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Edition
June, 2019

GST on REAL ESTATE TRANSACTIONS

By

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Second Edition

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Preface

to Second Edition

In many parts of the country, where the land is scarce and the value is high, the landowners enter into an agreement with a developer for construction/reconstruction of the building/s. In such cases, both the parties pool together the resources i.e. the landowner gives development rights to the developer and the developer undertakes the construction of the building/s. These agreements are generally termed as “Joint Development Agreements” (JDA) or “Collaboration Agreements”. In cities like Mumbai, the whole ownership of the land is with the Cooperative Housing Societies and such JDAs are executed by the Society.

After the successful launch of the 1st Edition of this book, we have been receiving several requests for including a separate chapter on implications of GST on Redevelopment of Housing Societies or on Development Agreements between Landowner and Developer.

Considering the need of Developers, Landowners and Housing Societies, we have added a separate chapter in Part V of the 2nd Edition. In Part V we have made an attempt to include all possible scenarios of such transactions and provided specific answers to all situations, eg. Taxability of supply of development rights/TDR/FSI by Landowner/society; GST liability on supply of construction service by Developer to landowner/society/independent buyers; time of payment and rate of GST on supply of these services etc. Besides we have also enlarged Appendix-3 containing the relevant legal provisions and FAQs issued by the Central Board of Indirect Taxes & Customs.

We hope that this book will be useful to all our readers.

M.P.S. Sengar
I.R.S Retd

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Part I

Introduction

The Real Estate Industry passing through a period of prolonged inventory pile up is going through a series of structural reforms which have been undertaken over the period of the last two years. One such reform is the introduction of the Real Estate (Regulation and Development) Act, 2016 (RERA) and another, which is designed to introduce integrity and transparency, is the Goods and Service Tax (GST) that significantly changed the way that business is conducted in the country.

1.1 GST is the answer to the problem of multiplicity of indirect taxes at the Centre and State levels, which resulted in a highly complex tax structure, high incidence of taxes and high cost of compliances. It subsumes most of the indirect taxes and has become a comprehensive unified tax on dual tax model i.e. it is legislated, levied and administered concurrently by both the levels of the Government, the Centre and States on a common base. It comprises of Central GST (CGST) and State GST (SGST) of each State, both the levels retaining their sovereignty, by legislating the Acts for respective States and both exercising powers to administer this single unified tax.

1.2 The constitutional hurdle due to the absence of enabling power of concurrent levy was overcome by the insertion of Article 246A titled 'special provision with respect to Goods and Service Tax' which enabled the Parliament and every State Legislature to make laws with respect to tax on Goods and Services where the supply of goods or services or both, takes place in the course of interstate trade or commerce. Whereas, intra State transactions were to be within the domain of Centre as well as States, the Centre was to have exclusive jurisdiction over interstate supply of goods or services or both.

Basic features of GST

1.3 The basic features of the GST are briefly stated below.

i. GST is a tax on supply of goods and services

GST is a tax on the supply of goods or services or both, except tax on the supply of alcoholic liquor for human consumption. '**Goods**' for the purpose of GST means every kind of movable property other than money and securities, but includes actionable claims, growing crop, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. Goods, therefore, exclude immovable property. "**Services**" are defined to mean anything other than goods for which a separate consideration is charged. The definition of services is quite wide. Accordingly, Schedule III of The Central goods and Services Tax Act, 2017 specifically lays down activities or transactions which shall be treated neither as a supply of goods nor a supply of services.

As will be seen in the later part, transactions in real estate include immovable property and are therefore not 'supply of goods' but certain transactions are deemed to be 'supply of services' and are within the purview of GST.

ii. GST subsumes existing indirect taxes

The term GST is defined in Article 366 (12A) to mean "any tax on supply of goods or services or both except taxes on supply

of the alcoholic liquor for human consumption” Thus, whereas almost all the indirect taxes have been subsumed, alcoholic liquor for human consumption has been kept outside the tax regime. Application of tax on petroleum, gas and aviation turbine fuel has, for the time being, been deferred and will be subject to GST from the date determined and notified by the GST Council. The taxes subsumed are:-

a) Taxes which were levied and collected by the Centre:-

- a. Central Excise Duty
- b. Duties of Excise (Medicinal and Toilet preparations)
- c. Additional duties of Excise
- d. Additional duties of Excise (Textile and Textile Products)
- e. Additional Duties of Customs (CVD)
- f. Special Additional Duties of Custom (SAD)
- g. Service Tax
- h. Central Surcharges and Cesses so far as they relate to supply of goods and services

b) Taxes levied by the States:-

- a. State VAT
- b. Central Sales Tax
- c. Luxury Tax
- d. Entry Tax (all forms)
- e. Entertainment and Amusement Tax (Except when levied by local bodies)
- f. Taxes on advertisements
- g. Purchase Tax
- h. Taxes on lotteries, betting and gambling
- i. State surcharges and cesses so far as they relate to supply of goods and services

iii. **Uniform tax base for Centre and States**

All goods and services are made taxable at the specified rate all over the country. The specified rates are 0%,5%,12%,18% or 28% apportioned equally between the Centre and States on the same base. In respect of certain luxury goods, a further tax in the nature of 'Sin tax' can be charged in addition to the maximum 28%. An exception has been made with respect to a few commodities e.g. gold and jewellery for which lesser rates are prescribed. There is also a composition scheme which has no application to transactions in real estate. There is to be a single assessment in which the share of the Centre and the State is to be determined.

iv. **A destination based tax**

GST is a consumption based tax and is levied where the goods or services are consumed. The place of consumption is determined by the place of supply. Since the destination based tax is less favourable to manufacturing States, the Union has agreed to compensate the losing States for loss of revenue for a period of 5 years.

v. **Tax on interstate supplies is within the exclusive jurisdiction of the Centre.**

Interstate supplies are governed by the Integrated Goods and Services Tax Act (IGST). Where the supplier and the receiver of the goods and services are in the same State, tax is levied by the Centre and the concerned State, but where they are in different States, the tax is levied by the Centre and apportioned between the Centre and the State in accordance with the determined formula. The import is treated as interstate supplies and the tax revenue accrues to the State where the imported goods/services are consumed.

vi. **GST is payable by the supplier of goods/provider of services**

The obligation to pay the tax is on the supplier of goods/services which he can pass on to the receiver of the goods/availer of services. Generally, transactions carried out

for consideration and in the course of business are subject to GST. Certain transactions which are subject to tax even without consideration are given in Schedule I to the CGST Act.

The prescribed threshold of turnover was initially Rs.20 lakh with respect to supply of goods and services. This has been increased to Rs.40 lakh for supply of goods with effect from 01.04.2019.

For certain States specified in Article 279A(4)(g) the exemption limit was initially Rs. 10 lakh which has been increased to Rs.20 lakh in respect of goods.

The supplier falling above this threshold is supposed to get himself/itself registered under the Act. In case the supplies are to different States, one is required to obtain registration from all such states even when the threshold is not reached in any State. Multiple registration can be obtained for different business verticals.

vii. **Reverse Charge**

Where supplies of notified commodities or services are made by an unregistered dealer to a registered dealer, tax is leviable under '**Reverse Charge**', according to which the liability is not on the supplier but on the receiver of goods/services who is a registered dealer.

viii. **GST provides for set-off benefits by way of input credits**

The cascading effect of taxation at multiple levels has been done away with by introducing the system of input tax credit against the GST payable. This results in the taxation of only value addition at each level. Taxes paid by the dealer on purchase of goods or availing of services which form inputs for taxable transactions of supply of goods/services are allowed to be reduced from the GST payable on supply of goods/services by him. It is subject to fulfillment of certain conditions, such as uploading the invoice details, receipt of goods, making payments within the prescribed period and

submitting the return. The input credit of taxes paid under the CGST is available under CGST liability only. So is the case with SGST. Excess credit under both can be set off against IGST and excess still remaining can be adjusted against CGST and thereafter against SGST.

Exception has been made in respect of certain supplies where input tax credit is not available. In such cases either the rate of GST is lesser or there are some other considerations. In case of real estate, an option exists in respect of supplies on or after 01.04.2019 for ongoing projects where one can opt to be taxed at an effective rate of 1% or 5% instead of the earlier effective rates of 8% or 12% without availing the benefit of input tax credit.

ix. **Anti- Profiteering Measures**

The benefit of any reduction in rate of tax or the benefit of input tax credit is required to be passed on to the recipient of goods or services by way of commensurate reduction in price. The Act provides for constitution of an Authority to ensure such passing on of benefits and consequences for default.

x. **Constitution of Goods and Service Tax Council**

Consequent to jurisdiction over the Central as well as State Taxes, a system had to be evolved for joint decision making. The GST Council has accordingly been constituted with the Union Finance Minister as the Chairman, MOS (Revenue) and Finance/Taxation Ministers of each State to make recommendations on the basis of which the respective Legislatures will act. It is provided that any decision in the GST Council will be taken by the majority of not less than $\frac{3}{4}$ of the weighted votes in which the votes of the State Governments will have a weightage of $\frac{2}{3}$ and Centre $\frac{1}{3}$.

Part II

GST provisions and Real Estate Sector

2.0 Even after more than 24 months that the GST is in operation, there are issues in relation to its application to this sector which are shrouded in ambiguities and uncertainties and which defy a categorical answer. The real estate sector being a capital intensive sector, the transactions involve large amounts and consequent heavy tax incidence. Any default of the provision or misapplication thereof arising from unacceptable interpretation not only upsets the cost and other projections, it leads the real estate developers to serious risk of consequences.

2.1 Before dealing with the provisions in relation to specific real estate situations, a brief discussion of the GST provisions in relation to the real estate sector will enable a better understanding of the subject. Later, our attempt will be to see how these influence the ultimate legal position.

Applicability of GST to real estate

2.2 GST is chargeable on supply of 'goods' and 'services'. The term goods, for purposes of GST, means “every kind of movable property other than money and securities but includes actionable claims,

growing crops, grass and other things attached to or forming part of land which are agreed to be severed before supply or under a contract of supply". It will be noticed that only movable property falls within the meaning of goods for purposes of GST. **Immovable property is, therefore, not goods and as such its supply is not subject to GST as 'goods'.**

2.2.1 Does 'immovable property' fall under 'services'? '**Services**' are broadly defined as anything other than goods. Question arises as to whether supply of land and/or building, which is not goods, can be taken to be 'supply of services'. Within the broad meaning given to the term 'services' one has to refer to Schedule II of the CGST Act which specifies activities which are to be treated as supply of goods or supply of services. In relation to '**Land and building**', item 5 specifies the activity of construction of complex etc. as service, subject to certain conditions. Supply of land is not mentioned. Reference has also to be made to Schedule III of the Act which is a negative list specifying activities or transactions which are to be treated neither as supply of goods nor as supply of services. Item 5 of the list of such activities mentions '**sale of land**'. Not finding a place in Schedule II and specific mention in Schedule III, makes it abundantly clear that sale of land is not service also. **Being neither goods nor service, sale of land is outside the GST tax net.**

2.2.2 Coming to '**building**', there are two situations. One, a building which is ready to move being complete, as evidenced by the issue of Completion Certificate, and another which is incomplete and in the process of construction. Schedule II, in item 5 mentions as service, "the construction of a complex, building, civil structure or a part thereof, except where the entire consideration has been received after issuance of completion certificate, where required, or after its first occupation, whichever is earlier".

2.2.3 A reading makes it clear that whereas the supply of a completed building is outside the GST net, falling neither within 'goods' nor 'service', supply of under- construction building amounts to supply of service and hence subject to GST. The above

broad proposition is subject to the condition that if the **entire consideration** is received after the issuance of completion certificate or after it is first occupied, it does not amount to 'supply of service' even if the transaction was in respect of under- construction property and is, accordingly, outside the tax net for GST. To put it differently, transactions under which any part of the payment, howsoever small, is made before the issuance of completion certificate or before it is first occupied, tantamounts to transaction for supply of service and attracts GST. It needs to be emphasized that even the money purportedly received as advance towards the sale of flat etc. is to be taken as consideration making the transaction subject to GST. The Act does not clarify the term 'first occupation' which remains a fact finding exercise based on the evidence of genuine occupation, as a fact.

2.2.4 Summing up in a simple way, the position is:-

- i. Supply of land is neither supply of goods nor services and hence not subject to GST;
- ii. Supply of completed, ready to move, unit of the building in which full consideration is received after issue of Completion Certificate or, after first occupation, whichever is earlier, is neither goods nor services and hence not subject to GST;
- iii. Supply of building, construction of which is in process and any part of payment for which is made prior to issuance of Completion Certificate or its first occupation is treated as supply of service and hence subject to GST. If entire payment is made after the issuance of Completion Certificate or after first occupation, the same will not amount to supply of service and will be outside the tax net of GST.
- iv. Such services of construction fall under the classification 'Construction Services'. The 'Works contract service' is a subcategory of Construction Services' which means *a contract for building, construction fabrication etc. of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract*. Transfer of property in goods is the essential

feature of works contract service. A builder/developer in this sense is a works contractor who constructs using the required material and services and pass on the property in the goods in the form of the flat, to the purchaser.

Activity of mere construction which does not involve transfer of property in goods is not 'works contract service' and is termed as 'Job-work' service. 'Job Work' has been defined to mean any treatment or process undertaken by a person on goods belonging to another registered person. In cases where a contractor constructs using the material supplied by the contractee, there is no transfer of property in goods and hence it is job work, not the works contract service.

Rate of GST upto 31.03.2019

2.3 The supply of under construction properties in respect of which any part of the payment is made before the issue of Completion Certificate or first occupation, are taxed at the rate applicable to Works Contract Services, which are taxed at 18% on the value of consideration received. However, since the value of apartment etc. sold includes the value of land which is outside the tax net, an ad-hoc abatement equal to $1/3^{\text{rd}}$ of total consideration is allowed in respect of the value of land included in the total consideration, resulting in the net chargeable tax on $2/3^{\text{rd}}$ of the applicable rate of 18%, which works out to be the effective rate of 12%.

2.3.1 As a measure of providing a boost to affordable housing, the tax is chargeable at 12% which, after abatement of $1/3$ of the value, is reduced to the effective rate of 8%. This rate is applicable to homes purchased under specified schemes.

2.3.2 In case the transaction was made by way of allotment prior to 1st July, 2017 when GST became applicable, and part consideration was received prior to this date, the part payment so made will be subjected to Service Tax and VAT as applicable at that time. But consideration received after 01.07.2017 will attract GST and be subject to tax at effective rate of 12% or 8% after input tax credit, a discussion of which is made later.

2.3.3 Abatement for the value of land at 1/3rd of the total value is an adhoc estimate of land value. It is considered to be too inadequate in places like Mumbai where the land cost forms a major component of cost, far exceeding 1/3rd of the total value. A suggestion is sometimes mooted to make separate sale agreements for the land portion and for construction thereon. Any such attempt is not likely to be acceptable to the department as the construction service is supplied simultaneously with the land and is inextricably linked to the supply of land, even when it is under separate agreements.

2.3.4 Where the construction work is assigned to a contractor on the contractee's land, the contractor renders works contract service taxable at 18% without any abatement for land.

2.3.5 As mentioned, the ready to move houses in respect of which completion certificate has been issued or which are occupied are not taxable if the entire consideration is paid after the issue of Completion Certificate or after first occupation, whichever is earlier.

Rate of GST with effect from 01.04.2019

2.3.6 Taxation of under-construction properties at 12% or 8% for non-affordable sector and affordable housing sector respectively, was considered a very heavy burden on the buyers of such properties as compared to the pre-GST rate of taxation when the total burden by way of Service Tax and VAT was limited to 5.5% of the value only. The burden becomes heavier when liability of Stamp Duty is also taken into account. The heavy tax regime of GST was being considered as aggravating factor in an already depressed real estate market where reducing demand was leading to mounting inventory of constructed units. The compensating factor of input tax credit benefits available to the builders was supposed to be passed on to the buyers, was found to be absent in practice in large number of cases. A need was felt for reconsideration of the GST regime for real estate sector. The GST Council in its 34th meeting made far reaching recommendations which were accepted and notified vide Notification No. 3/2019-(rate) dated 29th March, 2019.

2.3.7 Broadly speaking, the rates in respect of taxable supplies in Residential Real Estate Project (RREP) made after 31st March, 2019

were reduced to the effective rate of 1% and 5% for affordable housing and other than affordable housing respectively, compared with the earlier rates of 8% and 12% prevailing in respect of supplies upto 31st March, 2019. The sharp reduction in rates was accompanied by withdrawal of benefit of input tax credit. This substantially benefitted those to whom the input credit was not being passed on and GST was being paid at 8% and 12% respectively. -Also, for affordable housing projects, works contract services now stands chargeable at a reduced rate of 12%

Rates in respect of units in ongoing projects

2.3.8 While the new tax regime was applicable to new projects commencing on or after 31st March, 2019, an issue remained in respect of projects which had commenced before 1st April, 2019 but were not completed till that day. As some of the units in such projects would have been booked prior to 1st April, 2019, the applicability of the new rates raised a question. The GST Council vide their Notification dated 29th March, 2019 found the solution by giving a one-time option, until May 10, 2019 which subsequently was revised to 20th May, 2019 by Notification no. 10/2019 - CT(rate) dated 10.05.2019, to the promoters of such projects, to be governed either by the old regime of 8% or 12% tax rate with input tax credit or, the new regime of 1% or 5% tax rate without input tax credit. The Promoter can exercise this option for each project (as registered under RERA) separately.

2.3.9 The new tax regime carries with it certain conditions to be complied with, a discussion about such conditions and the changes brought about in the taxation of real estate will be made separately.

