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Internship Report

On

“A Study on the Impact of GST on the Real Estate Sector”

ANISHA

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Certificate

This internship report titled “A Study on the Impact of GST on the Real Estate Sector” is a report on a study taken up at the Fiscal Policy Institute (FPI) in 2022-2023.

The internship report is prepared by Anisha, PG Department of Commerce, PES Institute of Advanced Management Studies, Shivamogga, under the mentorship of Dr. Nithyanandaradhya, Consultant in Fiscal Policy Institute (FPI).

All opinions and conclusions expressed in the internship report are of the intern and the usual disclaimer applies.



Uma Mahadevan
Director, FPI

Institute's Seal

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CONTENTS

Sl. No.	Contents	Page No.
1.	Brief over view of GST	1
1.1	Introduction to GST	1
1.2	Salient features of GST	2
1.3	Input tax credit	2
1.4	Types of GST	4
1.5	Rate of GST	6
1.6	Online procedures for ease of doing business	7
2.	Objectives of the study	7
3.	Need for the study	7
4.	Literature review	8
5.	Research gap	9
6.	Methodology	9
7.	GST impact on different sectors	9
8.	Real estate sectors	9
8.1	Meaning of real estate sector	10
8.2	Types of real estate sector	10
8.3	Coverage of real estate transactions under GST	10
9.	RERA Act and Rules	12
9.1	Benefit of RERA	13
9.2	RERA registrations	14
9.3	Important definitions under RERA	14
10.	Taxes before GST implementation	19
10.1	Value Added Tax (VAT)	20
10.2	Works contract	20
11.	Taxes on real estate before 1/4/2019	21

12.	Taxes on real estate after 1/4/2019	22
12.1	GST on constructions	24
12.2	Applicability of new GST rates	25
12.3	Condition of new tax rates	26
12.4	Works contract in GST	29
12.5	GST applicable to TDR, FSI, and long term lease of land	31
12.6	Resident welfare associations	32
12.7	On-going projects	33
12.8	Mixed project	34
12.9	Joint development agreement	34
12.10	GST implications on consideration paid by developer to landowner against the transfer of development rights	35
12.11	Government policy	36
12.12	Anti-profiteering	37
12.13	Deemed valuation of land	37
12.14	Credit note within 6 months from end of financial year	37
13.	GST impact on real estate sectors	38
13.1	Impact of GST on buyers	38
13.2	Impact of GST on developers/builders/contractors	38
13.3	Impact on other stake-holders	39
14.	Conclusion	40
15.	Bibliography	41

LIST OF TABLES

SL. NO.	PARTICULARS	PAGE NO
1.	GST rates and their contributions to the GST	6
2.	History of indirect taxes applicable on real estate sector	20
3.	Taxes on real estate before 1/4/2019	22
4.	New GST rates on the construction of residential apartments	23
5.	The different rates of GST on construction materials	24-25
6.	The illustrations to understand the condition of 80% of the value of input	26
7.	A GST implication on the transfer of TDR and FSI	35
8.	An illustration of GST calculation on affordable property before 31.03.2019 and after 01.04.2019	39
9.	An illustration of impact of GST on luxury property	39

LIST OF FIGURES

SL. NO.	PARTICULARS	PAGE NO
1.	Rates of GST on affordable housing and non-affordable housing during the period before 1/4/2019 and after 1/4/2019.	29

ABBREVIATIONS

CGST – Central Goods and Services Tax

CST – Central Sales Tax

CBIC – Central Board of Indirect Taxes and Customs

DRC – Development Rights Certificate

FSI – Floor Space Index

FAR – Floor Area Ratio

GST – Goods and Services Tax

GDP – Gross Domestic Product

GSTN – Goods and Services Tax Network

HUPA – Housing and Urban Poverty Alleviation

IGST – Integrated Goods and Services Tax

ITC – Input Tax Credit

ISD – Input Service Distributor

IT – Information Technology

JDA – Joint Development Agreement

RNR – Revenue Neutral Rate

RERA – Real Estate Regulation Authority

RREP – Residential Real Estate Project

RCM – Reverse Charge Mechanism

RWA – Resident Welfare Association

SGST – State Goods and Services Tax

TDR – Transfer Development Rights

UTGST – Union Territory Goods and Service Tax

UJV – Unincorporated Joint Venture

VAT – Value Added Tax

Executive Summary

The implementation of GST has brought in buoyancy and stability for the real estate sector, especially after April 2019. The expectation of the government at the time of implementation of GST was that there should be a downward shift in the effective rates of indirect taxes on the real estate sector. The GST Council, through the suggestions of developers, tax authorities, and consumers, has made remarkable changes in GST with respect to real estate from April 2019. The rate of tax on the housing sector has been considerably reduced effective from April 1, 2019 in order to boost this sector and this has been fructified. The aim of the present study is to focus on the impact of GST on the real estate sector in the pre- and post-GST era.

1. BRIEF OVER VIEW OF GST

1.1 Introduction to GST

India is a diverse country having tax structures, namely direct tax and indirect tax. Goods and Services Tax (GST) is a revolutionary step taken by the Government of India and the state governments to bring in reforms to the indirect tax regime. It is indeed a very bold and strategic step taken by the government. Goods and Services Tax has a very vast list of items that have been included in the tax structure. Indirect taxes which were imposed earlier have been subsumed and GST has been introduced in their place. The Goods and Services Tax (GST) is the biggest and most substantial indirect tax reform since 1947. The main idea of GST is to replace the following existing taxes:

▶ **Central Government taxes**, like 1. Customs

2. Central Excise

3. Service Tax and Cesses

▶ **State Government taxes**, like, 1. VAT (Value Added Tax)

2. CST (Central Sales Tax)

3. Sales Tax

4. Entry Tax

5. Luxury Tax

6. Entertainment Tax

7. Betting Tax and Cesses

The Goods and Services Tax (GST)—India’s biggest tax reform post-Independence— was implemented on 1 July 2017. The new tax regime seeks to transform the Indian economy with its ‘One Nation, One Market, One Tax’ principle by subsuming a host of indirect taxes charged at varied rates by the Centre and states, therefore bringing uniformity in taxation across the country. Its primary objective is to simplify the complex tax structure on the supply of goods and services. While this reform might have certain short-term negative impacts the earlier indirect tax framework had challenges of multiplicity and cascading of taxes, apart from other

issues/complexities, both technical as well as from the perspective of ground-level practices by way of increased credits, reduced prices, uniformity of pricing across the country, free movement of goods, etc. The key feature of GST is to remove the cascading effect of taxes by making credits fully fungible. The objective is to ensure that businesses only act as a pass-through for all taxes and that tax would be GST.

1.2 Important features of GST

- **Dual Tax on Goods and Services: CGST and SGST**
- **Destination-Based Consumption Tax:** GST will be a destination-based tax. This implies that all SGST collected will ordinarily accrue to the state where the consumer of the goods or services sold resides.
- **Computation of GST on the basis of invoice credit method:** The liability under the GST will be the invoice credit method i.e. credit will be allowed on the basis of the invoice issued by the suppliers.
- **GST on imports:** Centre will levy Integrated Goods and Services Tax (IGST) on the inter-state supply of goods and services. Import of goods will be subject to basic customs duty and IGST.

1.3 Input Tax Credit

An uninterrupted and seamless chain of Input Tax Credit (ITC) is one of the key features of Goods and Services Tax. ITC is a mechanism to avoid cascading taxes. Cascading of taxes, in simple language, is 'tax on tax'. Under the present system of taxation, credit of taxes being levied by the Central government is not available as a set-off for payment of taxes levied by state governments, and vice versa. One of the most important features of the GST system is that the entire supply chain would be subject to GST to be levied by Central and state governments concurrently. As the tax charged by the Central or the state governments would be part of the same tax regime, credit of tax paid at every stage would be availing as set-off for payment of tax at every subsequent stage.

The provisions of input tax credit have been prone to litigation. The GST law provides an elaborate mechanism for availment and utilization of ITC and seeks to impart clarity with a view to minimising disputes. The important provisions of the law are as under:

(i) Taxpayer is allowed to take credit of taxes paid on inputs (input tax credit), as self-assessed, in his return.

(ii) Taxpayer can take credit of taxes paid on all goods and services, other than a few in the negative list, and utilise the same for payment of output tax.

