

# **TAXABILITY OF JOINT DEVELOPMENT AGREEMENT UNDER GST**

**Webinar - All India Federation of Tax Practitioners (CZ)**

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# MEANING OF JOINT DEVELOPMENT AGREEMENT (JDA)

An arrangement whereby a **landowner contributes his land** for the construction of a real estate project and **developer undertakes the responsibility for the development of property**, obtaining approvals, performing legal formalities and marketing the project. The landowner enters into an agreement and gives a General Power of Attorney to the developer, assigning him duty to obtain the mandatory approvals from various authorities and allows the developer to enter the land and do all necessary things for undertaking the construction.

## Types of Joint Development agreement :

- Area Sharing Agreement
  - ✓ Pure Residential Project
  - ✓ Pure Commercial Projects
  - ✓ Residential cum Commercial Projects
- Revenue Sharing
- Combination of Area & Revenue Sharing

## JOINT DEVELOPMENT VS. JOINT VENTURE VS. CO- OWNERSHIP VS. PARTNERSHIP

‘Joint Development’ should not be understood as ‘Joint Venture’ or ‘Co-ownership’ or ‘Partnership’ because it is done on Principal to Principal basis. Further the three terms are quite different having different meaning, areas of operation, taxability etc. *[Faqr Chand Gulati vs Uppal Agencies Pvt. Ltd. & Anr on 10 July, 2008 SC Civil Appeal No. 3302 of 2005]*

JOINT DEVELOPMENT	JOINT VENTURE	CO-OWNERSHIP	PARTNERSHIP
Profit Sharing possible	Profit Sharing done	Profit Sharing does not arise	Profit Sharing done
Restricted to Real Estate Sector	Applicable to every kind of business	Generally applicable to ancestral property	Applicable to every kind of business
Generally no Separate Legal entity	Separate Legal Entity as AOP	Individual owners are separate individual entities	Separate Legal Entity
Project Specific for limited period	Project/Goal Specific for limited period	Continues until property fully divided	Continues until dissolved
Project governed by RERA	Governed by relationship between parties	No contractual relationship	Governed by Indian Partnership Act

## **TAXABLE LIMBS UNDER JDA**

1. Transfer of development rights (TDR) from landowner to the developer.
2. Service provided by developer to landowner in the form of construction of area or flats in lieu of land development rights given.
3. Sale of under construction area or flats to the ultimate buyer by the developer.
4. Sale of under construction area or flats by the landowner to the buyers out of his own share.
5. Services by Contractor to Developer for constructing the project.

# LEGAL PROVISIONS UNDER GST

**Section 7** prescribes Scope of **Supply**. It is very wide term which also includes **sale, transfer, barter, exchange, license, rental, lease** or **disposal** of **goods or services** for a consideration in course of furtherance of business.

**Section- 2(52) -“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;

**Section- 2(102) -“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;

Further, Entry no. 5 of Schedule III of the CGST Act, 2017, **excludes sale of land from the scope of supply**. It is neither supply of goods nor supply of services.

Entry 5(b) of Schedule-II of the CGST Act, 2017= **Construction Service is Taxable**

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.

## TDR IS AN IMMOVABLE PROPERTY?

Under earlier laws TDR was considered as 'Immovable Property.' But under GST it is considered as service.

- TDR is neither '**lease**' nor '**license**' under section 7 r/w Entry Serial no. 2(a) of Schedule-II.
- 'Land' not just includes full title in land but also rights which gives benefits associated with it.
- Land development right is a right to carry out development or to develop the land or building or both. **[Girnar Traders v. State Of Maharashtra [2011] 3 SCC 1]**. It is thus a benefit arising out of land included within the word 'land'.
- Section 3(26) of the General Clauses Act defines immovable property as- Immovable Property **shall include land and benefit arises out of land**. So TDR is an immovable property.

The Hon'ble Apex Court in case of **Bala Bhaskar Rao Vs. CST (2016(43) S.T.R 161 (Mad.)**, maintained in **2017(48) STR J43 (Supreme Court)** where it was held that, the exchange of undivided land with builder for constructed area **amounts to service**.

