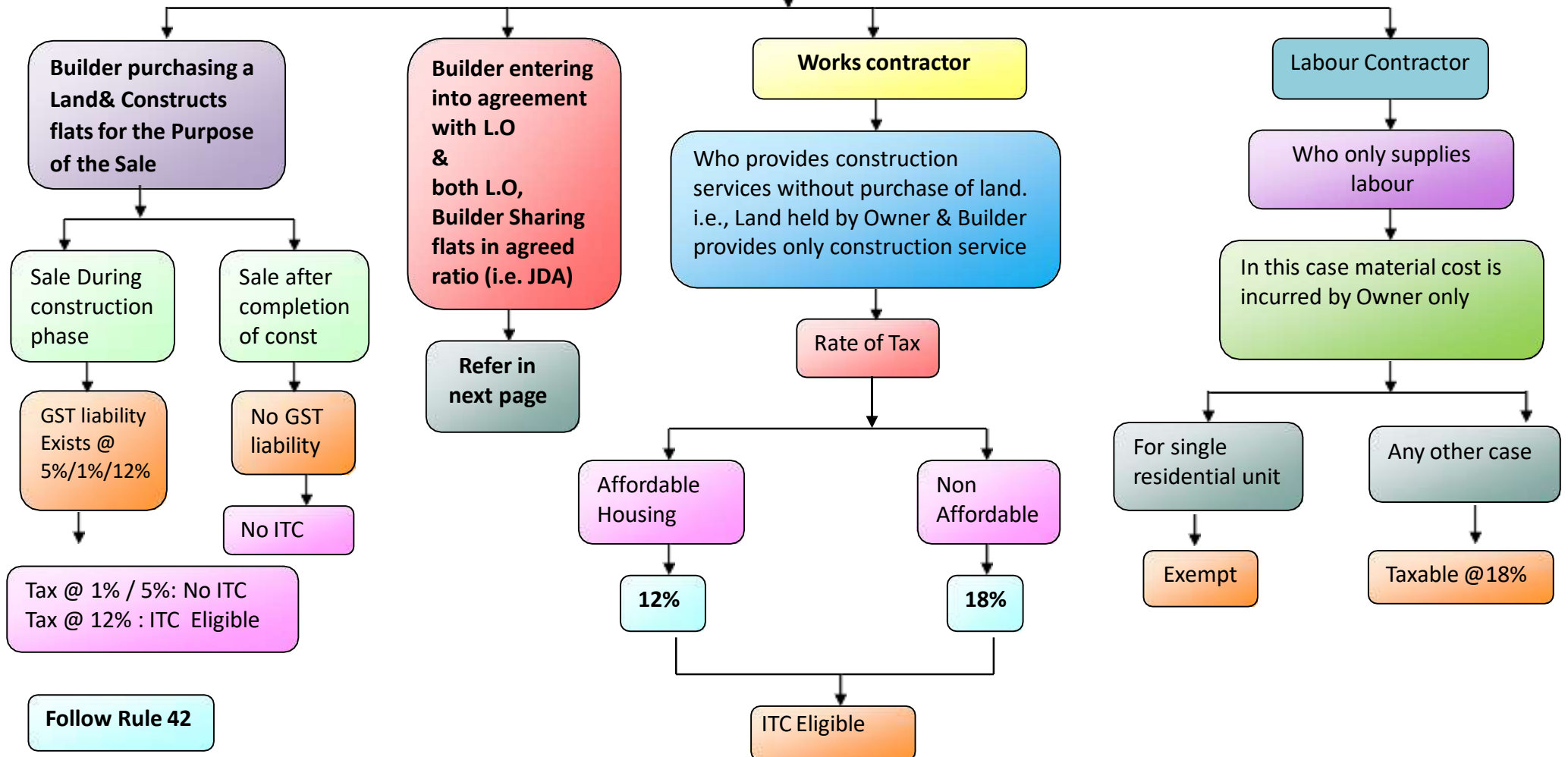




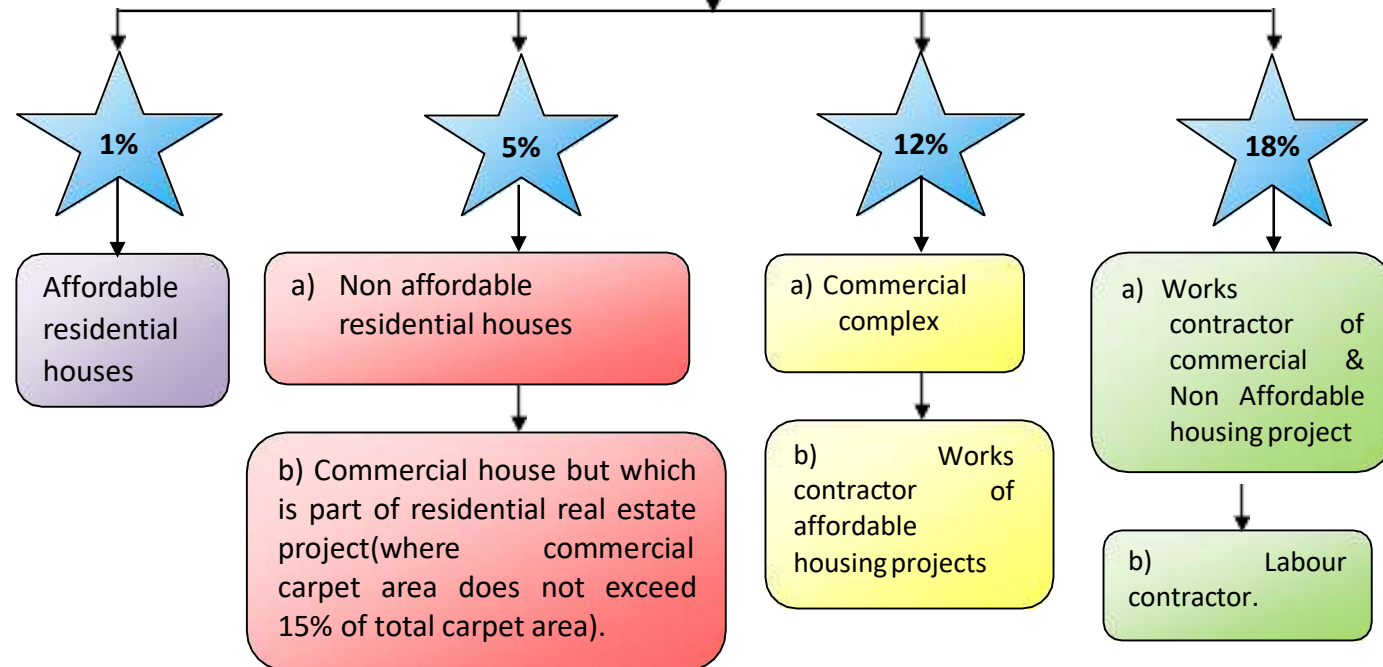
**GST ON REAL ESTATE &
CONSTRUCTION SECTOR**
with an integrated case study
on Joint Development
