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GST on Residential Real Estate Projects (Analysis of New Tax Scheme introduced w.e.f. 1-4-2019)

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Abstract

When GST was introduced w.e.f, July 1 2017, the GST on real estate was fixed at 12% /18% on construction depending on whether the land value was included. The benefit of ITC was also allowed to promoters. The provisions in respect of GST on the construction of residential and commercial complexes have been completely modified with effect from April 1, 2019. Even ongoing projects are expected to shift to the new GST regime. All these provisions are discussed and analyzed in the present paper with suitable case studies.

Keywords :- GST on construction, REP, RREP, Affordable Residential Apartments, RCM Liability of Promoters, GST on RRP from 1-4-2019

Introduction

Goods and Services Tax (GST) is an indirect tax on the supply of goods and services. As per section 2(52) of CGST Act, 2017, *"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."*[1] In order to levy GST, the feature "movable" is a prerequisite. In the case of immovable property, it seems that it will not be covered under GST. However, it is a misconception. For example, the renting of immovable property has been categorized as a supply of services under Schedule II of the CGST Act, 2017. When a building is constructed, or land is converted and developed into a project for sale, a question arises about the applicability of GST to these Real Estate Project (REP) activities. In the present article, the applicability of GST on these REP has been discussed. The article mainly focuses on the provisions and practical aspects of the new GST scheme for the Real Estate Project, which has been implemented w.e.f. April 1 2019.

Review of Literature

Dr. Vasanthagopal (2011)[2] argued, "Although there are many hurdles to be crossed before the implementation of GST, the Central Government reiterated its commitment towards the adoption of a flawless GST for the survival of the Indian Economy in the face of increasing international competition consequent to globalization and liberalization.

Niraj Dubey, Dr. Devesh Kumar, Sitaram Pandey (2017)[3]: The paper highlights the basics of GST and explores the earlier tax regime of the real estate sector and the effect of GST on the real estate sector. As per this paper, there may be an increase

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in the cost of residential houses by 2%. The buyer may benefit if and only if the developer passes the benefit of ITC to the buyer completely and brings down the base price.

C.A. Sumit Das (2018)[4] A paper presented at National CA Conference discussed GST in the real estate sector. The Chartered Accountant pointed out the changes brought about by the new tax reform in the real estate sector. The study highlighted schedule II of the CGST Act and also the need for input tax credit in the real estate sector. The article emphasized that the consumer will be benefitted as GST will reduce the overall cost of construction. The need for the implementation of anti-profiteering provisions was also discussed.

Indian real estate Industry Report (2019)[5]: This report is based on the data released by the Department of Industrial Policy and Promotion (DIPP) and the Government initiatives toward the real estate sector. It has highlighted the various subsectors, market size and the GDP contribution of the real estate sector. The prospects and investments, and development of the real estate sector have also been discussed in the report.

C.A. Pritam Mahure (2019)[6]:
The study evaluates the impact of the change in GST rates and the future of development rights, TDR, JDR etc. It also highlights the new GST tax rates on the real estate sector, types of real estate transactions, and rates of GST on real estate before March 30, 2019. The study also analyzed the new tax rate implemented after 33rd and 34th GST Council meetings. The relevant changes by the GST council have also been discussed.

Objectives of the Study
The objective of the paper is to comprehend and analyze the new GST scheme on real estate projects applicable w.e.f. 1-4-2019.

Research Methodology
The present paper is a descriptive study based on secondary data. Data sources include CGST Act, CGST Rules, notifications and financial newspapers. The existing research papers available on google scholar and other websites have also been referred to and analyzed.

Taxability of Construction Activity in Pre-GST Regime
In the pre-GST era, several indirect taxes were levied, including Service Tax, Value Added Tax, Central Excise Duty and Octroi. The construction activities require a variety of items and services. Before, July 1 2017, on most of these items, the Central Government and State Government used to levy excise duty and VAT, respectively. The service tax was levied on such properties which are under construction, i.e., where the builder has not received the competition certificate. It means if the builder has already obtained the completion certificate, then these taxes cannot be levied on the sale/purchase of these properties. On the same lines, service tax and VAT are not applicable when a completed property is purchased under resale. When an independent house or bungalow (i.e., a single residential unit) was constructed, the service tax was exempt.

