

GST changes for Real Estate Sector

Goods and Service Tax (GST) for the Real Estate sector is undergoing a 360° change. These changes are impacting every real estate project whether it is ongoing or new proposed one. To align the projects with the new GST scheme, following major areas need to be looked into:

- Changes in rates for residential units
- One-time option to select old or new rates for ongoing projects
- New definition of affordable housing
- New rules for mix projects
- Input tax credit (ITC) restriction along with new rates
- 80% mandatory purchases from registered person
- ITC transition policy for ongoing projects
- Changes in taxing policy for Transfer of development rights (TDR)/ Floor Space Index (FSI) (including additional FSI)/ Long lease premium
- Applicability of Unregistered Dealer (URD) Reverse charge mechanism (RCM) and mandatory RCM for the sector in specified cases

This document covers most likely questions on the GST changes in real estate sector based on notifications issued on 29th March 2019:

1. What is the meaning of Affordable Residential Apartment?

Two types of apartments qualify as Affordable Residential Apartment:

1. Residential unit fulfilling both the conditions:
 - a) Having RERA Carpet area upto 60 sq meters in metro cities (Bengaluru, Chennai, Delhi NCR, Hyderabad, Kolkata and Mumbai) or upto 90 sq meters in non-metro cities **AND**
 - b) Gross amount charged for such unit is upto INR 45 Lakhs
2. A unit which was qualifying as affordable housing unit under the earlier scheme (effective upto 31st March 2019). This is only for an ongoing project

2. What will be included in calculation of INR 45 lakhs?

The new rules provide that gross amount charged will include:

- a) Value towards construction service

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- b) Value towards land component
- c) Any other amount charged by the Promoter from the buyer like parking charges, development charges, preferential location charges, common facility charges, etc

From the above it emerges that recoveries like water charges, electricity meter charges, etc which are not taken as pure agent (on cost to cost basis) would all be covered for calculation of INR 45 lakhs.

3. What is the meaning of Project?

Project means a project as defined under Real Estate (Regulation and Development) Act, 2016 (RERA). It means every separate registration under RERA (even phase wise registrations) will be treated as separate project for GST purposes.

4. How are mix projects treated under the new scheme?

Mix projects are one which have both the components ie residential and commercial units. The new definitions have provided that a project with commercial units upto 15% area of the total area of the project will be treated as Residential Real Estate Project (RREP). In other words, these commercial units will be treated as residential units.

A project wherein the commercial units area is more than 15% of the total area of the project will be known as Real Estate Project (REP).

The rate of GST for units under an RREP and REP are defined separately.

In cases where the developer revises plan and the ratio of commercial to total project goes beyond 15%, it may face a few challenges in qualification as RREP and hence the applicability of GST rates.

5. What is the meaning of Ongoing Project and New Project?

The new rules provide that a project will qualify as “**Ongoing Project**” if all the below conditions are getting satisfied as on 31st March 2019:

- a) Commencement certificate for the project has been issued

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- b) Construction for the project has started (earthwork for site preparation is completed and excavation for foundation has started) and the same is certified by Architect or chartered engineer or licensed surveyor
- c) Completion certificate has not been issued or first occupation for the project has not taken place
- d) Apartments being constructed under the project have been booked (wherein at least one instalment is credited to the bank account) partly or wholly

A Project which does not qualify as ongoing project will qualify as **“New Project”** which commences on or after 1st April 2019.

6. What are the new GST rates prescribed?

The new scheme prescribes reduced rates of 5%/ 1% with a condition that input tax credit will not be available. These new rates are for residential apartments and specified commercial apartments (in a RREP).

Summary of effective rates prescribed under the new scheme are as under:

Nature of Project/ Unit	New	Ongoing
RREP		
Affordable units	1	1
Other-residential units	5	5
Commercial units	5	5
REP		
Affordable units	1	1
Other-residential units	5	5
Commercial units	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.

The above rates are effective rates after reduction to value of unit for the land component which is deemed to be 1/3 portion of unit value.

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7. Is the new scheme optional or mandatory?

The new scheme of charging 5%/ 1% with no ITC is mandatory for all new RREP. It is also mandatory to new REP to the extent of residential units.

For ongoing projects, the developer-promoter can choose to continue with old scheme of charging GST @ 12%/ 8% with availment of ITC or new scheme of charging GST @ 5%/ 1% with no ITC. Please note that this option is only available to ongoing projects as defined above.

8. By when is a developer required to decide on the option for its ongoing project(s)?

Developer has to decide the option for paying at full rate or reduced rate by submitting details on project wise basis by 10th May 2019. If the developer does not upload the details of option selected, it would be deemed to have selected the new rates.