Agreement (JDA)

REAL ESTATE SECTOR

TYPES OF CONSTRUCTION PROJECTS & IT'S TAXABILITY

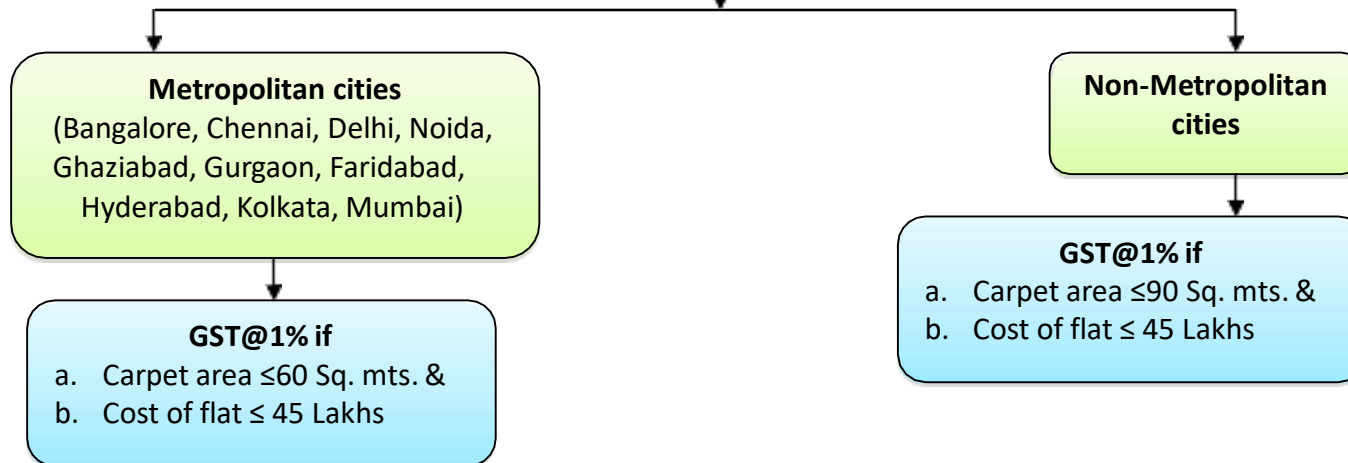


TAX RATES IN CASE OF REAL ESTATE SECTOR (w.e.f.01/04/2019)