Input Tax Credit

2.4. The basic feature of GST is the allowance of input tax credit to the supplier of goods or services in case the same is subject to GST. Input tax credit is available in respect of the tax payable and accordingly, no credit can be claimed in respect of supplies which are not taxable. In case of construction services therefore, such credit is available in respect of supply of under-construction apartments which are

subject to tax, but the same is not available in respect of ready-to-move apartments where the entire consideration is payable after the issue of Completion Certificate or after its first occupation, as they are not taxable. If inputs are used partly for effecting taxable supplies, including zero-rated supplies, and partly for exempt supplies, input tax credit shall be restricted to so much of input tax as is attributable to taxable supplies. Exempt supplies, for this purpose, include supplies on which the recipient is liable on reverse charge basis. In the context of construction services, if some of the units are sold during construction ie. before the receipt of Completion Certificate or first occupation, and some afterwards, and inputs are used in construction of all the units, credit is restricted to the amount attributable to supply of under-construction units only and the balance amount of input tax credit is reversed. As mentioned, Input Tax Credit is not available in respect of supply of residential units in projects commencing from 01.04.2019 and supply in ongoing residential project after 01.04.2019 where the developer- promoter does not opt for continuing with the old regime of 8% and 12% in respect of affordable and non-affordable apartments respectively.

2.4.1 It generally happens that after the Completion Certificate is received, the developer is left with unsold inventory which is sold after the Completion Certificate and hence not subjected to GST. But the input tax credit would have been availed for the entire project. In such scenario, input tax credit attributable to inventory sold after Completion certificate will have to be reversed. There may be situations where the goods or services procured are used for construction for sale as well as construction for non-business purpose. In such case also, the tax credit is restricted in respect of construction for business purposes only. The method of working the attributable tax is as per Rule 42 for goods and services and Rule 43 for capital goods. To take an example, if the total input tax credit availed by the developer for 10000 sq. ft. of construction is say Rs 100 lakhs and an area of 3000 sq. ft. is sold after the receipt of Completion Certificate, the amount of total input tax credit attributable to 3000 sq. ft. as worked out in accordance with Rule 42 will have to be reversed.

2.4.2 Tax credit is available to the developer in respect of material and services like those of contractors, engineers, architects etc. used in construction on which GST was paid by him. As a result, the net liability to tax is reduced by the amount of input credit. The system results in tax on value addition only. The credit mechanism operates through the electronic credit ledger maintained for registered persons. As mentioned, the benefit of input tax credit by way of reduction in tax liability is required to be passed on to the buyers in the form of reduction in the price to ensure such reduction mechanism by way of creation of an Anti-Profitteering Authority has been created.

2.4.3 The input credit is available if the inputs are used for further supply of works contract services. In other words, if construction was done for end use and not for sale, the credit will not be available. It is also blocked if the construction was on own account including when such goods or services are used in course of furtherance of business. If, for example, inputs are used for construction of own office building, credit will not be available even when the office is to be used for carrying on the business. However, it is pertinent to mention that these restrictions are applicable only for goods or services used for construction to the extent of capitalization of immovable property.

Person liable to pay GST

2.5 Under the GST regime, tax is payable by the service provider and not the service receiver, although the incidence is borne by the service receiver as the service provider is free to pass on the tax burden to the receiver. There are situations where the system of Reverse Charge Mechanism (RCM) is in vogue. A developer-promoter procuring less than 80% inputs from registered persons is required to pay tax on the shortfall under RCM at the prescribed rate, similarly in case purchase of TDR/FSI/Development rights from a land owner the developer will have to pay GST under RCM. On construction services, it is the obligation of the builder/developer to collect GST from the buyers or pay the tax on reverse charge basis, wherever such liability exists. How the same

works in different type of real estate transactions will be discussed at relevant places.

Point of taxation

2.6 The GST is chargeable at the point of supply of services. When is the supply deemed to have taken place in reference to real estate transactions? Section 13 of the CGST Act provides that the time of supply will be the earliest of :-

- i. The date of issue of invoice by the supplier, if issued within time i.e within a period of 30 days from the date of supply or the date of receipt of payment, whichever is earlier; or
- ii. The date of provision of service, if the invoice is not issued within the time as per (i) above; or
- iii. The date on which the recipient shows the receipt of service, in his books of accounts, in case (i) and(ii) do not apply.

2.6.1 Realizing that these events determining the time of supply do not fit in the case where the constructed units are allotted without any charge, the Government, by Notification No.04/2018-CGST(Rate) dated 25.01.2018 deferred the time of supply for registered builder and the landowner in transactions of the following nature-

- i. for a registered builder, where flats are constructed and given as consideration for the development rights granted to him by the societies or other landowners; and
- ii. for the landowners/societies, which transfer development rights to the builder in consideration, wholly or in part, of certain number of flats in the building to be constructed by the builder on that land,

2.6.2 The Notification no. 4/2018 dated 25.01.2018 provides that liability to GST in respect of supply of construction services provided to the landowner and also, in respect of transfer of development rights granted to the builder shall arise at the time of transfer of possession or the right in the constructed building, complex, or civil structure by entering into a Conveyance Deed or similar instrument (for example allotment letter).

2.6.3 However, in case development rights were transferred on or after 01.04.2019 for construction of residential apartments by a promoter, GST on development rights is exempt with a condition that the units constructed by using those development rights are sold on payment of GST. In case the flats remain un-booked on the date of receipt of completion certificate or its first occupation, as the case maybe, whichever is earlier the GST will be required to be paid by developer on the proportionate carpet area (to total carpet area) which remain un-booked. The liability to pay GST shall arise on the date of completion of the project or first occupation, as the case maybe, whichever is earlier (Notification No. 4/2019, 5/2019, 6/2019 Central Tax (Rate) all dated 29.03.2019).

2.6.4 It is to clarify that GST payable 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.

Value of Construction services

2.7 GST, being payable on the value of goods or services, it is necessary to ascertain its value. Section 15 of the CGST Act provides that the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both, where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply.

2.7.1 Where the transaction value cannot be determined wholly in monetary terms, a situation which the developers face in respect of constructed area to be given to landowners in terms of development agreement- the Rule 27 provides that the value of supply shall -

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

- (c) if the value of supply is not determinable under (a) and (b) above, be the value of supply of goods or services or both of the like kind and quality;
- (d) if the value is not determinable under (c) also, be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money, determined as per Rule 30 and 31.

2.7.2 Where construction units are provided free of charge, as a consideration in kind for some other goods or service and open market value is not determinable, the usual method adopted is to take the open market value of similar units sold by the developer. Since there will be no transactional value of the units supplied to the landowner free of charge, and the open market value may also not be available, the usual method is to adopt the value of units given to the landowner/society on the basis of the transactional value of the free sale units sold nearest to the time of agreement. An example is the supply of construction service to the supplier of development rights which, for GST, is taken as the consideration for the development rights. The developer is liable to GST in respect of the construction service provided to the landowner/society as well as to the other buyers whom he will be selling the free sale area. The GST charged by the developer-promoter will be available to landowner-promoter as ITC which may be utilized by the landowner-promoter only for payment of GST on sale of such flats to outsiders.

Part III

Application of rules to specific situations

3.0 With the exposition of general rules of GST applicable to real estate sector in broad terms, we will analyse the legal position applicable to transactions in certain specific situations which are commonly entered into by the developers in execution of development/redevelopment agreements. The persons involved in Real Estate Transactions as service providers and/ or service receivers are:-

1. Owner of a piece of land(Owner)
2. Purchaser of such land (Builder)
3. Occupant of the building other than owner (Tenant)
4. Person carrying on construction service on such land (Developer- Promoter)
5. Cooperative Housing Society owning the land(CHS)
6. The occupants of apartments in the CHS (Members)

3.1 The transactions involving the above stakeholders in matters of development/ redevelopment proposed to be discussed are:-

- (i) Outright purchase of land- open plot or with existing structure

- (ii) Outright purchase of land with occupation of tenants
- (iii) Redevelopment of society land under tripartite agreement with members

Outright purchase of land/structure (With no tenants)

3.2 The two modes generally in use are:-

- (i) by full payout to the land owner
- (ii) by partial payment in money and the balance in the form of constructed area in the building to be constructed.

Seller's Perspective

3.2.1 As mentioned in Part II, a combined reading of the meaning of 'Goods', Schedule II and item 5 of Schedule III brings out the position that transaction for sale of land falls neither under 'supply of goods' nor under 'supply of services' and accordingly, is outside the ambit of GST. **No GST is payable when land, with or without structure thereon, is purchased and full consideration is paid in money.**

3.2.2 Where there is outright purchase of land by the developer but the consideration thereof is payable in kind partly by way of constructed flats and/ or partly in cash, it is still a sale of land not subject to GST in the hands of the seller. The fact that consideration was fully or partly paid in terms of the constructed area does not detract it from its nature of sale, so long as the transfer is by execution of the conveyance deed.

Buyer's Perspective

3.2.3 The position is, however, different from the perspective of the developer. For the developer, provision of constructed units as consideration for the land is sale of the constructed units amounting to rendering of construction services. In case of effecting transfer to independent buyers, after issue of completion certificate, there will be no GST on transfer of such units. However where transfer is as a consideration for land, the consideration of the constructed units by way of land was received before the issue of completion certificate and, therefore, GST will be payable by the developer.

Outright purchase of land / building occupied by tenants

3.3 The rules applicable in case of outright purchase of land (with tenants) apply in the same way as purchase of land (without tenants). The additional issue that arises is for the developer to get the land vacated from the tenants. One course may be to get the tenants evicted by paying them monetary consideration. The other course generally adopted is to provide them, as compensation, a unit in the new building in lieu of their existing occupation. The legal position under GST from the angle of the tenants and the developer is examined below.

The Tenant

3.4 The permission granted by the tenant to vacate the existing unit and to allow the developer to enter, demolish and construct on the land, amounts to supply of service by the tenant and is subject to GST.

3.4.1 In case a tenant falls within the tax net, he will be subjected to GST at the general rate of 18% on the amount of compensation received from the developer. Where he is compensated by permanent alternate accommodation in the new building, the construction service provided by the developer in constructing the unit will become the consideration for supply of services by the tenant and the point of time of such services will be determined in the same manner as the construction services provided to the landowner as discussed in Para 2.6.1. In other words, the point of taxation will be when possession in the alternate accommodation is transferred by execution of conveyance deed.

3.4.2 The GST liability will arise on the analogy of Notification No. 04/2018 at the time of the transfer of possession or the right in the unit by the developer to the tenant by entering into the conveyance Deed or any other similar instrument.

3.4.3 The value of service will be the value of the consideration i.e., the value of the permanent alternate accommodation made available to the tenant which in the absence of any transactional value, will be the price of similar accommodation charged by the

developer from the independent customers at the same time or nearest to that time.

3.4.4 There are situations where the tenant demands additional area in the new unit. In some cases, the tenant purchases additional area from the developer. In both the cases, the tenant is liable to GST on the total value of the area of the new unit. The only difference will be that on the agreed area, he will have the primary liability as the service provider and on the additional area, the primary liability will be on the developer, who will be supplying construction services.

3.4.5 Illustration

“Developer 'A' buys an old building from the owner/landlord B which has 10 tenants. The building is purchased subject to existing tenancy. The tenants agree to surrender their tenancy rights to the developer in lieu of a unit in the new building of equal area. Since tenants are considered to be supplying taxable service by way of vacating, allowing entry, demolition and enabling construction, they are subject to GST on the amount which the developer would have realized on the basis of sale price of other units to independent customers. The liability will arise when the developer transfers possession to him by executing an instrument of transfer.

In case, some of the tenant want to purchase additional area to enlarge the area of the unit being provided to him by the developer, he will be treated like any independent buyer in respect of such additional area and the developer will be liable to GST on the construction services in respect of such area.”

The Developer

3.5 The developer will be rendering construction service by constructing the permanent alternate accommodation for the tenants. It will not be without consideration as the service provided by the tenant will be the consideration for such services. The valuation of such services will be governed by the price at which he is able to sell his units in the building to his customers and the liability will arise on the analogy of Notification No. 04/2018, at the time when he transfers possession to the tenant by executing the transfer document.

3.5.1 As mentioned in earlier paras, the tenant is liable to GST in

respect of the service by way of vacating the unit. Such supply of service by the tenant becomes the input for the supply of construction services by the developer and, accordingly, the developer is eligible to claim input tax credit of the tax paid by the tenant.

3.5.2 Illustration

The developer 'A', in consideration of the tenant 'B' vacating the unit admeasuring 1,000 sq.ft. agrees to provide him unit of equal dimension in the building to be constructed as permanent alternative accommodation. He is rendering construction service to the tenant in respect of such accommodation as the consideration of vacation services rendered by the tenant. When he transfers possession of such unit to the tenant, he will be subjected to GST at the effective rate of 12%. Presuming that he is selling his units @ Rs. 20,000 per sq.ft. then the value of the construction service will be Rs. 20,000X1,000 sq.ft. i.e Rs.2,00,00,000. If, however, the tenant has been subjected to GST on services supplied by him to the developer, then such service by the tenant becomes the input for the construction service and therefore the developer will be eligible to take credit of the tax paid by the tenant. This, by and large, will result in tax neutrality.

Redevelopment arrangements with Housing Societies

3.6 The stages involved are-

- (i) A redevelopment agreement is entered into with the society. The agreement generally is by way of a tripartite agreement between the society, the developer and the members of the society. The members agree to vacate the units occupied by them in order to enable the redevelopment for which the developer agrees to provide-
 - (a) the same area which the member was occupying; or
 - (b) the same with additional area as per development agreement;
 - (c) additional area which can be purchased by the member.
- (ii) Delivery of agreed constructed units to the society in terms of the redevelopment agreement
- (iii) Sale of free sale area by the developer

Execution of agreement for redevelopment/collaboration agreement.

3.7 From the perspective of the society/ landowner, there is transfer of development rights over the land in favour of the developer. The view being taken is that the development agreement results in supply of taxable service to the developer attracting GST payable by the supplier of service i.e., the landowner. The timing of supply in terms of Notification No. 04/2018, referred to in Part II, will be the time when the promised constructed area is transferred by execution of conveyance deed or any other instrument by the developer in favour of the landowner.

3.7.1 The value of the service will be the value of consideration i.e the value of constructed area which will be made available to him, free of charge. As mentioned, such value will be determined by the constructed units of like kind and quality which, in generality of cases, will be the price of similar units charged by the developer in respect of his own free sale area.

3.7.2 When GST is paid by the landowner on grant of development rights, the development rights being the input for construction services rendered by the developer, the developer will be entitled to avail the input tax credit of such tax paid by the landowner and passed on to him. The tax payable by the developer and the landowner, therefore, virtually results in tax neutral position.

3.7.3

3.7.1 Even though the Notification 04/2018 refers to tax liability of the landowner who transfers development rights to the developer, there is a contrary view according to which 'development rights' are benefit arising from the land and, accordingly, such rights are 'immovable property' being akin to land. As we have seen before, supply of land is neither supply of goods nor the supply of services and hence, not subject to GST. The view finds favour from the meaning of immovable property under other Acts and some decided cases under the Service Tax. It is contended that these rights are given irrevocably and permanently and tantamount to sale of land, which is outside the ambit of the Act. A Writ petition challenging the chargeability of GST in respect of transfer of

development rights is pending for decision before the Hon'ble Bombay High Court.

3.7.4 The issue therefore, is contentious. Based on the notification referred to above, the Department is taking the view in favour of chargeability. A cautious view is, therefore, called for in the matter.

GST on execution of Redevelopment/ Collaboration Agreement after 31.03.2019

3.7.5 The controversy has been set at rest by the Notification No.03/2019 dated 29th March, 2019 in respect of supplies taking place on or after 01.04.2019. The Press Release states that the supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of the value in case of affordable houses and 5% of value in case other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.

3.7.6 The result is that in case of transfer of development rights by any person (Landowner- Promoter) to a promoter (Developer-Promoter) against consideration , wholly or in part, in the form of construction of apartments will not be subjected to tax in the hands of the Landowner-Promoter if, tax is paid by the Developer-Promoter in respect of flats/houses constructed by using these rights. In case tax is not payable by the Developer-Promoter for reasons of bookings after the issuance of completion certificate, tax will be payable by the Developer-Promoter under RCM but the tax incidence shall be limited to 1% of value in case of affordable house and 5% in case of other than affordable houses. So far as the flats to be provided to the landowner/society are concerned, the Developer-Promoter will be liable for GST and accordingly, the Landowner-Promoter will be exempt from GST in respect of the transfer of development rights.

3.7.7 The liability to pay tax on Development Rights/ FSI, used for construction of apartments which remained unbooked on the date of issuance of completion certificate will be discharged by the developer under the reverse charge mechanism and the same shall be payable on the date of issue of completion certificate. The Landowner-Developer will, therefore, be exempt even in respect of free sale area by the developer. The notification has shifted the primary liability from the Landowner-Promoter to the Development Promoter.

3.7.8 The GST on Development Rights/FSI etc. used for constructing the flats which remain unbooked on the date of issuance of completion certificate or first occupation will have to be paid by the developer under RCM in proportion of the unbooked carpet area to the total area of the project.

To take an example, if a CHS having a land area of 1,000sq.mts.having FSI potential of 3,000 sq.mts. transfers the development rights over the land in consideration of getting 1,500 sq.mts. constructed area free of charge, the developer will be liable to pay GST on 1,500 sq.mts. to be allotted to the society as consideration in the form of development rights has already been received. Out of the free sale area of remaining 1,500 sq.mts., if it is presumed that 1,000 sq.mts. was sold on payment of GST and the balance 500 sq.mts. remained unbooked till issuance of completion certificate or first use, the developer will have to pay proportionate GST on transfer of development rights to the extent of 500 sq.mts. The remaining development rights over 2,500 sq.mts. will not be subjected to GST as it has suffered tax when sold by the developer or transferred to the society by him.

3.7.9 The value of flats given to landowner in lieu of development rights shall be the open market value of the similar flats charged from independent buyers, nearest to the date on which development rights of FSI was transferred. By inserting Paragraph 2A after Para 2 of Notification No. 11/2017- Central Tax (Rate), it is provided that 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 services 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 rights or FSI (including additional FSI), nearest to the date on which such development right or FSI is transferred to the promoter, less the value of transfer of land, if any, as prescribed in Paragraph 2.

Agreement with the Members for permanent alternate arrangement

3.8 Any redevelopment/ collaboration agreement with the society includes provision of accommodation of equal size or, sometimes even larger size, in the new building to the members of the society, in lieu of their existing accommodation in the society building. As a matter of general practice, the redevelopment agreement is either a tripartite agreement between the society, the developer and the members or, the members are the consenting parties in the agreement between the society and the developer. A question arises as to whether the consent given by the members to vacate the flats occupied by them amounts to supply of service. The view being taken is that by agreeing to vacate the flat and allowing demolition thereof and fresh construction thereon, the member is supplying a service subject to GST.

