

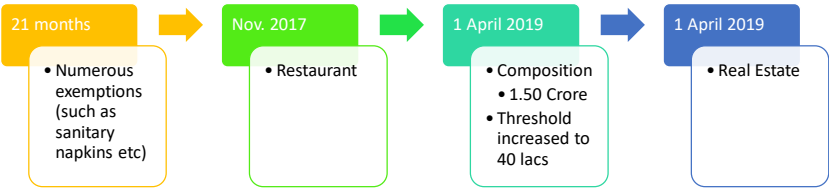
GST

Real Estate – Real Changes

CA Pritam Mahure and
Associates

RE Sector

Journey till now!



Points to Ponder!



Real Estate

Issues upto
31st March 2019

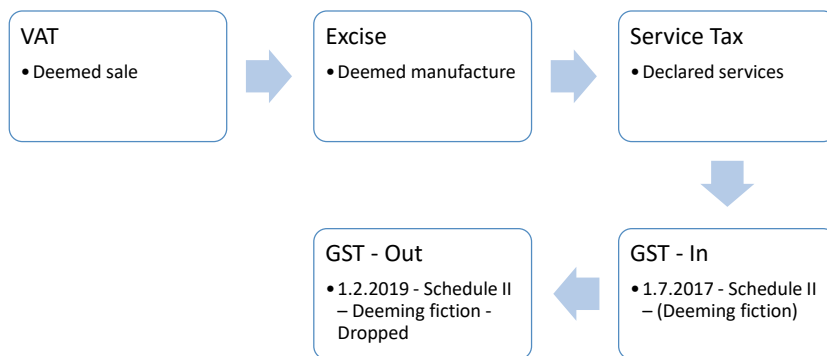
7. Scope of supply

(1) Supply includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,
- (b) Import of services, for a consideration whether or not in the course or furtherance of business, and
- (c) The activities specified in Schedule I, made or agreed to be made without a consideration ~~and~~
- ~~(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.~~

(1A) Where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

Deeming Fiction



Rational (refer Draft Proposal)

Classification of certain specified activities or transactions (which qualify as a supply under the CGST Act) either as supply of goods or supply of services is supposed to be done in Schedule II. However, it is observed that clause (d) being part of the subsection defining the term 'supply' leads to a situation where an activity listed in Schedule II would be **deemed to be a supply even if it does not constitute a supply** as per clauses (a), (b) and (c) of sub-section (1).

Hence, it is proposed to insert a new sub-section (1A) in section 7 and **omit** clause (d) of sub-section (1).

Schedule II

5. Supply of services	6. Composite supply
<p>The following shall be treated as supply of service, namely:— ...</p> <p>(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier</p> <p>Explanation</p> <p>...</p> <p>(2) the expression "construction" includes additions, alterations, replacements or re-modelling of any existing civil structure;</p>	<p>The following composite supplies shall be treated as a supply of services, namely:—</p> <p>(a) works contract as defined in clause (119) of section 2;</p> <p>...</p>

Works Contract

2 (119)
<p>“Works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract</p>

Impact of amendment

Works contract service

Construction services

Penalties

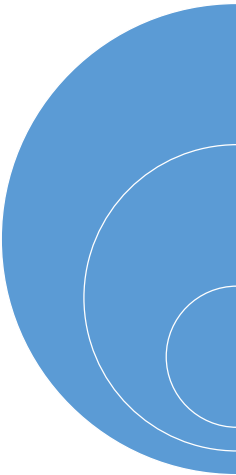
- Damages and penalties for cancellation

Renting of immovable property

Rate

*‘...the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be **deemed to be one third** of the total amount charged for such supply’*

Suresh Kumar Bansal [2016-TIOL-1077-HC-DEL-ST]



