Joint Development Agreement and GST- Union not yet Integrated

By Adv CA Dr Arpit Haldia

A story of Mr. Developer, Mr. Plot and Mr. Government

The story revolves around three persons Mr. Developer, Mr. Plot and Mr. Government. The role played by Mr. Government is a dual role i.e. in it's original Avtar and sometimes as Mr. Development Authority.

a) Mr. Developer is an expert in conceptualizing and construction of residential as well as commercial projects.
b) Mr. Plot owns a land.
c) Mr. Government/Mr. Governmental Authority is the authority which either approves the project or approves FSI/Additional FSI/ Transfer of Development Right.

There are following types of transactions-

a) Mr. Developer enters into a Joint Development Agreement with Mr. Plot to conceptualize and construct apartments wherein land is provided by Mr. Plot and construction services are provided by Mr. Developer. The agreement between Mr. Developer and Mr. Plot can be either completely or partly in any combination of

   -Revenue sharing basis
   -Area Sharing Basis
   -Consideration being paid in cash

   Mr. Government/Mr. Governmental Authority work as an authority to approve maps and building plan, grant Fire NOC, grants additional FSI on payment basis in cash.

b) Sometimes Mr. Developer enters into an agreement with Mr. Government who transfers development rights to Mr. Developer for construction carried out by Mr. Developer on the land owned by Mr. Government or for surrender of land owned by Mr. Developer.

A story of Mr. Developer and Mr. Plot

Mr. Plot

What he receives- construction services

What he gives-

undivided share in land to the builder

M. Developer

What he receives- right in the undivided share of land

What he gives- construction services of a house or an apartment in accordance with the specifications, by the builder for the owner

Joint Development Agreement

Results in execution of Joint Development Agreement

Why definition of Service is so vast in GST

Definition of Goods-Clause 2(52) of CGST Act, 2017 and Services-Clause 2(102) of CGST Act, 2017

"goods" **means every kind of movable property other than money and securities** but includes actionable claim, growing crops, 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;

"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation—For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities

Why Services have been so defined in the Constitution

2.88 In this regard the Ministry of Finance, Department of Revenue has stated that term 'services' has been so defined in order to give it wide amplitude so that all supplies that are not goods can potentially be covered within the ambit of services and no activity remains outside the taxable net. This would also minimize disputes.

2.100 Endorsing the view of the Department, the Committee feels that 'services' has been so defined in order to give it wide amplitude so that all supplies that are not goods can potentially be covered within the ambit of services and no activity remains outside the taxable net. This would also minimize disputes.- Report Of The Select Committee On the Constitution 122nd Amendment Bill-Views of the Government

Immovable Property and benefit to arise out of land

Immovable Property-3(26) of General Clauses Act, 1897 and scope of benefits to arise out of land

(26) “immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

Case-1-The right to carry away the fish is a benefit arising out of land because it is a right to take some profit of the soil for the use of the owner of the right- Ananda Behera And Another vs The State Of Orissa And Another on 27 October, 1955 Equivalent citations: 1956 AIR 17, 1955 SCR (2) 919

The facts disclosed in paragraph 3 of the petition make it clear that what was sold was the right to catch and carry away fish in specific sections of the lake over a specified future period. That amounts to a license to enter on the land coupled with a grant to catch and carry away the fish, that is to say, it is a profit a prendre: see 11 Halsbury's Laws of England, (Hailsham Edition), pages 382 and 383. In England this is regarded as an interest in land (11 Halsbury's Laws of England, page 387) because it is a right to take some profit of the soil for the use of the owner of the right (page 382). In India it is regarded as a benefit that arises out of the land and as such is immoveable property.

Case-2-Benefits to arise out of land means profits a prendre, rights of fishery and the like-Paresh Nath Singha vs Nabogopal Chattopadhya on 31 July, 1901 Equivalent citations: (1902) ILR 29 Cal 1

“By the expression "benefits to arise out of land" in Section 3(5) of the General Clauses Act are meant profits a prendre, rights of fishery and the like”.

Case-3-FSI/TDR being a benefit arising from the land, consequently must be held to be immovable property-Sadoday Builders Private Ltd vs The Jt.Charity Commissioner on 23 June, 2011

Can FSI/TDR be said to be a benefit arising from the land. Before answering that issue We may refer to some judgments for that purpose. In Sikandar and Ors. v. Bahadur and Ors. XXVII Indian Law Reporter, 462, a Division Bench of the Allahabad High Court held that right to collect market dues upon a given piece of land is a benefit arising out of land within the meaning of Section 3 of the Indian Registration Act, 1877. A lease, therefore, of such right for a period of more than one year must be made by registered instrument. A Division Bench of the Oudh High Court in Ram Jiawan and Anr. v. Hanuman Prasad and Ors. AIR 1940 Oudh 409 also held, that bazar dues, constitute a benefit arising out of the land and therefore a lease of bazar dues is a lease of immovable property. A similar view has been taken by another Division Bench of the Allahabad High Court in Smt. Dropadi Devi v. Ram Das and Ors. on a consideration of Section 3(26) of General Clauses Act.

From these judgments what appears is that a benefit arising from the land is immovable property. FSI/TDR being a benefit arising from the land, consequently must be held to be immovable property and an Agreement for use of TDR consequently can be specifically enforced, unless it is established that compensation in money would be an adequate relief.

Case-4- The authorization given to a "Developer" to develop the land and sell super-structure in perpetuity shall undisputedly fall within the words "benefit arising out of the land"-Chheda Housing Development Corpn Vs. Bibijan Shaikh 2007 (2) Bom CR 587 (xvii)

The authorization given to a "Developer" to develop the land and sell super-structure in perpetuity shall undisputedly fall within the words "benefit arising out of the land" and shall, therefore, be held to be "immovable property".

Case-5- In a profit a prendre one has a licence to enter on the land, not for the purpose of enjoying it, but for removing something from it, namely, a part of the produce of the soil.-Shrimati Shantabai vs State Of Bombay & Others on 24 March, 1958 Equivalent citations: 1958 AIR 532, 1959 SCR 265

In my opinion, the document only confers a right to enter on the lands in order to cut down certain kinds of trees and carry away the wood. To that extent the matter is covered by the decision in Chhotabhai Jethabhai Patel & Co. v. The State of Madhya Pradesh (1), and by the later decision in Ananda Behera v. The State of Orissa (2), where it was held that a transaction of this kind amounts to a licence to enter on the land coupled with a grant to out certain trees on it and carry away the wood. In England it is a profit a prendre because it is a grant of the produce of the soil " like grass, or turves or trees ". See 12 Halsbury's Laws of England (Simonds Edition) page 522, Note (m). (2) [1953]S.C.R.476,483. (2) [1955] 2 S.C.R. 919, 922, 923.It is not a " transfer of a right to enjoy the immoveable property " itself (s. 105 of the Transfer of Property Act), but a grant of a right to enter upon the land and take away a part of the produce of the soil from it. In a lease, one enjoys the property but has no right to take it away. In a profit a prendre one has a licence to enter on the land, not for the purpose of enjoying it, but for removing something from it, namely, a part of the produce of the soil.

Whether Immovable Property is covered under Services

and

What about Land

Para 2.2 of the Agenda stated as follows:

Under the GST regime, it is proposed to subject supply of goods or services to GST. Goods have been defined under the Constitution to include “all materials, commodities and articles”. Likewise, services have been defined under the Constitution “as anything other than goods”. Goods and services tax have been defined in the Constitution to mean “any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption”. Supply has been defined in the model GST law in the broadest possible sense and includes sale.

Why it was advocated to bring land and building under the GST Net-Part I

Thus, supply of immovable property (land and buildings) has been kept outside the purview of GST. It is felt, that this would distort the GST particularly when there is no constitutional or legal impediment to levy GST on supply of land and building to GST due to the following reasons:

Stamp duty, which is levied under Article 268, is with reference to documents and is collected by the Centre on documents listed in Entry 91 of the Union List while by the States on documents listed in Entry 63 of the State List. Therefore, the argument that because legal conveyance of title of land and buildings attracts stamp duty, they cannot be subjected to GST is facile because stamp duty is levied on documents while GST would be levied on the supply of land and buildings, whether as goods or services ("aspect theory" upheld by the Supreme Court in a host of judgements). Renting/leasing of land and buildings are subjected to service tax presently. Documents pertaining to such renting/leasing are subjected to stamp duty.

Why it was advocated to bring land and building under the GST Net-Part II

Entry 49 of the State List reads thus: - “Taxes on lands and buildings”

It is felt that this entry is not an impediment to levy of GST on supply of lands and buildings because of the “aspect theory” upheld by the Supreme Court: while the stock of lands and buildings is subjected to tax by the States on the aspect of possessing land and buildings, the supply aspect can be subjected to GST.

Without levying GST on supply of land and building, it would be very difficult to complete the input tax credit chain (ITC) and allow ITC in respect of construction services and construction material used in creation of immovable property which is further used for carrying out taxable activities. This is highly distortionary. While at the behest of business and industry, the ITC chain would get liberalized, the tax administration would forever be saddled with non-completion of ITC chain thereby resulting in disincentives to obtain taxable invoices for availing input tax credit. Non inclusion of land and building in GST results in cascading of taxes

Land and building are not on the same footing as alcoholic liquor for human consumption as the latter is constitutionally outside the definition of goods and services tax.

Why then Tax on Sale of Land and Building was not brought in GST

GST Council in its 7th Meeting Concluded as follows:

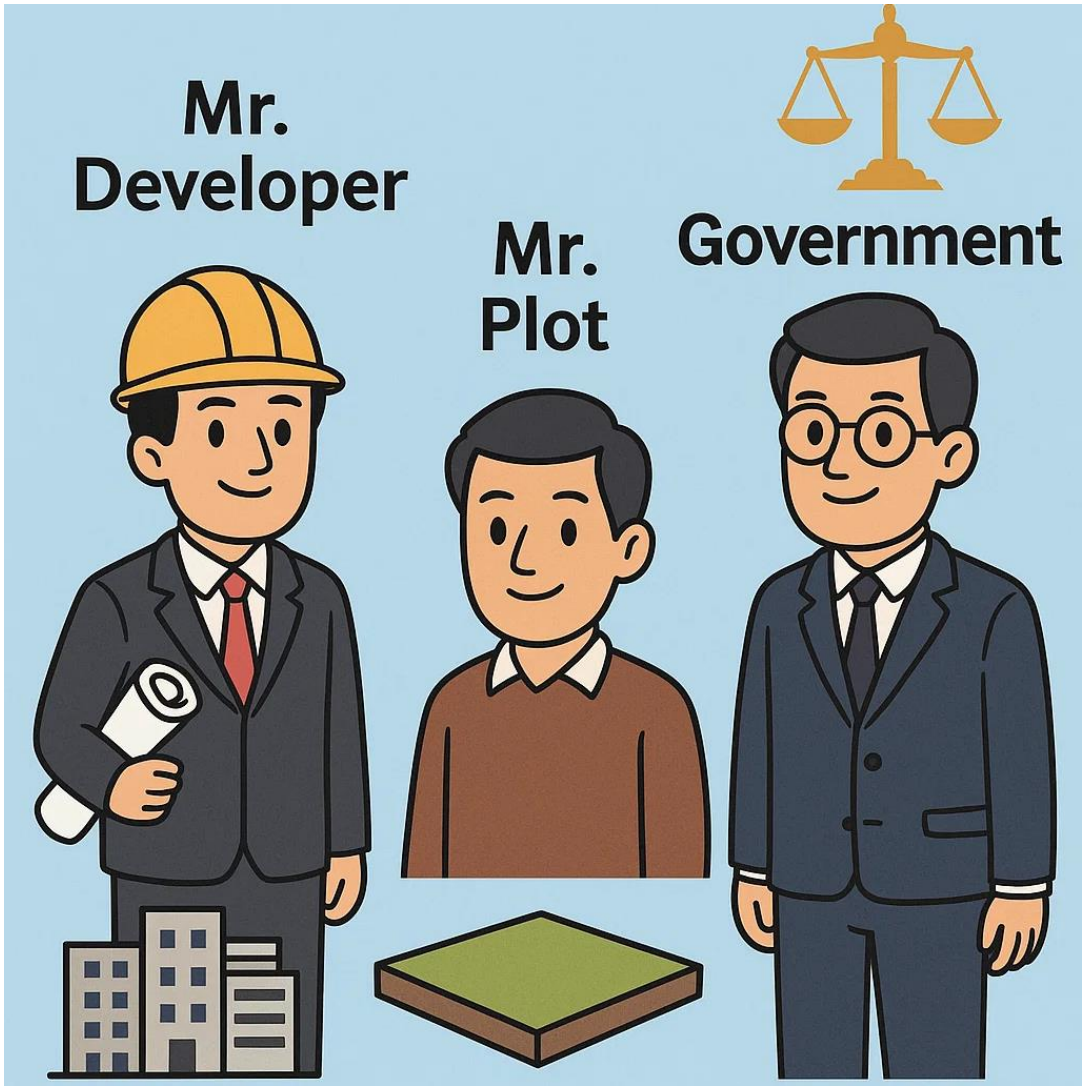
In view of the Discussion above for Agenda item 2A, the Council decided not to introduce GST on land and building at this stage and agreed that this issue could be revisited after a year or so the implementation of GST.