Now, under GST with a very wide definition of services which includes anything other than goods, the Government has taken a stand that even rights arising out of land, like TDR would be taxable under GST Scenario under residual entry. **[NN- 04/2018 and AAR ruling in case of Vilas Chandanmal Gandhi and AAR Karnataka in the case of Maarq Spaces Pvt. Ltd.]**

# GIST OF LATEST NOTIFICATIONS ETC.WEF-01.04.2019

NN/RDO /FAQ	Date	Contents
Notification 3/2019 CT (Rate)	29.03.2020	GST New Rates and other terms including input tax credit amending NN-11/2017
Notification 4/2019 CT (Rate)	29.03.2020	Rate of Tax for TDR etc. NIL with certain conditions amending NN-12/2017
Notification 5/2019 CT (Rate)	29.03.2020	RCM on TDR by Promoter under section 9(3)
Notification 6/2019 CT (Rate)	29.03.2020	Time of Supply for TDR etc.
Notification 7/2019 CT (Rate)	29.03.2020	RCM under section 9(4)
Notification 8/2019 CT (Rate)	29.03.2020	GST Rate u/s 9(4) other than CG & Cement
F. No. 354/32/2019-TRU(FAQs)	07.05.2019	Clarifying various issues
F. No. 354/32/2019 (FAQs-II)	14.05.2019	Clarifying various issues
RDO No.04/2019-Central Tax	29.03.2019	Input attributable to taxable and exempt supply is to be determined on the basis of area of construction.
Notification 5/2019 Central (Rate)	30.09.2019	NN.4/2018- Central Tax (Rate), dated the 25th January, 2018 made ineffective w.e.f.01.04.2019
Notification No.20/2019 CT(Rate)	30.09.2019	In NN 3/2019 – Central Tax (Rate) dt. 29 March, 2019 the word ‘registered’ is omitted.

## IMPORTANT DEFINITIONS-NN 11/2017 & 03/2019

**“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);

**“Project”** shall mean a Real Estate Project or a Residential Real Estate Project.

**“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);

Section 2 (zn) – **“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 apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

**“Residential Real Estate Project (RREP)”** 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.

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## IMPORTANT DEFINITIONS-NN 11/2017 & 03/2019

**“Residential apartment”** shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority.

**“Commercial apartment”** shall mean an apartment other than a residential apartment.

**“Affordable residential apartment”** shall mean, -

a residential apartment in a project which commences on or after 1st April, 2019, 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.

**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;

**Gross amount shall be** the sum total of Consideration charged +Amount charged for the transfer of land or undivided share of land +Any other amount charged like preferential location charges, development charges, parking charges, common facility charges etc.

Projects under the old schemes of PMAY & EVS will continue to be affordable if developer has not exercised option for old rates.

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## IMPORTANT DEFINITIONS-NN 11/2017 & 03/2019

**“Ongoing project”** shall mean a project which meets all the following conditions, namely-

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

- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
- (ii) a chartered engineer registered with the Institution of Engineers (India); or
- (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.

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

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

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

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

# COMPARATIVE TAX RATES –NEW VS. ONGOING PROJECTS

SL.	Category	New Projects on or after 01.04.2019- Effective Rate	Ongoing Projects (Option exercised for old rates)
1.	<b>Commercial Projects</b>	12% (With ITC)	12% (With ITC)
2.	<b>Residential Projects</b>		
	I. Non affordable	5% ( No ITC)	12% ( With ITC)
	II. Affordable	1% ( No ITC)	8% ( With ITC)
3.	<b>Mixed Projects (commercial and residential apartments)</b>		
	<b>Commercial apartments&lt;15%(RREP)</b>		
	i. Commercial	5% ( No ITC)	12% ( With ITC)
	ii. Non affordable Residential	5% ( No ITC)	12%( With ITC)
	iii. Affordable Residential	1% ( No ITC)	8% ( With ITC)
	<b>Commercial apartments&gt;15%(REP)</b>		
	i. Commercial	12% ( Proportionate ITC)	12% ( With ITC)
	ii. Non affordable Residential	5% ( No ITC)	12% ( With ITC)
	iii. Affordable Residential	1% ( No ITC)	8% ( With ITC)

