

GST On Real Estate

GST

Goods &
Services
Tax



Notifications 3/2019 to 8/2019 were released on 29th March 2019 and are **effective from 01st April 2019**, which have **proposed major amendments** to boost up the growth of real estate sector

Notification No.	Particulars
3/2019 – CT (R)	Change in GST rates for Real Estate Sector
4/2019 – CT (R)	Exemption to TDR, FSI and Long Term lease
5/2019 – CT (R)	Reverse charge on TDR, FSI and Long Term lease
6/2019 – CT (R)	Time of Payment of tax for supply of JDA & Construction service to landowner
7/2019 – CT (R)	Reverse charge in respect of procurement from Unregistered Supplier
8/2019 – CT (R)	18% Tax rate in respect of shortfall of goods procured from Registered Supplier
16/2019 – CT	Changes in GST Rules (Rule 42 and Rule 43)
4/2019 – (ROD)	Credit attributable to be determined based on carpet area

History of Indirect Taxes applicable on Real Estate

Period	Tax Regime
01.07.2010 to 30.06.2012	Service tax – Positive List based taxation of services
01.07.2012 to 30.06.2017	Service tax – Negative List based taxation of services
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 to 08/2019 – CT (R) dated 29.03.2019



Notifications
issued on 29th
March, 2019

One time option for Ongoing Projects

- Builders to have one-time option for ONGOING PROJECTS:
 - To pay tax at existing rates of 12% (affordable houses) or 18% (others) with ITC or
 - To pay tax at new rate i.e. 1.5% (affordable houses) or 7.5% (non affordable houses) without ITC
- Option to be exercised by filing notified form on or before 20th May*, 2019
- In case no option is exercised, new scheme will compulsorily apply
- This option is available only for ongoing projects
- New Projects commencing on or after 1st April, 2019, will be under new scheme only



Tax implications for projects opting for Old Scheme

Particulars	Effective Tax Rate
Sale of under-construction residential affordable house	8% (with ITC)
Sale of under-construction residential units (other than affordable)	12% (with ITC)
Sale of under-construction commercial units	12% (with ITC)

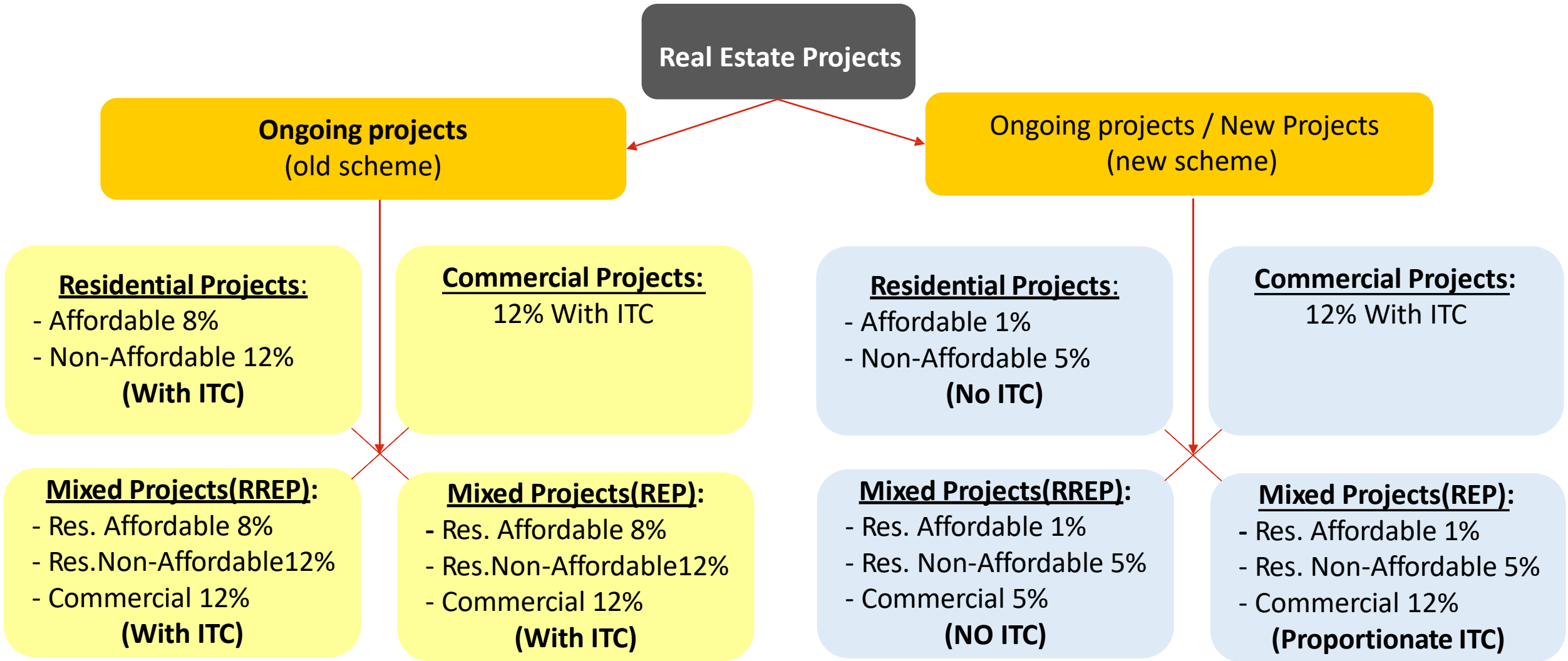
- ITC Balance as on 31st March, 2019 remains intact & further Credit of tax paid on procurements made after 1st April,2019 is available.
- Output tax liability can be discharged from ITC balance
- No Reverse charge liability in respect of procurement from Unregistered Supplier

