NOTE ON

GST FOR BUILDERS AND DEVELOPERS

w.e.f. 1st April 2019

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Introduction

The GST structure on real estate services relating to residential and commercial apartments has been thoroughly altered w.e.f. 1-4-2019.

The highlights of revised scheme are as follows -

1	The revised scheme applies to residential and commercial apartments which are covered under RERA [Real Estate (Regulation and Development) Act, 2016].
2	The provisions do not apply to construction of single houses or works contracts not covered under RERA.
3	The new scheme is compulsory for projects commenced on or after 1-4-2019.
4	Under new scheme, the GST rates are as follows – (a) CGST 0.5% plus SGST/UTGST 0.5% (total 1%) or IGST 1% (without ITC) for affordable residential apartments (b) CGST 2.5% plus SGST/UTGST 2.5% (total 5%) or IGST 5% (without ITC) for other residential apartments and commercial apartments.
5	Affordable Residential Apartment means apartment 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 Rs. 45 lakhs.
6	These rates apply where supply of services involves transfer of land or undivided share of land and its charges are included in the amount charged to customer.
7	In respect of new projects, the tax (CGST, SGST/UTGST or IGST as applicable) shall be paid in cash by debiting the electronic cash ledger only [without utilizing Input Tax Credit].
8	In case of ongoing projects as on 1-4-2019, the promoter has option to opt for earlier provisions of tax i.e. with utilization of ITC. If promoter intends to continue under old scheme, he has to submit

	declaration in specified form to jurisdictional Commissioner before 10-5-2019.
9	If the promoter does not submit such declaration, he is deemed to have opted for the new scheme.
10	If landowner- promoter 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, the developer- promoter shall pay tax on supply of construction of apartments to the landowner-promoter. The landowner - promoter can take credit of taxes charged from him by the developer promoter, if the landowner-promoter further supplies such apartments to his buyers.
11	No GST is payable 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.
12	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.
13	If not so received, the promoter is required to pay GST under reverse charge to the extent of difference. The tax rate is 28% in case of purchase of cement and 18% for other goods and services.
14	GST is not payable on TDR, FSI or upfront amount for long term lease of land if apartment is sold before completion. However, if some apartments remain unsold on date of completion, proportionate GST is payable on TDR, FSI or long-term lease of land by promoter under reverse charge.

Statutory provisions in respect of construction of complex

Following is 'supply of service' as per para 5(b) of Schedule II of CGST Act.

'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.'

Explanation - For the purposes of this clause-

(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely –

> (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
>
> (ii) a chartered engineer registered with the Institution of Engineers (India); or
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> (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.

(2) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure.

Residential Complex –

"Residential complex" means any complex comprising of a building or buildings, having more than one single residential unit - para 2 of Notification No. 12/2017-C.T. (Rate) and No. 9/2017-I.T. (Rate) both dated 28-6-2017, effective from 1-7-2017.

Single Residential Unit –

"Single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family - para 2 of Notification No. 12/2017-C.T. (Rate) and No. 9/2017-I.T. (Rate) both dated 28-6-2017, effective from 1-7-2017.

Definitions of terms used

Various terms are used in the new scheme of GST on real estate. These are explained below.

AFFORDABLE RESIDENTIAL APARTMENT

As per para 4 clause (xvi) to Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019, the term "affordable residential apartment" shall mean, -

(a) a residential apartment in a project which commences on or after 1-4-2019, 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 [cannot understand what is meant as there are no such items against Sr. No. 3]

(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-I.T. em (b), sub-I.T. em (c), sub-I.T. em (d), sub-I.T. em (da) and sub-I.T. em (db) of item (iv); sub-I.T. em (b), sub-I.T. em (c), sub-I.T. em (d) and sub-I.T. em (da) of item (v); and sub-I.T. em (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.

APARTMENT BOOKED ON OR BEFORE 31-3-2019

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

- clause (xii) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

APARTMENT

"Apartment" shall have the same meaning as assigned to it in section 2(e) of the Real Estate (Regulation and Development) Act, 2016 [RERA]

- clause (xiv) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

As per section 2(e) of the Real Estate (Regulation and Development) Act, 2016 [RERA], "Apartment" whether called block, chamber, dwelling unit, flat, office, show room, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.

PROJECT

The term "project" shall mean a Real Estate Project or a Residential Real Estate Project [RERA]

- clause (xv) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

PROMOTER

"Promoter" shall have the same meaning as assigned to it in section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 [RERA]

- clause (xvii) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

RERA defines 'promoter' as follows -

"Promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government,

or the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder - section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 [RERA].

REAL ESTATE PROJECT

The term "Real Estate Project (REP)" shall have the same meaning as assigned to it in section 2(zn) of the Real Estate (Regulation and Development) Act, 2016 [RERA]

- clause (xviii) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

As per section 2(zn) of the Real Estate (Regulation and Development) Act, 2016 [RERA], "Real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

RESIDENTIAL REAL ESTATE PROJECT (RREP)

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% of the total carpet area of all the apartments in the REP

- clause (xix) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

ONGOING PROJECT

As per clause (xx) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019, 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. –

- 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.

(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. 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.

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

COMMENCE CERTIFICATE

"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 - clause (xxi) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

The definition is same as contained in section 2(m) of the Real Estate (Regulation and Development) Act, 2016 [RERA].

DEVELOPMENT WORKS

"Development works" means the external development works and internal development works on immovable property - clause (xxii) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

The definition is same as contained in section 2(t) of the Real Estate (Regulation and Development) Act, 2016 [RERA].

EXTERNAL DEVELOPMENT WORKS

"External development works" includes roads and road systems landscaping, water supply, sewerage 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 - clause (xxiii) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

The definition is same as contained in section 2(w) of the Real Estate (Regulation and Development) Act, 2016 [RERA].

INTERNAL DEVELOPMENT WORKS

"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 - clause (xxiv) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

The definition is same as contained in section 2(zb) of the Real Estate (Regulation and Development) Act, 2016 [RERA].

COMPETENT AUTHORITY

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 - clause (xxv) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

CARPET AREA

The term "carpet area" shall have the same meaning assigned to it in section 2(k) of the Real Estate (Regulation and Development) Act, 2016 [RERA] - clause (xxvi) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

As per section 2(k) of the Real Estate (Regulation and Development) Act, 2016 [RERA], "Carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation.—For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee.

REAL ESTATE REGULATORY AUTHORITY

The term "Real Estate Regulatory Authority" shall mean the Authority established under section 20(1) of the Real Estate (Regulation and Development) Act, 2016 [RERA] by the Central Government or State Government - clause (xxvii) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

PROJECT WHICH COMMENCES AFTER 1-4-2019

"Project which commences on or after 1st April, 2019" shall mean a project other than an ongoing project - clause (xxviii) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

RESIDENTIAL APARTMENT

"Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority - clause (xxix) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

COMMERCIAL APARTMENT

"Commercial apartment" shall mean an apartment other than a residential apartment - clause (xxx) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

FLOOR SPACE INDEX

"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 - clause (xxxi) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

GST Rate w.e.f. 1-4-2019 on various types of real estate projects

GST Rates have been specified on various types of real estate projects.

