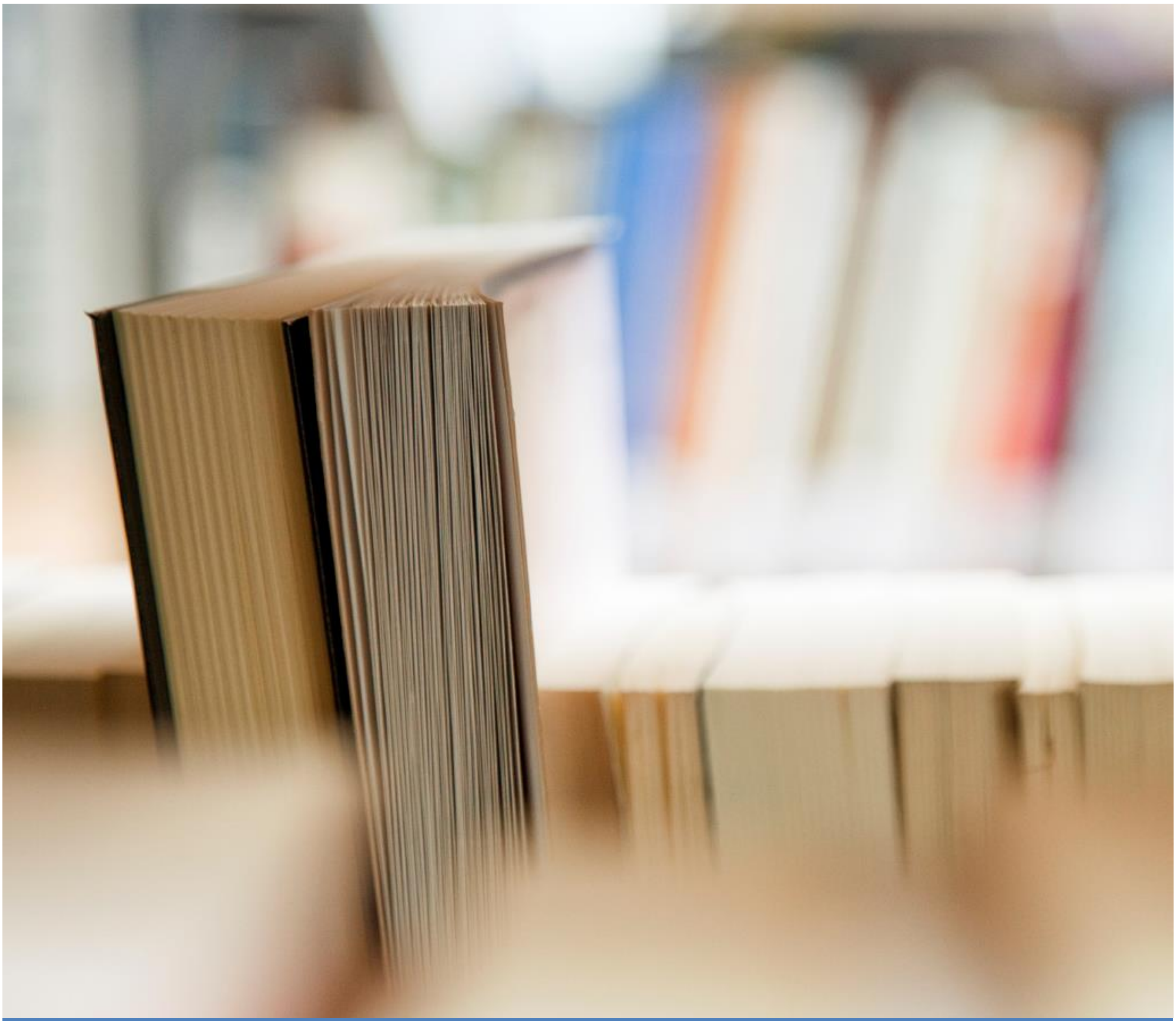

Real Estate – New GST Rates and Challenges!

CA Pritam Mahure

Guide on new GST rates on real estate in India!

1 April 2019 2nd Edition GST

Real Estate – New GST Rates and Challenges

Contents

About the Author

- Pritam Mahure is a Chartered Accountant by profession and has been actively tracking and working on future tax and technology trends since more than a decade.
- Pritam has authored more than ten books and numerous articles for leading international media houses.
- Pritam has been invited as a Keynote Speaker in conferences/ fintech events in Kuwait, UAE, Bahrain, Oman and India. Pritam has actively contributed on Tax Policy matters and training more than 20,000 Government officials and professionals on GST/VAT.

Feedback

- The book would not have been possible without support of team members CA Vaishali Kharde, CA Jaishree Kaltari, CA Shruti Golecha, Sahil Tharani Lavesh Solanki, Bhargav Amuru, Gaurav, Sajana Kumawat, Pooja Bora, Pooja Sharma and Nitu Mishra.
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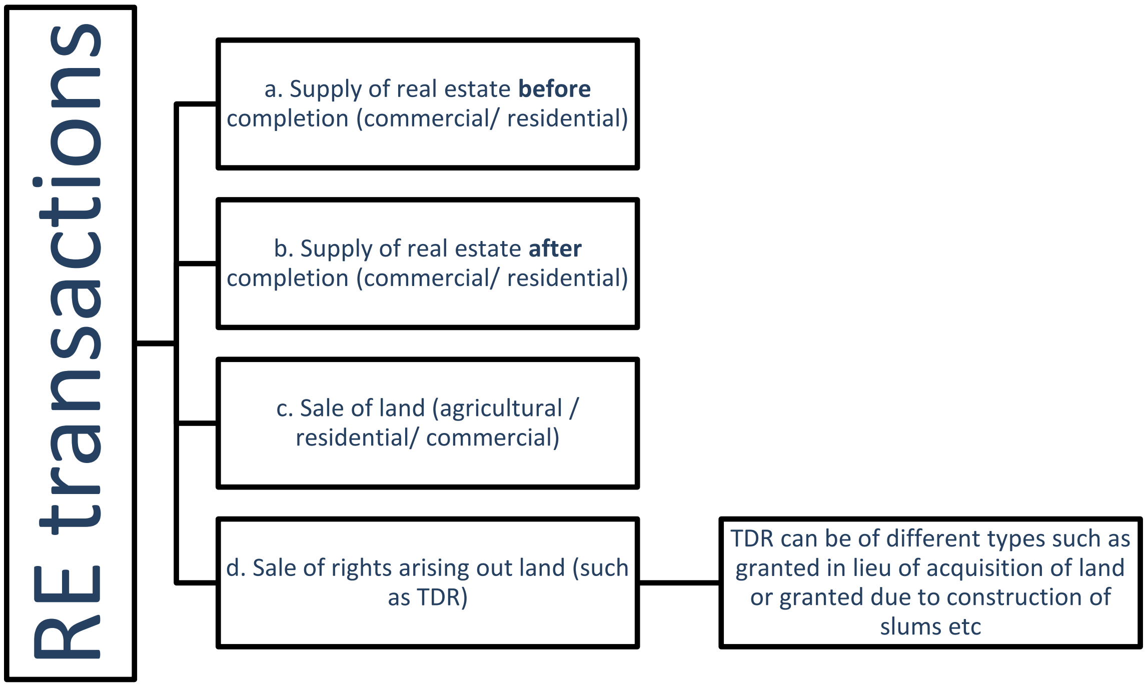
1. Real Estate – Changes / challenges from 1st April 2019

1.1 Types of real estate transactions

Real estate sector will, typically, comprise of following transactions:



1.2 Rate of GST on real estate before 31st March 2019

Out of these aforesaid, upto 31st March 2019, following rates were applicable on under-construction properties:

a. GST at **12%** was leviable (after 1/3rd deduction towards land value) on 'supply of real estate before completion'

b. Concessional rate such as **8%** was applicable for units qualifying for Affordable Housing[1]

[1] Upto 31st March 2019, for affordable housing, the criteria, *inter-alia,* was that the unit should be less than 60 sq. mtr (without any monetary ceiling)

In comparison to erstwhile Service Tax (@ 4.50%) and State VAT (@ 1%) regime, GST rate of 12% was much higher (in-spite of increased credit flow). Additionally, it is pertinent to note that real estate transactions are subject to **Stamp Duty[2]**. Stamp Duty also creates cascading impact on real estate sector.

Effectively, the Real Estate sector is burdened with **two taxes** GST plus Stamp Duty[3].

Globally, there are different practices, for taxation of real estate, as few countries have property taxes (similar to stamp duty in India) whereas most others have included real estate under the ambit of GST / VAT.

1.3 Reconsideration of rates by 33rd and 34h GSTC meeting

The 33rd and 34th GST Council meeting on 24th February 2019 and 19th March 2019, in its Press Release ('PR') recommended to

[2] Rate of Stamp duty varies from State to State and is in the range of 3 per cent to 10 per cent. Further, Stamp duty does not have provision for claiming credit of stamp duty (say paid on purchase of land).

[3] If Stamp Duty of 6% is assumed, then effectively buyer of under-construction property cumulatively pays tax of more than 14% for affordable housing and more than 18% for others.

implement, from 1st April 2019, the revised rates for residential properties as under:

a. GST @ 1% without ITC for affordable housing properties
b. GST @ 5% without ITC for residential properties[4] other than affordable segment
c. GST @ 12% with ITC for commercial properties (other than specified ones which will attract GST @ 5%)

1.4 Notifications issued (rates from 1st April 2019)

To give effect to aforesaid GST Council decisions, on 29th March 2019 and 30th March 2019, seven notifications were issued.

The Notifications are quite detailed (more than 66 pages!) and prescribe numerous formulas[5] as discussed below:

Not. No.	Particulars	Effective from	No. of pages
3/2019	Changes in GST rates	1st April 2019	27 pages
4/2019	Exemption to TDR, FSI and land premium	1st April 2019	4 pages

[4] Including for commercial properties such as shops, offices etc. if commercial apartments are 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

[5] These notifications made us feel nostalgic as they reminded us of our Algebra books!

5/2019	RCM for TDR, FSI and land premium	1st April 2019	2 pages
6/2019	Time of Supply for JDA	1st April 2019	2 pages
7/2019	RCM for 80% criteria	1st April 2019	2 pages
8/2019	Rate for RCM	1st April 2019	2 pages
16/2019 (CT)	Changes in GST Rules (Rule 41, Rule 42 and Rule 43)	1st April 2019	26 pages!
ROD 4/2019	Credit attributable to be determined based on carpet area	1st April 2019	1 page
		Total	**66 pages**

The Developer will have to go through the aforesaid jigsaw puzzle of notifications and decode the impact, based on facts of each project!

All notifications are reproduced at "Key Notifications, PRs and FAQ" chapter.

1.4 Deduction towards land / undivided share of land

It may be noted that the new rates (1% and 5%) are the effective-rate after abatement for land as discussed below:

Particulars	Tax Rate	Abatement	Effective tax rate
Upto 31st March 2019			
CGST	9%	33%	6%
SGST	9%	33%	6%
From 1st April 2019[6]			
CGST - Other than affordable	3.75%	33%	2.50%
SGST - Other than affordable	3.75%	33%	2.50%
CGST - Affordable	0.75%	33%	0.50%
SGST – Affordable	0.75%	33%	0.50%
CGST – Commercial	9%	33%	6%
SGST – Commercial	9%	33%	6%

[6] Option is available (subject to conditions) for ongoing projects to continue earlier rates (12% and 8%)

It may be recalled that though, at present, **deemed** deduction towards land / undivided share of land is provided for still whether it will be substitute for not providing actual deduction is an unanswered question.

It appears that there is no deduction for land value will available on **actual basis**. In the case of **Suresh Kumar Bansal**[7] it was held that "*The abatement to the extent of 75% 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… Levying a tax on … land would clearly intrude into the legislative field reserved for the States under List II of the Seventh Schedule of the Constitution of India.*"

Given the fact that the aforesaid case is pending at the Apex Court, it will be interesting to see how the matter unfolds over the coming days.

[7] 2016-TIOL-1077-HC-DEL-ST

1.5 Shifting of burden from consumer to developers

At the outset, it may be noted that the aforesaid is not just a 'rate change' for developers but rather a 'business change' as its going to impact:

a. Input tax credit ('ITC')

b. Cost of existing and ongoing projects

c. Cost of new projects

d. Anti-profiteering computations

e. Procurement contracts with vendors

f. Contracts/ agreements with customers

g. Spill over transactions

h. IT/ERP systems etc.

i. Numerous calculations pertaining to credit reversal and 80% criteria etc

This certainly is certainly a sudden change for developers **twenty-one months** after introduction of GST.

1.6 New rates - Option of compulsion?

It may be noted that the new rates will be an 'option' only for ongoing projects.

But the underlying question is what is the actual option available for ongoing projects? It appears from the language in the notifications that the Developer needs to choose, for on-going Real Estate Projects (REP)/ Residential Real Estate Projects (RREP)[8], between existing (12% and 8%) vis-à-vis new rates (5% and 1%).

Thus, effectively, for on-going real estate projects, the option will be either to continue old rates (12% and 8%) or choose new rates (5% and 1%).

1.6.1 One-time option – Means?

It may be noted that the option, to continue with existing rates or opt for new rates, will be **one-time option** through a specific Form as reproduced below (refer Annexure IV to Notification no. 3/2019):

FORM

(Form for exercising one time option to pay tax on construction of apartments in a project by the promoters at the rate as specified for item (ie) or (if), against serial number 3 in the

[8] For meaning of Real Estate Project (REP), refer Section 2 (zn) of RERA Act, 2016. Residential Real Estate Project (RREP) is defined 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'* (refer Not. No. 3/2019)

Table in this notification, as the case may be, by the **10th of May, 2019**)

Reference No. ____________________ Date ______

To ______________________

____

____

(To be addressed to the jurisdictional Commissioner)

1. GSTIN:
2. RERA registration Number of the Project:
3. Name of the project, if any:
4. The location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the longitude and latitude of the end points of the project:
5. The number, type and the carpet area of apartments for booking or sale in the project:
6. Date of receipt of commencement certificate:

Declaration

1. I hereby exercise the option to pay tax on construction of apartments in the above mentioned project as under :

I shall pay tax on construction of the apartments: (put (√) in appropriate box)	**At the rate as specified for item (ie) or (if), against serial number 3 in the Table in this notification, as the case may be**	**At the rate as specified for item (i) or (ia) or (ib) or (ic) or (id), against serial number 3 in the Table in this notification, as the case may be**

2. I understand that this is a onetime option, which once exercised, shall not be allowed to be changed.

3. I also understand that invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option being exercised herein.

Signature ______

Name _________

Designation

____

Place _____________________

Date _____________________

It can be observed that the aforesaid Form has declaration:

"2. I understand that this is a onetime option, which once exercised, shall not be allowed to be changed."

So, being a one-time option, once chosen, it appears that there is no possibility of going back on the decision.

Given the aforesaid, the Developers will need to carefully, after detailed cost-benefit and commercial analysis, choose between the options available.

1.6.2 Option – Building-wise or project-wise?

The Notification No. 3/2019, uses the terminology '*… **in an ongoing RREP in respect of which** the promoter **has not exercised option*** *to pay Central GST on construction of apartments at the rates as specified for item (ie) and (if)…'.*

Thus, it appears that the option is to choose either the existing rates or new rates for the entire Residential Real Estate Project (RREP) or Real Estate Project (REP). The term 'project' is defined in Not. No. 3/2019 as to mean 'a Real Estate Project or a Residential Real Estate Project'.