Tax implications for Projects under New Scheme

Particulars	Effective Tax Rate	Mode of payment
Sale of under-construction residential affordable house	1% (without ITC)	Cash
Sale of under-construction residential non affordable houses	5% (without ITC)	Cash
Sale of under-construction commercial units (in RREP i.e. upto 15% of total carpet area)	5% (without ITC)	Cash
Sale of under-construction commercial units (in REP)	12% (proportionate ITC)	Cash / Credit
Sale of completed flats Post CC	Nil	NA

- No ITC available in case of units sold at lower rates.
- ITC available in case of commercial units. (only in case of REP and in proportion of commercial area only.)
- Output in case of units sold at lower rates to be discharged in cash only.
- Reverse charge liability in respect of procurement from Unregistered Supplier

Summary of amended Scheme of Taxation



Sale of completed flats Post CC – Not liable to GST

- ❖ “**Project**” shall mean a Real Estate Project(**REP**) or Residential Real Estate Project (**RREP**)
- ❖ “**Real Estate Project (REP)**” shall have the same meaning as assigned to it in **RERA**; which provides as
 - 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; **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)**” shall mean a REP in which **carpet area** of the **commercial apartments is not more than 15 percentage** of the **total carpet area** of **all the apartments** in the **REP**

- ❖ “**Carpet Area**” shall have same meaning as assigned to it in RERA, which provides as
 - Net usable floor area of an apartment
 - Excluding the area covered by external walls, services shafts, exclusive balcony or verandah and exclusive open terrace area
 - But includes area covered by internal partition walls
- ❖ “**Residential Apartment**” shall mean an apartment intended for residential use as declared to The Real Estate Regulatory Authority or to competent authority

❖ “**Apartment**” shall have same meaning as assigned to it in RERA, which provides as

Block	Chamber	Dwelling Unit	Flat	Office	Showroom
Shop	Godown	Premises	Suit	Tenement	Unit

- ❖ means a separate and self contained part of any immovable property,
- ❖ 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, profession or trade, or for any other type of use ancillary to the purpose specified

“**Ongoing project**” shall mean a project which meets all following conditions:

- a) **Commencement certificate** is issued by the competent authority, where required, on or before 31st March, 2019; and it is certified that **construction has started** on or before 31st March, 2019 by a Registered Architect, Chartered Engineer or Licensed Surveyor of Local Body; **and**
- b) **Completion certificate** has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019; **and**
- c) Apartments have been, partly or wholly, **booked on or before the 31st March, 2019.**

*Where commencement certificate is not required from competent authority, then any of the authorities specified in (a) above shall certify that construction of the project started on or before the 31st March, 2019

➤ **Construction shall be considered to have started on or before 31st March, 2019 if:**

- Earthwork for site preparation is completed; **and**
- Excavation for foundation has started

“An apartment booked on or before 31st March, 2019” shall mean an apartment which meets **all** the following **three** conditions:

- a) part of supply of construction has time of supply on or before 31st March, 2019;
- b) at least one instalment has been credited to the bank account of the registered person on or before 31st March, 2019; **and**
- c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the 31st March, 2019



Conditions applicable
when opting under
new scheme or in
case of new projects

- Builder not entitled to ITC related to supply used in construction services taxed at 1% or 5%
- Builder to reverse the ITC availed from inception of project to the extent it relates to construction services to be taxed at 1% or 5%
- ITC not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B.

