

# CHALLENGES IN GST ON REAL ESTATE SECTOR

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# Introduction

- ✓ This industry is very unique and has its peculiar features not applicable to any other industry
- ✓ Indirect tax implications on real estate has been a tricky issue ever since its presence in the country.
- ✓ In erstwhile taxation regime builders/contractors were required to comply with the provisions of Finance Act, 1994 (i.e. Service Tax) and relevant State VAT Acts.
- ✓ W.e.f. 01.07.2017, such taxes have been substituted with one single tax namely Goods and Services Tax (“GST”)

# History

- ❖ The Constitution of India explicitly defines the taxation powers of Union under schedule VII list I and States under list II.
- ❖ Entry No 54 of state list has authorized States **to levy and collect taxes on sale and purchase of goods other than newspapers** within a state jurisdiction and on the basis of this entry States are levying sales tax.
- ❖ The States Government's attempt to levy sales tax on the transfer of property in goods involved in the execution of an indivisible contract. Amid all this a disputed point was taking birth that who is authorized to levy and collect tax on the materials supplied in a building contract where the material is used to construct the building. The builder and customer have entered into an agreement for construction of building and not for the sale of material
- ❖ The Hon'able Supreme Court in the case of **State of Madras vs. Gannon Dunkerley & Co. Ltd** reported at [1958] 9 STC 353 (SC) held that the **contract of building is one, entire and indivisible**. There is **no sale of movables** (building materials). The contract for building is not a contract for 'sale of goods'. It was further held that the **state does not have any power under the constitution to bifurcate the material and labour portion** in an indivisible contract and levy sales tax on the material supplied.

# History

❖ Introduction of the concept of 'Deemed sale' in Constitution of India vide Constitution (46th Amendment) Act, 1982 w.e.f. **02.02.1983**

The **Union Govt.** came to the rescue of the state governments and brought in the **46th amendment** to the **Constitution of India**. Vide the said amendment, **clause 29(A)** was inserted under **Article 366** which defined the "Tax on the sale or purchase of goods" to include:

- " ....
- *(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;*
- ...."

By inserting clause (29A) the Parliament has ensured to resolve the dispute arising out due to 1<sup>st</sup> Gannon Drunkenly case and covered maximum transactions under deemed sales. Sub clause (b) of clause (29A) specifically deals with works contract tax and empowered States to make laws related to taxation of works contract in a State.

# History

- ❖ Once again, the matter went up to the Apex Court in the case of **Gannon Dunkerley & Co. versus State of Rajasthan & Larsen & Toubro Ltd. & Union of India** reported at [1993] 88 STC 204 (SC) to determine whether the states are competent to levy tax on the interstate transfer of property in goods executed in the works contract. The *Honorable Supreme Court held that the Taxable event in works contract is the transfer of property in goods involved in execution of a works contract. In works contract, property in goods should pass on the principle of accretion, accession or blending when the works contract is getting executed. If property in goods pass after execution of works contract, it is 'sale' and not 'transfer of property in goods involved in execution of works contract'.*
- ❖ In the case of **Builders' Association of India vs. UOI – AIR 1989 SC 1371 (5-Member Constitution Bench)** the Hon'ble Supreme Court held that

“After the 46th amendment, the works contract which was indivisible one, is by a legal fiction altered into one for sale of goods and the other for supply of labour and services. After 46th amendment, it has become possible for States to levy tax on value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of goods and materials supplied in a building contract which had been entered into two distinct and separate parts.”

# Chronology of levy of Service Tax on the Real Estate Sector

- **10.09.2004** - Introduction of levy on **‘Commercial or Industrial Construction Service’** [S.65(25b) r/w. S.65(105)(zzq) of FA]
- **16.06.2005** - Introduction of levy on **‘Construction of (Residential) Complex Service’** [S.65(30a) r/w. S.65(105)(zzzh) of FA]
- **01.06.2007** - Introduction of levy on **‘Works Contract Service’** [S.65 (105) (zzzza) of FA]
- **01.07.2010** - Insertion of Explanation under **S.65(105)(zzq) and S.65(105) (zzzh)** of FA
- **01.07.2012** - Introduction of **‘Negative List-based levy of Service Tax Regime’**
- 01.07.2012 - ‘Service’ defined in S.65B(44) of FA as amended w.e.f. 01.07.2012

An activity which constitutes merely, a **transfer of title** on goods or **immovable property** by way of sale, gift or in any other manner’ **excluded** from ‘service’

- **01.07.2012** - **S.66E of FA prescribes the list of the ‘Declared Services’**

# Sec 66 E of FA 1994 Declared Service (relevant extracts)

## □ Clause (h) of S.66E reads as under:

*“(h) service portion in the execution of works contract.”*

-Clause (54) of S.65B defines ‘works contract’ as under:

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

# Pre – GST Regime Judicial Pronouncements

## Larsen & Toubro Ltd. vs. State of Karnataka – 2014(303) ELT 3 (SC-LB)

- The Indivisible contracts can be segregated into (i) contract for sale of goods involved in works contract and (ii) for supply of labour and service [para 63 and 101(viii)]
- ‘Works Contract’ is a contract for undertaking or bringing into existence some ‘works’ [para 76]
- **Dominant nature test is not relevant for ‘works contract’.** Even if dominant intention of contract is not to transfer the property in goods and rather it is rendering of service, then also sales tax can be imposed on materials used in such contracts if such contract otherwise has elements of works contract [para 101 (vi)]
- **Development agreements/Tripartite agreement between owner of land, developer and purchaser of flat is a ‘works contract’** [para 111]



# Pre – GST Regime Judicial Pronouncements

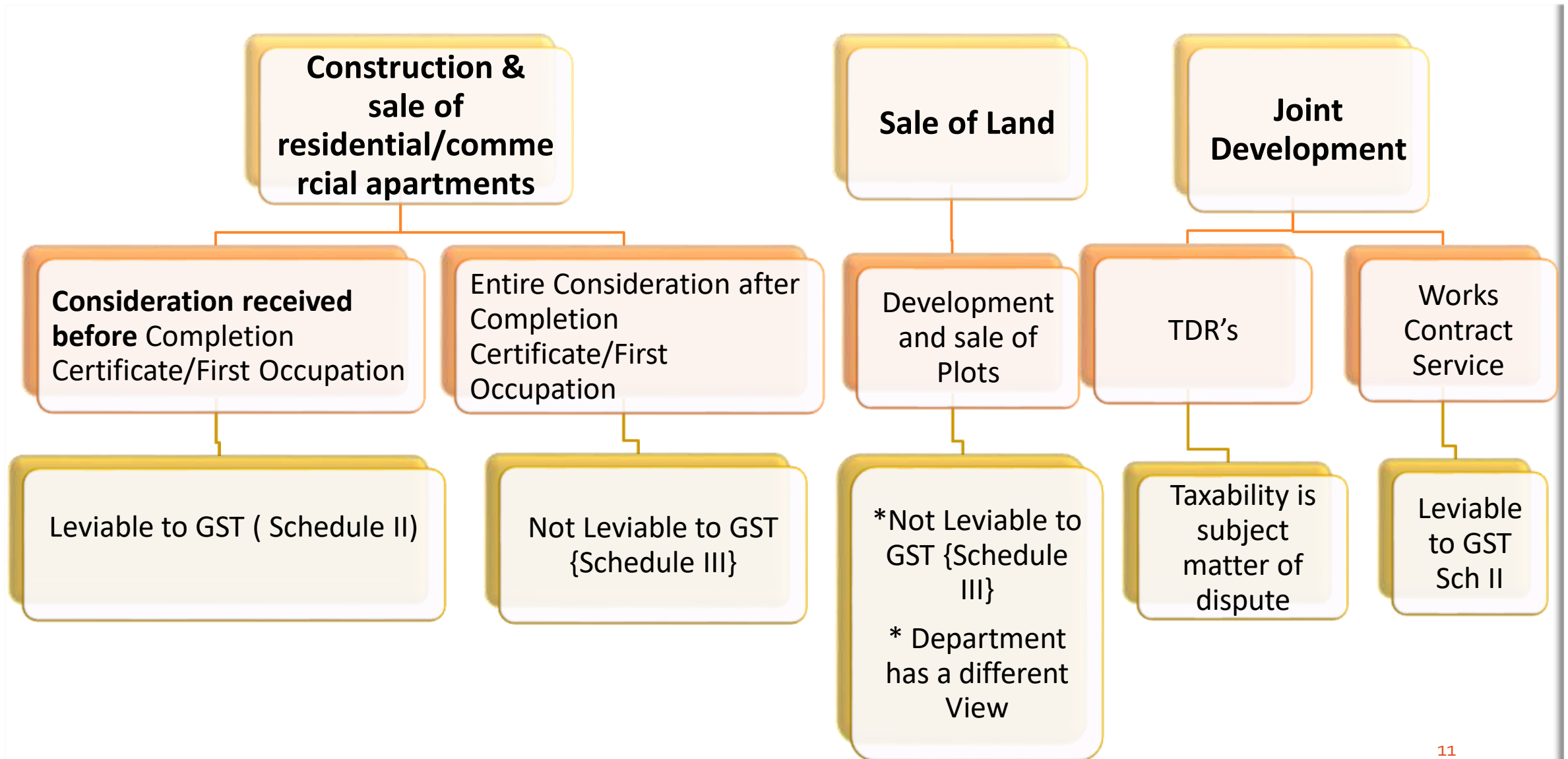
- Building contract is a species of works contract [para 101(iv)]
- If agreement is entered into after **flat or unit is already constructed, then there would be no ‘works contract’** as there was no purchaser when the building was under construction [para 117]
- **Works contract would be from stage of entering into agreement.** The value addition made to the goods transferred after the agreement is entered into with flat purchaser can only be made chargeable to tax by State Government.