Given the aforesaid, Developers will need to choose the option for on-going projects, on project to project basis.

1.7 Meaning of 'ongoing project'

It may be noted that the option of continuing to pay GST at old rates is available for 'ongoing projects'.

The term 'ongoing project' is defined at Not. No. 3/2019 as under:

*"(xx) the term **"ongoing project"** shall mean a **project** which meets **all the following conditions**, namely-*

*(a) **commencement certificate** in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, **and it is certified** by any*

of the following that construction of the project has started on or before 31st March, 2019:-

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 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.

(b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub- clause (a) above that construction of the project has started on or before the 31st March, 2019;

(c) ***completion certificate has not been issued*** *or first occupation* ***of the project*** *has not taken place on or before the 31st March, 2019;*

(d) apartments being constructed under the project have been, ***partly or wholly, booked on or before the 31st March, 2019****.*

Explanation.- For the purpose of sub- clause (a) and (b) above, construction of a project shall be considered to have started on or before the 31st March, 2019, if the ***earthwork*** *for site preparation* *for the project has been* ***completed*** *and* ***excavation for foundation has started*** *on or before the 31st March, 2019."*

The aforesaid conditions are **cumulative**. Thus, Developer can choose to continue levying old rates, Developer needs to ensure fulfilment of cumulative conditions as discussed:

Sr.	Condition	To be complied?
a.	Commencement certificate in respect of the project, (**if required** by the competent authority) has been issued on or before 31st March, 2019 and it is certified Architect, Chartered Engineer or License Surveyor that construction of the project has started on or before 31st March, 2019	Yes
b.	Certified by an Architect, Chartered Engineer or License Surveyor that construction of the project has started on or before 31st March, 2019 (if Commencement certificate in respect of the project, is not required from competent authority)	Yes

	Explanation.- For the purpose of sub- clause (a) and (b) above , construction of a project shall be considered to have started on or before the 31st March, 2019, if the **earthwork** for site preparation for the project has been completed **and excavation for foundation has started** on or before the 31st March, 2019	
c.	Completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;	Yes
d.	Apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.	Yes

It may be observed that only after fulfilment of all the aforesaid conditions, Developer can opt for continuation of existing rates.

As regards, condition (c) in the aforesaid table (i.e. 'Completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019') will create confusion for projects wherein partial-completion (say for few flats or floors) is obtained.

1.7.1 Meaning of 'construction' and 'booking'

Its pertinent to note that both the terms **'construction of project'** and **'booking'** are defined.

The term 'construction of project' has been defined as:

'(XX) … Explanation: For the purpose of sub- clause (a) and (b) above, ***construction*** *of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019'*

Thus, it appears that construction will effectively mean that, for a project,

a. **Earthwork** for site preparation for the project should be **completed and**

b. **Excavation for foundation should be started** on or before the 31st March, 2019

Thus, projects where say only land levelling is done, then the same will not qualify as 'construction'.

As regards, the term '*apartment **booked** on or before the 31st March, 2019*' the same has been defined as:

'*(xiii) an apartment **booked** on or before the 31st March, 2019 shall mean an apartment which meets **all the following three conditions**, namely-*

(a) part of supply of construction of which has time of supply on or before the 31st March, 2019 and

(b) at least one instalment has been credited to the bank account of the registered person on or before the 31st March, 2019 and

(c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the 31st March, 2019'

Its apparent that there are three conditions which are specified and all three conditions need to be satisfied cumulatively.

Fortunately, for the third condition i.e. sr. no. (c), allotment letter will also qualify as fulfilment of condition (and registration of agreements will not be required).

1.7.2 New rates – Default option

It may be noted that as per Not. No. 3/2019, its stated that:

'Provided also that where the option is not exercised in Form at annexure IV by the 10th of May, 2019, option to pay tax at the rates as applicable to item (i) or (ia) or (ib) or (ic) or (id) above, as the case may be, shall be deemed to have been exercised'

Thus, it appears that the new rates will be default option unless the Developer opts for continuation of the old rates i.e. the Developer will need to exercise the option.

Not. No. 3/2019, also specifies that the option should be exercised before 10th May 2019.

Its also stated that *'Provided also that invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be* ***in accordance with the option*** *to be exercised.'* Thus, it appears that the Developer will need to choose the option before raising the invoices for the month of April 2019!

1.7.3 Can a developer opt for practical solution?

It may be noted that while the Press Release discusses about two options for ongoing projects i.e. either to opt to continue old rates or levy GST at new rates, still, practically, there can be third option as well as discussed below.

The practical option is whether the Developer, for ongoing projects opt to continue old rates and pass on the credit to ensure that the final impact on the consumer is same as new rates. For example, on a flat price of 1 crore GST @ 12% will be 12 lacs. However, if the Developer chooses to recover from the property buyer 1.05 crore (i.e. 1.12 crore *less* Input tax credit rebate of Rs 7 lacs), then Developer will be able to convince the customer (as the amount paid by the customer is not more than 5%).

Though the aforesaid appears to be a practical solution for the competition between old and new rates, still the Developer will have to refer to all legal provisions (including anti-profiteering provisions) before exploring this kind of un-specified option (as this option is not specifically mentioned).

1.8 Conditions if opting for existing rates

The reduction in GST rates is with a numerous conditions, including:

a. **Paying GST in cash**

b. Non-availability of ITC

c. Requirement to procure 80% inputs and input services from registered vendors

d. Maintain project-wise account of inward supplies from registered and unregistered supplier

e. Declaring ITC not availed every month as ineligible credit in GSTR-3B [Row No. 4 (D)(2)]

f. Developer to pay tax in case of JDA

It may be noted that as the exemption is a 'conditional' exemption (than an absolute exemption), one can contend that the even after 1st April 2019, the Developers can continue to pay GST @ 12% (even in respect of new projects)!

This is because, section 11 of CGST Act provides[9] for compulsion for 'absolute' exemption than 'conditional' exemptions. Though this will

[9] Explanation to Section 11 of CGST Act reads as '*For the purposes of this section, where **an exemption** in respect of any goods or services or both from the **whole or part** of the tax leviable thereon has been **granted absolutely**, the registered person supplying such goods or services or both **shall not collect the tax**, in excess of the effective rate,*

certainly be subject matter of litigation and only higher Courts will be able to provide resolution to this issue.

Also, as the concessional rate (1% and 5%) are subject to condition, its not clear what will happen, if inadvertently, the Developer violates the condition say ITC is availed (say a meagre amount of Rs 1,000) then:

a. Will the Developer be required to reverse the ITC with interest? or
b. GST @ 12% will be applicable on entire project? If yes, whether ITC will be available?

Only time will tell what course of action will Judiciary provide in aforesaid cases!

1.8.1 Paying GST in cash

It may be noted that nowhere in the earlier 33rd or 34th GST Council meeting it was specified that the new rates will be paid in 'cash' (and not through ITC).

However, Not. No. 3/2019, states that:

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on such supply of goods or services or both.'

'Provided that the integrated tax at the rate specified in column (4) shall be paid in cash, that is, ***by debiting the electronic cash ledger only****.'*

This certainly is the biggest surprise for Developers, which will reduce the existing validly availed ITC to 'null' (as it cannot be utilised for payment of 1% and 5%).

It may be noted that when the GST Council themselves want the Developers to choose new rates (without credit) then why even the ITC, which was availed as per GST Act, should be denied?

Also, while the Government is actually insisting that the Developers should compulsorily follow, for new projects, the new GST rates, which is actually detrimental for the Developers (particularly for non-metro and non-premium projects), still the same is with a conditions!

Additionally, this raises question about violation of Model Code of Conduct, will also arise as the 34th GST Council meeting was only to implement the existing decisions taken in 33rd GST Council meeting (and no new decisions could have been taken).

1.8.2 No ITC

Not. No. 3/2019 provides that:

*'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 1st 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;'*

Its apparent that for the new rates (1% and 5%), the ITC on goods and services is denied. This certainly is a retrograde step as in the erstwhile Service Tax regime, credit of Service Tax paid on input services and capital goods was available.

As regards Annexures, Annexure I and Annexure II provide for example/ illustration and are quite detailed (running more than 6 pages each!).

1.8.3 Condition of 80% procurement!

If GST credits are not available to developers then the developer won't be incentivised (by way of credit) to procure from GST registered vendors or ensure their (vendor's) compliances. Given this, it appears that the concessional rate (1% or 5%) will be subject to condition of procurement (say 80%) from registered vendors.

Not. No. 3/2019, states that:

'*Provided also that **eighty percent** of value of **input and input services**, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only;*'

It can be observed that the 80% requirement is applicable for 'inputs' and 'input services'. Further, while calculating total value of inputs and input services following should be excluded:

a. Services by way of grant of development rights, long term lease of land or FSI (including additional FSI)

b. Electricity

c. High speed diesel, motor spirit, natural gas

Surprisingly, it is not specified whether non-GST supplies (such as say water from municipal corporation) or depreciation, interest etc will be excluded/ included?

For a mixed project, if a Developer is having commercial shops, lets say commercial area is more than 20%, wherein GST @ 12% is applicable, how the requirement of 80% will be fulfilled as most procurements will be common? The illustrations given at Annexure III of Not. No. 3/2019 only cover scenario of RREP (and not REP wherein commercial properties are subject to GST @ 12%).

It may be noted that going forward, the computation of 80% (which is not one time but a continuous requirement) is certainly going to be a daunting task for Developers!

1.8.3.a What if RCM is applicable?

The underlying issue was in cases where GST is paid under RCM (say legal services), will it be counted as procurement from registered vendors (as supplier is un-registered and recipient pays GST under RCM)?

In this regard, Not. No. 3/2019, specifies that:

'Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person'

Thus, inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person.

1.8.3.b 80% requirement is financial year-wise!

Not. No. 3/ 2019, provides that:

'Provided also that where value of input and input services received from registered suppliers ***during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier****) falls short of the said threshold of 80 per cent., tax shall* ***be paid*** *by the*

*promoter on value of input and input services comprising **such shortfall** at the rate of **eighteen percent** on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both;*

*Provided also that notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such **cement at the applicable rates** on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017), shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement;*

(Please refer to the illustrations in annexure III)'

It may be noted that the there are two rates specified for RCM as under:

a. For all inputs and input services – 18%

b. For cement - 28%

Further, entry 39 is inserted vide Not. 3/2019 as under:

Sr	Chapter	Nature of services	Rate	Condition
(1)	(2)	(3)	(4)	(5)
"39.	Chapter 99	**Supply of services other than** services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI) **by an unregistered person to a promoter** for construction of a project on which tax is payable by the recipient of the services under sub- section 4 of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), as prescribed in notification No. 07 / 2019- Central Tax (Rate), dated 29th March, 2019, published in	9	-";

		Gazette of India vide G.S.R. No. _, dated 29th March, 2019. Explanation. – This entry is to be taken to apply to all services which satisfy the conditions prescribed herein, even though they may be covered by a more specific chapter, section or heading elsewhere in this notification.		

Its surprising that it is specified aforesaid that, *'This entry is to be taken to apply to all services which satisfy the conditions prescribed herein, even though they may be covered by a more specific chapter, section or heading elsewhere in this notification'*

Given the aforesaid, in case of short-fall, all the procurement of services will attract 18% even through the specific services procured from un-registered vendor might be subject to lower rate of GST say 12% or 5%.

Further, as regards, cement, under RCM, the rate of GST will be 28%!

Further, its stated that that RCM will be applicable only on the shortfall value (as the terminology in the notification is **'...*such shortfall...*'**). Thus, if the procurement from registered vendors are 75% value then RCM will apply on 5% value.

For ease of reference, three illustrations, as provided at Annexure III of Not. No. 3/2019 are reproduced below:

Illustration 1:

A promoter has procured following goods and services [other than capital goods and services by way of grant of development rights, long term lease of land or FSI] for construction of a residential real estate project during a financial year.

Sl. No.	Name of input goods and services	Percentage of input goods and services received during the financial year	Whether inputs received from registered supplier? (Y/ N)
1	Sand	10	Y

2	**Cement**	**15**	**N**
3	Steel	20	Y
4	Bricks	15	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/ designing/ CAD drawing etc.	10	Y
8	Aluminium windows, Ply, commercial wood	15	Y

In this example, the promoter has procured 80 per cent. of goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], from a GST registered person. However, he has procured cement from an unregistered supplier. Hence at the end of financial year, the promoter has to pay GST on cement at the applicable rates on reverse charge basis.

Illustration 2:

A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

Sl. No.	Name of input goods and services	Percentage of input goods and services received during the financial year	Whether inputs received from registered supplier? (Y/ N)
1	Sand	10	Y
2	Cement	15	Y
3	Steel	20	Y
4	Bricks	15	Y
5	Flooring tiles	10	Y
6	**Paints**	**5**	**N**

7	Architect/ designing/ CAD drawing etc.	10	Y
8	**Aluminium windows, Ply, commercial wood**	**15**	**N**

In this example, the promoter has procured 80 per cent. of goods and services including cement from a GST registered person. However, he has procured paints, aluminum windows, ply and commercial wood etc. from an unregistered supplier. Hence at the end of financial year, the promoter is not required to pay GST on inputs on reverse charge basis.

Illustration 3:

A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

Sl. No.	Name of input goods and services	Percentage of input goods and services received during the financial year	Whether inputs procured from registered supplier? (Y/ N)
1	**Sand**	**10**	**N**
2	**Cement**	**15**	**N**
3	Steel	15	Y
4	Bricks	10	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/ designing/ CAD drawing etc.	10	Y
8	**Aluminium windows**	**15**	**N**
9	**Ply, commercial wood**	**10**	**N**

In this example, the promoter has procured 50 per cent. of goods and services from a GST registered person. However, he has procured sand, cement and aluminum windows, ply and commercial wood etc. from an unregistered supplier. Thus, value of goods and services procured from registered suppliers during a financial year falls short of threshold limit of 80 per cent. To fulfill his tax liability on the shortfall of 30 per cent. from mandatory purchase, the promoter has to pay GST on cement at the applicable rate on reverse charge basis. After payment of GST on cement, on the remaining shortfall of 15 per cent., the promoter shall pay tax @ 18 per cent. under RCM.

Further, the requirement appears to be financial year wise and thus, the Developer will be required to track the same year-on-year basis (or earlier if project is completed).

1.8.3.c Project-wise details!

Not. No. 3/ 2019, provides that:

"Explanation. -

1. *The promoter shall maintain* ***project wise account of inward supplies from registered and unregistered supplier*** *and*

calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be ***added to his output tax liability*** *in the month* ***not later than*** *the month of* ***June*** *following the end of the financial year.*

2. *Notwithstanding anything contained in Explanation 1 above,* ***tax on cement*** *received from unregistered person shall* ***be paid in the month in which cement is received****."*

As per the aforesaid Explanation, the Developer will need to:

a. Maintain project-wise details of procurement from registered and un-registered vendors

b. Pay shortfall, not later than June month of subsequent year

c. Pay RCM on cement in the month in which cement is received[10]

Looking at the additional compliances triggering on account of procurement from un-registered vendors, it will be preferable to procure only from registered vendors!

[10] However, as per Illustration 1 to Not. No. 3/2019, GST on cement is to paid at the end of the FY on RCM basis.

1.8.3.d Ensure filing and payment by vendors?