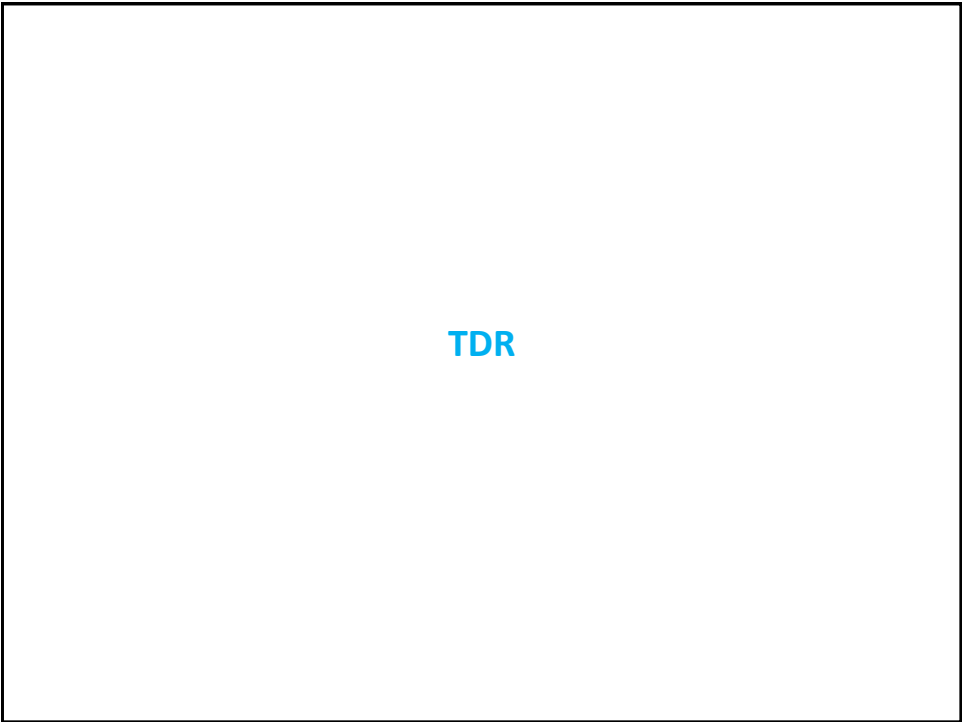
In order to sustain the levy of service tax on services, it is essential that the **machinery provisions provide for** a mechanism for **ascertaining the measure of tax**, that is, the value of services which are charged to service tax

Levying a tax on ... land would **clearly intrude into the legislative field reserved for the States** under List II of the Seventh Schedule of the Constitution of India.

*"The **abatement** to the extent of 75% **by a notification or a circular cannot substitute** the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract."*

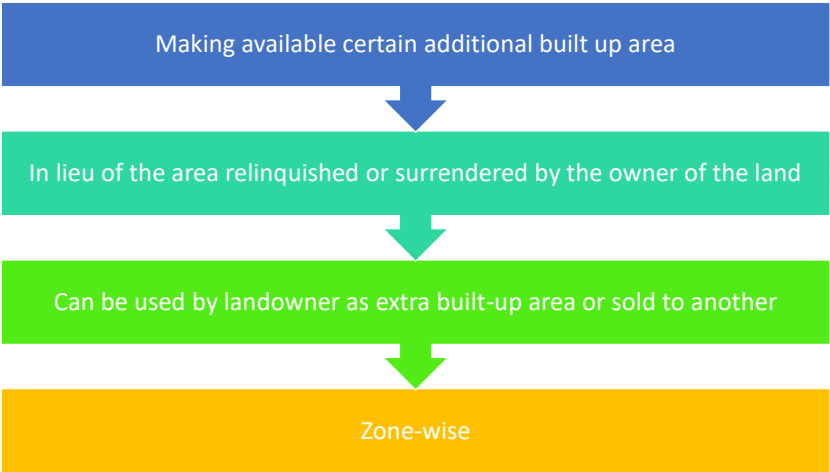
New rates

Particulars	Tax Rate	Abatement	Effective tax rate
31 st March 2019	18%	33%	12%
1 st April 2019 – Other than affordable	?	?	5%
Affordable	?	?	1%



TDR

TDR - Meaning



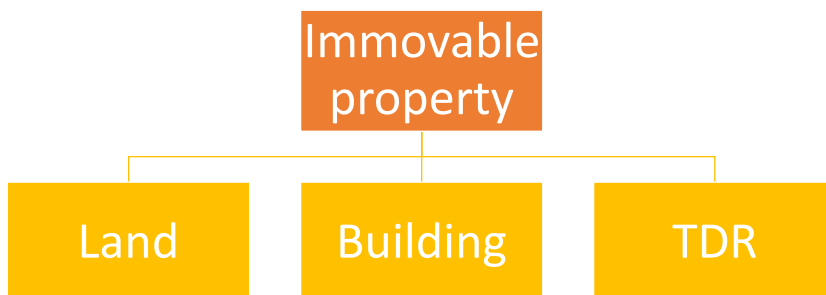
Schedule III

...