Meaning of Affordable Residential house

Affordable Housing Properties



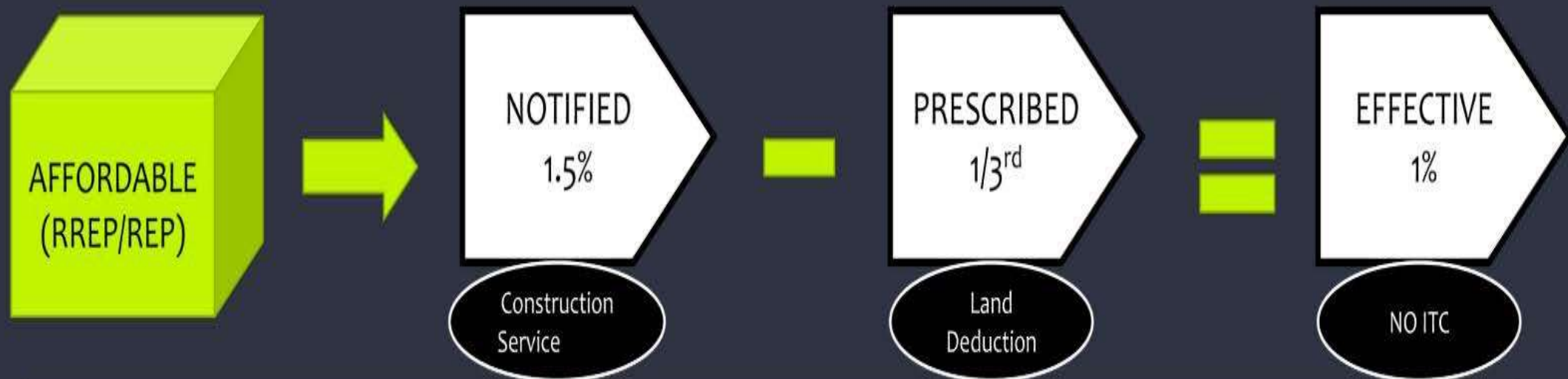
90 Sq. Meters = 107.6391 Sq Yards = 968.752 SFT
60 Sq. Meters = 71. 7594 Sq. Yards = 645. 835 SFT

Note 1: On commercial Properties GST@12% (old rate) continues

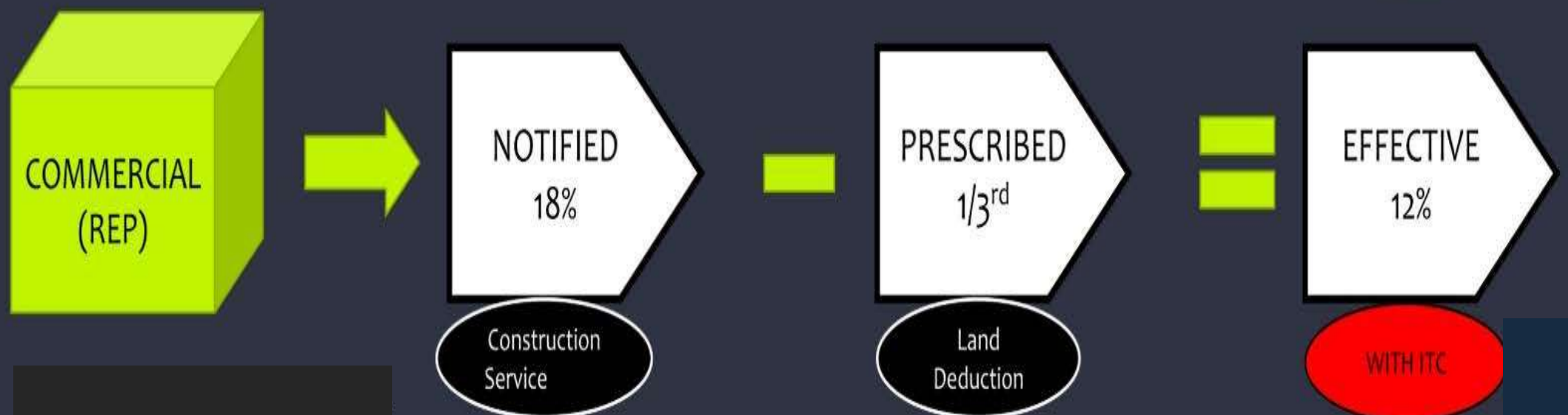
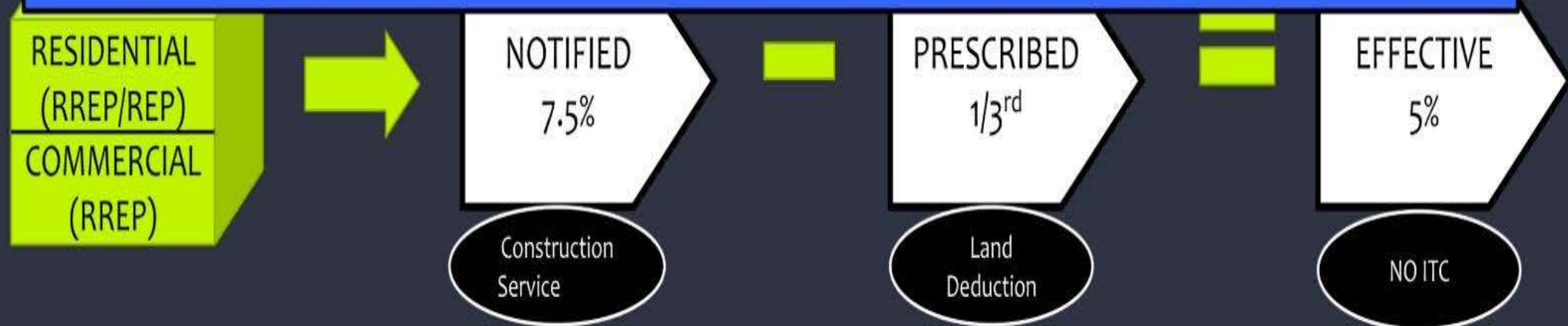
Note 2: If building-Residential or Commercial or sold after construction then NO GST (old provision only)

NEW RATES OF GST W.E.F. 01/04/2019

RATES OF TAX – N/N. 11/2017 CT(R)



$\frac{1}{3}$ rd abatement towards value of land is prescribed in **Para 2 of N/N. 11/2017 CT(R)** dated 28.06.2017





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 open terrace area, but **includes** the area covered by the internal partition walls of the apartment.