(iii) Credit of taxes paid on inputs can be taken where the inputs are used for business purposes or for making taxable supplies.

(iv) Full input tax credit shall be allowed on capital goods on its receipt as against the current central government and many state government's present practice of permitting the credit in two or three equal instalments.

(v) Unutilised input tax credit can be carried forward or can be claimed as refund in two specified situations.

(vi) The facility of distribution of input tax credit for services amongst group companies has been provided for through the mechanism of the Input Service Distributor (ISD).

Conditions for claiming Input Tax Credit in real estate

After the introduction of GST in real estate, according to the GST Act rules, Input Tax Credit is equal to the total tax paid, and may be claimed by real estate developers in the following cases:

- The claimant can produce a purchase invoice, tax invoice or a debit note as proof of GST being deducted.
- Under section 37, specified that the details of the invoice or debit note referred to in clause (a) have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.
- The goods and services have already been received by the claimant.
- Under section 38, the Input Tax Credit in respect of the said supply communicated to such registered person has not been restricted.
- The Input Tax Credit has not used the goods or services received for personal use.

- All taxes that were due have been paid to the government by the supplier.
- A valid GST return has been filed by the ITC claimant.

Administration of GST

Administration of GST will be the responsibility of the GST Council, which will be the apex policy-making body of the GST. Members of the GST Council comprise the Central and state ministers in charge of the finance portfolio.

Goods and Services Tax Council

The GST Council will be a joint forum of the Centre and the states. The Council will make recommendations to the Union and the states on important issues like tax rates, exemption list, threshold limits, etc. One-half of the total number of members of the Council will constitute the quorum of the GST Council.

Payment of GST

The CGST and SGST are to be paid to the accounts of the Central and states respectively.

Goods and Services Tax Network (GSTN)

The Goods and Services Tax Network (GSTN) is a not-for-profit, Non-Government Company called Goods and Services Tax Network (GSTN), jointly set up by the Central and state governments and other private sector companies like HDFC, HDFC Bank and ICICI Bank, LIC Housing Finance and NSE Strategic Investment Co. GSTN will provide shared IT infrastructure and services to the Central and state governments, taxpayers and other stakeholders.

Refund mechanism

No refund of unutilised Input Tax Credit is allowed on the construction of a complex, building, civil structure due to Inverted Duty Structure Scheme (accumulation of credit on account of rate of tax on inputs being higher than the rate of tax on output supplies.)

1.4 As per the newly implemented tax system, there are 5 different types of GST:

1. Integrated Goods and Services Tax (IGST)
2. State Goods and Services Tax (SGST)

3. Central Goods and Services Tax (CGST)
4. Union Territory Goods and Services Tax (UTGST)
5. Goods and Services Tax (Compensation to States) Act, 2017

1. Integrated Goods and Services Tax or IGST

The Integrated Goods and Services Tax or IGST is a tax under the GST regime that is applied on the supply of goods and/or services interstate (between 2 states) supply of goods and/or services as well as on imports and exports. The IGST is governed by the IGST Act. Under IGST, the authority responsible for collecting the taxes is the Central government. After the collection of taxes, it is further divided among the respective states by the Central government on the basis of consumption determined by the place of supply concept.

2. State Goods and Services Tax or SGST

The State Goods and Services Tax or SGST is a tax under the [GST regime](#) that is applicable to intrastate (within the same state) transactions. In the case of an intrastate supply of goods and/or services, both State GST (SGST) and Central GST (CGST) are levied.

However, the State GST or SGST is levied by the state on the goods and/or services that are purchased or sold within the state. It is governed by the SGST Act. The revenue earned through SGST is solely claimed by the respective state government.

3. Central Goods and Services Tax or CGST

Just like State GST, the Central Goods and Services Tax of CGST is a tax under the GST regime that is applicable on intrastate (within the same state) transactions. The CGST is governed by the CGST Act. The revenue earned from CGST is collected by the Central government.

4. Union Territory Goods and Services Tax or UTGST

The Union Territory Goods and Services Tax or UTGST is the counterpart of the State Goods and Services Tax (SGST) which is levied on the supply of goods and/or services in the Union Territories (UTs) of India.

1.5 Rates of GST:

Revenue Neutral Rate

Any change in the tax reform may result in a deficit in the amount of revenue collected by the country; therefore there must be a method through which the change in this system does not affect the collections by the government. Revenue Neutral Rate (RNR) as commonly known is the tax rate which ensures that the revenue collected by the new tax regime is the same as that collected by the previous one.

Revenue Neutral Tax Rate in GST may simply be defined as the tax rate which seeks to achieve and collect similar revenue under the newly implemented tax structure as collected from taxes that are sought to be subsumed and were in force prior to the implementation of the new tax structure.

The GST Council determines the GST rate slabs. The GST Council reviews the rate slabs for goods and services on a regular basis. GST rates are typically high for luxury items and low for necessities.

Liquor for human consumption is outside the purview of GST. Petroleum products namely crude oil motor spirit, diesel, Aviation Turbine Fuel, and Natural Gas though are brought under the purview of GST but exempted from GST as of now.

Under GST, goods and services are taxed at the following rates, Nil, 5%, 12% 18% and 28%. Certain items such as alcohol, petrol, diesel and natural gas will be exempt under the GST. There are separate tax rates (3% or 0.5%) for jewelry and precious metals respectively. As per the report of CBI* the contribution of various rates are as under

Table 1: GST rates and their contributions to the GST

Rate	Contribution
5%	10
18%	65
28%	16
Others (12% and 3%)	9

(Source: Report by CBIC in five years of GST)

1.6 Online procedures for ease of doing business

Previously, taxpayers faced a lot of hardships dealing with different tax authorities under each tax law. Besides, while return filing was online, most of the assessment and refund procedures took place offline. Now, GST procedures are carried out entirely online. Goods and Services Tax Network, a special purpose vehicle, has been created to provide all such online facilities to the taxpayers and governments. Everything is done with the click of a button, from registration to returns filing to refunds to e-way bill generation. It has contributed to the overall ease of doing business in India and simplified taxpayer compliance to a massive extent. The government also plans to introduce a centralised portal soon for all indirect tax compliance such as e-invoicing, e-way bills and GST return filing.

2. Objectives of the study

- a) To understand the current scenario of GST with specific reference to the real estate sector in India.
- b) The impact of tax on real estate sectors in pre and post-GST regime.
- c) To compare the status of the levy of GST on real estate for the period up to 31.03.2019 and after 1/4/2019.

3. Need for the study

The real estate sector has strong economic multiplier effects through backward and forward linkages. Construction is the second biggest employment generator in the country after agriculture and accounts for a significant proportion of the GDP. Under the previous system, the real estate sector had been in disputes due to ambiguity in provisions as well as multiple taxations.

There is a graphical change in the structure of the tax. The tax structure is being modified according to changing needs of the real estate sectors as per the programmes and policies of the Government of India and other state governments.

4. Literature review

- 1) **C.A. Sumit Das (2018)** conducted a survey on “**Overview of GST in Real Estate Sector**”. This paper was presented in the national CA conference. The paper discussed GST in the real estate sector. It talked about changes brought about by the new tax reform in the real estate sector. The study suggested that GST shall help in reducing the overall cost of construction and hence shall benefit the consumer. It also suggested that the government should immediately implement the anti-profiteering provisions so that it will help to achieve the goal of reducing cost.
- 2) **C.A. Pritam Mahure (2019)** in a study analysed the new GST rates on the real estate sector, types of real estate transactions, and rates of GST on real estate before 30th of March, 2019 and new tax rate implemented after the 33rd and 34th GST Council meetings. The study further evaluated the impact of the change of GST rates and future of development rights, TDR, JDR etc. The study looked into all the relevant changes that the GST council had taken in its recent meetings.
- 3) **India Brand Equity Foundation-Indian Real Estate Industry Report (2019)** analysed the subsectors of real estate sector, its market size and GDP contribution of this sector. It also took into consideration government initiatives like PM Awas Yojna, Smart Cities etc which have given a boost to the real estate sector.
- 4) **Niraj Dubey, Dr. Devesh Kumar and Sitaram Pandey (2017)** conducted “An Enquiry into the Effect of GST on Real Estate Sector of India”. The paper studied the basics of GST, explored the earlier tax regime of the real estate sector and effect of GST on the real estate sector. The study said that the cost of a house could increase by up to 2%. It further said that if the developer passed on the credit completely and brought down the base price, only then could the house buyer marginally get benefited under the new regime.
- 5) **Rajkumar Kankariya and Dr. Anil Dongre(2019)**, did a study on the impact of GST on real estate sector in India. The main objective of this study was to study the various indirect taxes on real estate in the pre- and post-GST regimes. It said there was a slowdown in the real estate sector after demonetisation and the implementation of the

GST. RERA Act had also brought new challenges for the developers. The government was taking positive steps in order to boost this sector. The government was giving relief on affordable housing. Since the GST was at a young stage in India, the positive impact of GST on the real estate sector would be seen over a period of time.

