

GST on Real Estate Sector

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Schedule II of GST Act – supply of services.

- ❖ S.No. 5 (b) – Construction of a complex, building, civil structure, or a part thereof, including a complex, or building or buildings intended for sale to a buyer, wholly or partly, except where entire consideration is received after Completion Certificate / first occupation, whichever is earlier.
- ❖ S.No. 6 (a) - Works Contract.

Schedule III of GST Act – Not a supply

- ❖ S.No. 5 Sale of Land and, subject to clause (b) of paragraph 5, sale of building.

Tax rates from 01.07.2017 to 31.03.2019

- ❖ 18 % on two third value, after allowing one third deduction for Land value. (Effectively 12 % on total value)
- ❖ 18 % for Works Contracts without transfer of land.
(Contractors engaged by Promoters, Contractors engaged by landowners)

Tax rates from 01.04.2019

- ❖ 7.5 % (1.5 % for affordable) on two third value, after allowing one third deduction for Land value. (Effectively 5 % / 1% on total value)
- ❖ Option to continue under old rate for “ongoing contracts”
- ❖ 18 % for Works Contracts.

Tax rates from 01.04.2019 – conditions

- ❖ No ITC eligible.
- ❖ To be paid only in cash.
- ❖ 80 % of procurements to be from registered persons.
- ❖ On shortfall, GST @ 18 % to be paid under RCM.
- ❖ Cement / Capital goods procured from unregistered persons – tax to be paid under RCM.

Notification 11/2017.

3 (ia) Construction of residential apartments other than affordable residential apartments by a promoter **in an RREP** which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, **intended for sale to a buyer, wholly or partly**, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

(Provisions of paragraph 2 of this notification shall apply for valuation of this service)

Notification 11/2017.

2. In case of supply of service specified in column (3), in item [(i), (ia), (ib), (ic), (id), (ie) and (if)]131, against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. –For the purposes of this paragraph, “total amount” means the sum total of,- (a) consideration charged for aforesaid service; and

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

Munjaal Manishbhai Bhatt Vs UOI. **2022 (62) GSTL 262 Guj.**

- ❖ If actual value of land is available, the same can be excluded and not one third.
- ❖ What if the actual value is less than one third of total price?
- ❖ Gujarat HC has held that one third deduction is not mandatory, but will be available at the option of the taxable person, where the actual value of land / UDS is not ascertainable.

Joint Development Agreements.

- ❖ Services provided by Developer to Apartment buyers.
- ❖ Services provided by Developer to Landowners.

(Vasanth Green Projects Vs Commissioner – 2019 (20) GSTL
568 Tri-Hyd.)

JDA – Service provided to landowners.

- ❖ When tax is payable?
 - Notification 4/2018 C.T. (R) Dt. 25.01.2018.
 - Notification 6/2019 C.T. (R) Dt. 29.03.2019.

JDA – Service provided to landowners.

- ❖ What is the value of supply?
Para 2 A of Notification 11/ 2017.

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

JDA – Service provided to landowners.

- ❖ What is the rate of tax?
 - As far as landowner is concerned, the Promoter is nothing but a contractor.
 - Is 7.5 % rate on two third value applicable for flats given to landowners also?
 - If so, why not the contractors also can pay tax @ 7.5 %?

Transfer of development right.

- ❖ Is there TDR in JDAs?
- ❖ Is TDR supply of goods or services and liable to GST?
- ❖ Notified for RCM – Notification 5/2019 C.T. (R)
- ❖ For residential project – Limited Exemption.

Transfer of development right.

- ❖ How to value TDR?
- ❖ Landowner parts with part of the land (UDS) and also transfers development right.
- ❖ In turn gets specified number of apartments.
- ❖ The difference between value of the apartments and value of the land surrendered is the value of TDR.

Details	Values
A. Total No. of Flats (Each 2,000 Sq. Feet)	10
B. Flats for Landowner	5
C. Flats for Builder	5
D. Sale price nearest to TDR	Rs.10,000/Sq. Feet
E. Value of construction service to LO $[5 \times 2,000 \times 10,000 \times 2/3]$	Rs.6,66,66,667
F. Value of UDS of 5 Builder's flats	Rs.3,33,33,333
G. Value of TDR [E-F]	Rs.3,33,33,334
H. Unsold Flat	1
I. Proportionate value of TDR for unsold flat	Rs.33,33,334
J. GST on TDR for 1 unsold flat – not to exceed 5 %	Rs.1,66,667

Area Sharing Vs Revenue Sharing.

- ❖ No construction service by Developer to Landowner in revenue sharing model.
- ❖ Valuation of TDR.
- ❖ Total Revenue share for Landowner – minus value of land surrendered.

Apartments sold by landowners.

- ❖ Sale after CC – No GST.
- ❖ Sale before CC – Landowner to pay GST.
- ❖ Landowner is entitled to avail ITC.
- ❖ Promoter can pay GST earlier, to enable landowner to avail ITC (Notification 3/2021 C.T. (R) Dt. 02.06.2021).

Sale of Plots



Sale of Plot.

- ❖ A is the owner of Land.
- ❖ A himself develops the Plot and sells the same.
- ❖ Sale deed for whole price.
- ❖ Sale of developed Plot for a single consideration is “sale of land” and not liable to GST.
- ❖ Rabia Khanum – 2023 (74) GSTL 86 AAAR-Karnataka.
- ❖ Shantilal Real Estate Services – 2022 (58) GSTL 569 AAR Goa.
- ❖ Contrary view in – Dipesh Anilkumar Naik – 2022 (61) GSTL 454 AAAR – Gujarat.
- ❖ CBIC’s Circular No. 177/9/2022 Dt. 03.08.2022

Sale of Plot.

- ❖ A is the owner of Land.
- ❖ A himself develops the Plot and sells the same.
- ❖ Sale deed for value of Land and Development agreement for development works undertaken.
- ❖ GST payable on Development work.

Sale of Plot.

- ❖ A is the owner of Land.
- ❖ A engages B to undertake development work of the Plot.
- ❖ Consideration for development payable by A to B.
- ❖ B liable to pay GST.

Sale of Plot.

- ❖ Plot Development under Joint Development.
- ❖ A is the owner of Land.
- ❖ A enters into JV with B to undertake development work of the Plot.
- ❖ Area sharing.
- ❖ B provides service to A.
- ❖ B liable to GST on sale proceeds of his area.

Sale of Plot.

- ❖ Plot Development under Joint Development.
- ❖ A is the owner of Land.
- ❖ A enters into JV with B to undertake development work of the Plot.
- ❖ Revenue sharing.
- ❖ B provides service to A.
- ❖ B liable to GST on his revenue share.
- ❖ Vidit Builders – 2020 (35) GSTL 235 AAR – MP.

Challenges

- ❖ Denial of ITC leads to cost escalation.
- ❖ Project wise records keeping.
- ❖ Compliance with 80 % procurement condition.
- ❖ ITC reversal for REPs.
- ❖ No clarity on TDR Valuation.
- ❖ No clarity on rate of GST for landowner apartments.



THANK YOU

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