A. Construction of affordable residential apartments

In respect of construction of affordable residential apartments,

the GST rate is CGST 0.5% plus SGST/UTGST 0.5% (total 1%) or IGST 1% (without ITC), where supply of services involves transfer of land or undivided share of land

- Sr. No. 3(i) and 3(ic) of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as amended w.e.f. 1-4-2019.

The GST rate will be CGST 0.75% plus SGST/UTGST 0.75% (total 1.50%) or IGST 1.50% where supply of services does not involve transfer of land or undivided share of land.

This rate applies to Construction of affordable residential apartments by a promoter in

(a) a Residential Real Estate Project (termed as RREP) Sr. No. 3(i) and

(b) Real Estate Project (termed as REP) other than RREP Sr. No. 3(ic).

This rate applies to RREP or REP commenced on or after 1-4-2019. This rate also applies to an ongoing RREP or REP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at full rate (after availing ITC) as specified in item 3(ie) or 3(if) of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as amended w.e.f. 1-4-2019.

No GST is payable 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.

In respect of new projects, the tax (CGST, SGST/UTGST or IGST as applicable) shall be paid in cash by debiting the electronic cash ledger only [without utilizing Input Tax Credit].

In respect of ongoing projects as on 31-3-2019, Input Tax Credit can be availed 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 to Notification No. 03/2019-C.T. (Rate) dated 29-3-2019.

B. Construction of residential apartments (other than affordable residential apartments)

In respect of construction of residential apartments (other than affordable residential apartments), the GST rate is CGST 2.5% plus SGST/UTGST 2.5% (total 5%) or IGST 5% (without ITC), where supply of services involves transfer of land or undivided share of land

- Sr. No. 3(ia) and 3(id) of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as amended w.e.f. 1-4-2019.

The GST rate will be CGST 3.75% plus SGST/UTGST 3.75% (total 7.50%) or IGST 7.50% where supply of services does not involve transfer of land or undivided share of land.

This rate applies to Construction of residential apartments (other than affordable residential apartments) by a promoter in

(a) a Residential Real Estate Project (termed as RREP) or

(b) Real Estate Project (other than RREP).

This rate applies to projects which commence on or after 1-4-2019. This rate also applies to an ongoing RREP and REP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at full rate (after availing ITC) as specified in item 3(ie) or 3(if) of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as amended w.e.f. 1-4-2019.

No GST is payable 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.

In respect of new projects, the tax (CGST, SGST/UTGST or IGST as applicable) shall be paid in cash by debiting the electronic cash ledger only [without utilising Input Tax Credit].

In respect of ongoing projects as on 1-4-2019, Input Tax Credit can be availed 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 to Notification No. 03/2019-C.T. (Rate) dated 29-3-2019.

C. Construction of commercial apartments (shops, offices, godowns etc.)

In respect of construction of commercial apartments (shops, offices, godowns etc.), the GST rate is CGST 2.5% plus SGST/UTGST 2.5% (total 5%) or IGST 5% (without ITC), where supply of services involves transfer of land or undivided share of land

- Sr. No. 3(ib) of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as amended w.e.f. 1-4-2019.

The GST rate will be CGST 3.75% plus SGST/UTGST 3.75% (total 7.50%) or IGST 7.50% where supply of services does not involve transfer of land or undivided share of land.

This rate applies to Construction of commercial apartments which commences on or after 1-4-2019. This rate also applies to an ongoing commercial project (the notification erroneously indicates it as RREP) in respect of which the promoter has not exercised option to pay central tax on construction of commercial apartments at full rate (after availing ITC) as specified in item 3(ie) or 3(if) of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as amended w.e.f. 1-4-2019.

No GST is payable 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.

In respect of new projects, the tax (CGST, SGST/UTGST or IGST as applicable) shall be paid in cash by debiting the electronic cash ledger only [without utilising Input Tax Credit].

In respect of ongoing projects as on 1-4-2019, Input Tax Credit can be availed 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 to Notification No. 03/2019-C.T. (Rate) dated 29-3-2019.

VALUE FOR GST WHEN TOTAL AMOUNT CHARGED INCLUDES VALUE OF LAND

When the total amount charges for sale of residential or commercial apartment includes value of land, the tax is payable on total amount charged less value of land. The value of land will be taken as one third of total amount charged.

The statutory wording is as follows -

In case of supply of service specified in column (3), it item (i); (ia), (ib), (ic), (id), (ie) and (if) against Serial No. 3, 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

- para 2 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as amended w.e.f. 1-4-2019.

For the purpose of paragraph 2 and 2A, 'total amount' means the sum total of (a) Consideration charged for such service and (b) amount charged for transfer of land or undivided share of land, as the case may be, including by way of lease/sub-lease - explanation to para 2 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as amended w.e.f. 1-4-2019.

NO SEPARATE TAX FOR SUPPLY OF LEASEHOLD LAND OR UNDIVIDED SHARE OF LAND AS PART OF COMPOSITE SUPPLY OF APARTMENTS

When a promoter sales apartment to buyer, he also transfers to him undivided share of land by way of lease or sub-lease.

In such cases, the value of service for GST is Nil, if the amount charged for such lease or sub-lease is one-third of total amount charged for composite supply - Sr. No. 16(ii) of Notification No. 11/2017-C.T. (Rates) and 8/2017-I.T. (Rates) dated 28-6-2017.

Even otherwise, since supply of apartment is a composite contract, there should not be any separate tax on lease of land.

Reverse charge if receipts of input and services from registered suppliers is less than 80% of total value of procurement

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.**

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

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 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 18% on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 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.

Liability of promoter to pay tax under reverse charge on goods and services or both (other than TDR, FSI or upfront amount for long term lease of land) has been provided in Sr. No. 1 and 2 of Notification No. 7/2019-C.T. (Rate) and 7/2019-I.T. (Rate) both dated 29-3-2019 effective from 1-4-2019.

Promoter is also liable to pay GST under reverse charge on capital good supplied to promoter for construction of a project Sr. No. 3 of Notification No.

7/2019-C.T. (Rate) and 7/2019-I.T. (Rate) both dated 29-3-2019 effective from 1-4-2019.

The GST rate is 9% CGST and 9% SGST/UTGST [total 18%] or IGST 18% even if the actual rate of GST in case of some of inputs or input services may be lower than 18%

- Sr. No. 39 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) and Sr. No. 452Q of Schedule III of Notification No. 08/2019-C.T. (Rate) and Notification No. 08/2019-I.T. (Rate) all dated 28-6-2017 as inserted w.e.f. 1-4-2019.

However, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rate (which is presently 28%). This tax will be paid in the same month of purchases.

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.

Tax on cement received from unregistered person shall be paid in the month in which cement is received.

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)]

The illustrations are given in Annexure III to Notification No. 3/2019-C.T. (Rate) dated 29-3-2019.

Provisions in respect of ongoing projects where promoter opts to avail Input Tax Credit

In respect of ongoing projects as on 1-4-2019, the promoter has option to pay GST at normal rates (as applicable prior to 1-4-2019). In that case he can avail Input Tax Credit.

In that case, the GST rates are as follows –

The GST rate is CGST 6% plus SGST/UTGST 6% (total 12%) or IGST 12% (with ITC), where supply of services involves transfer of land or undivided share of land

- Sr. No. 3(if) of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as amended w.e.f. 1-4-2019.

There are no restrictions on availment of ITC.

