

LAW ON DEVELOPMENT AGREEMENTS

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Managing Partner



DEVELOPMENT / JOINT DEVELOPMENT AGREEMENTS

RERA

Developer and Land owner as promoter.

GST

Three types of transactions where GST is applied.

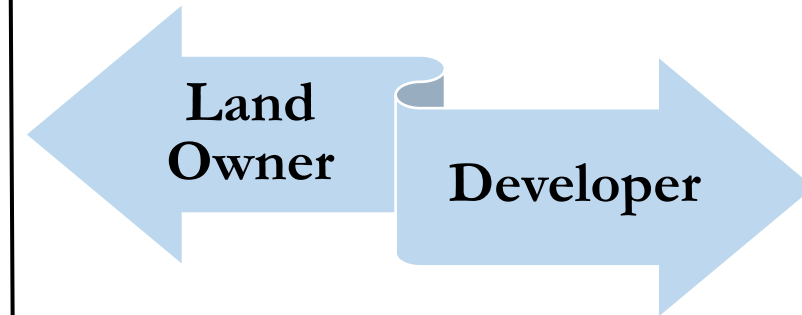


Stamp Duty

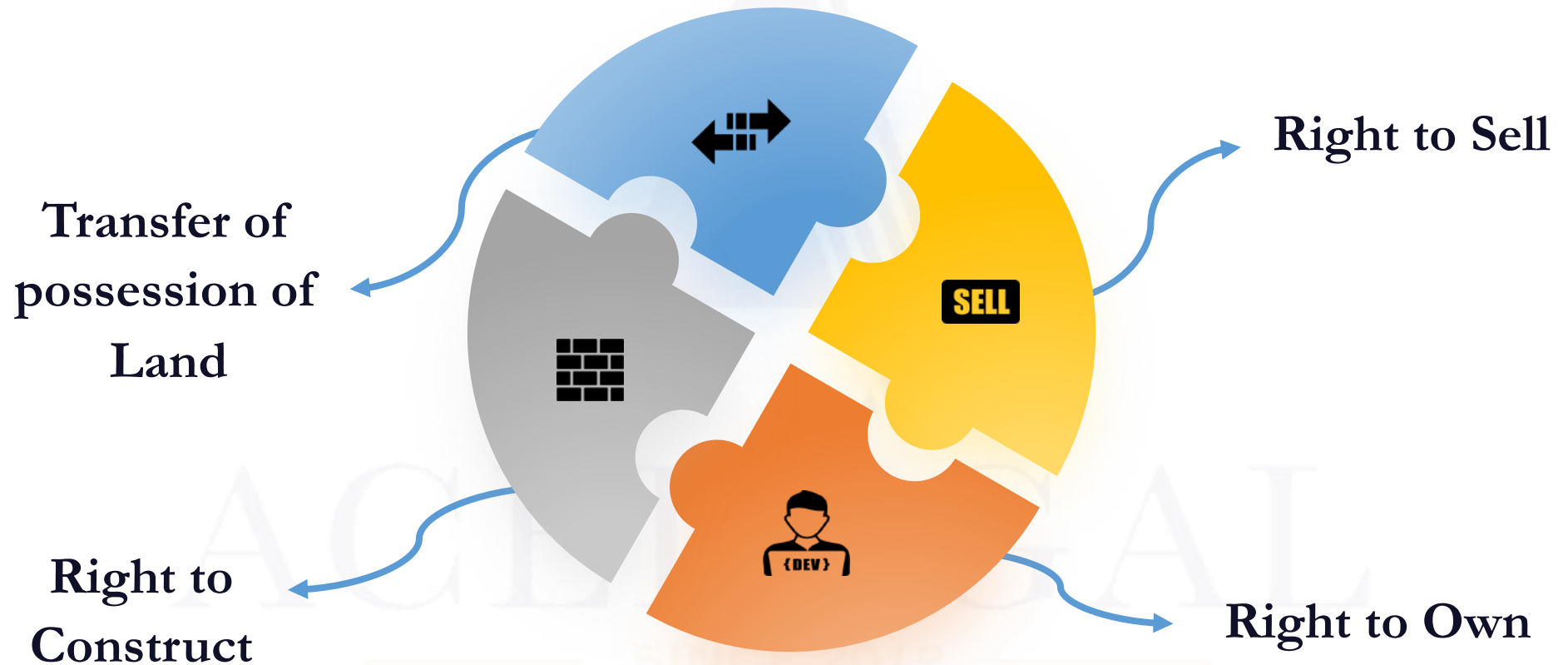
JDA between builder and land owner must be registered.

Income Tax

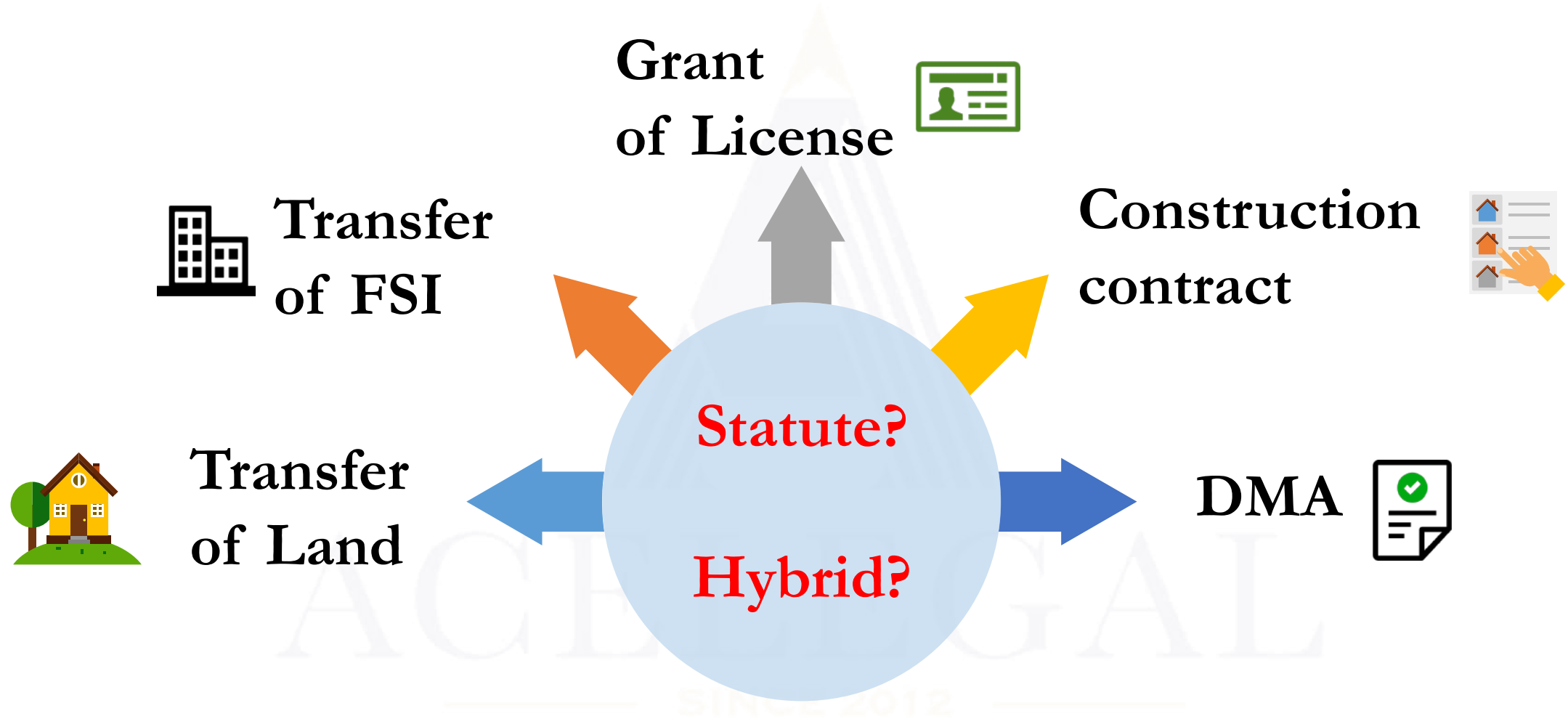
Taxability in the hands of owner and developer of the property.



ESSENTIALS OF DEVELOPMENT RIGHTS



NATURE OF DEVELOPMENT AGREEMENT



[Sushil Kumar Agarwal v. Meenakshi Sadhu & Ors. (2019) 2 SCC 241]

JUDGMENTS

**Faqir Chand Gulati v.
Uppal Agencies
(2008) 10 SCC 345**



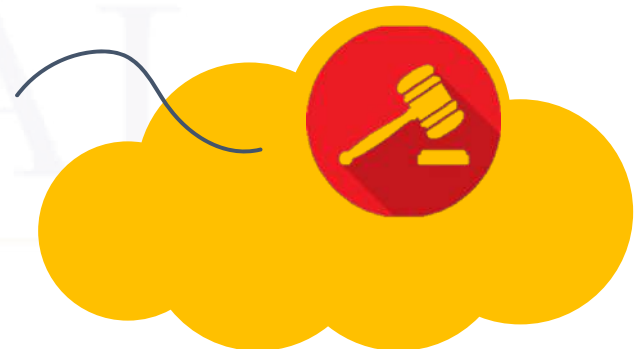
**Sushil Kumar
Agarwal v.
Meenakshi Sadhu &
Ors. (2019) 2 SCC
241**



**CIT v. Balbir
Singh Maini (2017)
398 ITR 531 (SC)**



**Chaturbhuj
Dwarkadas Kapadia
v. CIT (2003) 180
CTR Bom 107**



SUSHIL KUMAR AGARWAL V. MEENAKSHI SADHU & ORS.

(2019) 2 SCC 241

PARA 16

The expression “development agreement” has not been defined statutorily. In a sense, it is a catch-all nomenclature which is used to describe a wide range of agreements which an owner of a property may enter into for development of immovable property. As real estate transactions have grown in complexity, the nature of these agreements has become increasingly intricate. Broadly speaking, (without intending to be exhaustive), development agreements may be of various kinds:

- (i) An agreement may envisage that the owner of the immovable property engages someone to carry out the work of construction on the property for monetary consideration. This is a **pure construction contract**;
- (ii) An agreement by which the owner or a person holding other rights in an immovable property grants rights to a third party to carry on development for a monetary consideration payable by the developer to the other. In such a situation, the owner or right holder may in effect create an interest in the property in favour of the developer for a monetary consideration; **(Sale)**