# Pre – GST Regime Judicial Pronouncements

## Commr. of C.Ex. & Cus. Vs. Larsen & Toubro Ltd. - 2015 (39) STR 913 (SC)

- ❑ Prior to 01.06.2007, service tax was leviable only on contracts simpliciter and not composite indivisible works contract
- ❑ No charging section specifically levying service tax only on works contracts
- ❑ **Delhi HC's judgement in G.D. Builders vs. UOI - 2013 (32) STR 673 (Del) overruled**
- ❑ **Exemption notifications were immaterial as the levy itself was non-existent**
- ❑ Taxation powers of Centre and States are mutually exclusive – There is no concurrent power of taxation and entries are to be found only in Lists I and II of the Constitution – If taxing statute transgresses into prohibited exclusive field, it is liable to be struck down
- ❑ **Taxation and assessment machinery provisions – In their absence, law is vague and it is arbitrary to assess to tax subject.**

# REAL ESTATE TRANSACTION



# CONSTRUCTION & SALE OF RESIDENTIAL/COMMERCIAL APARTMENTS

# SCHEDULE II : ACTIVITIES (OR TRANSACTIONS\*) TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

## 5. Supply of services

The **following shall be treated as supply of services**, namely:—

- a) **renting of immovable property;**
- b) **construction of a complex, building, civil structure or a part thereof**, including a complex or building intended for sale to a buyer, wholly or partly, **except where** the **entire consideration has been received after issuance of completion certificate**, where required, **by the competent authority or after its first occupation**, whichever is earlier

6. Composite supply The following composite supplies shall be treated as a **supply of services**, namely:—

- (a) **works contract as defined in clause (119) of section 2; and ....**

## **SCHEDULE II : ACTIVITIES (OR TRANSACTIONS\*) TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

### **Explanation.—**

### **For the purposes of this clause—**

- (1) the expression "**competent authority**" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:— (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or (ii) a chartered engineer registered with the Institution of Engineers (India); or (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.
- (2) the expression "**construction**" includes additions, alterations, replacements or remodeling of any existing civil structure

## **SCHEDULE II : ACTIVITIES (OR TRANSACTIONS\*) TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

**The term “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;

### **Notes :**

- a) Exhaustive definition
- b) Three activities Building, Fabrication and modification added
- c) Transfer of property in goods and not consumption of material
- d) Only of any immovable property

# **SCHEDULE III :ACTIVITIES (OR TRANSACTIONS\*) WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES**

***Entry no 5.*** Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

## ***Comments:***

*What is the scope of this Entry ?*

*Whether partially constructed building subject to GST?*

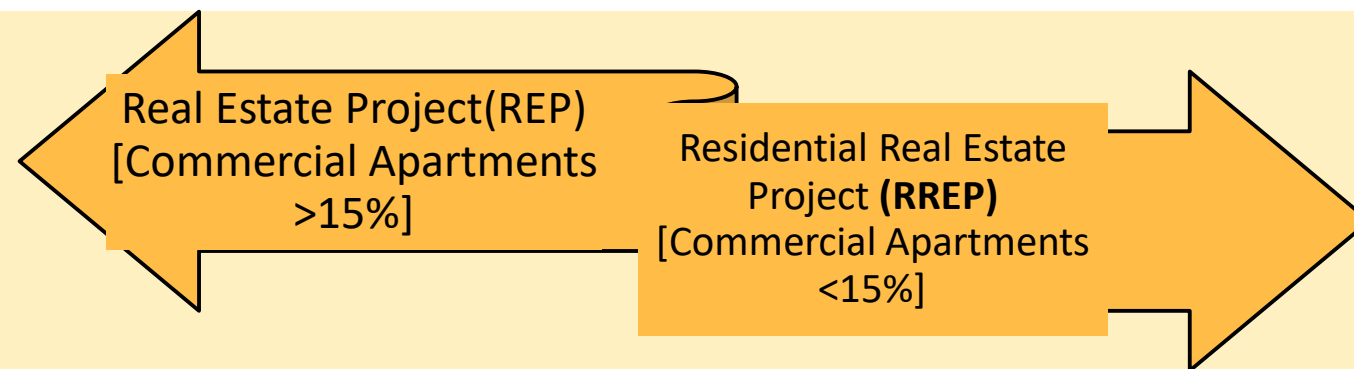
Discussed in detail in upcoming slides.



## The taxability of Construction of Commercial and Residential Projects under went a major change w.e.f. 1.4.2019.

Under the New Scheme, a project where the commercial apartments cover less than 15 % of the total carpet area are classified as Residential Real Estate Project (RREP)". This is further identified as : Fully Residential or a Mixed Project

Where the percentage of such coverage is more than 15%, it is said to be a Real Estate Project. This is further identified as Fully commercial or a Mixed Project

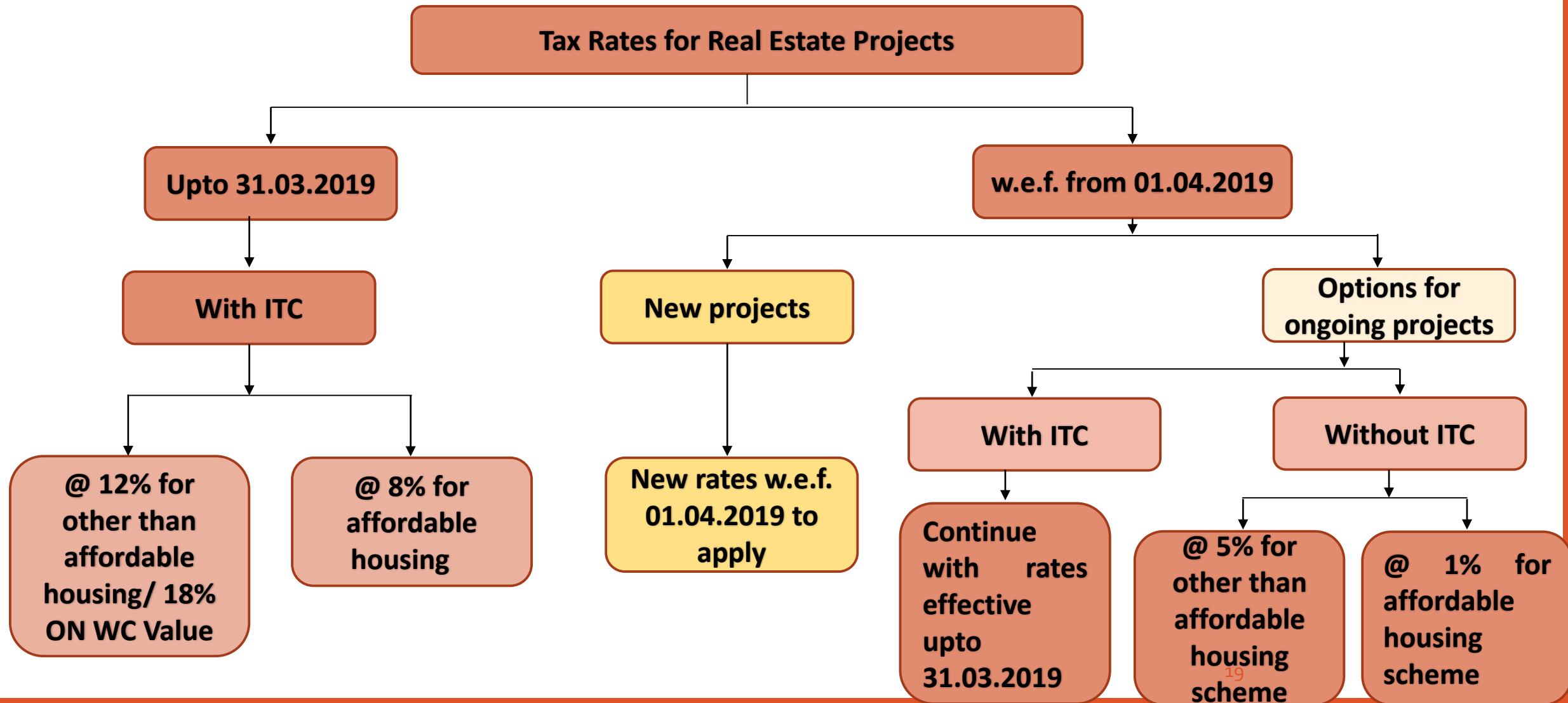


**The taxability of Construction of Commercial and Residential Projects under went a major charge w.e.f. 1.4.2019.**

**A Promoter undertakes the following activities:**

- Supply of Goods
- Supply of Service
- Sale of Land/Undivided portion of land
  
- **Sale of land is out of the purview of GST; therefore; value of the same to be reduced for charging GST.**

# Applicability of new tax rates:



# Land Value:- Deemed Deduction

## Notification No-11/2017 [CTR] dated 28.06.2017

Relevant Extract is as under:

*“..... 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”*

**Total Amount** means sum total of

- consideration charged for construction service; **and**
- amount charged for transfer of land or undivided share of land, as the case may be.

