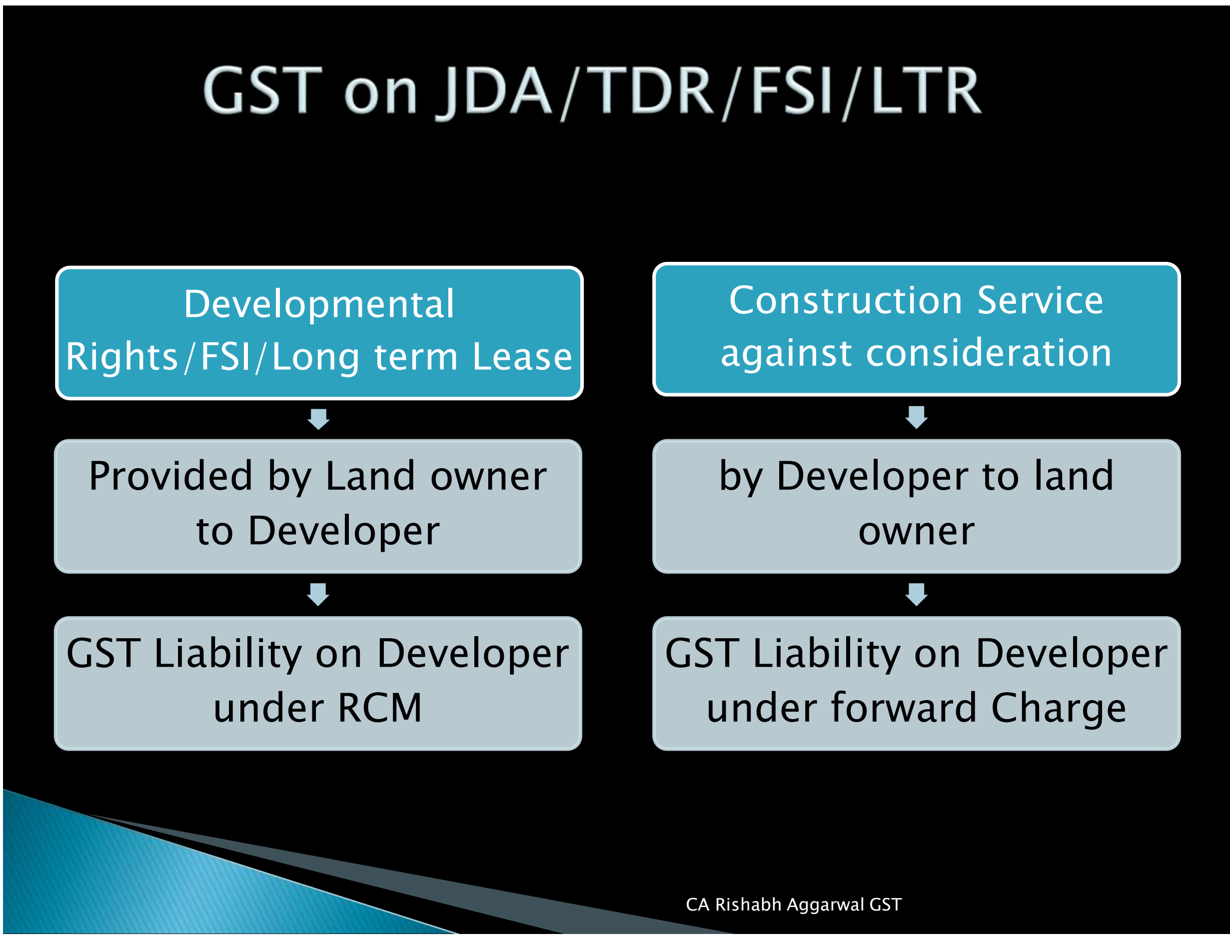
"GST on Real Estate" (wef April 01, 2019) Part – II of III

Thanks & Regards
CA Rishabh Aggarwal
Email: rishabhagg.ca@gmail.com
Mobile: 09654264464