In this regard, not. No. 3/ 2019, provides that:

'Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)].'

Only time will tell whether the requirement is only to 'procure' from registered vendors, or the Authorities will also insist that the Developers should additionally ensure that their vendors should also file GST return and deposit GST.

1.8.4 GST on JDA

As per Not. No. 3/2019 its stated that:

*'Provided also that where a registered person (landowner- promoter) who transfers **development right or FSI** (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, -*

*(i) the **developer- promoter shall pay tax** on supply of construction of apartments to the landowner- promoter, and*

*(ii) such landowner – promoter shall be **eligible for credit** of taxes charged from him by the developer promoter towards the supply of construction of apartments by developer- promoter to him, provided the landowner- promoter further supplies such*

apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer- promoter.

Explanation. -

(i) "developer- promoter" is a promoter who constructs or converts a building into apartments or develops a plot for sale,

(ii) "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.'

The Notification states that 'developer- promoter' shall pay tax on supply of construction of apartments to the landowner- promoter'.

Further, it additionally states that the 'landowner- promoter' shall be entitled to claim credit of taxes charged by developer provided:

a. 'Developer- promoter' charges GST

b. GST payable on such units by 'landowner- promoter' should not be less than amount charged by 'Developer- promoter'

As regards the value of such flats, Not. 3/2019 provides that:

*"2A. Where a registered person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service in respect of such apartments shall be deemed to be equal to the Total Amount charged for **similar apartments** in the project from the independent buyers, other than the person transferring the development right or FSI (including additional FSI), nearest to the date on which such development right or FSI (including additional FSI) is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 above."*

It may be noted that the value prescribed is the value of 'similar flats' though, more appropriately, it could have been the value of TDR or construction cost!

1.9 Will the basic property price increase?

It is pertinent to note that the non-availability of ITC will lead to increase in the cost of construction for developers. Typically, the cost of construction ranges from INR 1,500 to INR 3,500 per sq. ft. At present, most inputs and input services attract GST at 18 % (except cement which attracts GST @ 28 %).

On an average, the GST on a cost of construction of say **INR 3,000** per sq. ft will be **INR 450** which comes to **15 %** of cost of construction.

Effectively, this means cost of construction for developers is expected to go up to this extent (as ITC will not be available from 1st April 2019 for new projects on which new rates are applicable).

Also, it may be noted that if the Developers can increase the basic prices (due to loss of ITC) then during transition to GST (i.e. 1st July 2017) the Developers were required to pass on the benefits on ITC to the customers. Thus, if, due to loss of ITC, if there is any increase on or after 1st April 2019, then similarly, on 1st July 2017, there should have been decrease in basic price of flats.

It may be noted that, given the increase in cost, if the supplier wants to maintain the margin, then, they will not have any option but to increase the basic sale price. However, it may be noted that, in the current situation, whether the developer will be able to offload the entire ITC cost on the consumer is a question as it may negatively affect sales.

Also, before the developers will actually increase the prices, they would like to watch carefully how their competitors are treading this path and then will decide course of action to increase the base price (either partially or upto the extent of credit loss).
Also, Developers may need to consider whether near their own project whether any new projects are in the pipe-line (as new projects will levy new rates).

It may be noted that while Developers may find it beneficial to continue old rates, still they will need to convince the property buyers (as property buyers will always prefer lower tax amount on the invoice).

At a macro-level, it appears, for existing large projects, which will be sold over next 2/3 years, Developers may prefer to opt new rates whereas for ongoing projects with visibility/ certainty of sales in next few months, Developers may opt to continue existing rates (subject to cost-benefit analysis).

Given this major transition from 1st April 2019, the GST Authorities will certainly monitor the prices of the project, pre-rate change and post-rate change.

Given this, the Developers should maintain appropriate documents to substantiate the price rise, if any, during transition.

1.10 Procurement with concessional rate

To ensure that the cost of affordable housing project should not drastically go up, the GST Council has also prescribed concessional GST rate of 12% for works contract services which are input service for affordable housing projects.

In this regard, Not. No. 3/2019 provides concessional rate of GST @ 12% (i.e. CGST 6% and SGST 6%):

"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, installation, completion, fitting out, repair, maintenance, renovation, or alteration*** *of* ***affordable residential apartments*** *covered by sub- clause (a) of clause (xvi) of paragraph 4 below, 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** to pay central tax on construction of apartments at the rates as specified for item (ie) or (if), as the case may be, in the manner prescribed therein”*

It can be observed that the concessional rate is applicable for:

a. Specified works contract such as ***construction, erection etc***

*b. Of affordable housing **in respect of which** the **promoter has not exercised option** (i.e. to pay GST at existing rate of 12% or 8%)*

It may be noted that the aforesaid concessional rate is subject to following conditions as provided in Not. No. 3/2019:

*“Provided that carpet area of the affordable residential apartments as specified in the entry in column (3) relating to this item, is **not less than 50 per cent. of the total carpet area** of all the apartments in the project;*

*Provided also that for the purpose of determining whether the apartments at the time of supply of the service are affordable residential apartments covered by sub- clause (a) of clause (xvi) of paragraph 4 below or not, value of the apartments shall be the **value of similar apartments booked nearest** to the date of signing of* *the contract for supply of the service specified in the entry in column (3) relating to this item;*

*Provided also that in case it **finally turns out** that the carpet area of the affordable residential apartments booked or sold before or after completion, for which gross amount actually charged was forty five lakhs rupees or less and the actual carpet area was within the limits prescribed in sub- clause (a) of clause (xvi) of paragraph 4 below, was **less than 50 per cent**. of the total carpet area of all the apartments in the project, the recipient of the service, that is, the promoter shall be **liable to pay such amount** of tax on reverse charge basis as is equal to the difference between the tax payable on the service at the applicable rate but for the rate prescribed herein and the tax actually paid at the rate prescribed herein"*

1.11 Be ready for future surprises!

While Developers may find it beneficial to continue old rates, based on current scenario, still Developers also take into account **likely** future developments!

It may be noted that the new rate of 5% without credit may again be re-considered by the GST Council and lower rate say 4% or 3% could be considered. In case the 5% is lowered say to 3% without credit, then 12% (i.e. if any project continues old GST rates), will be 4 times the new rate (of 3%), making it further difficult for the Developer to convince the customers.

Similarly, the monetary ceiling of Rs 45 lacs, as per the new definition of affordable housing, might be increased (say Rs 60 lacs for non-metro and Rs 75 lacs for metro). Again in such cases, rate of 8% (i.e. if any project continues old GST rates) will be 8 times of the new rate (i.e. 1%).

Further the Opposition parties have dragged GST in Election fray and are stating that if voted to power in the general election then they will bring simpler and new GST[11]. Even stamp duty is expected to be subsumed in GST!

[11] It may be noted that in Malaysia, the opposition party, won the election only on the point that if voted to power they will scrap Malaysian GST which was introduced in the year 2015. In 2018, after winning the elections, Malaysian GST was scrapped and earlier Sales and Service Tax laws were re-introduced.

However, India can't be compared to Malaysia, given the demographic and population differences. Further, GST being a economic policy, jointly implemented by Center and States, ideally, should not be made scapegoat during elections. Also, if Opposition parties actually had a better solution, for GST challenges, then they should have presented the same before GST Council than waiting for election time and make a rhetoric about the same.

Given the aforesaid, though GST appears to stabilise for real-estate sector from 1st April 2019, still practically it appears to remain in fluid stage. Thus, before opting for old rates, Developers, should not only should factor the existing GST landscape but also likely future changes in GST.

1.12 New rate of 1% - Applicable to?

Affordable Housing properties are expected to attract GST @ 1% (without ITC).

As per Para 4 (i) of Press Release dated 19th March 2019, the rate of 1% will be applicable to:

a. All houses which meet the definition of affordable houses as decided by GSTC (area 90 sqm in non- metros / 60 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 1/3rd land abatement)

It may be noted that the new criteria for qualifying 'affordable housing' is with additional requirement of monetary ceiling limit of Rs 45 lacs.

Now, as per Not. No. 3/2019 it is stated that:

*"(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 cities or towns **other than metropolitan** cities and for which the **gross amount charged** is **not more than forty five lakhs rupees**.*

Thus, its apparent that 1% is applicable for apartments:

a. Having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and

b. For which the gross amount charged is not more than 45 lakhs rupees

Existing schemes

As per Not. No. 3/2019 its stated that:

*"(b) an apartment being constructed in an ongoing project 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 Table above, 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) against serial number 3, as the case may be."*

It appears that the GST rate of 1% will apply only to apartments withing specified ceiling (60 sq. mtr. or 90 sq. mtr.) with monetary value of 45 lacs or less or apartments which are part of Central / State Housing Schemes (such as PMAY or EWS or HFA etc) which are specified above.

1.12.1 What is included in 45 lacs?

As discussed aforesaid, the Affordable Housing properties are expected to attract GST @ 1% provided they meet the dual criteria of ceiling limit of area (60 sq. mtr./ 90 sq. mtr.) and monetary ceiling of Rs 45 lacs.

In case of Rs 45 monetary ceiling the question is whether amounts such as infrastructure charges, parking etc should also be included?

In this regard, the term '**gross amount'** has been defined as:

"(ii) Gross amount shall be the sum total of;

A. Consideration charged for the services specified at item (i) and (ic) in column (3) against sl. No. 3 in the Table;

B. 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

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."

Though there is no specific clarity about "one-time compulsory deposit", still one can contend that it being 'deposit' the same should not be includible in the gross amount charged.

1.13 New rate of 5% - Applicable to?

Other than Affordable Housing properties, the rate of GST for **residential** properties will be 5% (without credit).

As per Para 4 (ii) of Press Release dated 19th March 2019, the rate of 5% will be applicable to:

(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.

It may be noted that the Not. No. 3/2019, prescribes, for residential apartments other than affordable housing, a CGST rate of 3.75%, still after specified abatement towards land (33%), the effective rate will be 2.50% and equally for SGST.

1.13.1 5% on ongoing projects

For the ongoing projects, the new rate of 5%, **if so chosen** by Developer, will be applicable irrespective of the fact whether, in the ongoing projects, booked is prior to or after 01.04.2019.

However, in case of houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019.

Not. No. 3/2019 also provides at sr. no. (if) of column 3 of the table therein that:

"Explanation. -For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) in column (3) ***shall*** *attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and* ***shall*** *not be levied at the rate as specified under this entry."*

It may be noted that aforesaid sr. no. (if) of column 3 of the table which provides for effective GST rate of 18% with credit (effective rate 12% after land abatement) and in this context, the Explanation states that GST **shall** be levied on the specified rate for affordable units (i.e. @ 1% without credit), other residential units in REP/RREP (i.e. @ 5% without credit) etc and not @ 12% with credit.

1.13.2 5% on new projects

For new projects, the default rate of GST for residential properties (other than affordable houses) will be 5% (without ITC).

Though, on the face of it, the 5% option appears to be lucrative, still given the non-availability of ITC, the actual impact will be more than 5%.

Given the aforesaid, home property buyers expect that the rate of 5% should be further brought down to say 3%. It may be noted that there is sound rational for further reducing the rates for real estate as, real estate are not a form of 'consumption' but rather an 'investment' avenue (like gold attracts GST @ 3%) and thus, it deserves special treatment/ rate.

1.13.3 5% for specified commercial properties

GST @ 5% (without ITC) will be applicable for:

a. Commercial apartments (shops, offices, godowns etc.), in an RREP, which commences on or after 1st April, 2019 or

b. In an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the old rates (i.e. 12% and 8%)

Thus, even commercial units in an ongoing RREP will be entitled to levy GST @ 5%. The term RREP is defined through Not. No. 3/2019 as a Residential 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 REP'.*

As regards the carpet area ceiling of 15% for commercial apartments, its important to note that the ceiling of 15% will be in comparison with 'total carpet area of all the apartments in REP'. Thus, if the total carpet are of all the apartments is 1,00,000 sq. ft. then shops/ offices cannot be more than 15,000 sq. ft. However, one of the underlying question is still unanswered is whether area of common amenities will be considered herein?

Also, after a building is completed, property buyers, may change the residential area to commercial area. Though this change will be post facto, the question is whether it will have impact on the GST rate and if yes, whether the impact will be restricted to said flat (which was converted to commercial property) or it will impact all commercial properties?

Given the aforesaid un-answered questions, the Developers seek clarity on these issues.

1.14 12% for other than specified commercial properties

Its apparent that the rate of 12% (with ITC) will be mandatorily applicable on:

a. Standalone commercial properties (i.e. other than mixed projects)

b. Commercial properties in residential real estate project wherein the commercial area is more than 15%

It may be noted that typically the prices of commercial properties which will be substantially higher than construction cost and thus, levying 12% will certainly continue to pinch the commercial property buyers.

It may be noted that as stamp duty is already levied on land value, unless deduction for land value, based on **actual value** (than so called 1/3rd deduction), is introduced, the injustice of higher rate of GST (on an investment or livelihood avenue) cannot be undone.

1.15 Impact of changes on ITC

Till 31st March 2019, ITC was available to Developers as GST @ 12% or 8% was payable on under-construction properties. However, from 1st April 2019, for new residential estate projects, new rates are prescribed (1% / 5% but without credit) and for ongoing projects, option is available with Developers to either continue to pay GST at existing rates or new rates. As regards, commercial properties could attract GST @ 5% (without credit and subject to condition) or 12% (with credit).

The aforesaid discussion is tabulated for ease of reference:

SR	Project	Project	Unit	GST rate	ITC?
1	New	RREP	Residential	1% or 5%	No
2	New	RREP	Commercial	5%	No
3	New	REP	Residential	1% or 5%	No
4	New	REP	Commercial	12%	**Yes**
5	Ongoing	RREP	Residential	1% or 5%	No
6	Ongoing	RREP	Commercial	5%	No
7	Ongoing[12]	RREP	Residential	8% or 12%	**Yes**
8	Ongoing[13]	RREP	Commercial	12%	**Yes**
9	Ongoing	REP	Residential	1% or 5%	No
10	Ongoing	REP	Commercial	12%	**Yes**

[12] 'Ongoing projects' have option to continue old rates (subject to fulfilment of prescribed conditions) or opt for new rates for the project

[13] 'Ongoing projects' have option to continue old rates (subject to fulfilment of prescribed conditions) or opt for new rates for the project

It can be observed that there can be following scenario wherein ITC will be available / not available:

SR	Project	Particulars	Impact on ITC	Refer	Remarks
1	Ongoing (RREP/ REP)	Opt to pay GST at old rates	Continue to claim ITC	Section 171[14]	Sale of units after completion will trigger reversal[15]
2	Ongoing (REP)	Opt to pay GST at new rates	ITC reversal will trigger	Annexure I and II of Not. No. 3/2019	- As above
3	Ongoing (RREP)	Pay GST at new rates	ITC reversal will trigger	Annexure I and II of Not. No. 3/2019	NA[16]
4	New (REP)	Pay GST at new rates	ITC reversal will trigger	Rule 42/ 43 of CGST Rules	Sale of units after completion will

[14] Section 171 deals with Anti-profiteering provisions

[15] Refer Rule 42 and Rule 43 of CGST Rules

[16] Refer Rule 42 (5) of CGST Rules

					trigger reversal[17]
5	New (RREP)	Pay GST at new rates	ITC not available	NA	NA

Not. No. 3/2019 provides for methodology as discussed below:

Annex.	Project	Particulars
I	REP (other than RREP)	1. Where % completion as on 31st March, 2019 is not zero or where there is inventory in stock 2. Where % completion as on 31st March, 2019 is zero but invoicing has been done having time of supply before 31st March, 2019, and no input services or inputs have been received as on 31st March, 2019
II	RREP	1. Where % completion as on 31st March, 2019 is not zero or where there is inventory in stock 2. Where % completion as on 31st March, 2019 is zero but invoicing has been done

[17] Refer Rule 42 and Rule 43 of CGST Rules

		having time of supply before 31st March, 2019, and no input services or inputs have been received as on 31st March, 2019

For more details, kindly refer Not. No. 3/2019.