3.8.1 A further question that arises is whether such consent is given by him to the society or the developer. In effect, the transfer of development rights over the society land is by the society which is the legal owner of the land, and not by individual members. The agreement to vacate the accommodation is with the society which in turn, agrees with the developer to transfer development rights over the aggregate land to him. There being no service rendered by the individual members to the developer, the question of any taxable supply by them does not arise. Consent given to the society should be taken to be the consent to self and, accordingly, not subject to GST.

3.8.2 In case privity of contract is held between the members and the developers, a view is possible under which the consent by the member is taken to be a service to the developer. In that case, the member will be subjected to GST. As a consideration for the inconvenience faced by him, the agreement generally provides for

payment of rent for the intervening period, which will become a consideration for his service and be the value for this purpose. The developer will be entitled to input tax credit of the taxes paid by the members.

3.8.3 In some cases, the development agreement provides for additional area to the members. As the value of service provided by the society is determined by the value of constructed units allotted to it, the value so determined will take into account the value of additional area as well and, therefore, no further adjustment will be required.

3.8.4 Where the members purchase additional area from the developer, it will be like independent sale by the developer akin to sale of free sale area by him to his purchasers. The developer will be subjected to GST on the value of such area which will have no impact on the society.

3.8.5 A discussion in Paras 3.4 to 3.4.5 relating to the liability of tenant will be relevant in relation to this part also.

Delivery of agreed constructed units to the Society

3.9 The units to be allotted to the society as consideration for the development rights granted by it, attracts GST in the hands of the developer as it is supply of construction service to the society. Prior to 01.04.2019, the same will be subject to tax at the effective rate of 12% (8% in the case of affordable housing) after credit for inputs, including the input in the form of development rights in respect of which tax was payable, if any, by the society. After 31.03.2019, the rate of tax will be 5% (1% in the case of affordable housing) without any input credit unless the promoter opts for continuing with the old tax regime.

3.9.1 As mentioned before, the time of supply of such construction services will be when the Developer transfers right over such units to the society by executing a deed of conveyance or any other instrument of that nature. However, under the new regime, the liability on the Developer arises on the date of completion or first occupation, as the case may be, whichever is earlier.

3.9.2 As there will be no transactional value of such units, in the absence of any open market value, the basis for determining the value will be the price of similar flats sold at the same time or near about, charged by the Developer from the customers of the free sale area. The value of flats given to landowner in lieu of development rights shall be the open market value of similar flats charged from independent buyers, nearest to the date on which development rights of FSI was transferred. The notification provides that 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 services 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 rights or FSI (including additional FSI), nearest to the date on which such development right or FSI is transferred to the promoter, less the value of transfer of land, if any, as prescribed . The prescribed value of land is one-third of the total amount charged for the supply.

3.9.3 The net effect of taxation on the society on transfer of development rights (Prior to 01.04.2019) and, on the developer in relation to the supply of such units, is likely to ultimately fall on the society as, while the developer will be able to avail input tax credit in respect of the taxes paid by the society, the society will not have any such benefit in respect of the GST paid by the developer. The society will have to bear the tax on construction services paid by the developer and passed on to it.

Sale of free sale area

3.10 This has been discussed in Part-II. To repeat, the tax treatment will be as under:-

- (i) It will be taxed as construction service at 18% which, after abatement for land, presumed to be $1/3^{\text{rd}}$ of the total consideration, will effectively be 12%. The developer will have the benefit of input tax credit. In case it falls under the affordable housing, the rate of tax will be 12%, which after $1/3^{\text{rd}}$

abatement of land will effectively be 8%, with input tax credit. From 01.04.2019 the effective rate of taxation will be 5% and 1% respectively without the input tax credit.

- (ii) In case the supply was made after the issue of completion certificate or its first use, whichever is earlier, there will be no GST, if no part of the payment was received from the customer before these events.
- (iii) The liability will arise when the invoice is raised or when the consideration is received, whichever is earlier.
- (iv) The value will be the transactional value unless the sale is made to a related person.
- (v) The seller will be able to avail input tax credit proportionate to the sale which is subject to GST. In other words, if some flats in the project were sold after completion certificate and thus not subject to GST and some before it, in that case input tax credit will be restricted to the flats sold before completion certificate and the balance credit will be reversed.

PART IV

Impact of changes in GST applicable to Real Estate sector effective from 01.04.2019

The amendments introduced vide Notification No.3/2019 (Rate) and other Notifications all dated 29th March, 2019 meet the ever growing demand for reconsideration of tax regime relating to real estate sector, particularly residential housing, which was experiencing a negative impact on the business caused by the perceptible high rate of tax and consequently heavy burden on the purchaser. The rates in respect of residential units have been significantly reduced and procedural simplification has been introduced by bringing certain areas under reverse charge mechanism.

New GST rates from 1st April 2019

4.1 Vide the Notification no. 03/2019 – CT (rate) dated 29th March 2019 the earlier notification no. 11/2017 – CT (rate) dated 28th June 2017 has been amended and for the construction services falling under Service Heading 9954 new rates have been prescribed which shall be effective from 1st April 2019. To simply put, GST shall be chargeable @ 1.5% for affordable housing and @7.5% for all others. However, abatement in the taxable value shall continue @ 1/3rd of total consideration as the case was earlier. Accordingly, effective

rate for affordable housing will be 1% whereas for others it is 5%. It is pertinent to mention that the person who is availing these new rates shall not be entitled to take input tax credit and if input credit has been claimed under the old tax regime, the excess credit will have to be reversed.

4.2 There are certain conditions to be complied with under the new tax regime prescribing lower rate of taxation in respect of residential real estate transactions after 31.03.2019. The payment of central tax is necessarily to be made in cash i.e by debiting the electronic cash ledger. Further, the developer is placed under an obligation to procure minimum 80% of inputs by way of goods and services from the registered dealers only. In case there is any shortfall from 80%, the tax on the shortfall will be payable by the Developer- Promoter at the rate of 18% under the reverse charge mechanism (RCM). Such duty is to be worked-out and paid for the full financial year or part of the year upto the date of completion. The requirement of procurement to the minimum extent of 80% will be in respect of inputs other than services by way of:-

- (i) grant of development rights;
- (ii) Long term leases of land (against upfront payment in the form of premium, salami, development charges etc.);
- (iii) Electricity, High Speed Diesel, motor spirit and natural gas

There is a special case for purchase of cement in which case purchase from unregistered dealer will entail tax at 28% even if the requirement of 80% is met from other inputs. Shortfall in respect of capital goods is taxable at the applicable rate. GST on Reverse Charge basis in respect of cement and capital goods will be paid monthly.

4.2.1 It is provided that inputs and input services on which tax is paid on Reverse Charge basis shall be deemed to have been purchased from registered persons.

4.2.2 The developer is to maintain project wise account of inward supplies and calculate the shortfall at the end of the financial year. A statement has to be submitted by the end of the quarter following the financial year.

4.2.3 It is necessary to mention that the new rates of GST are applicable in respect of residential project only. Resident Real Estate Project (RREP) has been defined to mean a Real Estate Project 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 real estate project. It will mean that even commercial apartments will be taxable at 5%, if the aggregate carpet area of commercial apartment is upto 15% of the total carpet area.

4.2.4 In case of mixed projects i.e. the projects in which both the components are present, the commercial area, upto 15% of the total carpet area will be subjected to GST at 5%. In case, the commercial area exceeds the prescribed 15%, the whole of such area will be taxed at the rate for commercial area i.e. 12% with input tax credit.

Transitional provisions for ongoing projects

4.3 The ongoing project as per the notification is one in which:-

- (a) commencement certificate, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019:-
 - (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
 - (ii) a chartered engineer registered with the Institution of Engineers (India); or
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.
- (b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub- clause (a) above that construction of the project has started on or before the 31st March, 2019;
- (c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;

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

4.3.1 It will be seen that (i) commencement of the project prior to 01.04.2019, (ii) completion not having taken place till 31.03.2019 and (iii) booking, partly or wholly, are the essential requirements for any project to be termed as 'ongoing'. In view of the above, if a project had commenced before 01.04.2019 but no booking is done till 31.03.2019 then it will not be considered as an ongoing project and the developer shall not have the option to pay tax at existing rates and claim ITC i.e. he will have to compulsorily pay the GST at new rates effective from 01.04.2019, without ITC.

4.3.2 If the project is complete but no booking had taken place till 31.03.2019, it will not be an ongoing project. For the purpose of sub-clause (a) and (b) above, construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.

4.3.3 In case of ongoing projects the developer shall be given a onetime option to continue to pay tax at the old rates i.e. at the effective rate of 8% (for affordable housing) or 12% (for all others) with input tax credit or to pay tax at new rate i.e. 1% (affordable housing) or 5% (all others) without input tax credit.

4.3.4 The option to continue paying GST at old rates was to be exercised by 20th May 2019 in the Form appearing in Annexure IV appended to the notification 03/2019-CT(Rate) dated 29.03.2019, and in case the option was not exercised then the developer would be required to pay GST at new rates i.e. 1% or 5% without ITC. This option was to be exercised independently and identically by the landowner-promoter and developer-promoter for a project.

4.3.5 In case the option was exercised, invoices for supply of the services, pending the actual exercise, were to 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. However, if the invoices were not issued in accordance

with the option then credit or debit notes option could be exercised by the developer in accordance with the provisions of Section 34 of CGST Act, 2017, as has been clarified by FAQs issued by Ministry of Finance vide **F.No. 354/32/2019-TRU** Dated the 7th May, 2019.

Applicability of new tax rates for Affordable Housing

4.4 A significant feature of the notification is that it gives a clear meaning to the term “affordable housing” based on which the taxability at the new rates is determined.

- i. Tax at 1.5% without ITC shall be applicable to construction of affordable houses, However, abatement in the taxable value shall continue @ 1/3rd of total consideration, as the case was earlier, bringing the effective rate to 1%
- ii. Affordable Housing has been given a definite meaning based on the size and the price of each apartment. Affordable Residential Apartment has been defined to mean residential apartment in a project having carpet area not exceeding 60 sq. mtrs in Metro cities or 90 sq. mtrs in cities or towns other than Metro cities and for which the gross amount charged is not more than forty five lakh rupees. It has been clarified that the gross amount charged by the promoter shall include preferential location charges, development charges, parking charges and common facility charges. Accordingly, in Metros viz. Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon and Faridabad) the affordable housing project is one in which no apartment exceeds the carpet area of 60 sq. mtrs. In places other than these, affordable housing project can have apartments upto the carpet area of 90 sq. mtrs. The monetary limit for both- metros and non-metros remain the same Rs. 45,00,000. The term 'carpet area' has been defined in the same way as in the Real Estate Regulation Act (RERA). According to the RERA, carpet area is defined as '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'.

- iii. For working out the value of apartments the following shall be taken into account:-
 - a. Consideration charged
 - b. Amount charged for the transfer of land or undivided share of land
 - c. Amount charged including preferential location charges, development charges, parking charges, common facility charges etc
- iv. 7.5% without ITC shall be applicable to construction of all residential houses other than affordable houses in ongoing projects w.e.f. 01.04.2019 (If the option is not exercised by the developer). However, abatement in the taxable value shall continue @ $1/3^{\text{rd}}$ of total consideration as the case was earlier (giving the effective rate at 5%) to all houses other than affordable houses in new projects as well as ongoing projects in respect of which option has not been exercised.

Treatment of transfer of Development rights/FSI w.e.f. 01.04.2019

4.4 Vide the notification no. 04/2019 – CT (rate) dated 29th March 2019 with effect from 01.04.2019 supply of TDR, FSI, long term lease (of 30 years or more) falling under heading no. 9972, of land by a landowner to a developer shall be exempted from GST subject to the condition that a. the TDR/ FSI is utilized for an Residential Real Estate Project and b. the constructed flats are sold on payment of GST. In other words, if the apartments remain un-booked on the date of issuance of completion certificate or first occupation of the project then the exemption to TDR, FSI, long term lease (premium) shall not be available. Supply of TDR or FSI or long term lease of land, on such value which is proportionate to construction of residential apartments that remain un-booked on the date of issue of completion certificate or first occupation, would attract GST at the rate of 18% but the tax incidence shall be limited to 1% of value of apartment in case of affordable houses and 5% of value of apartment in case of other than affordable houses.

- i. The liability to pay tax on TDR, FSI, long term lease (premium) will be on the developer under the Reverse Charge (applicable only in case of flats remain un-booked on the date of issuance of completion certificate) and the same shall be payable on the date of issue of completion certificate.
- ii. The GST on FSI, Development Rights, lease premium etc. used for constructing the flats which remain un-booked on the date of issuance of completion certificate or first occupation of the project will have to be paid in proportion of the un-booked carpet area to the total carpet area of the project.
- iii. TDR or FSI or long term lease of land used for construction of commercial apartments shall attract effective rate of GST at 12%, after abatement of 1/3rd of the value towards value of land, and the liability to pay tax on the same shall arise immediately if the consideration for TDR or FSI is paid by way of monetary consideration. However, if the consideration is received in form of construction service, then on date of issuance of completion certificate or first occupation, whichever is earlier. The liability to pay GST shall be on the Developer under Reverse Charge Mechanism (RCM). It is to further clarify that if the consideration for TDR or FSI is partly in terms of money and partly in terms of construction service then the sum total of both shall be considered the value of supply of TDR or FSI, in terms of valuation provisions under the CGST Act, 2017 and Rules made thereunder.

4.4.1 The amendment provides certainty to the hitherto contentious issue of chargeability of tax in respect of transfer of development rights in so far as transfers after 31.03.2019 are concerned. The reverse charge mechanism will go a long way in relieving the landowner- promoters of the procedural requirements. The reduction in tax rate will considerably lessen the tax burden on the society in respect of the apartments allotted to it and will give a boost to the sector in general and redevelopment in particular.

4.4.2. The value of houses/flats given to landowner in lieu of development rights shall be the open market value of the similar

flats, charged from independent buyers, nearest to the date on which development rights or FSI was transferred.

PART V

GST on Redevelopment of Societies etc.

During the Redevelopment of a Society, the following transactions, as per the Goods and Services Tax Act, 2017, are treated distinctly:

1. Supply of Transfer of Development Rights/ Floor Space Index (commonly known as TDR/ FSI) by the Society/ Landowner to a Developer
2. Supply of Construction Service by the Developer to the Society/ Landowner in lieu of supply of TDR/ FSI by the Society/ Landowner
3. Sale of Constructed units by either the Developer or Landowner to outsiders

In context of the transactions above and w.e.f. 01/04/2019, the applicability of GST, value of supply, point of taxation and liability to pay GST to the government is explained below and under different situations A, B and C.

A: Redevelopment of a Residential Society by a Developer (Classified as an RREP, Other than Affordable Housing)

A “Residential Real Estate Project (RREP)” shall mean an 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, wherein REP means “Real Estate Project (REP)” as defined in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).

- a. **When the Landowner/Society provides Development Rights (TDR/ FSI) to a Developer,** such a transaction is exempt from payment of GST on the condition that the flats constructed by utilization of such TDR/ FSI are booked before receipt of completion certification or first occupancy, whichever is earlier. Thus, if there are any flats which remain un-booked on such date of receipt of completion certification or first occupancy, GST shall be payable at the rate of 18% on the value of TDR proportionate to the carpet area of un-booked flats subject to maximum 5% of the value of such un-booked flats. The liability to pay GST shall arise at the time of receipt of completion certificate or first occupancy, whichever is earlier and it shall be the liability of the Developer under Reverse Charge Mechanism (RCM).

The taxable value of TDR/ FSI will be equal to the market value of the flats/houses received by the Landowner/ Society without any consideration plus any monetary consideration viz. corpus, rent allowance, shifting allowance etc received by the Society and its members.

Market value of flats, given to Landowner/Society free of cost, shall be equal to similar flats sold to independent buyers nearest to the date of agreement.

- b. **When the Developer provides Construction Service to the Landowner/Society:** In a redevelopment project the Developer gets the development rights from the Landowner/Society and in turn he gives flats/houses to them. This is a barter of supplies, where there is no consideration in the form of money. However, for the purposes of levy of GST, the value of services has to be quantified. Therefore, the law provides that in such cases the value of construction service i.e. flats/houses supplied to Landowner/Society, shall be equal to the market value of the flats sold to independent buyers nearest to the date

of development agreement. GST shall be payable by the Developer on the same, recoverable from Landowner/Society, at the effective rate of 5% as he is the service provider. The liability to pay GST to the government will be on the Developer and the same has to be paid at the time of receipt of completion certification or first occupancy, whichever is earlier.

c. On sale of Flats by Landowner/Society:

As in some cases the Landowner/Society may like to sell these flats/houses before receipt of completion certificate, such sale of flats/houses shall also be chargeable to GST at the hands of Landowner. Therefore, to avoid double taxation of construction service, the law provides that the GST paid by the Developer, on the flats/houses supplied to Landowner/Society, will be available as Input Tax Credit to the Landowner. This Input Tax Credit can be used by the Landowner/Society for payment of GST on sale of those flats to an outsider which is received by the Landowner/Society from the Developer. The Liability to charge and pay GST shall be at the time of receipt of every instalments/ payments at the effective rate of 5%.

In case the same are sold after receipt of Completion Certificate, then the transaction is exempt from payment of GST.

d. On Sale of Units by the Developer to outsiders: For Flats sold by the Developer, to other customers, before receipt of Completion Certificate, GST will be chargeable at the effective rate of 5% (after taking into consideration 1/3rd abatement in value towards cost of land) by the Developer. For flats sold post receipt of Completion Certificate, the same shall be exempt from payment of GST. The Liability to charge and pay GST is at the time of receipt of every instalment/ payment.

It may be further clarified that this concessional effective rate of 5% is subject to conditions that no ITC is taken by the Developer and at least 80% of inputs and input services are purchased from registered persons.

e. When Developer supplies additional area to members post entitlement and agreed allocation: The same shall be chargeable to GST as if the member was an outsider and the

conditions as stated in point (d) above will be applicable.