5. Research Gap

The prior literature discusses GST as a concept and illustrates its benefits theoretically. The present study attempts to fill this research gap by examining the impact of GST on the real estate sector in pre & post GST regimes. The study also provides a comprehensive view of GST implementation in this context.

6) Methodology

This research is a descriptive study based on working papers, journals, articles, newspapers (Business Standard & Economic Times), and reports by management, scholars, researchers, magazines, websites and other references etc. A descriptive type research design is adapted to have more accuracy and analysis of research study in accordance with the objectives of the study. The available secondary data is intensively used for the research study.

7) GST impact on different sectors

GST will turn India into one common market, leading to greater ease of doing business and big savings in logistics costs for companies across all sectors. Some companies will gain more as the GST rate will be lower than the current tax rates they pay; others will lose as the rate will be higher than the present effective rate.

8) Real estate sector

Real estate is one of the most important sectors of the Indian economy and it is one of the top employment generators of the economy. The Real Estate Sector is going to become more transparent and efficient after this step but in the initial phases, the sector is experiencing a decline.

The real estate sector is one of the most globally recognized sectors. It comprises four sub-sectors - housing, retail, hospitality, and commercial. The growth of this sector is well

complemented by the growth in the corporate environment and the demand for office space as well as urban and semi-urban accommodation.

In India, the real estate sector is the second-highest employment generator, after the agriculture sector. It is also expected that this sector will incur more non-resident Indian (NRI) investment, both in the short term and the long term.

8.1 Meaning

Real estate is defined as the land and any permanent structures, like a home, or improvements attached to the land, whether natural or man-made. Real estate is a form of real property. It differs from personal property, which is not permanently attached to the land, such as vehicles, boats, jewellery, furniture, and farm equipment.

8.2 Types of real estate

Residential real estate: Any property used for residential purposes. Examples include single-family homes, condos, cooperatives, duplexes, townhouses, and multifamily residences.

Commercial real estate: Any property used exclusively for business purposes, such as commercial complexes, gas stations, grocery stores, hospitals, hotels, offices, parking facilities, restaurants, shopping centres, stores, and theatres.

Industrial real estate: Any property used for manufacturing, production, distribution, storage, and research and development.

Land: Includes undeveloped property, vacant land, and agricultural lands such as farms, orchards, ranches, and timberland.

Special purpose: Property used by the public, such as cemeteries, government buildings, libraries, parks, places of worship, and schools.

8.3 Coverage of real estate transactions under GST

As per the deeming provisions contained in Schedule II of the CGST Act and SGST Act, GST can be levied on the following transactions relating to Real estate sectors.

- Any lease, tenancy, easement, licence to occupy land [The lease of tenancy of land can be of any period – even 99 or 999 years].
- Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly [This covers renting or leasing of the building. Even renting part of a residential complex for business or commerce will be subject to GST].
- Renting of immovable property [since the lease of building and land is already covered in aforesaid clauses, this can cover other immovable property like plant and machinery].
- Construction of a complex, building, civil structure or a part of thereof including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after insurance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. [This covers of sale of apartments before it is occupied].
- Works contract as defined in section 2(119) of CGST Act [The definition covers only works contracts relating to immovable property].

It is considered essential and relevant to consider the RERA ACT and some of the definitions contained therein which are being used under the GST

RERA stands for Real Estate Regulatory Authority and came into existence as per the Real Estate (Regulation and Development) Act, 2016 which aims to protect home purchasers and also boost real estate investments. The bill of this Parliament of India Act was passed on 10 March 2016 by the Upper House (Rajya Sabha). The RERA Act was effective on and from 1 May 2016. At that time, out of 92 sections only 52 were notified. All the other provisions were effective on and from 1 May 2017.

The Real Estate Regulation and Development (RERA) Act, 2016 is considered one of the landmark legislations passed by the Government of India. Its objective is to reform the real estate sector in India, encouraging greater transparency, citizen-centricity, accountability and financial discipline. This is in line with the vast and growing economy of India as in the future many people will be investing in the real estate sector.

9) RERA Act and Rules

The real estate (Regulation and Development) Act, 2016 under Section 84 envisions that within a period of six months from its commencement date, state governments will set the rules to carry out the provisions associated with the Act.

- On 31 October 2016, the Centre, through HUPA (Housing & Urban Poverty Alleviation) Ministry, released the general rules of the Real Estate (Regulation and Development) Act, 2016.
- All these rules are applicable to the Union Territories like Chandigarh, Lakshadweep, Daman & Diu, Dadra & Nagar Haveli and Andaman and Nicobar Islands.

Some important provisions under Real Estate Regulation and Development (RERA)

Security: Under the RERA Act, a minimum of 70% of the buyers' and investors' money will be kept in a separate account. This money will then be allotted to the builders only for construction and land-related costs. Developers and builders cannot ask for more than 10% of the property's cost as an advance payment before the sale agreement is signed.

Transparency: Builders are supposed to submit the original documents for all projects they undertake. Builders are not supposed to make any changes to the plans without the consent of the buyer.

Fairness: RERA has now instructed developers to sell properties based on carpet area and not super built-up area. In the event that the project has been delayed, buyers are entitled to get back the entire money invested or they can choose to be invested and receive monthly investment on their money.

Quality: The builder must rectify any issue faced by the buyer within 5 years of purchase. This issue must be rectified within 30 days of the complaint.

Authorisation: A regulator cannot advertise, sell, build, invest, or book a plot without registering with the regulator. After registration, all the advertisements for investments should bear a unique project-wise registration number provided by RERA.

9.1 Benefits of RERA

RERA has a number of benefits for the buyer, the promoter, and the real estate agent. These include:

Standardisation of carpet area: Before RERA, how a builder calculated the price of a project was not defined. However, with RERA, there is now a standard formula that is used to calculate carpet area. This way, promoters cannot provide inflated carpet areas to increase prices.

Reducing the risk of insolvency of the builder: Most promoters and developers tend to have multiple projects being developed at the same time. Earlier, developers were allowed to move funds raised from one project to another. This is not possible with RERA since 70% of the funds raised need to be deposited in a separate bank account. These funds can be withdrawn only after certification by an engineer, a chartered accountant, and an architect.

Advance payment: As per the rules, a builder cannot take more than 10% of the cost of the project from the buyer as advance or application fees. This saves the buyer from having to source funds fast and having to pay a large amount.

Rights to the buyer in case of any defects: Within 5 years of possession, if there are any structural defects or problems in quality, the builder has to rectify these damages within 30 days at no cost to the buyer.

Interest to be paid in case of default: Prior to RERA, if the promoter delayed possession of the property, the interest paid to the buyer was much lower than if the buyer delayed payments to the promoter. This has changed with RERA and both parties have to pay the same amount of interest.

Buyer's rights in case of false promises: If there is a mismatch in terms of what was promised by the builder and what has been delivered, the buyer is entitled to a full refund of the amount that was paid in advance. At times, the builder may have to provide interest on the amount as well.

If there is a defect in the title: If at the time of possession, the buyer discovers that there is a defect in the title of the property, the buyer can claim compensation from the promoter. There is no limit to this amount.

Right to information: The buyer has the right to know all the information about the project. This includes plans related to layout, execution, and completion status.

Grievance Redressal: If the buyer, the promoter, or the agent has any complaints with respect to the project, they can file a complaint with RERA. If they are not pleased with RERA's decision, a complaint can also be filed with the Appellate Tribunal.

9.2 RERA Registration

The Real Estate Regulation and Development (RERA) Act, 2016 is considered as one of the landmark legislations passed by the Government of India. Its objective is to reform the real estate sector in India, encouraging greater transparency, citizen centricity, accountability and financial discipline. This is in line with the vast and growing economy of India as in the future many people will be investing in the real estate sector.