1.15.1 ITC Impact on developers having mix projects

Certain commercial properties are expected to continue to attract GST @ 12% with input tax credit.

As per Para 6.3 of Press Release, 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.

Further, as per Not. No. 3/2019:

"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"

As regards Annexures, Annexure I and Annexure II provide for example/ illustration and are quite detailed.

Thus, the Developers will be required to claim credit on pro-rata basis in proportion to carpet area of commercial portion which is subject to GST @ 12%.

This means, if a developer is having both, residential and commercial projects (wherein the commercial properties are subject to GST @ 12%), then aforesaid mechanism is certainly going to open up a Pandor's box as it will be difficult to apportion credits (as roof, lift or infrastructure could be common).

1.15.2 Impact on transitional credits and other aspects

With respect to transitional credits, the Press Release dated 19th March 2019 provided as under:

'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.'

In the Not. No. 3/2019, at Annexure I and II, formula for reversal is prescribed which is pro-rata based on carpet area. If one goes through the formula, total credit is required to be considered for reversal and total ITC is defined as:

a. Total ITC availed (**utilized or not**) on inputs and input services used in construction of the REP/RREP from 1st July, 2017 to 31st March, 2019

b. Transitional credit taken on 1st July, 2017

It may be noted that transitional credit (transferred through TRAN-1) does not even qualify as 'input tax credit' as per section 2 (62) of CGST Act. Thus, the question is, can the Government now ask the GST payers to reverse the validly availed credit (in Service Tax regime)?

It is pertinent to note that respect to ITC, it may be recalled that the Apex Court in the case of Dai Ichi Karkaria Ltd [1999 (112) ELT 353 (SC)] held that *'…credit that has been vaildly taken, and its benefit is available to the manufacturer without any limitation ... The credit is, therefore, indefeasible.'* Similarly, was held in the case of Eicher Motors Ltd [1999 (106) ELT 3 (SC)].

Also, if reversal was not required in Service Tax regime, ideally, it may not be insisted in GST regime. Further, without there being any authority for such reversal in the Act itself, reversal through Rules, may be considered as excessive delegation.

1.15.3 Can removal of difficulty order cure all issues?

A Removal of Difficulty Order has been issued (4/2019) w.e.f. 1st April 2019 which provides as under:

"For the removal of difficulties, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, the amount of credit attributable to the taxable supplies including zero rated supplies and exempt supplies shall be determined ***on the basis of the area*** *of the construction of the complex, building, civil structure or a part thereof, which is taxable and the area which is exempt."*

The authority to issue Removal of Difficulty order originates from Section 172 which is reproduced below for ease of reference:

"172. Removal of difficulties

(1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, ***make such provisions not inconsistent with the provisions of this Act or the rules*** *or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:*

Provided that no such order shall be made after the expiry of a period of ***three years*** *from the date of commencement of this Act.*

*(2) **Every order** made under this section **shall be laid**, as soon as may be, after it is made, **before each House of Parliament**."*

It can be observed that the Order issued under section 172 of CGST Act cannot be '***inconsistent with the provisions of this Act or the rules or regulations'.***

However, if one refers to the GST Rules as applicable upto 31st March 2019, there was no provision which provided for real estate sector a reversal based on area and thus, apparently the Order appears to be inconsistent with the Act/ Rules.

Also, the credit once availed validly becomes a right of the GST payer and thus cannot be taken away through introduction of subsequent Order/ Notifications.

Given the aforesaid contradictions with Act / Rules, the Order will certainly be questioned in the Court of Law by the GST payers in days to come.

1.15.4 Reversal in case of completed projects

As per Para 8 of Press Release dated 19th March 2019:

'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.'

As discussed aforesaid, now, new methodology is provided on the basis of carpet area at Rule 42 and Rule 43 of CGST Rules.

It may be noted that till the amendment in the Rule 42/ 43 of CGST Rules (i.e. upto 31st March 2019), reversal was pertaining to a tax period than the entire life of a project! One may state that the change may not apply to period prior to 1st April 2019 as this change is not a procedural change but rather a substantive change.

For more details, kindly refer 'amended Rule 42 and Rule 43'.

1.16 Implication on development rights/ TDR etc

The Press Release dated 19th March 2019, mentioned that a special treatment will be accorded to TDR/ FSI and long-term lease for projects **commencing after 01.04.2019.**

It was also specified in the aforesaid PR that the exemption in respect of TDR/ FSI and long-term lease premiums will be provided subject to the condition of payment of GST on such apartments.

In this regard, Not. No. 4/2019, provides for exemption to:

"Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) 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.

The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:

[GST payable on TDR or FSI (including additional FSI) or 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)"

It is apparent that the notification exempts GST payable on:

a. Service of transfer of TDR or FSI (including additional FSI)

b. On or after 1st April, 2019

c. By a promoter in a project

d. For construction of residential apartments

e. Intended for sale to a buyer, wholly or partly, except sale after completion

The aforesaid conditions should be satisfied cumulatively.

It may be noted that the aforesaid exemption is only in respect of transfer of TDR/FSI after 1st April 2019 and thus, if GST is already paid by the developer on TDR, then ideally, the Government should ensure that the entire credit (without reversal) of GST is made available (assuming GST is payable @ 5% on this property)

As the exemption is only in respect of 'residential' apartments, the exemption will be restricted to 'residential' apartments basis the carpet area. Thus, effectively, GST on TDR/ FSI to the extent of **commercial** units will be payable.

1.16.1 What if units are sold after completion?

It appears that exemption will be withdrawn if flats are sold after completion. In this regard Not. No. 4/2019 states that:

"Provided that 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, as is ***attributable*** *to the residential apartments, which remain* ***unbooked*** *on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner –*

[GST payable on TDR or FSI (including additional FSI) or both 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)

It can be observed that the after sale after completion will also trigger liability on the TDR/FSI value. This liability will be in proportion to the carpet area of project remain un- booked on the date of completion.

It may be recalled that the Press Release (dated 19th March 2019) stated that '*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.'*

Accordingly, Not. No. 4/2019 provides that:

"Provided further that tax payable in terms of the first proviso hereinabove shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 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"

Given the aforesaid, the reversal amount will not be more than the GST payable on units remained un- booked on the date of completion.

As regards the time of supply, the Not. No. 4/2019 also states that:

"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."

Thus, the aforesaid liability will arise, earlier of:

a. On the date of completion or

b. On the date of first occupation of the project

1.16.1.a Can GST be levied on development rights/ TDR

While the Not. No. 4/2019 exempts TDR in respect of specified residential units (as discussed in earlier paras), still the levy of GST on TDR/ FSI is itself non-existent, question of any exemption (as proposed from 1st April 2019) should not arise[18].

It may be recalled that Notification No. 4/2018 dated 25 January 2018 was issued to effectively demand GST on Development Rights[19] though its trite of law that notifications cannot override the statutory provisions (as Schedule III excludes sale of land and 'land' includes under its ambit benefits arising from land[20]).

[18] Larsen And Toubro Ltd 2015-TIOL-187-SC-ST

[19] The levy through Notification No. 4/2018-GST is itself questionable, as the Notification is issued under Section 148 of CGST Act, which deals with registration, payment and administrative aspect than 'levy' of GST

[20] There are judicial precedents wherein TDR was considered as equivalent to land and building (refer to Chheda Housing Development Corporation [2007 (3) MhLJ 402]). Even as per Section 3(a) of Land Acquisition Act, 1894, 'Land' includes benefits that arise out

Also, the Apex Court in the case of Safiya Bee[21] held that 'Land' includes rights in or over land, benefits to arise out of land.

However, in GST regime, given the all-encompassing definition of 'service', another emerging view is that GST is leviable on TDR. In the Advance Ruling of Sri Patrick Bernardinz D'sa[22] it was held that GST is payable on the supply of development rights.

It may be noted that transfer of development rights are already subject to stamp duty (approx. @ 6%). Given this, typically, development rights should be equated to transaction in land/ building and thus, should be outside the ambit of GST.

Given the aforesaid, the GST Council's view (that TDR are leviable to GST) is surprising, as TDR are the rights attached to the land and building.

Given the magnitude of this issue an early clarification on this aspect will help the construction sector.

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of land and things attached to earth or permanently fastened to anything attached to the earth

[21] (2011) 2 SCC 94

[22] 2018-TIOL-292-AAR-GST

1.16.2 GST on upfront premiums

It may be noted that Not. No. 4/2019, provides for exemption to:

*"**Upfront amount** (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of **thirty years, or more**, **on or after 01.04.2019**, 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.*

The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:

[GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land 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).

Its apparent that the notification exempts GST payable on:

a. Upfront amount (called as premium, salami etc) payable in respect of service by way of granting of long term lease of thirty years, or more
b. On or after 1st April, 2019
c. By a promoter in a project
d. For construction of residential apartments
e. Intended for sale to a buyer, wholly or partly, except sale after completion

The aforesaid conditions should be satisfied cumulatively.

It may be noted that the aforesaid exemption is only in respect of transfer of TDR/FSI after 1st April 2019 and thus, if GST is already paid by the promotor on upfront premium, then ideally, the Government should ensure that the entire credit (without reversal) of GST is made available (assuming GST is payable @ 5% on this property).

As the exemption is only in respect of 'residential' apartments, the exemption will be restricted to 'residential' apartments basis the carpet area. Thus, effectively, GST on upfront premium to the extent of commercial units will be payable.

1.16.2.a What if units are sold after completion?

It appears that the exemption (in respect of upfront amount) will be withdrawn if units are sold after completion. In this regard Not. No. 4/2019 states that:

"Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, 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, as the case may be, in the following manner –

[GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land 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);

It can be observed that the after sale after completion will also trigger liability on the upfront premium. This liability will be in **proportion to the carpet area** of project remain un- booked on the date of completion.

In respect of the reversal amount, there is a ceiling prescribed (as provided to TDR/FSI similarly) as under:

"Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 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."

Given the aforesaid, the reversal amount will **not be more than the GST payable on units remained un- booked** on the date of completion.

As regards the time of supply, the Not. No. 4/2019 also states that:

"The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as

above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be."

Thus, the aforesaid liability will arise, earlier of:

a. On the date of completion or

b. On the date of first occupation of the project

1.16.3 RCM on TDR/FSI and lease premiums

As per Para 7.2 of Press Release dated 19th March 2019 it was stated that '*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).'* Accordingly, Not. No. 5/2019, now introduces Reverse Charge Mechanism on promotor as below:

Sr	Category of supply of service	Supplier of service	Recipient of service
5B	Services supplied by any person by way of transfer of development rights or Floor Space Index (including additional FSI) for construction of a projecy by a promotor	Any person	Promotor

5C	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 promotor	Any person	Promotor

Going forward, effectively the liability to pay GST will be on promotors (instead of landowner / supplier).

This, RCM again will be an additional requirement, which Developers/ Promotors will be required to adhere to.

1.16.4 Time of Supply of TDR/FSI, premiums and JDA

As per Para 7.3 of Press Release dated 19th March 2019:

"*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.*"

Accordingly, Not. No. 6/2019 specifies the liability to pay GST on:

"(a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);

(b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;

(c) the upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relatable to construction of residential apartments in the project; and

(d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI)[23],

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shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier:"

[23] As per Para 7.4 of Press Release dated 19 March 2019 it was stated that '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.'

Thus, it can be observed that the time of supply to pay GST in respect of TDR/FSI, upfront premium, JDA is being shifted to earlier of:

a. Date of Issuance of completion certificate, where required, by the competent authority or

b. Date of its first occupation

Herein the un-answered question is whether this will apply for all the transaction of JDA undertaken in the past or only from 1st April 2019?

1.17. Anti-profiteering provisions – Lack of computation mechanism

On a positive note, effective rate of tax on most of the product is reduced to 18% as compared to earlier combined excise and State VAT of more than 35%.

For computation of anti-profiteering benefits, its pertinent to note that no specific guidance is made available by the Government except few Press Releases (PR) issued in FY 1718 by Central Board of Indirect Taxes and Customs ('CBIC').

The challenge with these PR is that whilst they highlight few benefits arising in GST regime, being just a one or two pager, they end up being high level analysis than reliable documents.

The inherent challenge is how to compute benefits from GST rate reduction, if any i.e. whether the benefit should be computed at product level or organization level. Should only the net benefits be passed on to the consumer or product-wise benefits should be passed (without netting off)?

For service providers, computation of anti-profiteering benefit is bigger challenge as for service industry difficult to determine service level benefits and pass on the same (as unlike products, prices of services may differ customer-wise).

Even now, it's a mystery as to whether the taxpayer is required to compute the benefits available at the vendor level and then pass on the gross benefit (i.e. arising at the taxpayer level plus benefits passed on by the vendors) to the customer.

Further for FMCG and B2C sector, the challenge is, in case there is any price reduction in view of anti-profiteering provisions, how a manufacturer of say medicine could ensure that the prices of the medicines on the shelf of his distributor are actually sold at a reduced price to the consumer.

Additionally, clarity is still missing whether the benefit of anti-profiteering should be passed on in FY1819 as transition period of GST was FY 1718.

It can be observed that the anti-profiteering provision has failed short of explaining the methodology to compute the benefit, leaving everything to the imagination of taxpayers/consultants and discretions of Authorities.

Thus, detailed guidelines on anti-profiteering will certainly enable industry self-assess whether they are anti-profiteering compliant or not.

2. Key Notifications, PRs, FAQs etc

2.1 Amended GST Rule

Authors note - Rule 42 and 43 are amended with effect from 1st April, 2019 vide Not. No. 16/2019. Amended Rules are reproduced below (amendments/ changes in red colour).

2.1.1 Rule 42 as amended

42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof.-

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the total input tax involved on inputs and input services in a tax period, be denoted as ‘T‘;

(b) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as 'T_1';

(c) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T_2';

(d) the amount of input tax, out of 'T', in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as 'T_3';

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C_1' and calculated as-

$$\mathbf{C_1 = T- (T_1+T_2+T_3);}$$

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as 'T_4';

[*Explanation:* For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T_4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(g) 'T_1', 'T_2', 'T_3' and 'T_4' shall be determined and declared by the registered person at the invoice level in ~~**FORM GSTR-2**~~ **and** at summary level in **FORM GSTR-3B**;

(h) input tax credit left after attribution of input tax credit under clause ~~(g)~~ (f) shall be called common credit, be denoted as 'C_2' and calculated as-

$$\mathbf{C_2 = C_1 - T_4;}$$

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as 'D_1' and calculated as-

$$\mathbf{D_1 = (E \div F) \times C_2}$$

where,

'E' is the aggregate value of exempt supplies during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period:

"Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of „E/F" for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F= aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 *vide* GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of „E" in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) dated 28th June, 2017 *vide* GSR number 690(E) dated 28th June, 2017, as amended.

Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A][24] of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D_2', and shall be equal to five per cent. of C_2; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C_3', where,-

$$\mathbf{C_3 = C_2 - (D_1+D_2);}$$

(l) ~~the amount 'C_3' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax;~~

"(l) the amount 'C3', 'D1' and 'D2' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;"

[24] Inserted vide Notf no. 03/2019-CT dt. 29.01.2019 wef 01.02.2019

(m) the amount equal to aggregate of 'D_1' and 'D_2' shall be ~~added to the output tax liability of the registered person~~ reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03**:

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T_1' and 'T_2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T_4'.

(2) ~~The input tax credit~~ Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and-

(a) where the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D_1' and 'D_2', such excess shall be ~~added to the output tax liability of the registered person~~ reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

(3) In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit

consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the manner prescribed in the said sub-rule, with the modification that value of E/F shall be calculated taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F= aggregate carpet area of the apartments in the project;

and,-

(a) where the aggregate of the amounts calculated finally in respect of „D1“ and „D2“ exceeds the aggregate of the amounts determined under sub-rule (1) in respect of „D1“ and „D2“, such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(4) In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for commercial portion in each project, other than residential real estate project (RREP), which underwent transition of input tax credit consequent to change of rates of tax on the 1st April, 2019 in accordance with notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published *vide* GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the following manner.

(a) The aggregate amount of common credit on commercial portion in the project ($C3_{aggregate\_comm}$) shall be calculated as under,

$C3_{aggregate\_comm}$ = [aggregate of amounts of C3 determined under sub- rule (1) for the tax periods starting from 1st July, 2017 to 31st March, 2019, x (A_C /

A_T)] + [aggregate of amounts of C3 determined under sub- rule (1)for the tax periods starting from 1st April, 2019 to the date of completion or first occupation of the project, whichever is earlier]

Where, -

A_C = total carpet area of the commercial apartments in the project

A_T = total carpet area of all apartments in the project

(b) The amount of final eligible common credit on commercial portion in the project ($C3_{final\_comm}$) shall be calculated as under

C3final_comm =C3aggregate_comm x (E/ F)

Where, -

E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

F = A_C = total carpet area of the commercial apartments in the project

(c) where, $C3_{aggregate\_comm}$ exceeds $C3_{final\_comm}$, such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment;

(d) where, $C3_{final\_comm}$ exceeds $C3_{aggregate\_comm}$, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(5) Input tax determined under sub- rule (1) **shall not be required** to be calculated finally on completion or first occupation of an **RREP** which underwent transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published *vide* GSR No. 690(E) dated the 28th June, 2017, as amended.

(6) Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis

and credit reversal pertaining to each project shall be carried out as per sub-rule (3).

2.1.2 Rule 43 as amended

43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.-

(1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in **FORM GSTR-2** **and FORM GSTR-3B** and shall not be credited to his electronic credit ledger;

(b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zerorated supplies shall be indicated in **FORM GSTR-2 and FORM GSTR-3B** and shall be credited to the electronic credit ledger;

"*Explanation:* For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date."

(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years from the date of the invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;

Explanation.- An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.

(d) the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as 'T_c', shall be the common credit in respect of capital goods for a tax period:

Provided that where any capital goods earlier covered under clause (b) is subsequently covered under clause (c), the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'T_c';

(e) the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'T_m' and calculated as-

$$\mathbf{T_m = T_c \div 60}$$

(f) the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'T_r' and shall be the aggregate of 'T_m' for all such capital goods;

(g) the amount of common credit attributable towards exempted supplies, be denoted as 'T_e', and calculated as-

$$T_e = (E \div F) \times T_r$$

where,

'E' is the aggregate value of exempt supplies, made, during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period:

Provided that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the value of „E/F" for a tax period shall be calculated for each project separately, taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F= aggregate carpet area of the apartments in the project;

Explanation1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in notification No. 11/2017Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of „E" in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended.

~~Provided~~ Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of ‛E/F‛ shall be calculated by taking values of ‛E‛ and ‛F‛ of the last tax period for which the details of such turnover are available, previous to the month during which the said value of ‛E/F‛ is to be calculated;

Explanation.- For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A][25] of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(h) the amount T_e along with the applicable interest shall**,** during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

(i) The amount Te shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.

~~(2) The amount T_e shall be computed separately for central tax, State tax, Union territory tax and integrated tax.~~

(2) In case of supply of services covered by clause (b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (Te^{final}) shall be calculated finally for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier,

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[25] Inserted vide Notf no. 03/2019-CT dt. 29.01.2019 wef 01.02.2019

for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as under: $Te^{final} = [(E1 + E2 + E3) / F] \times Tc^{final}$,

Where,-

E1= aggregate carpet area of the apartments, construction of which is exempt from tax E2= aggregate carpet area of the apartments, supply of which is partly exempt and partly taxable, consequent to change of rates of tax on 1st April, 2019, which shall be calculated as under, -

E2= [Carpet area of such apartments] x $[V_1 / (V_1+V_2)]$,-

Where,-

V_1 is the total value of supply of such apartments which was exempt from tax; and

V_2 is the total value of supply of such apartments which was taxable

E3 = aggregate carpet area of the apartments, construction of which is not exempt from tax, but have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F= aggregate carpet area of the apartments in the project;

Tc^{final} = aggregate of A^{final} in respect of all capital goods used in the project and A^{final} for each capital goods shall be calculated as under,

A^{final}= A x (number of months for which capital goods is used for the project/ 60) and,-

(a) where value of Te^{final} exceeds the aggregate of amounts of Te determined for each tax period under sub-rule (1), such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in subsection (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where aggregate of amounts of Te determined for each tax period under sub-rule (1) exceeds Te^{final}, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

Explanation.- For the purpose of calculation of Tc^{final}, part of the month shall be treated as one complete month.

(3) The amount Te^{final} and Tc^{final} shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(4) Where any capital goods are used for more than one project, input tax credit with respect to such capital goods shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (2).

(5) Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used;";

[*Explanation 1* : -For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

(a) [the value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-Integrated Tax (Rate), dated the 27th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017;][26]

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.][27][28]

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[26] Omitted vide Notf no. 03/2019-CT dt. 29.01.2019 wef 01.02.2019
[27] Inserted vide Notf no. 55/2017-CT dt. 15.11.2017
[28] Explanation substituted vide Notf no. 03/2018 – CT dt. 23.01.2018. Till then it read as follows: -
Explanation - For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude the value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-Integrated Tax (Rate), dated the 27th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017.

"*Explanation* 2: For the purposes of rule 42 and this rule,-

(i) 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);

(ii) the term "project" shall mean a real estate project or a residential real estate project;

(iii) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(iv) 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;

(v) the term "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);

(vi) "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;

(vii) "Commercial apartment" shall mean an apartment other than a residential apartment;

(viii) the term "competent authority" as mentioned in definition of "residential apartment", means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(ix) the term "Real Estate Regulatory Authority" shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government;

(x) the term “carpet area” shall have the same meaning assigned to it in in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(xi) “an apartment booked on or before the date of issuance of completion certificate or first occupation of the project” shall mean an apartment which meets all the following three conditions, namely-

(a) part of supply of construction of the apartment service has time of supply on or before the said date; and

(b) consideration equal to at least one installment has been credited to the bank account of the registered person on or before the said date; and

(c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

(xii) The term “ongoing project” shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;

The term "project which commences on or after 1st April, 2019" shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;

2.2 Notifications (CGST)

2.2.1 16/2019 – Changes in GST Rules (from 1st April 2019)

Government of India

Ministry of Finance

(Department of Revenue)

Central Board of Indirect Taxes and Customs

Notification No. 16/2019 – Central Tax

New Delhi, the 29th March, 2019

G.S.R……(E). - In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2019.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the official gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 41, in sub-rule (1), after the proviso, the following explanation shall be inserted, namely: -

"Explanation: - For the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.".

3. With effect from 1st April, 2019, in Rule 42 of the said rules,-

(a) in sub rule (1),-

a. in clause (f), the following Explanation shall be inserted, namely:-

"*Explanation:* For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T_4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date."

b. in clause (g), after the letter and figure "**FORM GSTR-2**", the words, letters and figure "**and** at summary level in **FORM GSTR-3B**" shall be inserted; c. in clause (h),-

i. for the brackets and letter "(g)", the brackets and letter "(f)" shall be substituted;

d. in clause (i),-

i. before the proviso, the following proviso shall be inserted, namely:-

"Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of „E/F" for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F= aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 *vide* GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of „E" in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) dated 28th June, 2017 *vide* GSR number 690(E) dated 28th June, 2017, as amended.

ii. in the proviso, for the word "Provided", the words "Provided further" shall be substituted;

e. for the clause (l), the following clause shall be substituted, namely:-

"(l) the amount „C3„, „D1" and „D2" shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B** or through **FORM GST DRC-03**;";

f. in the clause (m), for the words "added to the output tax liability of the registered person", the words, letters and figures "reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03**" shall be substituted;

(b) in sub rule (2), for the words "The input tax credit", the words, figures and bracket "Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit" shall be substituted;

(c) in the clause (a) of sub-rule (2), for the words "added to the output tax liability of the registered person", the words, letters and figures "reversed by the registered person in **FORM**

GSTR-3B or through **FORM GST DRC-03**" shall be substituted;

(d) after sub rule (2), the following sub rules shall be inserted, namely:-

"(3) In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1stJuly, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the manner prescribed in the said sub-rule, with the modification that value of E/F shall be calculated taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F= aggregate carpet area of the apartments in the project;

and,-

(a) where the aggregate of the amounts calculated finally in respect of „D1" and „D2" exceeds the aggregate of the amounts determined under sub-rule (1) in respect of „D1" and „D2", such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of „D1" and „D2" exceeds the aggregate of the amounts calculated finally in respect of „D1" and „D2", such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(4) In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for commercial portion in each project, other than residential real estate project (RREP), which underwent transition of input tax credit consequent to change of rates of tax on the 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published *vide* GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion

certificate is issued or first occupation takes place of the project, in the following manner.

(b) The aggregate amount of common credit on commercial portion in the project ($C3_{aggregate\_comm}$) shall be calculated as under,

$C3_{aggregate\_comm}$ =[aggregate of amounts of C3 determined under sub- rule (1) for the tax periods starting from 1st July, 2017 to 31st March, 2019, x (A_C / A_T)] + [aggregate of amounts of C3 determined under sub- rule (1)for the tax periods starting from 1st April, 2019 to the date of completion or first occupation of the project, whichever is earlier]

Where, -

A_C = total carpet area of the commercial apartments in the project

A_T = total carpet area of all apartments in the project

(c) The amount of final eligible common credit on commercial portion in the project ($C3_{final\_comm}$) shall be calculated as under

C3final_comm =C3aggregate_comm x (E/ F)

Where, -

E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

F = A_C = total carpet area of the commercial apartments in the project

(d) where, $C3_{aggregate\_comm}$ exceeds $C3_{final\_comm}$, such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment;

(e) where, $C3_{final\_comm}$ exceeds $C3_{aggregate\_comm}$, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(5) Input tax determined under sub- rule (1) shall not be required to be calculated finally on completion or first occupation of an

RREP which underwent transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published *vide* GSR No. 690(E) dated the 28th June, 2017, as amended.

(6) Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (3).".

4. With effect from 1st April, 2019, in rule 43

of the said rules,- (i) in sub rule (1),-

(a) in clause (a), after the words, letters and figures "**FORM GSTR-2**", the words, letters and figure "and **FORM GSTR-3B**" shall be inserted;

(b) in clause (b), after the letters and figure "**FORM GSTR-2**", the words, letters and figures "and **FORM GSTR-3B**" shall be inserted;

(c) after clause (b), the following explanation shall be inserted, namely: -

"*Explanation:* For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.";

(d) in clause (g),-

(A) after the letter and words "„F" is the total turnover", the words "in the State" shall be inserted;

(B) Before the proviso the following proviso shall be inserted, namely,-

"Provided that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the value of „E/F" for a tax period shall be calculated for each project separately, taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F= aggregate carpet area of the apartments in the project;

*Explanation*1*:* In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in notification No. 11/2017Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 *vide* GSR No. 690 (E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of „E" in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 28th June, 2017 *vide* GSR No. 690 (E) dated 28th June, 2017, as amended.";

(C) in the proviso, for the word "Provided", the words "Provided further" shall be substituted;

(e) after clause (h), the following clause shall be inserted, namely,-

"(i) The amount Te shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B**.";

(ii) for sub rule (2) the following sub rules shall be substituted, namely:-

"(2) In case of supply of services covered by clause (b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (Te^{final}) shall be calculated finally for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as under: $Te^{final} = [(E1 + E2 + E3) / F] \times Tc^{final}$,

Where,-

E1= aggregate carpet area of the apartments, construction of which is exempt from tax E2= aggregate carpet area of the apartments, supply of which is partly exempt and partly taxable, consequent to change of rates of tax on 1st April, 2019, which shall be calculated as under, -

E2= [Carpet area of such apartments] x $[V_1/ (V_1+V_2)]$,-

Where,-

V_1 is the total value of supply of such apartments which was exempt from tax; and

V_2 is the total value of supply of such apartments which was taxable

E3 = aggregate carpet area of the apartments, construction of which is not exempt from tax, but have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F= aggregate carpet area of the apartments in the project;

Tc^{final} = aggregate of A^{final} in respect of all capital goods used in the project and A^{final} for each capital goods shall be calculated as under,

A^{final}= A x (number of months for which capital goods is used for the project/ 60) and,-

(a) where value of Te^{final} exceeds the aggregate of amounts of Te determined for each tax period under sub-rule (1), such excess shall be reversed by the registered person in **FORM**

GSTR-3B or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in subsection (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where aggregate of amounts of Te determined for each tax period under sub-rule (1) exceeds Te^{final}, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

Explanation.- For the purpose of calculation of Tc^{final}, part of the month shall be treated as one complete month.

(3) The amount Te^{final} and Tc^{final} shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(4) Where any capital goods are used for more than one project, input tax credit with respect to such capital goods shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (2).

(5) Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used;";

(iii) the Explanation shall be numbered as "*Explanation 1*" thereof and after *Explanation* 1 as so numbered the following *Explanation* shall be inserted, namely:-

"*Explanation* 2: For the purposes of rule 42 and this rule,-

(i) 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);

(ii) the term "project" shall mean a real estate project or a residential real estate project;

(iii) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(iv) 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;

(v) the term "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);

(vi) "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;

(vii) "Commercial apartment" shall mean an apartment other than a residential apartment;

(viii) the term "competent authority" as mentioned in definition of "residential apartment", means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(ix) the term "Real Estate Regulatory Authority" shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government;

(x) the term "carpet area" shall have the same meaning assigned to it in in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(xi) "an apartment booked on or before the date of issuance of completion certificate or first occupation of the project" shall mean an apartment which meets all the following three conditions, namely-

(a) part of supply of construction of the apartment service has time of supply on or before the said date; and

(b) consideration equal to at least one installment has been credited to the bank account of the registered person on or before the said date; and

(c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

(xii) The term "ongoing project" shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;

(xiii) The term "project which commences on or after 1st April, 2019" shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the

28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;".

5. In the said rules, after rule 88, the following rule shall be inserted, namely: -

"**Rule 88A. Order of utilization of input tax credit**.- Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order:

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.".