### **ISSUES:**

1. Cause of worry for metro where cost of land is as high as 80 % to 90% ?
2. Is it not taxing land indirectly? whether is it permissible?
3. Can a promoter take deduction of actual value of land.
4. Is there any practical solution to deal with the issue ?

# GST Rates

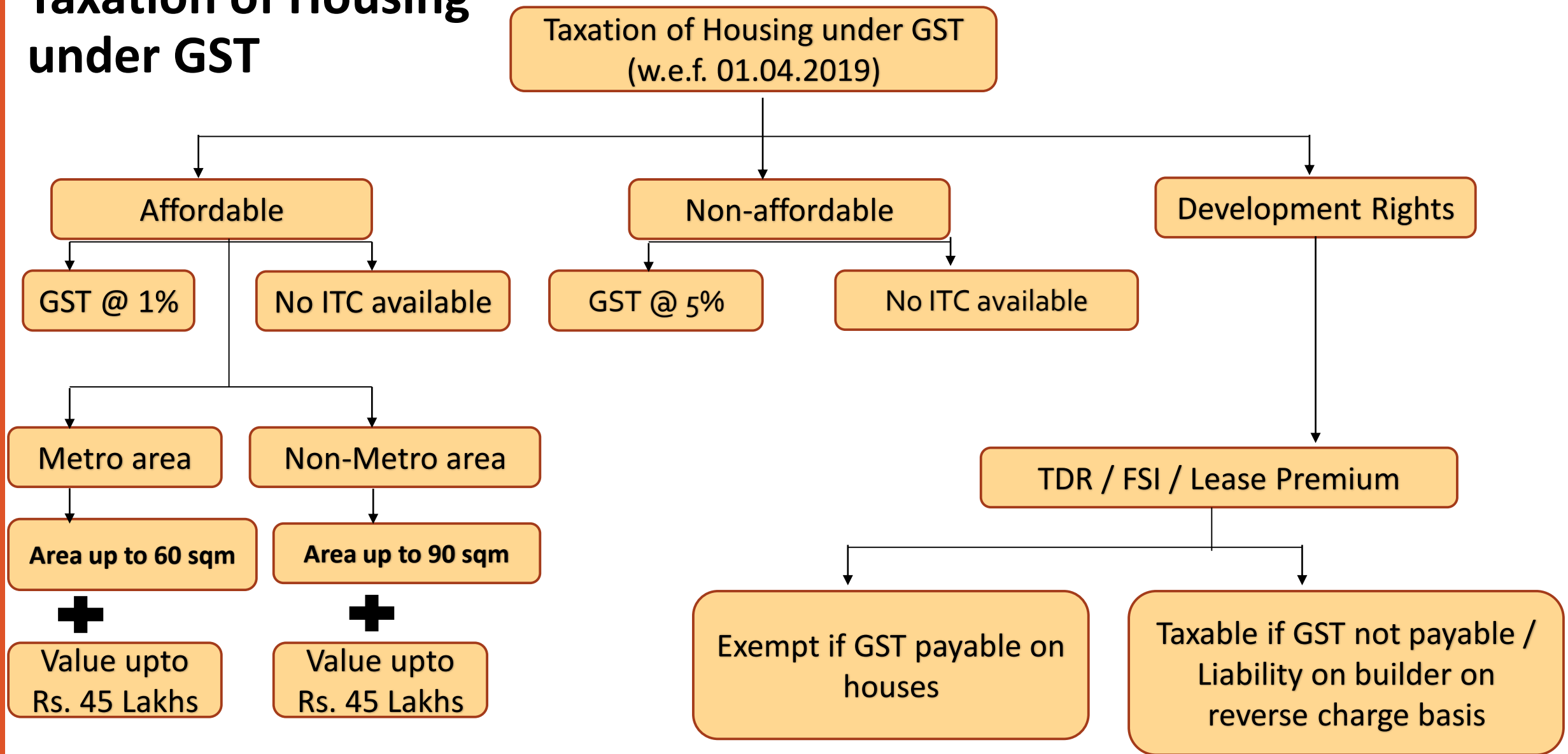
PERIOD	UP TO 31.03.2019	
Nature	Affordable Residential Apartments	Other Residential /Commercial Apartments
GST Rate	12%	18%
Land Deduction	1/3 <sup>rd</sup>	1/3 <sup>rd</sup>
Effective Rate of GST	8%	12%
N.N 11/2017 CT(R)	3(ie)	3(if)

In case of On-going projects **[where Promoter has availed option to pay tax as per old rates]** above rate shall be applicable even after 01.04.2019.

## Where no option exercised/New Projects

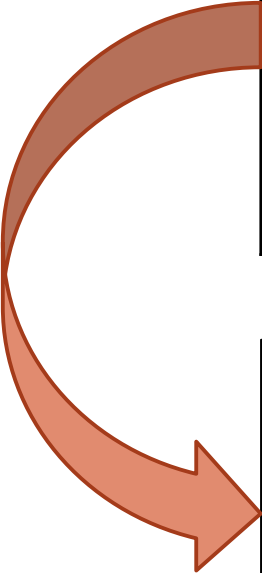
Period	W.e.f. 01.04.2019			
Nature	Affordable Residential Apartments	Other Residential Apartments	Commercial Apartments [RREP]	Commercial Apartments [REP]
GST Rate	1.5%	7.5%	7.5%	18%
Land Deduction	1/3 <sup>rd</sup>	1/3 <sup>rd</sup>	1/3 <sup>rd</sup>	1/3 <sup>rd</sup>
<u>Effective Rate of GST</u>	<u>1%</u>	<u>5%</u>	<u>5%</u>	<u>12%</u>
N.N 11/2017 CT(R)	3(i)(ic)	3(ia)(id)	3(ib)	3(if)

# Taxation of Housing under GST



# New Tax Rates without ITC w.e.f. 1.4.2019 for housing projects

Taxation of Housing under GST (w.e.f. 01.04.2019)



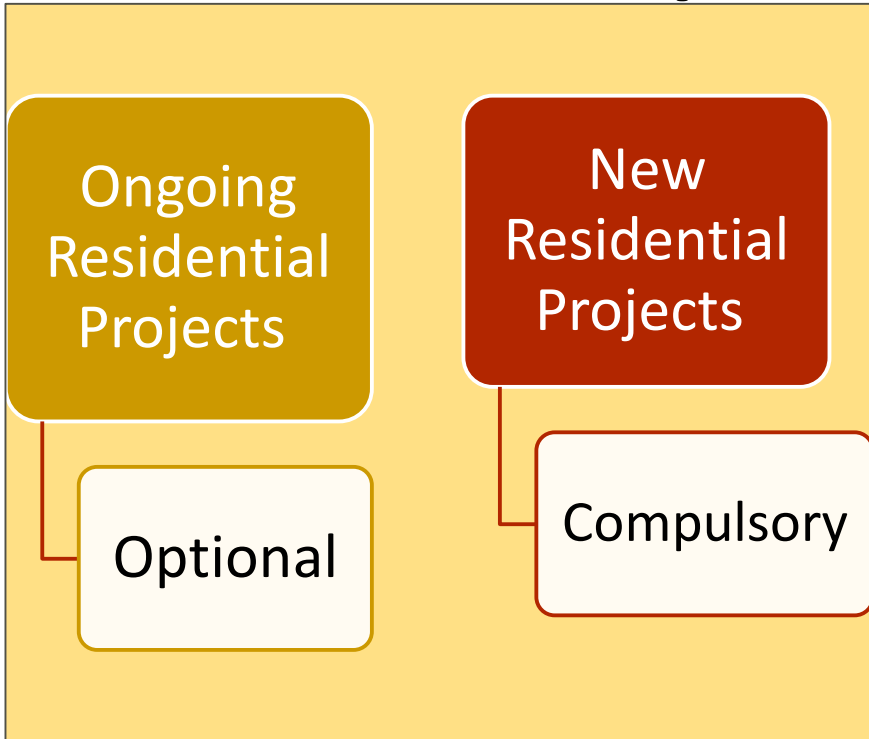
@ 1%	New affordable housing projects
	Ongoing affordable housing projects opting for new rates
@ 5%	Ongoing other than affordable housing
	New other than affordable housing projects
	Projects with commercial space <15% of total carpet area

## Conditions:

- ITC denied
- **80% of input/ input services procured from registered persons**
  - If not, tax @ 18% by builder under RCM
- **If cement purchased from unregistered person, GST @ 28% under RCM**



# Reduced Rates optional or compulsion



Whether 5% GST [with NO ITC] can be levied on Commercial Apartments in REP?