- Project applied for Registration – 6514
- Agent Registration – 3735
- Complaint Registration - 7680
- Conciliation Registration - 22

Projects under Investigation (In the case of Unregistered Projects)

The public is informed that these projects are not registered with RERA and are under Investigation. The public is warned that they are dealing with these projects is at their own risk as these are not registered with the RERA.

9.3 Important Definitions under RERA

Affordable residential apartment

As per Notification No. 11/2017 and 1/4/2019, the term “affordable residential apartment” shall mean a residential apartment in a project which commences on or after 1/4/2019, or in an ongoing project in respect of which the promoter has not exercised an option in the prescribed form to pay central tax on construction of apartments at the rates as specified for items (i.e.) or (if) against serial number 3, as the case may be, having carpet area not exceeding 60 square meters in metropolitan cities or 90 square meters in cities or towns other than metropolitan cities and for which the gross amount charged is not more than Rs 45 lakh.

Apartment

An “apartment” shall have the same meaning as assigned to it in section 2(e) of the Real Estate (Regulation and Development) Act, 2016 [RERA]-clause (xiv) of paragraph 4 of Notification Nos. 11/2017-CT (Rate) and 8/2017-IT (Rate) both dated 28-6-2017 inserted w.e.f.1-4-2019.

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

Promoter

“Promoter” shall have the same meaning as assigned to it in section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 [RERA] – clause (xvii) of paragraph 4 of Notification Nos. 11/2017-CT (Rate) and 8/2017-IT (Rate) both dated 28-6-2017 inserted w.e.f.1/4/2019.

RERA defines ‘promoter’ as follows –

‘Promoter’ means,

- A person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees,
- 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 structure thereon
- Any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of

attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale.

- Such a person who constructs any building or apartment for sale to the general public.

Real Estate Project (REP)

The term “Real Estate Project (REP)” shall have the same meaning as assigned to it in section 2(zn) of the Real Estate (Regulation and Development) Act, 2016[RERA] – clause (xviii) of paragraph 4 of Notification Nos. 11/2017-CT (Rate) and 8/2017-IT (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

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

Residential Real Estate Project (RREP)

The term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP – clause (xix) of paragraph 4 of Notification Nos. 11/2017-CT (Rate) and 8/2017-IT (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

Common buildings cannot be considered for purpose of 15% commercial apartments. In any real estate project, there are some common buildings like security offices, club houses, temples, security cabin, libraries etc. for use of all members of society. These cannot be considered for limit of 15%, as these are not ‘commercial apartments’. These are not for sale.

Ongoing project

As per clause (xx) of paragraph 4 of Notification Nos. 11/2017-CT (Rate) and 8/2017-IT (Rate) both dated 26-6-2017 inserted w.e.f. 1-4-2019, the term “ongoing project” shall mean a project which meets all the following conditions, namely-

- a) Commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31/3/2019, and it is certified by any of the following that construction of the project has started on or before 31/3/2019
- An architect registered with the Council of Architecture constituted under the Architects Acts, 1972 (20 of 1972)
 - A chartered engineer registered with the Institution of Engineers (India).
 - A licensed survey or the respective local body of the city or town or village or development or planning authority.
- b) Where a 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 the sub-clause above that construction of the project has started on before 31/3/2019.
- c) Completion certificate has not been issued or first occupation of the project has not taken place on or before 31/3/2019.
- d) Apartments being constructed under the project have been, partly or wholly, booked on or before 31/3/2019.

Commencement Certificate

“Commencement Certificate” means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on immovable property, as per the sanctioned plan- clause (xxi) of paragraph 4 of Notification Nos. 11/2017-CT (Rate) and 8/2017-IT (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

Development Works

“Development works” means the external development works and internal development works on immovable property – clause (xxii) of paragraph 4 of Notification Nos. 11/2017-CT (Rate) and 8/2017-IT (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

As per section 2(t) of the Real Estate (Regulation and Development) Act, 2016 [RERA], development works means the external development works and internal development works on immovable property.

“External development works” includes roads and road systems landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws”.

“Internal development works” means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provisions for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as education, health and other public amenities or any other work in a project for its benefit, as per sanctioned plans.

Carpet Area

The term “Carpet Area” shall have the same meaning assigned to it in section 2(k) of the Real Estate (Regulation and Development) Act, 2016 [RERA] – clause (xxvi) of paragraph 4 of Notification Nos. 11/2017-CT (Rate) and 8/2017-IT (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

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

Real Estate Regulatory Authority

The term “Real Estate Regulatory Authority” shall mean the Authority established under section 20(1) of the Real Estate (Regulation and Development) Act, 2016 [RERA] by the Central Government or State Government – clause (xxvii) of paragraph 4 of Notification Nos. 11/2017-CT (Rate) and 8/2017- IT (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

Floor Space Index

“Floor Space Index” shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built – clause (xxxix) of paragraph 4 of Notification Nos. 11/2017 – CT (Rate) and 8/2017- IT (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019. Floor Space Index (FSI) refers to the quotient obtained by dividing the total Built- Up Area (BUA) of all floors by the plot area.

Floor Area Ratio (FAR) is similar in concept to the FSI. The FSI value of 1 can be represented as 100 % FAR.

TDR certificate/ Development Rights Certificate (DRC) is a certificate issued by the competent authority to an owner or a lessee of the land on surrender of the gross ‘area’ of the land which is required for public purpose. Such an ‘area’ of land must be free of cost and free from all encumbrances. The certificate comprises details like FSI/FAR credit in square meters of the built-up area to which the owner or lessee is entitled, the place from where it is generated and the rate of that plot as prescribed in the Annual Statement of Rates issued by the Registration Department or other concerned department for the concerned year.

10) Taxes before GST implementation

Before the GST came into force, a variety of state and Central taxes were imposed on buildings, throughout the course of the construction of a housing project. While these taxes increased the cost of project development for developers, no credit against this tax was available to the builders against the output liability. Some of the taxes that real estate developers had to pay before the GST came into force included Value Added Tax (VAT), Central Excise, Entry Tax, Octroi, Service Tax, etc. The cost incurred on these taxes by builders, was then transferred to the property buyer. Moreover, as buyers had very little clarity over the various taxes, and the applicable rates, developers were also in a position to manipulate numbers, to keep the deal to their best advantage. For a common buyer, it would have been an uphill task, to find out the VAT, Central Excise, Entry Tax, Octroi and Service Tax rate applicable to property construction.

Table 2: History of Indirect taxes applicable on real estate sector

Period	Tax Regime
01-07.2010 to 30-06-2012	Service tax – Positive list-based taxation of Services levied by the Central Board of Indirect Taxes and Customs and Value Added Taxes levied by the State Commercial Taxes Department
01-07-2012 to 30-06-2017	Service tax –Negative list-based taxation of Services levied by the Central Board of Indirect Taxes and Customs and Value Added Taxes levied by the State Commercial Taxes Department
01-07-2017 to 31-03-2019	GST- Old scheme of Taxation
01-04-2019 Onwards	GST- Amended scheme of taxation post-issuance of notification no.03/2019-CT® dated 29-03-2019

(Source: Taxguru.in)

10.1 Value Added Tax (VAT) (on real estate before 1/7/2017)

A Value-Added Tax (VAT) is a type of tax that is levied on goods at each stage of value addition in a supply chain value incrementally. It is levied on the price of a product at each stage of production, distribution, or sale to the end consumer. If the ultimate consumer is a business that collects and pays the government VAT on its products it can reclaim the tax paid. VAT is an indirect tax because the person who ultimately bears the burden of the tax is not necessarily the same person as the one who pays the tax to the tax authorities.

There are two main methods of calculating VAT: the credit-invoice or invoice-based method and the subtraction or accounts-based method. In the credit-invoice method, sales transactions are taxed, the customer is informed of the VAT on the transaction, and businesses may receive a credit for the VAT paid on input materials and services.

10.2 Works contract under VAT

The contract being one indivisible contract, it cannot be broken up to levy VAT on the sale of goods involved in the execution of the works contract. This decision led the government to amend the Constitution of India and insert Article 366(29A) (b) which enabled the state governments to levy a tax (VAT) on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

Tax structure under VAT on the real estate sector special in construction industry

In this case, movable/immovable are both under VAT under the category of the work contract.