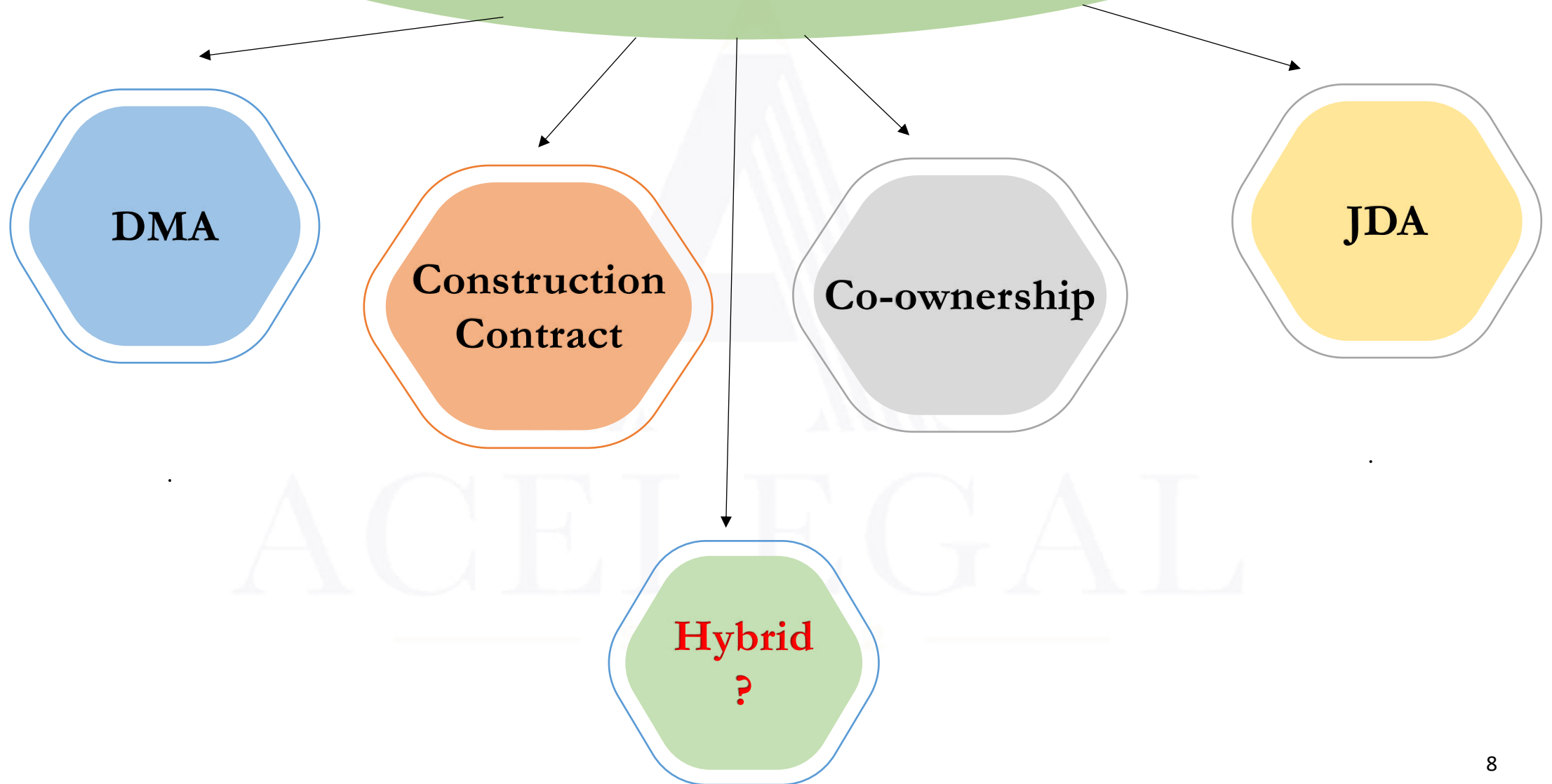
(iii) An agreement where the owner or a person holding any other rights in an immovable property grants rights to another person to carry out development. In consideration, the developer has to hand over a part of the constructed area to the owner. The developer is entitled to deal with the balance of the constructed area. In some situations, a society or similar other association is formed and the land is conveyed or leased to the society or association; **(Area Sharing)**

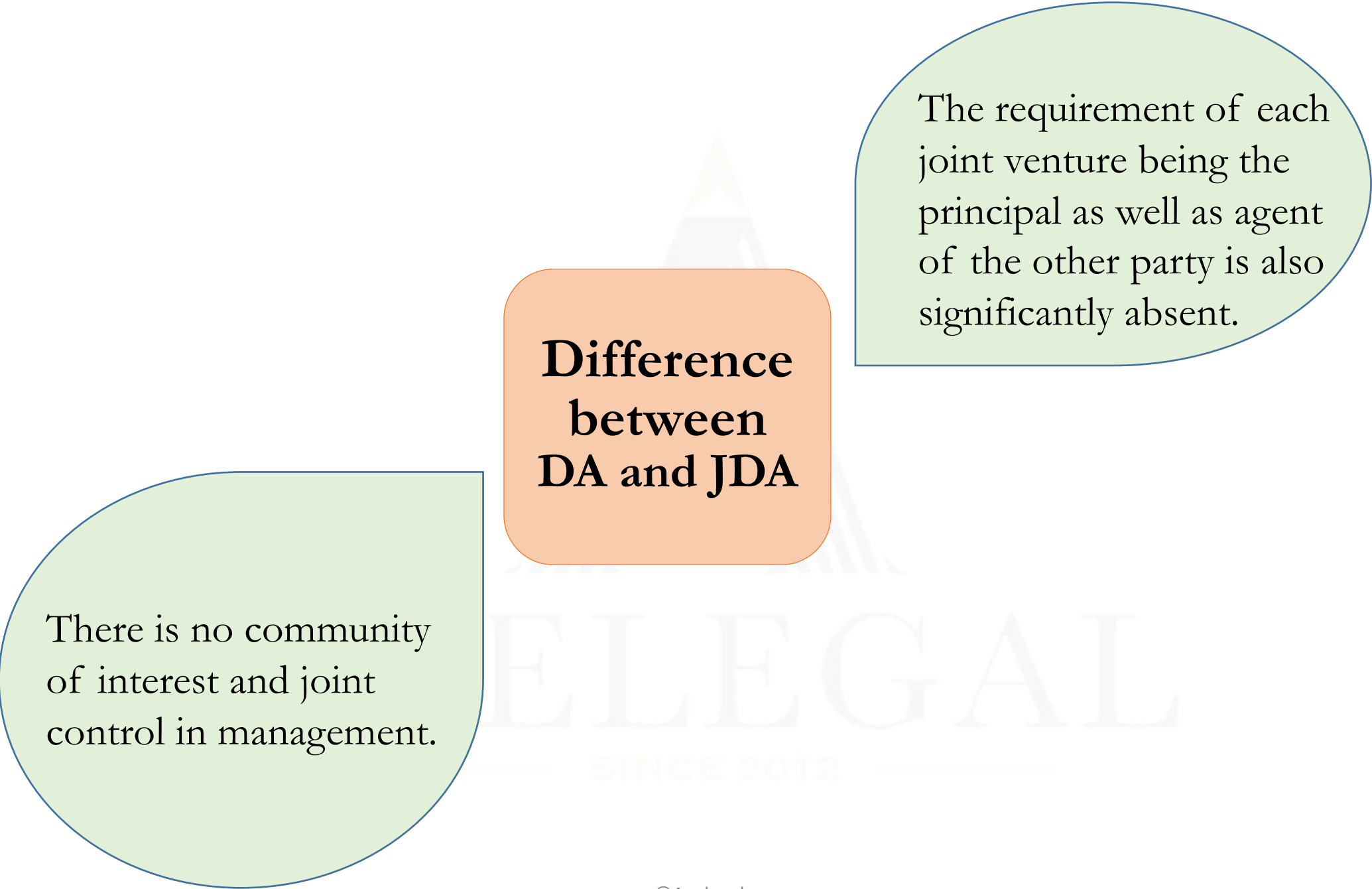
(iv) A development agreement may be entered into in a situation where the immovable property is occupied by tenants or other right holders. In some cases, the property may be encroached upon. The developer may take on the entire responsibility to settle with the occupants and to thereafter carry out construction; and **(License)**

(v) An owner may negotiate with a developer to develop a plot of land which is occupied by slum dwellers and which has been declared as a slum. Alternately, there may be old and dilapidated buildings which are occupied by a number of occupants or tenants. The developer may undertake to rehabilitate the occupants or, as the case may be, the slum dwellers and thereafter share the saleable constructed area with the owner. **(Redevelopment)**

When a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreements, the developer may have acquired a valuable right **either in the property or in the constructed area**. The terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights.

HOW IS A DA DIFFERENT FROM:





The diagram features a central orange rounded rectangle with the text "Difference between DA and JDA". To its left is a large green rounded rectangle containing the text "There is no community of interest and joint control in management." To its right is a green rounded rectangle containing the text "The requirement of each joint venture being the principal as well as agent of the other party is also significantly absent." In the background, there is a faint watermark of a building and the text "ACELEGAL SINCE 2012".

Difference between DA and JDA

There is no community of interest and joint control in management.

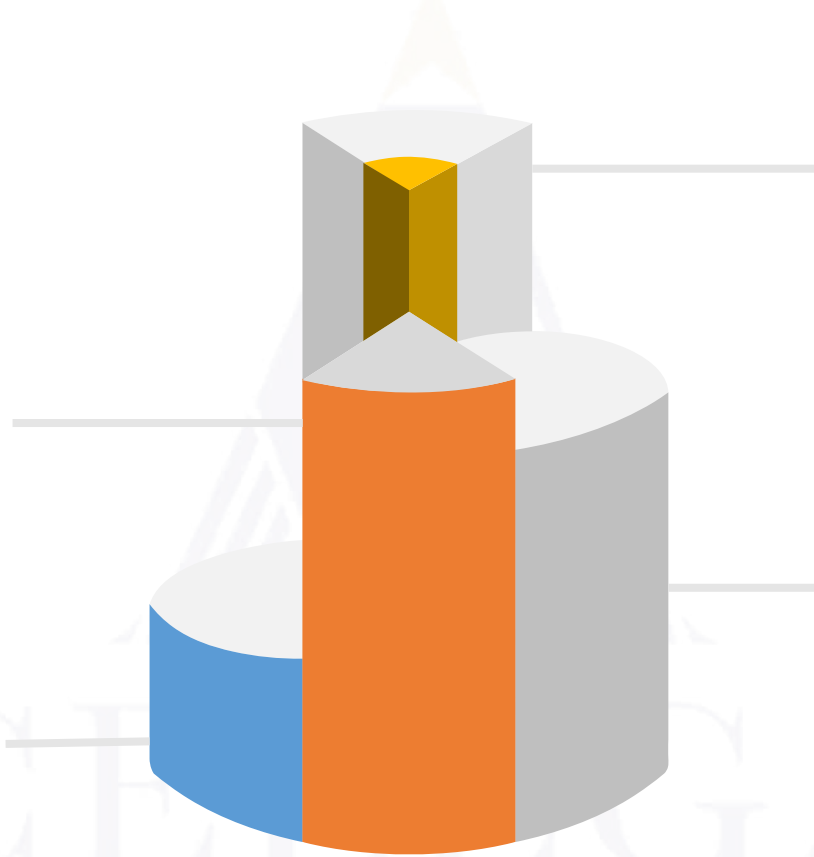
The requirement of each joint venture being the principal as well as agent of the other party is also significantly absent.

CONSTRUCTION AGREEMENT

IMPORTANT: The contractor is not involved in the sale of flats.

Owner provides plan approvals, engineering drawings and the contractor will construct the building using labour and materials procured by him.

Whenever a flat is sold to the buyer, the land owner and the buyer will enter into a sale deed.



The owner pays the builder as and when the work is being completed.

The payment could be as revenue share (charge) or area share (barter).