6. With effect from 1st April, 2019, in the said rules, for rule 100, the following rule shall be substituted, namely:–

"**100. Assessment in certain cases**.- (1) The order of assessment made under sub-section (1) of section 62 shall be issued in **FORM GST ASMT-13** and a summary thereof shall be uploaded electronically in **FORM GST DRC-07**.

(2) The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in **FORM GST ASMT-14** containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in **FORM GST DRC-01**, and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in **FORM GST ASMT-15** and summary thereof shall be uploaded electronically in **FORM GST DRC-07**.

(3) The order of assessment under sub-section (1) of section 64 shall be issued in **FORM GST ASMT-16** and a summary of the order shall be uploaded electronically in **FORM GST DRC-07.**

(4) The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the assessment order in **FORM GST ASMT–17.**

(5) The order of withdrawal or, as the case may be, rejection of the application under sub-section (2) of section 64 shall be issued in **FORM GST ASMT-18**.".

7. With effect from 1st April, 2019, in the said rules, for rule 142, the following rule shall be substituted, namely:–

"**142. Notice and order for demand of amounts payable under the Act.-** (1) The proper officer shall serve, along with the

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in **FORM GST DRC-01**,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a

summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC–04**.

(3) Where the person chargeable with tax makes payment of tax and interest under subsection (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of the goods and conveyance, he shall intimate the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in **FORM GST DRC-01** under sub-rule

(1) shall be furnished in **FORM GST DRC-06.**

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in **FORM GST**

DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC-08**.".

7. With effect from 1st April, 2019, in the said rules, for **FORM GST DRC-01**, the following FORM shall be substituted, namely:–

14. With effect from 1st April, 2019, in the said rules, for **FORM GST ASMT-16**, the following FORM shall be substituted, namely:–

...

[Kindly refer Not. No. 16/2019 for forms as in this book Forms are not reproduced]

[F. No. 20/06/17/2018-GST]

(Pramod Kumar)

Deputy Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* notification No. 3/2017-Central Tax, dated the 19th June, 2017, published *vide* number G.S.R 610 (E), dated the 19th June, 2017 and last amended *vide* notification No. 3/2019 - Central Tax, dated the 29th January, 2019, published *vide* number G.S.R 63 (E), dated the 29th January, 2019.

2.2.2 3/2019-CT (R) – New GST rates (from 1st April 2019)

Government of India

Ministry of Finance

(Department of Revenue)

Notification No. 3/2019-Central Tax (Rate)

New Delhi, the 29th March, 2019

G.S.R......(E).- In exercise of the powers conferred by sub-sections (1), (3) and (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 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 makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017- Central Tax (Rate), dated the 28thJune, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 690(E), dated the 28thJune, 2017, namely:-

In the said notification, -

(i) in the opening paragraph,

(a) after the word, brackets and figures “conferred by sub-section (1),”, the word, brackets and figures “sub-section (3) and sub-section (4)” shall respectively be inserted;

(b) the word “and” after the words and figures “sub-section (5) of section 15” shall be substituted by the symbol “,”;

(c) after the word, brackets and figures “section (16)”, the words and figure “and section 148” shall be inserted;

(ii) in the Table, -

(a) against serial number 3, for item (i), and the entries relating thereto in column (3), (4) and (5), the following items and entries shall be substituted, namely, - Table

(3)	**(4)**	**(5)**
“(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	0.75	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 hasnot been taken

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		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;
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)		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 1st April,

(ia) Construction of residential apartments other than affordable residential apartments by a promoter in an 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	3.75	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; Provided also that where a registered person (landowner-promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, - (i) the developer- promoter shall pay tax on supply of

shall apply for valuation of this service)		construction of apartments to the landowner-promoter, and (ii) such landowner – promoter shall be eligible for credit of taxes charged from him by the developer promoter towards the supply of construction of apartments by developer-promoter to him, provided the landowner- promoter further supplies such apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less
(ib) Construction of commercial apartments (shops, offices, godowns etc.) by a promoter in an 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,	3.75	

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)		than the amount of tax charged from him on construction of such apartments by the developer- promoter. Explanation. - (i) "developer- promoter" is a promoter who constructs or converts a building into apartments or develops a plot for sale,
(ic) Construction of affordable residential apartments by a promoter **in a Real Estate Project (herein after referred to as REP) other than RREP,** which commences on or	0.75	

after 1st April, 2019 or in an ongoing REP other than 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)		(ii) "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. Provided also that eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including

(id) Construction of residential apartments other than affordable residential apartments by a promoter **in a REP other than a RREP** which commences on or after 1st April, 2019 or in an ongoing REP other than 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.	3.75	additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only; Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person; Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short

(Provisions of paragraph 2 of this notification shall apply for valuation of this service)		of the said threshold of 80 per cent., tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of eighteen percent on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both; Provided also that notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable

		rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017), shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement; (Please refer to the illustrations in annexure III) Explanation. - 1. The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the

		end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year. 2. Notwithstanding anything contained in Explanation 1 above, tax on cement received from unregistered person shall be paid in the month in which cement is received.

		3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)].
(ie) Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), subitem (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, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as	6	Provided that in case of ongoing project, the registered person shall exercise one time option in the Form at Annexure IV to pay central tax on construction of apartments in a project at the rates as specified for item (ie) or (if), as the case may be, by the 10th of May, 2019; Provided also that where the option is not exercised in Form at annexure IV by the 10th of May, 2019, option to pay tax at the

specified for this item. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)		rates as applicable to item (i) or (ia) or (ib) or (ic) or (id) above, as the case may be, shall be deemed to have been exercised; Provided also that invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised.;

(if) Construction of a complex, building, civil structure or a part thereof, including,- (i) commercial apartments (shops, offices, godowns etc.) by a promoter **in a REP other than RREP**, (ii) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item in the manner prescribed herein, but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) above intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of	9	

completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. Explanation. -For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry. (Provisions of paragraph 2 of this notification shall apply for valuation of this service			

(b) against serial number 3, -

a. item (ii) and the entries relating thereto in columns (3), (4) and (5) shall be omitted;

b. in item (iv) in column (3), -

(1) after the figures "2017", the words, brackets, figures and letters "other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above" shall be inserted;

c. in item (v) in column (3), -

(1) after the figures "2017", the words, brackets, figures and letters "other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above" shall be inserted;

d. after item (v) and entries relating thereto in column (3), (4) and (5), the following items and entries shall be inserted, namely, -

(3)	(4)	(5)

(va) 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, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments covered by sub- clause (a) of clause (xvi) of paragraph 4 below, 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 to pay central tax on construction of	6	Provided that carpet area of the affordable residential apartments as specified in the entry in column (3) relating to this item, is not less than 50 per cent. of the total carpet area of all the apartments in the project; Provided also that for the purpose of determining whether the apartments at the time of supply of the service are affordable residential apartments covered by sub- clause (a) of

apartments at the rates as specified for item (ie) or (if), as the case may be, in the manner prescribed therein,		clause (xvi) of paragraph 4 below or not, value of the apartments shall be the value of similar apartments booked nearest to the date of signing of the contract for supply of the service specified in the entry in column (3) relating to this item; Provided also that in case it finally turns out that the carpet area

		of the affordable residential apartments booked or sold before or after completion, for which gross amount actually charged was forty five lakhs rupees or less and the actual carpet area was within the limits prescribed in sub- clause (a) of clause (xvi) of paragraph 4 below, was less than 50 per cent. of the total carpet area of all the apartments in the project, the recipient of the service, that is, the promoter

		shall be liable to pay such amount of tax on reverse charge basis as is equal to the difference between the tax payable on the service at the applicable rate but for the rate prescribed herein and the tax actually paid at the rate prescribed herein";

e. in item (vi) in column (3), after the figures "2017", the words, brackets, and figures "other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above" shall be inserted';

f. in item (xii) in column (3), for the entry, the following entry shall be substituted, namely: -

"(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above.

Explanation. - For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id), (ie) and (if) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry.";

(c) against serial number 16,in item (ii) in column (3), for the word, brackets and letters "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)", the word, brackets figures and letters " (i) (ia), (ib), (ic), (id), (ie) and (if)" shall be substituted;

(d) after serial number 38 in column (1) and the entries relating thereto in column (2), (3), (4) and (5) the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"39.	Chapter 99	Supply of services other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI) by an unregistered person to a promoter for construction of a project on which tax is payable by the recipient of the services under sub- section 4 of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), as prescribed in notification No. 07 / 2019- Central Tax (Rate), dated 29th March, 2019, published in Gazette of India vide G.S.R. No. _, dated 29th March, 2019. Explanation. -	9	-";

		This entry is to be taken to apply to all services which satisfy the conditions prescribed herein, even though they may be covered by a more specific chapter, section or heading elsewhere in this notification.		

(iii) in paragraph 2,-

(a) for the words, brackets, letters and figures "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)," the word, brackets, letters and figures " (i) (ia), (ib), (ic), (id), (ie) and (if)" shall be substituted;

(b) letters and figures " (i) (ia), (ib), (ic), (id), (ie) and (if)" shall be substituted;

(c) in the *Explanation,* after the words "this paragraph" the words "and paragraph 2A below" shall be inserted;

(iv) after paragraph 2, the following paragraph shall be inserted, namely, -

"2A. Where a registered person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service in respect of such apartments shall be deemed to be equal to the Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right or FSI (including additional FSI), nearest to the date on which such development right or FSI (including additional FSI) is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 above."

(v) in paragraph 4 relating to Explanation, after clause (xii), the following clauses shall be inserted, namely: -

"(xiii) an apartment booked on or before the 31st March, 2019 shall mean an apartment which meets all the following three conditions, namely- (a) part of supply of construction of which has time of supply on or before the 31st March, 2019 and (b) at least one instalment has been credited to the bank account of the registered person on or before the 31st March, 2019 and (c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the 31st March, 2019;

(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 (16 of 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 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, -

(i) 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;

(ii) Gross amount shall be the sum total of; -

A. Consideration charged for the services specified at item (i) and (ic) in column (3) against sl. No. 3 in the Table;

B. 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

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.

(b) an apartment being constructed in an ongoing project 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 Table above, 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) against serial number 3, as the case may be.

(xvii) the term “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);

(xviii) the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 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;

(xx) the term "ongoing project" shall mean a project which meets all the following conditions, namely-

(a) commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019:-

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 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.

(b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub- clause (a) above that construction of the project has started on or before the 31st March, 2019;

(c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;

(d) apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

Explanation.- For the purpose of sub- clause (a) and (b) above , construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.

(xxi) "commencement certificate" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan;

(xxii) "development works" means the external development works and internal development works on immovable property;

(xxiii) "external development works" includes roads and road systems landscaping, water supply, seweage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;

(xxiv) "internal development works" means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per sanctioned plans;

(xxv) the term "competent authority" as mentioned in definition of "commencement certificate" and "residential apartment" , means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(xxvi) The term “carpet area” shall have the same meaning assigned to it in in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(xxvii) the term “Real Estate Regulatory Authority” shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government;

(xxviii) “project which commences on or after 1st April, 2019” shall mean a project other than an ongoing project;

(xxix) “Residential apartment” shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;

(xxx)“Commercial apartment” shall mean an apartment other than a residential apartment; (xxxi) “floor space index (FSI)” shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.".

2. This notification shall come into force with effect from the 1st day of April, 2019.

[F. No.354/32/2019-TRU]

(Pramod Kumar) Deputy Secretary to the Government of India

Note: -The principal notification No. 11/2017 - Central Tax (Rate), dated the 28thJune, 2017 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 690 (E), dated the 28th June, 2017 and was last amended by notification No. 30/2018-Central Tax (Rate), dated the 31st December, 2018 *vide* number G.S.R. 1271 (E), dated the 31st December, 2018.

Annexure I Real estate project (REP) other than Residential Real estate project (RREP)

Input tax credit attributable to construction of residential portion in a real estate project (REP) other than residential real estate project (RREP), which has time of supply on or after 1st April, 2019, shall be calculated project wise for all projects which commence on or after 1st April, 2019 or ongoing projects 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) against serial number 3, as the case may be, in the prescribed manner, before the due date for furnishing of the return for the month of September following the end of financial year 2018-19, in the following manner:

1. Where % completion as on 31st March, 2019 is not zero or where there is inventory in stock

(a) Input tax credit on inputs and input services attributable to construction of residential portion in a REP, which has time of supply on or after 1st April, 2019, may be denoted as Tx. Tx shall be calculated as under:

Tx=T-Te

Where,

(i) T is the total ITC availed (utilized or not) on inputs and input services used in construction of the REP from 1st July, 2017 to 31st March, 2019 including transitional credit taken on 1st July, 2017;

(ii) Te is the eligible ITC attributable to (a) construction of commercial portion and (b) construction of residential portion, in the REP which has time of supply on or before 31st March, 2019;

(b) Te shall be calculated as under:

Te=Tc+Tr

Where, -

Tc is the ITC attributable to construction of commercial portion in the REP, calculated as under:

Tc =T * (carpet area of commercial apartments in the REP/ total carpet area of commercial and residential apartments in the REP)

and

Tr is the ITC attributable to construction of residential portion in the REP which has time of supply on or before 31st March, 2019 and which shall be calculated as under,

$Tr= T* F_1 * F_2 * F_3* F_4$

Where, -

F_1= Carpet area of residential apartments in REP

Total carpet area of commercial and residential apartments in the REP

Total carpet area of residential apartment booked on or before 31st March, 2019

Total carpet area of the residential apartment in REP

F2 = Such Value of supply of construction of residential apartments booked on or before 31st March, 2019 which has time of supply on or before 31st March, 2019

F3 =

Total value of supply of construction of residential apartments booked on or before 31st March, 2019

(F3 is to account for percentage invoicing of booked residential apartments)

F4= 1

% Completion of construction as on 31st March, 2019

Illustration: where one- fifth (twenty percent) of the construction has been completed, F_4 shall be 100 ÷ 20 = 5.

Explanation: "% Completion of construction as on 31st March, 2019" shall be the same as declared to the Real Estate Regulatory Authority in terms of section 4 and section 11 of Real Estate (Regulation and Development) Act, 2016 (16 of 2016) and where the same is not required to be declared to the Real Estate Regulatory Authority, it shall be got determined and certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India).

(c) A registered person shall have the option to calculate 'Te' in the manner prescribed below instead of the manner prescribed in (b) above,-

Te shall be calculated as under:

Te = Tc + T1 + Tr

Where, -

Tc is the ITC attributable to construction of commercial portion in the REP, calculated as under:

Tc =T3 * (carpet area of commercial apartments in the REP/ total carpet area of commercial and residential apartments in the REP);

Wherein

T3 = T- (T1 + T2)

T1 = ITC attributable exclusively to construction of commercial portion in the REP T2 = ITC attributable exclusively to construction of residential portion in the REP and

Tr is the ITC attributable to construction of residential portion in the REP which has time of supply on or before 31.03.2019 and which shall be calculated as under,

$Tr = (T3 + T2) * F_1 * F_2 * F_3 * F_4$ or

$Tr = (T - T1) * F_1 * F_2 * F_3 * F_4$

(d) The amounts 'Tx' and 'Te' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(e) Where, Tx is positive, i.e. Te<T, the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equal to the difference between T and Te. Such amount shall form part of the output tax liability of the registered person and the amount shall be furnished in FORM GST ITC- 03.

Explanation: The registered person may file an application in FORM GST DRC- 20, seeking extension of time for the payment of taxes or any amount due or for allowing payment of such taxes or amount in installments in accordance with the provisions of section 80. The commissioner may issue an order in FORM GST DRC- 21 allowing the taxable person further time to make payment and/or to pay the amount in such monthly installments, not exceeding twenty-four, as he may deem fit.

