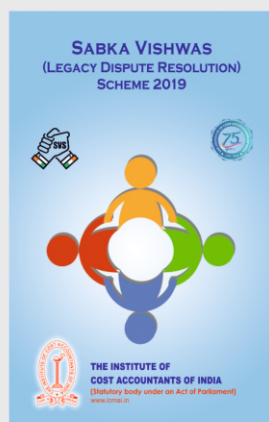
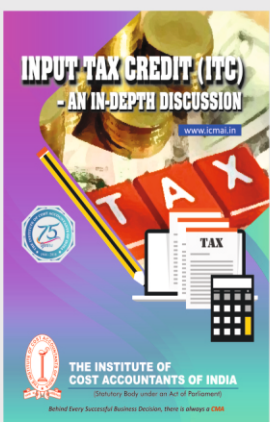
08/2019 Integrated (Rate) dated 29/03/2019

09/2019 Integrated (Rate) dt.29/03/2019

16/2019 Central (Rate) dt.29/03/2019

03/2021 Central dt. 02/06/2021

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### Contact Details:

#### Tax Research Department

12, Sudder Street, Kolkata - 700 016

Phone : +91 33 40364747 / 40364798 / 40364711

Email: trd.hod@icmai.in/trd@icmai.in/trd2@icmai.in

#### DELHI OFFICE

CMA Bhawan  
3, Institutional Area, Lodhi Road,  
New Delhi - 110003  
Ph: + 91-11-24666100/24666124/24666122  
Fax: +91-11-43583642



#### HEADQUARTERS

CMA Bhawan  
12, Sudder Street, Kolkata - 700 016  
Ph: +91-33-2252-1031/34/35/1602/  
1492/1619/7373/7143  
Fax: +91-33-2252-7993/1026/1723

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