## OTHER IMPORTANT POINTS

- With the new tax rates, **Input Tax Credit shall not be eligible** and any available ITC balance (accumulated net of reversal or from other business under the same registration) also cannot be used for payment of such GST liability.
- This scheme **mandatory for all new projects commencing from 1st April, 2019**. However for the ongoing projects, onetime **option is given to continue with the existing tax structure** and mechanism.
- The **option** of going into new scheme or continue with the existing **scheme is based on the project** and the said project is **as per the meaning given for Real Estate Project** under Real Estate Regulation Act (RERA).
- For the purpose of this scheme projects has to be identified as **Residential Real Estate Project (RREP)** or **others**.
- **RREP** is a project in which carpet area of **commercial premise is not more than 15%**. Such project including the commercial portion shall be treated as a residential project and the concessional GST rate of 5% shall will be applicable even for commercial apartments also.
- In projects **which are not RREP**, the **benefit of concessional rate** will be applicable only to residential apartments and **not for commercial apartments**.

## CONDITIONS WITH NEW TAX RATES W.E.F.01.04.2019

- **Payment of GST in Cash:** GST liability has to be discharged by debiting cash ledger only.
- **No ITC:** No ITC for goods and Services used in available except to the extent prescribed in Annexure-I & II to the NN-03/2019.
- **Reversal of ITC** attributable to construction in a project, time of supply of which is on or after 01.04.2019 in the manner prescribed in Annexure-I & II.
- **At least 80% of inputs and input services** (other than capital goods, TDR/ JDA, FSI, long term lease (premiums), electricity, high speed diesel, motor spirit, natural gas) **shall be purchased from registered persons.** On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis u/s 9(4). However, Tax on Cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates only.
- For the purpose of Calculation of 80% of threshold limit for the payment of tax under reverse charge u/s 9(4), **value of Exempted Goods/ Services shall be included in the value of purchases from unregistered persons.** [CBIC Vide Circular F. No. 354/32/2019-TRU, FAQs dated 14-5-2019]

**Question: Whether Bank Interest & Interest on unsecured loans will be covered ?**

## OTHER COMPLIANCE REQUIREMENTS

- The promoter shall maintain **project wise account** of inward supplies from registered and unregistered supplier and
- Calculate tax payments on the **shortfall at the end of the** FY and shall submit the same in the prescribed form **by end of the quarter** following the financial year (i.e. 30th June).
- The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the **month of** June following the end of the financial year.
- Tax on cement received from unregistered person shall be paid in the **month in which cement is received**.
- Input Tax Credit not availed **shall be reported every month** by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)].

# CASE-I - TAXABILITY OF TDR UNDER GST

## Person Liable to Tax & Rate of Tax

Upto 31.03.2019 = **Landowner was liable to pay tax @18%** on supply of development rights (both commercial & residential) to the developers under FCM.

[S. No. 16(iii) of Notification No. 11/2017-CT(R) dt. 28.06.2017]

From 01.04.2019 = There will be **no liability in the hands of Landowner** irrespective of residential or commercial project for sale. However, liability to pay GST on TDR is **shifted on the developer @18%** being recipient of TDR service under **RCM** u/s 9(3).

[NN- 13/2017-CT (R) dt. 28.06.2017 as amended by N-05/2019-CT (R)] Dated: 29.03.2019]

## TDR on residential Apartment **Exempted**

Services by transfer of TDR/FSI/LTL on or after 01.04.2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly is exempt, **except where entire consideration has been received after issuance of CC or OC.** [No.04/2019-CT(Rate)29.3.2019]

It implies that GST is payable in proportion to area of **flats remained un-booked** as on date of issuance of completion certificate or first occupation of project whichever is earlier.

**It may be noted that exemption is not available for construction of commercial apartments.**

# TAXABILITY OF TDR UNDER GST

## Time of Supply (TOS)

Upto 24.01.2018 = As per Section 13

From 25.01.2018 to 31.03.2019 =

For monetary Consideration = As per Section 13 (Residen./Comm.)