- f. As any REP having commercial area upto 15% of total carpet area of all the apartments in the REP is defined as RREP, therefore, the commercial units in the RREP are also chargeable to a concessional rate of GST @5%. This rate of 5% for commercial units shall also be subject to same conditions as are applicable for residential units. On this issue it is important to bear in mind that under the Notification No. 03/2019-C.T.(Rate) dated 29.03.2019, the Commercial apartments/units have been defined as any apartment other than residential apartment.
- g. **On Works Contract service provided by Contractor to Developer:** The Contractor will charge GST @ 18% to the Developer on the services provided by him as and when the required service is provided by the Contractor. Contractor can claim ITC on GST paid on inputs/input services purchased by him.

B: Redevelopment of a Commercial Premises by a Developer (Other than RREP)

In case of development of commercial complex/apartments / units/building, the Developer can claim Input Tax Credit of GST paid on purchase of TDR and other inputs/input services such as works contract service, materials etc. On supply TDR or FSI by the Landowner/Society, the GST is payable by the developer and chargeable at the rate of 18%.

- a. **When the Landowner/Society provides Development Rights (TDR/ FSI) to a Developer,** GST shall be chargeable @ 18% on the value of TDR/ FSI. The liability to pay GST shall be on the Developer under Reverse Charge Mechanism (RCM).

In case the consideration of TDR/ FSI is in the form of construction service, then the liability shall arise at the time of receipt of completion certification or first occupancy, whichever is earlier. In all other cases, including monetary consideration provided etc., the liability shall arise immediately.

The taxable value of TDR/ FSI will be equal to the market value of the flats/houses received by the Landowner /Society without any consideration plus any monetary consideration viz. corpus, rent allowance, shifting allowance etc received by the Society and its members.

Market value of flats, given to Landowner/ Society free of cost, shall be equal to similar flats sold to independent buyers nearest to the date of agreement.

- b. When the Developer provides Construction Service to the Landowner/Society:** The value of construction service of units given to Landowner/Society shall be equal to the market value of the similar units sold by the Developer to independent buyers nearest to the time of development agreement. The GST shall be payable by the Developer, recoverable from Landowner/ Society, on the same at the effective rate of 12% as he is the service provider and it shall be payable at the time of receipt of completion certification or first occupancy, whichever is earlier.

The amount of GST paid on the purchase of inputs/input services/capital goods will be available to the Developer as ITC which can be used for payment of GST on supply of those commercial units to Landowner/Society and outsiders.

- c. On sale of Units by Landowner:** In case of units received by the Landowner are sold to outsiders, the Landowner will charge GST at the effective rate of 12% on such sale if sold before receipt of Completion Certificate. In this case, the Landowner can utilize the Input Tax Credit of GST charged by Developer, which shall be available (as in (b) above) for payment of GST.

In case the same is sold after receipt of Completion Certificate, then the transaction is exempt from payment of GST. The Liability to charge and pay GST is at the time of receipt of every instalment/payment or on the due date of payment, whichever is earlier.

- d. **On Sale of Units by the Developer:** For units sold by the Developer before receipt of Completion Certificate, GST will be chargeable at the effective rate of 12% by the Developer. For units sold post receipt of Completion Certificate, the same shall be exempt from payment of GST. The Liability to charge and pay GST is at the time of receipt of every instalment/ payment or on the due date of payment, whichever is earlier.
The Developer can utilize the ITC for making of payment of GST collected on sale of units.
- e. **When Developer supplies additional area to members post entitlement and agreed allocation:** The same shall be chargeable to GST as if the member was an outsider and the conditions as stated in point (d) above will be applicable.
- f. **On Works Contract service provided by Contractor to Developer:** The Contractor will charge GST @ 18% to the Developer on the services provided by him as and when the required service is provided by the Contractor. Contractor can claim ITC on GST paid on inputs/input services purchased by him.

C: Redevelopment of a Residential Society by a Developer (Classified as Affordable Housing)

Affordable Residential Apartment as defined under Notification no. 11/2017- C.T. (Rate) dated 28/06/2017 as amended by Notification no. 03/2019- dated 29/03/2019, shall mean “a residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.”

- a. **When the Landowner/Society provides Development Rights (TDR/ FSI) to a Developer,** such a transaction is exempt from

payment of GST on the condition that the flats constructed by utilization of such TDR/ FSI are booked before the receipt of completion certification or first occupancy, whichever is earlier. Thus if there are any flats which remain un-booked at such time of receipt of completion certification or first occupancy, GST shall be payable at the rate of 18% on the value of TDR proportionate to the carpet area of un-booked flats but subject to maximum of 1% of the value of such un-booked flats. The liability to pay GST shall arise at the time of receipt of completion certification or first occupancy, whichever is earlier and it shall be the liability of the Developer under Reverse Charge Mechanism (RCM).

The taxable value of TDR/ FSI will be equal to the market value of the flats/houses received by the Landowner/ Society without any consideration plus any monetary consideration viz. corpus, rent allowance, shifting allowance etc received by the Society and its members.

Market value of flats, given to Landowner/Society free of cost, shall be equal to similar flats sold to independent buyers nearest to the date of agreement.

- b. When the Developer provides Construction Service to the Landowner/Society:** The value of construction service i.e. the flats given to the Society, will be equal to the market value of similar flat sold to independent buyers nearest to the date of agreement. GST shall be chargeable by the Developer on the same at the effective rate of 1% as he is the service provider. The liability to pay GST to the government will be on the Developer on the date of receipt of completion certification or first occupancy, whichever is earlier.

In case the Landowner/Society decides to sell the flats, the GST paid by the Developer to the government will be available as Input Tax Credit for the Landowner/Society, which can be used by the Landowner/ Society for payment of GST on sale of those flats received by the Landowner/Society as construction service provided by the Developer.

- c. On sale of Flats by Landowner:** In case of flats received by the Landowner are sold to outsiders, the Landowner will charge GST at the effective rate of 1% on such sale if sold before receipt of Completion Certificate. In this case, the Landowner can utilize the Input Tax Credit of GST charged by Developer which shall be available for payment of GST.

In case the Flats are sold after receipt of Completion Certificate, then the transaction is exempt from payment of GST. The Liability to charge and pay GST is at the time of receipt of every instalment/ payment or on due date of payment, whichever is earlier.

- d. On Sale of Units by the Developer:** For Flats sold by the Developer before receipt of Completion Certificate or first occupancy. GST will be chargeable @1% by the Developer. For flats sold post receipt of Completion Certificate, the same shall be exempt from payment of GST. The Liability to charge and pay GST is at the time of receipt of every instalment/ payment.

It may be further clarified that this concessional effective rate of 1% is subject to conditions that no ITC is taken by the Developer and at least 80% of inputs and input services are purchased from registered persons.

- e. When Developer supplies additional area to members post entitlement and agreed allocation:** The same shall be chargeable to GST as if the member was an outsider and the conditions as stated in clause (d) above will be applicable.

On Works Contract service provided by Contractor to Developer: The Contractor will charge GST @ 12% to the Developer on the services provided by him as and when the required service is provided by the Contractor. Contractor can claim ITC on GST paid on inputs/input services purchased by him. However, this concessional rate of 12% is available to the Developer only if the carpet area of affordable housing is not less than 50% of the total carpet area of the project. .

PART VI

Frequently Asked Questions

On-going projects

1. **What is taken as a project in case of a layout plan? Whether a single building in a layout can be taken as a project or the whole layout consisting of several buildings will be the project in respect of which its ongoing nature will be determined?**

The concept of project is similar to that under RERA. It means a Real Estate Project ('REP') or a Residential Real Estate Project('RREP'). A REP shall have the same meaning as assigned to it under RERA.

Under RERA, a layout plan can itself be a project. In case the promoter so desires, each building can be declared a separate project. If each building is made a separate independent project, its nature as ongoing will be determined separately.

2. **Whether, if a building has several wings, each wing can be taken as an independent project. Whether various phases of a project can be taken as independent project. In case of the multi-storey building, can there be a project in respect of construction upto certain floors?**

Yes, each Wing of the building can also be declared a separate project. RERA clearly specifies that where a project is to be developed in phases, each phase shall be considered a standalone REP, if the promoter obtains registration under RERA for each phase separately. The same rule will apply if construction upto certain floors is declared as separate project.

3. Will a project be ongoing if the plan is approved but construction is yet to commence but booking has started?

Commencement of construction is one of the basic requirement for a project to be termed as ongoing. Notification 3/2019 provides that construction shall be considered to have started on or before 31.03.2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before 31st March, 2019. The certificate required from the architect/chartered engineer/licensed surveyor should show the progress to this extent.

4. If in an approved layout plan consisting of several buildings, booking is taking place in some of the buildings only, whereas construction has commenced of all the buildings, whether all the buildings will be ongoing or those only where booking has started?

The answer will depend on whether each building was a project or the layout as a whole was a project. If each building was a standalone independent project, only those buildings in which booking has commenced will be considered as ongoing. If the entire layout was a project, it will be ongoing if booking has taken place in some of the buildings only.

5. What is meant by booking? Whether booking amount received which could not be deposited in bank before 31st March, 2019 will amount to booking? What will be the position if the cheque deposited before 31.03.2019 was credited after this date?

Under the notification an apartment booked on or before 31st March, 2019 shall mean one in which:-

- (a) time of supply was on or before 31st March, 2019
- (b) at least one instalment has been credited to the bank account of the registered person on or before this date;
- (c) an allotment letter or sale agreement or any other similar document evidencing the booking has been issued on or before this date.

For an apartment to be considered as booked, all of the above three tests should be satisfied.

Thus, an apartment for which booking amount is received but could not be deposited in bank before 31st March, 2019, will not be treated as booked.

- 6. Will the project be taken as complete if the construction as per originally approved plan was complete by 31.03.2019 but consequent to changes in the rules, additional floors were permitted in respect of which the plan was approved after 31.03.2019?**

The project is connected with the approved plan of construction which in this case was the originally approved plan. This is to be treated as a project for determining its nature as 'ongoing'. What happens on or after 1.4.2019 will not detract from its nature. The extension approved after 01.04.2019 should be taken as a new project to be governed by the new tax regime.

- 7. In a redevelopment arrangement on area sharing basis will the units to be allotted to the landowner be taken as booked and project will be taken as ongoing even if no booking has taken place in respect of free sale area.**

Going by the meaning of booking as explained in response to Q.5, the allotment of flats to the landowner/ society does not amount to booking as no part of the consideration in such cases goes to the credit of the promoter's account in the bank.

The view, however, appears to be too technical. An alternate view based on the practicality of the situation can be considered. On the face of it there is no booking till at least one apartment out of the free sale area is booked with at least one instalment going to the credit of the promoter's bank account.

- 8. Whether, if the Completion Certificate is received in respect of the part of the building only, entire building can be regarded as ongoing project?**

Whether a building is ongoing or not has to be determined with reference to the project. If the complete building was a project, issue of completion certificate in respect of a part only, in our view, should not be taken as completion of that part so as to take that out of its ongoing nature.

One-Time option

- 9. What will be the applicable rate if the promoter fails to exercise the option within the permitted time? Will the entire project be governed by the new tax regime or only the flats booked after 31.03.2019?**

The notification is to apply prospectively and not retrospectively. The promoter is to continue to observe the old tax regime in respect of supplies made prior to 01.04.2019. In case he fails to exercise the option within the prescribed time, the remaining project will be compulsorily governed by the new tax regime.

- 10. How the amendments in tax rate will work in respect of the flats booked prior to 01.04.2019 but only part payment was received upto that date? If the one-time option is not exercised, will the GST payable in respect of the booked flats be reworked or the new rates will apply to the balance payment received after 31.03.2019?**

In case the option is not exercised within the prescribed time in the manner provided in the notification, the new rates will apply to the instalments received on or after 01.04.2019. Whatever has been done under the old regime will not be undone and no reworking will be required. The proportionate input tax credit in respect of the apartments booked after 31st March, 2019 will have to be reversed.

- 11. Can the option once exercised be withdrawn after 10th May, 2019? Can it be changed?**

There is no provision for withdrawal of option in the notification. However, it should be permitted if application is withdrawn before 10th May, 2019.

The prescribed Form for making the option given in Annexure IV has a declaration to be made by the promoter which reads "I understand that this is a onetime option, which once exercised, shall not be allowed to be changed". Any change is not permissible. However, in case a change is made within the prescribed period for furnishing the option, it should be permissible.

- 12. In case the promoter exercises the option to continue with the old tax regime as he is possessed of substantial accumulated input tax credit and continue to charge the old rate in respect of bookings after 31.03.2019, is there any way to deal with the buyer who insists on the new rate?**

The exercise of option under the notification is an unilateral decision of the promoter without any say of the customer who booked the apartment. The interest of the existing buyers will be significantly impacted if the promoter opts for continuance of the old tax regime, particularly when the promoter was not passing on the benefit of input tax credit. A possible course in such a case can be to charge the GST @ 12% and compensate the buyer by a credit note of the amount equal to 7% of the value. This will be between the promoter and the buyer without in any way affecting the compliance under the Act.

Affordable Housing

- 13. It is not merely the applicable rate that has been revised but the meaning of “affordable housing” has also been revised. The limitation of price upto Rs. 45 lakhs was not mentioned under the GST regime prior to 01.04.2019. Where apartments were affordable under the old regime and the promoter exercises the option, whether they will continue to be affordable and GST will continue to be charged as before?**

'Affordable housing' is a term associated with the project. A project having been categorised as 'affordable' will remain so even under the new tax regime, however the new rates shall only be applicable to only those 'Affordable houses' which are falling within the new definition of affordable house. The definition under the notification is prospective and will apply only to new projects commencing on or after 01.04.2019.

Residential Real Estate Project

- 14. Residential Real Estate Project (RREP) has been defined to mean a project 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. Does it mean that the applicable rate in respect of such area will be the rate applicable to**

residential place so long as the area is within this limit?

So long as the commercial area is within the prescribed limit of 15%, it will be taxable at the same rate as prescribed for the residential area and GST, under the new regime will be 5%. If, however, the area exceeds 15%, the same will be charged as commercial at the rate prescribed for such area i.e., 12% with input credit.

15. Further, if in any project the area exceeds this limit, will it cease to be a residential project and the new tax rate will not be applicable to apartments in such projects?

The residential apartments will continue to be taxed at the rate applicable to it. But, in projects where the commercial area exceeds 15%, it will be taxable at the rate prescribed for commercial area i.e. 12% with input tax credit as the Notification 3/2019 does not change the rate for commercial area.

16. What is meant by 'commercial apartments' for the purpose of working out the limit of 15% under the RREP. Will parking area be taken as commercial apartment? Will constructions like club house, security cabin be taken within that area? Will a temple constructed within the compound be construed as commercial apartment?

Under the notification wherever the word 'Commercial' occurs in the Table, it is followed by '(shops, offices, godowns etc.)'. The table also mentions the words 'intended for sale'. Therefore, only shops, godowns and places of this nature which are intended for sale are to be taken in working out the permissible 15% area. However, since the 'Commercial Apartment' has been defined under the Notification to mean an apartment other than a residential apartment. hence it is possible that the department may take a view that all the places which are not residential apartments are to be taken as commercial apartment.

Procurement of 80% inputs

17. Whether the services consideration of which is payment of interest on loans, payment for water and other services to the

Municipal Corporation are to be considered for determining shortfall of 20% in procurement of inputs from registered persons. Further, whether payment for hardship allowance, compensation, shifting allowance, rent, corpus to society will be taken into account?

Interest on loan and supply of water and other services by the Municipal Corporation is exempt from GST and hence no GST will be payable even if there is shortage. However, other services for which payment is made by way of hardship allowances etc. are to be considered as they are not excluded. The notification excludes only FSI, Development rights, HSD, motor spirits etc.

- 18. In case the 80% limit for procurement from registered persons is reached by other inputs like iron, steel, sand, bricks, tiles etc. but still there is purchase of cement from unregistered persons, will there be a charge on reverse charge basis in respect of such procurement of cement? Further in case there is a shortfall on account of purchase of certain items, including cement, from unregistered persons, what will be the order in which GST will be payable on reverse charge basis?**

Procurement of cement from unregistered persons entail payment of tax on RCM even if the condition of 80% procurement is satisfied from other items. The GST will be payable at 28% in respect of such procurement inspite of the 80% limit having reached. Illustration 1 in Annexure III of Notification 3/2019 CT (Rates) may be referred to

In case the shortfall is on account of procurement of more than one item, including cement, the GST will be payable in respect of cement first at 28% and the balance shortfall will be taken care of by other items. Illustration 3 of Annexure III of Notification 3/2019 CT (Rates) may be referred to.

- 19. A land-owner promoter entered into a JDA with a developer-promoter in the month of April, 2018 and gave him development rights of his plot. The developer-promoter will be giving 10 units to land-owner promoter, free of charge, in the month of July, 2019. Who is required to pay GST on development rights in this case and when?**

In this case the supply of development rights took place prior to 01.04.2019 when the liability to pay tax, on development rights, was not under RCM and therefore in this case the GST will required to be paid by land-owner promoter. As regards the time of payment of GST, the same has to be decided in terms of Notification 04/2018- CT(Rate) dated 25.01.2018 (Which was in force when the JDA was made) and accordingly has to be paid at the time of transfer of possession or the right in the constructed building, complex, or civil structure by entering into a Conveyance Deed or similar instrument (for example allotment letter).

- 20. A society enters into a Joint Development Agreement, the developer-promoter procured the commencement certificate and started construction before 31st March, 2019. Flats/house to Society were allotted before 31st March, 2019. However, no booking of Free sale flats is done before 31st March 2019. Whether this project will qualify to be considered as “Ongoing Project”?**

The Notification 03/2019-CT (Rate) provides that:-

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

In view of the above it will not be considered as an “Ongoing Project”, because in this case the condition (b), of clause (xiii) of Para 4, is not fulfilled, as the Flats were given free of cost (against the supply of development rights). However, an alternate view is possible because the allotment of Flats to society members or land owners will amount to booking of Flats before 31st March 2019 and hence it may be treated as ‘ongoing project’.