Para 6.11-The Deputy Chief Minister of Delhi referred to his letter dated 4 March, 2017 addressed to the Hon'ble Chairperson and copies sent to all the Hon'ble Members pointing out that designating the sale of land and sale of buildings (subject to certain exceptions), neither as supply of goods nor a supply of services (in Schedule III of the draft CGST Law) would lead to a break in the input tax credit chain and it would be a very big missed opportunity to curb the flow of black money.

10th GST Council Meeting-How did Land and Building found themselves in Schedule III

The Secretary observed that as per the decision in the 7th Meeting of the Council, this issue was to be reconsidered after one year of implementation of GST and if there was an agreement at that time to bring sale of land and building under GST, it would require amendment to Schedule III. He therefore suggested that presently sale of land and building could be exempted through a notification instead of incorporating it in the law. CCT, Karnataka stated that if a decision was taken to bring sale of land and building in GST, then several amendments would be required in the law such as Section 16 dealing with eligibility and conditions for taking input tax credit. He therefore suggested that the entry regarding sale of land and building should not be removed from Schedule III. The Hon'ble Chairperson stated that this issue could be taken up for decision after one year of implementation of GST. The Hon'ble Minister from Uttar Pradesh suggested to retain the decision taken in the 7th Meeting of the Council. The Hon'ble Minister from Andhra Pradesh stated that they would further study the proposal made by the Hon'ble Deputy Chief Minister of Delhi. The Council decided to retain the decision taken in the in Meeting of the Council (held on 22-23 December, 2016).


Joint
Development
Agreement


Mr.
Developer
Mr.
Plot
Government

Impact of a Joint Development Agreement-Basic Structure

Basic Agreement-

1. Mr. Plot is the owner of the land. He wants a new house, but is not able to construct a new house for himself either on account of paucity of funds or lack of expertise or resources.
2. He, therefore, enters into an agreement with Mr. Developer. Mr. Plot asks Mr. Developer to construct a house and give it to him. He says that as he does not have the money to pay for the construction and will therefore permit Mr. Developer to construct and own additional floor/s as consideration. Mr. Plot also agrees to transfer an undivided share in the land corresponding to the additional floor/s which falls to the share of Mr. Developer.
3. Net result, instead of being the full owner of the land with an old building, Mr. Plot becomes a co-owner of the land with a one-third share in the land and absolute owner of the ground floor of the newly constructed building and agrees that the Mr. Developer will become the owner of the upper floors with corresponding two-third share in the land.
4. Alternatively, if the cost of the undivided two-third share in the land which Mr. Plot agrees to transfer to Mr. Developer, is more than the cost of construction of the ground floor by the builder for the landowner, it may also mutually agreed that Mr. Developer will pay Mr. Plot an additional cash consideration.
5. The basic underlying purpose of the agreement is the construction of a house or an apartment (ground floor) in accordance with the specifications, by Mr. Developer for Mr. Plot, the consideration for such construction being the transfer of undivided share in land to the builder and grant of permission to the builder to construct two floors.

Developer is not merely a contractor engaged to undertake the construction

a) What is Broadly referred as Joint Development Agreement-

In the context in which certain agreements pertaining to the construction of new buildings contemplate the construction to be undertaken or orchestrated by a person other than the owner of the land, whether upon the demolition of the existing structure or otherwise, with such person other than the owner having a share in the constructed area, such agreements have now come to be regarded as development agreements. Ashok Kumar Jaiswal vs Ashim Kumar Kar on 13 February, 2014 (Cal HC)

b) Is the developer merely a contractor engaged to undertake construction-

The developer is not merely a contractor engaged to undertake the construction; the developer is, under the agreement with the owner, promised a part of the constructed premises as owner thereof together with the proportionate area of the land. -Ashok Kumar Jaiswal vs Ashim Kumar Kar on 13 February, 2014 (Cal HC)

Scope of a Joint Development Agreement

c) Consideration for Construction Services provided by the Developer or Consideration for the development rights provided by the Landowner-

The basic underlying purpose of the agreement is the construction of a house or an apartment (ground floor) in accordance with the specifications, by the builder for the owner, the consideration for such construction being the transfer of undivided share in land to the builder and grant of permission to the builder to construct two floors.-Faqir Chand Gulati vs Uppal Agencies Pvt. Ltd. & Anr on 10 July, 2008 (SC)

d) Is developer an agent of the Land Owner

When such development agreement is entered into between the owners and the developers, the developers by reason of such development agreement are not mere agents, of the owners. Inasmuch as by reason of such development agreement, the developer apart from being an agent of the owners, acquires an interest in the property and does not remain a stranger to the property-Bhaskar Aditya vs Smt. Minati Majumdar And Ors. on 10 October, 2002 Equivalent citations: AIR2003CAL178 (Calcutta High Court)

202. Termination of agency, where agent has an interest in subject-matter.—

Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Joint development Agreement-Implications of Section 202 of Indian Contract Act, 1872

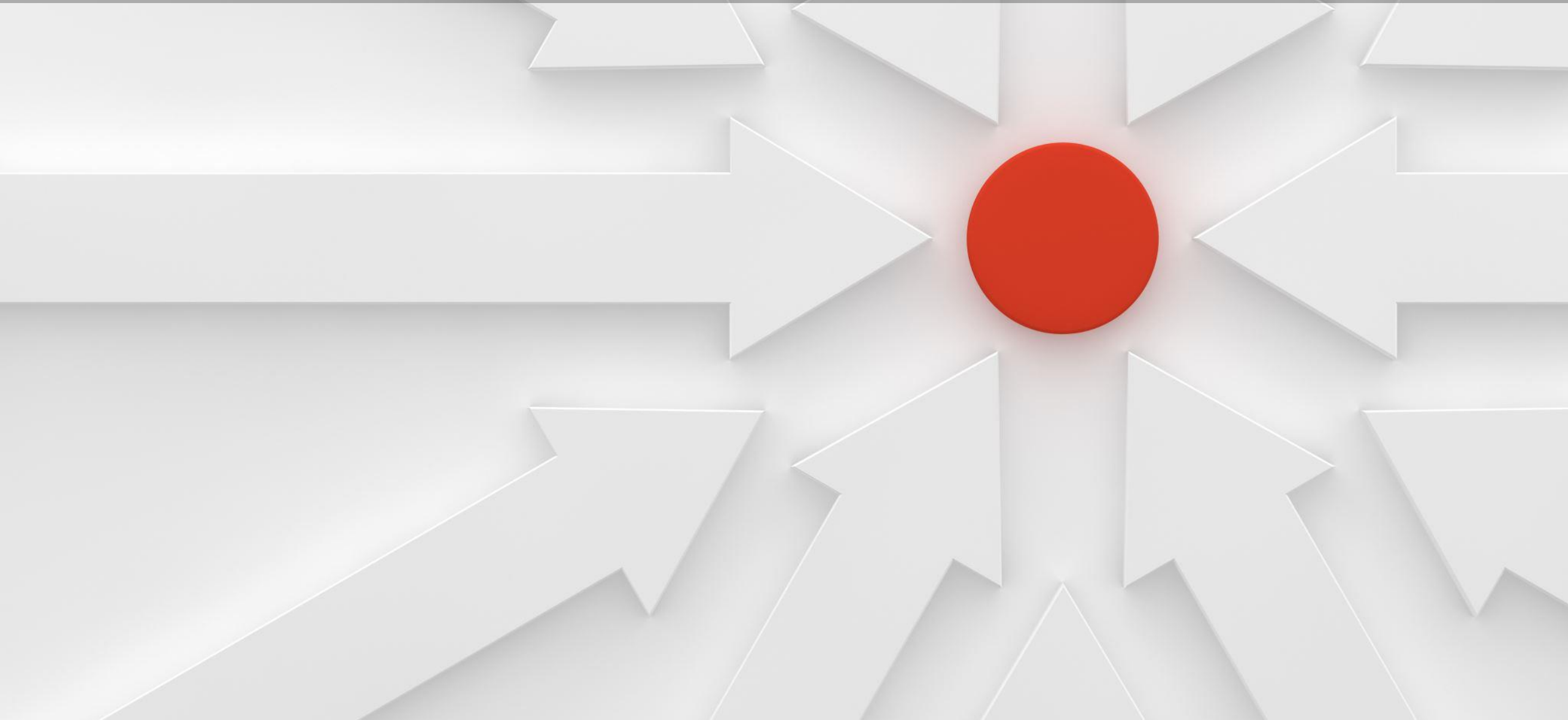
e) Implications of Section 202 of Indian Contract Act, 1872

By reason of such development agreement as agent of the owner, the developer acquires an interest in the property being subject-matter of development and agency, by reason of Section 202 of the Indian Contract Act, 1872 (Contract Act)-Bhaskar Aditya vs Smt. Minati Majumdar And Ors. on 10 October, 2002 Equivalent citations: AIR2003CAL178 (Calcutta High Court)

f) JDA entails transfer of immovable property

In law, however, a development agreement of the kind described herein entails the transfer of immovable property in the sense that the developer or an assignee of the developer, at the instance of the developer, would be entitled not only to a part of the constructed area but the proportionate share of the land on which the construction is made.-Ashok Kumar Jaiswal vs Ashim Kumar Kar on 13 February, 2014 (Cal HC)

Impact of Section 53A on Transfer of Development Right

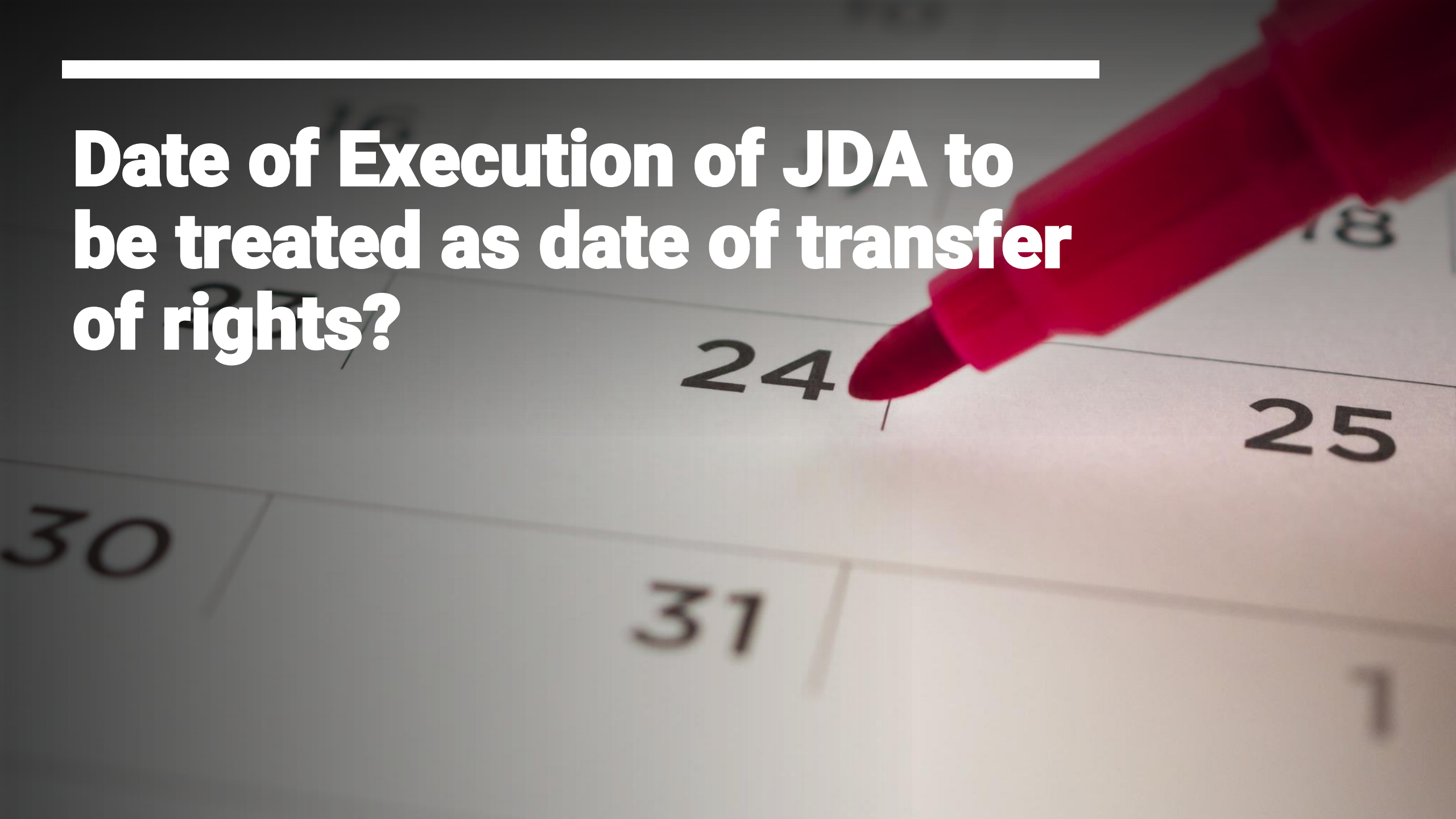


Section 53A Transfer of Property Act

53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof

Date of Execution of JDA to be treated as date of transfer of rights?