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 per cent of the total carpet area of all the apartments in the REP;”



CONSTRUCTION SERVICE

Entry 5(b) of Schedule II (ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES)

- Construction of a complex, building, civil structure or a apart 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.

Entry 5 of Schedule III (neither a supply of goods nor a supply of services)

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

1/3rd abatement towards value of land is prescribed in Para 2 of N/N. 11/2017 CT(R) dated 28.06.2017.

Amendments in GST in real estate sector (Section 9(4))

Earlier, the effective rate of GST on real estate sector was 8%/12% with ITC. With effect from 01.04.2019, the effective rates of GST for the new projects have been brought down to a large extent.

However, the promoters/builders have been given a one-time option to continue to pay tax at the old rates on ongoing projects (buildings where construction and actual booking both have started before 01.04.2019) which have not been completed by 31.03.2019.

New effective rates of GST for the new projects by promoters are as follows

New rate of 1% without ITC on construction of affordable houses (area 60 sq m in metros/ 90 sq m in non-metros and value upto `45 lakh)

New rate of 5% without ITC shall be applicable on construction of

All houses other than affordable houses, and

Commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions: Above tax rates shall be available subject to following conditions

- A. Input tax credit shall not be available.
- B. 80% of inputs and input services used in supplying the service shall be purchased from registered Persons . In case of shortfall, RCM u/s 9(4) @ 18%. However on cement @ 28%

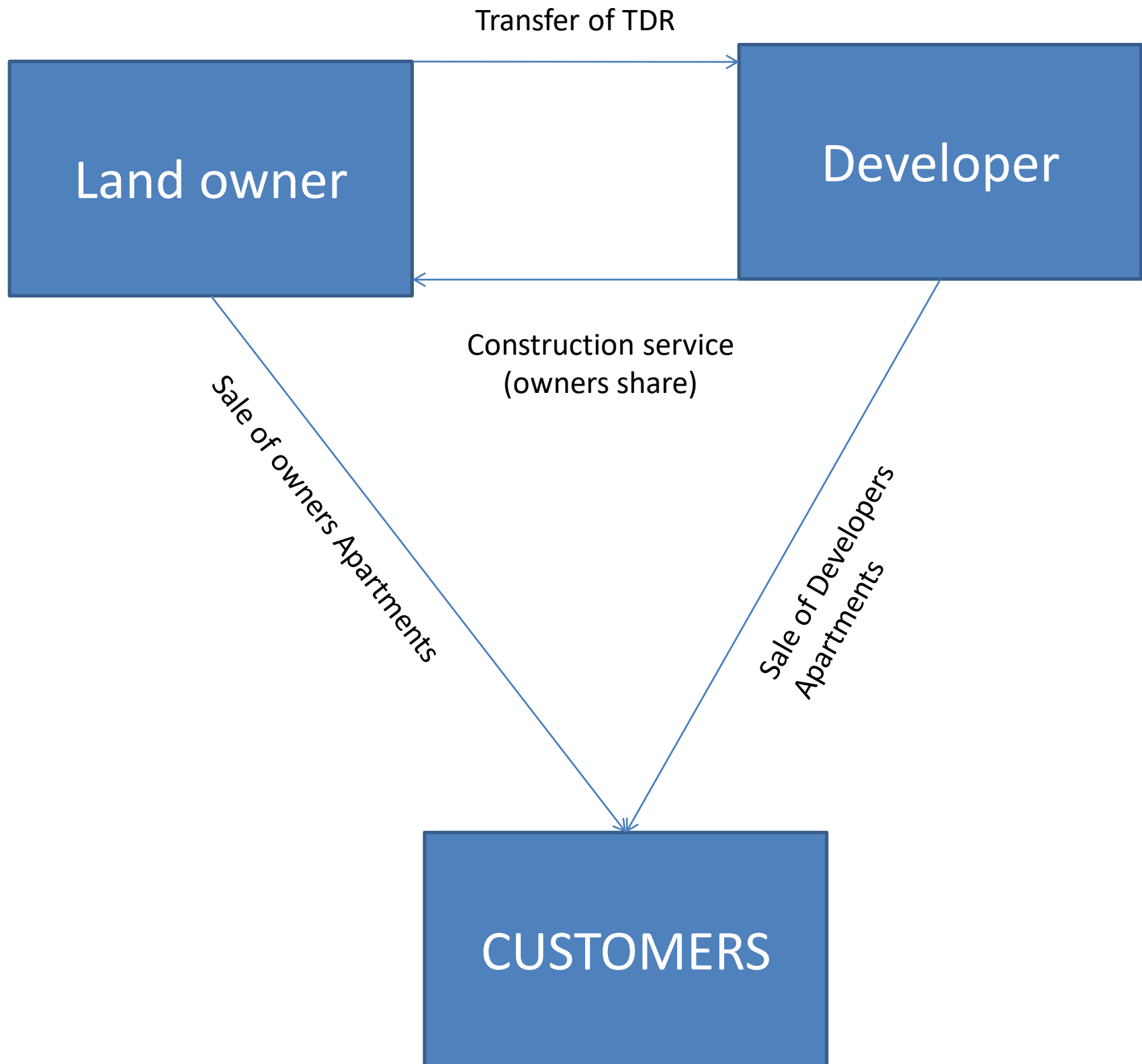
Moreover, GST on capital goods shall be paid by the promoter on reverse charge basis, u/s 9(4) of the CGST Act at the applicable rates