Appendix 1

[TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 03/2019-Central Tax (Rate)

New Delhi, the 29th March, 2019

G.S.R.....(E).- In exercise of the powers conferred by sub-sections (1), (3) and (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification, -

(i) in the opening paragraph,

- (a) after the word, brackets and figures “conferred by sub-section (1),”, the word, brackets and figures “sub-section (3) and sub-section (4)” shall respectively be inserted;
- (b) the word “and” after the words and figures “sub-section (5) of section 15” shall be substituted by the symbol “.”;
- (c) after the word, brackets and figures “section (16)”, the words and figure “and section 148” shall be inserted;

(ii) in the Table, -

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

Table

(3)	(4)	(5)
“(i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1 st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire	0.75	Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only; Provided also that credit of input tax charged on goods and services used in supplying the service hasnot been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;

consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)		Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1 st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;
(ia) Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which commences on or after 1 st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	3.75	Provided also that where a registered person (landowner- promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, - (i) the developer- promoter shall pay tax on supply of construction of apartments to the landowner- promoter, and
(ib) Construction of commercial apartments (shops, offices, godowns etc.) by a promoter in an RREP which commences on or after 1 st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	3.75	(ii) such landowner – promoter shall be eligible for credit of taxes charged from him by the developer promoter towards the supply of construction of apartments by developer- promoter to him, provided the landowner- promoter further supplies such apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer- promoter. Explanation. -
(ic) Construction of affordable residential apartments by a promoter in a Real Estate Project (herein after referred to as REP) other than RREP , which commences on or	0.75	(i) “developer- promoter” is a promoter who constructs or converts a building into apartments or develops a plot for sale,

after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	(ii) “landowner- promoter” is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently. Provided also that eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only;
(id) Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	3.75 Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person; Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 per cent., tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of eighteen percent on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both; Provided also that notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable

		rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017), shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement; (Please refer to the illustrations in annexure III) Explanation. - 1. The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year. 2. Notwithstanding anything contained in Explanation 1 above, tax on cement received from unregistered person shall be paid in the month in which cement is received. 3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)].
(ie) Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as	6	Provided that in case of ongoing project, the registered person shall exercise one time option in the Form at Annexure IV to pay central tax on construction of apartments in a project at the rates as specified for item (ie) or (if), as the case may be, by the 10th of May, 2019; Provided also that where the option is not exercised in Form at annexure IV by the 10th of May, 2019, option to pay tax at the

specified for this item. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)		rates as applicable to item (i) or (ia) or (ib) or (ic) or (id) above, as the case may be, shall be deemed to have been exercised;
(if) Construction of a complex, building, civil structure or a part thereof, including,- (i) commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP, (ii) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item in the manner prescribed herein, but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) above intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. Explanation. -For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	Provided also that invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised.;

- (b) against serial number 3, -
- a. item (ii) and the entries relating thereto in columns (3), (4) and (5) shall be omitted;
 - b. in item (iv) in column (3), -
 - (1) after the figures “2017”, the words, brackets, figures and letters “other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above” shall be inserted;

- c. in item (v) in column (3), -
 (1) after the figures “2017”, the words, brackets, figures and letters “other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above” shall be inserted;
- d. after item (v) and entries relating thereto in column (3), (4) and (5), the following items and entries shall be inserted, namely, -

(3)	(4)	(5)
(va) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments covered by sub- clause (a) of clause (xvi) of paragraph 4 below, in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if), as the case may be, in the manner prescribed therein,	6	Provided that carpet area of the affordable residential apartments as specified in the entry in column (3) relating to this item, is not less than 50 per cent. of the total carpet area of all the apartments in the project; Provided also that for the purpose of determining whether the apartments at the time of supply of the service are affordable residential apartments covered by sub- clause (a) of clause (xvi) of paragraph 4 below or not, value of the apartments shall be the value of similar apartments booked nearest to the date of signing of the contract for supply of the service specified in the entry in column (3) relating to this item; Provided also that in case it finally turns out that the carpet area

		of the affordable residential apartments booked or sold before or after completion, for which gross amount actually charged was forty five lakhs rupees or less and the actual carpet area was within the limits prescribed in sub- clause (a) of clause (xvi) of paragraph 4 below, was less than 50 per cent. of the total carpet area of all the apartments in the project, the recipient of the service, that is, the promoter shall be liable to pay such amount of tax on reverse charge basis as is equal to the difference between the tax payable on the service at the applicable rate but for the rate prescribed herein and the tax actually paid at the rate prescribed herein”;
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- e. in item (vi) in column (3), after the figures “2017”, the words, brackets, and figures “other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above” shall be inserted’;
- f. in item (xii) in column (3), for the entry, the following entry shall be substituted, namely: -
“(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above.

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

- (c) against serial number 16, in item (ii) in column (3), for the word, brackets and letters “sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi)”, the word, brackets figures and letters “ (i) (ia), (ib), (ic), (id), (ie) and (if)” shall be substituted;
- (d) after serial number 38 in column (1) and the entries relating thereto in column (2), (3), (4) and (5) the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
“39.	Chapter 99	Supply of services other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI) by an unregistered person to a promoter for construction of a project on which tax is payable by the recipient of the services under sub-section 4 of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), as prescribed in notification No. 07 / 2019- Central Tax (Rate), dated 29th March, 2019, published in Gazette of India vide G.S.R. No. __, dated 29th March, 2019. Explanation. - This entry is to be taken to apply to all services which satisfy the conditions prescribed herein, even though they may be covered by a more specific chapter, section or heading elsewhere in this notification.	9	-”;

(iii) in paragraph 2,-

- (a) for the words, brackets, letters and figures “sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi),” the word, brackets, letters and figures “ (i) (ia), (ib), (ic), (id), (ie) and (if)” shall be substituted;

(b) in the *Explanation*, after the words “this paragraph” the words “and paragraph 2A below” shall be inserted;

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

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

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

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

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

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

(xvi) the term “affordable residential apartment” shall mean, -

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

For the purpose of this clause, -

- (i) Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;

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

- A. Consideration charged for the services specified at item (i) and (ic) in column (3) against sl. No. 3 in the Table;
 - B. Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sub lease; and
 - C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.
 - (b) an apartment being constructed in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table above, in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be.
- (xvii) the term “promoter” shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
- (xviii) the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
- (xix) the term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;
- (xx) the term “ongoing project” shall mean a project which meets all the following conditions, namely-
- (a) commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019:-
 - (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
 - (ii) a chartered engineer registered with the Institution of Engineers (India); or
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.
 - (b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub-clause (a) above that construction of the project has started on or before the 31st March, 2019;
 - (c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;

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

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

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

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

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

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

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

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

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

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

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

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

(xxxi) “floor space index (FSI)” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.”.

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

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

(Pramod Kumar)

Deputy Secretary to the Government of India

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

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

Input tax credit attributable to construction of residential portion in a real estate project (REP) other than residential real estate project (RREP), which has time of supply on or after 1st April, 2019, shall be calculated project wise for all projects which commence on or after 1st April, 2019 or ongoing projects in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, in the prescribed manner, before the due date for furnishing of the return for the month of September following the end of financial year 2018-19, in the following manner:

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

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

$$Tx = T - Te$$

Where,

- (i) T is the total ITC available (utilized or not) on inputs and input services used in construction of the REP from 1st July, 2017 to 31st March, 2019 including transitional credit taken on 1st July, 2017;
 - (ii) Te is the eligible ITC attributable to (a) construction of commercial portion and (b) construction of residential portion, in the REP which has time of supply on or before 31st March, 2019;
- (b) Te shall be calculated as under:

$$Te = Tc + Tr$$

Where, -

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

$Tc = T * (\text{carpet area of commercial apartments in the REP} / \text{total carpet area of commercial and residential apartments in the REP})$ and

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

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

Where, -

$$F_1 = \frac{\text{Carpet area of residential apartments in REP}}{\text{Total carpet area of commercial and residential apartments in the REP}}$$

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

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

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

$$F_4 = \frac{1}{\% \text{ Completion of construction as on 31st March, 2019}}$$

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

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

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

Te shall be calculated as under:

$$Te = Tc + Tl + Tr$$

Where, -

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

$T_c = T_3 * (\text{carpet area of commercial apartments in the REP} / \text{total carpet area of commercial and residential apartments in the REP})$;

Wherein

$$T_3 = T - (T_1 + T_2)$$

T_1 = ITC attributable exclusively to construction of commercial portion in the REP

T_2 = ITC attributable exclusively to construction of residential portion in the REP

and

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

$$T_r = (T_3 + T_2) * F_1 * F_2 * F_3 * F_4$$

or

$$T_r = (T - T_1) * F_1 * F_2 * F_3 * F_4$$

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

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

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

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

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

(h) Where percentage completion is zero but ITC has been availed on goods and services received for the project on or prior to 31st March, 2019, input tax credit attributable to construction of residential portion which has time of supply on or after 1st April, 2019, shall be calculated and the amount equal to Tx shall be paid or taken credit of, as the case

may be, as prescribed above, with the modification that percentage completion for calculation of F₄ shall be taken as the percentage completion which, as certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India), can be achieved with the input services received and inputs in stock as on 31st March, 2019.

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

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

$$Te = Tc + Tr$$

Where, -

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

$Tc = Tn \times (\text{carpet area of commercial apartments in the REP} / \text{total carpet area of commercial and residential apartments in the REP})$ and

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

$$Tr = Tn \times F_1 \times F_2 \times F_3$$

Where, -

Tn= Tax paid on such inputs and input services on which ITC is available under the CGST Act, received in 2019-20 for construction of REP

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

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

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

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

- (i) where percentage invoicing is more than the percentage completion and the difference between percentage invoicing (per cent. points) and the percentage completion (per cent. points) of construction is more than 25 per cent. points; the

value of percentage invoicing shall be deemed to be percentage completion plus 25 percent. points;

- (ii) where the value of invoices issued on or prior to 31st March, 2019 exceeds the consideration actually received on or prior to 31st March, 2019 by more than 25 per cent. of consideration actually received; the value of such invoices for the purpose of determination of percentage invoicing shall be deemed to be actual consideration received plus 25 percent. of the actual consideration received; and
- (iii) where, the value of procurement of inputs and input services prior to 1st April, 2019 exceeds the value of actual consumption of the inputs and input services used in the percentage of construction completed as on 31st March, 2019 by more than 25 percent. of value of actual consumption of inputs and input services, the jurisdictional commissioner or any other officer authorized in this regard may fix the T_e based on actual per unit consumption of inputs and input services based on the documents duly certified by a chartered accountant or cost accountant submitted by the promoter in this regard, applying the accepted principles of accounting.

Illustration 1:

Sl. No	Details of a REP (Res + Com)			
	A	B	C	D
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		75	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	$C2 * C3$	5250	sqm
5	value of each residential apartment		0.60	crore
6	Total value of the residential apartments	$C2 * C5$	45.00	crore
7	No. of commercial apartments in the project		25	units
8	Carpet area of the commercial apartment		30	sqm
9	Total carpet area of the commercial apartments	$C7 * C8$	750	sqm
10	Total carpet area of the project (Resi + Com)	$C4 + C9$	6000	sqm
11	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chartered engineer]		20%	
12	No of residential apartments booked before transition		40	units
13	Total carpet area of the residential apartments booked before transition	$C12 * C3$	2800	sqm
14	Value of booked residential apartments	$C5 * C12$	24	crore
15	Percentage invoicing of booked residential apartments on or before 31.03.2019		20%	
16	Total value of supply of residential apartments having T.o.s. prior to transition	$C14 * C15$	4.8	crore
17	ITC to be reversed on transition, $T_x = T - T_e$			
18	Eligible ITC (T _e)= T _c + T _r			
19	T (*see notes below)		1	crore
20	$T_c = T \times (\text{carpet area of commercial apartments in the REP} / \text{total carpet area of commercial and residential apartments in the REP})$	$C19 * (C9 / C10)$	0.125	crore
21	$T_r = T \times F1 \times F2 \times F3 \times F4$			
22	F1	$C4 / C10$	0.875	
23	F2	$C13 / C4$	0.533	
24	F3	$C16 / C14$	0.200	
25	F4	$1 / C11$	5	
26	$T_r = T \times F1 \times F2 \times F3 \times F4$	$C19 * C22 * C23 * C24 * C25$	0.467	crore
27	Eligible ITC (T _e)=T _c + T _r	$C26 + C20$	0.592	crore
28	ITC to be reversed on transition, $T_x = T - T_e$	$C19 - C27$	0.408	crore
* Note:-				
1. The value of T at C19 has been estimated for illustration based on weighted average tax on inputs.				
2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencement of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.				

Illustration 2:

Sl. No	Details of a REP (Res + Com)			
	A	B	C	D
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		75	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	$C2 * C3$	5250	sqm
5	value of each residential apartment		0.60	crore
6	Total value of the residential apartments	$C2 * C5$	45.00	crore
7	No. of commercial apartments in the project		25	units
8	Carpet area of the commercial apartment		30	sqm
9	Total carpet area of the commercial apartments	$C7 * C8$	750	sqm
10	Total carpet area of the project (Resi + Com)	$C4 + C9$	6000	sqm
11	Percentage completion (Pc) as on 31.03.2019 [as declared to RERA or determined by chartered engineer]		20%	
12	No of residential apartments booked before transition		40	units
13	Total carpet area of the residential apartments booked before transition	$C12 * C3$	2800	sqm
14	Value of booked residential apartments	$C5 * C12$	24	crore
15	Percentage invoicing of booked residential apartments on or before 31.03.2019		60%	
16	Total value of supply of residential apartments having t.o.s. prior to transition	$C14 * C15$	14.4	crore
17	ITC to be reversed on transition, $Tx = T - Te$			
18	Eligible ITC (Te) = $Te + Tr$			
19	T (*see notes below)		1	crore
20	$Tc = Tx$ (carpet area of commercial apartments in the REP/ total carpet area of commercial and residential apartments in the REP)	$C19 * (C9/ C10)$	0.125	crore
21	$Tr = T \times F1 \times F2 \times F3 \times F4$			
22	F1	$C4 / C10$	0.875	
23	F2	$C13 / C4$	0.533	
24	F3	$C16 / C14$	0.600	
25	F4	$1/ C11$	5	
26	$Tr = T \times F1 \times F2 \times F3 \times F4$	$C19 * C22 * C23 * C24 * C25$	1.400	crore
27	Eligible ITC (Te) = $Te + Tr$	$C26 + C20$	1.525	crore
28	ITC to be reversed/ taken on transition, $Tx = T - Te$	$C19 - C27$	-0.525	crore
29	Tx after application of cap on % invoicing vis-a-vis Pc			
30	% completion		20%	
31	% invoicing		60%	
32	% invoicing after application of cap ($Pc + 25\%$)	$C11 + 25\%$	45%	
33	Total value of supply of residential apartments having t.o.s. prior to transition	$C14 * C32$	10.80	crore
34	F3 after application of cap	$C33/ C14$	0.45	
35	$Tr = T \times F1 \times F2 \times F3 \times F4$ (after application of cap)	$C19 * C22 * C23 * C34 * C25$	1.05	crore
36	Eligible ITC (Te) = $Te + Tr$ (after application of cap)	$C20 + C35$	1.18	crore
37	ITC to be reversed / taken on transition, $Tx = T - Te$ (after application of cap)	$C19 - C36$	-0.18	crore
38	Tx after application of cap on % invoicing vis-a-vis Pc and payment realisation			
39	% invoicing after application of cap ($Pc + 25\%$)		45%	
40	Total value of supply of residential apartments having t.o.s. prior to transition	$C33$	10.80	crore
41	Consideration received		8.00	crore
42	Total value of supply of residential apartments having t.o.s. prior to transition after application of cap vis-a-vis consideration received	$8 \text{ cr} + 25\% \text{ of } 8 \text{ Cr}$	10.00	crore
43	F3 after application of both the caps	$C42 / C14$	0.42	
44	$Tr = T \times F1 \times F2 \times F3 \times F4$ (after application of both the caps)	$C19 * C22 * C23 * C43 * C25$	0.97	
45	Eligible ITC (Te) = $Te + Tr$ (after application of both the caps)	$C20 + C44$	1.10	
46	ITC to be reversed / taken on transition, $Tx = T - Te$ (after application of both the caps)	$C19 - C45$	-0.10	crore
* Note:-				
1. The value of T at C19 has been estimated for illustration based on weighted average tax on inputs.				
2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencement of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.				

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

(Pramod Kumar)

Annexure II**Residential Real estate project (RREP)**

Input tax credit attributable to construction of residential and commercial portion in a Residential Real estate project (RREP), which has time of supply on or after 1st April, 2019, shall be calculated project wise for all projects which commence on or after 1st April, 2019 or ongoing projects in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, in the prescribed manner, before the due date for furnishing of the return for the month of September following the end of financial year 2018-19, in the following manner:

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

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

$$Tx = T - Te$$

Where,

- (i) T is the total ITC availed (utilized or not) on inputs and input services used in construction of the RREP from 1st July, 2017 to 31st March, 2019 including transitional credit taken on 1st July, 2017;
 - (ii) Te is the eligible ITC attributable to construction of commercial portion and construction of residential portion, in the RREP which has time of supply on or before 31st March, 2019;
- (b) Te shall be calculated as under:

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

Where, -

$$F_1 = \frac{\text{Carpet area of residential and commercial apartments in the RREP}}{\text{Total carpet area of apartments in the RREP}}$$

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

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

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

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

$$F_4 = \frac{1}{\% \text{ Completion of construction as on 31st March, 2019}}$$

Illustration: where one- fifth (twenty percent) of the construction has been completed, F₄ shall be $100 \div 20 = 5$.

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

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

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

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

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

(f) Where percentage completion is zero but ITC has been availed on goods and services received for the project on or prior to 31st March, 2019, input tax credit attributable to construction of residential and commercial portion which has time of supply on or after

1st April, 2019, shall be calculated and the amount equal to Tx shall be paid or taken credit of, as the case may be, as prescribed above, with the modification that percentage completion for calculation of F₄ shall be taken as the percentage completion which, as certified by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India), can be achieved with the input services received and inputs in stock as on 31st March, 2019.

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

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

$$Te = Tn * F_1 * F_2 * F_3$$

Where, -

Tn= Tax paid on such inputs and input services on which ITC is available under the CGST Act, received in 2019-20 for construction of residential and commercial apartments in the RREP.

