



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

GST Implications on Revenue Streams

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- History of Works Contract
- Levy under GST
- How is Real Estate Sector Taxed?
- Understanding various aspects of Real Estate (Regulation And Development) Act, 2016 (RERA) as relevant to GST
- Special Provisions under GST for Real Estate Sector
- GST Rates
- Taxability, Valuation, Time of Supply, etc
- Various charges recovered from customers
- Miscellaneous

Stakeholders

**Land
Owners**

Developers

Brokers

**Material:
Manufacturers
Traders**

**Contractors:
Labour
Composite**

**Services:
Architects
Engineers**

Customer



History of Works Contract

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- State of Madras vs Gannon Dunkerly held that sale of goods is different then sale of goods in pursuance of works contract; works contract were not liable to sales tax
- To negate the above judgment 46th amendment was introduced to incorporate works contract
- In Builders Association of India, SC held that sales tax could only be made applicable on goods component of works contract
- In Gannon Dunkerly vs State of Rajasthan, it was held that sales tax could not be levied on interstate works contract since CST Act was not amended; further methodology for arriving at value of goods was laid down
- In Imagic, SC held that sales tax and service tax could be applied only on respective subject matters of contract not on the entire contract
- In L&T, SC held property in goods in works contracts passes through accretion and hence property passes directly from sub contractor to contractee
- In K Raheja, it was held that where agreement for sale was entered before construction, development would amount to works contract
- Amendment in service tax and vat laws in 2010



Levy under GST - Supply

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(1) For the purposes of this Act, the expression "supply" includes,-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.- ...

(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;

(d) omitted.



Levy under GST – Services / Business

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"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;

"business" includes .-

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;



Levy under GST - Supply

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(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.

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.



Understanding Schedule II

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Schedule II

ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

5. Supply of Services

The following shall be treated as supply of services, namely:-

(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.



Understanding Schedule II

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Explanation.-For the purposes of this clause-

(1) the expression "competent authority" means the Government or any authority **authorised to issue completion certificate under any law for the time being in force** and in case of non-requirement of such certificate from such authority, from any of the following, namely:-

- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972.); or
 - (ii) a chartered engineer registered with the Institution of Engineers (India); or
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;



Understanding Schedule II

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Schedule II

ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:-

(a) works contract as defined in clause (119) of section 2

(119). "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



Understanding Schedule III

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Schedule III

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER
AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

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



How is RE Taxed?

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How is Real Estate taxed under GST?

- Supply includes sale, transfer, barter, exchange of goods and/ or services
- Schedule II covers construction and sale before completion as supply of service
- Schedule III covers sale of completed unit and sale of land as no supply cases
- Notification 11/2017 covers such construction under various rate entries with deduction for value of land as 1/3rd portion of total amount charged
- GST on Real Estate Sector has undergone a change in March-April 2019 and hence applicability needs to be seen as upto 31st March 2019 and from 1st April 2019 separately
- Relevance of RERA in GST



Notification 11/2017 – Para 2

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

2. In case of supply of service specified in column (3), in item (i); (i) (ia), (ib), (ic), (id), (ie) and (if), against serial number 3 of the Table above, **involving transfer of land or undivided share of land**, as the case may be, the value of such supply shall be **equivalent to the total amount charged** for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply. Explanation. -For the purposes of this paragraph and paragraph 2A below, "total amount" means the sum total of,-

- (a) consideration charged for aforesaid service; and
- (b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sublease.



Time of Supply

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TOS for services is:

- Date of issue of invoice as per Section 31 or date of receipt of payment whichever is earlier
- Date of provision of service if invoice is not issued within timeline as per Section 31 or date of receipt of payment whichever is earlier

Services under construction contract qualify as continuous supply of service

Timing of issuance of invoice for continuous supply is:

- Contractual due date, if any
- Payment linked to completion of event – time of such completion
- Other cases - earlier of payment or issuance of invoice