Deduction under works contract

The taxable turnover leviable to tax on the works contract of construction of the building was arrived at after deducting the eligible turnover from the total turnover and determining the taxable turnover thereof.

Clause (m) of Rule 3(2) prescribes deduction towards labour and like charges 'as a percentage of the value of the contract' in the execution of a works contract when such charges are not ascertainable from the books of accounts maintained by a dealer. This deduction towards labour and like charges was to be allowed on the turnover after deducting the VAT collected.

The assesses were allowed 30 percent of the total turnover which includes the taxes collected, as a deduction towards labour and like charges. However, for the same total turnover, the CBIC used to give deduction towards the cost of goods at 60% and labour, and like charges at 40% of total turnover were being taxed under Service Tax Act. Further, the Value Added Tax Act provided a composition scheme to levy tax at the rate not exceeding five percent on the entire total turnover for works contracts without allowing any deduction from the total turnover irrespective of such total turnover.

11) Tax on real estate (before 1/4/2019)

As per Notification No. 11/2017-Central Tax (Rate) New Delhi, the 28th June, 2017, Sl. No. 3 sub clause(2) Heading 9954 and column No. 3 (Construction services) means, 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 the completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

In the case of a supply of service specified in column (3) of the entry in construction services, involving the transfer of property in land or undivided share of land, as the case may be, the value of supply of service 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

Under GST a single rate of 12% is applicable on under construction properties whereas no GST is applicable on completed or ready to sale properties only if the Completion Certificate (CC) has been issued.

Table 3: Taxes on real estate before 1/4/2019

Particulars	Old Scheme
Residential Projects	<ul style="list-style-type: none"> • Affordable 8% • Non-Affordable 12% (with ITC)
Commercial Projects	12% with ITC
Mixed Projects (RREP)	<ul style="list-style-type: none"> • Residential Affordable 8% • Residential Non-Affordable 12% • Commercial 12% (with ITC)
Mixed Projects (REP)	<ul style="list-style-type: none"> • Residential Affordable 8% • Residential Non-Affordable 12% • Commercial 12% (with ITC)
Sale of completed flats Post CC	Not liable to GST

(Source: Taxguru.in)

12) Tax on real estate (After 1/4/2019)

GST rates on real estate on or after 01st April 2019 in the 33rd GST Council meeting dated 24.02.2019 following rates revision for residential apartments are recommended and are finalized in the 34th GST Council meeting dated 19.03.19 applicable from 01.04.2019:

1. GST @ 1.5% (Effective rate 1% after deducting Land Cost) without ITC for affordable residential apartments.
2. GST @ 7.5% (Effective rate 5% after deducting Land Cost) without ITC for residential apartments other than affordable residential apartments.

3. GST @ 12% with ITC for commercial properties (other than specified ones which will attract GST @ 5%).

Notification No. 11/2017-Central Tax (Rate) [Updated version of the Notification No. 11/2017-Central Tax (Rate) [Dated the 28th June, 2017 as amended up to 18.07.2022], Sl. No. 3 sub clause(2) Heading 9954 and column No. 3 (Construction services) means,

In case of supply of service involving transfer of land or undivided share of land, 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, and the value of such transfer of land or undivided share of land, in such supply shall be deemed to be **one-third of the total amount** charged for such supply.

Table 4: New GST rates on the construction of residential apartments

Rate	Description
1%	New affordable housing projects commenced on or after 01.04.2019
1%	Ongoing affordable housing projects as of 01.04.2019 (when the promoter opted for new rates)
5%	Ongoing projects other than affordable housing projects as of 01.04.2019
5%	New projects other than affordable housing projects commenced on or after 01.04.2019
1%	Projects with commercial space < 15% of total carpet area

(Source: ReLakh.com)

In March 2019, the GST Council cut the tax rates to 5% from 12% on residential properties and 1% from 8% for the affordable housing segment. However, ITC benefits will not be available under the new tax rate policy.

Developers of ongoing residential projects had an option to either to continue with the old scheme with ITC or to opt for the new scheme of taxation without ITC. It is to be noted that by exercising the option to pay tax under the new scheme, the developer was required to reverse a certain portion of the total ITC which had been claimed for the project as specified under GST legislation.

Under the new scheme of taxation for the real estate sector, the developer is eligible to claim ITC for commercial projects commencing after 1 April 2019 falling under the real estate project category. Further, in the case of a mixed project where the commercial carpet area is more than 15% of the total carpet area, the developer is eligible to claim ITC with regard to commercial premises only.

However, it is to be noted that such projects also involve amenities like elevators, corridors, etc. which will be used commonly by residential premises as well as commercial premises. No clarity has been provided for a claim of ITC pertaining to such common amenities. A clarification from the government will help avoid litigations in the future.

12.1 GST on Construction:

GST on construction materials has rationalised the taxation system and subsumed various state and Central government taxes. The government also levies GST on construction contracts. Before July 2017, the tax levied on the goods and services was complex, as there were numerous taxes imposed on the goods and their services. However, the introduction of GST has made the process simpler by eradicating excise duties, octroi, VAT, customs duties, etc. The basic needs of the person include food, shelter, and apparel.

Table 5: The different rates of GST on construction materials:

There are varieties of materials used at construction sites, including cement, sand, bricks, marbles, etc. Hence, a proper taxation system was introduced to manage the cost of these goods. However, GST on construction materials varies based on the material used, which still makes the calculations hefty for the dealers and buyers. Here is an overview of these rates:

Material	GST Rates
Sand	Asphaltic rocks, oil shale/bituminous, tar sand, natural asphaltites, asphalt- 18% Natural sand- 5%
Mica	5%
Brick	Fly ash bricks - 12%
Cement	28%
Crushed stones, pebbles, gravel	5%
Granite and marble	Blocks- 12% Not in blocks- 18%

Iron and Steel	18%
Building stones	5%
Tiles	Tiles (earthen or roofing) - 5% Glazed ceramic flags, paving, or wall tiles - 18% <u>Flooring tiles</u> of bamboo – 18%
Coal	5%
Wallpaper and decorative designs	18%
Varnish and Paint	18%
Bathroom interiors and appliances	Pipes and tubes, fitting- 18%
Electrical appliances	The rate applicable to most of the goods is 18% and only for a few it is 28%

(Source: cleartax.in.gst-real-estate-sector)

12.2 Applicability of new GST rates

The new tax rates shall be applicable as follows:-

- 1) 1% of ITC on the construction of affordable houses shall be available for:
 - Houses having an area of 60 sqm in non-metros/ 90 sqm in metros and value up to Rs. 45 lakh.
 - Under-construction affordable houses are presently eligible for a concessional rate of 8% GST (after 1/3rd land abatement).
- 2) 5% without ITC shall be applicable on construction of:
 - Under-construction houses other than affordable houses presently booked prior to or after 01.04.2019. For houses booked prior to 01.04.2019, the new rate shall be available in instalments payable on or after 01.04.2019.
 - Commercial apartments have a carpet area of not more than 15% of the total carpet area of all apartments.

12.3 Conditions of New Tax Rates

- a) No Input Tax Credit.
- b) Reverse ITC should be based on carpet area for supply of construction services.
- c) 80% of value of inputs and inputs services other than TDR, electricity, HSD, motor spirit and natural gas should be purchased from a registered supplier.
- d) Total ITC to be shown as Ineligible ITC in GSTR 3b every month.

- e) RCM should be charged on two rates:
- 18% - for all inputs and input services.
 - 28% - for cement.

f) GST is paid only in cash.

► **80% of the value of input and input services should be received from the registered supplier:**

In each project, the promoter has to procure supplies at least to an extent of 80% of the value of input and input services from a registered supplier in any given financial year or up to the date of issuance of the completion certificate or its first occupation. Wherever in a financial year or at the time of completion certificate/its first occupation (whichever is earlier), such 80% threshold is not met, tax has to be paid by the builder on shortfall @ 18%.