No, GST to be levied @12% [Entry No 3(if) N.N 11/2017 CT(R)]

## ➤ CONDITIONS FOR REDUCED RATES

- No ITC available and GST needs to be paid in **CASH only**.
- ITC not availed to be reported in GSTR-3B.
- In ongoing projects, where promoter opts for reduced rates, ITC needs to be reversed.
- 80% value of Inputs and Input Services to be procured from **Registered Persons**. However Cement to be procured from registered person only.
- Capital goods (100%) to be procured from registered person.

# 80% value of Input and Input Services to be procured from Registered Persons

## ❑ Why this Condition:

To safeguard revenue. As ITC is not available therefore; Promoter will procure from unregistered persons.

Particulars	Registered Suppliers	Un-Registered Suppliers
Purchases	1,00,000	1,00,000
GST	18,000	-
Total	1,18,000	1,00,000
Government Revenue	18,000	-

## ❑ What If this condition not met:

Tax under RCM to be paid by Promoter :

- (a) on supplies of input and input services which fall short of 80%.
- (b) On supplies of cement from unregistered persons
- (c) on supplies of capital goods from unregistered persons  
[Notification 07/2019 – CT (R) dated 29.03.2019 ]

## ❑ Following shall not to be considered:

- ✓ Services by way of grant of development rights,
- ✓ Long term lease of land or Floor Space Index (FSI),
- ✓ Electricity
- ✓ High speed diesel, motor spirit, natural gas
- ✓ Capital Goods

❑ Where **Cement is received from unregistered person**, the promoter is **mandatorily required** to pay tax on such cement under RCM.

Particulars	Supplier	Percentage %
Purchase of Input/Input Services	R	60
<b><u>Cement</u></b>	UR	10
Other Input/Input Services	UR	30
<b>Promotor shall be liable to pay GST under RCM</b>		<ul style="list-style-type: none"> <li>✓ Firstly, On Cement - 10%</li> <li>✓ Then on balance 10% w.r.t input/input services from unregistered suppliers</li> </ul>

Particulars	Supplier	Percentage %
Purchase of Input/Input Services	R	60
<b>Cement</b>	UR	25
Other Input/Input Services	UR	15
<b>Promotor shall be liable to pay GST under RCM</b>		<ul style="list-style-type: none"> <li>✓ On Cement - 25% even if limit of 80% crosses.</li> </ul>

# 80% value of Input and Input Services to be procured from Registered Persons

- Where **tax is paid** on inputs and input services **under reverse charge**, it shall be **deemed that same have been procured from registered persons**.
- Project wise** accounts of inward supplies from registered as well as unregistered suppliers needs to be maintained.
- Details of shortfall** needs to be submitted electronically by end of quarter following the FY.

# Important Aspects of 80% Limit

**Import of goods** is not specifically mentioned under RCM; however since GST has been paid at the time of filing BE; therefore; the same to be considered from registered person.

**Composition dealers** are registered persons; therefore; to be covered under 80% limit.

**Whether Exempted supplies to be considered in 80% limit** - 80% value of input and input services to be received from registered suppliers. Further, input/input service shall include exempted goods/services.

Excess procurement [more than 80%] from registered suppliers in a year cannot be adjusted against shortfall of another year as period of calculation of shortfall is on yearly basis.

## Section 2(59)

“input” means any goods other than **capital goods** used or intended to be used by a supplier in the course or furtherance of business;

## Section 2(60)

“input service” means any service used or intended to be used by a supplier in the course or furtherance of business;

# Important aspects of 80% Limit

Compliance of 80% limit in REP [**Commercial Apartments >15%**]

FAQ (Part II) on real estate dated 14.05.2019

Sl. No.	Question	Answer
5.	In case of a <b>Real Estate Project</b> , comprising of Residential as well as <b>Commercial portion (more than 15%)</b> , how is the minimum procurement limit of 80% to be tested, evaluated and complied with where the <b>Project has single RERA Registration</b> 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 <u>on the basis of the ratio of the carpet area of the residential and commercial apartments</u> in the project.

# Illustration:

A promoter has procured following goods and services [other than development rights, long term lease of land FSI, electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project [Commercial Apartments <15%] during a financial year.

Particulars	Supplier	Percentage %	Amount(Rs)
Purchase of Input/Input Services	Registered	20	200
Purchases from composition dealers	Registered	10	100
Input/Input Services where tax paid under RCM.	Deemed- Registered	10	100
Import of Goods [GST paid]	Deemed- Registered	10	100
Cement	Un-registered	15	150
Other Input/Input Services including Exempt Supplies	Un-registered	35	350
<b>Total</b>		100	1000
<b>Promotor Liability</b>			Cement [150@28% = 42] <b>Plus</b> Other Supplies [150@18%=27]

# Illustration:

A promoter has procured following goods and services [other than development rights, long term lease of land FSI, electricity, high speed diesel, motor spirit, natural gas], for construction of a real estate project [Commercial Apartments>15%] say carpet area of commercial apartments is 600 sq. ft and residential apartments is 400 sq. ft during a financial year.

Particulars	Supplier	Percentage %	Amount (Commercial+ Residential)	Cost apportion to residential apartments [40%=400/1000*100]
Purchase of Input/Input Services	Registered	20	200	80
Purchases from composition dealers	Registered	10	100	40
Input/Input Services where tax paid under RCM.	Deemed- Registered	10	100	40
Import of Goods [GST paid]	Deemed- Registered	10	100	40
Cement	Un-registered	15	150	60
Other Input/Input Services including Exempt Supplies	Un-registered	35	350	140
<b>Total</b>		<b>100</b>	<b>1000</b>	<b>400</b>
<b>Promotor Liability</b>			Cement [60@28% = 16.80] Plus Other Supplies [60@18%=10.80]	



Particulars	Input/Input Services	Cement	Capital Goods
<b>GST Rate</b>	<b>18%</b>	<b>28%</b>	<b>Rate of respective goods</b>
<b>Period of Calculation</b>	Financial Year or part of F.Y till date of completion certificate/First Occupation	Monthly	Monthly
<b>Time of Supply</b>	<b>Not Later than month of <u>June</u> following the end of F.Y</b>	<b>Month in which cement received</b>	<b>Earlier of following:</b> <ul style="list-style-type: none"> <li>✓ <b>Date of receipt of goods</b></li> <li>✓ <b>Date of payment in books/Bank Statement</b></li> <li>✓ <b>Date immediately following 30 days from date of invoice</b></li> </ul> <b>Entry in books if not determinable as per above.</b>
<b>Relevant Notification</b>	Entry 39, N.N 11/2017 – CT (R) inserted vide N.N 03/2019 – CT (R)  Entry 452Q, N.N 01/2017 – CT (R) inserted vide N.N 08/2019 – CT (R)	Entry 18, Schedule IV of N.N 01/2017 CT (R)	N.N 01/2017 CT (R)

# Relevant Definition:

- The term “**project**” shall mean a **Real Estate Project** or a **Residential Real Estate Project**. – *N.No. 03/2019 – CT(R) dt. 29.03.2019.*
- The term “**Real Estate Project (REP)**” shall have the same meaning as assigned to it in clause (zn) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017). - *N.No. 03/2019 – CT(R)*

The said definition in **Clause (zn)** reads as under:

- “**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 purposes 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;

# Relevant Definition:

- 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 (or 17.6% of residential area) of all the apartments in the REP; - N.No. 03/2019.
- The term “carpet area” shall have the same meaning as assigned to it clause (k) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017). - N.No. 03/2019

The said definition in Clause (k) reads as under:

- “**Carpet Area**” means the **net usable floor area** of an apartment, **excluding** the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but **includes** the area covered by the **internal partition walls of the apartment.**

# Relevant Definition:

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 (16 of 2016);

The said definition in Clause (e) read as under:

*“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;*

The Term “**Residential apartment**” shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;

“**Commercial apartment**” shall mean an apartment other than a residential apartment.

# Affordable Residential Apartments

- A. A residential apartment, having carpet area not exceeding 60 square meter (646 Sq. Feet) in metropolitan cities or 90 square meter (969 Sq. Feet) in cities or towns other than metropolitan cities and for which the gross amount charged is not more than forty-five lakhs rupees.