**Charge u/s.
100 of TPA**

**POA/ Board
Resolution**

**RERA
Sec. 4(2)(I)(D)**

**Contractor can be
made “Promoter”**

DEVELOPMENT MANAGEMENT SERVICES

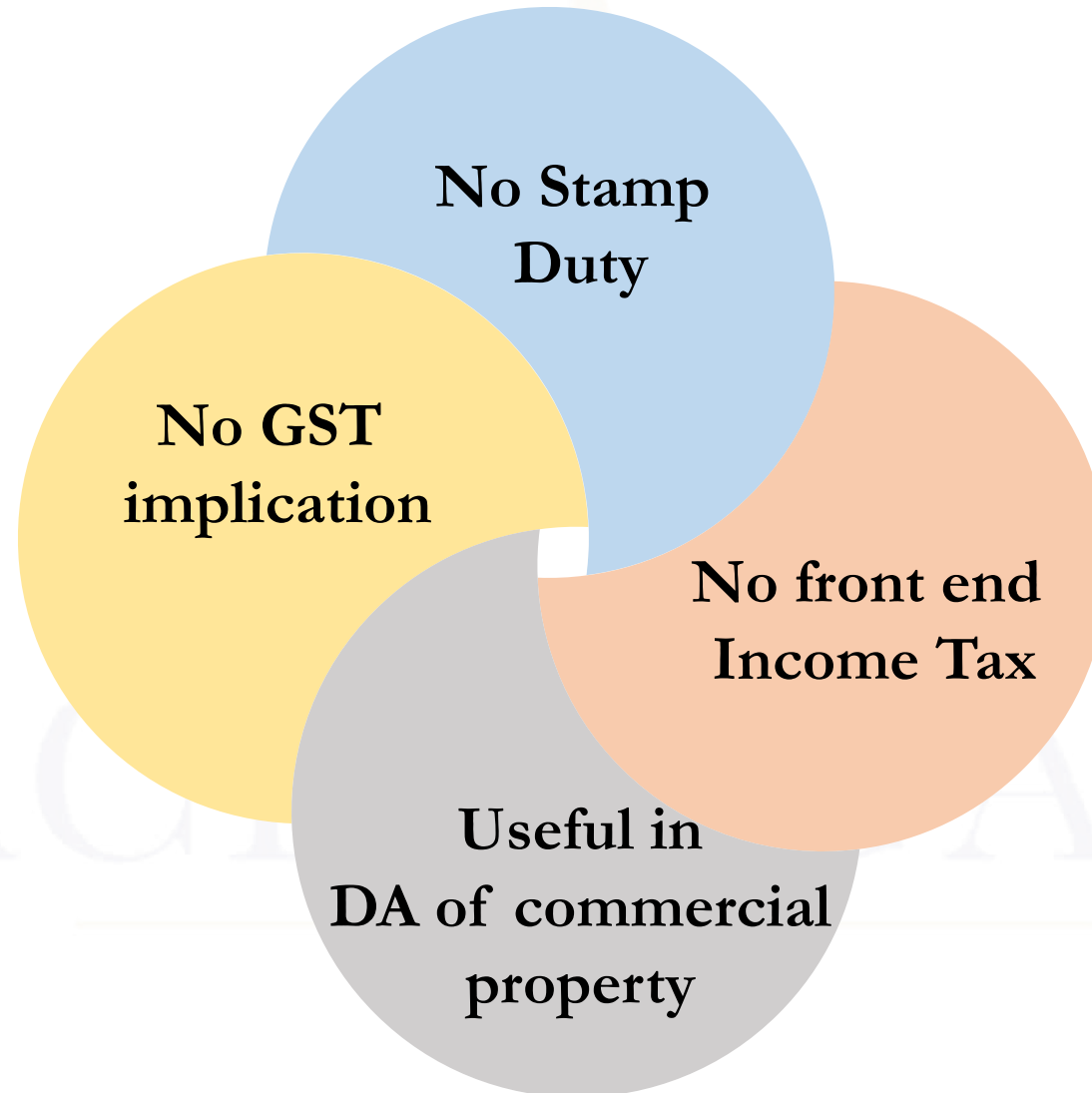
Takes care of the entire property development process from initial strategy and concept through to delivery on **fee basis**.

- ◆ Project direction and advice
- ◆ Site investigation and selection
- ◆ Supervise Construction
- ◆ Funding assistance
- ◆ Sales and marketing

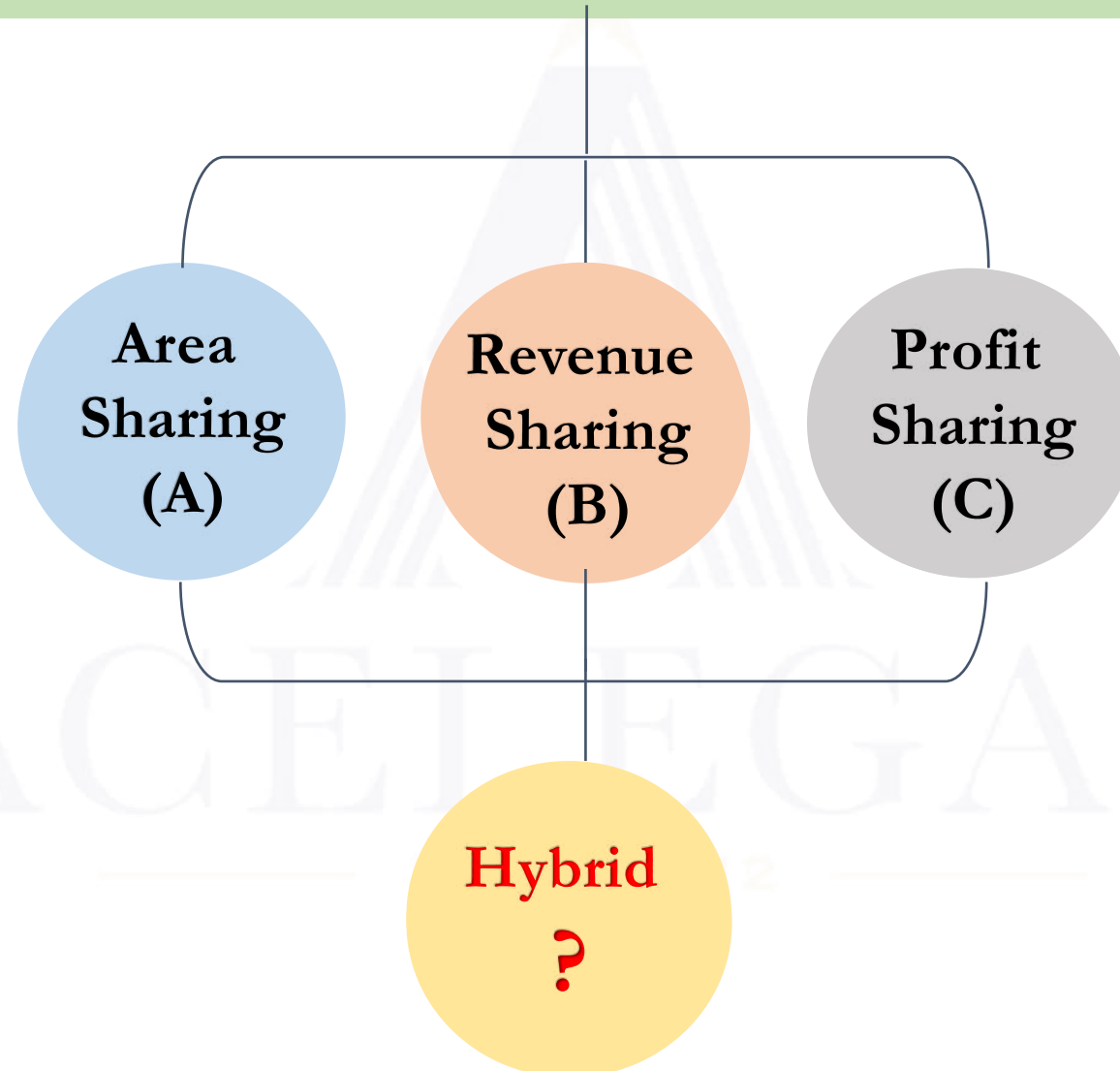


- ◆ Land title management
- ◆ Development strategy
- ◆ Planning proposals
- ◆ Engage specialists
- ◆ Liaise with neighbors

BENEFITS



TYPES OF DA



TYPICAL AREA SHARING



Builder

Land Owner



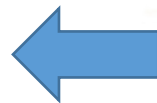
Builder pays deposit to owner and obtain possession of land by executing DA



Owner execute PoA in favour of builder



**Builder gets part
of constructed
area**



**CONSTRUCTION
COMPLETED**



**Land Owner gets
part of
Constructed area**

REVENUE SHARING MODEL

LO and D join in a Tripartite Agreement with ultimate purchaser of apartment wherein:

LO and D agrees to share **“Distributable Revenue”** in specified percentage.

The legal ownership, domain and control of land remains vested with the LO and no portion of it is transferred to the D.

LO agrees to convey his undivided right, title and interest in land to and in favour of the prospective purchaser of the apartments ;

D agrees to convey the specific unit being constructed on the land in favour of ultimate purchaser.



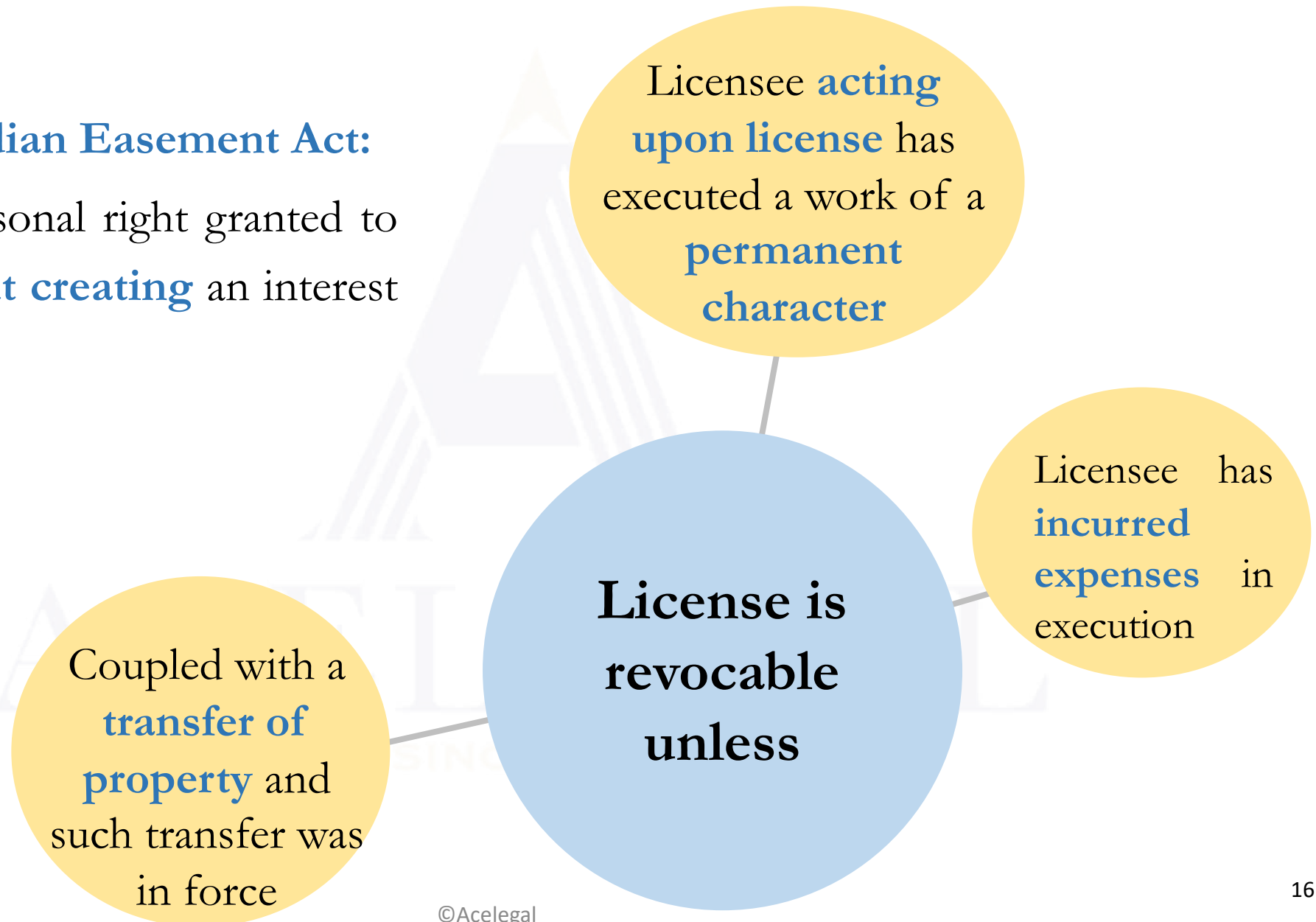
A joint account, **“Escrow Account”** is opened for sharing revenue

Specific PoA executed by LO in favor of D.

GRANTING OF LICENSE

Section 60 - Indian Easement Act:

Licence is a personal right granted to a person **without creating** an interest in the property.



DEPOSIT

Land owner
received deposit
from Builder



- REFUNDABLE
 - NON-REFUNDABLE
- each having different tax implications.

Front end capital
gain subject to
Sec. 45(5A)

Non Refundable

10% TDS
u/s. 194 IC

**Chaitanya
Properties Pvt.
Ltd. v. JCIT
(2016) 67 taxmann.
com 201 (Kar.)**



Non-refundable deposit –
would partake character of sale
consideration.

01



Only upon the ownership of the
undivided interest in land being
transferred by a sale deed and not
before.