Transfer of development rights happen at the time of execution of JDA

The very purpose of issuance of the said notification appears to be ensuring ease for the landowners and developers as transfer of development rights happen at the time of execution of JDA. However, handing over of the constructed area to the landowner happens at a later stage only on issuance of the completion certificate of the project. In other words, the aforesaid notification deals with the time of supply of services of transfer of development rights which was otherwise always taxable, since introduction of GST, has now been postponed to a time when the petitioner transfers the possession of the constructed/developed area to the landowner.- Prahitha Contruction (P.) Ltd. vs. Union of India [2024] 159 taxmann.com 437 (Telangana)/[2024] 83 GSTL 129 (Telangana)[09-02-2024]

Date of entering into the development agreement is the date of transfer

In this case, the agreement is a development agreement and in our view, the test to be applied to decide the year of chargeability is the year in which the transaction was entered into.

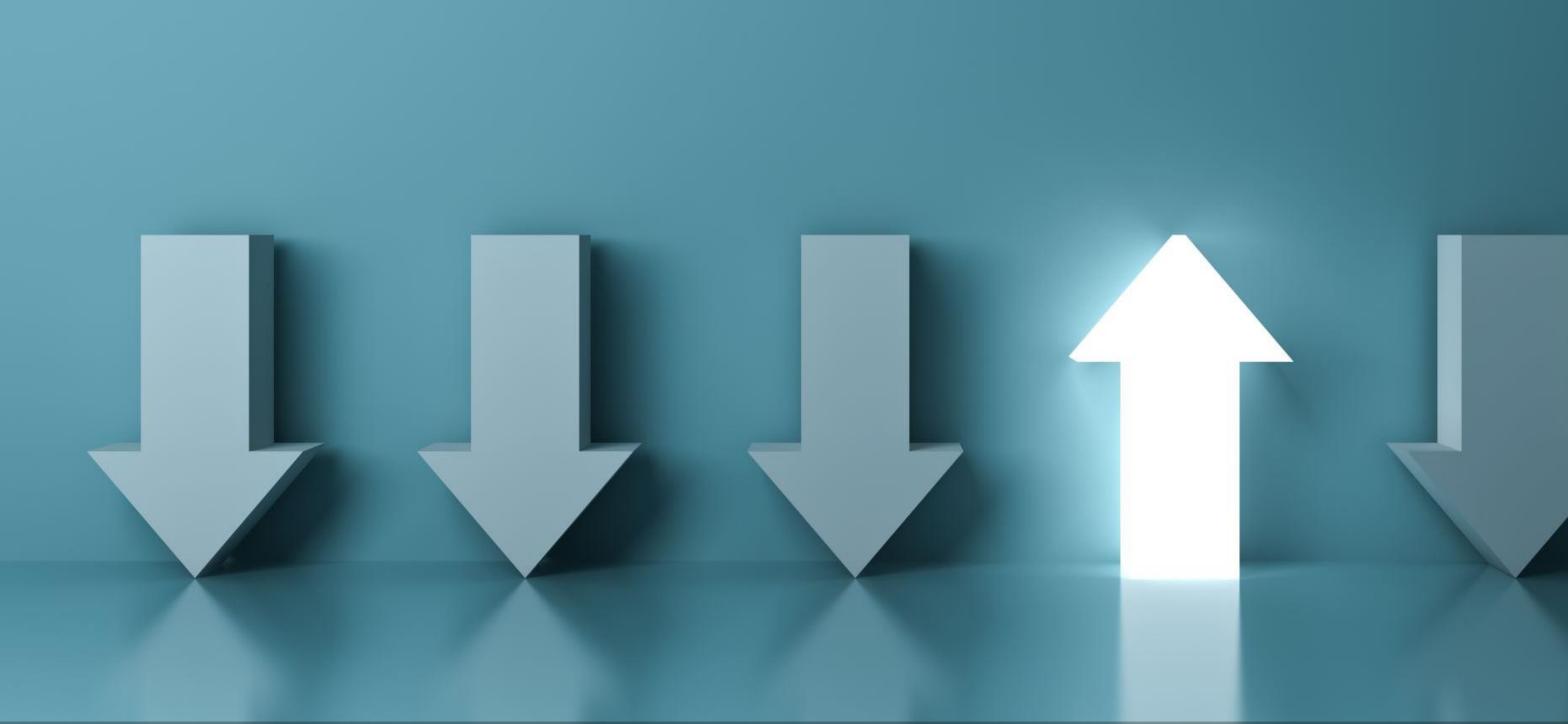
At the same time, if one reads the contract as a whole, it is clear that a dichotomy is contemplated between the limited power of attorney authorising the developer to deal with the property vide para. 8 and an irrevocable licence to enter upon the property after the developer obtains the requisite approvals of various authorities. In fact, the limited power of attorney may not be actually given, but once under Clause 8 of the agreement a limited power of attorney is intended to be given to the developer to deal with the property, then we are of the view that the date of the contract, viz., August 18, 1994, would be the relevant date to decide the date of transfer under Section 2(47)(v) and, in which event, the question of substantial performance of the contract thereafter does not arise.- Chaturbhuj Dwarkadas Kapadia of Bombay v. CIT (2003) 129 Taxman 497 (Bombay)

Date of entering into the development agreement is not date of transfer, if one of the parties has not done anything to discharge its obligations

On facts, a reading of the 'Development Agreement-cum-General Power of Attorney' indicates that what was handed over by the assessee to the developer is only 'permissive possession'. The agreement specifically provides that the assessee has permitted the developer to develop the land and that the consideration receivable by the assessee from the developer is '38% of the residential part of the developed area'. That being so, it is only upon receipt of such consideration in the form of developed area by the assessee in terms of the development agreement, the capital gains becomes assessable in the hands of the assessee. Further, the facts show that even as on date, there was no developmental activity on the land. The process of construction has not been even initiated and no approval for the construction of the building is obtained. This is due to lapse on the part of the transferee. While the assessee has fulfilled its part of the obligation under the development agreement, the developer has not done anything to discharge the obligations cast on it under the develop agreement. Mere receipt of refundable deposit cannot be termed as receipt of consideration-Binjusaria Properties Pvt. Ltd vs. ACIT (ITAT Hyderabad) (Fibars Infratech, Vijaya Productions 134 ITD 19 (TM) followed, Chaturbhuj Dwarkadas Kapadia 260 ITR 491 (Bom) distinguished

Date of entering into the development agreement is not date of transfer, if one of the parties has not done anything to discharge its obligations

We have considered the rival submissions. Perusal of the Joint Development Agreement dated 13.07.2011 shows that possession of the scheduled property has not been handed over by the assessee to the builder. As per the Joint Development Agreement, the builder has been granted only a right to enter into the premises for the purpose of demolition of the existing building and re-construction. This is very clear as per Clause-10 of the Joint Development Agreement. A perusal of the power of attorney dated 08.11.2011 granted by the assessee to the developer clearly shows that as per Clause-8, it is specifically barred from selling or executing any deed for any portion of the property described in the scheduled property. Thus, it is very clear that neither Joint Development Agreement, nor the power of attorney granted on 08.11.2011, complied with the conditions specified in Section 53A of the Transfer of Property Act. In fact, perusal of the Supplementary agreement entered into on 18.07.2012 shows that the consideration has been clearly determined in Clauses 1 & 2 and in Clause-3, the owners agreed to execute the power of attorney in favour of the developer and registered it, authorizing 50% of undivided land in the scheduled property. Consequent to the said Supplementary agreement dated 18.07.2012, power of attorney dated 17.08.2012 has been granted to M/s.Chaitanya Eastlyn giving them the authority to convey, sell, transfer the property described in the scheduled therein to such prospective purchasers and to issue valid receipt thereon. This clearly shows that the transfer took place only in August, 2012 by execution of the power of attorney dated 17.08.2012 in respect of consideration determined in the Supplementary agreement dated 18.07.2012.-Rameysh Ramdas v. ITO I.T.A No. 1399/Chny/2017 – Chennai Tribunal



Transfer of Development right and Transferable Development Rights-Synonymous or different

Transfer of Development Right and Transferable Development Rights

The expression "transfer of development rights" read in conjunction with 'FSI' as indicated in entry 5B, would only relate to a TDR (Transferable Development Rights) as contemplated by clause 11.2.2 under the regulations for grant of TDR in the Unified Development Control and Promotion Regulations for the State of Maharashtra, clause 11.2.1 of which defines transferable development rights, to mean compensation in the form of Floor Space Index (FSI) or development rights, which shall entitle the owner for construction of built up area subject to the provisions in the said regulations-Shrinivasa Realcon (P.) Ltd. vs. Deputy Commissioner Anti-Evasion Branch, CGST & Central Excise Nagpur [2025] 173 taxmann.com 600 (Bombay)[08-04-2025]

The question now arises is whether Additional FSI and Transfer of Development Right are same or different?

Transfer of Development Right

The TDR in short enables the transfer of development potential partly or fully from one plot to another. Supposedly, Mr. Governmental Authority brings in a policy to issue TDR certificate in lieu of land surrendered by Mr. Developer, free of cost and free from all encumbrances for

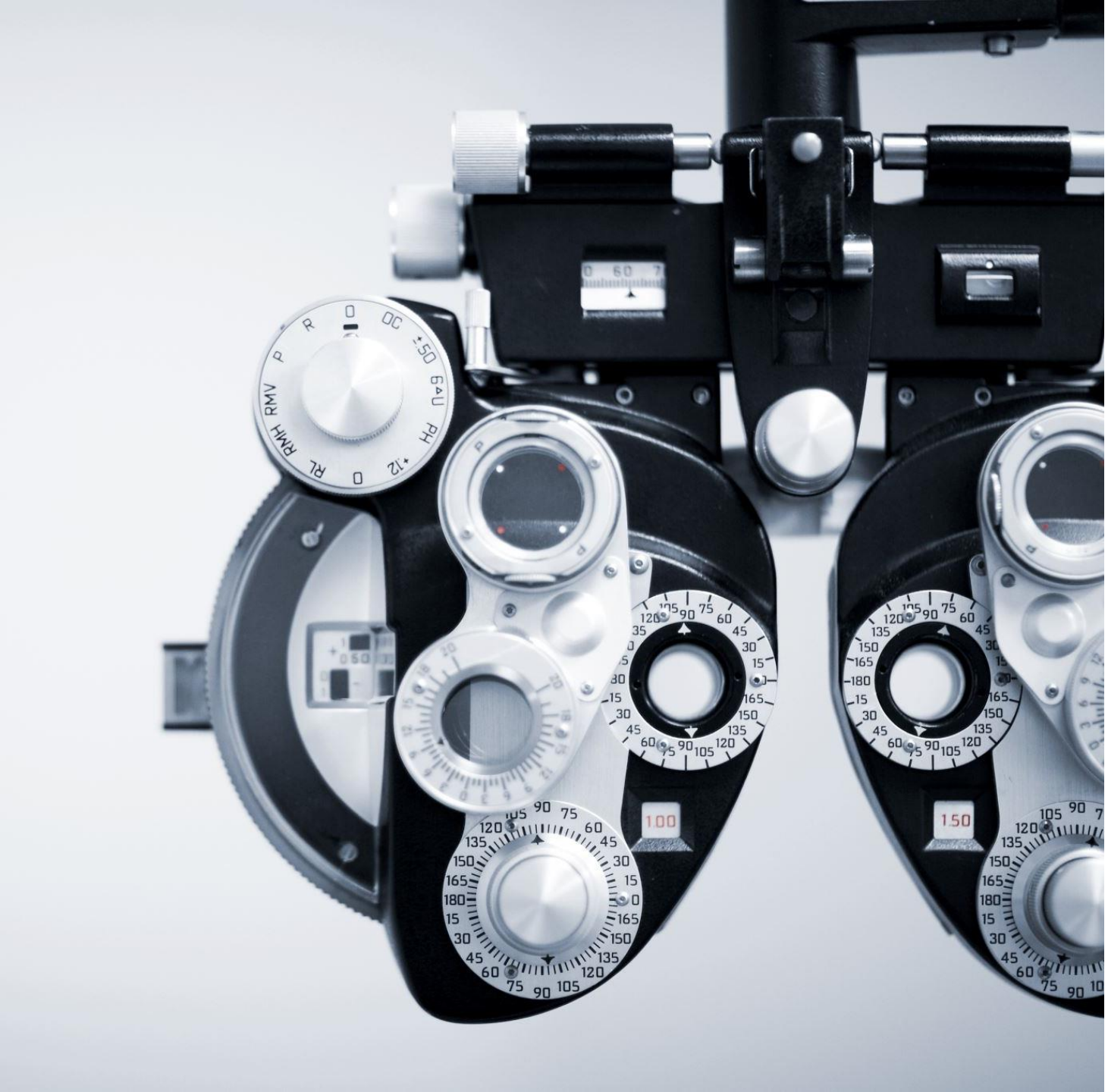
a. Development of houses under State Affordable Housing Policy in lieu of FAR/FSI granted.
b. Development of Green spaces- Parks/ Open Spaces/Playgrounds Water Bodies etc. as per the provision of Master Plan/ Sector Plan.
c. Development of Master Plan/ Sector Plan roads including road widening
d. Development of Public Parking lots,
e. Development of City level Facilities/other public purposes as per Master Plan proposals.
f. Slum rehabilitation scheme