Additional conditions in case of JDA

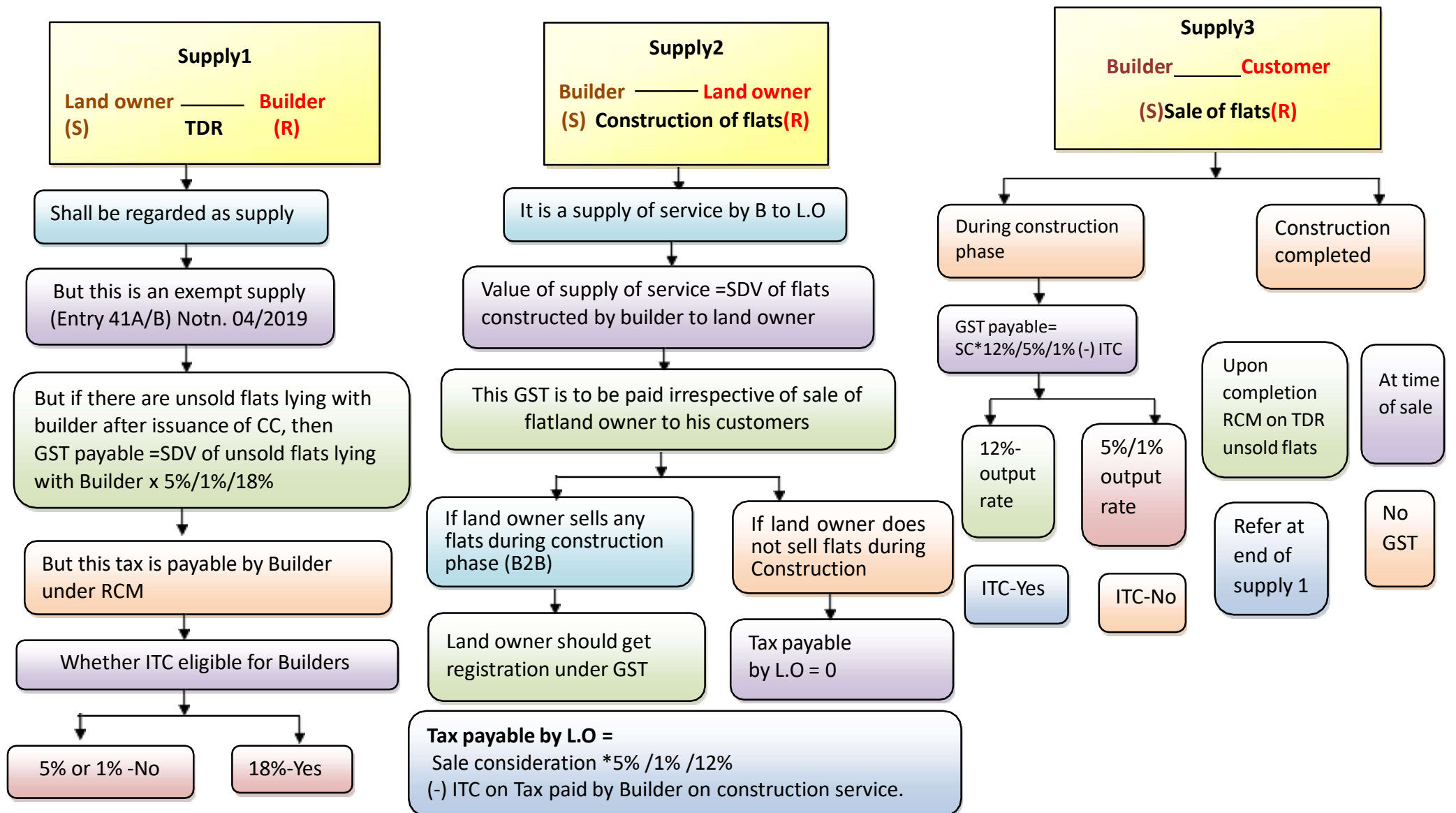
- C. Promotor i.e, Builder is liable to pay GST on construction of houses w.r.t. Landlord share
- D. Upon completion of construction, TDR on unsold portion is liable to GST , but under RCM i.e., Tax to be paid by Promotor(Builder)



JOINT DEVELOPMENT AGREEMENT (AREA SHARING)



TDR & its TAX LIABILITY (w.e.f 01/04/2019)



APPLICABILITY OF SEC 9(4)

NO ITC, lets
purchase from
Unregistered
Dealers...