*For the purpose of this clause, -*

***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 respective geographical limits prescribed by an order issued by the Central or State Government in this regard.*

- **Gross amount (not more than forty-five lakhs rupees)** shall be the sum total of:
  - ✓ Amount Charged for **Construction Services** and
  - ✓ Amount charged for the **transfer of land or undivided share of land**, as the case may be including **by way of lease or sub lease**; and
  - ✓ **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.**

## Issues: 1. Valuation

- Whether charges like **EDC and IDC** (payable to the authorities and not charged by promoter for his supplies) shall be considered as part of composite supply and shall be liable to tax at the concessional rate of tax i.e. 1.5% or 5% as the case may be?
- **An apartment being constructed in an ongoing project** [in respect of which the promoter has not exercised option to pay tax on old rates] under the existing central and state housing schemes shall be covered in new scheme?
- **What are the consequences if conditions are not met?**
  - Will the residual entry apply?
  - Tax payable @18% w/o deduction for the cost of land? Is it valid?
  - Will the notification fail on this count?

## ISSUE 2 : Payment of tax to be made in cash

- **Post 1.4.2019** , the ITC in relation to the residential projects can not be availed. Thus, leading to accumulation of cost
- **Notification 11/2017 – CT (rate)** provides that
  - Provided that **the central tax at the rate specified in column (4) shall be paid in cash**, that is, by debiting the electronic cash ledger only;
  - **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;
  - Way forward:
    - Challenge the notification
    - In the meanwhile take ITC and reverse
    - If notification quashed, the balance ITC and the ITC availed later would become available

# Issue 3: Cancellation of Flats:

Situation A :	Comments
<p>Flat booked during March'18 and <b>cancellation of the same falls before the month of Sep'18</b></p>	<ul style="list-style-type: none"><li>• The supplier can issue a credit note and adjust the amount of GST mentioned in the credit note against the subsequent GST liability by disclosing the credit note in the GST returns. (as per the provisions of Sec 34, CGST Act, 2017)</li><li>• <b>Such credit note for any financial year cannot be issued later than due date of filing return for September month of the following financial year or the date of furnishing of the annual returns for that particular financial year, whichever is earlier.</b></li></ul>



# Issue 3: Cancellation of Flats:

Situation B:	Comments
<p>Flat booked by the customer in Mar'18 and is <b>cancelled after Sep'18.</b></p>	<ul style="list-style-type: none"><li>• Cancellation for same happened after Sep'18 and the entire amount along with GST is refunded to the customer.</li><li>• Then the GST paid cannot be adjusted against the subsequent liability by issuing a credit note.</li><li>• <b>Option available with the builder is to go for refund of the taxes paid under GST within 2 years from the date of cancellation of flat by the customer as per Sec. 54 of the CGST Act, 2017, on the ground that the incidence of tax has been borne by the builder itself and the same is not passed on to the customer.</b></li><li>• <b>It can also be claimed by the buyer on proper documentation by supplier.</b></li><li>• <b>Whether above options are practically feasible? Self adjustment against OTL may be allowed?</b></li></ul>

## Exemptions: Pure Labour contracts exempt from GST (vide. N/No. 12/2017)

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
10	Heading 9954  <b>Note:</b> Activities from old definition of works contract – Intentional or inadvertent error?	<u>Services provided by way of pure labour contracts</u> of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement <b>under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.</b>	Nil	Nil
11	Heading 9954 <b>Note:</b> Only four activities	<u>Services by way of pure labour contracts</u> of construction, erection, commissioning, or installation of <b>original works pertaining to a single residential unit otherwise than as a part of a residential complex.</b>	Nil	Nil

# DEVELOPMENT AND SALE OF PLOTS

# Development and Sale of Land

- Supply of land per se does not fall under clause 5 of schedule II as no building /complex is being constructed, rather developments activities.
- Sale of Land is neither supply of goods or services as per Schedule III. Thus, not leviable to GST
- Irrespective of the fact whether sale is made during the development or after carrying out the development, it remains a sale of plot i.e., land
- Pre - GST Regime, the Department contended that development of plots is a separate transaction from sale of land and issued notices to the developers demanding service tax. This matter is under litigation.
- In GST it shall at the most composite supply and principal supply is sale of land.

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- In GST it shall at the most be a composite supply and principal supply is sale of land.
- Transaction cannot be artificially vivisected. Transaction remains outside the purview of levy

# Development and Sale of Land

- **AAR Rulings**
  - Plots developed and sold by the owner:
  - Satyaja Infratech (2020-TIOL-80-AAR-GST)
  - Dipesh Anilkumar Naik (2020-TIOL-143-AAR-GST)
  - PPD Living Spaces Pvt. Ltd. (2018-TIOL-192-AAR-GST)
- **Plots developed and sold under Joint Development Agreement:**
  - M/s. Maarq Spaces Pvt. Ltd. (2020-TIOL-28-AAAR-GST)
  - M/s.Vidit Builders (2020-TIOL-47-AAR-GST)
- **Latest Ruling by Uttarakhand AAR in Shri Abhishek Darak – 2020- VIL-303-AAR [dt 22/10/2020]**  
**Difference of opinion between the Members**
  - Member Shri Amit Gupta: • Taxability of Sale of Developed Plots • Sale of Developed plot does not constitute the supply of goods or services • Not exigible for to GST
  - Member Shri Anurag Mishra: • Assurance to the purchasers as to the nature and the extent of development that will be carried out as a part of the package. Entry 5; Sch.III refers to only sale of 'Undeveloped Land' and not of 'Developed Land' – it is a supply of service liable to GST • Matter referred to AAAR

# Development and Sale of Land – Practical Solution

- **Segregate** the value of land and also development activities.
- **Pay GST on Development charges.**
- **Claim of ITC** - ITC on goods or services procured for development of land shall be allowed and net tax cost impact will be on value addition only.

However, if we club the values and consider the entire value of land as exempted being sale of Developed Land – ITC on the procured for development of land shall not be allowed.

# TDR'S

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# What is meant by Development Rights-?

- ❑ **Meaning - Permission given by landowner for development of land/building**
- ❑ **Apart from transfer of physical possession, also authorises the Developer to:**
  - ❑ do all such acts/ apply before authorities for development of land/building.
  - ❑ create mortgage on the land in order to raise finance
  - ❑ advertise the project in such mode as may deem fit to the Promoter
  - ❑ sell, allot, lease, license etc. the saleable area and other spaces available in the project
- ❑ ***In nutshell landowner gives all its rights over the land and gives full authority to the promoter to enjoy the land in the manner of his choice. For all purposes, therefore, the landowner extinguishes its interest in the land in favor of promoter on execution of collaboration agreement.***

# GST Implication on Collaboration Agreements

Collaboration Agreements	Most Common type of transaction in real estate
Types	<ul style="list-style-type: none"><li>➤ Area Sharing</li><li>➤ Revenue Sharing</li><li>➤ Both</li></ul>
Transactions covered	<ul style="list-style-type: none"><li>➤ Transfer of Development Rights by landowner to the Promoter</li><li>➤ Construction of units by Developer for the landowner (in case of area sharing and mix arrangements)</li><li>➤ Sale of units by the Promoter/landowner (units of its share) to the third parties</li><li>➤ Payment of consideration on the basis of specified % of revenue earned on sale of units</li></ul>

# GST Implications on Transfer of Development Rights

Is transfer of development rights can be considered as sale ?

- Sale has not been defined in GST Law.
- As per various dictionary meanings/another acts, the term 'sale' means transfer of ownership or title in a property from one person to another for a consideration. Moreover, in common parlance also, the term 'sale' is construed as 'transfer of ownership' in respect of any goods or property.
- At the time of transferring development rights, the landowner, generally, transfers all the rights in such land to the promoter. In other words, after the receipt of development rights, the promoter can exercise all the rights of owner on such land.
- In following decisions of courts it is also held that Development /collaboration agreement is effectively an agreement of sale of land wherein the landowner transfers all its rights in the land to the developer and also extinguishes all its rights in such land in favour of Developer.
- Faqir Chand Gulati Versus Uppal Agencies Pvt Ltd [2008 (12) S.T.R. 401 (S.C.)] dated 10.07.2008
- Radhe Developers And Ors versus Income Tax Officer [(2008) 113 TTJ Ahd 300] dated 29.06.2007
- In view of the aforesaid discussion, a conclusion can be drawn that the **transfer of development rights is akin to the sale of land only.**

Development Rights = Benefit arising out of land = Land = Not subjected to GST

# **GST Implications on Transfer of Development Rights**

- 1. Whether the transaction is not in the nature of “ Exchange of Immovable Property”**
- 2. No purchaser during construction – SC in L & T’s case – 2014 (303) ELT 3 (SC) - Activity of construction, in the absence of purchaser during construction would not be a works contract**
- 3. Is this not a levy on re-sale of the apartment which is a transaction in immovable property?**
- 4. Whether the transfer/grant of “Development Rights” by landowner to the Developer constitutes “consideration” in the hands of the Developer?**
- 5. Does the valuation mechanism fails in so far as the value of ‘Development Right is concerned and thus levy fails .**

# Government Intends to Levy GST on Development Rights

Relevant notifications in this regard have been encapsulated hereunder:

Notification No.	Relevant Provisions
<u>04/2018 – CT (R) dated 25.01.2018</u>	<u>Time of supply</u> in case of transfer of development rights by landowner and construction services provided by Promoter.
<u>04/2019 – CT (R) dated 29.03.2019</u>	<u>Conditional exemption</u> to transfer of development rights [on or after 01.04.2019] w.r.t residential apartments.
<u>05/2019 – CT (R) dated 29.03.2019</u>	<u>Reverse charge</u> has been made applicable on the services supplied by way of transfer of development rights.
<u>06/2019 – CT (R) dated 29.03.2019</u>	<u>Time of supply</u> in case of development rights/FSI/Long term lease by the promoter.