02



Only to the extent of the amount
proportionately applicable to the
extent of land so transferred.

03



FAQIR CHAND GULATI
v.
UPPAL AGENCIES PVT. LTD. AND ANR.
(2008) 10 SCC 345 - SUPREME COURT

TERMS OF AGREEMENT

D Hand over entire Ground floor to A + 8 Lakhs

1st and 2nd floor shall belong to D as its share.

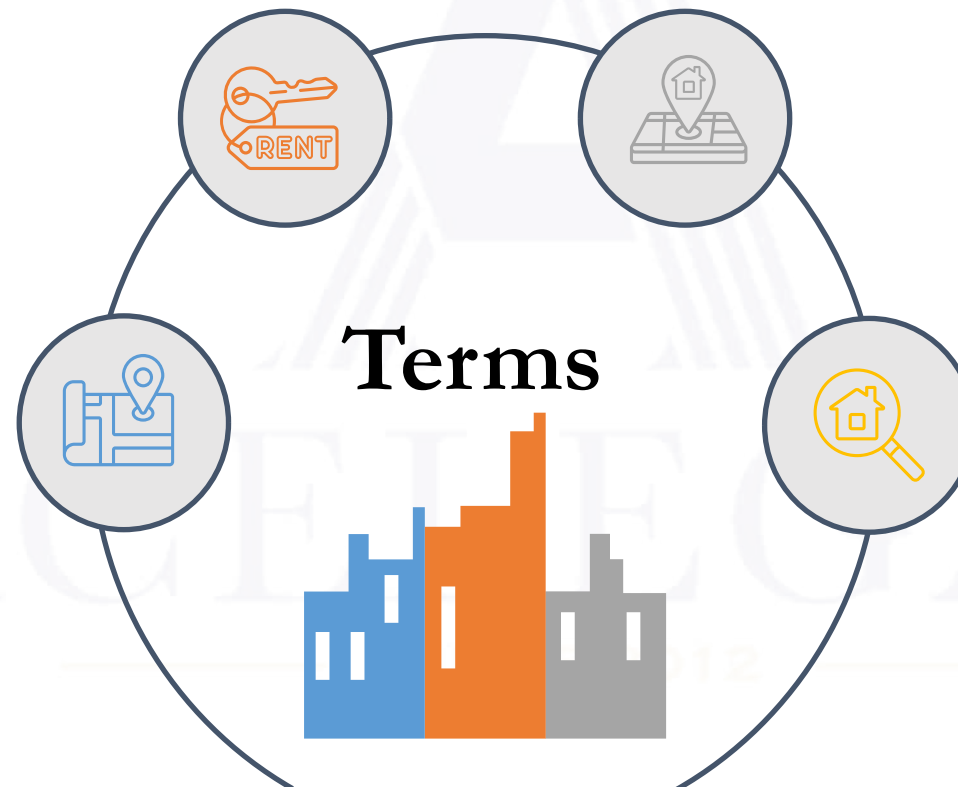
LO and D shall be entitled to undivided and indivisible share in land.

D to demolish existing structure and construct new (G + 2)

Agreement is not partnership and shall not be deemed to a partnership

D to secure permissions and approvals

In the event of breach – affected party shall have right to claim specific performance



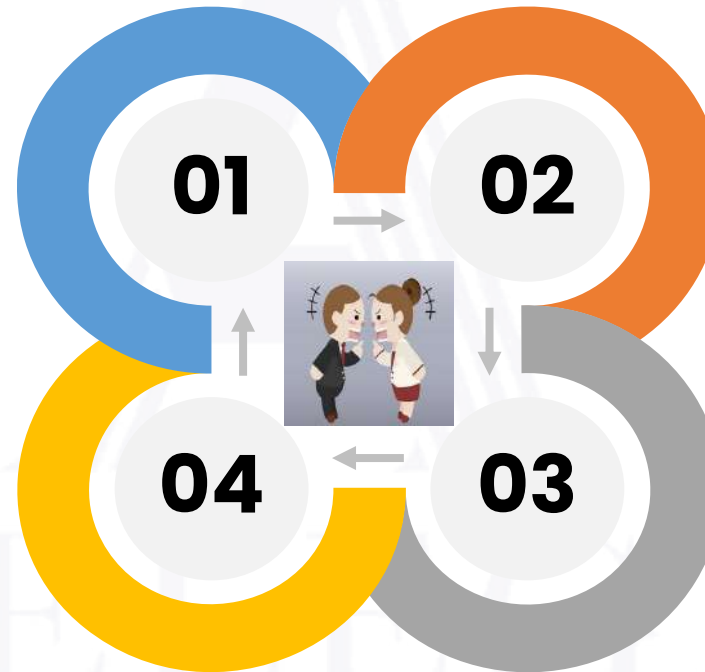
DISPUTE

D during construction made several unauthorised deviations in sanction secure, premises was sealed by corporation.

Later LO found several shortcoming in construction. LO approached D to rectify deviations. D did not comply.

Subsequently corporation allowed D to rectify the deviations.

The delivery of ground floor was made to LO's son in absence of LO.



National commission rejected petition observing that the agreement is in nature of **Joint Venture** and transaction did not have any element of hiring the services of D.

QUESTIONS BEFORE HON'BLE SUPREME COURT



Whether on the facts and circumstances, a complaint of LO is maintainable under the Consumer Protection Act, 1986?



What is nature of agreement entered between parties?



Whether LO is consumer ?

FINDINGS

Such agreement whether called as a ‘collaboration agreement’ or a ‘joint-venture agreement’, is not however a ‘joint-venture’.



The title/caption/nomenclature of the instrument is not determinative of the nature and character of the instrument, though the name may usually give some indication of the nature of the instrument.

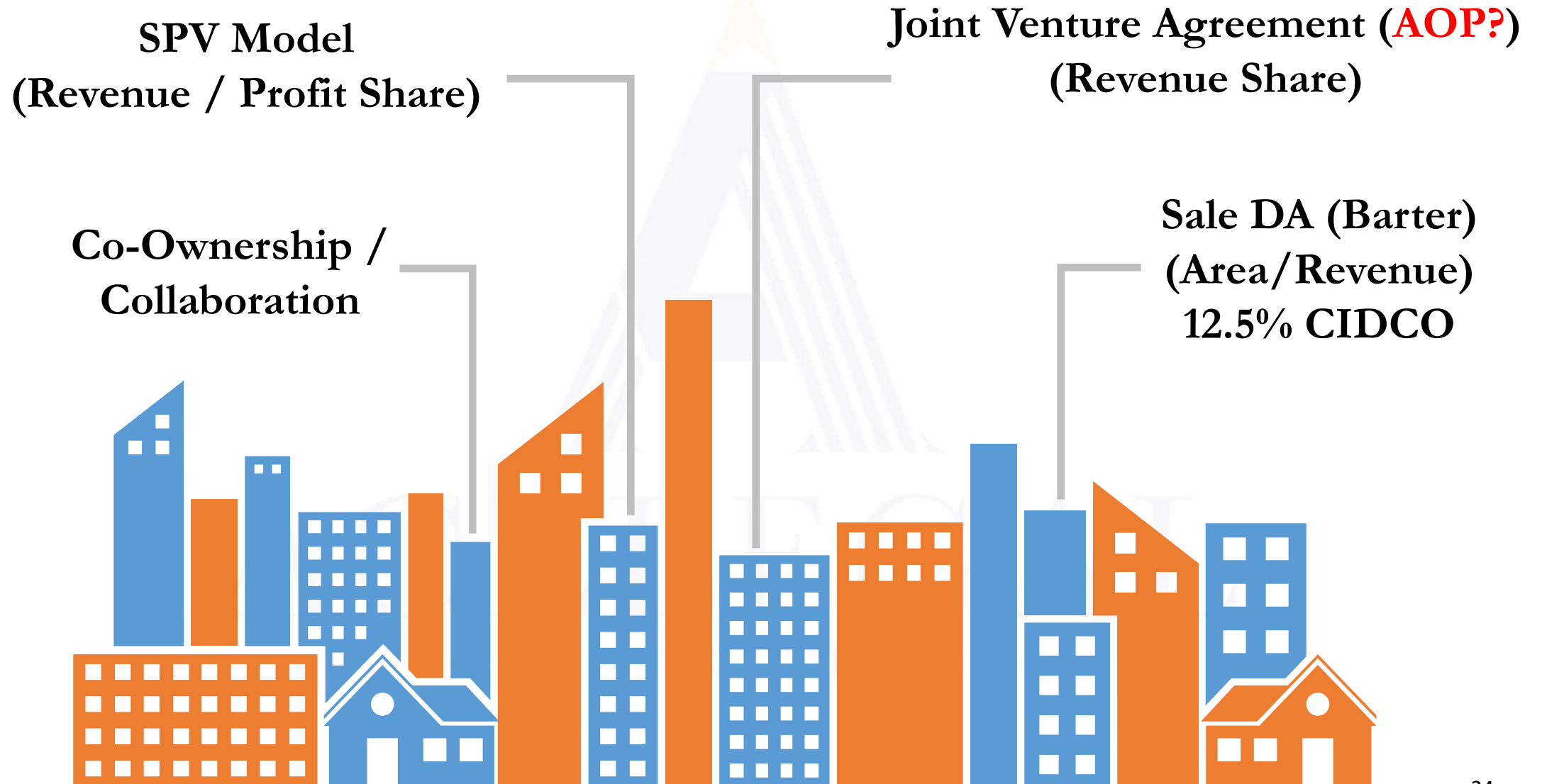


The builder alone is responsible to pay penalties in respect of any unauthorised deviations.



1. RERA obligation on builder or on both?
2. Affects head of income for LO (“PGBP” / “Capital Gain”)?

SOME EXISTING STRUCTURES



JOINT VENTURE AGREEMENT (AOP ?)

Agreement between the Owner of land/building and Developer to re/construct large building complexes.

Developer undertakes construction and allied activities as well as marketing processes.

May provide for PSR between the owner and developer with respect to constructed units.

Incorporated / Unincorporated JV. LLP can be formed.



Owner contributes his share by granting development rights on the land owned.

Owner continues to own the property.

Whenever a flat is sold to the prospective buyer, tripartite agreement will be executed between the owner, buyer and developer.

If SPV is formed then one has to consider implications u/s 56(2)(x), s. 45(3), s. 50C, s. 43CA and Stamp duty.

SAFEGUARDS OF LAND OWNER



Exclude clearly from RERA obligations and labour law regulations.



Reclarify about the joint participation in planning, design, but at the cost of the Developer.



Structure the responsibility of the Developer.



Developer must get the customer agreement approved by the owner.



