

# GST IMPLICATION ON DR/TDR/LTLP AND JOINT DEVELOPMENT.

Presented by:  
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- *Evolution of GST Act.*
- *Brief History of GST on DR/TDR/LTLP.*
- *Summary of Notifications relevant to DR/FSI/LTLP.*
- *Rate of GST w.e.f .01.04.2019.*
- *Various Types of Projects under Real Estate Sector.*
- *Meaning of Affordable Housing Apartment.*
- *Taxation of DR/TDR/LTLP.*
- *Various aspects in JDA.*
- *Key take away from session.*

# Highlights of Constitution (101th amendment) Act, 2016.

- Insertion of **article 246A**- power of parliament frame law namely CGST 2017.
- **Article 366(12A)** defines **Goods and service tax** means any tax on the supply of goods or services or both except taxes on the supply of the alcoholic liquor for human consumption.
- **Article 366(12)** “Goods” includes all materials, commodities, and articles [Definition Already Present prior to 101 Constitutional amendment]
- **Article 366(26A)** “Service” means anything other than goods.
- **Article 269A** Levy and collection of GST in the course of inter state trade and commerce-levy and collection by Central government and apportioned between Union and states.
- **Article 269A** Import will deemed as supply in the course of inter state
- **Article 269A** Parliament to formulate principle for determining place of supply in the course of inter state supply
- **Article 279A** constitution of GST Council to recommend apart from other The taxes, cesses and surcharges that may be subsumed or The goods and services that may be subjected to or exempted from GST

## **Brief History of GST on DR/TDR/LTLP.**

- **Entry 5(b) of Sch. II of CGST Act, 2017:-** Construction service of residential or commercial apartment sold before OC is Supply of Service.
- **Entry 5 of Sch. III of CGST Act, 2017:-** Sale of Land and after OC building is neither Sale of Goods nor Service.
- **N T 11/2017 (R) dated 28/06/2017:-** Construction service of residential or commercial apartment sold before OC will taxable under SAC 9954 and tax rate shall be 18% after taking 1/3 deduction towards value of land involved in Consideration.
- **N T 04/2018 (R) dated 25/01/2018:-** point of taxation for GST on Transfer of Development right and Construction Service provided.
- *Bombay High Court judgment in case of Builders Association of Navi Mumbai Vs Union of India on 28/03/2018, GST Applicable on LTLP.*
- **N T 04/05/06 dated 29/03/2019:-** *taxability and exemption of DR/TDR/ LTLP , Person Liable to tax, Time for making payment of tax.*

## Summary of the Notifications in relation to DR/TDR/LTLP.

Sr No	Noti. (CGST)*	Summery
1	04/2018 (Rate) 25/01/2018	Point of Taxation in case of area Sharing Joint development agreement.
2	04/2019 (Rate) 29/03/2019	Exemption of GST payable of D R /FSI/Long term Lease Premium.
3	05/2019 (Rate) 29/03/2019	Person Liable to Pay GST on DR/FSI/Long term Lease Premium.
4	06/2019 (Rate) 29/03/2019	Time of Supply for GST on DR/FSI/Long term Lease Premium.
5	354/32/2019 07/05/2019	41 FAQs (Part I) to simplify the various notification issued on 29.03.2019.
6	354/32/2019 14/05/2019	27 FAQs (Part II) to simplify the various notification issued on 29.03.2019.
7	23/2019(Rate) 30/09/2019	N T 04/2018 shall be applicable for all Dev. Rights transferred till 31.03.2019

**Effective rates of GST w e f 01.04.2019.**

<b>Particulars</b>	<b>Old GST regime (Upto 31.03.19)</b>	<b>New GST regime (w.e.f.01.04.19)</b>
Affordable House	8%	1%
Residential House other than Affordable House	12%	5%
Commercial Units (in RREP)	12%	5%
Commercial Units (other than RREP)	12%	12%

Rate Specified under Old regime also continue to apply even after 01.04.2019, in case where developer opted to continue with existing rates in case of ongoing Projects.

# Types of Projects undertaken by Real Estate developer.

N T 03/2019 ( R)dated 29.03/2019

Project having  
Commercial  
area less 15%  
of Total Carpet  
area

Project having  
Commercial area  
more 15% of  
Total Carpet area

Project having  
100 %  
Commercial area.