9. What is the treatment to be given to the units already booked in an ongoing project wherein it is decided to charge at new rates?

New rates are to be charged to instalment which become due on or after 1st April 2019. At this point it is also important to ascertain the instalment becoming due as on 31st March 2019 and raising appropriate invoices at applicable old rates.

In cases where invoice is issued (for instalment due) in March 2019 and payment is received in April 2019, GST is payable at old rates.

10. What treatment is to be given to full commercial project?

A full commercial project will be subject to old rates with availability of ITC. This applies to both ongoing as well as new commercial projects.

11. It is mentioned that new rates are without ITC. Does it mean that the payment for 5%/ 1% is to be made in cash only?

Yes, the new rates does not allow ITC. It is clearly mentioned that payment is to be made through electronic cash ledger only.

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12. What about the old ITC which is lying in books/ on GST portal as on 31st March 2019?

The rules provide that eligible ITC as 31st March 2019 has to be calculated on project wise basis applying the below principles:

- 1) ITC availed for the project till 31st March 2019 is to be determined
- 2) Stage of completion of the project as on 31st March 2019 is to be determined (based on RERA workings)
- 3) Find out the percentage of sold area to total project area (based on RERA carpet area)
- 4) Find out the percentage (on value terms) demands raised till 31st March 2019 based on milestones as per agreement clauses to the total value of booked units
- 5) Apply percentage booking and percentage demand raised to ITC at (1) above
- 6) Extrapolate the ITC at (5) to convert it to full project ITC based on stage of completion (using the percentage at (2))

Amount arrived at (6) above is the final ITC eligible for the project as on 31st March 2019.

Difference between ITC availed and ITC eligible will have to be reversed from the available balance on the portal. In case the portal does not have enough balance then the shortfall will have to be paid in cash. This reversal or payment is to be paid off on or before the due date for filing return for the month of September 2019.

Please note that the above is a sample formula for a pure residential project. Each project needs to be worked out in detail to determine the amount of eligible ITC as various factors like commercial area, stage of work, consideration received, unsold inventory play a crucial role.

13. How will the ITC rules play for on-going project where the builder intends to continue with old rates?

In case the developer opts to continue with old rates, ITC lying as on 31st March 2019 will continue as it is. However, the developer will have to follow regular reversal mechanism based on sold/ unsold ratio at the end of the project.

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14. The new scheme also mandates 80% purchases from registered person. How will this apply?

The new reduced rates are with a condition that the developer is required to purchase at least 80% of its input and input services from registered person. While calculating the above, services by way of transfer development rights/ FSI/ long lease premium, electricity, high speed diesel, motor spirit, natural gas are to be excluded.

15. Is the mandatory purchases requirement only goods?

No, it includes services also. In other words, the developer will have to check 80% mark considering goods and services together.

16. What happens if the developer is not able to meet the 80% requirement?

The developer will have to pay GST on the shortfall.

17. Will the Goods transport agency services/ Legal services on which RCM is paid again considered as un-registered for this calculation?

Purchases which are already covered under mandatory RCM will be considered as deemed to be purchased from registered persons. In other words, such purchases will not form part of URD purchases.

18. Is there any differentiation for cement and capital goods (CG)?

Yes, cement and capital goods purchased from URD are under mandatory RCM irrespective on the quantum.

19. What will be the rate of RCM for Cement/ CG/ Others?

- URD RCM is to be paid on cement @ 28%
- URD RCM on CG is at applicable rate for the product purchased
- URD RCM on Others (goods and services) will be @ 18% (irrespective of the nature of goods or services)

20. When is the developer required to do this calculation and pay GST?

- URD RCM on Cement and CG is to be paid monthly
- URD RCM on Others is to be calculated for the full financial year or part thereof (upto the date of completion certificate) and paid along with liability for June of next financial year

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21. What are the implications of mandatory purchases on mix projects?

Any project in which GST is to be paid at 5%/ 1% are required to check mandatory purchases and follow procedure therein. The current provisions are silent on whether the mandatory purchases requirement is for full project (in a mix project) or portion on which GST is payable at reduced rates. On conservative basis, mandatory purchases requirement should be worked out for full project (irrespective on quantum of residential and commercial area). In case of commercial area, ITC for RCM paid would anyways be available proportionately.

22. Are there any benefits to projects with affordable residential apartments from procurement angle?

A supplier providing works contract services in relation to construction would charge GST @ 12% provided the project fulfils the following condition: It is a project in which more than 50% units qualify as affordable residential apartment.