GST on JDA/TDR/FSI/LTR
Developmental Rights/FSI/Long term Lease
Provided by Land owner to Developer
GST Liability on Developer under RCM
Construction Service against consideration
by Developer to land owner
GST Liability on Developer under forward Charge
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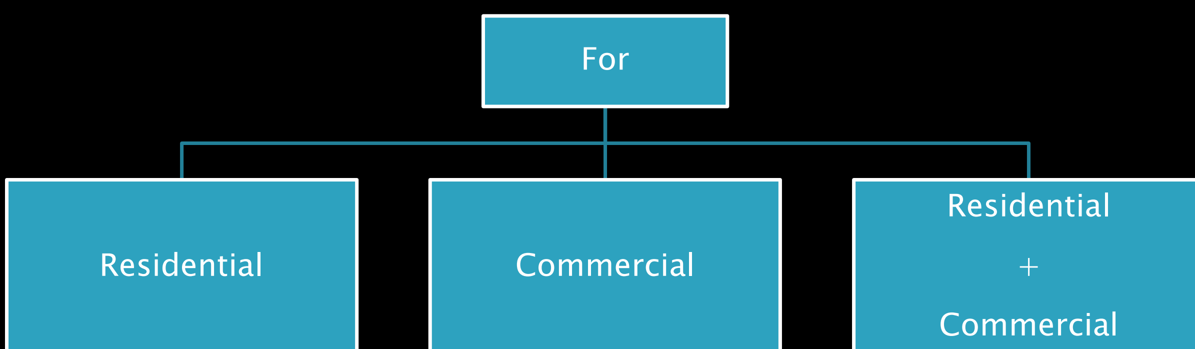
Transfer of Developmental Rights/FSI/Long Term Lease



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Residential
RCM on T/F developmental right is exempted only for which apts that booked before OC/FO
RCM liability shall be arise on un booked on the date of OC /FO.
Commercial
RCM liability shall be arise in all cases even sold before OC/FO
Residential + Commercial
RCM on T/F developmental right is exempted only for which Residential apts that booked before OC/FO
Pro – Rata Basis shall apply
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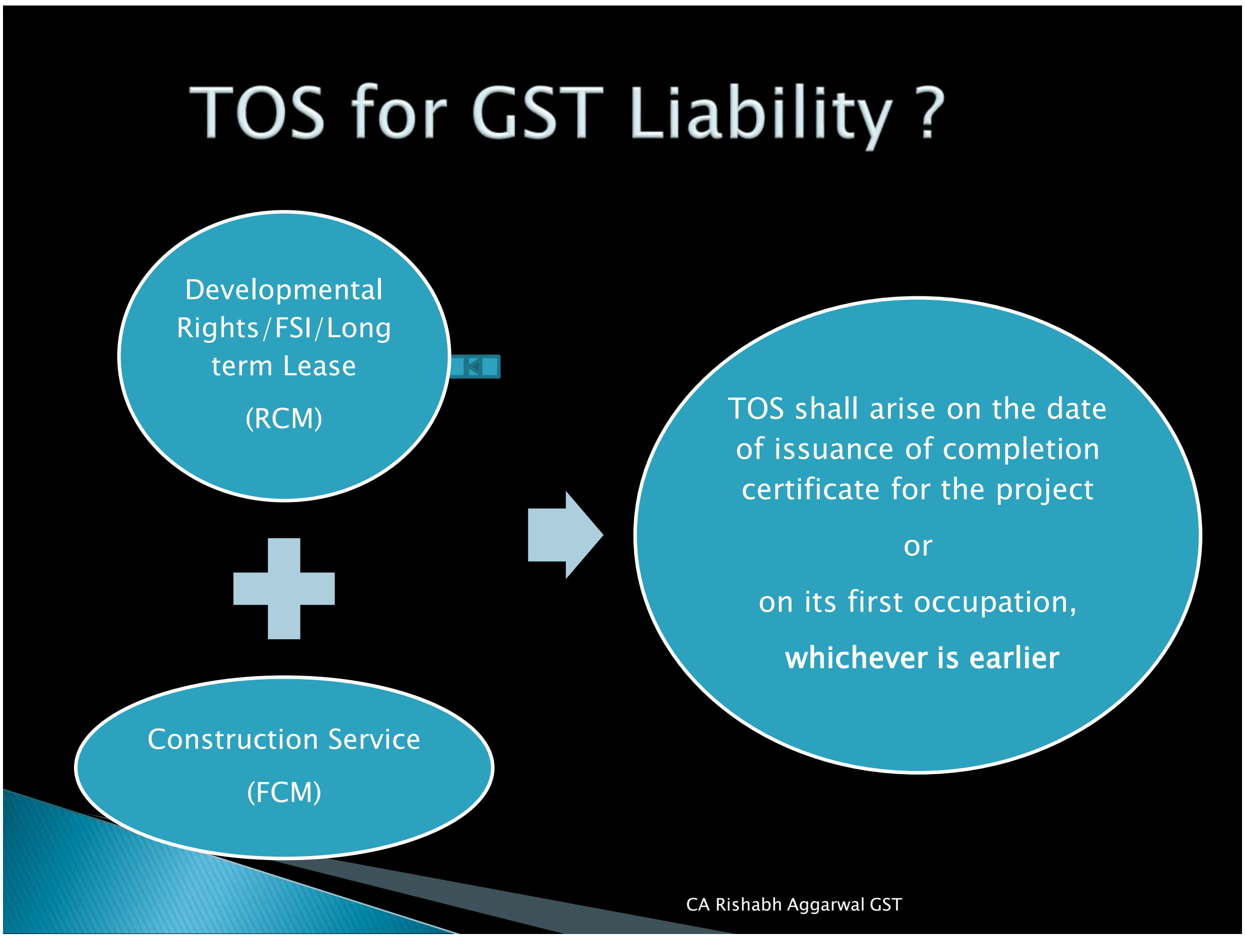
Value of Supply for GST Liability ?