Similarly, if the carpet area is up to 60 sq meters per house (i.e., affordable house), there was no service tax. The entire agreement value is not treated as a works contract. "*An under-construction property can be divided into three parts, vis-à-vis its cost components. The first part is the cost of the land, on which neither VAT nor service tax is applicable. The second part is the cost of materials. According to the Supreme Court's decision, in the case of Raheja Development Corporation vs the State of Karnataka, this can be deemed a part of the work contract and thus, is liable for VAT. The third part is the cost of construction, which largely involves labour charges and can be treated as a service that the builder renders to the purchaser. Therefore, service tax can be levied on this component*."[7]Thus, the works contractor must maintain separate records to pay relevant taxes. Under the past tax era, the law provided to opt 30% of the entire agreement value towards the service component. For example, if the agreement value is Rs. 20,00,000 and separate records are not maintained, then the service tax component shall be 30% of Rs. 20,00,000, i.e., Rs. 6,00,000. Accordingly, the service tax payable @ 15% was Rs. 90,000

Inception Scheme for Construction Activities under GST
In an unprecedented historical move, with the introduction of GST, the indirect tax structure was radically changed w.e.f. July 1 2017. At this time,

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the GST structure on real estate provided an effective rate of 12% on construction if the value of land is also included in the document and 18% if not included. In the case of affordable housing projects, the rate was fixed at 8%. Moreover, the developers were allowed input tax credit (ITC). As per Section 171 of the CGST Act, 2017, "*the suppliers of goods and services should pass on the benefit of any reduction in the rate of tax or the benefit of input tax credit to the recipients by way of commensurate reduction in prices*". If the benefit is not passed to the recipient, it is termed "profiteering."[8].

Problem with the inception scheme

In the case of real estate projects, ITC was not allowed under the erstwhile tax structure, but now it has become available in the GST regime. Therefore, due to section 171, the benefit of ITC had to be passed on to the end consumer. Since no methodology has been given in section 171 and due to the nature of the activities, it was challenging to objectively find the exact benefit of ITC. Moreover, there was a variety of factors affecting such calculations. Thus, estimating how much is due to GST alone was virtually subjective. As a result, the application of GST provisions on real estate projects faced a large number of litigations from developers. The Department opined there was no transfer of the benefit of ITC, whereas the developers advocated that no such benefit was received.

The prices of real estate projects started increasing because of multiple factors, including inflation. In this scenario, a perception started developing in the minds of consumers and industry that due to the imposition of GST, there is an increase in prices which has made them not affordable, and GST on real estate is not upright and scientific. In order to overcome these problems, the GST structure on real estate projects pertaining to residential and commercial apartments has been comprehensively modified with effect from April 1, 2019.

New alternative Scheme for Real Estate Project (REP)

As stated above, the Government implemented a new alternative scheme w.e.f. 1-4-2019 for real estate projects. As per section 2(zn) of the Real Estate (Regulation and Development) Act, 2019, *"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, to sell 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".*[9] **The new scheme may be divided into two parts:**

(a) Commercial Real Estate Projects (CREP), in which the things were continued to be the same i.e. 12% GST rate with an allowance of ITC.

(b) 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 per cent. of the total carpet area of all the apartments in the REP*.[10] The following are the new GST rates:

Table 1 New GST rates for Real Estate Projects

Nature of Apartment	Where the supply of services	
	Involves transfer of land and its charges are includible in the amount charged to the customer	**Does not involve transfer of land.**
Affordable Residential Apartments#	1%	1.5%
Other Residential Apartments	5%	7.5%
Commercial Apartments (Shops, offices, godowns, etc.) in RREP	5%	7.5%
Under the new scheme for real estate projects, the GST rate is lower, but the input tax credit is unavailable. Since ITC is not available in the new scheme, the GST shall only be paid in cash by debiting the electronic cash ledger.		