What is FSI

What is FSI-Floor Space Index

FSI calculation is the ratio of the constructed covered area of all floors of the building to the total area of the land.

For example, Mr. Plot has a land of 2000 sq.m and permissible FSI on the land is 1, then Mr. Developer would be able to build a covered area structure of 2000 sq. m. However, if over and above the permissible FSI, any FSI is allowed as per the scheme by Mr. Government/Mr. Governmental Authority, it is referred as additional FSI. Therefore, if additional FSI of 1 more is granted then Mr. Developer would be able to build a further covered area structure of 2000 sq. m.



Scope of Supply in GST

Scope of Supply under Section 7 of CGST Act, 2017 and Schedule II and III of CGST Act, 2017

a) Scope of Supply under Section 7 of CGST Act, 2017

(1) For the purposes of this Act, the 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;

b) Entry No. 5 to Schedule III

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

c) Entry No. 2 to Scheule II

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.

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.

Answer-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

Schedule II of CGST Act, 2017

d) Para No. 5(b) of Schedule II of CGST Act, 2017

(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;

FAQs on real estate- Dated the 7th May, 2019, New Delhi

29. What is the meaning of the term "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 ongoingproject, 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?

Answer-The term "first occupation" appearing in Schedule 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 ongoingproject 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.

FAQs on real estate- Dated the 7th May, 2019, New Delhi

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 11thto 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?

Answer-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.

30 (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 ?

Answer-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.

Affordable Residential Apartment, Non-Affordable Residential Apartment and Residential Real Estate Project

Meaning of Affordable Residential Apartment

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 items (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.-N. No. 11/2017-Central Tax Rate Dated 28th June 2017

FAQs on real estate- Dated the 14th May, 2019, New Delhi

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**

Answer-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. "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." 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.

Taxability of Preferential Location Charges-Circular No. 234/28/2024-GST Dated 11-10-2024

8. Applicability of GST on Preferential Location Charges (PLC) collected along with consideration for sale/ transfer of residential / commercial properties:

8.1 Allowing choice of location of apartment is integral part of supply of construction services and therefore, location charge is nothing but part of consideration charged for supply of construction services before issuance of completion certificate. Being charged along with supply of construction services for the apartment, the same attract GST at same rate as of construction services before issuance of completion certificate.

8.2 Therefore, based on the recommendations of the 54th GST Council, it is hereby clarified that location charges or Preferential Location Charges (PLC) paid along with the consideration for the construction services of residential /commercial/industrial complex forms part of composite supply where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply of construction service.

Meaning of Affordable Residential Apartment

Example-1-Mr Developer has constructed a residential apartment which is having a carpet area of 85 square meter in Mumbai and gross amount charged Rs Fifty lakh rupees. The gross amount charged includes Rs 40 Lakh as consideration charged for construction services and towards undivided share of land and Rs 10 Lakh as amount charged for preferential location charges and parking charges.

Example-2- The definition of gross charges include common facility charges. The term has not been defined any where and supposedly, Mr. Developer has collected Rs 43 Lakh towards construction services, undivided share of land and Parking Charges. It also collects one-time Rs 2.50 Lakh as common facility charges. The question is that since the aggregate is more than 45 Lakh, will it still be counted as affordable residential apartment or it will go out of the scope of affordable residential apartment. It would be worthwhile to highlight that the amount of Rs 2.50 Lakh is remitted to society for maintenance once the society is incorporated.

Meaning of Residential Real Estate Project

The term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent of the total carpet area of all the apartments in the REP.-N. No. 11/2017-Central Tax Rate Dated 28th June 2017

As per RERA Act, "carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

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

Snapshot of Reporting of Carpet Area and Area of Exclusive Balcony, Area of Exclusive Varandah and Area of Exclusive Terrace at RERA Webportal

APARTMENTS TYPE DETAILS

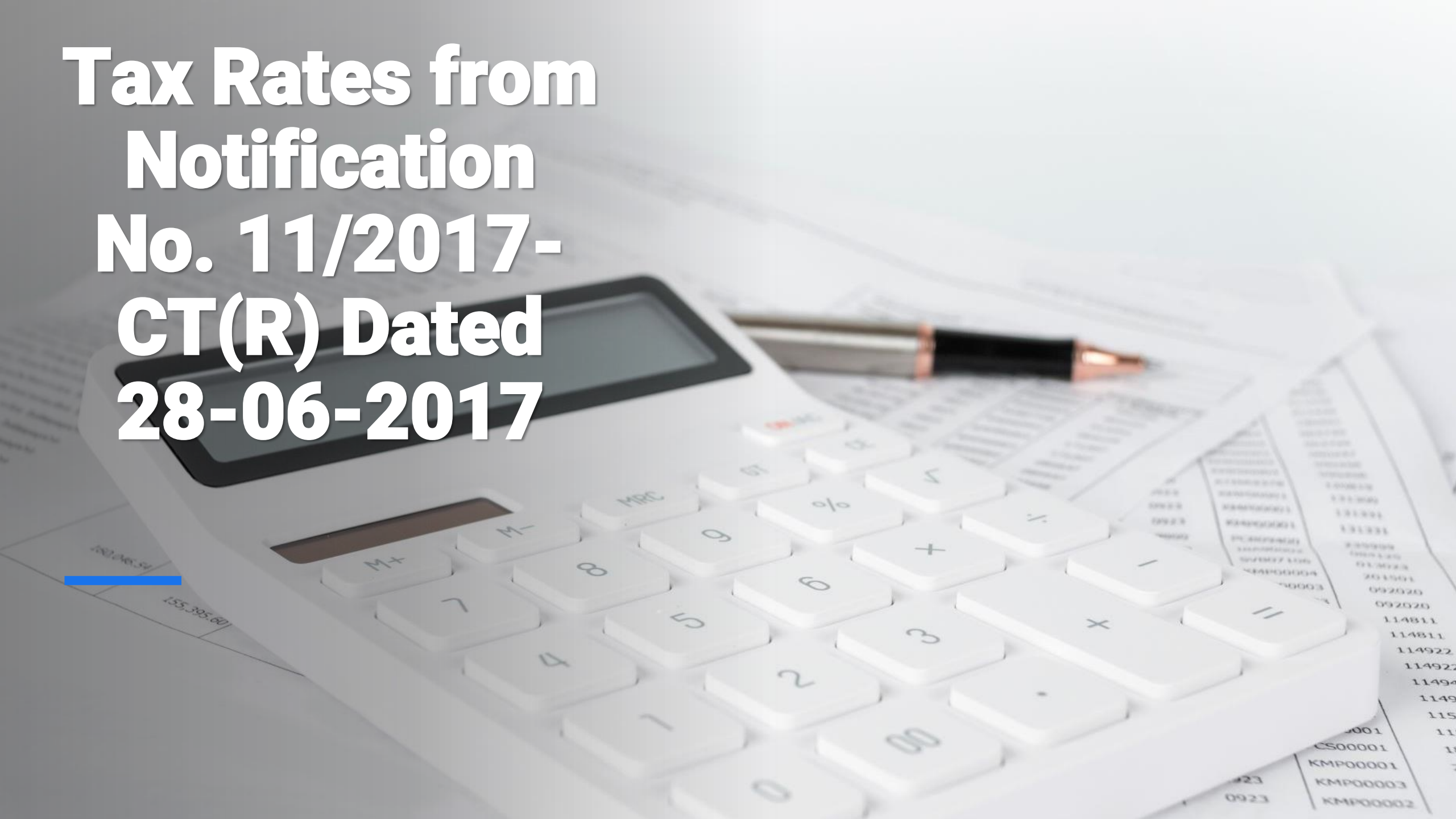
Sanctioned

Apartment Type	Block Number	Carpet Area (In sq. meters)	Area of Exclusive Balcony (In sq. meters)	Area of Exclusive Verandah (In sq. meters)	Area of Exclusive Terrace (In sq. meters)	Area of Exclusive Store (In sq. meters)
-	-	-	-	0	0	

Not Sanctioned

Apartment Type	Block Number	Carpet Area (In sq. meters)	Area of Exclusive Balcony (In sq. meters)	Area of Exclusive Verandah (In sq. meters)	Area of Exclusive Terrace (In sq. meters)	Area of Exclusive Store (In sq. meters)
-	-	-	-	0	0	

Tax Rates from Notification No. 11/2017-CT(R) Dated 28-06-2017



Tax Rate on Affordable residntial apartment-whether in RREP or REP

Particulars	Comment
Construction of affordable residential apartments by a promoter in a RREP a) which commences on or after 1st April, 2019 or b) in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the 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.	Affordable Flats in RREP would be taxed at 1.5%
Construction of affordable residential apartments by a promoter in a REP other than RREP, a) which commences on or after 1st April, 2019 or b) 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.	Affordable Flats in REP would be taxed at 1.5%

Mr. Developer has constructed residential flats having carpet area of 50 Sq Mt and having a cost of Rs 35 Lakh in a non-metropolitan city. The commercial apartments in the township are not more than 15 per cent of the total carpet area of all the apartments in the Real Estate Project. What would be the Tax Rate and would your answer had been different had the commercial apartments in the township been more than 15 per cent of the total carpet area of all the apartments in the Real Estate Project.

Tax Rate on Affordable Flats whether in RREP or REP

Question: Whether the rate of 0.75% under Item No. (i) of Entry No. 3 of Notification No. 03/2019-Central Tax (Rate) can be availed in respect of those units which qualify as "Affordable Residential Apartment" in a "Residential Real Estate Project" when the project consists of both "Affordable Residential Apartments" as well as apartments other than Affordable Residential Apartments?

Answer: The applicant is liable to pay GST at the rate of 1.5% [0.75% - CGST + 0.75% - SGST] in respect of the services of construction of affordable residential apartments as per entry at Item (i) and the rate of 7.5% [3.75% - CGST + 3.75% - SGST] in respect of the services of construction of residential apartments other than affordable residential apartments as per entry at Item No. (ia) of Sl. No. 3 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 in the Residential Real Estate Project subject to the conditions prescribed under the respective entries. Crescent Builders., In re [2022] 145 taxmann.com 392 (AAR - KERALA)/[2023] 69 GSTL 98 (AAR - KERALA)[12-07-2022]

FAQs on real estate- Dated the 14th May, 2019, New Delhi

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 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. subitem (da) of item (iv) of Sl. No. 3 of notification No. 11/2017-CTR?