Notwithstanding the above, in cases where cement is purchased from an unregistered supplier (URD), the builder shall be liable to pay tax at applicable rates, i.e., 28 % at present. The same has to be paid month-wise

Table 6: The illustrations to understand the condition of 80% of the value of input

Examples for 80% fulfilment :(Total value of inputs 100lacs)

Sl. No.	Name of input	From registered dealer (in lakh)	From registered URD (in lakh)
1	Sand	10	
2	Steel	20	
3	Cement		15
4	Bricks	15	
5	Tiles	10	
6	Paints	5	
7	Sanitary ware	25	

(Source: Taxguru.in)

Total purchases from registered dealer are Rs.85 lakh. Though the first condition of 80% is fulfilled, the second condition of procuring cement from registered dealer (RD) is not fulfilled. Hence, he has to pay tax @ 28% on cement.

Builders have to remember that the above conditions are required to be met project wise; averaging of all the inputs (in case of more than one project) shall not be done.

For proper understanding of 80% condition, first tax is to be paid on cement, if any, received from Unregistered Dealer. Then such value of cement is to be added to the value of inputs procured from registered dealer and verified whether it satisfies the condition of 80%. Tax at the rate of 18% has to be paid on such short quantity, if any.

► **GST on government housing schemes**

The government has clarified that government-led mega housing projects meant for the common man, will attract only 1% GST under the new regime. These housing schemes include as the Jawaharlal Nehru National Urban Renewal Mission, the Rajiv Awas Yojana, the Pradhan Mantri Awas Yojana and housing schemes of state governments.

► **GST on maintenance charges for housing societies**

Flat owners are liable to pay 18% GST on residential property, if they pay at least Rs.7,500 as maintenance charge to their housing society. Housing societies or residents' welfare associations (RWAs) that collect Rs.7,500 per month per flat, also must pay an 18% tax on the entire amount. Housing societies that have an annual turnover of less than Rs.20 lakhs are, however, exempted from paying the GST. For the GST to be applicable, both conditions should apply – i.e., each member should pay more than Rs.7,500 per month as maintenance charge and the annual turnover of the RWA should be higher than Rs.20 lakhs.

► **GST rent**

- **Tenant is liable to pay GST**

GST-registered tenants, who lease a residential unit will have to pay an 18% tax on the rent amount. An amendment in this regard was announced by the GST Council on July 13, 2022. The new provision applies to individual service providers earning more than Rs 20 lakh in a year and businesses generating an income over Rs 40 lakh annually — in both instances, GST registration becomes mandatory for the individual/business.

- **A landlord is liable to pay GST**

The GST regime treats renting residential property for business purposes as the supply of services. An 18% GST rent on residential flats is charged from the landlord on such rental income under this regime, if the rent amount per year exceeds Rs 20 lakh. In this case, landlords have to register themselves, to pay the GST on their rental income. On letting out of commercial properties, a GST of 18% is levied.

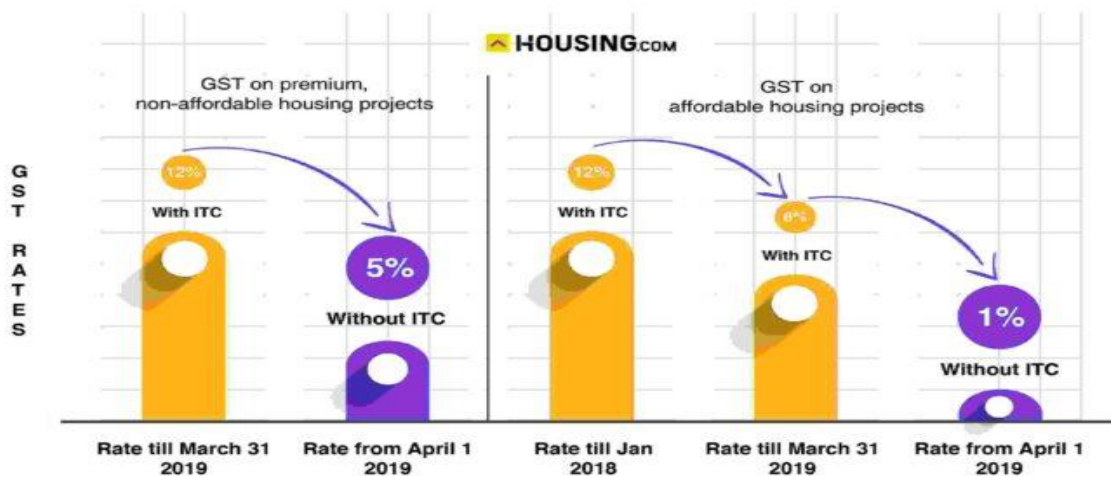
▶ **GST is not applicable on ready-to-move-in flats; it is applicable on under-construction flats only:-**

It is important to note that the GST does not cover the real estate sector under its ambit. The tax rate applicable on property building is charged under ‘work contracts’. This is precisely why a developer cannot charge GST on the sale of ready- to -move in homes. Upon completion and after receiving the occupancy certificate, a property is categorised as ready to move in and is out of the purview of the work contract. In short, the GST would apply on the sale of under-construction properties that have yet to receive the OCs. It also begs mention here that in the previous regime, buyers also had to pay service tax on the purchase of ready-to-move in homes.

▶ **GST is not applicable on land transactions (1/3 rd. of land)**

The sale of land is also outside the purview of the GST on construction services, as the sale does not involve the transfer of any goods or services. As the cost of land is a crucial factor that determines property prices, GST provides a standard abatement of 33% of the total contract the value, towards value of land for taxable real estate transactions.

Figure 1: Rates of GST on affordable housing and non-affordable housing the period between before 1/4/2019 and after 1/4/2019.



(Source: Housing.com)

12.4 Works contract in GST

The works contracts has been defined in Section 2(119) of the CGST Act, 2017 “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 the such contract.”

Under GST laws, the definition of “Works Contract” has been restricted to any work undertaken for an “Immovable Property” unlike the existing VAT and Service Tax provisions where works contracts for movable properties were also considered.

GST has removed the confusion regarding tax treatment. This means the works contract will be treated as a service and tax would be charged accordingly (not as goods or part goods/part services).

No abatement had been prescribed for works contract service under GST. Previously, VAT was payable on the works contract. Service tax was paid @15% on either 40% (on new work) or 70% (on repair and maintenance work). Due to no abatement/ composition being provided, it has led to a significant increase in tax burden, especially since the works contract is taxed at the standard GST rate (which is 18%) and though subjected to a lower tax rate (12%).

► **Value of supply of works contracts**

The value of a works contract service is determined by whether the contract includes a land transfer as part of the works contract. In the case of a service supply involving the transfer of property in land or an undivided share of land, the value of the service and commodities element of the supply shall be equal to the entire amount charged for the supply less the value of the land or undivided share of land, as the case may be.

One-third of the entire price paid for such supply will be deemed to constitute the value of land or an undivided share of land, as the case may be.

► **Place of Supply in respect of Works Contract**

Works contract under GST would necessarily involve immovable property. In view of the same, the place of supply would be governed by Section 12(3) of the IGST Act, 2017, where both the supplier and recipient are located in India. The place of supply would be where the immovable property is located. In case the immovable property is located outside India, and the supplier as well as recipient both are located in India, the place of supply would be the location of the recipient as per proviso to Section 12(3) of the IGST Act, 2017. As per Section 13(4) of the IGST Act, 2017, in cases where either the supplier or the recipient is located outside India, the place of supply shall be the place where the immovable property is located or intended to be located.

► **Availability of composition scheme to works contractors**

The composition scheme is available to works contractors from April 2019 provided turnover is up to Rs.50 lakhs. Earlier, the composition scheme was not available to service providers and was opening only available to suppliers of goods. This was a big blow to the small sub-contractors who cannot opt for the composition scheme. They were forced to register for the normal taxation scheme increasing their compliances and costs. With the composition scheme extended to service providers, small service providers can benefit.

12.5 GST is applicable on transfer of development rights, FSI and long-term lease of land:-

- Supply of TDR or FSI or long term lease of land used for the construction of residential apartments in a project that is booked before issuing 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 the 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 the 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 an 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 the supply of the TDR or FSI or long-term lease of land used in the new projects where a new rate of 1% or 5% is applicable

A person liable to pay GST on TDR and floor space index

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

I. The promoter should discharge its tax liability on TDR.

The liability to pay GST on development rights shall arise on the date of completion or first occupation of the project, whichever is earlier. Therefore, the 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 the completion certificate, or first occupation of the project.