Developmental Rights/FSI/Long term Lease (RCM)

- Value of portion of residential or commercial apartments remaining un-booked shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of CC or FO

Construction Service (FCM)

- Value of supply of service shall be deemed to be equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred


TOS for GST Liability ?
Developmental Rights/FSI/Long term Lease
(RCM)
Construction Service
(FCM)
TOS shall arise on the date of issuance of completion certificate for the project
or
on its first occupation,
whichever is earlier
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Rate for GST Liability ?

Developmental Rights/FSI/Long term Lease

(RCM)

- 18 %
- *Tax payable shall not exceed 1% of the value in case of affordable residential apartments and 5% of the value in case of residential*

Construction Service

(FCM)

- 1% for affordable residential apartments
- 5% for residential apartments other then affordable
- 12%/5% for Commercial apartments

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Example for residential apartments other then affordable

Developer Ltd and Land Ltd entered into a Joint Development Agreement (JDA) after 01.04.2019 as follows :-

- Construction of 100 apartments (25 for Land Ltd and 75 for Developer Ltd)
- The carpet area of each apartments would be 1000 sq ft.
- Out of the 75 apartments, developer sells 60 apartments prior to the OC Date.
- Value of apartments sold to independent buyers nearest to the date of JDA is Rs. 50 lacs.
- Value of apartments sold to independent buyers nearest to the cut-off date is Rs. 60 lacs

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Analysis…..

- There is no requirements to pay GST under RCM on residential apartments which booked prior OC means 60 apartments.
- Developer will pay GST on 15 apartments under RCM.
- Developer will pay GST on 25 apartments under FCM.

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Analysis.....

- GST payable under RCM*(Carpet area of the residential apartments which un-booked on OC/ Total carpet area of the residential and commercial apartments in the project)
- (60 lacs*18%*100 apartments) * {(1000*15)/(1000*100)}
- 1080 lacs*(15000/100000)
- 162 lacs

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Analysis.....

- The max GST under RCM will not exceed 5% of value of apartments.
- Max GST = 5%*15 apartments*60 lacs
  = 45 lacs

So, Max liability under RCM will be 45 lacs.

Notifications…

- **GST will be paid by promoter under RCM :-**
  - **on the Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI)** (including additional FSI) for **construction of a project** by a promoter.
  - Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.

Ref. N. No. 05/2019 CT(Rate)

Exemption on Developmental Rights/FSI/Long Term Lease

- Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) and LTR on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, 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.
- [GST payable on TDR or FSI (including additional FSI) and LTR both for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)

Exemption on Developmental Rights/FSI/Long Term Lease

- The promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, and LTR as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project.

- [GST payable on TDR or FSI (including additional FSI) or both and LTR for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project).

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Exemption on Developmental Rights/FSI/Long Term Lease

- Tax payable under RCM shall not exceed 1.00 per cent. of the value in case of affordable residential apartments and 5.00 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un- booked on the date of issuance of completion certificate or first occupation.

- The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier.

Definations...

- "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).
- "Project" shall mean a Real Estate Project or a Residential Real Estate Project.
- "Promoter" shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).

Definations…

- “Developer- promoter” is a promoter who constructs or converts a building into apartments or develops a plot for sale.

- “Landowner- promoter” is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.

Definations…

- "Affordable residential apartment" shall mean,
  - a residential apartment in a project which commences on or after 1 st April, 2019, or
  - In an ongoing project in respect of which the promoter has not exercised option existing option.
  - Having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than 45 lakhs rupees.

Definations…

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

- Gross amount shall be the sum total of –

  - Consideration charged for the services specified above.
  - 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.
  - 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.

CA Rishabh Aggarwal
Email: rishabhagg.ca@gmail.com
Mobile: 09654264464