Answer-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 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

Tax Rate on other than Affordable Residential Flats-whether in RREP or REP

Particulars	Comment
Construction of residential apartments other than affordable residential apartments by a promoter in a RREP a) which commences on or after 1st April, 2019 or b) in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the 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.	Non-Affordable Flats in RREP would be taxed at 7.5%
Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP a) which commences on or after 1st April, 2019 or b) 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.	Non-Affordable Flats in REP would be taxed at 7.5%

Mr. Developer has constructed residential flats having carpet area of 100 Sq Mt and having a cost of Rs 70 Lakh in a metropolitan city. The commercial apartments in the township are not more than 15 per cent of the total carpet area of all the apartments in the Real Estate Project. What would be the Tax Rate and would your answer had been different had the commercial apartments in the township been more than 15 per cent of the total carpet area of all the apartments in the Real Estate Project.

Tax Rate on Commercial Apartments in RREP or REP

Particulars	Comment
Construction of commercial apartments (shops, offices, godowns, etc.) by a promoter in an RREP a) which commences on or after 1st April, 2019 or b) in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the 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.	Commercial Apartments in RREP would be taxed at 7.5%
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; 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.	Commercial Apartments in REP would be taxed at 18%

Mr. Developer has constructed commercial apartments having a cost of Rs 70 Lakh in a metropolitan city. The commercial apartments in the township are not more than 15 per cent of the total carpet area of all the apartments in the Real Estate Project. What would be the Tax Rate and would your answer had been different had the commercial apartments in the township been more than 15 per cent of the total carpet area of all the apartments in the Real Estate Project.

Conditions attached to the Rate Notification for Applicable Tax Rate on Builder w.e.f. 1-4-2019

a) Tax shall be paid in cash, that is, by debiting the electronic cash ledger only

b) Credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP

c) Registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP.

Conditions attached to the Rate Notification for Applicable Tax Rate on Builder w.e.f. 1-4-2019

d) 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

(i) 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.

(ii) Explanation.—

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

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

(iii) the landowner-promoter shall be eligible to utilise the credit of tax charged to him by the developer-promoter for payment of tax on apartments supplied by the landowner-promoter in such project.

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 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?

Answer-Promoter shall be liable to pay GST on TDR transferred by any person whether registered or not on RCM basis.

Conditions attached to the Rate Notification for Applicable Tax Rate on Builder w.e.f. 1-4-2019

Mr. Plot has a land measuring 2 bigha. Mr. Developer approaches Mr. Plot for construction of 200 residential flats out of which Mr. Plot would get 50 flats as a consideration of transfer of development rights.

Now, Post execution of JDA, a flat at similar location was sold by Mr. developer for Rs 36 Lakhs. The construction service provided by Mr. Developer to Mr. Plot would be Rs 24 Lakh as 1/3 portion of and being deducted and the value of development right transferred would be Rs 36 Lakh.

Mr. Developer is required to pay tax on supply of 50 residential apartments to Mr. Plot at Rs 24 Lakh each at 1.5%. Mr. Plot shall be eligible for credit of taxes charged from him by Mr. Developer towards the supply of construction of apartments wherein he 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.

One question which lefts to be answered is whether the condition “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” is to be seen for each of the flat or for the flats as a whole.

Conditions attached to the Rate Notification for Applicable Tax Rate on Builder w.e.f. 1-4-2019

e) 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.

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

g) 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, central tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of nine per cent 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.

Conditions attached to the Rate Notification for Applicable Tax Rate on Builder w.e.f. 1-4-2019

h) 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

i) The promoter shall maintain projectwise 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.

j) 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.

k) 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).

Example given in N No. 11/2017-Central Tax Rate for calculation of threshold of 80%

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.

Example given in N No. 11/2017-Central Tax Rate for calculation of threshold of 80%

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, aluminium 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.

Example given in N No. 11/2017-Central Tax Rate for calculation of threshold of 80%

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 aluminium 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 fulfil 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 @ [8][18 (9 + 9)] per cent under RCM.

FAQs on real estate- Dated the 14th May, 2019, New Delhi

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?

Answer-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%.

18. Whether the inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold?

Answer-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?

Answer-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.

Valuation of Land and deduction allowed thereof from the value of immovable property for arriving at construction services

Valuation of Land

2. In case of supply of service specified in column (3), in items (i), (ia), (ib), (ic), (id), (ie) and (if)] against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation.—For the purposes of this paragraph and paragraph 2A below, "total amount" means the sum total of,—

(a) consideration charged for aforesaid service; and

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

Mr Developer has constructed a residential apartment which is having a carpet area of 85 square meter in Mumbai and gross amount charged Rs Fifty lakh rupees. The gross amount charged includes Rs 40 Lakh as consideration charged for construction services and towards undivided share of land and Rs 10 Lakh as amount charged for preferential location charges and parking charges. What would be the 1/3 value of land in the given case, whether it would be calculated based upon Rs 50 Lakh or Rs 40 Lakh.

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 ?

Answer-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.

Valuation of Construction services provided by Developer to Landowner against transfer of TFD/FSI

Valuation of construction services provided by the promoter against transfers development right or FSI (including additional FSI)

2A. Where a 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.

Mr. Plot has a land measuring 2 bigha. Mr. Developer approaches Mr. Plot for construction of 200 residential flats out of which Mr. Plot would get 50 flats as a consideration of transfer of development rights. Now, Post execution of JDA, a flat at similar location was sold by Mr. developer for Rs 36 Lakhs. The construction service provided by Mr Developer to Mr. Plot would be Rs 24 Lakh as 1/3 portion of land being deducted. The value of development rights transferred would be Rs 36 Lakh.

Question is that the notification provides for 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,", however whether it mans the date when the flats are identified or when the JDA is executed.

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?

Answer-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.

Valuation of construction services provided by the promoter against transfers development right or FSI (including additional FSI)

Whether paragraph 2A of Notification No. 03/2019-Central Tax (Rate) dated 29th March, 2019, is applicable to those agreements entered on or before 29th September 2019 with unregistered persons? If the answer to question (1) is affirmative, whether Notification No 03/2019-Central Tax (Rate) dated 29th March, 2019 is applicable, when the actual cost of construction of services are known?

Answer-In the instant case, the date of levy being the date of issuance of completion certificate, Para 2A becomes applicable to them and so the value should be calculated only as prescribed in the said para. The said para prescribes that the value of construction 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/FSI. From the wording of this para, it is seen that the only value which can be adopted is as prescribed, there being no choice of adoption of any other value. As the law has provided for such valuation, the contention that para 2A is not applicable when the actual cost of construction is available does not hold water as we cannot go beyond the law pronounced. Hence the valuation as prescribed in the said para 2A becomes squarely applicable in the present case-Neelakanta Realtors Limited Liability, In re vs. [2021] 133 taxmann.com 13 (AAR - TAMILNADU)[17-08-2021]

Value of Supply by way of Supply of Transfer of Development Right/FSI and Value of portion of residential or commercial apartments remaining unbooked on the date of issuance of completion certificate or first occupation

Value of TDR and unsold flat at the end of the Project-N. No. 12/2017-CT(Rate) Dated 28th

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 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 unbooked 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

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?

Answer-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.

UNDERSTANDING OF NOTIFICATION FOR LEVY OF TAX ON TDR/ADDITIONAL FSI TRANSFERRED DURING THE PERIOD 1-7-2017 TO 31-03-2019

CERTAIN PROCESSES - SPECIAL PROCEDURE FOR - BUILDERS, TIME OF ACCRUAL OF TAX LIABILITY, IN CASE OF TDR-4/2018-Central Tax Rate

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely :—

(a) **registered persons who supply development rights to a developer, builder, construction company or any other registered person** against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and

(b) **registered persons who supply construction service of complex, building or civil structure to supplier of development rights** against consideration, wholly or partly, in the form of transfer of development rights,

as the registered persons in whose case the **liability to pay central tax** on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, **shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).**

Explanation—Nothing contained in this notification shall apply with respect to the development rights supplied on or after 1st April, 2019.

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 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.

Answer-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, in cash or kind, is paid in part or full on or after 01.04.2019.

27. In case where the Development rights are supplied by the Landowner to the Promoter, under an area sharing arrangement between 1st 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)?

Answer-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.

FAQs on real estate- Dated the 14th May, 2019, New Delhi

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.

Answer-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.

Levy of Tax in GST on JDA prior to 1-4-2019

Yes, the grant of Development Rights is currently taxable under the GST Act. Notification No. 4/2018 Central Tax (Rate), dated 25-1-2018 notified that the liability to pay tax in case of transfer of development rights in exchange of constructed space shall be the date of allotment of constructed complex, i.e., the letter of allotment issued by the developer after the construction is complete. The notification clearly suggests the liability to pay tax on transfer of Development Rights. As regards the second point for determination, the value of supply has to be determined in accordance with Notification No. 11/2017 Central Tax (Rate), dated 28 June, 2017 read with notification No. 4/2018 Central Tax (Rate), dated 25 January 2018. The relevant entry for valuation is Sr. No. 3, Heading 9954 read with Para No. 2 of Notification No. 11/2017 Central Tax (Rate), dated 28 June, 2017. Experion Developers (P.) Ltd., In re vs. [2021] 123 taxmann.com 278 (AAR - HARYANA)/[2021] 84 GST 590 (AAR - HARYANA)/[2021] 48 GSTL 56 (AAR - HARYANA)[27-02-2019]

How Notification No. 4/2018-Central Tax Rate has to be understood

The Notification No. 4 of 2018 dated 25-1-2018 as amended by Notification No. 23/2019-Central Tax (Rate), dated 30-9-2019, on its plain reading would reveal that it is not with which there is a charge created on the transfer of development rights, but in fact only provide for the time when the tax need to be paid. The very purpose of issuance of the said notification appears to be ensuring ease for the landowners and developers as transfer of development rights happen at the time of execution of JDA. However, handing over of the constructed area to the landowner happens at a later stage only on issuance of the completion certificate of the project. **In other words, the aforesaid notification deals with the time of supply of services of transfer of development rights which was otherwise always taxable, since introduction of GST, has now been postponed to a time when the petitioner transfers the possession of the constructed/developed area to the landowner.-** **Prahitha Contruction (P.) Ltd. vs. Union of India [2024] 159 taxmann.com 437 (Telangana)/[2024] 83 GSTL 129 (Telangana)[09-02-2024]**

UNDERSTANDING OF NOTIFICATION FOR LEVY OF TAX ON TDR/ADDITIONAL FSI TRANSFERRED POST ON AND AFTER 1-4-2019

Liability to pay tax on TDR/FSI/Long term Lease and construction Services

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), , the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely:—

(i) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

(ii) a promoter, who receives long term lease of land on or after 1st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name), as the registered persons, who shall pay central tax on,—

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

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

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

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

in a tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls.

Liability to pay tax on TDR/FSI/Long term Lease and construction Services

2. Explanation:— For the purpose of this notification,—

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

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

(iii) the term "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

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

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

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

(vii) Tax on services covered by sub-para (i) and (ii) of paragraph 1 above is required to be paid under reverse charge basis in accordance with notification No. 13/2017- Central Tax (Rate), dated 28.06.2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide GSR No. 692 (E), dated 28.06.2017, as amended.

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

Levy of GST on JDA-Area Share Model-Residential Apartment

a) **Name of the Promoter**-Mr. Developer
b) **Name of the Owner of the Land**- Mr. Plot
c) **When he has received the development rights**- JDA executed on 5-4-2019
d) **Who shall be liable to pay tax on the consideration paid for development rights in the form of construction services of residential apartment**- Mr. Developer under RCM
e) **When shall be the tax on Transfer on Development Rights be paid**-In the tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls.
f) **What shall be the value of development rights-** Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right, nearest to the date on which such development right is transferred to Mr. Developer
g) **What shall be the tax rate on development rights**-18% subject to entry No. 41A vide N. No. 12/2017-Cental Tax Rate Dated 28th June 2017
h) **What shall be the value of construction services**- Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right, nearest to the date on which such development right is transferred to Mr. Developer, less the value of transfer of land, if any, as prescribed in paragraph 2 of N. No. 11/2017-C.T Rate Dated 28th June 2017
i) **What shall be the rate of tax on construction services**-1.5% in affordable and 7.5% in non-affordable
j) **When shall be the tax on construction services be paid**- In the tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls.

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), , the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely:—

(i) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

as the registered persons who shall pay central tax on,—

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

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

in a tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls.

2A.Where a 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.