- ❖ ITC to be reversed from Gross accumulated ITC up to 31st March, 2019 based on the formula prescribed as per annexure as also attributable to construction time of supply of which is on or after 1st April, 2019 in case of residential units.
- ❖ Reversal to be worked out project wise and to be done before due date for filing of return for September, 2019.
- ❖ Where ITC to be retained, **exceeds** Total ITC availed in the project, such excess can be availed on goods and services **received on or after 01.04.2019**
- ❖ Application can be made in in **Form GST DRC - 20** to Commissioner for seeking extension of time and instalments for payment.
- ❖ No entitlement of future ITC related to supply used in construction services taxed at 1% or 5%
- ❖ ITC not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B.

Procurement from Registered Suppliers

- ❖ 80% of value of input and input services used in supplying construction services taxed at concessional rate to be procured from registered persons
- ❖ For calculating shortfall, following services to be excluded:

Development rights	High speed diesel	Electricity	Long term lease of land (against upfront payment in the form of premium, salami, development charges etc.)
Motor spirit	Natural gas	FSI	

- ❖ In case of shortfall of purchases below the specified limit:

Tax shall be paid by builders **under Reverse Charge**, on the shortfall value:

- @ 18% on purchases (other than Cement, payable by month of June following the end of the financial year.)
- @ 28% on Cement (100% payment of tax under RCM on cement procured from unregistered suppliers, irrespective of value or shortfall, payable monthly)



Affordable Residential Apartment

Meaning of Affordable Residential Apartment

Particulars	Conditions
Metropolitan Cities*	Apartment having carpet area upto 60 sq. mt. and having Gross amount upto Rs. 45 Lacs
Non-metropolitan cities/towns	Apartment having carpet area upto 90 sq. mt. and having Gross amount upto Rs. 45 Lacs
An apartment in an ongoing project	Covered under specified scheme.

***Metropolitan cities include following:**

Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata & Mumbai (whole of MMR)

Value of Affordable Residential Apartment

➤ Gross amount of Rs. 45 lakhs, shall be the sum total of:

- Consideration charged for construction services
- Amount charged for the transfer of land or undivided share of land, including by way of lease or sublease
- Any other amount charged by the promoter from the buyer of the apartment, including:

Preferential Location Charges	Development charges	Parking charges	Common Facility Charges	Similar Charges
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➤ Whether following should be included for calculating threshold of Rs. 45 lakhs?

Infrastructure Charges	Extra amenities	Club House Charges	Furniture
Society formation charges	Share capital contribution	Advance maintenance	Legal charges



Development Rights,
TDR / FSI and
Long term lease
(premium)

Transfer of TDR/FSI/Lease on or after 01.04.2019 for Construction of Residential apartments

<p>Taxability</p>	<ul style="list-style-type: none"> • Transfer of TDR / FSI / Lease used for sale of under construction residential units is exempt • However, taxable to the extent of unsold residential flats on the date of issuance of completion certificate or first occupation, whichever is earlier
<p>Time of Supply / Payment of Tax - Area sharing, Revenue sharing or upfront payment of TDR/FSI/Lease</p>	<p>Earlier of:</p> <ul style="list-style-type: none"> • Issuance of Completion certificate; or • First occupation of project
<p>Person liable to pay Tax</p>	<p>Promoter – Developer (to be paid under RCM)</p>
<p>Eligibility of ITC</p>	<p>New Scheme –not eligible; Old Scheme – eligible</p>

Transfer of TDR/FSI/Lease on or after 01.04.2019 for Construction of Residential apartments

Value of Tax on transfer of TDR/ FSI/ Lease pertaining to unsold flats on completion of project

Lower of:

- 18% on Value of TDR/FSI* in proportion to carpet area of such unsold flats to total carpet area of residential flats; or
- 1% / 5% of Value of such unsold flats**