Understanding RERA – Carpet Area

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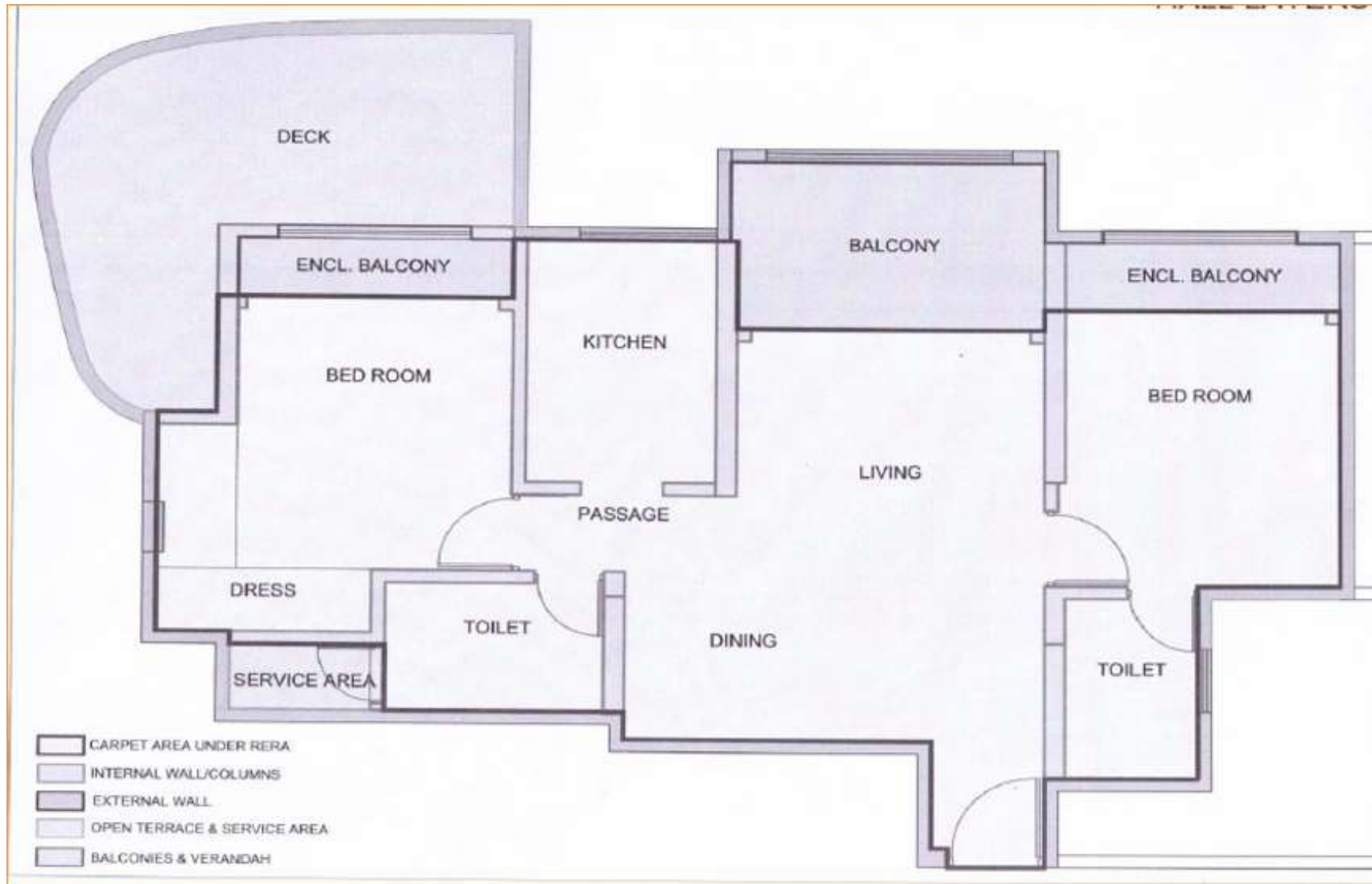
Carpet Area

"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



Circular 4/2017 dated 14th June 2017 issued by Maharashtra RERA

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Understanding RERA - Project

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Project means Real Estate Project

"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto

Section 3(2) - Explanation.—For the purpose of this section, **where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.**



Understanding RERA - Promoter

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Promoter

- 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; or
- ...