Could be any  
type of Project  
i.e. RREP/REP/  
Commercial

## ➤ Affordable Residential Apartments

- a) Residential apartments with carpet area 60 sq mtr. (In case metropolitan) / 90 sq mtr (Other than metropolitan) and 45 lac consideration.
- b) Ongoing Project with 8% rates.(N T 01/2018 ( R) Dated 25.01.2018

*Metropolitan cities are B  
Delhi, Noida, Greater  
Hyderabad, Kolkata  
respective Geographical  
the Central or State Go*

As per the MMRDA, MMR include  
8 Municipal corporations (Mumbai, Thane, Kalyan Dombiwali, Navi Mumbai, Mira Bhayander, Bhiwandi-Nizampur, Ulhasnagar, Vasai-Virar),  
9 Municipal council (Ambernath, Kulgoan – Badlapur, Uran, Alibag, Pen, Matheran, Karjat, Khopoli, Panvel).

Source:- <https://mmrda.maharashtra.gov.in>



GST on Development  
rights, TDR/FSI and Long  
Term Lease Premium  
(LTLP). w.e.f. 01.04.2019

# Transfer of Development rights under difference Models.

Outright  
Purchases  
Agreement.


Development  
agreement (Area  
Sharing Model)

Development  
agreement  
(Revenue  
Sharing Model)

Society  
Redevelopment  
agreement.

# Taxability Development Rights/FSI and LTLP.

NT 04/2019 dated 29.03/2019



In all the cases GST on DR/TDR/LTLP shall be paid by developer under Reverse charge w.e.f.01.04.2019. NT 05/2019 dated 29.03.2019

# Time of payment for GST on DR/FSI/LTLP.

**N T 06/2019 ( R)dated 29.03/2019**

# GST on Joint Development Arrangement. w.e.f. 01.04.2019

N T 03/2019 ( R ) and N T 04/2019 ( R ) dated 29.03/2019c

## Joint Development Arrangement under GST.

Time for payment of GST and Value of Supply in JDA arrangement:-

Land  
Owner/  
Land  
Lease  
Holder/

Transfer of development right /  
Additional FSI.

Share in developed real estate  
Project and /or cash consideration.

Real  
Estates  
developer  
/

Tax liability shall arise at the time of completion certificate issued by competent authority or buyer at/earliest time whichever is earlier.

## **Transfer of Development rights by Land owner to Developer.**

➤ Classification of DR/FSI/LTLP-SAC 9972.

**N T 05/2019 ( R)dated 29.03/2019**

➤ Person Liable to pay the tax :- Recipient (Developer) under RCM.

➤ Rate of Tax:- 18% (9% CGST +9% SGST).

However in case of GST Payable on DR/FSI/LTLP attributable to the unsold residential apartment on the date of OC, shall not exceed,

➤ In case of Affordable residential apartment, 1% of value charged for similar apartment nearest to the time of OC/First occupancy .

➤ In case of residential apartment other than affordable apartment, 5% of value charged for similar apartment nearest to the time of OC/First occupancy .

**N T 04/2019 ( R)dated 29.03/2019**

## Transfer of Constructed area by Developer to Land owner.

➤ Classification of Construction Service:- SAC9954

➤ Rate of Tax,

**N T 03/2019 ( R)dated 29.03/2019**

Affordable residential apartment :- 1%.

Residential (other than affordable ) apartment :- 5%

Commercial Units in RREP :- 5%

Commercial Units in REP:- 12%.

➤ Person Liable to pay Tax- Developer (under Forward Charge).

As the Land owner is also Promoter in the Project (under RERA), and if land owner is intended to sale the his share of area before OC(or first occupancy which ever is earlier), then Land owner need to take registration and discharge the Liability of GST.



## **Technical issues ,**

1) As per the notification tax is paid by developer at the time of OC, whereas LO can take ITC if, LO sale these units before OC.

But LO need to pay tax as per continues supply provision (% Completion), so LO need to take ITC at earlier stage when such tax is paid by developer at later stage.

2) Proportional ITC of the commercial area in REP and commercial DA available to the developer. However, GST on DR/TDR/LTLP is payable by developer (RCM) at the time of OC, except in case of DR purchased for Commercial Area.