* Valuation of TDR/FSI/Lease

- ✓ **Upfront payment:** value of monetary consideration paid.
- ✓ **Area sharing:** value of similar apartments charged by promoter from independent buyers nearest to the date of transfer of TDR/FSI/Lease;
- ✓ **Revenue sharing:** monetary consideration paid to the Landowner as revenue share;

****Value of unsold flats** is deemed as equal to value of similar apartments charged by the promoter nearest to the **date of completion certificate or first occupation**, whichever is earlier

Transfer of TDR/FSI/Lease on or after 01.04.2019 for Construction of Commercial apartments

Taxability	Taxable
Time of Supply / Time of payment of Tax	<p>Upfront Payment: Date of payment for TDR/FSI/Lease</p> <p>Area Sharing: Earlier of:</p> <ul style="list-style-type: none"> • Issuance of Completion certificate; or • First occupation of project <p>Revenue Sharing:</p> <ul style="list-style-type: none"> • Invoice or payment, whichever is earlier. As per 13(3) of the CGST Act.
Person liable to pay Tax	Promoter – Developer (to be paid under RCM)

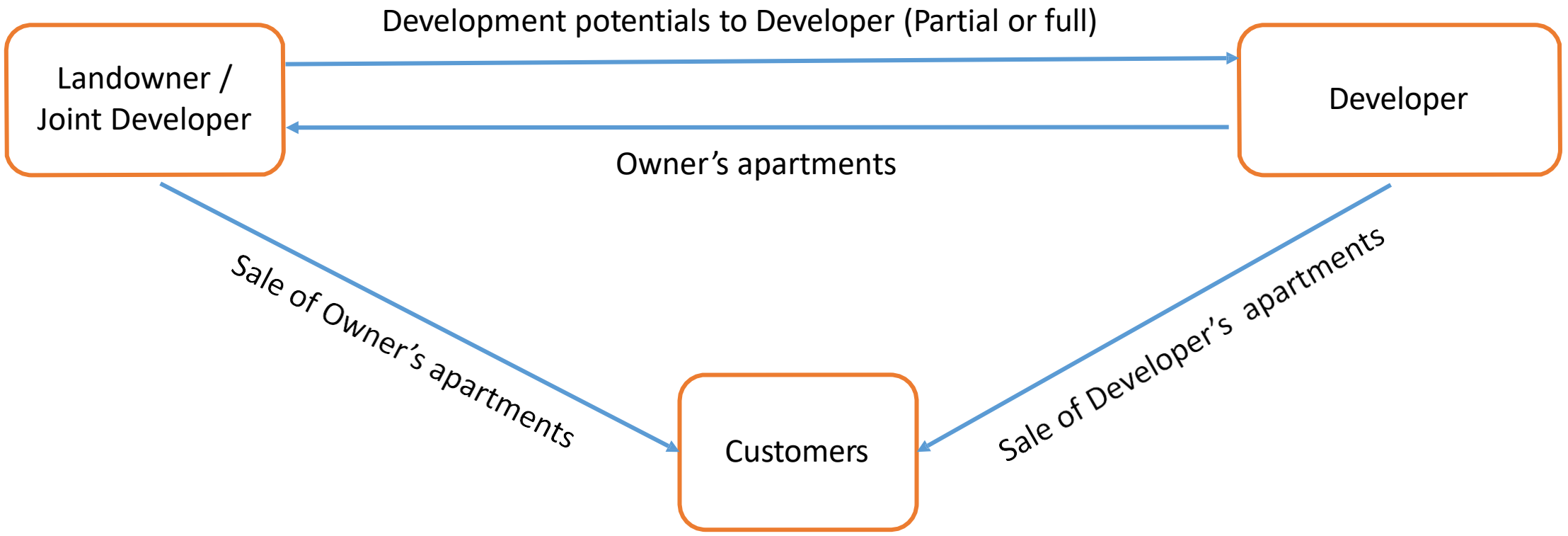
Transfer of TDR/FSI/Lease on or after 01.04.2019 for Construction of Commercial apartments