Primary condition in all sub bullets is - for the purpose of sale



Ongoing Project – Transition (2019)

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Transition from with ITC rates to no ITC rates in 2019 brought in the concept of “Ongoing Project”

Ongoing Project has to meet following conditions as on 1st April 2019:

- Commencement Certificate of the Project is issued on or before 31st March 2019 and it is certified by Architect/ Engineer/ Surveyor that construction for the project has started
- Completion Certificate or 1st occupancy has not taken place on or before 31st March 2019
- Apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March 2019



Ongoing Project – Transition (2019)

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- A project qualifying as “ongoing project” had an option to opt for new rates (without ITC) or continue with old rates (with ITC)
- This option was available only for such project and the same was to be opted by filing a Form. If no Form was filed, it was deemed that the new rates would apply
- In case new rates were opted, the Developer was required to calculate the amount of ITC which was needed to reversed on account of opting for new rates. This ITC was required to be reversed by due date for filing return of September 2019
- **Formula for eligible ITC**



Effective Rates upto 31st March 2019

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Nature of Project/ Apartment	Rate
Residential Apartment – carpet upto 60 sq mtrs in a project with more than 50% area being such units (wef 25 th January 2018)	8
Residential Apartment in projects of specified government schemes	8
Residential Apartment constructed under EWS, LIG, MIG, etc schemes	8
Other than specified projects/ units – Residential Apartment	12
Commercial Apartment	12
* Above rates are also applicable for ongoing projects which opted for old scheme (rates applicable till 17 th July 2022)	



Effective Rates from 18th July 2022 (for ongoing projects which opted rate with ITC)

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Nature of Project/ Apartment	Rate
Residential Apartment – carpet upto 60 sq mtrs in a project with more than 50% area being such units	12
Residential Apartment in projects of specified government schemes	12
Residential Apartment constructed under EWS, LIG, MIG, etc schemes	12
Other than specified projects/ units – Residential Apartment	12
Commercial Apartment	12
* Above rates are applicable for ongoing projects which opted for old scheme (Rates applicable from 18 th July 2022)	



Concepts of RREP and REP

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Residential Real Estate Project:

- A project in which carpet area of commercial apartments/ units is less than or equal to 15% of the total carpet area of the project

Real Estate Project:

- A project in which carpet area of commercial apartments/ units is more than 15% of the total carpet area of the project



Meaning of Affordable Residential Apartment

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A Residential Unit

- having carpet area upto 60 sq mtrs in metro cities/ upto 90 sq mtrs in non-metro cities and
- for which the gross amount charged is upto 45 lakhs

(ii) Gross amount shall be the sum total of;-

A. Consideration charged for the construction services;

B. Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sub lease; and

C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.



Effective Rates from 1st April 2019

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Nature of Project/ Apartment	New	Ongoing
RREP (Commercial upto 15%)		
Affordable Residential Apartment	1	1
Other than Affordable – residential Apartment	5	5
Commercial Apartment (both under affordable and other than affordable)	5	5
REP (Commercial more than 15%)		
Affordable Residential unit	1	1
Other – Residential unit	5	5
Commercial Apartment	12* (with ITC)	12* (with ITC)
* Please note that in a REP the commercial units will be charged at effective rate of 12% with proportionate ITC eligibility		



Conditions

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- ITC is not eligible for these reduced rates of 5/1%
- Payment of GST has to be made through cash ledger only
- Developer has to follow 80:20 rule for procurement of goods and services ie atleast 80% of the procurements should be from GST registered person



In a residential project, a Developer is recovering following charges from its customers:

1. Unit Charges
2. Infrastructure or Development Charges
3. Parking Charges
4. Floor-rise Charges
5. MSEB Deposit
6. One-time Maintenance Deposit
7. Maintenance Charges
8. Stamp Duty

Developer is also giving following things free to some selected customers:

1. Kitchen Trolleys
2. TV/ AC/ 2 wheeler – to lucky draw winners



Various Charges recovered from customers

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Are this taxable for GST, if yes at what rate?

Stamp duty is paid on what components?

Which receipts are pass through, qualify under pure agent services?

Maharashtra AAR – Puranik Builders v/s FAQ issued in May 2019 and
Maharashtra AAR – Joyville



Free Supplies

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Are free supplies to be added to value of construction service? Are these taxable separately?

Will ITC be available on these supplies?



What is the meaning of first occupation?

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Possession letters, electricity bills in name of customer, photos of pooja/ house-warming?

Are Developers allowed to handover units before receipt of occupancy from municipal corporation?

Logic v/s Karnataka AAR – Bindu Ventures



Others

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- Part Completion Certificate for the Project
- Re-sale before receipt of Completion Certificate
- Cancellations – Credit Notes/ refunds
- Cancellation Charges
- FAQs issued in May 2019



Disclaimer

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My comments are based on GST Act assented on 12th April 2017 (as amended from time to time), RERA Act 2016 (as amended from time to time) and various updates (available in public domain).

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. On any specific matter, reference should be made to appropriate advisor.

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Thank You

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