No Mortgage rights of Land should be granted to Developer



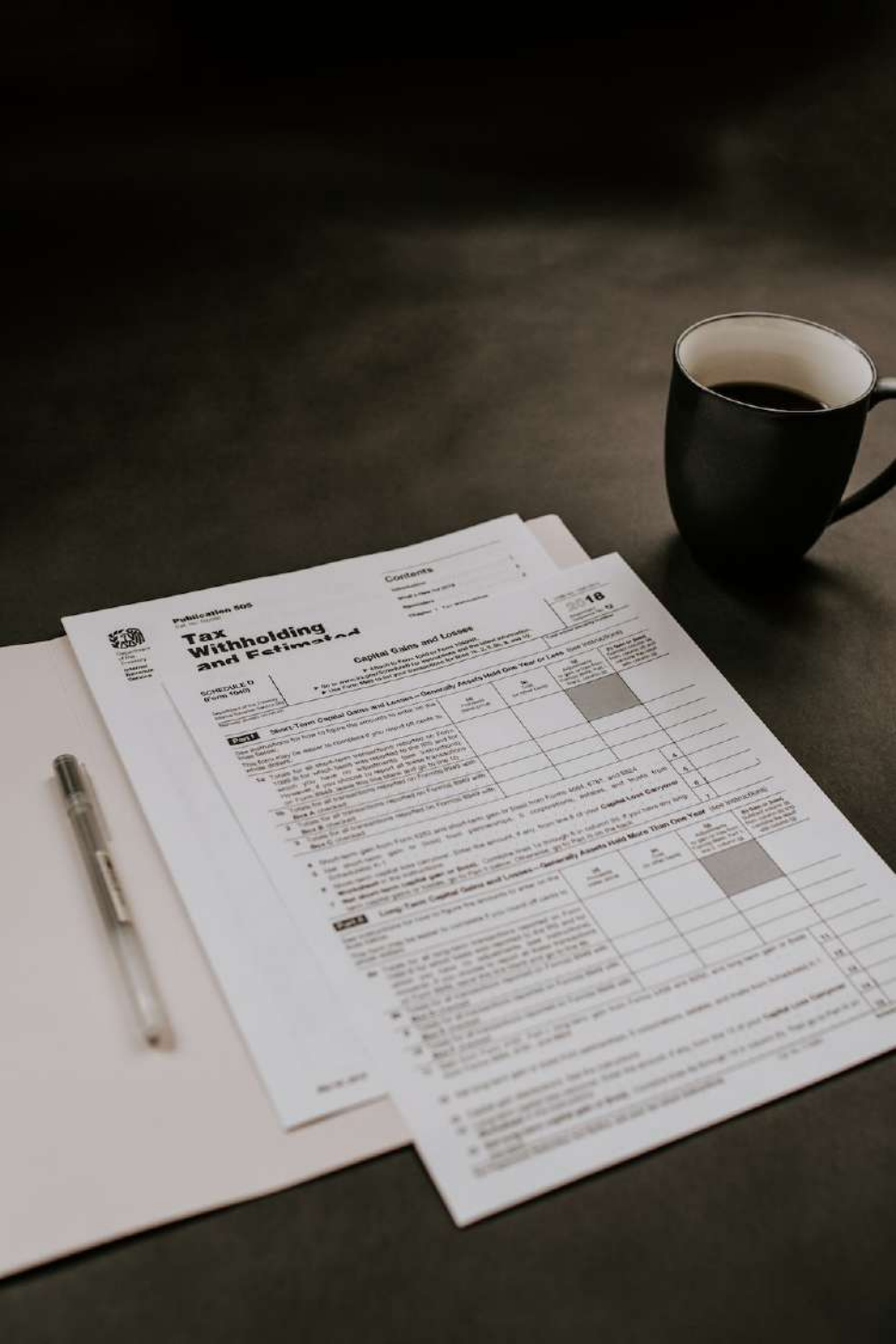
Approvals of land owner regarding designs, specifications, civic amenities etc. must be obtained by the developer



Developer to meet entire cost of construction, obtain OC, Insurance as per sec. 16 of RERA



Developer clear the defect as per the defect liability period under RERA.



INCOME TAX IMPLICATIONS

ELEGAL
— SINCE 2012 —

DEFINITION OF “TRANSFER” UNDER IT ACT, 1961 - SECTION 2(47)

“Transfer”, in relation to a “capital asset”, includes,-

(v) any transaction involving the allowing of the **possession** of any immovable property to be taken or retained in part performance of a contract of the nature referred to in * **section 53A of the Transfer of Property Act, 1882 (4 of 1882)**.

Legislation by reference
v.
Legislation by incorporation



SECTION 53A - PART PERFORMANCE TRANSFER OF PROPERTY ACT, 1882

Where any person contracts to **transfer** for consideration any immovable property **by writing signed by him** or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, **taken possession** of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee **has performed or is willing to perform** his part of the contract,

then, notwithstanding that [xxx] where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

1. Inserted by Act 20 of 1929, S. 16.

1. The words “the contract, though required to be **registered**, has not been registered, or,” omitted by Act 48 of 2001, S. 10 (w.e.f. 24-09-2001).

Chaturbhuj Dwarkadas Kapadia v. CIT

(2003) 260 ITR 491 (Bom.)

Controversy



Whether transfer of property under the development agreement conferring the privileges of ownership without transfer of title will fall under S. 2(47)(v) of I.T. Act ?



Court Held

If the contract, read as a whole, indicates the passing of or **transferring of complete control over the property** in favor of developer, then the date of contract would be relevant to decide the chargeability.

Jasbir Singh Sarkaria, In re. (2007) 294 ITR 196 (AAR – New Delhi)



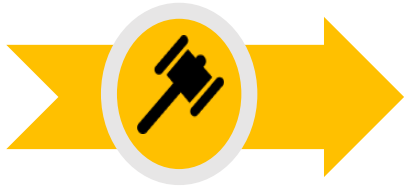
Whether the capital gains accrue/arise to the applicant (Land Owner) during the financial year and accordingly subject to tax in the assessment year in which DA is executed ? - Yes



Possession in 2(47)(v): need not necessarily be sole and exclusive possession



Transferee is able to exercise general control over property



Court held: the execution of GPA shall be regarded as the "transaction involving the allowing of the possession" of land to be taken in part performance of the contract and therefore, the transfer within the meaning of **Section 2(47)(v)** must be deemed to have taken place on the date of execution of such GPA.

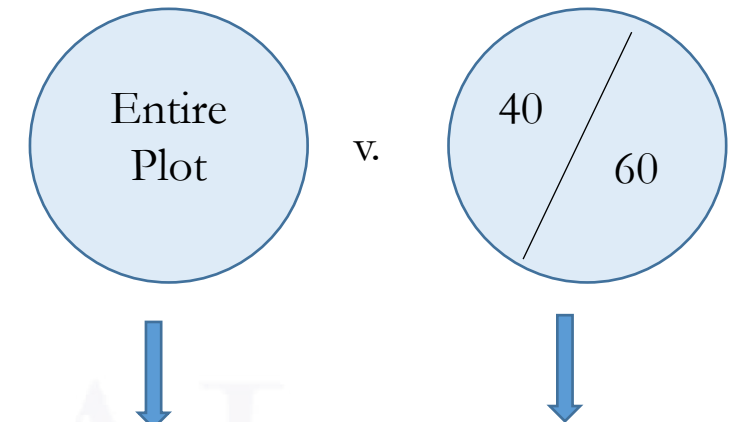


Once it is held that the transaction of the nature referred to in **Section 2(47)(v)** had taken place on a particular date, the actual date of taking physical possession need not be probed into. It is enough if the transferee has by virtue of that transaction a right to enter upon and exercise the acts of possession effectively.

Pr. CIT v. Infinity Infotech Parks Ltd. (2018) 407 ITR 137 (Cal.)



Construction on
40% land



Consideration
is MV of flat
against full land
value

Consideration is
construction cost
against 60% land
value

- Terms of the contract would indicate when transfer would take place.
- Where the owner retains any right in the constructed area that may come up in future, it would scarcely be a case of a transfer taking place at the time of the execution of the agreement.
- Merely because de facto possession of the land is made over to a mason or a civil engineer for the purpose of making a construction thereon, it would not imply that possession is made for their enjoyment of the property.
- Such persons would be in **de facto possession under the de jure possession** of the owner and only for the purpose of undertaking the construction.



*CIT v. Sadia Shaikh, ITA no. 11 and 12/2013,
order dated 02/12/2013 (Bom.)*

Mere execution of a development agreement is not a “transfer” **if possession as** per s. 53A of the Transfer of Property Act **is not given.**



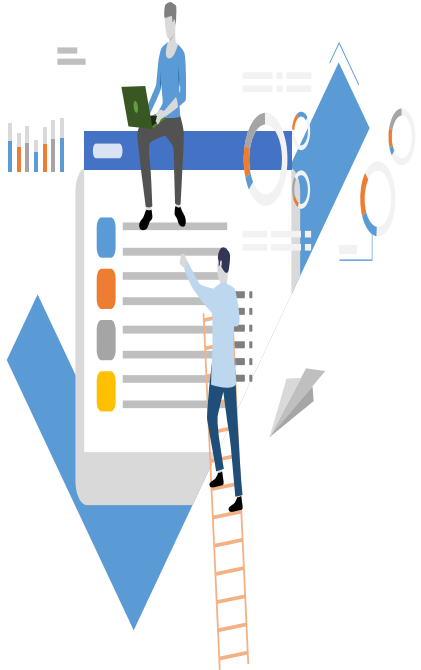
*Dilip Anand Vazirani vs. ITO
(2015) 167 TTJ 194 (Mum.)(Trib.)*

Mere execution of a development agreement does not result in a "transfer" if the approval of the municipal corporation is delayed and the developer has not started work- Complete control over the property was not given and only license was given.



*CIT vs. Delhi Apartments Pvt Ltd.
(2013) 352 ITR 322 (Del.)*

Neither possession was given nor consideration was received except some advance – no construction activity started – No Transfer



1

**General Glass Co. (P.)
Ltd. v. DCIT (2007) 108
TTJ 854 (Mum.)**

- Where payment of balance consideration within stipulated time- essence of contract
- Payments not made on time
- Contract doesn't confer any right on transferee.

2

**Fardeen Khan v. ACIT
(2015) 58 taxmann.com 186
(Mumbai ITAT) (approved
by Bombay HC)**

- Where assessee, owner of a piece of land, entered into a development agreement with developer for specific purpose to develop land, and possession of land continued to be with assessee, there was no transfer in terms of section 2(47)(v).
- **Only license to enter given. No possession was transferred.**
- The land was held as "Stock in trade" and not "capital asset".

3

**S. Ranjith Reddy v. DCIT
(2013) 144 ITD 461 (Hyd.
ITAT)**

- Where nothing happened during relevant previous year except execution of agreement/no construction taken place

4

**Fibars Infratech Pvt. Ltd.
v. ITO (2014) 162 TTJ 228
(Hyd. ITAT)**

- No consideration passed to assessee
- No construction activity
- No approval of Development Plan
- Transferee was not willing to perform obligations

5

**CIT v. Dr. Arvind S
Phake (2018) 401 ITR 96
(Bom.)**

- Complete consideration not paid
- Holds 'possession date' as 'transfer date' of land.

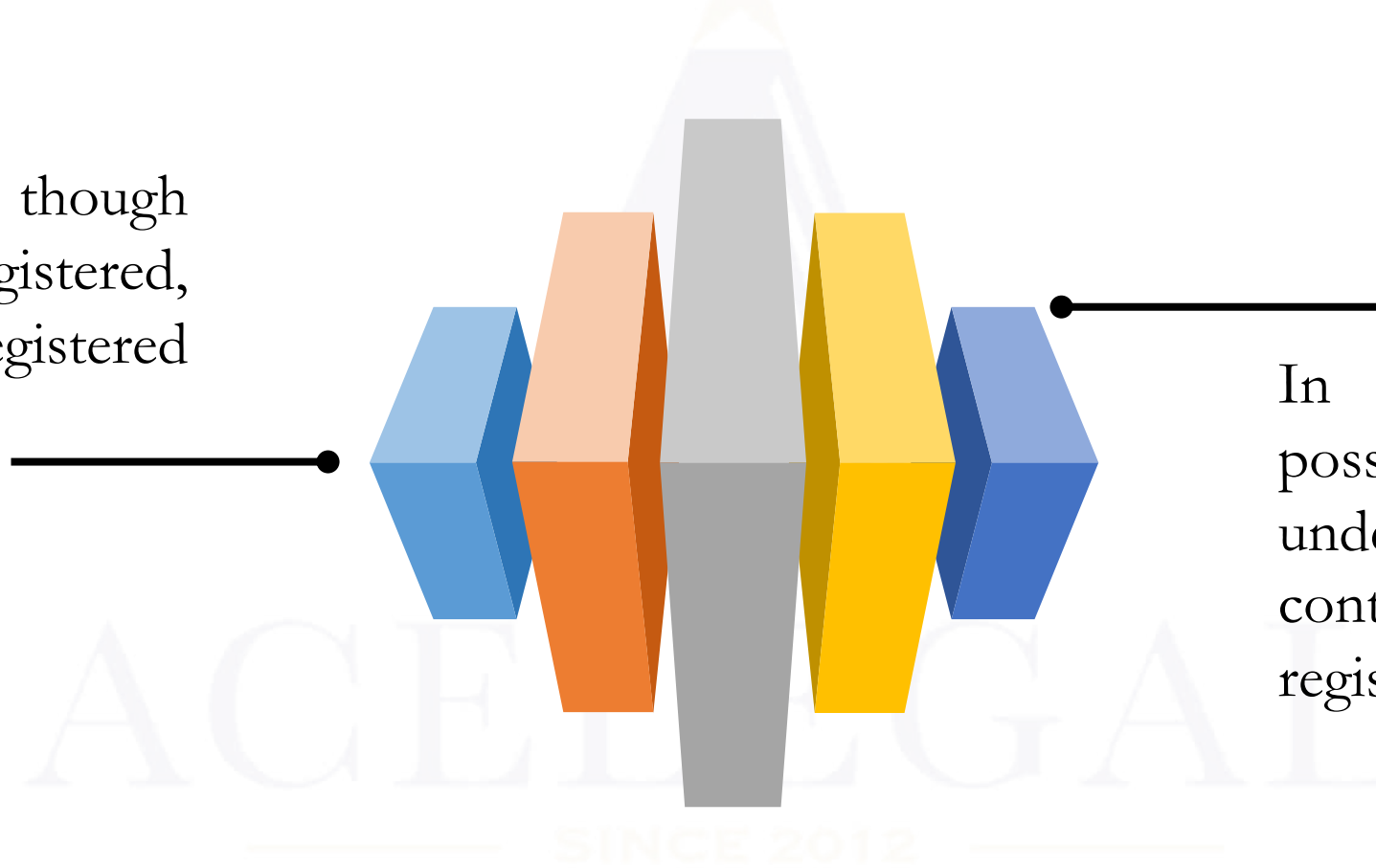
6

**Finian Estate Developers
Pvt. Ltd. [2011] 142 TTJ
545 (Delhi - Trib.)**

- Income accrues only upon obtaining necessary approval from local authorities by the developer.