Levy of GST on JDA-Area Share Model-Residential Apartment

Mr. Plot has a land measuring 2 bigha. Mr. Developer approaches Mr. Plot for construction of 200 residential flats out of which Mr. Plot would get 50 flats residential flats as a consideration of transfer of development rights in addition to the commercial apartments(not being discussed as example restricted to residential apartment). Now, Post execution of JDA, a flat at similar location was sold by Mr. developer for Rs 36 Lakhs. The construction service provided by Mr. Developer to Mr. Plot would be Rs 24 Lakh as 1/3 portion of land being deducted and the value of development right transferred would be Rs 36 Lakh. The Tax on development rights will be calculated as follows-

a) Value of Joint Development rights- Rs 36 Lakh*50 flats
b) Tax on Development Rights- 18 Crore*18%= 3.24 Crore
c) % Carpet Area for Commercial Apartments= 10%
d) Tax on Development Rights for Carpet Area of Residential Apartments-=3.24 crore*90%= 2.92 Crore
e) %carpet area of the residential apartments which remained un- booked on the date of issuance of completion certificate out of total carpet area for residential apartments= 20%
f) Tax on Development Rights for Carpet Area of Residential Apartments remaining unsold on the date of issuance of completion certificate=2.92 Crore*20%=58.32 Lakh
g) Residential Apartment remaining unsold=40
h) Selling price of each unit= 40 Lakhs
i) Tax due on Residential Apartments= 16 Crore *1% =16 Lakh
j) Tax due on development rights for residential apartment would be lesser of 16 Lakh and 58.32 Lakh i.e. 16 Lakh

Tax Due on Construction Services

a) Tax due on Value of construction services would be 50*36 Lakhs*2/3*1.5%= 18 Lakh

Levy of GST on JDA-Area Share Model-Commercial Apartment

a) **Name of the Promoter**-Mr. Developer

b) **Name of the Owner of the Land**- Mr. Plot

c) **When he has received the development rights**- JDA was executed on 5-4-2019

d) **Who shall be liable to pay tax on the consideration paid for development rights in the form of construction services of commercial apartment**- Mr. Developer under RCM

e) **When shall be the tax on Transfer on Development Rights be paid**-In the tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls.

f) **What shall be the value of development rights-** Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right, nearest to the date on which such development right is transferred to Mr. Developer

g) **What shall be the tax rate on development rights**-18%

h) **What shall be the value of construction services**- Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right, nearest to the date on which such development right is transferred to Mr. Developer, less the value of transfer of land, if any, as prescribed in paragraph 2 of N. No. 11/2017-C.T Rate Dated 28th June 2017

i) **What shall be the rate of tax on construction services**-7.5% in RREP and 18% in REP

j) **When shall be the tax on construction services be paid**- In the tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls.

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), , the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely:—

(i) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

as the registered persons who shall pay central tax on,—

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

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

in a tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls.

2A. Where a 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.

Levy of GST on JDA-Area Share Model-Commercial Apartment

Mr. Plot has a land measuring 2 bigha. Mr. Developer approaches Mr. Plot for construction of 200 commercial apartment out of which Mr. Plot would get 50 flats as a consideration of transfer of development rights. Now, Post execution of JDA, a flat at similar location was sold by Mr. developer for Rs 36 Lakhs. The construction service provided by Mr. Developer to Mr. Plot would be Rs 24 Lakh as 1/3 portion of land being deducted and the value of development right transferred would be Rs 36 Lakh. The Tax on development rights will be calculated as follows-

a) Value of Joint Development rights- Rs 36 Lakh*50 commercial apartment
b) Tax on Development Rights- 18 Crore*18%= 3.24 Crore

Tax Due on Construction Services

a) Tax due on value of construction services would be 50*36 Lakhs*2/3*18%= 2.16 Crore

Levy of GST on JDA-Monetary Terms/Revenue Share Model-Residential Apartment

a) **Name of the Promoter**-Mr. Developer
b) **Name of the Owner of the Land**- Mr. Plot
c) **When he has received the development rights**- JDA executed on 5-4-2019
d) **How would the consideration be payable**- Monetary terms
e) **Who shall be liable to pay tax on the monetary consideration paid for development rights of residential apartment**- Mr. Developer under RCM
f) **When shall be the tax on Transfer on Development Rights be paid**- In the tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls.
g) **What shall be the value of development rights-** Amount actually paid and estimated amount payable of the unsold units as on the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls.
h) **What shall be the tax rate on development rights**-18% subject to entry No. 41A vide N. No. 12/2017-Cental Tax Rate Dated 28th June 2017

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), , the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely:—

(i) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

as the registered persons who shall pay central tax on,—

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

in a tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls.

Levy of GST on JDA-Monetary Terms/Revenue Share Model-Residential Apartment

Mr. Plot has a land measuring 2 bigha. Mr. Developer approaches Mr. Plot for construction of 200 residential flats. Mr. Developer will be paid consideration on a revenue sharing of 70:30 in addition to the revenue sharing of commercial apartments(not being discussed as example restricted to residential apartment). Out of 200 flats 150 flats have been sold before receipt of completion certificate, on which amount paid to Mr. Plot is Rs 12 Crore as 30% share. For the balance 50 flats, the estimate revenue for which they would be sold is Rs 20 crore and 30% share works out to be Rs 6 Crore. Therefore, 18 crore becomes the value of the development rights transferred. The Tax on development rights will be calculated as follows-

a) Value of Joint Development rights-18 Crore
b) Tax on Development Rights- 18 Crore*18%= 3.24 Crore
c) % Carpet Area for Commercial Apartments= 10%
d) Tax on Development Rights for Carpet Area of Residential Apartments-=3.24 crore*90%= 2.92 Crore
e) %carpet area of the residential apartments which remained un- booked on the date of issuance of completion certificate out of total carpet area for residential apartments= 20%
f) Tax on Development Rights for Carpet Area of Residential Apartments remaining unsold on the date of issuance of completion certificate=2.92 Crore*20%=58.32 Lakh
g) Residential Apartment remaining unsold=40
h) Selling price of each unit= 40 Lakhs
i) Tax due on Residential Apartments= 16 Crore *1% =16 Lakh
j) Tax due on development rights for residential apartment would be lesser of 16 Lakh and 58.32 Lakh i.e. 16 Lakh

Levy of GST on JDA-Consideration in Monetary Terms/Revenue Share Model-Commercial Apartment

a) **Name of the Promoter**-Mr. Developer
b) **Name of the Owner of the Land**- Mr. Plot
c) **When he has received the development rights**- JDA executed on 5-4-2019
d) **How would the consideration be payable**- Monetary terms
e) **Who shall be liable to pay tax on the monetary consideration paid for development rights of commercial apartment**- Mr. Developer under RCM
f) **When shall be the tax on Transfer on Development Rights be paid**- Based on the date of Execution of JDA Agreement and Section 13 of CGST Act, 2017 for tax to be paid under reverse charge
g) **What shall be the value of development rights-** Revenue to be taken on an estimated basis. The basis should be having a rationale linked with the sale value of the flats and estimated consideration to be paid to Mr Plot since no specific method has been provided in the statute for this unlike for valuation in case of area sharing basis. However, If value cannot be estimated then possible resort can be made to Rule 30 of CGST Rules, 2017. This is a matter which can be a cause of litigation in future amongst other matters and further clarity is awaited.
h) **What shall be the tax rate on development rights**-18%

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), , the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely:—

(i) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

as the registered persons who shall pay central tax on,—

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

~~in a tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls.~~

Levy of GST on JDA-Consideration in Monetary Terms-Commercial Apartment

Mr. Plot has a land measuring 2 bigha. Mr. Developer approaches Mr. Plot for construction of 200 commercial apartment. Mr. Developer will be paid consideration of Rs 18 Crore in cash for the development rights. The Tax on development rights will be calculated as follows-

Tax Due on Development Rights

a)Value of Joint Development rights-18 Crore

b)Tax on Development Rights- 18 Crore*18%= 3.24 Crore

FAQs on real estate- Dated the 7th May, 2019, New Delhi

11. What is the rate of GST applicable on transfer of development rights, FSI and long term lease of land?

Answer-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.

13. At what point of time, the promoter should discharge its tax liability on TDR.

Answer-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).

Answer-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.

FAQs on real estate- Dated the 14th May, 2019, New Delhi

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 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.)?

Answer-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.

Exemption from Levy of Tax on TDR/FSI-Entry No. 41A of N. NO. 12/2017-CT(R)

Particulars	
Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on TDR or FSI (including additional FSI) or both for construction of the project] × (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)	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] × (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project): 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 unbooked 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.

Calculation of Tax on Development Right applying Entry No. 41A of N. No. 12/2017-CT(R)

Mr. Plot has a land measuring 2 bigha. Mr. Developer approaches Mr. Plot for construction of 200 residential flats out of which Mr. Plot would get 50 flats residential flats as a consideration of transfer of development rights in addition to the commercial apartments(not being discussed as example restricted to residential apartment). Now, Post execution of JDA, a flat at similar location was sold by Mr. developer for Rs 36 Lakhs. The construction service provided by Mr. Developer to Mr. Plot would be Rs 24 Lakh as 1/3 portion of land being deducted and the value of development right transferred would be Rs 36 Lakh. The Tax on development rights will be calculated as follows-

a) Value of Joint Development rights- Rs 36 Lakh*50 flats
b) Tax on Development Rights- 18 Crore*18%= 3.24 Crore
c) % Carpet Area for Commercial Apartments= 10%
d) Tax on Development Rights for Carpet Area of Residential Apartments-=3.24 crore*90%= 2.92 Crore
e) %carpet area of the residential apartments which remained un- booked on the date of issuance of completion certificate out of total carpet area for residential apartments= 20%
f) Tax on Development Rights for Carpet Area of Residential Apartments remaining unsold on the date of issuance of completion certificate=2.92 Crore*20%=58.32 Lakh
g) Residential Apartment remaining unsold=40
h) Selling price of each unit= 40 Lakhs
i) Tax due on Residential Apartments= 16 Crore *1% =16 Lakh
j) Tax due on development rights for residential apartment would be lesser of 16 Lakh and 58.32 Lakh i.e. 16 Lakh

31. Whether TDR purchased on or after 1.4.2019 to be consumed by 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?

Answer-Yes. Portion of such TDR transferred on or after 01-04-2019 which is used in an ongoing project in 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.

FAQs on real estate- Dated the 14th May, 2019, New Delhi

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 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?

Answer-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.

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 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.

Answer-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, in cash or kind, is paid in part or full on or after 01.04.2019.

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 sub-clause (v) in clause (zk) in section 2 in RERA Act, 2016 covers a person who purchases TDR as developer?

Answer-The exemption is available only on TDR/ FSI transferred on or after 1st April, 2019 for construction of residential apartments by a promoter in a real estate project

UNDERSTANDING OF NOTIFICATION FOR LEVY OF TAX ON UPFRONT LEASE AMOUNT

Exemption from Levy of Tax on Upfront Lease Amount-Entry No. 41B of N. NO. 12/2017

Particulars	
Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 1-4-2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] × (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).	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] × (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project); 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

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 sub-clause (v) in clause (zk) in section 2 in RERA Act, 2016 covers a person who purchases TDR as developer?

Answer-The exemption is available only on TDR/ FSI transferred on or after 1st April, 2019 for construction of residential apartments by a promoter in a real estate project

15. At what point of time, the promoter should discharge its tax liability on supply of long term lease.

Answer-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 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?

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 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.

APPLICABILITY OF RCM PROVISIONS ON TDR/FSI/UPFRONT LEASE AMOUNT

Liability to pay Tax under RCM

Entry No.	Particulars	Supplier	Recipient
5B	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter.
5C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.	Any person	Promoter.

Mr. Developer has received a long-term lease of land against consideration in the form of upfront amount of Rs 5 Crore and a periodic rent of Rs 10 Lakh per month. He would be eligible for the benefit of Entry No. 41B of Notification No. 12/2017-Central Tax Rate Dated 28th June 2017 for the upfront amount paid towards the lease rent. However, he would not be eligible for the benefit of the said notification for the periodic rent. It is to be noted that liability to pay tax under RCM is for both upfront amount and the period rent.

12. Who is liable to pay GST on TDR and floor space index?

Answer-The promoter is liable to pay GST on TDR or floor space index supplied on or after 01-04-2019 on reverse charge basis.