BUILDER/
PROMOTER

RCM under section 9(4) for Promoter

Minimum value of
purchase from
Registered Person

80%
of the Total Value of
input & input services
purchased.

1. Services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI).
2. Purchase of land and payment of salaries, wages etc. doesn't constitutes supply under GST.

the above shall not be included in the limit of 80%.

Capital goods
purchased from
unregistered person
will be taxable under
RCM
@ applicable rates.

1. Input & input services from composition dealer shall be considered as purchase from registered person.
2. Excess above 80% in any year cannot be utilized/setoff against the shortfall of the next year.

Threshold Limit of
purchase from
unregistered Person

20%
of the Total Value of
input & input services
purchased.

On excess above
20%, tax shall be
payable under
RCM @ 18%

20 % limit is Not Applicable

1. Cement purchased from unregistered person.
 2. Purchase of input and input services liable to tax under section 9(3)
- shall be separately liable to tax under RCM and not includable in the limit of 20%.

28% for
Cement

App. Rates for
9(3)

ILLUSTRATION ON 9(4)

DLF, promoter and builder, bought the following goods:

- (i) Cement purchased from unregistered supplier: ₹ 15 Lakh.
- (ii) Capital goods (18%) purchased from composite dealer: ₹ 20 Lakh.
- (iii) Capital goods (18%) purchased from unregistered supplier: ₹ 10 Lakh.
- (iv) Other input and input services (12%) received from registered supplier: ₹ 62 Lakh.
- (v) Other input and input services (12%) received from unregistered supplier: ₹ 23 Lakh.

Calculate the amount of IGST payable by DLF under forward charge and reverse charge, separately.

Particulars			₹ in lakh
Cement (UR)			15
Capital Goods (R)			20
Capital Goods (UR)			10
Other (R)			62
Other (UR)			23
Total Purchases			130
80% of the total purchases should be from registered supplier (A)			104 [80% X 130]
Actual purchases from Registered Supplier	₹	Deemed purchases from Registered Supplier (as tax is payable under RCM)	₹
Capital Goods	20	Cement	15
Other	62	Capital Goods	10
Total	82	Total	25
Total purchases from Registered Supplier [82+25] (B)			107
As (B) > (A) means satisfying the condition of 80%, there is no shortfall on which tax is required to be paid under RCM.			
Tax payable under FCM	₹	Tax payable under RCM	₹
Capital Goods [20 X 18%]	3.60	Cement [15 X 28%]	4.2
Other [62 X 12%]	7.44	Capital Goods [10 X 18%]	1.8
Total	11.04	Total	6.00

What a real estate dealer should do upon completion of construction?

Amendments in Rule 42 – In case of assessee under business of construction (Notn no. 16/2019-CT dt. 29.03.2019)

- a. D_1 shall be calculated for each project separately
- b. E = Aggregate carpet area of apartments which are exempt from tax
 F = Aggregate carpet area of apartments in the project
- c. E shall include aggregate carpet area of apartments which have not been booked till the date of issuance of completion certificate or first occupation of project, whichever is earlier
- d. While calculating 'E', carpet area of apartment on which tax @1%, 5% is to be paid shall also be included. Because in those cases ITC cannot be availed. If availed, then reversal shall be made under this rule.
- e. D_1 & D_2 shall be reversed either in GSTR 3B or through GST DRC-03

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

Dated the 7th May, 2019, New Delhi

Subject: FAQs on real estate- reg.

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

S.N	Question	Answer
1.	What is a Residential Real Estate Project?	A "Residential Real Estate Project" means a „RealEstate Project" in which the carpet area of the commercial apartments is not more than 15 per cent. Of the total carpet area of all the apartments in the project.
2.	Does a promoter/ builder have to purchase all goods and services from registered suppliers only?	A promoter shall purchase at least eighty percent. of the value of input and input services, from registered suppliers. For calculating this threshold, the value of services by way of grant of development rights, long term lease of land, floor space index, or the value of electricity, high speed diesel, motor spirit and natural gas used in construction of residential apartments in a project shall be excluded.
3.	If value of purchases as prescribed above from registered supplier is less than 80%, what would be the applicable GST rate on such purchases?	Promoter has to pay GST @ 18% on reverse charge basis on all such inward supplies (to the extent short of 80% of inward supplies from registered supplier) except cement on which tax has to be paid (by the promoter on reverse charge basis) at the applicable rate, which at present is 28% (CGST 14% + SGST 14%)
4.	What is the rate of GST applicable on transfer of development rights, FSI and long term lease of land?	TDR or FSI or long term lease of land used for construction of commercial apartments shall attract GST of 18%. The above shall be applicable to supply of TDR or FSI or long term lease of land used in the new projects where new rate of 1% or 5% is applicable.
5.	Who is liable to pay GST on TDR?	The promoter is liable to pay GST on TDR supplied on or after 01-04-2019 on reverse charge basis.
6.	At what point of time, the promoter should discharge its tax liability on TDR.	The liability to pay GST on development rights shall arise on the date of completion or first occupation of the project, whichever is earlier. Therefore, promoter shall be liable to pay tax on reverse charge basis, on supply of TDR on or after 01-04-2019, which is attributable to the residential apartments that remain un-booked on the date of issuance of completion certificate, or first occupation of the project.
7.	Whether the option to pay tax at the applicable effective rate of 12% or 8% (with ITC) is available to the Promoter in respect of the New Project, which has been commenced on or after 1st April 2019?	No, there is no option to pay tax at the effective rate of 12% or 8% with ITC on construction of residential apartments in projects which commences on or after 01-04-2019.
8.	Whether the GST is leviable on the output supply of Transferrable Development rights by a developer (usually evidenced by TDR Certificate issued by the	Yes, GST is payable on transfer of development rights by a developer to another developer or promoter or to any other person under reverse charge mechanism @ 18% with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017 – Central Tax (Rate) dated 28-06-2017