# Liability in case of transfer of development rights/FSI/long term lease of land [for 30 years or more]

Description	On or After 01.04.2019	Before 31.03.2019
<p><b>Person liable for payment of GST</b></p>	<p><b>Promoter under reverse charge</b>  <i>[Sr Nos. 5B and 5C of Notification No. 13/2017-CT (R) as inserted vide N.N 05/2019-CT(R) dated 29.03.2019]</i></p>	<p><b>Provider of Service under forward charge - Landowner</b></p>
<p><b>Time of Supply – Area Sharing</b></p> <p><i>[where consideration paid in form construction of residential / commercial apartments]</i></p>	<p><b>Date of completion certificate of project or its first occupation, whichever is earlier</b></p> <p><b>[Notification No. 6/2019-CT (R) dated 29-3-2019]</b></p>	<p><b>When the Promoter, transfers possession or the right to the land owner by entering into a conveyance deed or similar instrument like (allotment letter)</b></p> <p><b>[Notification No. 4/2018-CT (Rate) dated 25-1-2018]</b></p>

Description	On or After 01.04.2019	Before 31.03.2019
<p><b>Time of Supply – Revenue sharing</b></p> <p><i>[In case of Monetary consideration]</i></p>	<p><b><u>Residential Apartment</u></b> Date of completion certificate of project or its first occupation, whichever is earlier [Notification No. 6/2019-CT (R) dated 29-3-2019]</p> <p><b><u>Commercial Apartment</u></b> Earlier of following: ✓ Date of payment ✓ Date immediately following 60 days from the issuance of invoice/any other document [Contract] If not determinable from above then date of entry in books of accounts. <b>[Section 13(3) of CGST Act, 2017]</b></p>	<p><b>Earlier of following:</b></p> <ul style="list-style-type: none"> <li>✓ Date of issuance of invoice if issued within 30 days</li> <li>✓ When contract is executed</li> <li>✓ Date of receipt of payment</li> </ul> <p><b>[Section 13(1) of CGST Act,2017]</b></p>
<p><b>Value of Supply</b></p>	<p>Value of similar apartments charged by promoter from independent buyers <b><u>nearest to the date on which development rights/ FSI is transferred to promoter.</u></b></p> <p><b>Plus</b></p> <p><b>Monetary Consideration</b> [Para 1A of Notification No. 12/2017-CT (R) dated 28-6-2017 inserted vide N.N 04/2019-CT (R) dated 29.03.2019]</p>	<p><b>Applying the ratio of valuation rules, cost incurred by the Promoter for constructing the area belonging to landowner plus some reasonable margin of Promoter</b> to be considered as consideration in the hands of landowner for such transfer of development rights.</p> <p><b>Plus</b> <b>Monetary Consideration</b></p>
<p><b>GST Rate</b></p>	<p>18%</p>	<p>18%</p>

# Exemption on transfer of development rights/FSI/Long term lease for Residential Apartments

[Entry 41A & 41B of N. No 12/2017-CT(R) inserted vide N.N 04/2019 dated 29.03.2019]

W.e.f. 01.04.2019	Exemption is available on transfer of development rights/FSI/Long term lease on or after 01.04.2019.
Applicability	Available only in case of residential apartments which are sold prior to date of completion certificate/First Occupation.
Amount of Exemption – <b>Proportionate on Area Basis</b>	(GST payable on TDR/FSI/Long term lease for <b>Project</b> X Carpet area of the <b><u>residential apartments</u></b> in the project) <hr/> Total carpet area of the residential and commercial apartments in the project
If all residential Apartments not booked	Promoter shall be liable to pay tax under RCM on proportionate value of development rights/FSI/Long term lease attributable to residential apartments not booked up date of completion certificate/First occupation – <b>Unsold Flats</b>



Tax Computation –  
**On Area Basis**

(GST payable on TDR/FSI/Long term lease for residential apartments X Carpet area of unbooked-residential apartments)

Total carpet area of the residential apartments in the project

Maximum Liability  
(Ceiling limit)

- ✓ 1%/5% of the **value of un-booked residential apartments.**
- ✓ Value shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be.

# Liability in case of construction of area pertaining to landowners share

Description	On or After 01.04.2019	Before 31.03.2019
Person liable for payment of GST	Promoter as supplier	Promoter as supplier
Time of Supply	Date of completion certificate of project or its first occupation, whichever is earlier <b>[Notification No. 6/2019-CT(R) dated 29-3-2019]</b>	When the Promoter transfers possession or the right to the person supplying the development rights by entering into a conveyance deed or similar instrument <b>[Notification No. 4/2018-CT (Rate) dated 25-1-2018]</b>
Value of Supply	Total amount charged for similar apartments <b>nearest to date on which development rights/FSI are transferred</b> less 1/3rd of total amount charged as value of land [Para 2A of Notification No. 11/2017-CT (R) inserted vide N.N 03/2019 dated 29.03.2019]	Applying the ratio of valuation rules, cost incurred by the Promoter for constructing the area belonging to landowner plus some reasonable margin of Promoter to be considered as consideration in the hands of landowner for such transfer of development rights.
GST Rate	7.5% (Residential)/ 18% (Commercial - REP)	18%

# Illustration:

Landowner has entered into a collaboration agreement dated 01.05.2019 with Promoter for developing and constructing a project. Landowner has transferred development rights in consideration of transfer of **25% of carpet area** [both in residential and commercial] and **paid sum of Rs. 50,00,000/- on 20.05.2019**. Further, 75% share will pertain to Promoters share.

## Additional Information:

Total Carpet Area of Project	5,00,000/- sq ft [500 units]
Carpet Area of Residential Apartments	4,00,000/- sq ft [400 units]
Carpet Area of Commercial Apartments	1,00,000/- sq ft [100 units]
Landowners share of Residential Apartments	1,00,000/- sq ft [100 units]
Landowners share of Commercial Apartments	25,000/- sq ft [25 units]