The GST rate will be CGST 9% plus SGST/UTGST 9% (total 18%) or IGST 18% where supply of services does not involve transfer of land or undivided share of land.

There are no restrictions on availment of ITC.

No GST is payable 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.

This rate applies to following ongoing projects -

(a) construction of complex, building, civil structure or part thereof in

(i) Commercial apartments (shops, offices, godowns etc.) in a REP other than RREP.

(ii) (ii) Residential apartments in other than affordable residential apartments.

(b) Supply of services where concessional rate is applicable as detailed below.

Concessional rate on ongoing projects in respect of certain apartments –

The concessional GST rate is CGST 4% plus SGST/UTGST 4% (total 8%) or IGST 8% (with ITC), where supply of services involves transfer of land or undivided share of land

- Sr. No. 3(ie) of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as amended w.e.f. 1-4-2019.

There are no restrictions on availment of ITC.

The GST rate will be CGST 6% plus SGST/UTGST 6% (total 12%) or IGST 12% where supply of services does not involve transfer of land or undivided share of land.

There are no restrictions on availment of ITC.

No GST is payable 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.

This concessional rate applies to following -

1. Services specified in Sr. No. 3(iv)(b) - a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas Yojana
2. Services specified in Sr. No. 3(iv)(c) - a civil structure or any other original works pertaining to the in-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban)
3. Services specified in Sr. No. 3(iv)(d) - a civil structure or any other original works pertaining to the "Beneficiary led individual house construction/enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana

4. Services specified in Sr. No. 3(iv)(da) - a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban)
5. Services specified in Sr. No. 3(iv)(db) - a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/Lower Income Group (LIG)/Middle Income Group-1 (MIG-1)/Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban)
6. Services specified in Sr. No. 3(v)(b) - a single residential unit otherwise than as a part of a residential complex. "Single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.
7. Services specified in Sr. No. 3(v)(c) - low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India.
8. Services specified in Sr. No. 3(v)(d) - low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under- (1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (2) any housing scheme of a State Government.
9. Services specified in Sr. No. 3(v)(da) - low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017.
10. Services specified in Sr. No. 3(vi)(c) - Service provided to the Central Government, State Government, Union Territory, a local authority, a governmental authority or a Government Entity for a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.

Option if taxable person intends to avail ITC in respect of ongoing project

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. 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, if taxable person intends to avail ITC in respect of ongoing projects, he must specifically intimate the same before 10-5-2019.

If he does not do so, it is deemed that he has availed option not to avail ITC w.e.f. 1-4-2019 in respect of ongoing project.

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.

GST on TDR/FSI/Upfront Amount in real estate transactions

GST is payable on transfer of development rights, FSI and upfront amount payable. The tax is payable by promoter under reverse charge.

However, exemption is available in respect of transfer of development rights, FSI or upfront amount to the extent of construction of residential apartments by promoter, when sale is made during construction.

This exemption is not available –

(a) where entire construction of residential apartment is received after completion certificate or first occupation i.e. when ready apartments are sold without GST

(b) transfer of commercial apartments.

The detailed statutory provisions are as follows:

Provisions in respect of exemption and tax on TDR/FSI/Upfront amount in real estate transactions have been made in Sr. Nos. 41A and 41B of Notification No. 12/2017-C.T. (Rate) and 9/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

The provisions are in respect of following –

(a) Service by way of transfer of development rights (TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April 2019

(b) 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 1-4-2019.

The service is 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 or on upfront amount payable in respect of service by way of granting of long term lease of thirty years, or more 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).

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, or 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 TDR or FSI (including additional FSI) or both or 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).

The tax payable in terms of above shall not exceed 1% of the value in case of affordable residential apartments and 5% 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, or upfront amount paid for long term lease of land, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier.

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

- para 1A of Notification No. 12/2017-C.T. (Rate) and 9/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

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

- para 1B of Notification No. 12/2017-C.T. (Rate) and 9/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

Liability of promoter to pay tax under reverse charge has also been provided in Notification No. 06/2019-C.T. (Rate) and 06/2019-I.T. (Rate) both dated 29-3-2019 effective from 1-4-2019.

Where landowner-promoter transfers TDR or FSI to promoter developer

Where a registered person (landowner- promoter) 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. If 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.

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

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

Valuation of apartments given free to land owner, transferor of TDR or owners of old flats at same place

In many projects of construction of residential or commercial complexes, the owner of land gives development rights to the promoter. Similarly, in some cases, owner of TDR (Transferable Development Rights) transfers TDR rights to promoter. In some cases, joint development agreement is entered into between promoter and land owner/transferor of TDR.

In all such cases, if payment is made by cheque/DD/cash by promoter to the land owner or transferor of TDR, question of valuation does not arise and GST @ 18% (9% CGST plus 9% SGST/UTGST) is payable on such amount by the recipient, less the value of land which is taken as one-third of total amount charged.

However, often, instead of making cash payment to the owner of land or transferor of TDR, the promoter offers to give some flats/shops to the owner of land or transferor of TDR (so called) free of cost. Of course, the supply of apartments is not 'free', it is only consideration given by builder/developer to land owner or transferor of TDR in form other than cash.

In case of old residential/commercial complexes, normal practice adopted by promoter is to re-locate the tenants or owners of such old complexes to another place for some time, demolish the earlier building and construct new residential/commercial complex. In that case, the earlier tenant or owner is often given equivalent built up area in new residential/commercial complex without any charge. Here also, there is no free supply but only consideration given by builder/developer to the earlier tenant or owner in form other than cash [If the earlier tenant or owner wants extra built up area, it is offered by builder/developer to him on payment of commercial price].

After giving such so called 'free' apartments, remaining apartments are sold by promoter to others for cash.

There is no doubt that the promoter is providing construction service to the land owner, transferor of TDR or earlier tenant/owner of apartments. The consideration is paid to them in form other than cash.

GST should be payable in respect of free apartments given to the land owner. See also CBI&C circular dated 10-2-2012 and Para 6.2.1 of CBI&C's 'Taxation of Services : An Education Guide' published on 20-6-2012, where the same view has been expressed.

In LCS City Makers P Ltd. v. CST (2012) 36 STT 228 = 23 taxmann.com 169 = 68 VST 318 (CESTAT). it has been held that service tax is payable even when consideration is received in form of land - same view in Direktorna Direktsia Obzhalvane I Upravlenienaizpalnenieto v. Orfey Balgaria EOOD [2013] 38 STT 289 (ECJ) * Southern Properties v. CCE [2015] 52 GST 413 = 61 taxmann.com 423 (Mad HC DB) * Gowra Ventures (P.) Ltd., In re [2018] 98 taxmann.com 320 (AAR - Telangana).

In all such cases, the issue of valuation of flats/residential units/shops arises.

Statutory provisions for valuation of transfer of development rights

If the land owner promoter transfers development rights and receives consideration in form of constructed apartments, the value of such supply will be amount of money received by him, less value of land which will be taken as one-third of total amount charged for such supply.

If he receives consideration in form of construction of apartments, the value will be equal to total amount charged by developer-promoter from other buyers of similar apartments, less the value of land, which will be taken as one third of total amount charged.

The statutory wording is as follows:

In case of supply of service specified in column (3), it item (i); (ia), (ib), (ic), (id), (ie) and (if) against Serial No. 3, 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

- para 2 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as amended w.e.f. 1-4-2019.