REALESTATE SECTOR

	authorities). If yes, under which entry and at what rate?	
9.	Can a developer take deduction of actual value of Land involved in sale of unit instead of taking deduction of deemed value of Land as per Paragraph 2 to Notification No. 11/2017-CTR ?	No. Valuation mechanism prescribed in paragraph 2 of the notification No. 11/2017- CTR dated 28.06.2017 clearly prescribes one- third abatement towards value of land.
10.	Land Owner being an individual is not engaged in the business of land relating activities and thus whether the transfer of development rights by an individual to a promoter is liable for GST and whether the same will fall within the scope of „Supply“ as defined in Section 7 of CGST / SGST Act, 2017? Position of such a transaction may be clarified in light of amendments recently made.	The term business has been assigned a very wide meaning in the CGST Act and it includes any trade, commerce, manufacture, profession, vacation, adventure, or any other similar activity whether or not it is for a pecuniary benefit irrespective of the volume, frequency, continuity or regularity of such activity or transaction. Therefore, the activity of transfer of development rights by a land owner, whether an individual or not, to a promoter is a supply of service subject to GST.

Reverse Charge Mechanism on real estate (w.e.f.01/04/2019)

5B	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter on unsold flats by Promoter (However RCM is to the extent of unsold portion)	Promoter
5C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter on unsold flats by Promoter (However RCM is to the extent of unsold portion)	Promoter

Exemptions in Notification 12/2017 (W.e.f.01/04/2019)

41A	Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by promoter in a project (Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis)
41B	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 01.04.2019, for construction of residential apartments by a promoter in a project (Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis)

A Case study

M/s. ABC Builders has entered into seven separate Joint development agreements (JDA) with the land owners for development of land into residential complexes. The details of the 7 JDA are as under :

S.No.	Name of the Project	Date of Development Agreement	Total No. of Flats	Flats allotted to Builder	Flats allotted to Land Owner
1	SRI LAKSHMI VITTAL	18.04.2016	10 (50:50)	5	5
2	VIJAYA LAKSHMI ENCLAVE	05.05.2016	10 (50:50)	5	5
3	SRI NILAYAM	20.10.2016	5 (50:50)	2.5	2.5
4	SREE RENUS RESIDENCY	22.04.2016	8 (50:50)	4	4
5	SRI LAND MARK	16.04.2018	15 (50:50)	7.5	7.5
6	ROYAL TULIP	02.11.2019	10 (60:40)	6	4
7	SRI RAM'S THE ARROW	27.01.2020	10 (50:50)	5	5

The assessee has to pay 12% on total consideration withland value for the supplies effected before 31.03.2019 and eligible to eligible to utilise ITC vide notification no. notification 11/2017-CT(Rate),Dated:28.6.2017. After 01.04.2019, they have to pay GST at 5%/1% without ITC vide notification no.3/2019-CT(rate) dt.29.03.2019. Accordingly the tax liability is worked out as under:

S.No.	Name of the Project	Date of development Agreement	No. of Flats	Carp et Area of Flat (in Sqm.)	Flats allotted to Builder	Flats allotted to Land Owners	Value of Supply	Time of Supply	Rate of Tax	FC/ RCM	Date of occu pency Certific ate	Sche me
1	VIJAYA LAKSHMI ENCLAVE	05.05.16	10 (50:50)	108 & 76	1A (108)		30,50,000	21-02-19	0%	--	13.04.18	OLD
					1B (76)		21,00,000	18-04-18	0%	--		
					3A (108)		29,00,000	18-04-18	0%	--		
					3B (76)		21,00,000	17-04-18	0%	--		
					5B (76)		21,85,000	11-10-18	0%	--		
						2A (108)	20,06,250	13-04-18	12%	FC		
						2B (76)	14,37,500	13-04-18	12%	FC		
						4A (108)	20,06,250	13-04-18	12%	FC		
						4B (76)	14,37,500	13-04-18	12%	FC		
						5A (108)	20,06,250	13-04-18	12%	FC		
2	VITTAL MANSION	18.04.16	10 (50:50)	102	1A		31,00,000	28-02-19	0%	--	28.02.19	OLD
					1B		31,00,000	29-07-19	0%	--		
					3A		31,00,000	06-06-19	0%	--		
					3B		31,00,000	20-04-19	0%	--		
					5B		31,00,000	30-05-19	0%	--		
						2A	19,37,500	28-02-19	12%	FC		
						2B	19,37,500	28-02-19	12%	FC		
						4A	19,37,500	28-02-19	12%	FC		
						4B	19,37,500	28-02-19	12%	FC		
						5A	19,37,500	28-02-19	12%	FC		
3	SRI NILAYAM	20.10.16	5 (50:50)	197	3A (197)		42,40,500	29-06-19	5%	RCM	29.06.19	NEW
					4A (197)		42,40,500	29-06-19	5%	RCM		
					50% of 5A (98.54)		21,20,250	29-06-19	5%	RCM		
						1A (197)	51,17,750	29-06-19	5%	FC		
						2A (197)	51,17,750	29-06-19	5%	FC		
						50% of 5A (98.54)	25,58,875	29-06-19	5%	FC		