WHETHER DA MANDATORY TO REGISTER TO FALL UNDER S. 2(47)(v)?

“The contract, though
required to be registered,
has not been registered
or” – DELETED



In order to protect
possession by transferee
under this section,
contract must be
registered

CIT v Balbir Singh Maini (2017) 398 ITR 531 (SC)

Issue 1

Whether giving of possession of land for purposes of development under an unregistered joint development agreement could be regarded as giving rise to capital gains

Court Held

An unregistered agreement was not covered by section 53A of the Transfer of Property Act, 1908.

Issue 2

Whether the signing of the joint development agreement or giving of possession could be said to be a transaction, which had the effect of transferring or enabling the enjoyment of the immovable property, which could also give rise to capital gains?

Court Held

Owner had continued to be the owner of the property throughout the development of the property. Possession was given for the limited purpose of development. Therefore, this clause also did not apply to the transaction, and that there was no transfer giving rise to capital gains.

Issue 3

Where the JDA fell through due to want of permissions, whether “capital gain” tax liability would still arise on LO ?

Court Held

On such facts no income accrued to the LO since such income was dependent upon receipt of necessary permissions for the project. No debt owed to the LO by the Developer. Therefore, no right to receive income had arisen in favour of the LO.

M/s Seshasayee Steels v. ACIT

[2020] 115 taxmann.com 5(SC)

Issue 1

Whether assessee is liable to capital gain in 2004-05?

Whether Section 53A of TOPA is attracted?

Court Held

License given to another to enter upon the land for the purpose of developing the land into flats and selling the same cannot be said to be 'possession' within the meaning of Section 53A, which is a legal concept, and which denotes control over the land and not actual physical occupation of the land. This being the case, Section 53A of the T.P. Act cannot possibly be attracted to the facts of this case for this reason alone.

WHERE
LAND
HELD
AS

***“STOCK IN
TRADE”***

- ☐ S. 2(47)(v) and r.w.s. 53A not applicable to transaction of stock in trade.
- ☐ Similarly, there is no “sale” within meaning of sec. 54 of TOPA.
- ☐ No profit will be taxable immediately on execution of JDA.
- ☐ When will tax arise to Land Owner – in “area sharing” / in “revenue sharing” model ?

CASE LAWS

1) CIT v. Skyline Great Hills (2016) 68 taxmann.com 188 (Bom.) :

- ✓ The provision of S. 53A of TOPA cannot be extended to stock in trade as S. 2(47)(v) of the I.T. Act has artificially extended the definition of transfer of capital asset.

2) R. Gopinath (HUF) v. ACIT (2010) 133 TTJ 595 (Chennai) :

- ✓ Concept of S. 53A of TOPA is borrowed only with respect to the transfer of “capital assets” as provided under S 2(47)(v) of IT Act and the same isn’t applicable in other cases which don’t fall under S 2(47)
- ✓ Section 53A doesn’t provide conditions for transfer, but provides protection to transferee for possession of property.

Sec. 50C considers stamp duty value.

Sec. 48 refers to consideration received as a result of transfer of capital asset as full value consideration.



Sec 43CA applicable, however care to be taken while drafting DA

ITO v. N.S. Nagaraj
(2015) 152 ITD 262
(Bang. ITAT)

QUANTUM OF “CONSIDERATION” IN “AREA SHARING” MODEL

Full consideration = Cost of Construction incurred by the builder

or

MV as per 45(5A)?

ACCOUNTING AND TAXABILITY OF INCOME OF LO IN CASE OF REVENUE SHARING

Whether the income received is to be treated as “capital gain” or “business income” ?
(Depends on DA or JDA)

Whether section 43CB will be applicable to the LO ?
(If Business Income)

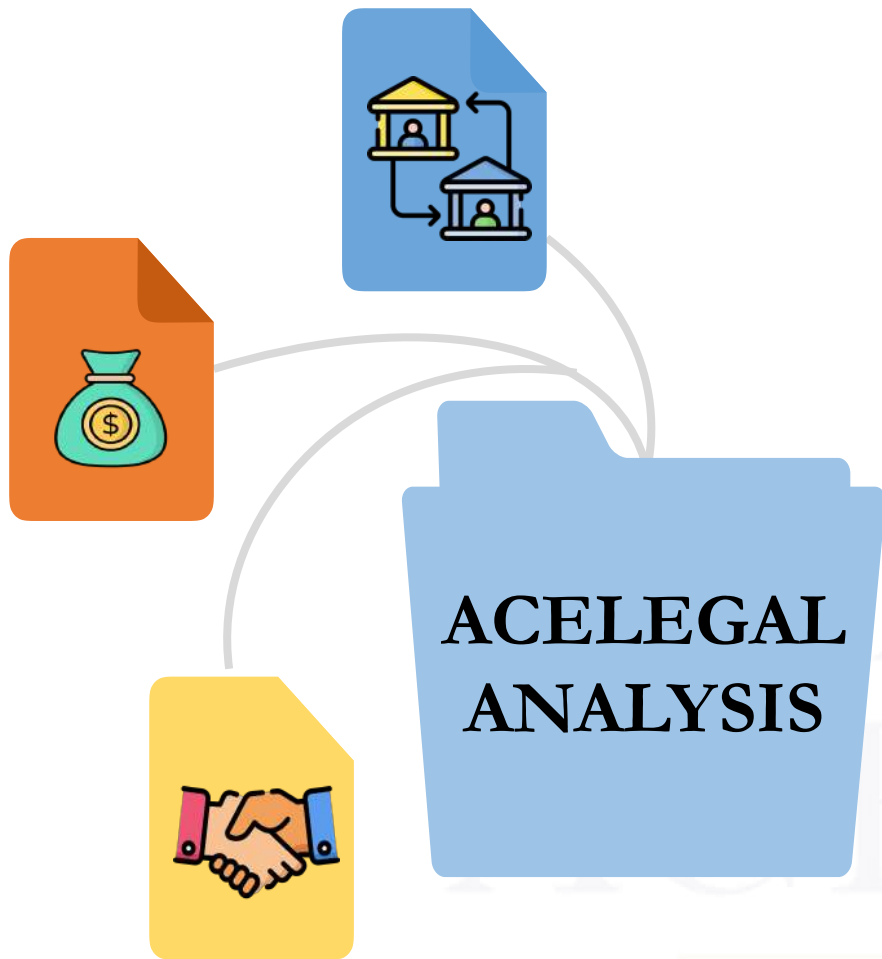
If the income is treated as business income, then whether such income will be offered to tax on “project completion method” or “percentage completion method” ?

[ITO v. Vilas Babanrao Rukari (HUF) [2018] 93 taxmann.com 465 (Pune – Trib.)]

LAND OWNER'S POINT OF TAXATION

Otherwise than sec. 45(5A)

Sr. No.	Case	Point of Taxation	Reason
1)	Where Possession is transferred at the time of agreement	At time of signing the joint development agreement	Once Sec. 2(47) (v) is invoked, actual event of conveyance is irrelevant
2)	Where possession is not transferred at the time of agreement	At the time when POA become irrevocable	Such transactions will be covered under sec 2(47)(v).
3)	If a capital asset is converted into stock in trade	At the time of selling the buildings/conveyance to society	Sec 45(2)



- ◆ Point of Taxation- will purely depend on the terms of DA/JDA
- ◆ If possession is not transferred but deferred until a specific event by limiting the rights of developer, the liability to capital gains tax and income tax will arise upon happening of specific event.
- ◆ Where the agreement is of such nature that possession is given in part performance of a contract, the liability of capital gains tax and income tax will arise on the handing over of such possession to the builder

SECTION 45(5A) OF INCOME TAX ACT, 1961

[(5A) **Notwithstanding** anything contained in sub-section (1), where the capital gain arises to an assessee, being an **individual or a Hindu undivided family**, from the transfer of a capital asset, being land or building or both, under a **specified agreement**, the capital gains **shall** be chargeable to income-tax as income of the previous year in which the **certificate of completion** for the whole or part of the project is issued by the competent authority; and for the purposes of section 48, the stamp duty value, on the date of issue of the said certificate, of his share, being land or building or both in the project, as increased by the consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset :

Provided that the provisions of this sub-section shall not apply where the assessee transfers his share in the project on or before the date of issue of the said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place and the provisions of this Act, other than the provisions of this sub-section, shall apply for the purpose of determination of full value of consideration received or accruing as a result of such transfer.

Whether applicable to Revenue Sharing DA?

Explanation.—For the purposes of this sub-section, the expression—

- (i) "*competent authority*"...
- (ii) "*specified agreement*" means a **registered agreement** in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in **consideration** of a share, being **land or building** or both in such project, whether with or without payment of part of the consideration in cash
- (iii) "*stamp duty value*"

Q. Whether section 45(5A) is a mandatory provision or whether the LO has a choice of not applying it ?

ACELEGAL VIEW on Sec. 45(5A)