Affordable Residential Apartments: *"Flats having carpet area of 60 sqm and value up to 45 lacs are affordable residential apartments in metropolitan cities, and flats having carpet area of 90 sqm and value up to 45 lacs are affordable residential apartments in non-metropolitan cities."*[11] **It means an affordable residential**

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apartment is a residential apartment which satisfies the following conditions:

1. *For New Projects:* The residential apartment is in a project which commences on or after 1-4-2019.
2. *For ongoing Projects:* The residential apartment is in an ongoing project in respect of which the promoter has not opted for the old GST regime.
3. *Gross Amount Charged:* It is not more than Rs. 45 lacs.
4. *Carpet Area:* The residential apartment has a carpet area not exceeding 60 square meters in metropolitan cities or 90 square meters in cities or towns other than metropolitan cities.

As per Para 4 Clause (xvi) to NN 3/2019 CT(Rate), *"Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (the whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;*[12]

The Gross amount shall be the sum total of; -

A. *Consideration charged for the services provided by the promoter;*
B. *Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sublease; 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.*[13] *"*

New Scheme for Real Estate Project: Compulsory or Optional

The new GST scheme is compulsory for the real estate projects which commence on or after April 1, 2019. In the case of ongoing projects, as of April 1, 2019, an option is given to the promoters to opt for the old scheme (i.e. higher GST rate and utilization of ITC). If a promoter of ongoing projects, wants to continue under the old GST scheme, he/it will have to submit a declaration to the jurisdictional commissioner before May 20, 2019. If such declaration is not submitted, he is deemed to have opted for the new regime. The declaration has to be submitted for each project separately. It is clear that no option is available (i.e., the new scheme is compulsorily applicable) if residential REP has started on or after 1-4-2019.

Case Study-1

ABC Limited is a construction company located in Delhi. It owns two residential plots:

Type of Plot	***Total area of plot***	***No. of residential apartments***	***Carpet area per apartment***	***Date of starting of construction***
Residential	*1000 square meter*	*150*	*6000 square feet*	*1-1-2019*
Residential	*2000 square meter*	*300*	*5000 square feet*	*15-8-2019*

The company wants to claim ITC for both the real estate projects. Can the company be entitled?

As stated above, if RREP commences on or after April 1, 2019, it is not possible to opt for the old scheme. Therefore, the new scheme is compulsory for the second project, which started on 15-8-2019. However, the company may opt for the old scheme for the ongoing project (as on 1-4-2019), provided it has submitted the declaration within the due date.

Old vs. New Scheme for Real Estate Projects

The following Table 2 compares old and new GST taxation regimes on affordable housing segments.

Table 2 Old and New GST Regime on Affordable Housing Segment

		Up to 31-3-2019	**On and after 1-4-2019**
A	Property cost (Per square meter)	Rs. 3,000	Rs. 3,000
	Applicable GST Rate	8%	1%
B	GST (Rs.)	Rs. 240	Rs. 30
	Applicability of ITC	Allowed	Not Allowed
	Transfer of benefit of ITC	Yes	Not Applicable
C	ITC benefit for material cost Rs. 1,200 @ 18%	Rs. 216	NA
	Total (A + B – C)	**Rs. 3,024**	**Rs. 3,030**

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It has been assumed that the supply of services involves the transfer of land and its charges are includible in the amount charged to customers.

Table 3 Old and New GST Regime on Luxury Housing Segment

		Up to 31-3-2019	On and after 1-4-2019
A	Property cost (Per square meter)	Rs. 8,000	Rs. 8,000
	Applicable GST Rate	12%	5%
B	GST (Rs.)	Rs. 960	Rs. 400
	Applicability of ITC	Allowed	Not Allowed
	Transfer of benefit of ITC	Yes	Not Applicable
C	ITC benefit for material cost Rs. 1400 @ 15%	Rs. 210	NA
	Total (A + B – C)	**Rs. 8,750**	**Rs. 8,400**

In the case of Residential cum Commercial Real Estate Projects

There may be some units in the project with commercial shops on the ground floor and residential units on other floors. In such cases, if the carpet area of the commercial portion is not more than 15% of the carpet area of the entire project, then it will be called a residential real estate project even if there is commercial property involved in the project.