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

- para 2A of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as inserted w.e.f. 1-4-2019.

For the purpose of paragraphs 2 and 2A, 'total amount' means the sum total of
(a) Consideration charged for such service and

(b) amount charged for transfer of land or undivided share of land, as the case may be, including by way of lease/sub-lease

- explanation to para 2 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 as amended w.e.f. 1-4-2019.

In Southern Properties v. CCE [2015] 49 GST 695 = 54 taxmann.com 116 (CESTAT), a prima facie view was held that valuation should on basis of value of similar flats (apartments) and not on basis of value of land.

Is the value of construction of similar apartments given to others comparable with apartments given free to land owner etc.?

The issue is whether the value of similar apartments given to others is comparable with apartments given free to land owner, transferor of TDR or earlier tenants/owners, i.e. whether that value closely or substantially resembles the value of construction of apartments given 'free'.

It is clear that GST is payable on value of supply of construction services. This value cannot include value of land, while open market value of similar apartments include value of land also.

It is obvious that value of land is recovered by promoter from buyers of flats who pay in cash. Thus, value of land is apportioned only on apartments which are sold for cash and not on all apartments. Thus, the value of land is included in the price charged to buyers. In fact, it is much higher than the average value of land, if such value was apportioned on all apartments.

Even a cursory glance of definition of 'Open Market Value' and 'Supply of goods or services or both of like kind and quality' is sufficient to establish that value of similar apartments sold to others cannot be considered as 'open market value' of apartments given 'free', as the first includes value of land while the second does not include value of land.

Can we apply 'deeming provision' to calculate value of construction service' on basis of open market value of flats?

In case of construction of complex, the builder charges an amount which is inclusive of land or undivided share of land. In that case, as per para 2 of Notification No. 11/2017-C.T. (Rate) and No. 8/2017-I.T. (Rate) both dated 28-6-2017, the land value will be deemed to be one third (33.33%) of total amount (i.e. value including land value) and GST is payable on balance amount.

This is a 'deeming provision' only, which is similar to composition scheme i.e. an easy and hassle free way of calculating value of construction service.

However, in my view, such deeming provision cannot apply as the actual value of land as included in open market value of similar apartments may be in most of the cases more than 33.33%.

Value in any case cannot exceed value as determined under section 15

Issue is 'Can deemed value exceed value as calculated as per section 15 of CGST Act?'.

In cases where value of land exceeds 33.33% of value, the value of construction will be less than 66.67%. However, GST (goods and services tax) will be payable on 66.67% of value.

This is obviously not permissible, as any deeming provision cannot prescribe a value which is higher than value as determined under section 15 of CGST Act.

Rules or Notifications cannot override provisions of Act - It is well settled that Rules or Notifications cannot override provisions of Act.

Rules are made to carry out the purpose of Act. The rules cannot be so framed which do not carry out the purpose of the Act and cannot be in conflict with the same. - Laghu Udyog Bharati v. UOI 105 Taxman 630 = 1999 AIR SCW 2771 = AIR 1999 SC 2577 = 112 ELT 365 = 115 STC 616.

Rules cannot be framed so as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself. - Kunj Behari Lal v. State of HP 2000 AIR SCW 543 = AIR 2000 SC 1069 = [2000] 3 SCC 40 (SC 3 member bench) - quoted with approval and followed in Wipro Ltd. v. ACC [2015] 319 ELT 177 (SC) * Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd. [2015] 9 SCC 209.

Rules and Notifications cannot override the provisions of Act and cannot be derogatory to the object of the Act - UOI v. Jalyan Udyog- Para 34 - 1993 (68) ELT 9 (SC). A rule cannot override or be contrary to a section - CCE v. Ashok Arc 2005 (179) ELT 513 (SC 3 member bench).

Price of similar apartments is not comparable

As we saw above, price of similar apartments or open market value is not comparable as that price includes value of land, which may be more than 33.33% of total amount charges for such apartments and value of supply calculated on that basis will exceed value as permissible under section 15 of CGST and SGST Act. Thus, in my view, valuation on basis of value of similar apartments would be incorrect.

Value of supply of goods or services or both based on cost

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be one hundred and ten per cent of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services - Rule 30 of CGST and SGST Rules, 2017.

Residual method for determination of value of supply of goods or services or both - Where the value of supply of goods or services or both cannot be determined under rules 27 to 30 of CGST and SGST Rules, the same shall be determined using reasonable means consistent with the principles and general provisions of section 15 of CGST Act and provisions of rules 27 to 30 of CGST Rules - rule 31 of CGST and SGST Rules, 2017.

Value of service can be on basis of rule 31 instead of on cost plus 10% basis - In case of supply of services, the supplier may opt for rule 31 ignoring rule 30 - proviso to Rule 31 of CGST and SGST Rules, 2017.

How free apartments can be valued as per section 15 of CGST Act read with valuation rules

Valuation can be on basis of rule 30 (cost plus 10%) or rule 31 (residual method).

In case of services, valuation can be done on basis of rule 31 without taking recourse of rule 30.

Hence, in my view, the promoter has following choices -

➢	Value on basis of 'deeming provision' considering value of land as 33.33%, it the actual land value is around that figure or less than 33.33% [rule 31 i.e.' using reasonable means' consistent with Acts and Rules].
➢	Value of basis of cost plus 10% under rule 30.
➢	Value on the basis of price of similar apartments deducting value of land (if value of comparable land is available) as apportionable to that flat/shop [rule 31].

In Gowra Ventures (P.) Ltd., In re [2018] 98 taxmann.com 320 (AAR-TELANGANA), valuation on basis of cost of construction plus 10% was accepted.

There is no doubt that this view will not be accepted by department, which will insist on valuation of free apartments on basis of similar apartments less land value to be taken as one-third of total amount charged.

Hence, promoter has to decide whether to enter into litigation or pay as per provisions as contained in notification.

Accommodation/rent given to earlier tenants/owners during transition period

The promoter often offers alternate accommodation or compensates rent to earlier tenant/owners during transition period i.e. till new apartments are ready for occupation. This comes under 'tolerating an act or situation' which is a deemed service.

Amount received by tenant towards alternate accommodation or delayed possession of new premises would be receipt of amounts for doing an act i.e. vacating premises for redevelopment as well as tolerating construction cum redevelopment work till possession of new redeveloped premises and further for tolerating an act of not having completed redevelopment period within time, would be a 'supply' and therefore, GST to be levied on such amount - Zaver Shankarlal Bhanushali, In re [2018] 68 GST 730 = 95 taxmann.com 3 (AAR - Maharashtra).

Of course, taxability will arise only if the tenant is getting amount exceeding Rs. 20 lakhs per annum, or where tenant is registered under GST.

Apportionment of ITC between taxable supply and exempt supply on basis of 'Area' in case of real estate services

Section 17(3) of CGST Act envisages that apportionment of ITC between exempt supply and taxable supplies including zero rated supplies shall be on basis of value.

However, **as per scheme of GST on real estate w.e.f. 1-4-2019, it is envisaged that such apportionment shall be on basis of area of construction of complex.**

Hence, Removal of Difficulties Order No. 04/2019-C.T. dated 29-3-2019 provides that such **apportionment shall be on basis of area of construction of complex.**

Contracts for construction of affordable residential apartments where land value not included

The concessional GST rates discussed above apply to affordable residential apartments in REP or RREP, where the contract amount includes value of undivided portion of land.