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

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

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

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

- (i) where percentage invoicing is more than the percentage completion and the difference between percentage invoicing (per cent. points) and the percentage completion (per cent. points) of construction is more than 25 per cent. points; the value of percentage invoicing shall be deemed to be percentage completion plus 25 per cent. points;
- (ii) where the value of invoices issued on or prior to 31st March, 2019 exceeds the consideration actually received on or prior to 31st March, 2019 by more than 25 per cent. of consideration actually received; the value of such invoices for the purpose of determination of percentage invoicing shall be deemed to be actual consideration received plus 25 per cent. of the actual consideration received; and

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

Sl No	Details of a residential real estate project (RREP)			
	A	B	C	D
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		100	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	$C2 * C3$	7000	sqm
5	value of each residential apartment		0.60	crore
6	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chartered engineer]		20%	
7	No of apartments booked before transition		80	units
8	Total carpet area of the residential apartment booked before transition	$C3 * C7$	5600	sqm
9	Value of booked residential apartments	$C5 * C7$	48	crore
10	Percentage invoicing of booked residential apartments on or before 31.03.2019		20%	
11	Total value of supply of residential apartments having t.o.s. prior to transition	$C9 * C10$	9.6	crore
12	ITC to be reversed on transition, $T_x = T - T_e$			
13	Eligible ITC (T_e)= $T \times F1 \times F2 \times F3 \times F4$			
14	T (*see notes below)		1	crore
15	F1		1	
16	F2	$C8 / C4$	0.8	
17	F3	$C11 / C9$	0.2	
18	F4	$1 / C6$	5	
19	Eligible ITC (T_e)= $T \times F1 \times F2 \times F3 \times F4$	$C14 * C15 * C16 * C17 * C18$	0.8	crore
20	ITC to be reversed on transition, $T_x = T - T_e$	$C14 - C19$	0.2	crore
*Note:- 1. The value of T at C14 has been estimated for illustration based on weighted average tax on inputs. 2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencement of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.				

Illustration 2:

Sl No	Details of a residential real estate project (RREP)			
	A	B	C	D
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		100	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	C2 * C3	7000	sqm
5	Value of each residential apartment		0.60	crore
6	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chartered engineer]		20%	
7	No of apartments booked before transition		80	units
8	Total carpet area of the residential apartment booked before transition	C3 * C7	5600	sqm
9	Value of booked residential apartments	C5 * C7	48	crore
10	Percentage invoicing of booked residential apartments on or before 31.03.2019		60%	
11	Total value of supply of residential apartments having t.o.s. prior to transition	C9 * C10	28.8	crore
12	ITC to be reversed on transition, Tx= T- Te			
13	Eligible ITC (Te)=T x F1 x F2 x F3 x F4)			
14	T (*see notes below)		1	crore
15	F1		1	
16	F2	C8 / C4	0.8	
17	F3	C11 / C9	0.6	
18	F4	1/ C6	5	
19	Eligible ITC (Te)=T x F1 x F2 x F3 x F4)	C14 * C15 * C16 * C17 * C18	2.4	crore
20	ITC to be reversed on transition, Tx= T- Te	C14 - C19	-1.4	crore
21	Tx after application of cap on % invoicing vis-a-vis Pc			
22	% completion		20%	
23	% invoicing		60%	
24	% invoicing after application of cap(Pc + 25%)	C6 + 25 %	45%	
25	Total value of supply of residential apartments having t.o.s. prior to transition	C9 * C24	21.60	crore
26	F3 after application of cap	C25/C9	0.45	
27	Te= T x F1 x F2 x F3 x F4 (after application of cap)	C14 * C15 * C16 * C26 * C18	1.80	crore
28	ITC to be reversed / taken on transition, Tx= T- Te (after application of cap)	C14 - C27	-0.80	crore
29	Tx after application of cap on % invoicing vis-a-vis Pc and payment realisation			
30	% invoicing after application of cap(Pc + 25%)		45%	
31	Total value of supply of residential apartments having t.o.s. prior to transition	C25	21.60	crore
32	consideration received		16.00	crore
33	Total value of supply of residential apartments having t.o.s. prior to transition after application of cap vis-a-vis consideration received	16 cr + 25% of 16 Cr	20.00	crore
34	F3 after application of both the caps	C33/C9	0.42	
35	Te= T x F1 x F2 x F3 x F4 (after application of both the caps)	C14 * C15 * C34 * C26 * C18	1.67	
36	ITC to be reversed / taken on transition, Tx= T- Te (after application of both the caps)	C14 - C35	-0.67	crore
*Note:- 1. The value of T at C14 has been estimated for illustration based on weighted average tax on inputs. 2. In actual practice, the registered person shall take 'aggregate of ITC taken as declared in GSTR-3B of tax periods from 1.7.2017 or commencement of project which is later and transitional credit taken under section 140 of CGST Act' as value of T.				

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

(Pramod Kumar)

Annexure III**Illustration 1:**

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

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

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

Illustration 2:

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

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

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

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

Illustration 3:

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

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

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

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

(Pramod Kumar)

Annexure IV**FORM**

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

Reference No. _____

Date _____

To _____

(To be addressed to the jurisdictional Commissioner)

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

Declaration

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

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

2. I understand that this is a onetime option, which once exercised, shall not be allowed to be changed.
3. I also understand that invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option being exercised herein.

Signature _____

Name _____

Designation _____

Place _____

Date _____

Appendix 2

[TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

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

New Delhi, the 29th March, 2019

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

In the said notification, -

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

(ii) in the Table, -

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

(1)	(2)	(3)	(4)	(5)
“41A	Heading 9972	Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1 st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the	Nil	Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain 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 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

		competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on TDR or FSI (including additional FSI) or both for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)		÷ Total carpet area of the residential apartments in the project) Provided further that tax payable in terms of the first proviso hereinabove shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un- booked on the date of issuance of completion certificate or first occupation The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier.
41B	Heading 9972	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 01.04.2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation,	Nil	Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un- booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner - [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of

	whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).	the residential apartments in the project); Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un- booked on the date of issuance of completion certificate or first occupation. The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.
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(iii) after paragraph 1, the following paragraphs shall be inserted, namely, -

“1A. Value of supply of service by way of transfer of development rights or FSI by a person to the promoter against consideration in the form of residential or commercial apartments shall be deemed to be equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter.

1B. Value of portion of residential or commercial apartments remaining un-booked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be.”

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

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

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

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

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

(ix) the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in clause (zn) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(x) The term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;

(xi) The term “carpet area” shall have the same meaning as assigned to it clause (k) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

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

- (a) part of supply of construction of the apartment service has time of supply on or before the said date; and
- (b) consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date; and
- (c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

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

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

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

(Pramod Kumar)
Deputy Secretary to the Government of India

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

Appendix 3

RELEVANT SECTIONS

Scope of Supply- Sec. 7 (1)(a)

Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

Time of supply of services. Sec. 13

13. (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section. (2) The time of supply of services shall be the earliest of the following dates, namely:— (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or (b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply: Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount. Explanation.--For the purposes of clauses (a) and (b)-- Time of supply of services. (i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment; (ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier. (3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:-- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier: Provided that where it is not

possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply: Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier. (4) In case of supply of vouchers by a supplier, the time of supply shall be-- (a) the date of issue of voucher, if the supply is identifiable at that point; or (b) the date of redemption of voucher, in all other cases. (5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall-- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or (b) in any other case, be the date on which the tax is paid. (6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value

Eligibility and conditions for taking input tax credit Sec. 16 (1)

Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person

SCHEDULE I

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION 1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets. 2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business: Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. 3. Supply of goods— (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or (b) by an agent to his principal where the agent undertakes to

receive such goods on behalf of the principal. 4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

SCHEDULE II

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES 1. Transfer (a) any transfer of the title in goods is a supply of goods; (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services; (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods. 2. Land and Building (a) any lease, tenancy, easement, licence to occupy land is a supply of services; (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services. 3. Treatment or process Any treatment or process which is applied to another person's goods is a supply of services. 4. Transfer of business assets (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person; (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services; (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless – (i) the business is transferred as a going concern to another person; or (ii) the business is carried on by a personal representative who is deemed to be a taxable person. 5. Supply of services The following shall be treated as supply of services, namely: – (a) renting of immovable property; (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required,

by the competent authority or after its first occupation, whichever is earlier.

Explanation.—For the purposes of this clause— (1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:— (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or (ii) a chartered engineer registered with the Institution of Engineers (India); or (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority; (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure; (c) temporary transfer or permitting the use or enjoyment of any intellectual property right; (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software; (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration. 6. Composite supply The following composite supplies shall be treated as a supply of services, namely:— (a) works contract as defined in clause (119) of section 2; and (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration. 7. Supply of Goods The following shall be treated as supply of goods, namely:— Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES 1.

Services by an employee to the employer in the course of or in relation to his employment. 2. Services by any court or Tribunal established under any law for the time being in force. 3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local

authorities; (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause. 4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased. 5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building. 6. Actionable claims, other than lottery, betting and gambling. Explanation. — For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court. — DR. G. NARAYANA RAJU Secretary to the Govt. of India.

Appendix 4

GST on Co-operative Housing Societies

INTRODUCTION

Co-operative Housing Societies are entities registered under the co-operative laws of the respective States.

According to Section 2(16) of the Maharashtra Cooperative Society Act, 1960, “housing society” means a society, the object of which is to provide its members with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its members common amenities and services.

Simply put these are a collective body of persons, who stay in a residential society. As a collective body, they would be supplying certain services to its members, be it collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc.

Co-operative Housing Societies - whether amenable to levy of GST

A Society is akin to a club, which is composed of its members. So, can a service provided by a Housing Society to its members be treated as service provided by one person to another. The answer is yes. The following extracts of the GST law will make the position clear.

As per Section 9 of CGST Act, 2017, levy of GST is on supply of goods and services. As per Section 7 expression “supply” includes--

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

The definition of “*person*” in Section 2(84) (i) of the CGST Act, 2017 specifically includes a co-operative society registered under any law relating to co-operative societies. Thus a registered co-operative society is a person within the meaning of the term in the CGST Act.

The next question which arises is whether the activity of the society can be said to be in the course or furtherance of business. The definition of business as per section 2(17) of the CGST Act, 2017 is as under

“business” includes--

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

- (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

Thus, as per section 2(17)(e) of the CGST Act, 2017 provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members is deemed to be a business. The activities of the housing society would thus attract the levy of GST and the housing society would be required to register and comply with the GST Law.

Compliance requirements for housing societies under GST

If the turnover of housing society is above 20 lakhs, it needs to take registration under GST in terms of Section 22 of the CGST Act, 2017. However, taking registration does not mean that the housing society has to compulsorily charge GST in the monthly maintenance bills raised on its members. Notification No.12/2017 -Central Tax (Rate) dated 28.06.2017 at sr. no. 77 provides for the following exemption to housing societies:

Service by an unincorporated body or a non- profits entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –

- (a) as a trade union;
- (b) for the provision of carrying out any activity which is exempt from the levy of Goods and service Tax; or
- (c) up to an amount of seven thousand five hundred rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex

In view of the provision contained at (c) above, a society may be registered under GST, however if the monthly contribution received from members is less than Rs.7,500/- (and the amount is for the purpose of sourcing of goods and services from a third person for

the common use of its members), no GST is to be charged by the housing society on the monthly bill raised by the society. However, GST would be applicable if the monthly contribution exceeds Rs.7,500/-.

Certain statutory dues such as property tax, electricity charges etc. form part of the monthly maintenance bill raised by the society on its members. The question would arise whether such charges should be included while computing the monthly limit of Rs.7,500/- in terms of clause (c) of sr. no. 77 of notification 12/2017 -Central Tax (Rate) dated 28.06.2017. As per clause (b) of the above exemption, exemption is available to housing societies for provision of carrying out any activity which is exempt from the levy of Goods and Services Tax assuming that a housing society is a non-profit registered entity; and property tax and electricity is exempt from the levy of GST. Thus, charges, collected by the society on account of property tax, electricity charges and other statutory levies would be excluded while calculating the limit of Rs.7,500/-.

“Further, the question would then arise that if the monthly bill is say Rs. 8,500/- (and the same is on account of services for common use of its members), will GST be applicable on Rs. 8,500/- or Rs. 1,000/-. In such cases, exemption is available up to an amount of Rs. 7,500/ and GST would be applicable on the amount in excess of Rs. 7,500/-”

TRU vide F.No.332/04/2017-TRU released FAQs on levy of GST on supply of services to the Co-operative society and has clarified as under.

“Note: The limit of Rs 5,000/- per member per month has been enhanced to Rs. 7,500/- per member per month vide notification no. 02/2018 dated 25.01.2018”

S.No.	Question	Answer
1.	The society collects the following charges from the members on quarterly basis as follows: 1. Property Tax-actual as per Municipal Corporation of Greater Mumbai (MCGM) 2. Water Tax- Municipal Corporation of Greater Mumbai (MCGM) 3. Non- Agricultural Tax- Maharashtra State Government 4. Electricity charges 5. Sinking Fund- mandatory under the By-laws of the Co-operative Societies 6. Repairs & maintenance fund 7. Car parking Charges 8. Non Occupancy Charges 9. Simple interest for late payment. From the tax/ charge as listed above, on which GST is not applicable.	1. Services provided by the Central Government, State Government, Union territory or local authority to a person other than business entity, is exempted from GST. So, Property Tax, Water Tax, if collected by the RWA/Co-operative Society on behalf of the MCGM from individual flat owners, then GST is not leviable. 2. Similarly, GST is not leviable on Non-Agricultural Tax, Electricity Charges etc, which are collected under other statutes from individual flat owners. However, if these charges are collected by the Society for generation of electricity by Society's generator or to provide drinking water facility or any other service, then such charges collected by the society are liable to GST. 3. Sinking fund, repairs & maintenance fund, car parking charges, Non occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members.

As per Section 23 (1) of the CGST Act, 2017, the following persons shall not be liable to registration, namely:-

- (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;
- (b) an agriculturist, to the extent of supply of produce out of cultivation of land.

Thus, if the turnover of the society is less than Rs.20 Lakh or even if the turnover is beyond Rs. 20 lakhs but the monthly contribution of individual members towards maintenance is less than Rs.7,500/- (such services being exempt) and the society is providing no other taxable service to its members or outsiders, then the society (essentially exclusively providing wholly exempt services) need not take registration under GST.

Whether activities of Housing Societies would become more expensive under GST

No. In the press release dated 13.07.2017, it has been clarified as under

There are some press reports that services provided by a Housing Society [Resident Welfare Association (RWA)] will become expensive under GST. These are completely unsubstantiated. It may be mentioned that supply of service by RWA (unincorporated body or a registered non- profit entity) to its own members by way of reimbursement of charges or share of contribution up to an amount of Seven thousand five hundred rupees per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.

Further, if the aggregate turnover of such RWA is up to Rs.20 Lakh in a financial year, then such supplies would be exempted from GST even if charges per member are more than Rs. five thousand.

RWA shall be required to pay GST on monthly subscription/contribution charged from its members if such subscription is more than Rs. 7500 per member and the annual turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more. Under GST, the tax burden on

RWAs will be lower for the reason that they would now be entitled to ITC in respect of taxes paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services. ITC of Central Excise and VAT paid on goods and capital goods was not available in the pre-GST period and these were a cost to the RWA.

Thus, there is no change made to services provided by the Housing Society (RWA) to its members in the GST era.

Conclusion

In so far as tax implications on housing societies are concerned, the position prevailing under Service Tax is sought to be continued under GST. The tax burden under GST will be lower as the society would be entitled to take ITC which was hitherto not allowed under service tax. Moreover, the exemptions given ensure that there would be no tax burden on smaller societies where the monthly contribution of the individual members does not exceed Rs.7,500/-. In a nutshell GST will be a favourable tax regime for housing societies vis a vis service tax.

Appendix 5-A

F. No. 354/32/2019-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

Dated the 7th May, 2019, New Delhi

Subject: FAQs on real estate- reg.

A number of issues have been raised regarding the new GST rate structure notified for real estate sector effective from 01-04-2019. A compilation of Frequently Asked Questions (FAQs) is presented below. The answers to the FAQs have been given in simple language for guidance and easy understanding of all stakeholders in the real estate sector. They do not have force of law. In case of conflict, the gazette notifications, which have legal force, shall have precedence.