For non-monetary Consideren. = Time when there is transfer of possession or rights in the constructed area by entering into conveyance deed or similar documents (e.g. allotment letter)(Residen./Comm.) [NN-04/2018]

W.e.f. 01.04.2019 = For developer TOS under RCM will be:

Residential Project = For monetary & Non-monetary consideration = On issuance of CC or First occupation whichever is earlier. [NN-06/2019]

Commercial Project = For monetary consideration = As per Section 13  
For non-monetary consideration = On issuance of CC or First occupation whichever is earlier [NN-06/2019]



# TAXABILITY OF TDR UNDER GST

## Value of Supply ( **Applicable both to Commercial & Residential apartment** )

**Upto 31.03.2019** = As per Rule 27 of the CGST Rules ( OPM, similar apt. of like kind, quality etc.)

**W.e.f. 01.04.2019** = The value of supply under RCM is to be determined as per para 1A of **NN-12/2017-CT(R)** dated: **28.06.2017** inserted through **NN 04/2019-CT(R)**.  
However, such value shall not exceed **1% of the value in case of affordable residential apartments and 5% of the value of non-affordable residential apartments remaining un-booked on date of CC/OC**. Value of apartments remained un-booked is to be calculated according to paragraph 1B.

- 1A. Value of supply of service by way of transfer of development rights or FSI by a person to the promoter against consideration in the form of residential or commercial apartments shall be deemed to be **equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights** or FSI is transferred to the promoter.*
- 1B. Value of portion of residential or commercial **apartments remaining un-booked on the date of issuance of completion certificate or first occupation**, as the case may be, shall be deemed to be **equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation**, as the case may be.*

# TAXABILITY OF TDR UNDER GST

## COMPARISON OF OLD VS. NEW PROVISION

POSITION PRIOR TO 01.04.2019	POSITION W.E.F. 01.04.2019 onwards
It was under Forward Charge – Landlord was liable to pay tax.	It is made under Reverse Charge –Developer is liable to pay tax.
Landowner was required to take registration compulsorily once value of TDR exceeded threshold for registration.	Landowner is not required to take registration on account of transfer of TDR.
No Exemption to Landowner from transfer of TDR on residential project.	Exemption to developer on residential project if he book/sales entire project before completion.
Time of Supply in case of monetary consideration in residential project was as per Section 13. In case of non-monetary consideration it is on transfer of possession rights by conveyance deed or allotment letter.	Time of Supply is same both for monetary & non-monetary consideration i.e on CC or first OC whichever is earlier for residential & commercial project .
Value of TDR as per rule 27 i.e. similar apartment value or OPM.	Value of similar apartment charged to independent buyers nearest to the date of transfer of TDR.

# CALCULATION OF TDR-RESIDENTIAL PROJECT

Description	Qty./ Value
Non-Affordable Flats started on 01.05.2019	10 Flats
Landowner's Share	5 Flats
Developer's Share	5 Flats
First Booking done on 02.05.2019	1 Cr. /Flat
Last Booking done just before completion of Project	1.20 Cr./Flat
Total Flats Sold by Developer before CC	3 Flats
Unsold Flats ( 20% Carpet Area)	2 Flats

1. Total Value of DR trfd. by Landlord =  
5 Flats @ Rs 1 Cr. each = 5 Cr.
  2. Tax payable on TDR = 18% of 5 Cr. = .90 Cr.
  3. Liability of Promoter under RCM =  $.90 \times 20\%$  = 18 Lakhs
  4. Upper Cap =  $1.20 \text{ Cr.} \times \text{Unsold 2 Flats} \times 5\%$  = 12 Lakhs
- GST Payable under RCM (Lower of 3 or 4) = 12 Lakhs

## CALCULATION OF TDR-RESIDENTIAL CUM COMMERCIAL PROJECT

GST shall be payable in the following manner.

$$\begin{array}{l} \text{[GST payable on TDR or FSI} \\ \text{(including additional FSI) or both} \\ \text{for construction of the residential} \\ \text{apartments in the project but for} \\ \text{the exemption contained herein]} \end{array} \times \frac{\begin{array}{l} \text{(carpet area of the residential apartments in the project} \\ \text{which remain unbooked on the date of issuance of CC or} \\ \text{first occupation} \end{array}}{\begin{array}{l} \text{Total carpet area of residential apartments in project).} \end{array}}$$

- TDR on Commercial Project is fully taxable in the hands of developer under RCM without any exemption.
- Difficulties arises in case of calculation of tax on TDR for residential project (un-booked area) where the project is commercial cum residential.
- The above is the manner laid down for proportionate calculation of taxable value of such TDR.