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

6. **Actionable claims**, other than lottery, betting and gambling.

Transactions



Goods and services

2 (52) “goods” means every kind of **movable property** other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply

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

Land

Col	Section 3(a) of Land Acquisition Act, 1894,	Sec.3(4) of Bombay Land Revenue Code, 1879	Safiya Bee (2011) 2 SCC 94
<ul style="list-style-type: none">49. Taxes on lands and buildings	<ul style="list-style-type: none">‘Land’ includes benefits that arise out of land and things attached to earth or permanently fastened to anything attached to the earth.	<ul style="list-style-type: none">‘Land’ includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth and also shares in or charges on the revenue or rent of village or other defined portions of territory.	<ul style="list-style-type: none">‘Land’ includes rights in or over land, benefits to arise out of land. The Apex court in the case of Pradeep Oil Corporation vs Municipal Corporation of Delhi – (2011) 5 SCC 270 observed that land includes benefits to arise out of land.

TDR

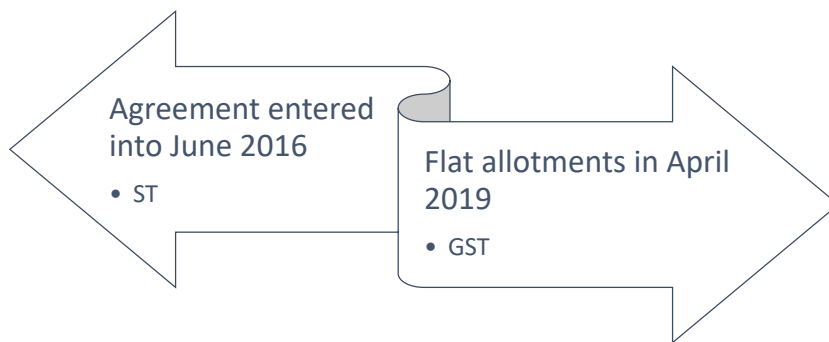
G.S.R.....(E).- In exercise of the powers conferred by **section 148** of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby **notifies** the following classes of registered persons, namely :-

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

148. Special procedure for certain processes

The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain **classes of registered persons**, and the **special procedures** to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

Spill-over!



Real Estate

Issues from
1st April 2019

Overview – Proposed GST Rate

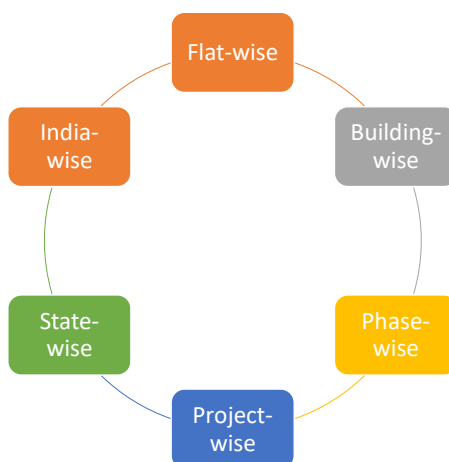
Proposed Revised GST Rate- Overview

Particulars	ST and VAT regime	GST - Present	GST – From 1 st April 2019
Output tax rate	ST @ 4.50% + VAT @ 1%	GST @ 12%	1% or 5% or 12% (specified commercial)
Credit availability	Available on IPS and CG	Available	Not available (except specified commercial)
TDR	NA	Applicable?	Applicable/ NA

One time option!

The promoters shall be given a **one -time option** to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 01.04.2019) which have not been completed by 31.03.2019

Option-wise, be wise!