Litigious

1

Dangerous provision

2

Doesn't help land owners

3



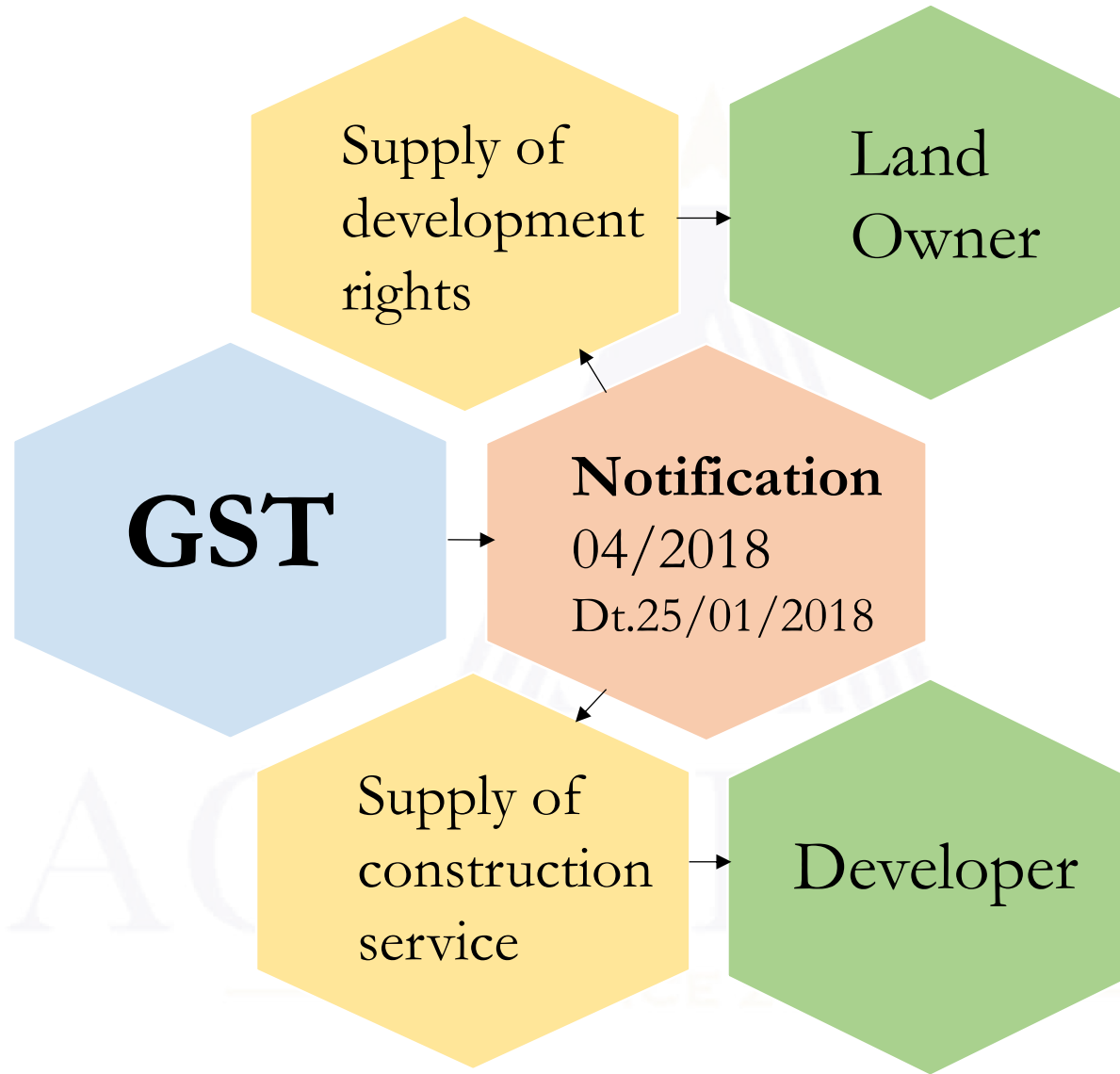
SECTION - 194IC, INCOME TAX ACT, 1961

- Notwithstanding anything contained in **section 194-IA**, any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under the **agreement referred to in sub-section (5A) of section 45**, shall at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to **ten per cent of such** sum as income-tax thereon.]



GST IMPLICATIONS

ACELEGAL
— SINCE 2012 —



**Notification no. 03/2019 dated 29/03/2019
(rate of GST on supply of goods / services to
buyers)**



DEFINITION

REAL ESTATE PROJECT (REP)

As defined in RERA

RESIDENTIAL REAL ESTATE PROJECTS (RREP)

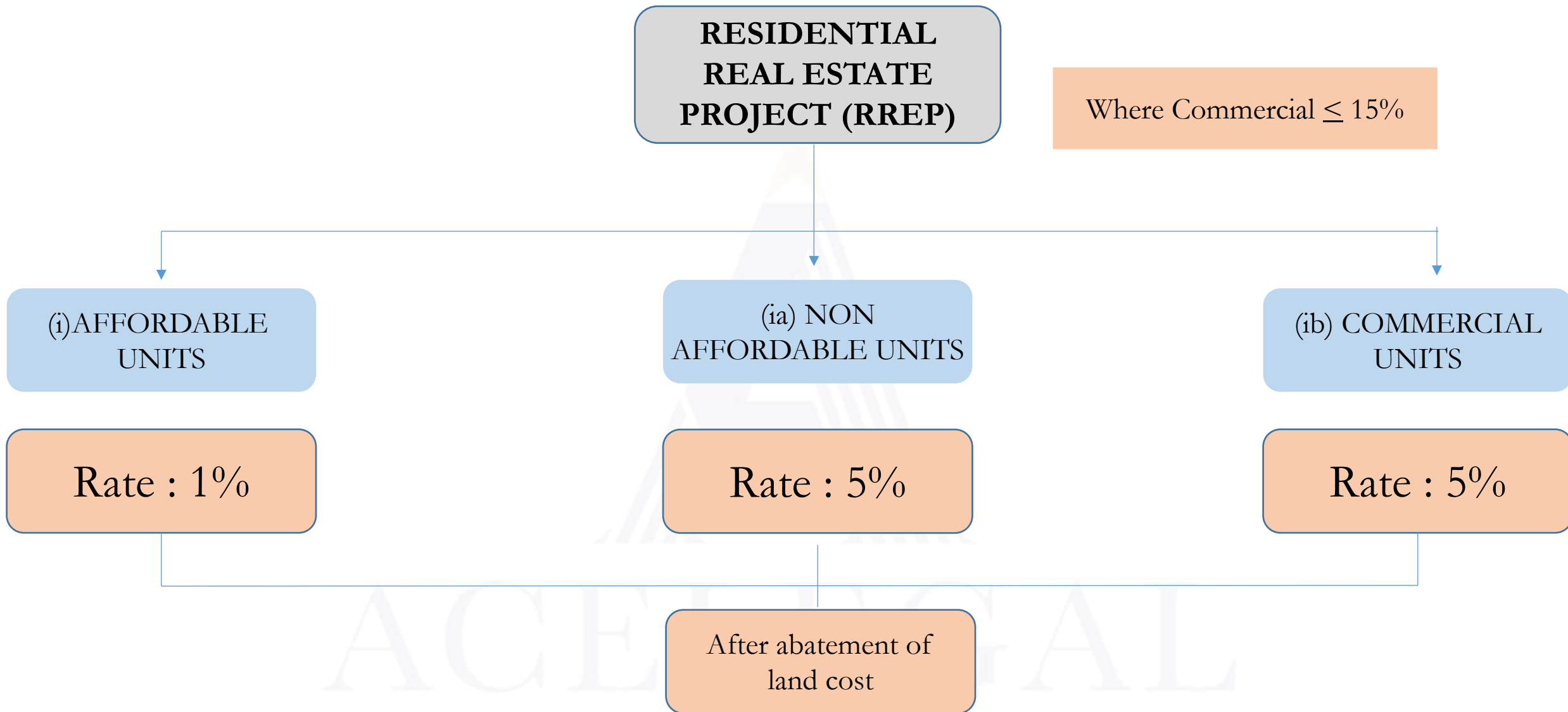
REP in which “commercial” carpet area is not more than 15% of total carpet area of all the apartments in REP.

AFFORDABLE RESIDENTIAL APARTMENT

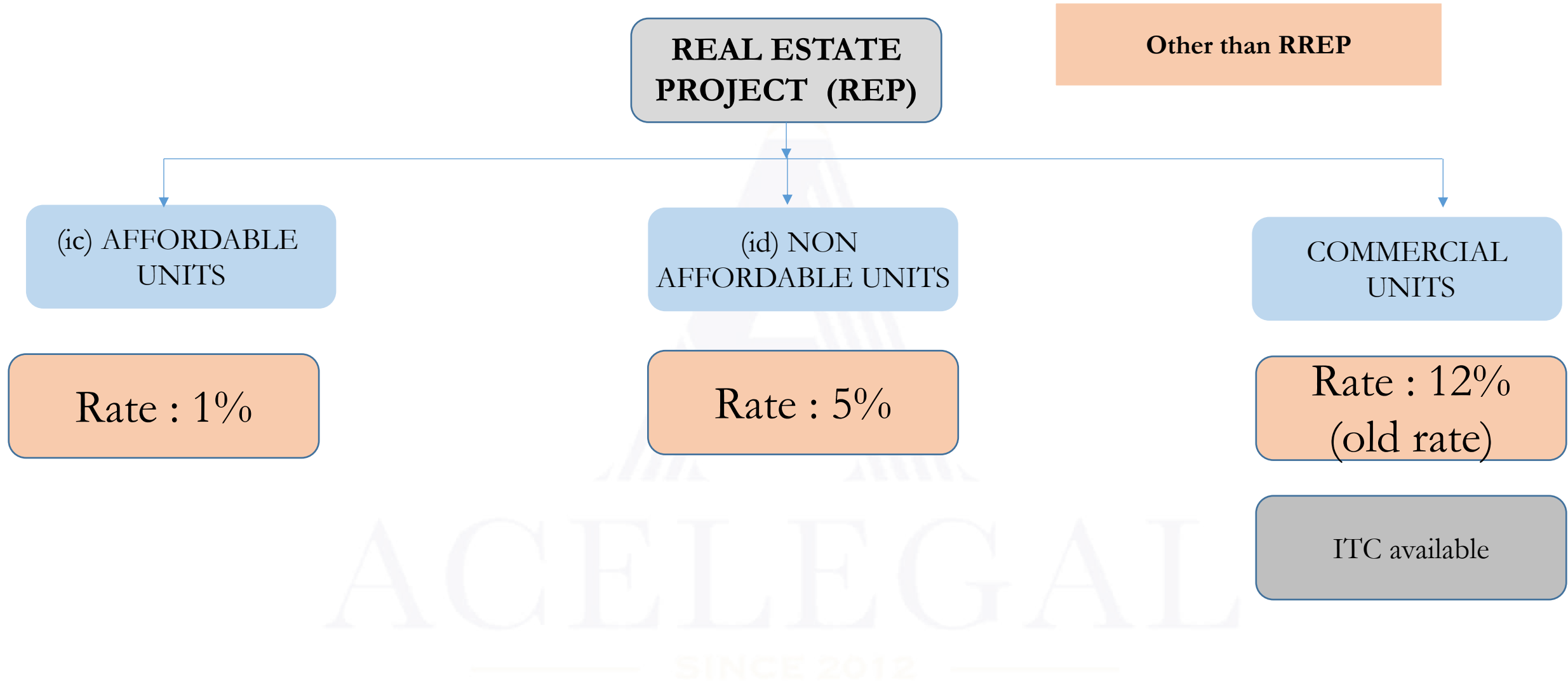
Carpet Area no exceeding 60 square meter in metropolitan cities or 90 in other than metropolitan cities ;

AND

Gross Amount charged not more than Rs.45 lacs.
Gross amount = Sale Proceeds of Unit + Amenities + Parking + Preferential Location Etc.



construction commences on or after 01/04/2019 OR Ongoing project (opted for new scheme)



AREA SHARING DEVELOPMENT AGREEMENT

Notification 4/2019 and 5/2019

1

GST on transfer of Development Rights

- Payable by “Developer” on “reverse charge”
- To the extent of “unsold units”
- @ 1% / 5% on unsold units