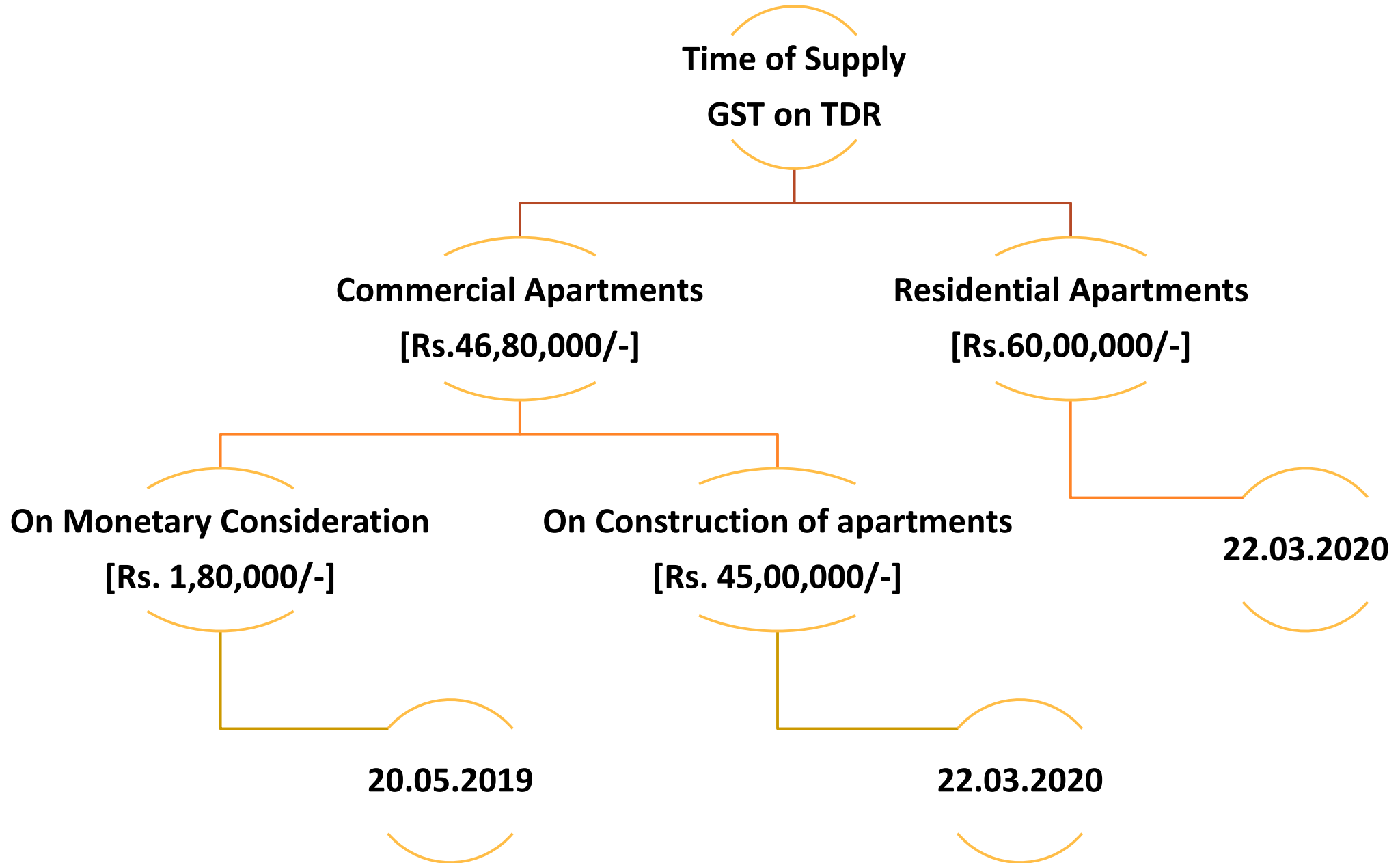
**First sale of apartment has been made on 25.05.2019 at Rs. 10,00,000/-.**

Further, **last sale** prior to the date of completion certificate [22.03.2020] has been made **for Rs. 12,00,000/- and 100 [1,00,000 sq ft] residential apartments remain unsold** till the date of completion certificate.

**Compute GST liabilities in the hand of Promoter ?**

# GST on Transfer of Development Rights

Particulars	Amount
Monetary consideration	50,00,000
Add: Value of Similar units nearest to the date when rights transferred	12,50,00,000 (10,00,000 X 125)
Total Value of Development Rights	13,00,00,000
GST Payable @18%	2,34,00,000
Amount of Exemption [if all residential apartments sold prior to CC] (GST Payable [2,34,00,000] X Carpet area Residential [3,00,000])/ Total Carpet Area [375000]	1,87,20,000
Un-sold residential area	1,00,000 sq ft.
GST to be paid on Development rights w.r.t Residential Apartments (GST Payable on residential area [1,87,20,000] X unsold residential area [1,00,000])/Total Residential Area [300000]	62,40,000
Maximum Liability ([5% of value of unsold units]=12,00,000 X 100 X 5%) w.r.t residential apartments	60,00,000
GST to be paid on Development rights w.r.t Commercial Apartments (2,34,00,000-1,87,20000)	46,80,000
Total GST on Development Rights [60,00,000 + 46,80,000]	1,06,80,000



# GST on construction of landowner's area

Particulars	Residential	Commercial
Value of Similar units nearest to the date when rights transferred	10,00,00,000	2,50,00,000
Less: 1/3 <sup>rd</sup> Land Deduction	3,33,33,333	83,33,333
Taxable Value	6,66,66,667	1,66,66,667
GST@ 7.5%/18%	50,00,000	30,00,000
Time of Supply [Date of Completion Certificate/First Occupation]	22.03.2020	22.03.2020

## JOINT DEVELOPMENT – REVENUE SHARING

Landowner and Developer enter into Joint Development Agreement

Landowner contributes land and Developer contributes time and resources to develop the land.

Constructed units are sold and revenue is shared between the landowner and the developer in the agreed ratio.

No service provider-recipient relationship between landowner & developer.

Both are jointly developing land and selling it ultimately to buyers. Accordingly, no one is supplying service to one another. Old World Hospitality Limited Versus CST [2017 (2) TMI 1176 - CESTAT NEW DELHI.

Transaction between Landowner and Developer not exigible to GST

GST implication shall arise only on sale of constructed units, if consideration is received from buyer prior to CC or first occupation.

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# ITC IN THE REAL ESTATE SECTOR



# BLOCK CREDIT AS PER SEC 17(5)

**Sec 17 (5) - Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-**

**(c) works contract services** when supplied for construction of an immovable property (other than plant and machinery) **except where it is an input service for further supply of works contract service;**

**(d) goods or services or both received** by a taxable person for construction of an immovable property (other than plant or machinery) **on his own account** including when such goods or services or both are used in the course or furtherance of business.

***Explanation.***—For the purposes of clauses (c) and (d), the expression “**construction**” **includes** re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

## **BLOCK CREDIT AS PER SEC 17(5)**

**Explanation :** For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means **apparatus, equipment, and machinery fixed to earth by foundation or structural support** that are **used for making outward supply of goods or services or both and includes such foundation and structural supports** **but excludes-**

- (i) land, building or any other civil structures;**
- (ii) telecommunication towers; and**
- (iii) pipelines laid outside the factory premises.**

# ITC Issue :

- **Practically, landowner cannot utilise ITC and there shall be accumulation of ITC**
- Time of supply of construction of landowner's apartments shall be the date of completion certificate or First occupation whichever is earlier.
- Accordingly, promoter shall charge GST and ITC of same allowable to landowner only at the completion of project.
- Meanwhile landowner sold its share of apartments [before completion certificate] but since time of supply of promoter supplies have not arisen, landowner has no option but to discharge GST liability in cash only.
- Now at completion no more GST liability arises to landowner as project is completed and no GST to be payable if same has been sold after receiving the completion certificate/first occupation.
- ITC so available shall be a dead asset for the landowner in the absence of other GST liability within the same GSTIN.

# Amendments in Real Estate Sector w.e.f. from 02.06.2021 vide N. No. 02/2021-CT (R) and N. No. 03/2021-CT (R)

## Need for amendment:

Presently, most of the development in real estate is done based on Joint Development Agreement (JDA) wherein the Landowner transfers the land development right to the Developer and gets few constructed flats from the Developer in return. To illustrate:

- A JDA is entered in 2021 wherein landowner transfers the development rights of the land to the developer in lieu of 40% of the flats constructed on such land by the Developer. The remaining 60% represent the developer's share.
- The landowner enters into an agreement for sale of few flats under construction in 2022.
- The completion certificate for the whole project is received by the Developer in 2025.

## **Amendments in Real Estate Sector w.e.f. from 02.06.2021 vide N. No. 02/2021-CT (R) and N. No. 03/2021-CT (R)**

Earlier provisions: The landowner was required to charge and pay GST on accrual basis (demand or payment whichever is earlier) from 2022 onwards when he entered into the agreement for sale. However, the developer was required to charge GST on construction services provided to the landowner (i.r.o. 40% flats) in 2025 only i.e., at the time of receipt of completion certificate. The point of taxation of construction services by the developer to landowner was prescribed as the date of issuance of completion certificate or first occupation, whichever is earlier, by Notification 06/2019 - Central tax (rate) dated 29.03.2019.

This created a **timing difference and resulted in loss of ITC to the landowner.**

The Landowner would be making payment in cash on output supply from 2022 onwards while he would receive credit in 2025 only, after which hardly any liability arises for adjusting against the credit. Therefore, GST paid by the landowner to the developer becomes a cost for the landowner.