4	SREE RENUS RESIDENCY	22.04.16	8 (50:50)	73.35	1A		34,15,845	20-06-20	1%	RCM	20.06.20	NEW
					1B		34,15,845	20-06-20	1%	RCM		
					3A		34,15,845	20-06-20	1%	RCM		
					4A		34,15,845	20-06-20	1%	RCM		
						2A	44,65,450	20-06-20	1%	FC		
						2B	44,65,450	20-06-20	1%	FC		
						3B	44,65,450	20-06-20	1%	FC		
						4B	44,65,450	20-06-20	1%	FC		
5	PRABHAS LAND MARK	16.04.18	15 (50:50)	116 & 88	1A (88)		36,30,000	20-08-20	1%	RCM	20.08.20	NEW
					1B (88)		39,60,396	17-01-20	1%	FC		
					1C (116)		44,76,190	18-07-19	5%	FC		
					3A (88)		39,60,396	29-05-20	1%	FC		
					3B (88)		39,60,396	05-02-20	1%	FC		
					4C (116)		46,69,524	30-01-20	5%	FC		
					5A (88)		36,30,000	20-08-20	1%	RCM		
					50% of 5C (58)		23,38,095	26-02-20	5%	FC		
						2A (88)	36,30,000	20-08-20	1%	FC		
						2B (88)	36,30,000	20-08-20	1%	FC		
						2C (116)	44,77,000	20-08-20	5%	FC		
						3C (116)	44,77,000	20-08-20	5%	FC		
						4A (88)	36,30,000	20-08-20	1%	FC		
						4B (88)	36,30,000	20-08-20	1%	FC		
						5B (88)	36,30,000	20-08-20	1%	FC		
						50% of 5C (58)	23,38,095	26-02-20	5%	FC		
6	ROYAL TULIP	02.11.19	10 (60:40)	105 & 76	2B (76)	-	23,91,089	29-07-20	1%	FC	Not Issued	NEW
7	SRI RAM'S THE ARROW	27.01.20	10 (50:50)	-	1A	-	33,33,333 (Advance received)	30-06-20	5%	FC	Not Issued	NEW
					1B	-	18,09,524 (Advance received)	31-08-20	5%	FC		

Case Study 2

Total Carpet Area	10,000 Sq. Ft.	Project completion date	31st May 2022	
• Residential Carpet Area	6000 Sq. Ft.	Rate at the time of Completion		
• Commercial Carpet Area	4000 Sq. Ft.	• Affordable Residential Apartments	₹ 45 Lakhs each	
Total Apartments	100 units	• Other Residential Apartments	₹ 55 Lakhs each	
• Residential Apartments	60 units (Affordable: 30 units)	• Commercial Apartments	₹ 75 Lakhs each	
• Commercial Apartments	40 units	No. of Apartments sold by 31st May 2022 (Land Owner)		
Date of JDA (Transfer of Development Rights/FSI)	24 th May 2020	• Residential Apartments	15 units (5 Affordable) near completion	
Consideration for granting development rights to Builder		• Commercial Apartments	10 Units near completion	
• Monitory Consideration	₹ 100 Lakhs	No. of Apartments Booked by 31st May 2022 (Builder)		
• Non-Monitory Consideration	20 Residential Apartments (Affordable: 10 units)	• Residential Apartments	Affordable – 20	₹ 25 Lakhs each
	10 Commercial Apartments		Affordable – 5	₹ 45 Lakhs each
			Others – 17	₹ 35 Lakhs each
			Others – 8	₹ 55 Lakhs each
Date of issue of Allotment Letter to Land Owner	1 st May 2022	• Commercial Apartments	Commercial – 20	₹ 50 Lakhs each
Date of Booking commenced (by the Builder)	1 st June 2020		Commercial – 15	₹ 75 Lakhs each
Rate at the time of booking		No. of Apartments Un-Booked by 31st May 2022 (Builder)		
• Affordable Residential Apartments	₹ 25 Lakhs each	• Residential Apartments	10 Residential Apartments (Affordable: 5 units)	
• Other Residential Apartments	₹ 35 Lakhs each	• Commercial Apartments	5 Commercial Apartments	
• Commercial Apartments	₹ 50 Lakhs each			