However, in some cases, the promoter may only undertake construction of residential apartments which do not include value of land. In such contracts, some residential apartments may be affordable residential apartments (as defined) and some may be normal residential apartments.

In that case, provision of concessional rate of GST has been made at Sr. No. (va) to Notification Nos. 11/2017-C.T. (Rate) and 8/2017-I.T. (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

This concessional rate applies to both new projects after 1-4-2019 or ongoing projects as on 1-4-2019, where the promoter has not opted to pay GST at rates specified in item 3(ie) or 3(if).

The GST rate will be CGST 6% plus SGST/UTGST 6% (total 12%) or IGST 12%, as the supply of services does not involve transfer of land or undivided share of land.
Input Tax Credit is available.

The carpet area of affordable residential apartments should be at least 50% of total carpet area of all the apartments in the project.

Statutory wording -

The provision in respect of Affordable Residential Apartments apply to composite supply of works contract as defined in section 2(119) of the CGST Act, 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 paragraph 4(xvi)(a), 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.

Meaning of 'affordable residential apartment' -

Basically, 'affordable residential apartment' means 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. The detailed definition is given above.

Conditions for concessional rate -

The carpet area of the affordable residential apartments should not be less than 50% of the total carpet area of all the apartments in the project.

For the purpose of determining whether the apartments at the time of supply of the service are affordable residential apartments covered by paragraph 4(xvi)(a), 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.

In case it finally turns out that the carpet area of affordable residential apartments was less than 50% of total carpet area of all the apartments, the promoter shall be liable to pay difference between normal tax payable and the tax collected at concessional rate from the buyers, under reverse charge basis.

Reversal of ITC in case of opting for new scheme

Due to the changes in rates of tax with the condition of ITC ineligibility, there is a need for reversal of ITC in cases where the promoter opts to pay GST at the new effective rate of 1% or 5%, as applicable, to the extent of the ITC attributable to the supplies whose time of supply (ToS) occurs after 01.04.2019, in terms of section 13(2) read with section 31(5) of the Act. This has to be identified and reversed before the due date of Sep '19 return.

Also, in case of the promoters of the ongoing projects who opt to pay tax at the rates applicable prior to 01.04.2019, there was lack of clarity regarding to the need for reversal of credit at the end of the project to the extent of the apartments sold after the cut-off date (i.e. post obtaining completion certificate or after its first occupancy). There have been amendments made to the rules to incorporate the provisions for requiring such reversals which would have to be followed for the credit availed from 01.7.2017 (including transition credit) till the cut-off date for such promoters.

The computations for the above reversal, as applicable, are critical for the promoter in deciding whether or not to opt for the new scheme. Hence, first this computation shall be done and the quantum of reversal shall be ascertained to identify the impact on the tax cost in case of opting for the new scheme.

Before getting into the mechanism for reversal it is important to note that a removal of difficulty Order No. 04/2019-Central Tax, F. No. 354/32/2019-TRU, dated 29.03.2019 has been issued which provides that w.r.t. the construction of complex services as defined in para 5(b) of Schedule II to the Act, the area of construction can be considered as the basis for determining the area attributable to the taxable and exempt supplies.

Prior to the issuance of this order the only basis for attributing ITC to the taxable and exempt supplies was the value of such supply.

Terms used with their meanings

(As per Annexure I and Annexure II of notification 3/2019 ibid) in REP / RREP

- Tx = ITC on inputs and input services attributable to construction of residential and commercial portion, where ToS is on or after 01.04.2019
- T = Total ITC availed from 01.07.2017 to 31.03.2019 including transition credit (whether or not utilised)
- Te = ITC attributable to construction of commercial and residential portion, where ToS is on or before 31.03.2019 .
- Tc = ITC attributable to construction of commercial portion in the REP
- Tr = ITC attributable to construction of residential portion in the REP where ToS is on or before 31.03.2019.
- F1 = carpet area of residential apartment / Total carpet area of residential and commercial apartment
- F2 = Total carpet area of residential apartment booked before 01.04.2019 / Total carpet area of residential apartment
- F3 = Value of supply for residential apartment booked before 01.04.2019 where ToS is before 01.04.2019 / Total value of supply for such apartments
- F4 = 1 / % completion of construction as on 31.03.2019 (Extrapolation)

A. Where % of completion is not zero or where there is inventory in stock

Tx = T – Te

Where,

Te = Tc + Tr

Tc = T * carpet area of commercial apartments in project / total carpet area of commercial and residential apartments

Tr = T*F1*F2*F3*F4

In case the figures of ITC attributable exclusively to the commercial portion (T1) and ITC attributable exclusively to the residential portion of the project (T2) are available then the above formula can be applied for the remaining common credit (T3) including the ITC attributable to the residential apartments.

i.e. Tr = (T3+T2) *F1*F2*F3*F4

Other points

- The amount of Tx and Te shall be computed separately for CGST/SGST/IGST.
- If Tx is positive, ie., Te<T, then shall pay an amount equal to the difference between Te and T by debit in the electronic credit ledger or cash ledger and disclose in Form GST ITC -03. For this assesses have an option to seek extension of time for paying such excess ITC availed in instalments, in terms of section 80 of the CGST Act, 2017, not exceeding 24 months by filing an application in Form DRC-20. This would attract interest at the rate of 18% in terms of section 50 of the said Act and in case of default in payment of any one instalment on its due date, the entire balance outstanding on such date would become due and payable without any further notice being served and can be recovered as per the provisions of the said Act.

- If Tx is negative, Te>T, then ITC can be on the goods or services received on or after 01.04.2019 for construction of the residential portion to the extent of such difference.
- Until the above calculation is completed and ascertained, Tc can be ascertained and used for paying tax liability w.r.t. the commercial apartments in the project.
- Where the % of completion is zero but ITC has been availed on goods and services for the project prior to 01.04.2019, Tr shall be calculated as discussed above except that in F4 the % of completion shall be as certified by an 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), which can be achieved with the input services received and inputs in stock as on 31.03.2019.

B. Where % of completion is zero as on 31.03.2019 but invoicing has been done having time of supply before 31.03.2019, and no input services or inputs have been received as on 31st March, 2019

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

Te = Tc + Tr

Tc = Tn * carpet area commercial apartments in the project / total carpet area of commercial and residential apartments in the project

Tr = Tn * F1 * F2 * F3

Other points

- ITC can be on the goods or services received on or after 01.04.2019 for construction of the residential portion to the extent of amount of Te.
- Te shall be computed for CGST, SGST and IGST.

Common points for consideration for the above 2 computations

- Where % of invoicing > % of completion, and % of invoicing - % of completion > 25 %; then % of invoicing = % of completion + 25 %
- Where the value of invoices issued prior to 01.04.2019 > the consideration actually received prior to 01.04.2019 by more than 25% of consideration actually received;
  Value of such invoices for the purpose of determination of % invoicing = actual consideration received + 25 % of the actual consideration received; and

- Where, the value of procurement of inputs and input services prior to 01.04.2019 > the value of actual consumption of the inputs and input services used in the % of construction completed prior to 01.04.2019 by more than 25 % 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.