Existing Projects

Existing projects means:

- Buildings where
 - Construction and
 - Actual booking have both started **before** 01.04.2019

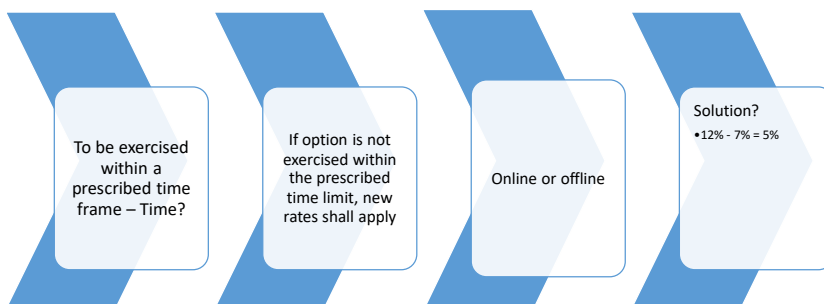
Existing Projects

- Meaning of 'construction'
- Meaning of booking?
 - Registered agreements?
 - Booking in Building 'A' in a project having 3 buildings?
- Any challenges?
 - Rates and value
 - Convincing customers
 - Competitors
 - Nearby projects

Existing Projects

- When to apply?
 - How much time
- How to apply?
 - Letter or Online?

Option – How to exercise?



Can basic price be increased?

- ITC Cost increase for projects
- Section 171
 - Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices

Rate – 1%

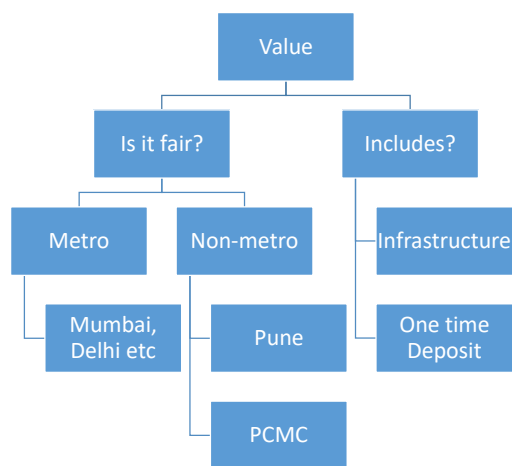
(a)

- All houses which meet the **definition of affordable** houses as decided by GSTC (area 60 sqm in non- metros / 90 sqm in metros and value upto RS. 45 lakhs) and

(b)

- Affordable houses being constructed in ongoing projects under the **existing Central and State** Housing Schemes presently eligible for concessional rate of 8% GST (after 1/3rd land abatement) [eg. PMAY]

45 lacs only?



Rate – 5%

(a)	(b)	(c)
<ul style="list-style-type: none">• All houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019.• In case of houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019	<ul style="list-style-type: none">• All houses other than affordable houses in new projects	<ul style="list-style-type: none">• 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

New Rates – Conditions Apply*

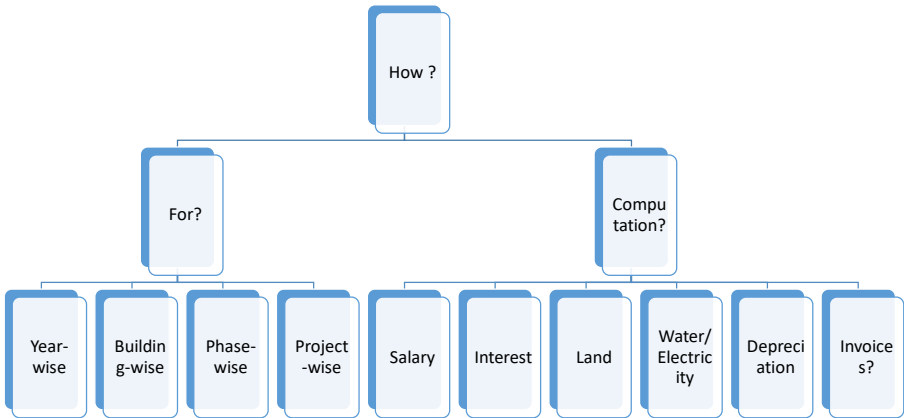
(a) Input tax credit shall not be available

(b) 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates

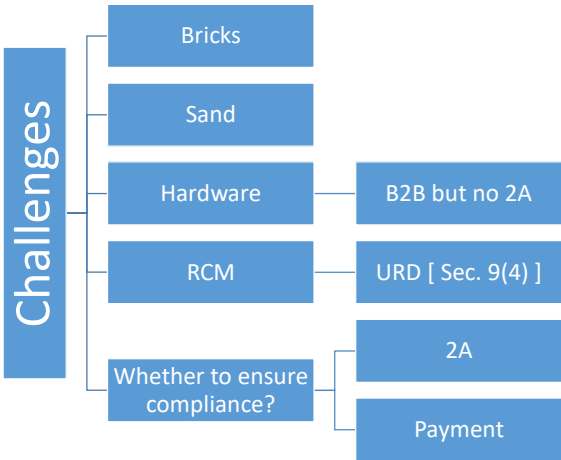
80%

80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease) shall be purchased from registered persons