## CASE-2-TAXABILITY OF CONSTRUCTION SERVICES TO LANDOWNER

### Person Liable to Tax & Rate of Tax

Upto 31.03.2019

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- Developer liable to pay tax effective rate @12% (after 1/3<sup>rd</sup> deduction for land value)
- Applicable to both to commercial and residential projects.
- ITC is available on TDR services and other materials and services used.

From 01.04.2019

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- Tax rate as applicable on sale of flats to Independent buyer by developer.
- @ 8%/12% with ITC if option for old rates exercised. (after 1/3<sup>rd</sup> dedn. for land)
- @ 1%/5% without ITC for residential projects. (after 1/3<sup>rd</sup> dedn. for land)
- However, for Commercial projects effective Tax rate @ 12% with ITC. (after 1/3<sup>rd</sup> dedn. for land)

# TAXABILITY OF CONSTRUCTION SERVICES TO LANDOWNER

## Time of Supply (TOS) - Residential & Commercial Project

Upto 24.01.2018 = **As per Section 13**

From 25.01.2018 to 31.03.2019 =  
For monetary Consideration = As per Section 13

For non-monetary Considen. = Time when there is transfer of possession or rights in the constructed area by entering into conveyance deed or similar documents (e.g. allotment letter) [NN-04/2018]

## W.e.f. 01.04.2019

For monetary consideration = As per Section 13

For non-monetary consideration = On issuance of CC or First occupation whichever is earlier [NN-06/2019]

# TAXABILITY OF CONSTRUCTION SERVICES TO LANDOWNER

## Value of Supply ( Applicable both to Commercial & Residential apartment)

**Upto 31.03.2019 = As per Rule 27 of the CGST Rules ( OPM, like kind, quality etc.)**

**W.e.f. 01.04.2019 = The value of supply of construction services to landlord is to be determined as per para 2A of NN-11/2017-CT(R) dated: 28.06.2017 inserted through NN 03/2019-CT(R).**

*“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.**”*

## CASE-3 –SALES OF AREA TO INDEPENDENT BUYERS BY DEVELOPER

### Rate of Tax

#### Upto 31.03.2019

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- Developer liable to pay tax effective rate @ 8%/ 12% (after 1/3<sup>rd</sup> deduction for land value) [NN 11/2017-CT(R) dated:28.06.2017]
- Applicable to both to commercial and residential projects.
- ITC is available on TDR services and other materials and services used.

#### From 01.04.2019

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- effective rate @ 8%/12% with ITC if option for old rates exercised.
- effective rate @1%/5% ( Affordable /Non-affordable) without ITC for residential projects.
- However, for Commercial projects effective Tax rate @ 12% with ITC.



# SALES OF AREA TO INDEPENDENT BUYERS BY DEVELOPER

## Time of Supply (TOS):

- It will be governed by section 13 of the CGST Act.
- Earliest of the receipt of money, raising of invoice or provisioning of service.

## Value of Supply:

- It will be governed by section 15 of the CGST Act.
- Actual sale price of flats to the buyers will be the transaction value of supply.

[Notification No. 4/2018 C.T.(R) 25.01.2018]

## CASE-4- SALES OF AREA TO INDEPENDENT BUYERS BY LANDOWNER

- The landlord is liable to pay GST if he further sales under construction area/flats to the buyers.
- The Tax Rate, Time of Supply & Value of Supply shall be same as discussed hereinabove as applicable to developer.
- Landowner can claim ITC charged by the developer on the construction service rendered **provided the landowner further supplies such flats to his buyers before issuance of CC of first occupation whichever is earlier, and pays tax on the same which is not less than the amount of tax charged on him by the developer.** [This is the exception only where ITC can be claimed under new rates]
- However, the Land Owner shall not be entitled to avail ITC on any other services or goods used by him.