How to choose which option is better - Example

Q. Proactive Constructions Ltd (hereinafter referred to as 'Developer') has entered into a Joint Development agreement (JDA) on 01.08.2018 with Landlord ltd (hereinafter referred to as the 'Landowner') **to construct a residential apartment**.

Project comprises of 1,50,000 sq ft carpet area and the carpet are of each flat is 1500 sq. ft.

The **sharing ratio between the Developer and Landowner is 50:50**.

Further **supplementary agreement was entered on 01.01.2019 where demarcation of 100 flats was done between the Landowner and the Developer.**

90% of the project was completed up to 31.03.2019

Developer sold (booked) 30 flats for Rs.5000 per sq. ft.

Further, **90% invoicing was done up to 31.03.2019**, **payment for the same was received from the customer and the tax on the same was paid**.

ITC availed by Developer for the project including transitional credit claimed - Rs. 3.75 crore.

Estimated ITC to be availed on the future procurements – **25 lakhs**

Completion certificate is not received on or before 31.03.2019.

If Developer opts for Old scheme:

Steps	Action	Amount (Crores)
1	**GST paid @12% on the consideration already received** on the flats booked(A)=(1500*30*5000*90%)*12%	2.43 Cr
2	**GST @12% payable for the balance consideration to be received** out of the flats booked (B) = (1500*30*5000*10%)*12%.	0.27 Cr
3	**Compute the GST payable** on the **estimated sale value** of the projects **(un-booked and expecting to book prior to obtaining completion certificate)** at 12%(C)= (1500*20*5000)*12%	1.8 Cr
4	Compute the ITC availed on the project including transitional credit (D)	3.75 Cr
5	Compute the estimated ITC to be paid on input, input service and capital goods till the end of the project (E).	0.25 Cr

6	Compute the net tax payable on the project(F)= A+B+C-D-E	0.5 Cr
7	Assuming customer has remitted only 5%. Balance 7% would be cost to Developer(G)= (1500*30*5000*10%)*5%+(1500*20*5000)*5%	0.8625 Cr
8.	**Total cost to Developer (H)= (B)+(C)-G**	**1.2075 Cr**

If Developer opts for new scheme

Steps	**Action**	**Amount (Crores)**
1.	**Compute the GST that needs to be reversed** in case of opting for new scheme of 5% (i.e. credit pertaining to input, input service and capital goods pertaining to flats un- booked as on 31st of March 2019 and to the extent of the time of supply (installments due or receipt of money, whichever is earlier) falling after 1st April 2019) A1 (ITC eligible for reversal) =3.75Cr – (3.75Cr* 60%*90%*1.11) **(refer working note-1)**	1.50225 Cr

2.	**Compute the estimated ITC** to be paid on input, input service and capital goods **till the end of the project (B1)**	0.25 Cr
3.	Arrive at cost under the new project**(C1) =A1+B1**	1.75225 Cr
4.	Decide = If H < C1 = Continue Old Scheme **Here, 1.2075< 1.75225. Thus, old scheme would be beneficial.**	

<u>Working Note -1:</u>

ITC to be reversed (Tx) = T-Te

Tx= ITC attributable to construction where ToS is on or after 01.04.2019

T= Total ITC availed as on 31.03.2019

Te= ITC attributable to construction where ToS is on or before 31.03.2019

Te=T* (% of flats booked on or before 31.03.2019)* (% of invoicing (as per ToS) on or before 31.03.2019) * 1 / % of completion of construction as on 31.03.2019.

Te= 3.75 Cr* 30/50*90%*1.11= 2.24775 Cr

Continuing the above example, we would proceed to analyse the best option to Landlord Ltd:

- **Out of 50 flats allotted to Landowner**, **90% of construction is completed**.

He sold 10 flats for Rs. 5000 per sq. ft prior to 01.04.2019. 90% invoicing is done and payment for the same was received from the customer and the tax on the same was paid.

- **ITC availed by the Landowner on the construction services provided by the Developer - Rs. 1 crore**
- Completion certificate is not received on or before 31.03.2019.

If Landowner opts for Old scheme:

Steps	**Action**	**Amount (Crores)**
1	**GST paid @12% on the consideration already received** on the flats booked(A)=(1500*10*5000*90%)*12%	0.81Cr

2	**GST @12% payable for the balance consideration to be received out of the flats booked** (B) = (1500*10*5000*10%)*12%.	0.09 Cr
3	**Compute the GST payable on the estimated sale value of the projects (un-booked and expecting to book** prior to obtaining completion certificate) at 12%(C)= (1500*40*5000)*12%	3.60 Cr
4	ITC charged by Developer (D)	1.00 Cr
6	Compute the net tax payable on the project(E)= A+B+C-D	3.50 Cr
7	**Assuming customer has remitted only 5%.** Balance 7% would be cost to Landowner(F)= (1500*10*5000*10%)*7%+ (1500*40*5000)*7% 525000	2.1525 Cr
8	Total cost to Developer (G)= E+F	5.6525 Cr

If Landowner opts for new scheme:

Steps	Action	Amount
1.	**Compute the GST that needs to be reversed in case of opting for new scheme of 5%** (i.e. credit pertaining to input, input service and capital goods pertaining to flats un- booked as on 31st of March 2019 and to the extent of the time of supply (installments due or receipt of money, whichever is earlier) falling after 1st April 2019) A1 (ITC eligible or reversal) = 1Cr – (1Cr* 20%*90%*1.11)	0.1998 Cr
2.	Total cost under the new project(B1=A1)	0.1998 Cr
3.	Decide = If G < B1 = Continue Old Scheme **But, Here, 5.6526 > 0.1998.** **Thus, new scheme would be beneficial.**	

Reversal of ITC if continuing with existing rates

Reversal of ITC by a promoter continuing to pay tax as per rates applicable prior to 01.04.2019 in terms of rule 42 (Inputs and input services) & 43 (capital goods) [effective from 01.04.2019] Notification No.16/2017 Central Tax (rate) dated 29.01.2019

A. Reversal relating to input and input services – Rule 42

Few points to be noted before proceeding for the computation:

- ITC on inputs and input services used for real estate (residential or commercial) projects should be considered as common credit in the tax period in which the credit is eligible, where tax is paid at the rate of 18% or 12% (with deduction for 1/3rd on value towards deemed value of land), as applicable.
- W.r.t. common credit, the amount of eligible credit shall be calculated on the basis of the carpet area and not on the basis of sale value. Such calculation shall be done for each project separately.
- Where any input or input service is used for more than one project, reasonable basis to be adopted to identify input or input service attributable for each project and then compliance with rule 42 to be done.
- Such computation shall be done on a monthly basis and then re-computed finally on completion of project (i.e. by due of September return following the FY in which CC is issued or first occupation,

whichever is earlier) <u>and not annually</u>. However, such final computation is not required to be done for RREP which underwent transition of ITC due to the introduction of new rates i.e. 1.5% or 7.5% (with deduction for 1/3rd on value towards deemed value of land), as applicable) i.e.

a. Ongoing project which have opted for the new scheme of tax.
b. New projects which did not require to do any reversal of ITC as per Annexure I and Annexure II ibid as there was no ITC availed prior to 01.04.2019

- Further, the final computation shall be done for ITC availed from 01.07.2017 or date of beginning of the project, whichever is later till the cut-off date.