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

		the buyers.
2.	What is an affordable residential apartment?	Affordable residential apartment is a residential apartment in a project which commences on or after 01-04-2019, or in an ongoing project in respect of which the promoter has opted for new rate of 1% (effective from 01-04-2019) having carpet area upto 60 square meter in metropolitan cities and 90 square meter in cities or towns other than metropolitan cities and the gross amount charged for which, by the builder is not more than forty five lakhs rupees. [Cities or towns in the notification shall include all areas other than metropolitan city as defined, such as villages.] In an ongoing project in respect of which the promoter has opted for new rates, the term also includes apartments being constructed under the specified housing schemes of Central or State Governments. [Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their geographical limits prescribed by Government.]
3.	What is an on-going project?	A project which meets the following conditions shall be considered as an ongoing project. (a) Commencement certificate for the project, where required, has been issued by the competent authority on or before 31st March, 2019, and it is certified by a registered architect, chartered engineer or a licensed surveyor that construction of the project has started (i.e. earthwork for site preparation for the project has been completed and excavation for foundation has started) on or before 31st March, 2019. (b) Where commencement certificate in

		respect of the project, is not required to be issued by the competent authority, it is to be certified by any of the authorities specified in (a) above that construction of the project has started on or before the 31st March, 2019. (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 of the project have been, partly or wholly, booked on or before 31st March, 2019.				
4.	Does a promoter or a builder has option to pay tax at old rates of 8% & 12% with ITC?	Yes, but such an option is available in the case of an ongoing project. In case of such a project, the promoter or builder has option to pay GST at old effective rate of 8% and 12% with ITC. To continue with the old rates, the promoter/ builder has to exercise one time option in the prescribed form and submit the same manually to the jurisdictional Commissioner by the 10th of May, 2019. However, in case where a promoter or builder does not exercise option in the prescribed form, it shall be deemed that he has opted for new rates in respect of ongoing projects and accordingly new rate of GST i.e. 5% / 1% shall be applicable and all the provisions of new scheme including transitional provisions shall be applied. There is no such option available in case of projects which commence on or after 01.04.2019. Construction of residential apartments in projects commencing on or after 01.04.2019 shall compulsorily attract new rate of GST @ 1% or 5% without ITC.				
5.	What is the rate of GST applicable on construction of commercial apartments [shops, godowns, offices etc.] in a real estate project?	With effect from 01-04-2019, effective rate of GST, after deduction of value of land or undivided share of land, on construction of commercial apartments [shops, godowns, offices etc.] by promoter in real estate project are as under: <table><tr><th>Description</th><th>Effective rate of GST</th></tr><tr><td></td><td></td></tr></table>	Description	Effective rate of GST		
Description	Effective rate of GST					

			(after deduction of value of land)
		Construction of commercial apartments in a Residential Real Estate Project (RREP), as explained in question no. 6 below, which commences on or after 01-04-2019 or in an ongoing project in respect of which the promoter has opted for new rates effective from 01-04-2019	5% without ITC on total consideration.
		Construction of commercial apartments in a Real Estate Project (REP) other than Residential Real Estate Project (RREP) or in an ongoing project in respect of which the promoter has opted for old rates	12% with ITC on total consideration.
6.	What is a Residential Real Estate Project?	A "Residential Real Estate Project" means a 'Real Estate Project' in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the project.	
7.	What is the criteria to be used by an architect, a chartered engineer or a licensed surveyor for certifying that construction of the project has started by 31 st March, 2019	Construction of a project shall be considered to have been started on or before 31 st March, 2019, if the earthwork for site preparation for the project has been completed, and excavation for foundation has started on or before the 31 st March, 2019.	
8.	Does a promoter/ builder have to purchase all goods and services from registered suppliers only?	A promoter shall purchase at least eighty percent. of the value of input and input services, from registered suppliers. For calculating this threshold, the value of services by way of grant of development rights, long term lease of land, floor space index, or the value of electricity, high speed diesel, motor spirit and natural gas used in	

		construction of residential apartments in a project shall be excluded.
9.	If value of purchases as prescribed above from registered supplier is less than 80%, what would be the applicable GST rate on such purchases?	Promoter has to pay GST @ 18% on reverse charge basis on all such inward supplies (to the extent short of 80% of inward supplies from registered supplier) except cement on which tax has to be paid (by the promoter on reverse charge basis) at the applicable rate, which at present is 28% (CGST 14% + SGST 14%)
10.	In case of new rate of 5% / 1%, whether the conditions of payment of tax through Cash Ledger, payment of tax under RCM subject to 80% limit, non-availing of Input Tax Credit, reversal of credit, maintenance of project wise account, reporting of ITC not availed in corresponding GSTR-3B etc. are required to be complied mandatorily by the Developer ?	Yes. All the specified conditions against clause (i) to (id) of Sl. No 3 of Notification No. 11/2017-CTR are mandatory.
11.	What is the rate of GST applicable on transfer of development rights, FSI and long term lease of land?	Supply of TDR or FSI or long term lease of land used for the construction of residential apartments in a project that are booked before issue of completion certificate or first occupation is exempt. Supply of TDR or FSI or long term lease of land, on such value which is proportionate to construction of residential apartments that remain un-booked on the date of issue of completion certificate or first occupation, would attract GST at the rate of 18%, but the amount of tax shall be limited to 1% or 5% of value of apartment depending upon whether the residential apartments for which such TDR or FSI is used, in the affordable residential apartment category or in other than affordable residential apartment. TDR or FSI or long term lease of land used for construction of commercial apartments shall attract GST of 18%. The above shall be applicable to supply of TDR or

		FSI or long term lease of land used in the new projects where new rate of 1% or 5% is applicable.
12.	Who is liable to pay GST on TDR and floor space index?	The promoter is liable to pay GST on TDR or floor space index supplied on or after 01-04-2019 on reverse charge basis.
13.	At what point of time, the promoter should discharge its tax liability on TDR.	The liability to pay GST on development rights shall arise on the date of completion or first occupation of the project, whichever is earlier. Therefore, promoter shall be liable to pay tax on reverse charge basis, on supply of TDR on or after 01-04-2019, which is attributable to the residential apartments that remain un-booked on the date of issuance of completion certificate, or first occupation of the project.
14.	At what point of time, the promoter should discharge its tax liability on FSI (including additional FSI).	On FSI received on or after 1.4.2019, the promoter should discharge his tax liability on FSI as under: (i) In case of supply of FSI wherein consideration is in form of construction of commercial or residential apartments, liability to pay tax shall arise on date of issuance of Completion Certificate. (ii) In case of supply of FSI wherein monetary consideration is paid by promoter, liability to pay tax shall arise on date of issuance of Completion Certificate only if such FSI is relatable to construction of residential apartments. However, liability to pay tax shall arise immediately if such FSI is relatable to construction of commercial apartments.
15.	At what point of time, the promoter should discharge its tax liability on supply of long term lease.	On long term lease received on or after 1.4.2019, the promoter should discharge his tax liability on long term lease as under: In case of supply of long term lease of land for construction of commercial apartments, tax shall be paid by the promoter immediately. However, for construction of residential apartment, liability to pay tax on the upfront amount payable for long term lease shall arise on the date of issuance of Completion Certificate.
16.	Land development corporation of Orissa has provided land on long term lease for 99 years, for	The liability to pay tax on Long term lease of land (30 years or more) received against consideration in the form of upfront amount and periodic licence

	construction of a real estate project. As per the lease agreement, promoter has to pay an upfront amount of Rs. 10 Crore and annual/ monthly licence fee of 5 lakhs. Does the promoter has to pay GST on these amounts?	fee is on the promoter. The promoter has to discharge tax liability on the same on RCM basis. However, the upfront amount payable for the long term lease (known as premium, salami, cost, price, development charges etc.) is exempt to the extent it is used for construction of residential apartments that are booked before issuance of completion certificate or first occupation. Annual/ monthly rent or licence fee payable for long term lease is taxable under GST.
17.	Someone booked a flat from XYZ Developers in June, 2018. As of 31-03-2019, he had paid 40 % of the value of the flat. What shall be the GST rate applicable on the remaining portion of value of the flat?	GST on the remaining portion of the value of flat payable to the promoter on or after 01-04-2019 as per the contract between the promoter and buyer shall be payable at effective rate of 1% or 5%, subject to the condition that the builder has not exercised the option to pay tax on construction of apartments at the old rates of 12% or 18%. If the XYZ developer exercises option to continue to pay tax at old effective rate of 8% or 12% by 10th May, 2019, then GST has to be paid @ 8% or 12% on remaining portion of the value of the flat; in such cases, the promoter would be entitled to permissible credit of input taxes and, as such, the price that he charges from the buyer should appropriately reflect this credit.
18.	I am a beneficiary of PMAY-CLSS and carpet area of my house being constructed in an ongoing project is 150 sqm. Am I eligible for new rate of 1% on same?	You are eligible for new GST rate of 1%, subject to the condition that the developer-promoter with whom you have booked the house has not exercised option to pay tax on construction of apartments at the old rate of 8%.
19.	I am planning to purchase an apartment in a newly launched project. The project has been launched after 31.03.2019 by XYZ Developers at Noida. Price of the apartment having carpet area of 80 sqm is 48 lakhs. What is the rate of GST applicable on construction of this apartment?	The tax rate applicable on construction of the apartments in a project that commences on or after 01.04.2019 would be 5%.
20.	I have already paid tax of 12% (effective) on instalments paid before 01.04.2019. I wish to get	The buyer cannot exercise option to pay tax at the new or old rates. It is the builder, who has to exercise the option to pay tax on construction of

	the benefit of new rate of 1% or 5%. Whether it is the builder or the buyer who has the option to pay tax at the new or old rates?	apartments at the old rate of 12% latest by 10 th May, 2019. If the builder doesn't exercises his option to continue to pay tax at the old rate by the said date, then the effective GST rate applicable on all your instalments payable to the builder on or after 01.04.2019 as per the contract shall be either 1% or 5%, depending on whether the apartment is an affordable or other than affordable residential apartment.
21.	In respect of supply made in an ongoing Project covered by clauses (ie) and (if) of Entry 3 of Notification No. 3/2019, CT (R), an option is required to be exercised by the Promoter in Annexure IV by 10 th May 2019. At the same time, it is permissible for him to issue invoices between 1 st April 2019 to 9 th May 2019 which shall, however, be in conformity with the option to be exercised. Whether it is permissible for the Promoter to revise the invoice as provided in Section 34 of CGST Act, 2017, including by way of issuance of Credit/Debit Notes so as to bring the transaction in conformity with the option exercised by the Promoter ultimately by 10 th May 2019?	Where the GST rate at which tax has been charged in the invoices issued by the promoter prior to 10 th May, 2019 are not in accordance with the option required to be exercised by him on or before 10 th May, 2019 to pay GST on construction of apartments in an ongoing project at either the new or old rates, the promoter may issue debit or credit notes in accordance with Section 34 of CGST Act, 2017.
22.	How to compute adjustment of tax in a Credit Note to be issued u/s 34 by Real Estate Developer in case unit was booked prior to 1st April, 2019 on which GST was paid on part consideration received at the time of booking, but cancelled after 1st April, 2019.	Developer shall be able to issue a Credit Note to the buyer as per provisions of section 34 in case of change in price or cancellation of booking provided that the amount received in excess if any, consequent to issuance of Credit Note, is refunded to the Buyer by the Developer before September following the end of the financial year. Developer shall be able to take adjustment of tax paid in respect of the amount of such Credit Note. For example, a Developer who paid GST of Rs. 1,20,000 at the rate of 12% (effectively) in respect of a gross amount of booking of Rs. 10,00,000

		before 1st April, 2019 shall be entitled to take adjustment of tax of Rs. 1,20,000 upon cancellation of the said booking on or after 1st April, 2019 against other liability of GST including liability arising at the rate of 5% / 1% provided that the entire amount received from the buyer is refunded by the Developer. Further, in case apartments booked prior to 1.04.2019 on which GST has been paid till 31.03.2019 at the old rates of 8%/ 12% with ITC, are cancelled and rebooked at the new rates of 1% / 5% without ITC or sold after issuance of completion certificate, the credit taken in respect of such apartments for supply of service till 31.03.2019 on which tax was paid @ 8%/ 12% with ITC shall be required to be reversed.
23.	Whether the option to pay tax at the applicable effective rate of 12% or 8% (with ITC) is available to the Promoter in respect of the New Project, which has been commenced on or after 1 st April 2019?	No, there is no option to pay tax at the effective rate of 12% or 8% with ITC on construction of residential apartments in projects which commences on or after 01-04-2019.
24.	From the plain reading of the provisions and the definitions of the various terms as defined in the Notification No. 3/2019-CT(R), it appears that the one-time option is required to be exercised for the entire REP or RREP. Does this mean that a Promoter can opt for old rates or new rates, as the case may be, for different projects being undertaken by him under the same entity?	Yes. The option to pay tax on construction of apartments in the ongoing projects at the effective old rates of 8% and 12% with ITC has to be exercised for each ongoing project separately. As per RERA, 2016, project wise registration is allowed. So, the promoter may exercise different options for different ongoing projects being undertaken by him.
25.	In respect of the construction and supply of premises under specific schemes like PMAY, Housing for All (Urban), RAY etc. as mentioned in sub items (b), (c), (d), (da), (db) of item (iv) and sub items (c), (d), (da) of item (v)	No. The rate of 8% and 12% with ITC is not available for construction of apartments in a project that commences on or after 01-04-2019. It makes no difference whether or not the apartments are being constructed under PMAY or any other housing schemes of the Central or State Government.

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

	“first occupation” referred to in clauses (i) to (id) of Entry 3 of Notification No. 3/2019? Whether, in case of an ongoing project, where part occupation certificate has been received in respect of some of the premises comprised in the ongoing project, the Promoter is entitled to exercise the option of 1% / 5% (without ITC) or @ 8%/12% (with ITC) available in terms of Notification No. 3/2019 CT (R), in respect of the balance ongoing project?	II para 5 (b) and in notification No. 11/2017 – Central Tax (Rate) dated 29-03-2019 means the first occupation of the project in accordance with the laws, rules and regulations laid down by the Central Government, State Government or any other authority in this regard. Where occupation certificate has been issued for part (s) of the project but not for the entire project by 31-03-2019, the first occupation of the project shall not be considered to have taken place on or before 31-03-2019 and the project shall be considered ongoing project provided it satisfies the other requirements of the definition of the term ongoing project. Promoter shall be entitled to exercise option to pay tax @ 1%/5% (without ITC) or @ 8%/12% (with ITC) on construction of apartments in such project.
30.	(a) In case of a single building registered as 2 (two) separate projects under the provisions of RERA viz. 1st to 10th floor as one Project and 11th to 20th floor as another project, whether the Developer can consider the entire building as single ongoing project, since all the three conditions to be complied with for classifying a project as an ongoing project can be satisfied only if the entire building is considered as a single project? (b) Furthermore, if different towers in a single layout are registered as separate projects under the provisions of RERA but where the approvals are common for all the towers, whether the Developer can consider entire layout as a single Ongoing project ?	(a) Both the projects registered as separate projects under RERA, 2016 shall be treated as distinct projects for the purpose of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017 as amended by Notification No. 3/2019-Central Tax (Rate) dated 29-03-2019. Both the projects will have to independently satisfy the requirements of the definition of ongoing projects. (b) No. All the towers registered as different projects under RERA shall be treated as distinct projects. Only such towers registered as distinct projects for which commencement certificate has been issued on or before 31-03-2019, construction has started on or before 31-03-2019 and for which apartments have been booked on or before 31-03-2019 but completion certificate has not been issued or first occupation has not taken place by the said date shall be treated as ongoing projects.
31.	Whether TDR purchased on or after 1.4.2019 to be consumed by	Yes. Portion of such TDR transferred on or after 01-04-2019 which is used in an ongoing project in

	a developer-promoter in an ongoing project, in respect of which the promoter has opted for the new rate of tax, shall be liable to be taxed at the applicable rate, but limited to 1% or 5%, as the case may be, of the unsold area at the time of issuance of completion certificate?	respect of which the promoter has opted for new rate of tax on construction of apartment @ 1% or 5% without ITC which remained un-booked on the date of issuance of completion certificate or first occupation of the project shall be liable to tax at the applicable rate not exceeding 1% of the value in case of affordable residential apartments and 5% of the value in case of other than affordable residential apartments.
32.	What shall be the classification of and rate of tax applicable to works contract service provided by a contractor to a developer or promoter under the new dispensation effective from 01-04-2019 for (a) New project after 1.4.2019 and ongoing projects where option has been exercised for new rate and (b) Ongoing projects where option has not been exercised for new rate?	The rate of tax applicable on the work contract service provided by a contractor to a promoter for construction of a real estate project shall be 12% or 18% depending upon whether such work contract service is provided for construction of affordable residential apartments or residential apartments other than affordable residential apartments. Rate of tax applicable on such work contract service provided by a contractor to a promoter on construction of commercial apartments shall be 18% (irrespective of option exercised by developer-promoter). The relevant entries of the notification are at items (iv), (v), (va) and (vi) against sl. no. 3 of the table in Notification No. 11/2017-Cenral Tax (rate) dated 28-06-2017 prescribing rate of 12% for works contract services of construction of affordable apartments/ apartments being constructed under schemes specified therein. In case of works contract services for construction of other apartments, rate of 18% as prescribed in item (xii) against sl. no. 3 of the table in Notification No. 11/2017-Cenral Tax (rate) dated 28-06-2017 shall be applicable.
33.	A registered project has three blocks and Completion Certificate has been received for one block prior to 1st April, 2019 and for two blocks will be received after that date. Will such a project for which multiple completion certificates are received partly before 1st April, 2019 and partly after that	Where more than one completion certificate is issued for one project, for the purpose of definition of ongoing project as defined in the clause (xx) in the paragraph 4 of the notification No. 11/ 2017-CTR, dated 28.06.2017, completion certificate issued for part of the project shall not be considered to have been issued for the project on or before 31-03-2019 unless completion certificate(s) have been issued for the entire project. Therefore, if completion certificate has not been issued for part of the project on or before 31-

	date, constitute an ongoing project?	03-2019, the project shall still be considered as ongoing project provided other conditions of the definition of 'ongoing project' are met.
34.	It is a prevalent practice that more than one commencement certificate is issued by competent authority for single project. For example, in case of a single tower comprising of 50 floors and registered as single project, separate commencement certificates may be issued by the competent authority for (i) basement and parking which is common to entire building (ii) first twenty floors (iii) next thirty floors. If one or two commencement certificates are received by the Developer prior to 1st April, 2019 and remaining on or after that date, will such a project be considered as an ongoing project?	Where commencement certificate has been issued even for part of the project on or before 31-03-2019, it shall be treated as an ongoing project provided other requirements of the definition of ongoing project are met.
35.	There are many projects of redevelopment/slum rehabilitation in pipeline as on 1st April, 2019. It is possible that in such projects the development rights have been conferred upon the developer and pursuant to which the development process has been initiated such as receipt of commencement certificate, excavation for foundation etc., but booking against units for sale has not been received prior to 1st April, 2019. However, allotment of units to the existing dwellers (in respect of free supply units) which will yield no monetary consideration has been done. Clause (xiii) of Para 4 of Notification No.	In case of redevelopment or slum rehabilitation projects, the original inhabitants or the slum dwellers are not required to pay any monetary consideration to the promoter for the residential apartments allotted to them. Therefore, the residential apartments allotted to the original inhabitants in case of redevelopment project or slum dwellers in case of slum rehabilitation or redevelopment project, the requirement that at least one instalment has been credited to the bank account of the promoter shall not be required to be met for such apartments to be considered as having been booked on or before 31-03-2019 provided other requirements for considering an apartment booked on or before 31.03.2019 have been met. The consideration for such apartments is receipt in the form of transfer of development rights from the original inhabitants in case of redevelopment projects or the government in case of slum rehabilitation projects. Hence, the condition