II. The promoter should discharge its tax liability on FSI (including additional FSI).

On FSI received on or after 1.4.2019, the promoter should discharge his tax liability on FSI as under:

- (i) In the case of a supply of FSI wherein consideration is in form of construction of commercial or residential apartments, liability to pay tax shall arise on the date of issuance of completion certificate.
- (ii) In the case of supply of FSI wherein monetary consideration is paid by promoter, liability to pay tax shall arise on date of issuance of the completion certificate only if such FSI is relatable to the construction of residential apartments. However, liability to pay tax shall arise immediately if such FSI is relatable to the construction of commercial apartments.

III. The promoter should discharge its tax liability on the supply of long-term lease.

On long-term lease received on or after 1.4.2019, the promoter should discharge his tax liability on long-term lease as under:

In case of supply of long-term lease of land for the construction of commercial apartments, tax shall be paid by the promoter immediately. However, for the construction of a residential apartment, the liability to pay tax on the upfront amount payable for long-term lease shall arise on the date of issuance of the completion certificate.

- **The GST on the transfer of development rights service falls under the reverse charge mechanism (RCM).** In simple words, the developer to whom the TDR GST has been supplied will be liable to pay GST.

12.6 Resident Welfare Associations are registered under the Societies Registration Act 1860. Every state in India may have a lot of amendments that differ from one another and keep changing with time as well. When a building is registered under the Societies Registration Act, the RWAs are governed by certain constitutional documents and cannot work as per their own will.

- Maintenance charges paid by residents to the Resident Welfare Association are exempt up to Rs.7,500. In case the amount charged exceeds Rs.7,500 per month per member, GST is chargeable on the entire amount charged.
- The RWA is not required to take registration and charge GST since its aggregate turnover does not exceed Rs.20 lakh (or Rs.40 lakh or Rs.10 lakh, as applicable) in the financial year even if the amount of maintenance charges exceeds Rs.7,500 per month per member. Further, the registration and charging of GST would not be required where the aggregate turnover exceeded Rs.20 lakh in a financial year, but the monthly maintenance charges were up to Rs.7,500 per member.
- Where a person owns two or more flats In the general business sense, the limit of Rs.7,500 per month per member shall apply separately to each apartment owner and not per member living in the apartment. It is because the person is considered a member of the RWA for each apartment separately.
- **GST on maintenance charges by the builder**

The builder is the one who is responsible for maintenance of the society he can charge GST on maintenance. The builders charge advance maintenance charges for a year or two from the residents. They can also charge GST if the property is under construction and RWA has not been formed yet.

12.7 On-going projects – options available with the developer and not with the buyer

As per the new scheme of taxation for real estate projects, the developers of under-construction projects / ongoing projects as on 31 March 2019 had an option either to continue with the old rates at 12% / 8% with ITC or to shift to the new 5% / 1% rates without ITC. The developer who opted to continue with the old rate and was required to communicate the same to GST Authority by 20 May 2019.

As a layman, every home buyer would be willing to avail the benefit of a reduced rate on the purchase of a flat without considering the impact of increase in the cost of the developer due to restriction of ITC. The buyer does not have the eligibility to exercise an option to pay tax at the new or old rates. It is the developer, who has to exercise the option to pay tax on the construction of residential apartments at the old rate of 12% with ITC. If the builder does not exercises his option to continue to pay tax at the old rate by the specified date, then the effective GST rate applicable on all future instalments payable to the developer on or after 01.04.2019 as per the contract shall be either 1% or 5% (without ITC benefits), depending on whether the apartment is an affordable or other than an affordable residential apartment.

Additional liability under RCM:

- The developer is required to maintain project-wise records of purchases from registered and unregistered person. This will have a significant impact on compliance costs.
- The developer will be liable to pay tax @ 18% even in case of purchase of goods or services from Unregistered Person (URP) which may be otherwise taxable at a lower rate of tax. E.g. – Sand, Bricks, Wood, etc.
- Purchase of exempted supply from URP. In FAQ (Part II), it was clarified by CBIC that the same is to be included in the calculation threshold limit. This will further increase the cost of the project, as ITC of the same is not available.

12.8 Mixed Project – Limitation of 15%

In the case of a mixed project, where the carpet area of commercial premises is less than 15% of total carpet area, a developer can discharge GST at 5% without ITC even for commercial premises. However, in case, the carpet area of commercial premises exceeds 15% of total carpet area, the developer has to discharge GST at 12% with ITC.

Hence, in a mixed project, the scheme of taxation for commercial premises depends on the ratio of the carpet area of commercial premises to total carpet area of the project. Due to any unexpected circumstances, eventually, if such a ratio changes and results in carpet area of commercial premises being more than 15% of the total carpet area, the entire calculation of cost and profitability will go haywire. Further, the benefit of ITC will also be limited due to time limit to claim ITC by return for the month of September of the succeeding F.Y.

12.9 Joint Development Agreement

A Joint Development Agreement (JDA) is one wherein the landowner gives development rights of the land owned by him to a developer and in return the developer undertakes the responsibility for the development of the property. In a JDA, developer may pay consideration to landowner in following the forms;

- Consideration in kind i.e. in the form of Percentage of Developed Area.
- Monetary consideration either as a lump sum amount or Percentage of Sales Revenue.
- Part consideration in kind and part consideration in money.

There have been many pressing issues on the indirect tax front in the real estate sector and more so in case of JDA. In the pre-GST regime, there was no tax to be levied on transfer / sale of Transferable Development Rights (TDR) and Floor Space Index (FSI) as it was considered akin to the sale of immovable property. However, as per FAQ issued by GST authorities, the activity of transfer of development rights by a landowner (whether an individual or promoter) is a supply of service subject to GST.

Under this model, the land owner and builder / developer join hands and may either create a new entity or otherwise operate as an unincorporated association, on partnership/joint/collaboration basis, with mutuality of interest and to share common risk/ profit together. The new entity undertakes construction on behalf of land owner and builder /

developer. They may form a separate legal entity or they may operate as UJV (Unincorporated Joint Venture) and in such a case, GST will be payable.

GST implications on the transfer of development rights by the landowner to the developer

Table 7: A GST implication on the transfer of TDR and FSI

Particulars	Complete Commercial Project	Mixed Project with Commercial > 15% of total carpet area	Mixed Project with Commercial < 15% of total carpet area
Commercial Premises	Tax @ 18% under RCM payable by Developer. ITC of the same eligible	Tax @ 18% under RCM payable by Developer. ITC of the same eligible	Tax @ 18% under RCM payable by Developer. ITC of the same ineligible
Residential Premises	N.A.	Exempt in case of all the Flats sold before cut-off date ²	Exempt in case of Flats sold before cut-off date ²
Common Areas	N.A.	No Clarifications have been provided	No Clarifications have been provided

(Source: Taxmann.com)

12.10 GST implications on consideration paid by developer to landowner against the transfer of development rights

a. Consideration in kind

In the given case, The developer transfers a certain percentage of the developed area to landowner as a consideration against the Transfer of Development Rights. The developer is required to discharge tax at applicable rate i.e. either at an effective rate of 1% (affordable house), 5% (residential) or 12% (commercial), depending on the nature of the premises so transferred. However, tax is required to be discharged on the total amount charged to independent buyers for similar premises which is nearest to the date of transfer of TDR / FSI, after deduction of the value of land i.e. 1/3rd of total consideration.

It may be argued that the value of construction service provided by the developer to the land owner should be either equal to the value of the land or the construction cost incurred. Also, the value for individual flats to the buyer may not be compared with value of flats given in bulk to the land owner.

In the case of JDA, the developer's role is like a works contractor for the land owner and hence, GST, if any, shall be leviable on the cost of construction and not on the total amount charged to independent buyers for similar premises which are nearest to the date of transfer. This may lead to litigations in the future.

Further, the landowner is eligible to claim ITC of such GST charged by the developer only if output tax liability on the sale of such premises is higher than the ITC so availed.

b. Consideration in Money

In the case where consideration is wholly or partly paid in money, there is no supply of any goods or services or both by the developer to landowner and hence, there will not be any GST implications on it from the developer's perspective.

12.11 Government policy

In the span of two years, the government has brought a lot of changes to bring the real estate sector under the purview of GST. Earlier, the burden of the tax was fixed on the buyers but the recent decision of the GST council regarding the rates of GST has actually caused a change of business where the shift was made from the consumer to the developer as ITC will not be allowed in the case of affordable housing and residential property other than affordable housing. The government has realized that despite there being a provision for anti-profiteering in the GST law, the benefits of input tax credit has not been transferred to the ultimate consumers.