I. COMPUTATION OF THE ELIGIBLE COMMON CREDIT - MONTHLY

Credit attributable towards exempt supply D1= C2 *E/F

Where

C2 = Common credit (input and input services)

E = Aggregate carpet area of the apartments, construction of which is

a. exempt

b. Not exempt but identified to be sold after cut-off date.

‘E’ would include

c. In the tax period during which cut-off date occurs, the carpet area of all apartments that remain un-booked.

d. Carpet area of apartments that opt for the new rates = Aggregate carpet area of the apartment in the project

II. FINAL COMPUTATION OF ELIGIBLE ITC

The above shall finally be calculated (for all ongoing projects and new projects which did not undergo ITC transition due to introduction of new rate) by due of September return following the FY in which the cut-off date occurs by applying the above formula where 'E' would be:

Aggregate carpet area of the apartments, construction of which is

a. exempt and

b. Not exempt but remain un-booked after cut-off date

On the final computation done as above, the final adjustment (excess/short) needs to be carried out in Form GSTR-3B or through Form GST DRC-03 in the month not later than the month of September following the end of financial year in which the cut-off date occurs, as follows

a. Excess ITC availed: Such excess need to be reversed along with interest @18% from 1st of April of such financial year till the date of reversal.

b. Short ITC availed: Same can be claimed as credit in the return filed not later than September following the FY in which the cut-off date occurs.

Final computations of eligible ITC in respect of commercial portion for projects other than RREP i.e. where carpet area of commercial apartments > 15% of project carpet area, which underwent ITC transition due to introduction of new rates

This reversal is required in respect of the ongoing projects where the carpet area of the commercial apartments is more than 15% of the total project carpet area. Though the residential apartments in these projects are eligible for the new rates without ITC, the commercial apartments would be liable to GST at the rates as applicable prior to 01.04.2019 with ITC being eligible. Hence the requirement to identify the eligible ITC at the project completion as was done for the ongoing projects discussed above. The computation shall be done as below:

C3 (Agg) = (Aggregate of monthly C3 determined for the period 01.07.02017 to 31.03.2019) * AC/AT (+) (Aggregate of monthly C3 determined for the period 01.04.2019 to the cut-off date)

Where, C3 (Agg) = Aggregate common credit on commercial portion in the project

AC = Total carpet area of commercial apartments in the project

AT = Total carpet area of all apartments in the project

The final eligible credit would be C3 (Agg)* E/F

Where,

E= total carpet area of commercial apartments which have not been booked till the cut-off date.

F=AC=Total carpet area of commercial projects in the apartment.

On the final computation done as above, the final adjustment (excess/short) needs to be carried out in Form GSTR-3B or through Form GST DRC-03 in the month not later than the month of September following the end of financial year in which the cut-off date occurs, as follows

a. Excess ITC availed: Such excess need to be reversed along with interest @18% from 1st of April of such financial year till the date of reversal.

b. Short ITC availed: Same can be claimed as credit in the return filed not later than September following the FY in which the cut-off date occurs.

B. Reversal of input tax credit relating to Capital goods - Rule 43

The following are a few points to be noted before proceeding for the computation:

- ITC on capital goods used for real estate (residential or commercial) projects should be considered as common credit in the tax period in which the credit is eligible, where tax is paid at the rate of 18% or 12% (with deduction for 1/3rd on value towards deemed value of land), as applicable.
- W.r.t. common credit, the amount of eligible credit shall be calculated on the basis of the carpet area and not on the basis of sale value. Such calculation shall be done for each project separately.
- Where any capital good is used for more than one project, reasonable basis to be adopted to identify input or input service attributable for each project and then compliance with rule 43 to be done.
- Such computation shall be done on a monthly basis and then re-computed finally on completion of project (i.e. by due of September return following the FY in which cut-off date occurs).
- Further, the final computation shall be done for ITC availed from 01.07.2017 or date of beginning of the project, whichever is later till the cut-off date.
- Existing capital goods used in new project- ITC attributable to remaining useful life can be availed in new project.

I. COMPUTATION OF THE ELIGIBLE COMMON CREDIT - MONTHLY

Credit attributable towards exempt supply D1= C2 *E/F

Where

C2 = Common credit (capital goods)

E = Aggregate carpet area of the apartments, construction of which is

a. exempt

b. Not exempt but identified to be sold after cut-off date.

'E' would include

c. In the tax period during which cut-off date occurs, the carpet area of all apartments that remain un-booked.

d. Carpet area of apartments that opt for the new rates

F = Aggregate carpet area of the apartment in the project

II. FINAL COMPUTATION OF ELIGIBLE ITC

Te (final) = [(E1 + E2 + E3)/F]*Tc (final)

Where

Te (final) = common credit attributable to exempt supplies

E1 = Total carpet area of apartments which is exempt from tax

E2 = Total carpet area of apartments where sold before 31.03.2019 and opted for new rates.

i.e. E2 = Carpet area of such apartments * V1/ (V1+V2)

V1= Instalments where Time of supply is on or after 01.04.2019

V2= Instalments where Time of supply is before 01.04.2019

E3 = Aggregate carpet area of apartments which is not booked before cut-off date.

F = Aggregate carpet area of apartments in the project.

Tc (final) = aggregate of credit of all capital goods attributable to the project.

Tc (final) = aggregate of A (final) in respect of all CG used in the project

A(final) = A* (no. of months CG used in project/60)

On the final computation done as above, the final adjustment (excess/short) needs to be carried out in Form GSTR-3B or through Form GST DRC-03 in the month not later than the month of September following the end of financial year in which the cut-off date occurs, as follows

a. Excess ITC availed: Such excess need to be reversed along with interest @18% from 1st of April of such financial year till the date of reversal.

b. Short ITC availed: Same can be claimed as credit in the return filed not later than September following the FY in which the cut-off date occurs.

The following can be noted from the above amendments in the provisions of rule 42 and 43 of the Rules:

- There is now clarity w.r.t. the eligibility of credit relating to the real estate projects whereby the final ITC entitlement has to be calculated for the entire project on the basis of the units sold before and after cut-off date, which earlier was supposed to be done only for a FY and not for the entire project as a whole.
- Further, the ITC eligibility would be on the basis of the carpet area of the apartments (the common areas, etc. are not be considered) and not the revenue generated there-from.

- Such ITC eligibility would have to be computed project-wise. Hence it could pose difficulty to ascertain project-wise details in case of ongoing projects if such details were not maintained earlier. In such case reasonable basis can be adopted to apportion the same for each project.
- Though the said rule is effective from 01.04.2019, it has to be applied for ITC availed even earlier, w.r.t. projects where cut-off has not occurred before 01.04.2019. <u>However, for projects where cut- off date has occurred before 01.04.2019, provisions of rule 42 as existed prior to 01.04.2019 would only apply.</u>
- The interest on excess ITC availed, which is ascertained after final computation is to be paid whether or not the same is utilised i.e. even mere availment of excess ITC would attract interest. Though the interest is to be calculated only from April following the FY in which the cut-off date occurs.