(f) Where Tx is negative, i.e. Te>T, the registered person shall be eligible to take ITC on goods and services received on or after 1st April, 2019 for construction of residential portion in the REP, for which he shall not otherwise be eligible, to the extent of difference between Te and T.

(g) The registered person may calculate Tc and utilize credit to the extent of Tc for payment of tax on commercial apartments, till the complete accounting of Tx is carried out and submitted.

(h) Where percentage completion is zero but ITC has been availed on goods and services received for the project on or prior to 31st March, 2019, input tax credit attributable to construction of residential portion which has time of supply on or after 1st April, 2019, shall be calculated and the amount equal to Tx shall be paid or taken credit of, as the case may be, as prescribed above, with the modification that percentage completion for calculation of F_4 shall be taken as the percentage completion which, as certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India), can be achieved with the input services received and inputs in stock as on 31st March, 2019.

2. Where % completion as on 31st March, 2019 is zero but invoicing has been done having time of supply before 31st March, 2019, and no input services or inputs have been received as on 31st March, 2019, "Te" shall be calculated as follows: -

(a) Input tax credit on inputs and input services attributable to construction of residential portion in a REP, which has time of supply on or before 31st March, 2019 may be denoted as Te which shall be calculated as under,

Te = Tc + Tr

Where, -

Tc is the ITC attributable to construction of commercial portion in the REP, calculated as under:

Tc =Tn* (carpet area of commercial apartments in the REP/ total carpet area of commercial and residential apartments in the REP) and

Tr is the ITC attributable to construction of residential portion in the REP which has time of supply on or before 31st March, 2019 and which shall be calculated as under,

$Tr = Tn^* F_1 * F_2 * F_3$

Where, -

Tn= Tax paid on such inputs and input services on which ITC is available under the CGST

Act, received in 2019-20 for construction of REP

F1, F2 and F3 shall be the same as in para 1 above

(b) The registered person shall be eligible to take ITC on goods and services received on or after 1st April, 2019 for construction of residential portion in the REP, for which he shall not otherwise be eligible, to the extent of the amount of Te.

(c)The amount 'Te' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

3. Notwithstanding anything contained in paragraph 1 or paragraph 2 above, Te shall be determined in the following situations as under:

(i) 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 percent. points;

(ii) 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 beactual consideration received plus 25 percent. of the actual consideration received; and

(iii) where, the value of procurement of inputs and input services prior to 1st 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.

Illustration 1:

Sl. No	**Details of a REP (Res + Com)**			
	A	**B**	**C**	**D**
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		75	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	C2 * C3	5250	sqm
5	value of each residential apartment		0.60	crore
6	Total value of the residential apartments	C2 * C5	45.00	crore
7	No. of commercial apartments in the project		25	units
8	Carpet area of the commercial apartment		30	sqm
9	Total carpet area of the commercial apartments	C7 * C8	750	sqm
10	Total carpet area of the project (Resi + Com)	C4 + C9	6000	sqm

11	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chertered engineer]		20%	
12	No of residential apartments booked before transition		40	units
13	Total carpet area of the residential apartments booked before transition	C12 * C3	2800	sqm
14	Value of booked residential apartments	C5 * C12	24	crore
15	Percentage invoicing of booked residential apartments on or before 31.03.2019		20%	
16	Total value of supply of residential apartments having t.o.s. prior to transition	C14 * C15	4.8	crore
17	ITC to be reversed on transition, Tx= T- Te			
18	Eligible ITC (Te)= Tc + Tr			
19	T (*see notes below)		1	crore

20	Tc= T x (carpet area of commercial apartments in the REP/ total carpet area of commercial and residential apartments in the REP)	C19 * (C9/ C10)	0.125	crore
21	Tr= T x F1 x F2 x F3 x F4			
22	F1	C4 / C10	0.875	
23	F2	C13 / C4	0.533	
24	F3	C16 / C14	0.200	
25	F4	1/ C11	5	
26	Tr= T x F1 x F2 x F3 x F4	C19 * C22 * C23 * C24 * C25	0.467	crore
27	Eligible ITC (Te)=Tc + Tr	C26 + C20	0.592	crore
28	ITC to be reversed on transition, Tx= T- Te	C19 - C27	0.408	crore

* Note:-

1. The value of T at C19 has been estimated for illustration based on weighted average tax on inputs.
2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods

	from 1.7.2017 or commencemnt of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.

Illustration 2:

Sl. No	**Details of a REP (Res + Com)**			
	A	**B**	**C**	**D**
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		75	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	C2 * C3	5250	sqm
5	value of each residential apartment		0.60	crore
6	Total value of the residential apartments	C2 * C5	45.00	crore
7	No. of commercial apartments in the project		25	units
8	Carpet area of the commercial apartment		30	sqm

9	Total carpet area of the commercial apartments	C7 * C8	750	sqm
10	Total carpet area of the project (Resi + Com)	C4 + C9	6000	sqm
11	Percentage completion (Pc) as on 31.03.2019 [as declared to RERA or determined by chertered engineer]		20%	
12	No of residential apartments booked before transition		40	units
13	Total carpet area of the residential apartments booked before transition	C12 * C3	2800	sqm
14	Value of booked residential apartments	C5 * C12	24	crore
15	Percentage invoicing of booked residential apartments on or before 31.03.2019		60%	
16	Total value of supply of residential apartments having t.o.s. prior to transition	C14 * C15	14.4	crore
17	ITC to be reversed on transition, Tx= T- Te			

18	Eligible ITC (Te)= Tc + Tr			
19	T (*see notes below)		1	crore
20	Tc= T x (carpet area of commercial apartments in the REP/ total carpet area of commercial and residential apartments in the REP)	C19 * (C9/ C10)	0.125	crore
21	Tr= T x F1 x F2 x F3 x F4			
22	F1	C4 / C10	0.875	
23	F2	C13 / C4	0.533	
24	F3	C16 / C14	0.600	
25	F4	1/ C11	5	
26	Tr= T x F1 x F2 x F3 x F4	C19 * C22 * C23 * C24 * C25	1.400	crore
27	Eligible ITC (Te)=Tc + Tr	C26 + C20	1.525	crore
28	ITC to be reversed/ taken on transition, Tx= T- Te	C19 - C27	- 0.525	crore
29	Tx after application of cap on % invoicing vis-a-vis Pc			
30	% completion		20%	

31	% invoicing		60%	
32	% invoicing after application of cap(Pc + 25%)	C11+25%	45%	
33	Total value of supply of residential apartments having t.o.s. prior to transition	C14*C32	10.80	crore
34	F3 after application of cap	C33/C14	0.45	
35	Tr= T x F1 x F2 x F3 x F4 (after application of cap)	C19 * C22 * C23 * C34 * C25	1.05	crore
36	Eligible ITC (Te)=Tc + Tr (after application of cap)	C20 + C35	1.18	crore
37	ITC to be reversed / taken on transition, Tx= T- Te (after application of cap)	C19 - C36	-0.18	crore
38	Tx after application of cap on % invoicing vis-a-vis Pc and payment realisation			
39	% invoicing after application of cap(Pc + 25%)		45%	

40	Total value of supply of residential apartments having t.o.s. prior to transition	C33	10.80	crore
41	Consideration received		8.00	crore
42	Total value of supply of residential apartments having t.o.s. prior to transition after application of cap vis-a-vis consideration received	8 cr + 25% of 8 Cr	10.00	crore
43	F3 after application of both the caps	C42 / C14	0.42	
44	Tr= T x F1 x F2 x F3 x F4 (after application of both the caps)	C19 * C22 * C23 * C43 * C25	0.97	
45	Eligible ITC (Te)=Tc + Tr (after application of both the caps)	C20 + C44	1.10	
46	ITC to be reversed / taken on transition, Tx= T- Te (after application of both the caps)	C19 - C45	-0.10	crore
	* Note:- 1. The value of T at C19 has been estimated for illustration based on weighted average tax on inputs.			

	2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencemnt of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.

[F. No.354/32/2019-TRU]

(Pramod Kumar)

Annexure II Residential Real estate project (RREP)

Input tax credit attributable to construction of residential and commercial portion in a Residential Real estate project (RREP), which has time of supply on or after 1st April, 2019, shall be calculated project wise for all projects which commence on or after 1st April, 2019 or ongoing projects 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) against serial number 3, as the case may be, in the prescribed manner, before the due date for furnishing of the return for the month of September following the end of financial year 2018-19, in the following manner:

1. **Where % completion as on 31st March, 2019 is not zero or where there is inventory in stock**

(a) Input tax credit on inputs and input services attributable to construction of residential and commercial portion in an RREP, which has time of supply on or after 1st April, 2019, may be denoted as Tx. Tx shall be calculated as under:

Tx=T-Te

Where,

(i) T is the total ITC availed (utilized or not) on inputs and input services used in construction of the RREP from 1st July, 2017 to 31st March, 2019 including transitional credit taken on 1st July, 2017;

(ii) Te is the eligible ITC attributable to construction of commercial portion and construction of residential portion, in the RREP which has time of supply on or before 31st March, 2019;

(b) Te shall be calculated as under:

$Te= T* F_1 * F_2 * F_3* F_4$

Where, -

F_1= Carpet area of residential and commercial apartments in the RREP

Total carpet areaofapartments in the RREP

(In case of a Residential Real Estate Project, value of "F1" shall be 1.)

$$F_2 = \frac{\text{Total carpet area of residential and commercial apartment booked on or before 31st March, 2019}}{\text{Total carpet area of the residential and commercial apartment in the RREP}}$$

$$F_3 = \frac{\text{Such value of supply of construction of residential and commercial apartments booked on or before 31st March, 2019 which has time of supply on or before 31st March, 2019}}{\text{Total value of supply of construction of residential and commercial apartments booked on or before 31st March, 2019}}$$

(F3 is to account for percentage invoicing of booked residential apartments)

$$F4 = \frac{1}{\text{\% Completion of construction as on 31st March, 2019}}$$

Illustration: where one- fifth (twenty percent) of the construction has been completed, F_4 shall be 100 ÷ 20 = 5.

Explanation: "% Completion of construction as on 31st March, 2019" shall be the same as declared to the Real Estate Regulatory Authority in terms of section 4 and section 11 of Real Estate (Regulation and Development) Act, 2016 and where the same is not required to be declared to the Real Estate Regulatory Authority, it shall be got determined and certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India).

(c) The amounts 'Tx' and 'Te' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(d) Where, Tx is positive, i.e. Te < T, the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equal to the difference between T and Te. Such amount shall form part of the output tax liability of the registered person and the amount shall be furnished in FORM GST ITC- 03.

Explanation: The registered person may file an application in FORM GST DRC- 20, seeking extension of time for the payment of taxes or any amount due or for allowing payment of such taxes or amount in installments in accordance with the provisions of section 80. The commissioner may issue an order in FORM GST DRC- 21 allowing the taxable person further time to make payment and/or to pay the amount in such monthly installments, not exceeding twenty-four, as he may deem fit.

(e) Where, Tx is negative, i.e. Te>T, the registered person shall be eligible to take ITC on goods and services received on or after 1st April, 2019 for construction of the RREP, for which he shall not otherwise be eligible, to the extent of difference between Te and T.

(f) Where percentage completion is zero but ITC has been availed on goods and services received for the project on or prior to 31st March, 2019, input tax credit attributable to construction of residential and commercial portion which has time of supply on or after 1st April, 2019, shall be calculated and the amount equal to Tx shall be paid or taken credit of, as the case may be, as prescribed above, with the modification that percentage completion for calculation of F_4 shall be taken as the percentage completion which, as certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India), can be achieved with the input services received and inputs in stock as on 31st March, 2019.

2. Where % completion as on 31st March, 2019 is zero but invoicing has been done having time of supply before 31st March, 2019, and no input services or inputs have been received as on 31st March, 2019, "Te" shall be calculated as follows: -

(a)Input tax credit on inputs and input services attributable to construction of residential and commercial portion in an RREP, which has time of supply on or before 31st March, 2019 may be denoted as Te which shall be calculated as under,

$Te = Tn * F_1 * F_2 * F_3$

Where, -

Tn= Tax paid on such inputs and input services on which ITC is available under the CGST

Act, received in 2019-20 for construction of residential and commercial apartments in the RREP.

F1, F2 and F3 shall be the same as in para 1 above

(b) The registered person shall be eligible to take ITC on goods and services received on or after 1st April, 2019 for construction of residential or commercial portion in the RREP, for which he shall not otherwise be eligible, to the extent of the amount of Te.

(c)The amount 'Te' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

3. Notwithstanding anything contained in paragraph 1 or paragraph 2 above, Te shall be determined in the following situations as under:

(i) 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 percent. points;

(ii) 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 per cent. of the actual consideration received; and

(iii) where, the value of procurement of inputs and input services prior to 1st 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 per cent. 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.

Illustration 1:

Sl No	Details of a residential real estate project (RREP)			
	A	**B**	**C**	**D**
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		100	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	C2 * C3	7000	sqm
5	value of each residential apartment		0.60	crore
6	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chertered engineer]		20%	
7	No of apartments booked before transition		80	units
8	Total carpet area of the residential apartment booked before transition	C3 * C7	5600	sqm
9	Value of booked residential apartments	C5 * C7	48	crore

10	Percentage invoicing of booked residential apartments on or before 31.03.2019		20%	
11	Total value of supply of residential apartments having t.o.s. prior to transition	C9 * C10	9.6	crore
12	ITC to be reversed on transition, Tx= T-Te			
13	Eligible ITC (Te)=T x F1 x F2 x F3 x F4)			
14	T (*see notes below)		1	crore
15	F1		1	
16	F2	C8 / C4	0.8	
17	F3	C11 / C9	0.2	
18	F4	1/ C6	5	
19	Eligible ITC (Te)=T x F1 x F2 x F3 x F4)	C14 * C15 * C16 * C17 * C18	0.8	crore
20	ITC to be reversed on transition, Tx= T-Te	C14 - C19	0.2	crore

	*Note:- 1. The value of T at C14 has been estimated for illustration based on weighted average tax on inputs. 2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencemnt of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.