Judgements in GST Regime on JDA/TDR/FSI

Judgements taking down different perspectives

Faqir Chand Gulati vs Uppal Agencies Pvt. Ltd. & Anr on 10 July, 2008 (SC)	Prahitha Contruction (P.) Ltd. vs. Union of India [2024] 159 taxmann.com 437 (Telangana)/[2024] 83 GSTL 129 (Telangana)[09-02-2024]
The basic underlying purpose of the agreement is the construction of a house or an apartment (ground floor) in accordance with the specifications, by the builder for the owner, the consideration for such construction being the transfer of undivided share in land to the builder and grant of permission to the builder to construct two floors.	It is only by way of a separate conveyance deed, that too, after the completion of the development activity, the undivided share of land to the extent the petitioner is entitled, could be transferred and not solely by virtue of the JDA, thus, the execution of the JDA between the two parties by itself would not amount to result in transfer of ownership. The transfer of development rights is hence a service under GST Law which the landowner is offering to the developer and that too for a consideration. Thus, the transfer of development rights is a service and not an outright sale of an immovable property.-

Specific facts of Prahitha Contruction (P.) Ltd. vs. Union of India [2024] 159 taxmann.com 437

"6.7 The Parties have agreed that upon achieving Project-Phase I including but not limited to the handover of Landowner's Share (including but not limited to the handing over of possession of the Landowners UDS) to the Landowners on Delivery Date, the Developer shall be entitled to seek in its favour or in favour or any of its nominee(s) (subject to the terms of this Agreement), a conveyance (in the form of sale) from the Landowners of the Developer UDS in proportion to the completed Tower and Annex Building in the Project which is attributable to the Developer Share as per the Allocation Agreement. The Parties have further agreed that upon Project Completion, the Developer shall be entitled to seek and receive in its favour and/or in favour of any of its nominee(s) (subject to the terms of this Agreement), a conveyance (in the form of sale) from the Landowners of the remaining proportionate Developer UDS. It is clarified that in the event Completion of all 3 (three) Towers in the Project is achieved contemporaneously, then the Developer shall be entitled to receive conveyance (in the form of sale) of the entire Developer UDS. For the purposes of receiving sale of the Developer UDS in accordance with this clause 6.7, the Developer shall be entitled to execute all relevant deeds and documents including sale deeds, conveyance deed etc. on behalf of the Landowners and admit execution thereof for purposes of registration before the jurisdictional Sub-Registrar of Assurances by using the authorization provided by the Landowners in terms of clause 17 herein. Further, at the request of the Developer, the Landowners shall furnish certificate from its statutory auditor confirming that the Developer UDS is classified as stock in trade in its current financials and that there are no pending proceedings or liabilities in terms of Section 281 of the Income-tax Act, 1961 affecting the Landowners, prior to conveyance by sale of the Developer UDS or any part thereof in accordance with this Clause."

7. Clauses 6.1 and 6.7 of JDA further envisages that after the development, later on when the developer/petitioner hands over the completed units to the landowners, the landowners and the developer will then enter into a conveyance deed whereby the landowners will execute a sale deed to transfer the undivided share of land which would fall to the share of the petitioner towards the investment, efforts, cost of construction and expenses incurred by the petitioner in the course of developing that entire property. Thus, it is evident that the petitioner is offering construction services to the landowners in exchange for the landowners transferring the development rights to the petitioner. Only on account of the development rights thus the petitioner gets the right to enter into the land to undertake construction over the said property.

30. The transfer of ownership from the landowner goes directly to the purchaser of the constructed property and not in favour of the petitioner unless and until the land stands transferred in the name of the petitioner. The same cannot be brought within the ambit of sale. Transferring of the development rights does not result in transfer of ownership rights. That the sale of land/transfer of land or undivided share of land would get executed only after issuance of completion certificate of the project. This itself would give a clear indication that the services rendered by the petitioner in execution of JDA was supplied prior to the issuance of completion certificate and would thus be amenable to GST

Recent Judgement in Shashi Ranjan Constructions (P.) Ltd. v. Union of India [2025] 174 taxmann.com 356 (Patna)

"4.1. As consideration for 57% (Fifty Seven percent) of the undivided share in the said land to be conveyed/transferred by the owner of the first part to the developer or its nominee(s) in terms of clause 5 below the developer agrees to build, deliver and give possession to the owner of the First part 43% (Forty percent) of the total built-up area in the shape of Shops/offices/Flats and reserved car parking spaces and/or any other built-up area(s) in the said building to be constructed on the said land by the developer hereinafter referred to as the "OWNER'S AREA". The construction specification and services and amenities to be provided for the owner's area.

Relied upon-"25. The object of Section 2(47)(vi) appears to be to bring within the tax net a de facto transfer of any immovable property. The expression "enabling the enjoyment of" takes colour from the earlier expression "transferring", so that it is clear that any transaction which enables the enjoyment of immovable property must be enjoyment as a purported owner thereof.1 The idea is to bring within the tax net, transactions, where, though title may not be transferred in law, there is, in substance, a transfer of title in fact.

26. A reading of the JDA in the present case would show that the owner continues to be the owner throughout the agreement, and has at no stage purported to transfer rights akin to ownership to the developer. At the highest, possession alone is given under the agreement, and that too for a specific purpose —the purpose being to develop the property, as envisaged by all the parties. We are, therefore, of the view that this clause will also not rope in the present transaction."

Held-33. Having gone through the development agreement (Annexure-3 to the writ application), we are of the considered opinion that in fact the petitioner does not get any right on the said property until the completion of the project. After the project is completed and completion certificate is issued, the petitioner gets a right to sell the area of the property which is called "Developers Area". We do not find any substantial material to establish that with execution of the development agreement, the petitioner got ownership in the land. It is held that the transfer of development rights as it stands is amenable to GST and cannot be brought within the purview of sale of land subject to clause (b) of Paragraph 5 of Schedule II, sale of building (as per Entry 5 of Schedule-III of the GST Act).-[2025] 174 taxmann.com 356 (Patna) HIGH COURT OF PATNA Shashi Ranjan Constructions (P.) Ltd. v. Union of India

Levy of Tax in GST on revenue sharing agreement in JDA

As far as interim reliefs are concerned, we find that the issue in the present case is similar, though not identical, to the issue that was raised before the Gujarat High Court wherein the Gujarat High Court considered whether an assignment of a lease would fall within Schedule II of the CGST Act. The Gujarat High Court,in fact, took a view that an assignment by the original lessee to a third party would not fall within Schedule II and hence, would not be taxable under the GST Law. The Gujarat High Court came to the conclusion that the assignment was actually a transfer of immovable property and hence no exigible to GST. **In the present case, in fact it is the case of the Petitioner that there is no transfer at all. Even if one would assume that there is a transfer, the same would be of immovable property and not taxable under the GST Law.** We, therefore, find that a prima facie case for interim relief is made out. **Nirmal Lifestyle Developers (P.) Ltd. vs. Union of India [2025] 173 taxmann.com 642 (Bombay)[09-04-2025]**

Judgement in Gujarat Chamber of Commerce and Industry & Ors. V/s Union of India & Ors.

Fine line of distinction to be drawn for Assignment of leasehold rights vis-a-vis allotment of plot of land by GIDC on lease by charging one time premium which is exempt under the said notification is that subsequent transaction of Assignment of leasehold rights is transfer of interest in immovable property which would be equivalent to transfer of immovable property, would be covered by Clause 5 of Schedule III whereas renting of the plot of land by GIDC would be covered by clause 5(b) of Schedule II. Lessee/Assignor is not transferring leasehold right by way of a sub-lease so as to earn rent on such Assignment of leasehold rights, so as to apply clause 5(b) of Schedule II to such transaction. As nature of transaction in facts of the case is outright Assignment resulting into sale/transfer of the leasehold rights in favour of assignee by lessee/assignor for a consideration would be covered by clause 5 of Schedule III which provides that sale of land and building shall not be considered as supply of services. Therefore, it cannot be said that Assignment of the outright leasehold rights would be a service or transferring of leasehold right.

Judgement in Arham Infra Developer Vs Union of India SLP No. 26910/2025 (SC)

SLP was filed against the Judgement of Bombay High wherein matter was challenged for levy of GST on supply of development rights by the Landowner and supply of construction services by the developer. Although the Court dismissed the Writ petition on the ground of alternative remedy but Hon’ble Apex Court stayed the decision of Adjudicating Officer.

Levy of GST on JDA for development of Plot and sale thereof

Question1: Whether sale of developed plots by applicant to various customers after development is taxable under the GST Acts or not?

Clarification: The applicant is engaged in the business of development and Sale of plots. These plots are developed on the land purchased by them or the land for which they have entered into a development agreement with the land owner.

The activity of sale of land is covered as item (5) of the Schedule III to the CGST Act. The Circular No. 177/09/2022 dt:03-8-2022 issued by Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit) at para-14.3 states that "Land may be sold either as it is or after some development such as leveling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST".

Therefore, the value of Land is not taxable either sold as undeveloped land or selling it after the land is developed. .-Vaishnaoi Infratech and Developers (P.) Ltd., In re [2023] 156 taxmann.com 133 (AAR - TELANGANA)[30-09-2023]

Levy of GST on JDA for development of Plot and sale thereof

Question2: Whether development of plots' service provided to the land owners is taxable under GST and if so under which Notification and under which entry?

Clarification: The above circular No. 177/09/2022 dt:03-8-2022 at para-14.4 enumerates as follows:

"However, it may be noted that any service provided for development of land, like leveling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services".

Thus, a tax payer is liable to pay tax on the supply of the aforementioned works contract service if such service is supplied to any recipient of these services viz.

i. A Land owner with whom the tax payer has entered into a development agreement.
ii. An owner of Land property other than tax payer.
iii. A Land property in respect of which "contract of sale" is made by the tax payer under Sec 54 of the Transfer of property Act 1882 where in the purchaser has obtained an equitable interest in such land.

The applicant is engaged in supply of service of works contracts on the above 3 accounts as seen from their submissions. "Works contract" is defined in the CGST Act in sec 2 (119) i.e., ' "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract'.

The supply of works contract service to customers as well as land owners, who have transferred the development rights to the applicant, is taxable at the rate of 9% CGST & 9% SGST as sub entry - xii of entry at serial no. 3 with SAC 9954 of the notification 11/2017. .-Vaishnaoi Infratech and Developers (P.) Ltd., In re [2023] 156 taxmann.com 133 (AAR - TELANGANA)[30-09-2023]

Levy of GST on JDA for development of Plot and sale thereof

Question 3: Whether transfer of development rights by the land owner in consideration of land development services received is taxable or not under the provisions of the GST Acts? If taxable, whether the applicant is liable to pay GST under RCM basis on the development rights received from the land owners or whether the land owner is only liable to pay GST on such transfer of development rights. What is the applicable Notification and entry in the Notification?

Clarification: Notification 12/2017 is amended vide notification 4/2019 dt: 29-3-2019 to inserted Sl.No.41A in the exemption for the purpose of exempting "Transfer Of Development Rights" for construction of residential apartments. This is an exemption given to a specific category of taxable persons i.e., developers of residential apartments only. As the category of the works contracts under taken by the applicant, who develops plots by leveling or altering land are not included in the above notification 04/2019, this exemption is not applicable to the transactions made by them. Further the Notification 13/2017 was amended vide Notification 5/2019 dt:29-3-2019 to include services supplied by way of "transfer of development rights" by any person to a promoter for construction of a project; and thus this supply attracts liability on reverse charge.

The term project is defined in the notification as a Real estate project or a residential real estate project as defined under Sec 2 (zn) of the Real-estate (regulation and development) Act 2016. In Sec 2 (zn) of the Real estate Act 2016 :"real estate project" means
"the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto";

The term promoter is defined to have same meaning as assigned to it in Sec 2 (zk) of the Real-estate (regulation and development) Act 2016:
In Sec 2 (zk) of the Real estate Act 2016 : "Promoter" means,—
"(i) …
(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon";

Thus, the Transfer of Development Rights by the land owner to the applicant is taxable under the CGST & SGST Acts at the hands of the recipient promoter, i.e., the applicant, of these rights. The rate of tax is 9% on CGST & SGST respectively as residuary entry as mentioned in circular no. 164/20/2021 dt: 6-10-2021 at Para no. 9.3.2. The applicant can claim input tax credit of the same while discharging the liability to pay tax on development services provided by him. .-Vaishnaoi Infratech and Developers (P.) Ltd., In re [2023] 156 taxmann.com 133 (AAR - TELANGANA)[30-09-2023]

Levy of GST on JDA for development of Plot and sale thereof

Question 4: If transfer of development rights and development of plot service are liable for GST, how to arrive at the value of supply of such services for payment of GST. How much value of land has to deducted for levying tax?

Clarification: Where the value of works contract is separately specified w.r.t development undertaken on land by way of altering the immovable property, such amount shall be the value of supply exigible to tax as determined under sec 15 of the CGST Act. However, if the value of the works contract is not separately specified then Rule 30 of the CGST Rules read with Sec 15 of the CGST Act shall be applied for arriving at value of supply of such services.