Case Studies

Q. Better Builders Ltd (hereinafter referred to as 'Developer') and Good Properties LLP (hereinafter referred to as the 'Landowner')

- **JDA entered on 01.01.2018.**
- **200 apartments i.e. 175 residential and 25 commercial**. These would be constructed as **2 separate towers.**
- The **supplementary agreement** was entered **on 31.07.2018** where demarcation was done as below:

Tower1: 75 residential and 25 commercial apartments for the Developer
Tower2: 100 residential apartments for the Landowner

- The **Developer has opted to pay GST on the instalments to be received from 01.04.2019 at the rate of 5% for the commercial and the residential units.**

- **Construction of Tower 2 has not yet started** and **separate registration under RERA has been obtained for each tower.**

- **For the construction of Tower 2** the Developer would be procuring the 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], during a financial year.

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

• Further facts relating to the Developer (for Tower 1) are as below:

Sr. No.	Particulars	Formula	Amount	UOQ
C1	No. of apartments		100	Units
C2	**No. of residential apartments**		**75**	Units
C3	**Carpet area of the residential apartment**		**70**	Sq. m
C4	**Total carpet area of the residential apartments**	**C2 * C3**	**5250**	Sq. m
C5	Value of each residential apartment		0.6	crore
C6	Total value of the residential apartments	C2 * C5	45	crore
C7	No. of commercial apartments in the project		25	Units
C8	Carpet area each of the commercial apartment		30	Sqm
C9	Total carpet area of the commercial apartments	C7 * C8	750	Sqm
C10	Total carpet area in the share of the Developer (Resi + Com)	C4 + C9	6000	Sqm
C11	**% of completion as on 31.03.2019 [as declared to RERA or determined by chartered engineer]**		**20%**	
C12	No of residential apartments booked before transition		40	Units

C13	Total carpet area of the residential apartments booked before transition	C12 * C3	2800	Sqm
C14	**Value of booked residential apartments**	**C5 * C12**	**24**	crore
C15	**% of invoicing of booked residential apartments on or before 31.03.2019**		**20%**	
C16	Total value of supply of residential apartments having ToS prior to transition	C14 * C15	4.8	crore
C17	**ITC availed by Developer for the project including transitional credit claimed**		**Rs. 4.50**	**crore**

1. What is the liability under GST with respect to JDA entered?

In the instant case, as **JDA and SA have been entered prior to 01.04.2019**, notification No. 6/19 & 4/19 ibid would not be applicable and the **provisions as existed prior to 01.04.2019 would have to be followed**

i.e. the ToS has to be determined as per notification No. 4/2018-Central Tax (Rate) dated 25.01.2018, **which would be the date of SA.**

2. Whether both Tower-1 (attributable to Developer) and Tower-2 (attributable to Landowner) can be considered as on-going projects for the purpose of the new scheme of rates. If not, what are the implications?

Notification No.3/2019- Central Tax (Rate) dated 29.03.2019 defines **ongoing project** as a project **which meets all the following conditions**, namely-

1. **Commencement certificate issued - on/ before 31.03.2019**
2. **Construction has started – on/before 31.03.2019**
3. **Completion certificate not issued on / before 31.03.2019**
4. **Booking (even partly) - on/ before 31.03.2019**

In the instant case, each tower can be considered as a separate project in terms of the definition of REP under RERA.
Thereby, different tax treatment can be applied for each tower.

<u>With respect to Tower-1,</u>
as all the conditions enumerated above for ongoing projects are satisfied, such tower is an on-going project.
Thereby, Developer has an option to pay GST at the **existing rates or new rates**.

<u>With respect to Tower-2,</u>
as construction has not started, condition 2 mentioned above is not satisfied and thus such tower would be a new project.
Thereby, Landowner has to pay GST at the **new rate i.e. @5% mandatorily.**

3. What is the amount of ITC that is required to be reversed if the Developer opts to pay GST@5% w.r.t. the instalments received from 01.04.2019?

This project is an RREP as the total carpet area of the commercial apartments is less than 15% of the total towers' carpet area.
Hence, the ITC to be reversed in terms of Annexure II to notification 3/2019 ibid due to transition by the Developer from the existing rates to the new rate w.e.f. 01.04.2017.

ITC to be Reversed:

S. No	Description	Formula	Value	UOQ
S1	ITC to be reversed on transition, Tx= T- Te			
S2	Eligible ITC (Te)= Tr (as only residential units are sold prior to 01.04.2019)			
S3	T= Total ITC availed as on 31.03.2019	C17	4.50	crore
S4	Tr= T x F1 x F2 x F3 x F4			
S5	F1	C4/C10=5250/6000	0.875	
S6	F2	C13 / C4=2800/5250	0.533	
S7	F3	C16 / C14= 4.8/24	0.2	
S8	F4	1/ C11	5	
S9	Te= T x F1 x F2 x F3 x F4	S3 * S5 * S6 * S7 * S8	2.10	Crore
S10	**ITC to be reversed on transition, Tx= T- Te**	**S3-S9**	**2.40**	**Crore**

4. What would be the liability on the Developer under RCM w.r.t. the construction undertaken for Tower 2 belonging to the Landowner?

Since, the Developer has procured only 50% of goods and services from registered persons which falls short of threshold limit of 80%,
the **Developer would be liable to pay GST on cement at the applicable rate on reverse charge basis in the month of receipt of cement.**
After payment of GST on cement,
the remaining shortfall would be 15 % of procurement on which the Developer shall pay tax GST @ 18 %

Q. Best Developers Pvt Ltd (hereinafter referred to as 'Developer') **and Mr. Abhishek** (hereinafter referred to as the 'Landowner') **have entered into a Joint Development Agreement (JDA) after 01.04.2019 for construction of 100 apartments wherein 40 apartments are allocated to Landowner and 60 apartments are allocated to Developer.**

- The carpet area of each apartments would be 2000 sq ft.
- Out of the 60 apartments, developer sells 50 apartments prior to the cut-off date
- Landowner sells all apartments before cut-off date
- **The value of apartments sold to independent buyers nearest to the date of JDA is Rs. 2 Crore.**
- **The value of apartments sold to independent buyers nearest to the cut-off date is Rs. 2.5 Crore**
  What is the liability under GST w.r.t. the above JDA entered?

Here,

a) With respect to the **construction services provided by Developer to Landowner, GST @5% shall be discharged** as per notification 3/2019 ibid on
Rs. 2 crore * 40 apartments * 5% = Rs. 4 crores

b) With respect to **development rights transferred by Landowner to Developer**, **GST is not applicable to the extent of 50 apartments which are sold prior to cut-off date**, as the same is exempted vide notification No.4/2019 ibid.

c) However, w.r.t. **10 flats un-sold after cut off date**, the **Developer would be liable to pay GST under RCM** in terms of notification No.4/2019 ibid.

The liability would be **lower of the following**:

i. (GST payable on development rights for all 100 apartments)* Carpet area of apartments which remain un-booked as on the cut off date /Total carpet area of the apartments.

= (2 crore*100*5%) * (10*2000)/(100*2000)= Rs. 1,00,00,000.
ii. Value of un-booked apartments as on cut-off date * 5%

= 2.5 crore * 10 apartments* 5% = Rs. 1,25,00,000/-
Thereby, liability would be Rs. 1,00,00,000/

d) Further, **the date on which Developer is required to pay under RCM is the <u>cut-off date.</u>**

Thank You!

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