## CASE-5- SERVICES BY CONTRACTOR TO THE DEVELOPER

### Works Contract Services (for affordable housing)

Description of services	Applicability	Rate	Conditions
Composite supply of works contract supplied by way of <ul style="list-style-type: none"> <li>✓ construction,</li> <li>✓ erection,</li> <li>✓ commissioning,</li> <li>✓ installation,</li> <li>✓ completion,</li> <li>✓ fitting out,</li> <li>✓ repair,</li> <li>✓ maintenance,</li> <li>✓ renovation, or</li> <li>✓ alteration</li> </ul>	Works Contract Services for Affordable residential apartments  a) New projects after 01-04-2019  b) Ongoing projects not opting for existing rates.	12%	<ol style="list-style-type: none"> <li>1. <b>Carpet area</b> of the affordable residential apartment is <u>not less than 50%</u> of total carpet area of all the apartments in the project.</li> <li>2. <b>Value</b> of affordable apartment should be taken as value of similar apartment booked nearest to the date of signing of the contract for supply of service to check whether the apartment fall into the affordable category or not.</li> <li>3. Finally if it turns out that the carpet area of the affordable residential apartments was less than 50%, then the promoter will be liable to pay differential tax on works contract under reverse charge mechanism.</li> </ol>

Contractor is liable to pay GST at the rate of 12% for affordable housing projects. For other contracts tax rate will be @ 18%.

## RECENT ADVANCE RULINGS -JDA

### **Durga Projects & Infrastructure (P.) Ltd [2019] 108 taxmann.com 105 (AAR – KARNATAKA)**

- Partially completed flats having identified customers before GST regime and **agreement executed prior to 01.07.2017**, applicant builder is **liable to pay service tax proportionate to services provided up to 30-6-2017 and from 1-7-2017 onwards, it is liable to pay GST proportionate to services** provided effective from 1-7-2017, in terms of section 142(11)(b).
- Partially completed flats, where customers are identified after implementation of GST and **agreement has been entered into after 01.07.2017** but before issuance of completion certificate from competent authority, applicant-builder is **liable to pay GST on transaction value of supply u/s 15**.
- Partially completed flats, where no customers are identified after implementation of GST and **no agreement has been entered into before issuance of completion certificate** from competent authority, applicant-builder is **not liable to pay GST** as per Entry no. 5 of Schedule-III.

### **MAARQ Spaces (P.) Ltd., [2019] 111 taxmann.com 368 (AAR – KARNATAKA)**

- Applicant has entered into a joint development agreement with landowners for development of land into residential layout and cost of development shall be borne by applicant and revenue accruing from **sale of plots** is shared in ratio of 75 per cent for landowners and 25 per cent for applicant, activities undertaken by applicant amount to supply of service to landowners and taxable value of supply in terms of rule 31 ( residuary rules using reasonable means consistent with the principles and the general provisions of section 15) is equal to total amount received by applicant. **Similar view in case of Satyaja Infratech by Gujrat AAR 2020(4)TMI 633.**

### **Vilas Chandanmal Gandhi [2020] 114 taxmann.com 239 (AAR - MAHARASHTRA)**

- In case of applicant, owner of land, **GST is leviable on amount received on sale of Transferable Development Rights ('TDR')/Floor Space Index ('FSI')** for surrendering joint rights in terms of Development Control Regulations granted in light of agreement entered into between applicant and Pune Municipal Corporation ('PMC')

## SOME ISSUE UNDER JDA

- Can we charge old rate of tax and claim ITC for new projects after 01.04.2019?
- Is Development of Plot/Site Formation a taxable service?
- Is 1/3rd standard deduction on account of land value enough?
- Is introduction of valuation mechanism by rate notification valid?
- Can developer pre-pone his liability on construction services rendered to landowner to enable landowner to claim ITC?
- Construction on individual /ancestral land of landowner for own use. Is it in furtherance of business?



*Thanks!*

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