How the developer will utilize the such ITC, as there is no taxable supply after OC?

## Illustration:-

In the Project, there is transfer of DR by Land owner to developer, for which developer is agree to share him 3 shops out of 7 shops and 5 flats out of 20 flats. Additional details are as follows,

Sr No	Particulars	At the time of DA	At the time of OC
1	Value of Flats	65,00,000	80,00,000
2	Value of Shops	95,00,000	1,20,00,000
3	No of Flats unsold	20 Flats	2 Flats
4	No of Shops unsold	7 Shops	1 Shop
5	Area of Shop	40 Sq mtr (Total 280 Sq mtr)	
	Area of flats	55 Sq mtr (Total 1100 sq mtr)	

Value Flats (65 Lac \* 5 flats) = 3,25,00,000

Value of Shops (95 Lac\* 3 Shops) = 2,85,00,000

**Total 6,10,00,000**

Value of  
Development  
rights.

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GST payable on DR transferred by Land owner to Developer.

<b>Particulars</b>	<b>Calculation</b>	<b>Amount (in Cr)</b>
GST Payable on DR	$(6.10 \text{ Cr} * 18\%)$	1.0980
GST in residential apartments	$(1.098 * (1100/1380))$	0.8752
GST on shops	$(1.098 * (280/1380))$	0.2227
<b>GST Payable at the time of O.C</b>		
On Shops	Same as above	0.2227
On Residential Apartments	$(0.8752 * (110/1100))$	A-0.0875
On Residential Apartments	$(80 \text{ Lac} * 2 \text{ flats} * 5\%)$	B-0.0800
<b>Total GST Payable</b>	$(0.2227+0.0800)$	<b>0.3027</b>

**Note:-** Since it is an JDA arrangement, hence tax of DR on commercial area is to be paid at the time of OC otherwise same is to be paid at the time of date of DA.

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GST on construction services provided by Developer to Land owner .

<b>Particulars</b>	<b>Calculation</b>	<b>Amount (in Cr)</b>
GST on Construction service.	On Flats (3.25 Cr * 5%)	0.1625
	On Shops (2.85 Cr * 12%)	0.3420
Total GST Payable on construction services.		0.5045

<b>Particulars</b>	<b>Flats</b>	<b>Shops</b>
Total No of units	20	7
Tax Paid on units Given to LO	5	3
Tax Paid on Units sold before OC	13	3
Tax under (RCM on DR)	2	1
Untaxed Units	0	0

## Key Takeaway

➤ For purpose of determination of 45 lac consideration, following amount shall be included,

- Value charged for construction services.
- Value charged / included for undivided share in land.
- Other charged such as PLC, Dev. Charges, Parking, common facilities etc

But does not include maintains charges / refundable deposited, (FAQ 4 Dated 14.05.2019 series II).

Therefore above element also need to be considered at the of valuation of similar apartment incase of,

- Taxation of Development Right. (LO to Developer)
- Taxation on Construction service. (Developer to LO)

## Key Takeaway

- In case of JDA, effectively all units are get taxed ( as seen in illustration), in following manner,
    - All Units given to LO (Tax payable at the time of OC).
    - Units sold out of Free Sale, (Throughout the project life under % accrual)
    - Units unsold from Free sale, (in form of RCM on DR/TDR)
  - Now it is normal presumption that, land owner is need not to follows GST Compliance, as w. e. f. 01.0.4.2019 all burden of compliance is shifted to developer.
- However in case if LO sale it's share in project before issuance of OC, same is taxable is taxable in the hand of LO and LO need to take registration and follow the compliance.

## Key Takeaway

➤ Amended provision for taxation of DR/TDR under RCM is only applicable for the DR/TDR transferred after 01.04.2019. (FAQ 38 dated 07.05.2019).

Even In case where DA is executed before 31.03.2019, but allotment of constructed area is taken place on or after 01.04.2019, same shall be governed on N T 04/2018 dated 25.01.2018 and not by 05/2019.

➤ In case REP project or 100% Commercial project, where Developer is eligible to take ITC proportional to the commercial area involved in the project, GST paid under RCM on DR/TDR at the time of OC can be utilized against payment of GST payable due to ITC reversal on unsold units in said project at the time of OC.





*Thank  
you*