In case the 50% criteria is finally not met, the developer will have to pay differential GST under RCM.

23. What does Transfer of development rights (TDR) mean?

TDR is an arrangement wherein the Land Owner (LO) instead entering into an outright sale arrangement, give rights for development of land. Under this arrangement the LO generally gets consideration by following modes:

- Portion of constructed area
- Monetary consideration
- Portion of constructed area along with part monetary consideration

Please note that in all non-monetary cases, there are two type of transactions
1) Service of transfer of development rights by the LO; 2) Construction service by the developer (to the extent of constructed area given to the LO).

Without getting into an argument, we have for the time being construed that transfer of development rights by the LO is a taxable service under GST. All the answers below are based on this presumption.

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24. Under the new scheme, what is the tax treatment for constructed area given by the developer to the LO?

Valuation:

Under the new scheme, value of units (residential and/ or commercial) given to the LO be similar to value charged from independent buyer closest to the date of transfer of development rights.

Rate:

GST on such value is payable by the developer at applicable rate (depending upon it being affordable/ other residential/ commercial).

Timing:

The developer is required to pay this GST at the end of the project ie on receipt of completion certificate or its 1st occupancy whichever is earlier.

Since the provision of reduced rates is also available to ongoing projects, the above valuation, rate and timing of payment of GST will be applicable to both ongoing and new projects.

25. What happens if the LO re-sales any of the unit(s) before completion?

In case the LO re-sales the unit (residential and/ or commercial) before completion, he is required to pay GST on the same at applicable rates. While paying GST, LO would be allowed to take offset of GST charged by the developer. However, the value on which GST is payable by the LO cannot be lower than the value on which GST is paid by the developer (for the relevant unit).

26. From a developer perspective, is there any GST payable by the developer in case he gives monetary consideration for development rights to the LO?

No, since in such case, the developer is not providing any service but only making monetary payment for rights received.

27. From a LO perspective, how will the service of transfer of development rights be treated under the new GST scheme effective from 1st April 2019?

The service of TDR (value of which will be value of units given to LO or monetary consideration given to LO) is exempted from GST to the extent it results into construction of residential apartments. However, the exemption would be proportionately withdrawn in case the residential units remain unsold as on the date of completion certificate. Further, the provisions also provide that the GST payable on the withdrawn portion would be capped at 5%/ 1% of

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the value of unsold units (wherein the value of unsold units would be based on value of similar units sold to independent buyer closest to the date of completion certificate).

- 28. There is a lot of confusion that under a TDR model GST is payable on the unsold residential inventory also. From the above it seems that the GST is payable on the unsold residential inventory of the developer and not of the LO. Is this correct?**

Yes, GST payable on account of service of TDR is capped to unsold residential inventory lying with the developer on the date of completion certificate.

- 29. What happens if the TDR service provided by the LO is used for construction of commercial area by the developer?**

The exemption for TDR service is only for using the same for construction of residential units. In case the TDR service is used for construction of commercial units, the same will be taxable.

- 30. Under the above scheme, who is required to pay GST on the taxable portion of TDR?**

The new scheme has put TDR service under RCM and hence the GST payable on TDR service provided by the LO is now payable by developer on RCM. This will include taxable portion of TDR service towards construction of both residential and commercial units.

- 31. When is the developer required to pay GST under RCM on the taxable portion of TDR service?**

The answer to this question depends on two things: 1) what is constructed by using this TDR – residential and/ or commercial; 2) how is the LO paid for this service – by way giving constructed area and/ or monetary consideration.

In cases where the LO is given constructed area (residential and/ or commercial), the developer is required to pay GST on taxable TDR service under RCM at the end of the project ie at the time of receipt of completion certificate.

In case where the LO is given monetary consideration, the developer is required to pay GST in two parts: 1) on the proportionate rights used for commercial construction – at the time of entering into development agreement; 2) on the

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proportionate rights used for residential construction (to the extent of unsold inventory) – at the time of receipt of completion certificate.

32. What will be the tax treatment for Long lease premium received by the LO (for a lease of land covering period of 30 years or more)?

Answers at 27 to 31 will also apply to such premium received by the LO.

33. What will be the tax treatment for payment received by the LO towards FSI (including additional FSI)?

Answers at 27 to 31 will also apply to such monetary consideration received by the LO for FSI (including additional FSI).

This document is prepared by CA Sanket Shah and approved by CREDAI Maharashtra. For queries, Sanket can be reached at sanket.shah@bcslp.in.

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