Illustration 2:

Sl No	**Details of a residential real estate project (RREP)**			
	A	**B**	**C**	**D**
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		100	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	C2 * C3	7000	sqm
5	value of each residential apartment		0.60	crore

6	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chertered engineer]		20%	
7	No of apartments booked before transition		80	units
8	Total carpet area of the residential apartment booked before transition	C3 * C7	5600	sqm
9	Value of booked residential apartments	C5 * C7	48	crore
10	Percentage invoicing of booked residential apartments on or before 31.03.2019		60%	
11	Total value of supply of residential apartments having t.o.s. prior to transition	C9 * C10	28.8	crore
12	ITC to be reversed on transition, Tx= T- Te			
13	Eligible ITC (Te)=T x F1 x F2 x F3 x F4)			
14	T (*see notes below)		1	crore
15	F1		1	

16	F2	C8 / C4	0.8	
17	F3	C11 / C9	0.6	
18	F4	1/ C6	5	
19	Eligible ITC (Te)=T x F1 x F2 x F3 x F4)	C14 * C15 * C16 * C17 * C18	2.4	crore
20	ITC to be reversed on transition, Tx= T- Te	C14 - C19	-1.4	crore
21	Tx after application of cap on % invoicing vis-a-vis Pc			
22	% completion		20%	
23	% invoicing		60%	
24	% invoicing after application of cap(Pc + 25%)	C6 + 25 %	45%	
25	Total value of supply of residential apartments having t.o.s. prior to transition	C9 * C24	21.60	crore
26	F3 after application of cap	C25/C9	0.45	

27	Te= T x F1 x F2 x F3 x F4 (after application of cap)	C14 * C15 * C16 * C26 * C18	1.80	crore
28	ITC to be reversed / taken on transition, Tx= T- Te (after application of cap)	C14 - C27	-0.80	crore
29	Tx after application of cap on % invoicing vis-a-vis Pc and payment realisation			
30	% invoicing after application of cap(Pc + 25%)		45%	
31	Total value of supply of residential apartments having t.o.s. prior to transition	C25	21.60	crore
32	consideration received		16.00	crore
33	Total value of supply of residential apartments having t.o.s. prior to transition after application of cap vis-a-vis consideration received	16 cr + 25% of 16 Cr	20.00	crore
34	F3 after application of both the caps	C33/C9	0.42	

35	Te= T x F1 x F2 x F3 x F4 (after application of both the caps)	C14 * C15 * C34 * C26 * C18	1.67	
36	ITC to be reversed / taken on transition, Tx= T- Te (after application of both the caps)	C14 - C35	-0.67	crore

*Note:-

1. The value of T at C14 has been estimated for illustration based on weighted average tax on inputs.
2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencemnt of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.

[F. No.354/32/2019-TRU]

(Pramod Kumar)

Annexure III

Illustration 1:

A promoter has procured following goods and services [other than capital goods and services by way of grant of development rights, long term lease of land or FSI] for construction of a residential real estate project during a financial year.

Sl. No.	Name of input goods and services	Percentage of input goods and services received during the financial year	Whether inputs received from registered supplier? (Y/ N)
1	Sand	10	Y
2	**Cement**	**15**	**N**
3	Steel	20	Y
4	Bricks	15	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/ designing/ CAD drawing etc.	10	Y
8	Aluminium windows, Ply, commercial wood	15	Y

In this example, the promoter has procured 80 per cent. of goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], from a GST registered person. However, he has procured cement from an unregistered supplier. Hence at the end of financial year, the promoter has to pay GST on cement at the applicable rates on reverse charge basis.

Illustration 2:

A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

Sl. No.	**Name of input goods and services**	**Percentage of input goods and**	**Whether inputs received from**

		services received during the financial year	**registered supplier? (Y/ N)**
1	Sand	10	Y
2	Cement	15	Y
3	Steel	20	Y
4	Bricks	15	Y
5	Flooring tiles	10	Y
6	**Paints**	**5**	**N**
7	Architect/ designing/ CAD drawing etc.	10	Y
8	**Aluminium windows, Ply, commercial wood**	**15**	**N**

In this example, the promoter has procured 80 per cent. of goods and services including cement from a GST registered person. However, he has procured paints, aluminum windows, ply and commercial wood etc. from an unregistered supplier. Hence at the end of financial year, the promoterisnotrequired to pay GST on inputs on reverse charge basis.

Illustration 3:

A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

Sl. No.	**Name of input goods and services**	**Percentage of input goods and services received during the financial year**	**Whether inputs procured from registered supplier? (Y/ N)**
1	**Sand**	**10**	**N**
2	**Cement**	**15**	**N**
3	Steel	15	Y
4	Bricks	10	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/ designing/ CAD drawing etc.	10	Y

8	**Aluminium windows**	**15**	**N**
9	**Ply, commercial wood**	**10**	**N**

In this example, the promoter has procured 50 per cent. of goods and services from a GST registered person. However, he has procured sand, cement and aluminum windows, ply and commercial wood etc. from an unregistered supplier. Thus, value of goods and services procured from registered suppliers during a financial year falls short of threshold limit of 80 per cent. To fulfill his tax liability on the shortfall of 30 per cent. from mandatory purchase, the promoter has to pay GST on cement at the applicable rate on reverse charge basis. After payment of GST on cement, on the remaining shortfall of 15 per cent., the promoter shall pay tax @ 18 per cent. under RCM.

[F. No.354/32/2019-TRU]

(Pramod Kumar)

Annexure IV

FORM

(Form for exercising one time option to pay tax on construction of apartments in a project by the promoters at the rate as specified for item (ie) or (if), against serial number 3 in the Table in this notification, as the case may be, by the 10th of May, 2019)

Reference No. ____________________

Date _____________

To ______________________

____

____

(To be addressed to the jurisdictional Commissioner)

1. GSTIN:
2. RERA registration Number of the Project:
3. Name of the project, if any:
4. The location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the longitude and latitude of the end points of the project:
5. The number, type and the carpet area of apartments for booking or sale in the project:

6. Date of receipt of commencement certificate:

Declaration

1. I hereby exercise the option to pay tax on construction of apartments in the above mentioned project as under :

I shall pay tax on construction of the apartments: (put (√) in appropriate box)	**At the rate as specified for item (ie) or (if), against serial number 3 in the Table in this notification, as the case may be**	**At the rate as specified for item (i) or (ia) or (ib) or (ic) or (id), against serial number 3 in the Table in this notification, as the case may be**

2. I understand that this is a onetime option, which once exercised, shall not be allowed to be changed.

3. I also understand that invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option being exercised herein.

Signature ______________________

Name ___________________________ Designation ____________________

Place _____________________

Date _____________________

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

2.2.3 4/2019-CT (R) – Exemption for TDR, FSI, premiums

Notification No. 04/2019- Central Tax (Rate)

New Delhi, the 29th March, 2019

G.S.R......(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.12/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 691(E), dated the 28th June, 2017, namely:-

In the said notification, -

(i) in the opening paragraph, for the word, brackets and figures "sub-section (1) of section 11" the word, brackets and figures ", sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11,sub-section (5) of section 15 and section 148," shall be substituted;

(ii) in the Table, -

(a) after serial number 41 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"41A	Heading 9972	Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) 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	Nil	Provided that 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, as is attributable to the residential apartments, which remain unbooked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner - [GST payable on TDR or FSI (including additional FSI) or both for construction of the

		issuance of completion certificate, where required, by 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

		competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on TDR or FSI (including additional FSI) or both for construction of the project] **x** (carpet area of the		÷ Total carpet area of the residential apartments in the project) Provided further that tax payable in terms of the first proviso hereinabove shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 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

		residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)		occupation of the project, as the case may be, whichever is earlier.

41B	Heading 9972	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 01.04.2019, 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	Nil	Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, 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, as the case may be, in the following manner - [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein] **x** (carpet area of

		has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation,		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

		whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] x		the residential apartments in the project); Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 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 proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion

		(carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).		certificate or first occupation of the project, as the case may be.

(iii) after paragraph 1, the following paragraphs shall be inserted, namely, -

"1A. Value of supply of service by way of transfer of development rights or FSI by a person to the promoter against consideration in the form of residential or commercial apartments 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 to the promoter.

1B. Value of portion of residential or commercial apartments remaining un-booked on the date of issuance of completion certificate or first occupation, as the case may be, 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.”

(iv) in paragraph 3 relating to Explanation, after clause (iv), the following clause shall be inserted, namely: -

“(v) The term “apartment” shall have the same meaning as assigned to it in clause (e) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(vi) The term “affordable residential apartment” shall have the same meaning as assigned to it in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.

(vii) The term "promoter" shall have the same meaning as assigned to it in clause (zk) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(viii) The term "project" shall mean a Real Estate Project or a Residential Real Estate Project.

(ix) 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).

(x) 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;

(xi) 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).

(xii) "an apartment booked on or before the date of issuance of completion certificate or first occupation of the project" shall mean an apartment which meets all the following three conditions, namely-

(a) part of supply of construction of the apartment service has time of supply on or before the said date; and

(b) consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date; and

(c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

(xiii) "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.".

2. This notification shall come into force with effect from the 1st day of April, 2019.

[F. No.354/32/2019 -TRU]

(Pramod Kumar)

Deputy Secretary to the Government of India

Note: -The principal notification No. 12/2017 - Central Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 691 (E), dated the 28th June, 2017 and was last amended by notification No. 28/2018 - Central Tax (Rate), dated the 31st December, 2018 *vide* number G.S.R. 1272 (E), dated the 31st December, 2018.

2.2.4 5/2019-CT (R) – RCM on TDR, FSI, premiums

Notification No. 05/2019- Central Tax (Rate)

New Delhi, the 29th March, 2019

GSR......(E).**-** In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.13/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 692(E), dated the 28th June, 2017, namely:-

In the said notification, -

(i) in the Table, after serial number 5A and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)
"5B	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.	Any person	Promoter.
5C	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.	Any person	Promoter.”;

(ii) in the Explanation, after clause (h), the following clauses shall be inserted, namely: -

“(i) The term “apartment” shall have the same meaning as assigned to it in clause (e) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(i) the term "promoter" shall have the same meaning as assigned to it in clause (zk) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017). (k) the term "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(l) "the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).

(m) 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.

(n) "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.".

2. This notification shall come into force with effect from the 1st of April, 2019.

[F. No. 354/32/2019- TRU]

(Pramod Kumar)

Deputy Secretary to the Government of India

Note: -The principal notification No. 13/2017 - Central Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 692 (E), dated the 28th June, 2017 and was last amended by notification No.29/ 2018- Central Tax (Rate), dated the 31st December, 2018 *vide* number G.S.R. 1273 (E), dated the 31st December, 2018.

2.2.5 6/2018-CT (R) – ToS for TDR, FSI and JDA

Notification No. 06/2019-Central Tax (Rate)

New Delhi, the 29th March, 2019

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:-

(i) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

(ii) a promoter, who receives long term lease of land on or after 1st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name),

as the registered persons in whose case the liability to pay central tax on, -

(a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);

(b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;

(c) the upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relatable to construction of residential apartments in the project; and

(d) the supply of construction service by him against consideration in the form of development rights or FSI(including additional FSI), -

shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

2. *Explanation*:- For the purpose of this notification,-

(i) 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);

(ii) the term “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);

(iii) the term “project” shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(iv) the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);.

(v) 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.

(vi) the term “floor space index (FSI)” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.

(vii) Tax on services covered by sub-para (i) and (ii) of paragraph 1 above is required to be paid under reverse charge basis in accordance with notification No. 13/2017- Central Tax (Rate), dated 28.06.2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), *vide* GSR No. 692 (E), dated 28.06.2017, as amended.

3. This notification shall come into force with effect from the 1st day of April, 2019.

[F. No.354/32/2019-TRU]

(Pramod Kumar) Deputy Secretary to the Government of India

2.2.6 7/2018-CT (R) – URD RCM

Notification No. 07/2019- Central Tax (Rate)

New Delhi, the 29th March, 2019

G.S.R......(E).**-** In exercise of the powers conferred by sub-section (4) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies that the registered person specified in column

(3) of the table below, shall in respect of supply of goods or services or both specified in column (2) of the Table below, received from an unregistered supplier shall pay tax on reverse charge basis as recipient of such goods or services or both, namely:-

Table

Sl. No.	Category of supply of goods and services	Recipient of goods and services
(1)	(2)	(3)

1	Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017-Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter.
2	Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in	Promoter.

	notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial	

Explanation. - For the purpose of this notification, -

(i) the term "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);

(ii) "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(iii) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(iv) "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.

(v) the term "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

2. This notification shall come into force with effect from the 1st of April, 2019.

[F. No. 354/32/2019- TRU]

(Pramod Kumar)

Deputy Secretary to the Government of India

2.2.7 8/2018-CT (R) – GST rate for goods

Notification No. 08/2019- Central Tax (Rate)

New Delhi, the 29th March, 2019

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9 and sub- section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 673(E), dated the 28th June, 2017, namely:-

In the said notification, in Schedule III - 9%, after serial number 452P in column (1) and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)
"452Q	Any chapter	Supply of any goods other than capital goods and cement falling under chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975), by an unregistered person to a promoter for construction of the project on which tax is payable by the promoter as recipient of goods under sub- section 4 of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), as prescribed in notification No. 07 / 2019- Central Tax (Rate), dated 29th March, 2019, published in Gazette of India vide G.S.R. No. _, dated 29th March, 2019 *Explanation.* For the purpose of this entry,– (i) the term "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).

		(ii) "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP). (iii) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016). (iv) "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. (v) This entry is to be taken to apply to all goods which satisfy the conditions prescribed herein, even though they may be covered by a more specific chapter/ heading/ sub heading or tariff item elsewhere in this notification.

2. This notification shall come into force with effect from the 1st of April, 2019.

[F. No. 354/32/2019- TRU]

(Pramod Kumar) Deputy Secretary to the Government of India

Note: - The principal notification No.1/2017-Central Tax (Rate), dated the 28thJune, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673(E), dated the 28thJune, 2017 and last amended by notification No. 24/ 2018- Central Tax (Rate), dated the 31st December, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1261 (E), dated the 31st December, 2018.

2.2.8 11/2017-CT (R) – GST Rate (upto 31st Mar. 19)

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

New Delhi, the 28th 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

Sl 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 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.][29]

[29] Substituted vide notification No. 1/2018- Central Tax- (Rate) dt 25.01.2018

2.3 Press Releases (PR)

2.3.1 34th GSTC PR

Decisions taken by the GST Council in the 34th meeting held on 19th March, 2019 regarding GST rate on real estate sector

GST Council in the 34th meeting held on 19th March, 2019 at New Delhi discussed the operational details for implementation of the recommendations made by the council in its 33rd 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 1/3rd land abatement).

(ii) New rate of 5% without input tax creditshall 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 underthe 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.

2.3.2 33rd GSTC PR

Press note on recommendations of the 33rd GST Council meeting held on 24th 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 33rd 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 1st 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.

2.3.3 25th GSTC PR

Recommendations made by the GST Council in its 25th Meeting held on 18th January, 2018 at Delhi for the housing sector

In the meeting held on 18th 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 AwasYojana (Urban). Credit Linked Subsidy Scheme is one of the components of Housing for All (Urban) Mission/Pradhan MantriAwasYojana (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 30th 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.

2.3.4 PR dated 8th 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.

Period	Output Tax Rate	Input Tax Credit details		Effective Rate of Tax
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	Effective pre-GST tax incidence: 15- 18%

			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%.	
GST	Affordable housing segment: 8%, Other segment: 12% after 1/3rd	Major construction materials, capital goods and input services used for construction of flats, houses, etc. attract GST	ITC available and weighted average of ITC incidence is approximately 8 to10%.	Effective GST incidence, for affordable segment and for other segment has not

	abatement of value of land	of 18% or more.		increased as compared to pre-GST regime.

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.

2.3.5 PR dated 15th 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 15th 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 1st July 2017 or to face higher tax incidence for payment made after 1st 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.**

2.4 Specific FAQs for RE

2.4.1 FAQ on Time of Supply

6. Builder is demanding balance money due to tax rate changed under GST. Do we have to pay service tax on entire amount of registration under GST, also if abatement provided before GST is available or not?

GST is operational from 01.07.2017. Only on the balance amount GST will be applicable on future payments. For tax paid under the earlier law, section 142(11) of the CGST Act, 2017 may be referred to.

Source - https://cbec-gst.gov.in/sectoral-faq.html

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Yesterday I was clever, so I wanted to change the world.

Today I am wise, so I am changing myself.

Rumi