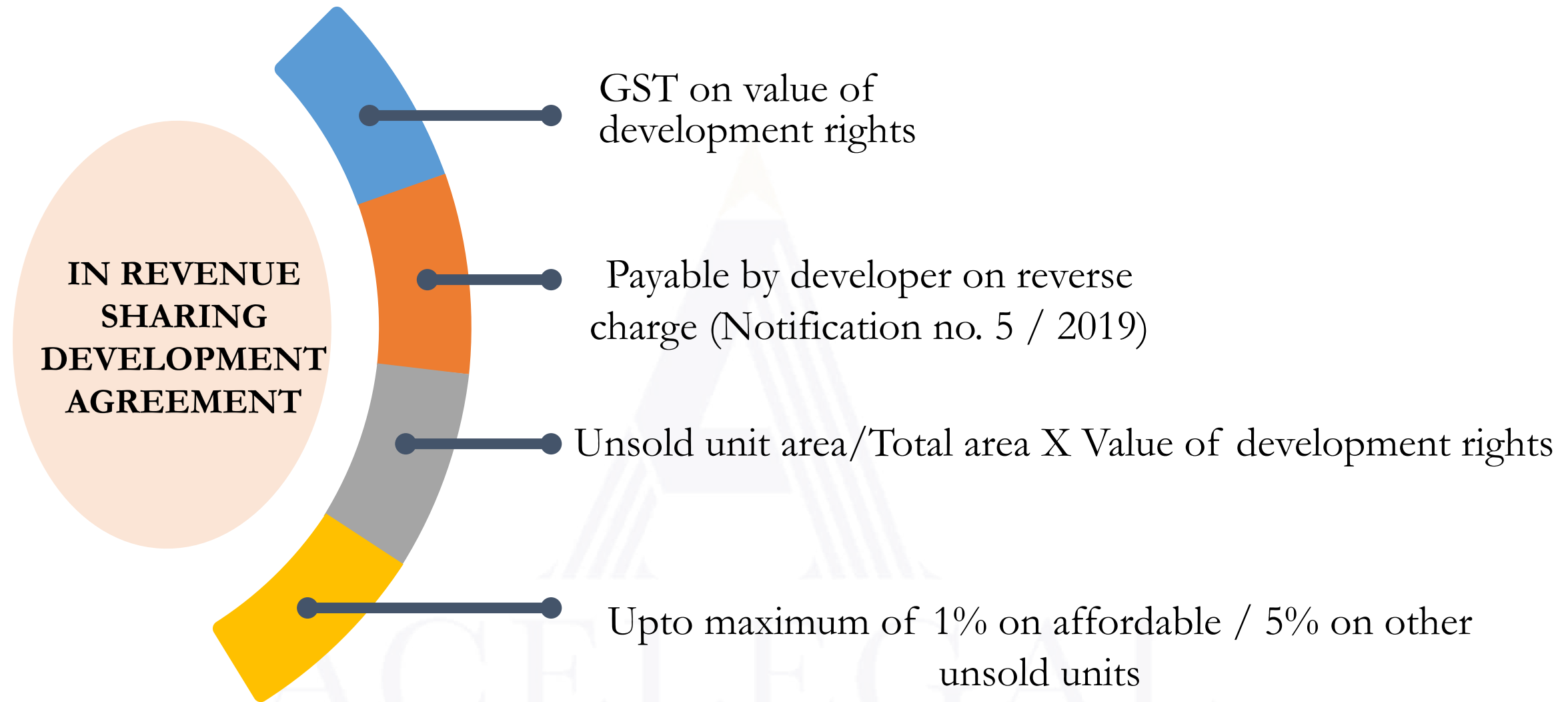
2

GST on constructed area of Land Owner

- “Developer” to collect from “Land Owner” and pay to Government
- Land Owner to get “input credit”

Value of Consideration

Total amount charged for similar apartments in the project from ***Independent purchaser***, nearest to the date on which development right / FSI is transferred



Where : value of development rights = total amount charged for similar apartments in the project from the independent buyers nearest to the date on which such development rights or FSI is transferred to the developer

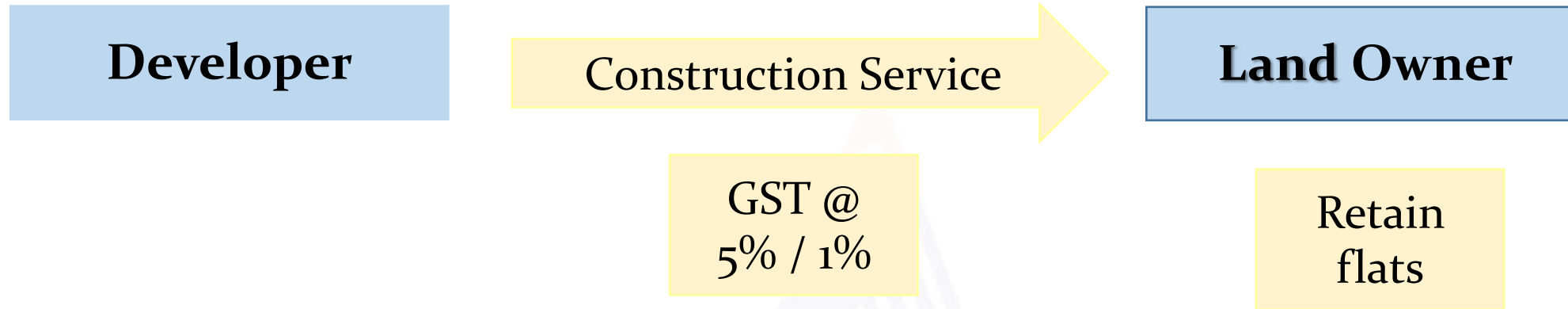
TO SUMMARIZE :

What	Construction service	By Developer
	Development rights	By Land owner- on developer in RCM
When	On completion of RREP	Upon transfer of development rights in REP
Quantum	Unsold units	5% /1% on MV or value of development rights whichever is lower
ITC	NA in RREP	Available in REP



EFFECTIVELY :

- Government gets 5% / 1% GST on under construction sale of flats.
- Such GST is finally paid by ultimate purchaser.
- No GST cost is to be borne by either Developer or Land Owner on such under construction sale.

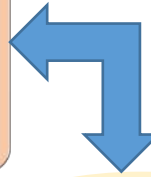


EFFECTIVELY :

- Developer has to pay GST .
- Government gets 5% GST on all flats in the Project.

M/s. MAARQ SPACES PVT. LTD.
Advance Ruling No. KAR ADRG 119/2019 dated 30/09/2019

Developer enters into a JDA with LO on 08/11/2017
Revenue sharing 25 : 75 (LO : Developer)



*Question
before AAR*

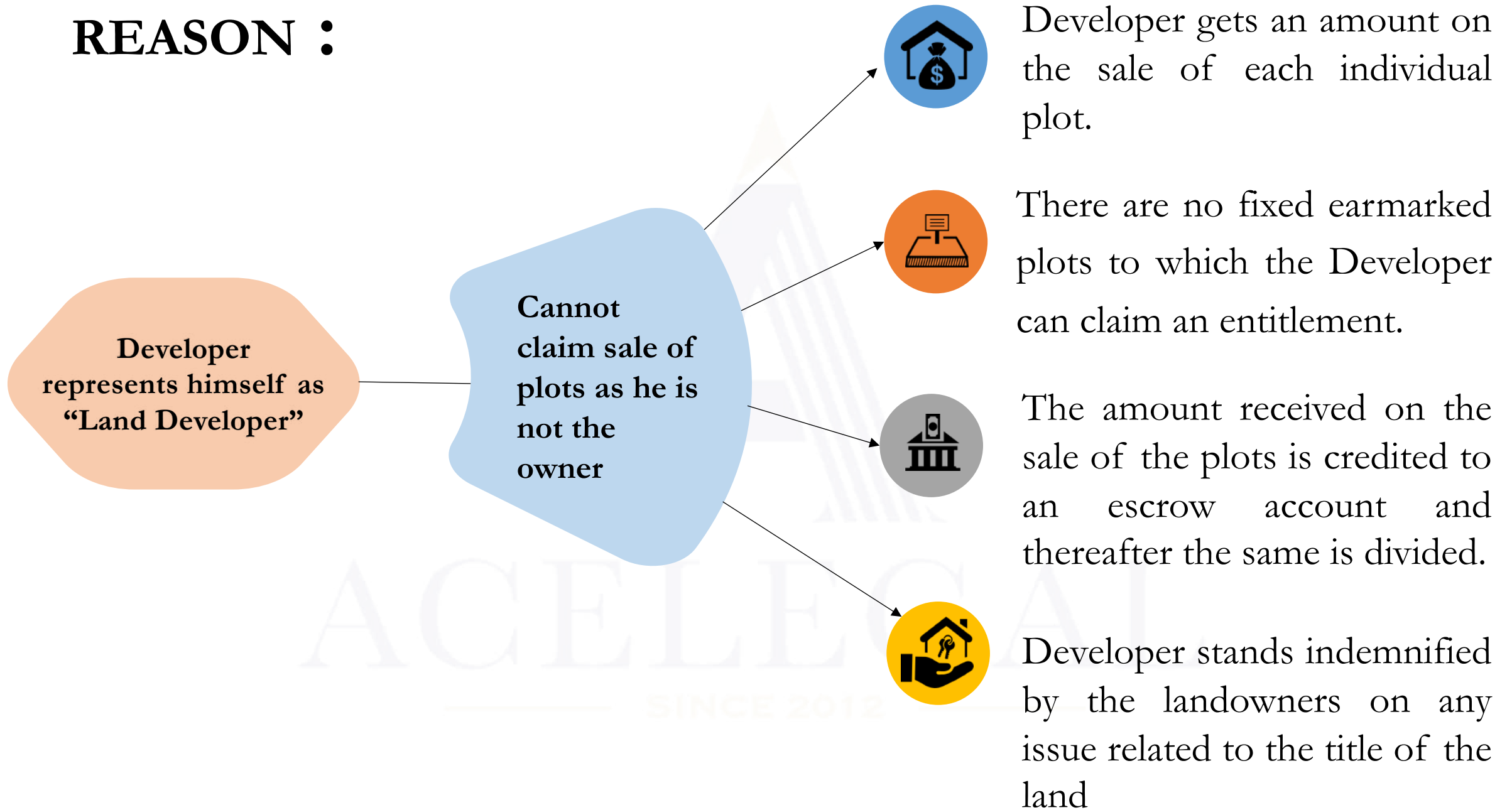


Whether the activity of development and sale of land attract tax under GST?

AAR held :

- (i) The activities as envisaged in the agreement between the applicant and the landowners amount to supply of service and is liable to be taxed under GST.
- (ii) Rule 31 applies in the instant case and the value of the supply is equal to the total amount received by the applicant, which is equal to 25% of the market value of each plot.

REASON :





STAMP DUTY IMPLICATIONS

**STAMP
DUTY
VALUATION**

Construction cost of land owner's area
+
Monetary consideration, if any
+
Interest on refundable deposit @ 10%
[or higher if specifically provided in DA]

OR

Area | Revenue

Construction cost of land owner's share
+
Monetary consideration, if any
+
Interest on refundable deposit @ 10% [or
higher if specifically provided in DA]

OR

Area for which DA given to developer
X
Rate for developed Land under the
Reckoner

Full area for which DA given to Developer
X
Rate for developed Land under the
Reckoner

**Whichever is
higher.**

*State government Circular dated 1st March 2014



CASE STUDIES



CASE STUDY 1:

- Land Owner is holding ancestral land since 1980. The said land was being used for agriculture. Subsequently, NAINA has become the competent authority for development of a new town where the said land is situated. As per Development Plan the said land can be now developed as a housing project. The land owner desires to enter into a development agreement with a developer whereby the Land Owner will get 45% of the constructed area and the Developer will retain 55% of the constructed area.
- Advise the land owner client in a manner that the land owner is able to:
- Defer the incidence of tax which arises on the execution of Development Agreement
- Reduce the incidence of taxation.

CASE STUDY 2:

- The land owner entered into a Agreement on 01/05/2019 for development of a commercial project. As per the terms of the Agreement, LO shall receive a refundable security deposit of Rs.2 crores and is entitled to 50% of the constructed area. D has not obtained CC of the project as yet, nor the units has been allocated between D and LO.
- Work out the liability of the GST on the said transaction.
- Can you think of any method of structuring the transaction so as to reduce / defer the GST liability?

CASE STUDY 3:

- Three different land Owners hold three plots of land adjoining to each other. They are desirous of self-developing the said plots as a housing project. They plan to share the profits of the project in equal ratio. What different models can you think of for structuring the transaction so as to have minimum tax and stamp duty costs?



CASE STUDY 4:

- An existing residential building comprising of 48 flats is in a dilapidated state. The Corporation has issued a notice for demolition. The said society is receiving offer from developers for redevelopment of the said building. The offers broadly provide larger flats to the existing 48 members and in exchange the Developer will retain the additional FSI of 0.5 and construct 24 additional flats and sell the same to recover his cost and profit. The Developer will also give rent to the existing members till completion of the new building and a corpus fund of 1.00 crore to the Society. The Members will also get hardship allowance of 10.00 lakhs each. The Developer as well as Society has approached you seeking to know the tax implications. Please advise.



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