12.12 Anti-Profiteering

Anti-profiteering provisions under the GST mandate pass on the tax benefits arising from GST to the customers by way of commensurate price reductions. However, no methodology has been prescribed for the same. Recently, a penalty of 10% of the profiteered amount was also notified by government if there is a delay in payment of the profiteered amount for more than 30 days.

Unlike other sectors, the real estate sector will be required to carry out anti-profiteering studies twice to ensure benefits have been commensurately passed on. The first study was on 1 July 2017 ie at the time of transition from erstwhile indirect tax laws to GST and the second study was on 1 April 2019 on conversion from the old scheme of taxation to the new scheme of taxation. Further, the industry will have to keep track of frequent changes that may have an impact on the cost of the project.

12.13 Deemed valuation of land:

The reduced rate of 1% without input credit on the construction of affordable houses and 5% on the construction of other than affordable houses is the effective rate after considering the 33% deemed deduction for the value of the land. This one-third deemed deduction on account of transfer of land or undivided share of land is irrespective of the actual value of the land transferred. However, the said deemed deduction is not available when there is no transfer of land or undivided share of land.

The issue here is that in metro cities, at times, the value of the land exceeds the value of the construction. In such a scenario, only 1/3 deemed deduction is not justifiable.

12.14 Credit note within 6 months from end of financial year

Under GST legislation, a taxpayer can adjust his tax liability if he declares the details of the credit note in the return latest by September following the end of the Financial Year in which such a supply was made, or the date of furnishing of the relevant annual return, whichever is earlier.

However, in real estate sector, construction service is a 'continuous supply of service' requiring 3 to 5 years for completion. However, due to this time limit of September's return, developers could get only six months after end of the year to issue credit note. The aforesaid provision leads to practical challenges for builders /developers to take benefit of the reduction of tax liability on account of credit note issued after 6 months from the end of the financial year.

In view of the above, the cost of GST paid on flat cancelled is either required to be borne by developer or the buyer. This GST cost could be an area of dispute between developers and property buyers.

13) GST impact on real estate

13.1 Impact of GST on buyers

Under the earlier tax regime, buyers had to pay VAT, service tax, registration charges & stamp duty on the purchase of properties under construction. Also since VAT, registration charges and stamp duty were state levies, prices of properties varied from state to state. Moreover, developers had to pay various duties like sales tax (CST), customs duty, octroi etc. for which credit was not available. Under GST, a single tax rate of 5% is applicable on properties under construction while GST is not applicable on completed or ready to sell properties which was the case in the previous law. Hence buyers are benefitting from the reduction of prices under GST.

13.2 Impact of GST on developers / builders / contractors

Under the previous tax regime, developers had to bear excise duty, VAT, customs duty, entry taxes etc. on raw materials / inputs and service tax on various input services like approval charges, architect's professional fees, labour charges, legal charges etc. ITC was not available for duties like CST, customs duty, entry tax etc. This would impact the pricing and subsequently the burden was transferred to the buyer.

Under GST, developers' construction costs are significantly reduced as multiple taxes are subsumed and due to the availability of input tax credit. Also, reduction in cost of logistics will be an added benefit. Hence developers may see improvement in margins.

On the downside, developers have to do multiple calculations to arrive at ITC in order to pass it on to the buyers. Hence, in most cases, they can pass on the ITC only during the final stages. This lack of transparency on ITC may affect the developers since buyers may resort to a "wait and watch" approach and defer the buying decision.

13.3 Impact of GST on other stakeholders

The impact on the allied services like labour, material suppliers, service suppliers etc. depends on the increase or decrease in the tax levied on these goods and services. This will have a consequential impact on real estate industry as a whole.

Table 8: An illustration of GST calculation on affordable property before 31.03.2019 and after 01.04.2019

Here's a look at how to calculate GST on flats' purchase in the affordable housing segment, before and after the change in rate in April 1, 2019:

Affordable housing	GST on affordable housing before April 1, 2019	GST on affordable housing after April 1, 2019
Property cost per sq. ft.	Rs. 3,500	Rs. 3,500
GST rate on flat purchase	8%	1%
GST	Rs. 280	Rs. 35
ITC benefit for material cost of Rs 1,500 at 18%	Rs. 270	Not applicable
Total	Rs. 3,510	Rs. 3,553

(Source: cbic.gov.com)

Table 9: An illustration of impact of GST on luxury property

Under the new GST rates, buyers of luxury properties will save more than they would have earlier. Here's a look at how to calculate GST on flat purchase in the luxury segment:

Luxury housing	Before April 1, 2019	After April 1, 2019
Property cost per sq ft	Rs 7,000	Rs 7,000
GST rate on flat purchase	12%	5%
GST	Rs 840	Rs 350
ITC benefit for material cost of Rs 13,000 at an average of 15%	Rs 126	Not applicable
Total	Rs 7,714	Rs 7,350

(Source: cbic.gov.in)

14) Conclusion

In the pre-GST regime, the builder or developer had to deposit several indirect taxes collected from the customer. But GST has reduced the cascading effect. It is observed that the implementation of GST has brought in transparency in the indirect tax structure on real estate and the tax burden is being reduced as envisaged. Further rationalisation of the tax structure from 1.4.2019 on real estate has further reduced the tax burden and made the pricing of real estate more competitive. Buyers are benefitting from the reduction of prices under GST. Construction costs are significantly reduced as multiple taxes are subsumed and due to the availability of input tax credit. Also, reduction in cost of logistics will be an added benefit. Hence developers / builders / contractors are experiencing improvement in their compliance to GST laws because of the IT driven online system and thereby there are increased margins for them. Thus, there has been a considerable gain in the real estate sector by the implementation of GST and it is more evident after the sweeping rationalisation changes in the tax structure and rates of GST effected after April 1, 2019.

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15)Bibliography

- 1) Manisha Patawari (2020), “Impact of Goods and Services Tax on Real Estate sector in India”, *International Journal of Law Management & Humanities*, [ISSN 2581-5369], Volume 3, Issue 5.
- 2) C.A. Pritam Mahure (2019), “GST on Real Estate Law & Procedure”, Bharat Law House, Delhi, ISBN-10, January 2019.
- 3) <https://www.ibef.org/industry/indian-real-estate-industry-analysis>.
- 4) Niraj Dhar Dubey | Dr Devesh Kumar | Sitaram Pandey (2017), "An Enquiry into the Effect of GST on Real Estate Sector of India" Published in *International Journal of Trend in Scientific Research and Development (ijtsrd)*, ISSN: 2456-6470, Volume-1 | Issue-6, October 2017, pp.1001-1005.
- 5) Rajkumar Kankariyal and Dr. Anil Dongre (2019), “A Study of Impact GST on Real Estate Sector in India”, *International Journal of Research in Engineering, IT and Social Sciences*, ISSN 2250-0588, Volume 9, Special Issue, March 2019.
- 6) <https://www.taxmann.com/blogpost/2000001797/is-real-boost-given-to-the-real-estate-sector.aspx>.
- 7) <https://cleartax.in/s/gst-real-estate-sector-affect>
- 8) <https://www.cbic.gov.in/>
- 9) <https://housing.com/>
- 10) <https://taxguru.in/>
- 11) <https://www.nobroker.in/bangalore>
- 12) <https://economictimes.indiatimes.com/>
- 13) <https://rera.karnataka.gov.in/>
- 14) <https://www.gst.gov.in/>
- 15) <https://gstcouncil.gov.in/>
- 16) *[Five Years Of GST - GST@5.pdf \(cbic.gov.in\)](#)
- 17) [GST on flat purchase & real estate : Rates in 2022, impact on home buyers \(housing.com\)](#)

18) Books

- Taxman's GST (2018 addition) by CA Raj K Agrawal.
- Taxman's GST on Works Contract and Real Estate Transactions.
- Taxman's GST on Builders and Real Estate Transactions.
- The Real Estate (Regulation & Development) Act, 2016, Ameya Publications.
- The Karnataka Value Added Tax Act, 2003 – KARNATAKA LAW JOURNAL PUBLICATIONS (2008-09 11th Edition).
- The Karnataka Value Added Tax Act, 2003 – KARNATAKA LAW JOURNAL PUBLICATIONS (2015-16 31st Edition).