Question 5: If Transfer of development rights are liable for GST, can developer claim ITC of the same while discharging the liability to pay tax on development services provided, if such rights are received from the registered land owners?

Clarification: Yes. Please see response to the question 3 above.

Question 6: If tax is payable on TDRs on RCM basis and on development service, what is the time of payment and what is the applicable Notification?

Clarification: Notification 4/2018 dt: 25-1-2018 has notified time of supply of development rights and construction service w.r.t. constructed complex, building or civil structure, however, there is no reference to development of plots in the notification. Therefore, the time of supply in the case of the applicant is discerned from the CGST Act as follows:

i. **Time of supply Transfer of Development Rights which are recognized as service under notification no. 13/2017 as amended by notification no. 5/2018, is determined under Sec 13 (3) (b) of the CGST Act read with sec 31 (3) (f) or (g). Thus, time of supply is the date immediately following 60 days from the date of issue of invoice or voucher or any other document in lieu thereof by the supplier.**

ii. **Development Services are given in continuity over a period of time, therefore they are "Continuous Supply of Services" hence the time of supply of development services is determined by sec 13 read with sec 31 (5). Therefore, the time of supply will be due date of payment by the recipient or when due date is not ascertainable then the actual date on which payment is received and when such payment is linked to the completion of an event then the time of supply will be date of completion of that event.-Vaishnaoi Infratech and Developers (P.) Ltd., In re [2023] 156 taxmann.com 133 (AAR - TELANGANA)[30-09-2023]**

Payment of Tax on TDR and Transferable Development Rights

A perusal of the language of entry 5B, above would indicate, that it relates to services which can be said to be supplied by any person by way of transfer of development rights or Floor Space Index (FSI) [including additional FSI] for construction of a project by a promoter. The expression "transfer of development rights" read in conjunction with 'FSI' as indicated in entry 5B, would only relate to a TDR (Transferable Development Rights) as contemplated by clause 11.2.2 under the regulations for grant of TDR in the Unified Development Control and Promotion Regulations for the State of Maharashtra, clause 11.2.1 of which defines transferable development rights, to mean compensation in the form of Floor Space Index (FSI) or development rights, which shall entitle the owner for construction of built up area subject to the provisions in the said regulations. It therefore, follows, that the TDR / FSI as contemplated by entry 5B, cannot be related, to the rights which a developer derives from the owner under the agreement of development for constructing the building for the owners, in lieu of the owner agreeing to permit the developer to transfer certain built up units for consideration to be appropriated by the developer.

5. In the instant case, the agreement dated 07.4.2022 (page 27) is an agreement of development entered into between the petitioner and the land owner, in terms of which, the petitioner, has been granted right to develop the property in question by utilizing its present FSI or any increases thereof. Mr. Naik, learned Senior Counsel, upon instructions, submits, that in the execution of the agreement dated 07.4.2022 no TDR or FSI has been purchased by the owner or for that matter by the petitioner from any person / entity whomsoever.-Shrinivasa Realcon (P.) Ltd. vs. Deputy Commissioner Anti-Evasion Branch, CGST & Central Excise Nagpur [2025] 173 taxmann.com 600 (Bombay)[08-04-2025]

Gist of AAR Rulings on the issue of JDA

Citation	Decision
Vinod Kumari Goyal [2023] 154 taxmann.com 75 (AAR - KARNATAKA)	Owner of land would be acting as a supplier of works contract service to prospective purchasers of apartments and, hence, liable to pay tax where he is entering into a joint development agreement with developer for development of residential apartments in which cost of construction shall be borne by Developer and owner of land would get 32 per cent share of apartments.
	Owner of land entering into a joint development agreement with developer for development of residential apartments in which cost of construction shall be borne by Developer and applicant would get 32 per cent share of apartments would be liable to pay tax as per entries 3(i) to 3(id) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 3/2019-Central Tax (Rate), dated 29-3-2019 depending on nature of apartment
Maddi Seetha Devi, In re [2022] 143 taxmann.com 152 (AAR - TELANGANA)/[2022] 94 GST 889 (AAR - TELANGANA)[13-07-2022] (Decision based on N. No. 4/2018)	Whether transfer of land or transfer of 'development rights' to the developer by the landowner is to be considered as receipt of consideration by the developer as per Notification No. 04/2018-CT (Rate) dt.25-1-2018 and as per the clarifications issued after introduction of GST and prior thereto towards the construction of flats in the residential complex to be taken up by the developer for the landowner? Answer-Yes. Transfer of development rights by the landowner to the developer is consideration received by such developer for supply of construction service.
	Whether the liability to pay GST or service tax as applicable arises on the developer immediately on receipt of development rights or immediately on conveyance of the flats to be constructed by way of an allotment letter? Answer-The liable to pay GST by the developer-promoter shall arise at the time of transfers possession or right in the constructed complex or constructed flats and not at the time of receipt of development rights.

Gist of AAR Rulings on the issue of JDA

Citation	Decision
Maarq Spaces (P.) Ltd., In re vs. [2020] 116 taxmann.com 702 (AAAR-KARNATAKA)	The JDA clearly indicates that the primary purpose of the agreement with the Appellant is for the Appellant to develop the land. The agreement acknowledges that the expertise of the Appellant in development of land is the reason the landowners approached the Appellant for the JDA. The consideration for the development of the land is in the form of the revenue earned from the sale of the land. The instant JDA is based on a revenue sharing model and the revenue accruing from the sale of the plotted land is divided between the landowner and the developer in the agreed ratio of 75:25. It is therefore, manifest that the transaction between the landowner and the Appellant-Developer is not a sale of land simplicitor but coupled with obligations for development of the land and provision of infrastructure/amenities. There is an element of service rendered by the Appellant in the form of plotted development of the land which is the dominant activity of the agreement.
B.R. Sridhar, In re vs. [2020] 121 taxmann.com 342 (AAR - KARNATAKA)	The amounts received by the applicant, either by himself or through his agents, towards sale of their share of flats are not exigible to GST, if and only if the entire consideration related to such sale of flats is received after the issuance of Completion Certificate dated 26-8-2019, as the said activities are treated neither supply of goods nor supply of service in terms of schedule III of the CGST Act 2017 subject to clause 5(b) of the Schedule-II of the CGST Act, 2017.
Nforce Infrastructure India (P.) Ltd. [2018] 100 taxmann.com 209 (AAR - KARNATAKA)	Where applicant developer entered into a joint development agreement for supply of construction service of building/civil construction with a person on a land belonging to said person against consideration in form of transfer of development rights, applicant was liable to pay GST towards construction service provided by it to land owner and value on which applicant was liable to pay GST was to be determined in terms of para 2 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017
Patrick Bernardinz D'Sa, In re [2018] 100 taxmann.com 208 (AAR - KARNATAKA	Applicant, being the person who has supplied development rights to a developer in respect of his land, is liable to registration and payment of tax.

Gist of AAR Rulings on the issue of JDA

Citation	Decision
Teamview Developers LLP [2019] 110 taxmann.com 440 (AAR - KARNATAKA) (30-09-2019)	Tax rate applicable on supply of construction service to land owner for commercial property Real Estate Project in lieu of transfer of development rights to promoter developer is 9 per cent CGST and 9 per cent KGST under Entry No. 3(xii) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017
Durga Projects & Infrastructure (P.) Ltd., In re vs. [2019] 108 taxmann.com 106 (AAR - KARNATAKA) (Decision based on N. No. 4/2018)	Applicant, a registered person, is supplying construction service of building/civil structure to supplier of the development rights (the land owner) against consideration in the form of transfer of development rights. Notification No.4/2018-Central Tax (Rate), dated 25.01.2018, at para (b), stipulates that the supplier of construction service is liable to pay GST for the service provided to the land owner in lieu of development rights. The value for levy of tax is to be determined in terms of para 2 of the Notification No.11/2017-Central Tax (Rate), dated 28.06.2017, which is appended as under: 2. In case of supply of service specified in column (3) of the entry of item (i) against serial No. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of services and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply. Explanation .- For the purposes of paragraph 2, "total amount" means the sum total of,— (a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be. In this regard we draw reference once again to the Notification No.4/2018-Central Tax (Rate), dated 25.01.2018, which stipulates that the Registered persons, who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights, in whose case the liability to pay tax on supply of the said services, on the consideration received in the form of development rights, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).

Levy of GST on Approval Expenses

Service Provider and Service recipient in case of Approval of Building Map/change of land use by the Local Authority or Governmental Authority

Mr. Developer applies for approval of building map before Mr. Governmental Authority. In such cases, service provider would be Mr. Governmental Authority and service recipient would be Mr. Developer.

Notification No. 14/2017-Central Tax (Rate), Dated 28-6-2017, as amended by, Notification No. 16/2018-Central Tax (Rate), Dated 26-7-2018 provides that Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution shall be treated neither as a supply of goods nor a supply of service. Further Entry No. 4 of Notification No. 12/2017-Central Tax Rate Dated 28th June 2017 provides that Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.

The activities entrusted to the Municipality under Article 243W of the Constitution of India are listed under Twelfth Schedule and Entry 2 of Article 243W provides that a "Regulation of land use and construction of buildings" falls under the activities entrusted to Municipality under Article 243W of the Constitution. Therefore, for Local Authority by virtue of Notification No. 14/2017-Central Tax (Rate), Dated 28-6-2017, as amended by, Notification No. 16/2018-Central Tax (Rate), Dated 26-7-2018 and for Governmental Authority by Entry No. 4 of Notification No. 12/2017-Central Tax Rate Dated 28th June 2017 , such services are outside the ambit of GST. Once the services are outside the ambit of GST, therefore no GST is payable on such services either under forward charge or under reverse charge.

FAQ released on Government Services provided by Governmental authority as covered entry no. 4 and 5 of Notification No. 12/2017-Central Tax (Rate) as follows:

Question 19: Whether services in the nature of change of land use, commercial building approval, utility services provided by a governmental authority are taxable?

Answer: Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority are exempt from payment of tax.

Press Release to 55th GST Council interestingly stated that *"The issue of whether charges collected by municipalities for granting FSI including additional FSI, chargeable to GST on reverse charge basis was brought up in the Council. The matter was deferred for further examination on the behest of the Central Government on the ground that this amount relates to Municipalities or local authority."*

Levy of GST on sale of TDR

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?

Answer-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).

Levy of GST on Sale of TDR

As regards the Appellant's contention that the sale of TDR/FSI would not get covered under entry (iii) of the Heading 9972 of the Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 bearing the description "Real Estate Services" as the same is not appearing under the explanatory notes to the Heading 9972 of the above said notification, it is stated that the explanatory notes indicate the scope and coverage of the heading, group and service codes of the scheme of classification of services, and is merely a guiding tool for the assessee and tax administration for classification of services. Thus, the explanatory notes of the notification would not prevail over the notification itself, i.e. if a service is falling under any head of the notification by virtue of its nature and description, then merely non-appearance of the same in the explanatory notes to that notification would not mean that the services are not covered under that heading.

22. We would like to advert to the Notification No. 4/2019-C.T. (Rate), dated 29-3-2019, which seeks to amend the Notification No. 12/2017-C.T. (Rate), dated 28-6-2017 by inserting entries at Sl. No. 41A in the aforesaid exemption notification, which stipulates that "services by way of transfer of development rights, i.e., TDR, or Floor Space Index (including additional FSI) on or after 1st April, 2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of the completion certificate, where required by the competent authority or after its first occupation, whichever is earlier, has been exempted subject to certain conditions specified under the said Notification No. 4/2019-C.T. (Rate), dated 29-3-2019. It is noteworthy that the services described above in the aforesaid Notification No. 4/2019-C.T. (Rate), dated 29-3-2019, has been classified under the Heading 9972. Thus, on perusal of the aforesaid notification, it is evident that the subject transaction would adequately get classified under the Heading 9972. Now, we refer to the Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 to ascertain the exact entry and the GST rate thereto. On perusal of the aforesaid Notification, it is observed that the subject transaction would be covered under entry at Sl. No. 16 (iii) of the Notification No. 11/2017-C.T. (Rate), dated 28-6-2017, bearing description "Real estate services other than (i) and (ii) above", and accordingly, would attract GST at the rate of 18% (9% CGST + 9% SGST)-Vilas Chandanmal Gandhi, In re vs. [2020] 120 taxmann.com 83 (AAAR-MAHARASHTRA)/[2020] 42 GSTL 522 (AAAR-MAHARASHTRA)/[2021] 83 GST 424 (AAAR-MAHARASHTRA)[26-08-2020]

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