# Amendments in Real Estate Sector w.e.f. from 02.06.2021 vide N. No. 02/2021-CT (R) and N. No. 03/2021-CT (R)

## Effect of amendments

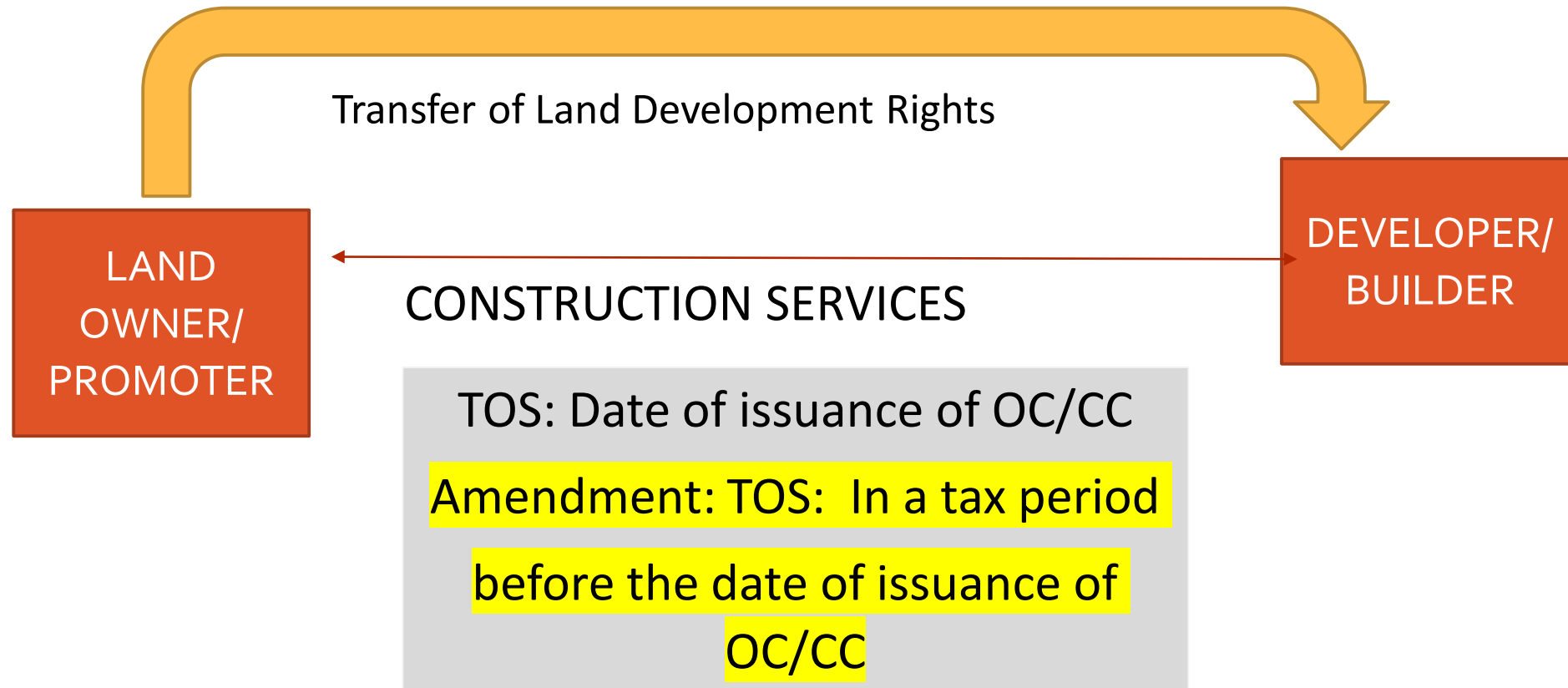
❖ The first amendment vide Notification 02/2021 - Central tax (Rate) **provides that the landowner is eligible for claim and utilisation of input tax credit of GST** paid to the developer on construction services received from the latter. Further, **such ITC** can be utilised against the output tax payable on sale of under-construction apartments by the landowner.

❖ The second amendment vide Notification 03/2021 - Central tax (Rate), **resolved the major anomaly of timing difference. It prescribed the point of taxation of construction services** supplied by the developer to the landowner as any tax period not later than the tax period in which completion certificate or first occupation, whichever is earlier, is received.

# Amendments in Real Estate Sector w.e.f. from 02.06.2021 vide N. No. 02/2021-CT (R) and N. No. 03/2021-CT (R)

- ❖ Now the Developer can discharge the output tax liability on construction services provided to the landowner and landowner can claim the input tax credit of such services well within time and not at the later stage of completion.
- ❖ The amendment has minimized the timing difference which resulted in loss of input tax credit to the landowner and added to the cost of the flat.
- ❖ Now, the landowner and the developer have an option to get into back-to-back contracts where the Developer can also charge and pay the GST to the government in 2022 and consequently the landowner will the credit for the same.
- ❖ In nutshell, the Central Government has made the above **two amendments to facilitate the smooth flow of input tax credit to the landowner of tax charged from him by the developer on construction services under JDA, provided the landowner in turn supplies the apartments under-construction to the intending buyers.**

The above proposition can be better understood with the help of a following graphical representation:





- **Eligible credit in case of REP [Commercial Apartments>15%]**
- **Rule 42 & 43 of CGST Rules prescribes method of reversal of ITC w.r.t residential apartments.**
- **Broadly, eligibility is as under:**
  - *ITC of inward supplies exclusively used for commercial apartments is allowed*
  - *ITC of inward supplies exclusively used for residential apartments is not allowed*
  - ***Common ITC is allowed to the extent of carpet area of commercial apartments, divided by total carpet area of the project***

- **Availability of ITC even in case of Residential Apartments – Only ongoing projects**
- Available only to landowner w.r.t GST charged by promoter towards supply of construction of Apartments. Applicable only on ongoing projects.
- No Other ITC allowable.
- Available only if landowner further supplies such apartments to his buyers before issuance of completion certificate/ first occupation.
- Payment of GST by landowner on such supply should not be less than the tax charged by Promoter

# ITC of Construction allowed:

- **M/S. SAFARI RETREATS PRIVATE LIMITED AND ANOTHER VERSUS CC OF CGST & OTHERS** [2019 (5) TMI 1278 - ORISSA HC] dated 17.04.2019 – **Appeal admitted in SC in Nov, 2019.**
- *In our considered opinion the **provision of Section 17(5)(d) is to be read down** and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, inasmuch as keeping in mind the language used in **EICHER MOTORS LTD. VERSUS UNION OF INDIA [1999(1)TMI 34 - SUPREME COURT]** , the very purpose of the credit is to give benefit to the assessee.*
- *In that view of the matter, if the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST, which is required to pay under Section 17(5)(d) of the CGST Act.*
- **Issue:** Whether ITC of Lifts, Escalators, etc. shall be admissible to Malls, Hotels, etc. if capitalised to Plant & Machinery or it shall be considered as part of building itself?

# CENVAT CREDIT AVAILED TILL CC, NOT LIABLE FOR REVERSAL -

- **THE PRINCIPAL COMMISSIONER VERSUS M/S ALEMBIC LTD. [2019 (7) TMI 908 - GUJARAT HIGH COURT] dated 12.04.2019**
- *CENVAT credit availed in respect of input service is not required to be paid back under any circumstances and therefore, the respondent was not legally required to reverse any credit which was availed by them during the period 2010 till obtaining completion certificate i.e. during the period when output service was wholly taxable in their hands, merely because later on, some portion of the property was converted into immovable property on account of receipt of completion certificate and on which no service tax would be paid in future-Tribunal therefore, rightly held that once the respondent are not required to reverse any credit availed by them on valid input services availed during the period 2010 till obtaining of completion certificate, the said amounts reversed by them under protest cannot be retained by the revenue authorities and have to be refunded to the respondent.*

# ITC Issue :

S.No	Issue	Comments
1	Whether Builders shall be entitled for ITC of gold coins, luxury cars, and other free gifts given under promotional scheme with the sale of Flats ?	Yes, as it is a contractual Obligation
2	Where a cinema hall is being constructed under works contract. Whether ITC would be allowed for the inputs procured by the contractor ?	Yes, looking to the case laws in pre-GST era

# Sale of land to be part of 'exempt supply' for computation of Reversal of credit as per rule 42 & 43.

Sec 17 (3)– This provisions effective from 01.02.2019. It reads as under:

*The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include*

*(i) supplies on which the recipient is liable to pay tax on reverse charge basis,*

*(ii) transactions in securities,*

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

**Explanation.**—For the purposes of this sub-section, the expression "value of exempt supply" **shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.**

# RCM IN THE REAL ESTATE SECTOR

**Cement -  
1.10.2019)**

**Capital Goods  
- 01.04.2019**

**TDR/FSI/Long Term  
Lease w.r.t contracts  
entered on or after  
(w.e.f. 01.04.2019)**

**Inputs and Inputs Services up to 80% value of  
annual purchases before issuance of  
completion certificate/First occupation OC  
(w.e.f. 01.04.2019)**

# Reverse Charge Mechanism & Real estate (vide. N/no. 13/2017)

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
5A	Services supplied by the Central Government, State Government, Union territory or local authority by way of <b>renting of immovable property to a person registered under the CGST Act, 2017</b>	<ul style="list-style-type: none"> <li>- Central Gov,</li> <li>- State Gov</li> <li>- UT Govt.</li> <li>- Local Authority</li> </ul>	Any person registered under the CGST Act, 2017.
5B*	Services supplied by any person by way of <b>transfer of development rights or Floor Space Index (FSI)</b> (including additional FSI) <b>for construction of a project</b> by a promoter. * w.e.f. 1.04.2019	Any person	Promoter
5C*	<b>Long term lease of land (30 years or more)</b> by any person <b>against consideration in the form of upfront amount</b> (called as premium, salami, cost, price, development charges or by any other name) <b>and/or periodic rent for construction of a project</b> by a promoter. * w.e.f. 1.04.2019	Any person	Promoter

**THANK YOU !**