Tax payable under RCM by the Promoter

The section 9(4) of CGST Act, 2017 provides the applicability of RCM if specified persons receive specific supplies from unregistered suppliers. As regards Real Estate Residential Projects, the tax is payable by the promoter under RCM in the following cases if he provides input, input services or capital goods from unregistered suppliers:

(a)	All Capital Goods	These are to be acquired from registered suppliers. Otherwise, tax is payable by the promoter under RCM @ 28%, and NO ITC will be available.
(b)	All Cement (The tax will be paid in the same month of purchases)	
(c)	Input/Input Services [Other than (a) and (b)]	After considering payment of GST on the cement under reverse charge (if any), at least 80% of the value of input and input services (input supply of exempted goods/services shall be included), used in supplying the real estate project service, shall be received from registered suppliers only. However, this rule of 80% is not applicable in the case of the following: (i) Input services by way of grant of TDR, long-term lease of land or Floor space index. (ii) Electricity, high-speed diesel, motor spirit, natural gas If there is any shortfall in procurement from registered suppliers, GST 2 18% is payable on value to the extent of the shortfall.

Case Study-2

A promotor has opted to pay GST at a 1%/5% GST rate without availment of ITC. He received following in October 2019 for one of its residential complexes started in June 2019:

	Particulars	*Procurement from a Supplier who is*		*Total Procurement*
		Registered	*Unregistered*	
(a)	*Cement*	*1,50,000*	*66,000*	*2,16,000*
(b)	*Input Goods (Other than Cement)*	*12,66,000*	*2,46,000*	*15,12,000*
(c)	*Input Services*	*60,000*	*12,000*	*72,000*
	TOTAL	***14,76,000***	***3,24,000***	***18,00,000***

Examine the applicability of RCM.

Procurement from registered suppliers = $\frac{14,76,000}{18,00,000} \times 100 = 82\%$.

Cement from unregistered suppliers = Rs. 66,000

In the given case, the procurement from registered suppliers is more than 80%; overall, RCM is not applicable. However, in October 2019, a cement of Rs. 66,000 was purchased from unregistered suppliers. Consequently, the GST liability under

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RCM for October will be Rs. 18,480 (i.e., 28% of Rs. 66,000).

Case Study-3

A promotor has provided the following information for June 2019 in relation to one of residential project (RREP):

	Particulars	*Procurement from Supplier who is*		*Total Procurement*
		Registered	*Unregistered*	
(a)	*Cement*	*9,72,000*	*4,86,000*	*14,58,000*
(b)	*Input Goods (Other than Cement)*	*48,60,000*	*17,01,000*	*65,61,000*
(c)	*Input Services*	*Nil*	*81,000*	*81,000*
	TOTAL	*58,32,000*	*22,68,000*	*81,00,000*

Examine the applicability of RCM.

Analysis:

Procurement from registered suppliers = $\frac{58,32,000}{81,00,000} \times 100 = 72\%$.

Cement from unregistered suppliers = Rs. 4,86,000

GST payable under RCM on Cement = 28% of Rs. 4,86,000 = Rs. 1,36,080

After payment of this GST, cement will be deemed to have been purchased from registered suppliers.

Effective procurement from registered suppliers = $72\% + \frac{4,86,000}{81,00,000} \times 100 = 72 + 6 = 78\%$

Since, it is less than 80%, a shortfall will be computed.

Shortfall = 2% of Rs. 81,00,000 = Rs. 1,62,000

GST payable on shortfall = 18% of Rs. 1,62,000 = Rs. 29,160

Total GST under RCM = Rs. 1,36,080 + Rs. 29,160 = Rs. 1,65,240

Limitations of the Study:

The following are the limitations of the present study:

- The erstwhile indirect taxation system (VAT/Service Tax) has not been discussed in detail.
- The present paper does not disclose the provisions relating to reversal of ITC, Transfer of Development Rights (TDR), Floor Space Index (FSI) and provisions regarding the construction of commercial apartments like shops, offices, godowns, etc.

Conclusion

The new GST scheme for residential real estate Projects is a remarkable attempt of the Government to eradicate the complexities involved in the inception scheme. The new GST regime has minimized the subjective approach of the developers. Although the ITC is not available, but the lower rate of GST has compensated it. The applicability of Anti-Profiteering automatically becomes inapplicable as now ITC is not available. The revised scheme is comparatively straightforward, but many issues are yet to be resolved. For example, the GST calculation mode on Transferrable Development Rights is unworkable. Due to reduction in GST rates, there is a perception among the buyers that the tax burden of builders has reduced. It has created pressure on the promoters to lower the prices.

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