Tax Rate	18% on Value of TDR/FSI/Lease
Valuation of TDR/ FSI	<p>Upfront Payment: value of monetary consideration paid</p> <p>Area sharing: value of similar apartments charged by promoter from independent buyers nearest to the date of transfer of DR/TDR/FSI;</p> <p>Revenue sharing: monetary consideration paid to the Landowner as revenue share;</p>
Credit of tax paid under RCM by developer	<p>For Commercial projects - ITC is eligible</p> <p>For REP – ITC attributable to Commercial portion can be claimed</p> <p>For RREP (with Commercial portion less than 15%) - ITC not eligible for New scheme. However, same is eligible under Old scheme;</p>



Joint Development
Agreement (JDA) –
Area Sharing On or
after 01.04.2019

Joint Development (Area Sharing)



GST on transfer of development rights

- Landowner transfers development rights to Developer
 - Landowner receives consideration in form of constructed apartments (Owner's Area)
 - Time of supply arises on irrevocable transfer of development rights
 - Transfer of development rights on or after 01.04.2019 is **exempt** where it is used for construction of residential apartments sold before issuance of completion certificate
 - Development rights, FSI used for following will still be **liable to GST**:
 - Construction of commercial premises*
 - Construction of Residential Complex intended for sale after completion*
 - Construction of apartments remaining unsold on completion*
- *(to be paid by developer under RCM)*

GST on sale of owner 's apartments by the landowner

- Landowner is liable to GST on sale of under-construction apartments at 5% or 1% or 12%
- Developer will charge GST @ 5% or 1% or 12% on apartments allotted to landowner
- Landowner is entitled to input tax credit of GST levied by developer on construction of owner's flat subject to cap of output tax payable on Residential apartments sold under construction.
- If developer pays tax on completion of the project, landowner will not be in a position to avail or utilise ITC
- Whether developer can raise invoice earlier and pay GST before the date of completion of project or first occupation ?

**Notification No.03/2021-Central Tax (Rate) dt. 02.06.2021.*

GST payable by developer under RCM on development rights relatable to:

Apartments	Taxability
Construction of commercial apartments	Value of Development Rights shall be deemed to be value of similar commercial apartments charged by promoter from Independent buyer nearest to date of transfer of Development Rights or FSI. Tax rate will be 18% thereof - Clause iii of Notification No. 04/2019-CT(R) dated 29.03.2019
Residential apartments remained unsold on completion	<ul style="list-style-type: none">• Value of Development Rights shall be as per above• Value of unsold apartments shall be deemed to be value of similar apartments charged by promoter nearest to date of completion or first occupation; or• Tax payable will be lower of:<ul style="list-style-type: none">• 18% of TDR / FSI value attributable to unsold apartments; or• 5% or 1% of value of unsold apartments

GST payable on apartment allotted to owners

- Construction of owner's apartments is a service by developer to landowner which is liable to GST
- Developer shall pay tax on owner's area at the time of completion certificate or first occupation, whichever is earlier
- GST to be paid on the value of total amount charged for similar apartments in the project to independent buyers nearest to the date of transfer of development rights
- Developer is liable to GST on sale of under-construction apartments at 5% or 1% or 12% subject to conditions mentioned in Notification 3/2019 – CT(R)
- If one follows notification:
 - Developer is liable to pay GST on market value of apartments allotted to owners (which also includes value of land)
 - Developer will not be entitled to ITC relatable to owner's area

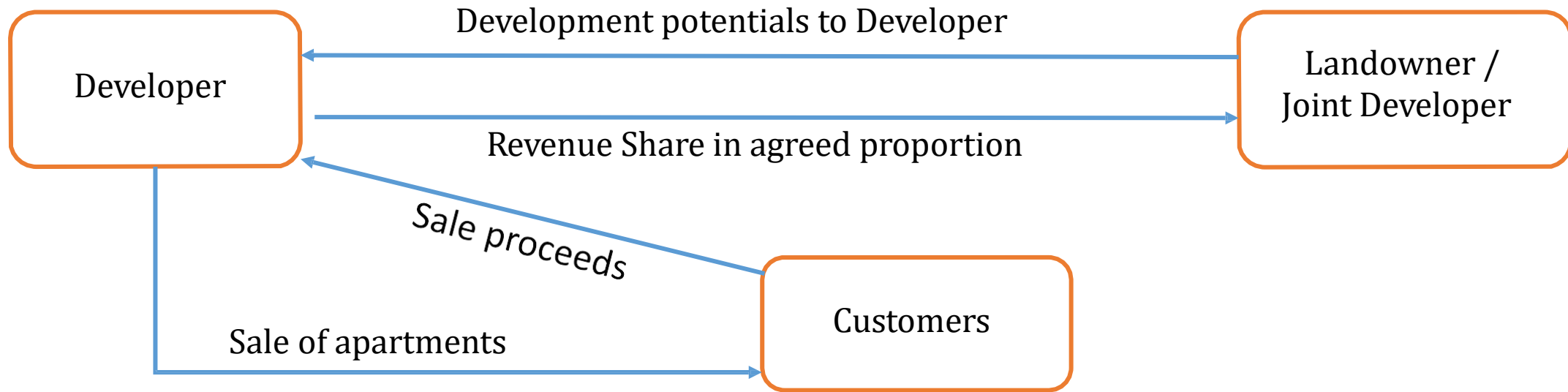
GST on sale of apartments to customers by developer:

- GST payable on sale of under construction apartments at 1% or 5% or 12% as applicable
- ITC **not available** for inputs and input services (including development rights) relating to residential/ commercial units sold at concessional rate of 1% or 5%
- Proportionate ITC relating to under construction commercial units to be taxed at 12% **is allowable**
- ITC reversal on unsold commercial units to be done as per Rule 42 and 43:
 - On area basis; and
 - For entire project period
- In case of **unsold apartments** as on the **date of completion**, Developer will be liable to pay tax under **RCM** (on such TDR, FSI, etc.) **in cash** at 18% on value of FSI/DR attributable to unsold flat **subject to cap of:**
 - 1% of value of affordable residential apartments remaining un-booked; and
 - 5% of value of Non-affordable residential apartments remaining un-booked



Joint Development
Agreement (JDA) –
Revenue Sharing On
or after 01.04.2019

Joint Development (Revenue Sharing)



➤ Revenue Share could be on:

- **Top Line** (Sales proceeds/ Realization); or
- **Bottom Line** (Project Profit); or
- **Any other basis**

GST on transfer of development rights

- Landowner transfers development rights to Developer
- Landowner receives consideration in form of revenue share
- Transfer of development rights on or after 01.04.2019 is exempt where it is used for construction of:
 - residential apartments to be sold before issuance of completion certificate; and
 - Such apartments are liable to GST
- Implications of development rights transferred on or before 31.03.2019 for which revenue share received on or after 01.04.2019?
- Development rights, FSI used for following will still be **liable to GST**:
 - Construction of commercial premises **(to be paid by developer under RCM)**
 - Construction of Residential Complex intended for sale after completion **(to be paid by developer under RCM)**

GST payable by developer under RCM on development rights relatable to:

Apartments	Taxability
Construction of commercial apartments	GST at 18% will be payable under RCM on actual revenue share paid to landowner (How to determine this on the date of transfer of Development Rights?)
Residential apartments remained unsold on completion	<ul style="list-style-type: none">• Value of Development Rights shall be as per above• Value of unsold apartments shall be deemed to be value of similar apartments charged by promoter nearest to date of completion or first occupation; or• Tax payable will be lower of:<ul style="list-style-type: none">• 18% of TDR / FSI value attributable to unsold apartments; or• 5% or 1% of value of unsold apartments

GST on apartments sold to ultimate customers by developer

- GST payable on sale of **all** under construction apartments at 5% or 1% or 12% as applicable
- ITC **not available** for inputs and input services (including development rights) relating to residential / commercial units sold at concessional rate of 1% or 5%
- Proportionate ITC relating to under construction **commercial units** to be taxed at 12% **is allowable**
- ITC reversal on unsold **commercial units** to be done as per Rule 42 and 43:
 - On area basis; and
 - For entire project period

- Rate of GST on TDR.
- Time of Supply of DR in case of revenue sharing project.
- Transfer of DR from 1 developer to another.
- Ascertainment of value of similar apartments in case of a commercial cum residential project.
- Taxability and ITC in case of leased project after CC.
- Taxability in case of car park sold separately.
- Taxability of other charges (PLC, EDC, Legal, Transformer, Club etc.).
- Valuation in case of a project where there is no sale and only rent, between Owner & Developer.
 - Availability of ITC in above case.
- Carry over / Utilisation of ITC of one project to another.
- Disclosure of Correct output Value & Rate in GST Returns
- Ensuring correct method of payment of output (viz ITC/Cash).
- Can refund be claimed for overflow of ITC. (IDS)

Thank you



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