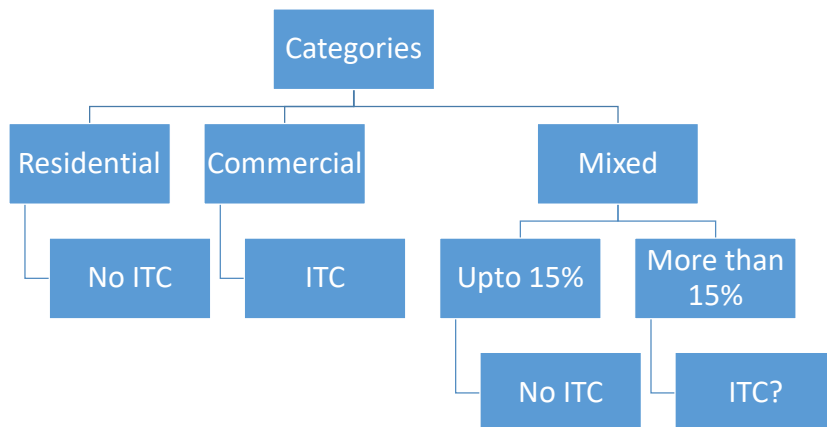
Additional Requirement - 80%



Additional Requirement - 80%



Commercial Projects



15%

15% of total
carpet area of
'all apartments'

Common infra
– Lifts etc

What if
changed later?

Press Release

TDR -RCM - Developer

- 7.2 The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under reverse charge mechanism (**RCM**)

TDR - ToS - CC

- 7.3 The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to **date of issue of completion certificate**

JDA – ToS - CC

- 7.4 The liability of builder to pay tax on construction of houses given to land owner in a **JDA** is also being shifted to the **date of completion**

RCM

From when?

- New projects from 1st April 2019?
- Existing?
- What if LO sells before completion?

Transitional ITC – To be prescribed!

The transition formula approved by the GST Council, for residential projects extrapolates ITC taken for percentage completion of construction as on 01.04.2019 to arrive at ITC for the entire project.

Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined.

Thus, transition would thus be on pro-rata basis based on a simple formula such that credit in proportion to booking of the flat and invoicing done for the booked flat is available subject to a few safeguards

Reversal of ITC

For a mixed project transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project

ITC – Availled and eligible

Can it be utilized for making payment of 1% and 5%?

Reversal of ITC

ITC rules shall be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in real estate projects

The change would clearly provide procedure for availing input tax credit in relation to commercial units as such units would continue to be eligible for input tax credit in a mixed project

TDR/ FSI and Long term lease

The following treatment shall apply to TDR/ FSI and Long term lease for projects commencing after 01.04.2019

TDR/ FSI and Long term lease

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them

Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses

TDR/ FSI and Long term lease

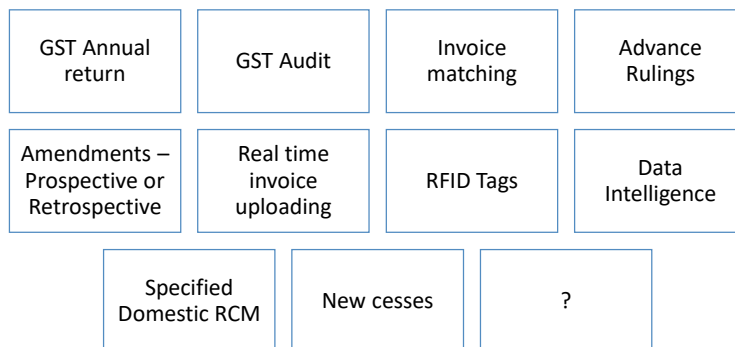
The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM)

The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate

TDR/ FSI and Long term lease

The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion

Future!



Thank you for a patient hearing...

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Youtube – Videos on GST
E-book on GST

Smile please 😊