	11/2017-CTR as amended by Notification No. 3/2019-CTR requires credit of at least one instalment in the bank account prior to 1st April, 2019 for a project to be considered as ongoing project. It may please be clarified whether in such cases, apartments being constructed in the project shall be deemed to have been booked prior to 1st April, 2019 in case development agreement is executed prior to that date and whether accordingly such projects shall be considered as an ongoing project?	relating to credit of at least one instalment in the bank account of the promoter for the apartments being constructed in a slum redevelopment project to have been partly or wholly booked shall be deemed to have been satisfied in order to consider the project as an ongoing project, provided all other conditions for considering an apartment as booked are met in case of apartments allotted to slum dwellers; as there is no cash payment to be made by the slum dwellers.
36.	Can a developer take deduction of actual value of Land involved in sale of unit instead of taking deduction of deemed value of Land as per Paragraph 2 to Notification No. 11/2017-CTR ?	No. Valuation mechanism prescribed in paragraph 2 of the notification No. 11/2017- CTR dated 28.06.2017 clearly prescribes one- third abatement towards value of land.
37.	Para 3 of Annexure I and II to Notification No. 3/2019-CTR dated 29.03.2019, stipulate three different conditions. Clause (i) and (ii) of the said Para 3 are relating to percentage of invoicing. It is requested to clarify as to how and where the percentage of invoicing is to be taken into consideration while determining quantum of ITC reversal.	The illustrations given in the said annexure clearly explain how the provisions given in the clause (i) and (ii) of para 3 of the said annexure relating to percentage of invoicing shall operate. The same may be referred to.
38.	It may be clarified whether exemption granted on transfer of development right or FSI for residential construction and reverse charge mechanism prescribed for payment of tax on TDR, FSI or long term lease (premium) in the new	The new dispensation has been prescribed for real estate sector vide notifications issued on 29.03.2019. The same are effective prospectively from 01.04.2019. They shall apply only to development rights or FSI transferred on or after 01.04.2019. They shall not apply to development rights transferred by way of an agreement prior to 01.04.2019 even if the consideration for the same,

	dispensation is applicable where development rights were transferred by way of an agreement executed prior to 1st April, 2019 but consideration, whether in cash or other form, flowed to the land owner, in full or part, on or after 1st April, 2019.	in cash or kind, is paid in part or full on or after 01.04.2019.
39.	Land Owner being an individual is not engaged in the business of land relating activities and thus whether the transfer of development rights by an individual to a promoter is liable for GST and whether the same will fall within the scope of 'Supply' as defined in Section 7 of CGST / SGST Act, 2017? Position of such a transaction may be clarified in light of amendments recently made.	The term business has been assigned a very wide meaning in the CGST Act and it includes any trade, commerce, manufacture, profession, vacation, adventure, or any other similar activity whether or not it is for a pecuniary benefit irrespective of the volume, frequency, continuity or regularity of such activity or transaction. Therefore, the activity of transfer of development rights by a land owner, whether an individual or not, to a promoter is a supply of service subject to GST.
40.	In certain projects, developers have started construction on or before 31-03-2019. However, bookings in the project have not started. One of the conditions prescribed for a project to qualify as an ongoing project is that apartments being constructed should have been partly or wholly booked. Whether such project where bookings have not started but construction has started, would be eligible for the new rates of 1% or 5% without ITC?	As per explanation in clause (xxviii) of para 4 of the notification No. 11/2017- CTR dated 28.06.2017, "project which commences on or after 01.04.2019" shall mean a project other than an ongoing project. A project, in which bookings for the apartments have not started, would not be covered under definition of "ongoing project". The same would accordingly be treated as a project which commences on or after 01.04.2019 subject to the new rates of 1% or 5% without ITC, as the case may be.
41.	Whether the Form as per Annexure IV of the Notification No. 3/2019-CTR is to be filed with both the jurisdictional commissioner i.e. Central Tax, State Tax.	No. The Form shall be filed manually with the office of the Commissioner in whose jurisdiction the registration of the promoter is assigned. No modification / amendment of the option is allowed in the Form once submitted.

	Whether modification / amendments in such Form are allowed subsequent to filing of the form, after 10 th May, 2019?	
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F. No. 354/32/2019-TRU

Appendix 5-B

F. No. 354/32/2019-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

Dated the 14th May, 2019, New Delhi

Subject: FAQs (Part II) on real estate- reg.

A number of issues have been raised regarding the new GST rate structure notified for real estate sector effective from 01-04-2019. A compilation of Frequently Asked Questions (FAQs) containing 41 questions was issued on 7th May, 2019. Part II of the FAQ is presented below. The answers to the FAQs have been given in simple language for guidance and easy understanding of all stakeholders in the real estate sector. They do not have force of law. In case of conflict, the gazette notifications, which have legal force, shall have precedence.

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

	charged to him by the Developer-Promoter on such supply? Whether the Landowner-Promoter shall be entitled to avail ITC on any other services or goods used by him in furtherance of his business (such as brokerage on sales etc.)?	
3.	Residential Real Estate Project (RREP) shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP (Clause xix). "Carpet area" shall have the same meaning as assigned to it in clause (k) of Section 2 of the RERA, 2016. Whether non-saleable areas such as society office, club house, etc., are to be taken into consideration for determining 15% for deciding whether the project is RREP or not?	The term "Residential Real Estate Project (RREP)" has been defined in the notification to mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP. Apartments shall be taken as commercial or residential apartments as declared to RERA authority.
4.	For the purpose of determining the threshold of Rs.45 lakhs in case of "affordable residential apartment", whether the following charges generally recovered by the developer from the buyer shall be included? • Amenity Charges • Society formation charges • Advance maintenance • Legal Charges	For the purpose of determining the threshold of the gross amount of Rs.45.00 lakh for affordable residential apartments, all the charges or amounts charged by the promoter from the buyer of the apartments shall form part of the gross amount charged. Clause xvi, sub-clause (a)(ii)(C) of paragraph 4 of notification No. 11/2017-CT(R) dated 28.06.2017, reproduced below, refers. <i>"C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc."</i> However the value shall not include stamp duty payable to the statutory authority, maintenance

		charges / deposits for maintenance of apartment or maintenance of common infrastructure.
5.	In case of a Real Estate Project, comprising of Residential as well as Commercial portion (more than 15%), how is the minimum procurement limit of 80% to be tested, evaluated and complied with where the Project has single RERA Registration and a single GST Registration and it is not practically feasible to get separate registrations due to peculiar nature of building(s)?	The promoter shall apportion and account for the procurements for residential and commercial portion on the basis of the ratio of the carpet area of the residential and commercial apartments in the project.
6.	In an area sharing model, a promoter has to handover constructed flats/ apartments to the land owner who supplied TDR for the project. Value of TDR at the time when the landowner transferred it to the promoter is not known. How would the promoter determine GST on TDR?	Value of TDR, shall be equal to the amount charged by the promoter for similar apartments from the independent buyers booked on the date that is nearest to the date on which such development rights or FSI is transferred by the land owner to the promoter.
7.	In the formula prescribed under first proviso to Entry 41A of the Notification 12/2017- CT (R), as amended by Notification 4/2019 CT (R), what rate shall be taken to determine the value to be ascribed to the “GST Payable on TDR or FSI or both for construction of the residential apartments in the project but for exemption contained therein” as no specific rate has been prescribed in Notification 11/2017 CT-Rate or any other notification? What is the rate applicable to output supply of TDR or FSI? Whether the quantum of TDR or	The GST on transfer of development rights or FSI (including additional FSI) is payable at the rate of 18% (9% + 9%) with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017 - Central Tax (Rate) dated 28-06-2017 (heading 9972). There is no exemption on TDR or FSI (Addl. FSI) for construction of commercial apartments. Therefore, GST shall be payable on TDR or FSI (including additional FSI) or both used in respect of (i) carpet area of commercial apartment and (ii) un-booked residential apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula.

	FSI (including additional FSI) or both shall be taken only in respect of un-booked apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula?	
8.	In case of Redevelopment, Slum Rehabilitation or similar arrangements, the Developer will be constructing two types of units i.e. one which is allotted to existing occupiers for no monetary consideration and second which is sold in the market to outside buyer. Price at which the unit is being sold to the outsider is determined in a manner to factor cost of construction of both type of units so that the unit to existing occupiers may be allotted free of monetary consideration. It may be clarified whether the Input Tax Credit in relation to construction of units to be allotted to existing occupiers, in case of residential project opted for old rates or commercial projects, shall be allowed to the Developer.	The apartments given to the original inhabitants or the slum dwellers in redevelopment project or slum rehabilitation project are given by the promoter against consideration received by them in the form of TDR/ FSI/ monetary consideration from the original inhabitants in case of redevelopment projects and from the Government in case of slum rehabilitation projects. The supply of service by way of construction of such apartments against construction wholly or partly in the form of TDR/FSI is a taxable supply subject to GST. Wherever tax is paid on construction of such apartments at the effective rates of GST of 8%/ 12% with ITC, the promoters shall be eligible for ITC, including ITC in relation to construction of units to be allotted to the existing occupiers even though there may not be a monetary consideration but the consideration is in the form of grant of TDR/FSI.
9.	In case of redevelopment or slum rehabilitation project, (new or an existing project) whether the constructed units supplied to existing occupiers by the developer free of monetary consideration are taxable? In case of ongoing project in respect of which the promoter has opted for new rates of 1% / 5%, it may be clarified whether	Yes, units supplied free of cost also attract GST as their consideration is not money but TDR/ FSI or rights relatable to land on which construction takes place. In such an ongoing project, the units sold in open market would be eligible for GST rate of 1% (without ITC), if such units are covered under Credit Linked Subsidy Scheme, as provided in the definition of “affordable residential apartments” given in notification no 11/ 2017- CTR dated 28.06.2017 as amended by notification No. 3/2019- CTR dated 29.03.2019 .

	the units being supplied free of monetary consideration to existing dwellers will fall within the definition of affordable housing when certain units being sold in the open market are eligible for concessional rates under the category of Credit Linked Subsidy Scheme i.e. sub-item (da) of item (iv) of Sl. No. 3 of notification No. 11/2017-CTR?	The apartments being constructed in such ongoing project, for existing slum dwellers/ occupiers shall be eligible for 1% rate if they meet the definition of affordable residential apartment, as under- (a) They have carpet area of less than 60 sqm in specified metropolitan cities or 90 sqm in places other than the specified metropolitan cities and the gross amount charged for similar apartments from independent buyers is not more than rupees 45 lakhs. (Please refer to para 2A of notification No. 11/2017- CTR dated 28.06.2019 as amended vide notification No. 3/2019- CTR dated 29.03.2019), or (b) They are being constructed under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the said notification.
10.	What shall be the rate of GST applicable on projects in respect of which OC has been issued prior to 01.04.2019, but the balance demands are pending? Such projects are neither projects which commence on or after 01.04.2019 nor ongoing projects.	Time of supply of the service by way of construction of apartments in such projects falls prior to 01.04.2019 and accordingly the rates as existed prior to 01.04.2019 would apply to such balance demands.
11.	The affordable residential apartment should not have a carpet area exceeding 60 sqm in metropolitan cities and 90 sqm in other places. Will the internal walls of the apartment, balcony or verandah be included 60/90 sq meter?	"Carpet area" is defined in clause (k) of section 2 of the RERA, 2016 and the same has been adopted in the notification.
12.	If an un-registered person transfers development right to a developer-promoter, then it is apparently not covered by the fourth proviso applicable to	Promoter shall be liable to pay GST on TDR transferred by any person whether registered or not on RCM basis.

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

	any additional tax for such payment he has made prior to 31st march, 2019?	
17.	Whether the condition of receiving 80% of inputs and input services from the registered person shall be applicable if the developer opts to continue to pay tax at the old rates of 12%/8% in respect of an ongoing project?	No, if the developer opts to continue to pay tax at the old rates of 12%/8% in respect of an ongoing project, the condition of receiving 80% of inputs and input services from the registered person doesn't apply.
18.	Whether the inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold?	Yes. Inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold.
19.	Whether the purchase of Land from an unregistered person shall be required to be included in the value of Input and Input Services for the purpose of calculation of 80% threshold?	No. As per Schedule III, Entry No 5, of CGST Act, sale of land is not a supply. In addition, as per 5th proviso to entries at Sl. No. (i), (ia), (ib), (ic) and (id) against Serial No 3 in the Notification No.11 / 2017-CTR dated 28.06.2017 as amended by Notification No. 3 / 2019-CTR dated 30/03/2019, transactions by way of grant of development rights, long term lease, FSI etc. are not required to be included in the value of Input and Input Services for evaluation of criteria of 80% from registered persons.
20.	When a developer prefers the option of paying tax at 1%/ 5%, without ITC, for an ongoing project, whether the apartments which were not considered as affordable in the earlier scheme (though certain apartments in such project were considered as affordable in the earlier scheme) will be considered as affordable after 1st April, 2019, if such apartments fit the definition of affordable residential apartments as provided in notification No. 3/2019-CT(R) dated 29.03.2019?	Yes, in case of an ongoing project in respect of which the promoter has not opted to pay GST at the old rate, he shall pay tax at the effective rate of 1% without ITC on apartments which meet the new definition of affordable residential apartment.

21.	Whether the amended rule 42 shall apply to all RREPs including ongoing projects?	In case of an ongoing RREP, in respect of which promoter opts for the new rates of 1% / 5% and which underwent transition of ITC consequent to change of rates of tax on 01.04.2019, ITC determined under sub- rule (1) of rule 42 shall not be required to be calculated finally on the completion or first occupation of the RREP.
22.	Whether separate Form (Annexure IV) shall be filed by the Developer in respect of each of the Ongoing Projects?	Yes. The promoter has to exercise the option for payment of tax at the old rates of 8%/ 12% with ITC for each of the ongoing projects separately.
23.	On what basis a Contractor / Sub-contractor executing a composite supply of works contract in terms of clause (va) i.e. 12% for affordable residential apartments, shall satisfy himself as regards condition of 50% of the total carpet area?	The contractor may charge tax on the works contract service provided by him to a promoter at the concessional rate of 12% under notification No. 11/2017- CTR dated 28.06.2019, S. No.3, entry (va) on the basis of a declaration by the promoter to the contractor that the project meets the conditions prescribed for concessional rate of GST on works contract service prescribed under the said entry.
24.	Whether the condition to make payment within 180 days by Land Owner – Promoter to Developer – Promoter as provided in second proviso to section 16 (2), shall be applicable for reversal of input tax credit ?	The apartments given to the Land Owner – Promoter are given by the Developer – Promoter against consideration received by him in the form of TDR from the Land Owner – Promoter. Therefore, the payment by Land Owner – Promoter for service of construction of apartments received from the Developer – Promoter is made even before the service is provided. Therefore, Land Owner – Promoter shall not be required to reverse input tax credit of tax charged from him by the Developer – Promoter on the ground that he has not made payment for the service received from the Developer – Promoter.
25.	Whether the exemption given by way of Entry 41A / 41B of Notification No. 12/2017-CTR shall be available in respect of development rights etc. transferred to a person other than promoter? Please clarify whether	The exemption is available only on TDR/ FSI transferred on or after 1 st April, 2019 for construction of residential apartments by a promoter in a real estate project.

	sub-clause (v) in clause (zk) in section 2 in RERA Act, 2016 covers a person who purchases TDR as developer?	
26.	How to determine value of construction services provided by the promoter to land owner in lieu of transfer of development rights, when land owner is not registered?	Value of construction services provided by the promoter to land owner in such cases shall be determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers, other than the land owner, nearest to the date on which such development right etc. is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 of Notification No. 11/2017-CT(R) dated 28.06.2017.
27.	In case of a project, where completion certificate has been received prior to 31-03-2019 but some part of the consideration in relation to the apartment is due after 31-03-2019, it appears that such project will not qualify as ongoing project. What will be the applicable tax rate on such amount received on or after 01.04.2019 – old rate or new rate?	Time of supply of service of construction of such apartments is prior to 01.04.2019 and the same shall be subject to tax at the old rates of 12%/8%.

F. No. 354/32/2019-TRU

K. K. Ramani & Co.

(Advocates)



Sitting from left;

Adv. K. R. Lakshminarayan, Adv. K. K. Ramani, Adv. N. C. Jain

Standing from left;

CA M. S. Varadarajan, Adv. Sunil K. Ramani, Adv. Vinay Sinha,
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- Joined Service in the CBEC (Now CBIC) in 1982
- Handled toughest legal matters/court cases of Central Excise & Service Tax
- On the occasion of 'Republic Day' 2016, Hon'ble President of India was pleased to confer “**Presidential Award**” for “**Specially distinguished Record of Service**” &

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- Contributed more than 25 Articles on various subject like Interpretation of Law, Service Tax, Central Excise and GST which are published in reputed Law Journals like Excise Law Time, Excise & Customs Reporter etc.
- Visiting faculty of **National Academy of Customs Indirect Taxes & Narcotics (NACIN), Mumbai & Delhi**, since last 20 years and a **Master Trainer of GST**, involved in designing the Training material/FAQs/Flyers (Available at CBIC website) and imparting training to officers and members of trade and industry

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Shri Sunil K Ramani is a well known Advocate of Mumbai. He is a partner of **K. K. Ramani & Co. (Advocates)**

Matters relating to transactions in immovable properties in general and concerning Non-Resident Indians in particular are of great interest to Shri Sunil Ramani. His work “Transactions of Residential and Commercial Properties”, which was brought out by Bombay Chartered



Accountants Society has been very well received by all, including Professionals. He was repeatedly invited by Khaleej Times, Dubai to explain provisions and procedures applicable to immovable property transactions to Non-Resident Indians during the annual “Indian Property Exhibitions” in Dubai.

He has given talks on various subjects under the auspices of Western India Regional Council of Chartered Accountants, Rotary Clubs, Rotaract Clubs and Maharashtra Chamber of Housing Industry.

Shri Sunil Ramani was invited by the Chief Commissioner of Income-tax and Chief Commissioner of Customs, Central Excise and Service Tax, Mumbai to speak on Large Taxpayers Unit Scheme (LTU) in October, 2007 which was an initiative of the Ministry of Finance.

He is co-author of very popular book Deemed Conveyance under The Maharashtra Ownership Flats Act, 1963.