

PRESIDENT
Nayan A. Shah

IMMEDIATE PAST PRESIDENT
Mayur Shah

VICE PRESIDENTS
Deepak Goradia
Boman Irani
Harish Patel
Nainesh Shah
Domnic Romell

ADDL. VICE PRESIDENT
Sukhraj Nahar

HON. SECRETARY
Bandish Ajmera

TREASURER
Mukesh Patel

SPECIAL PROJECTS
Parag Munot
Sandeep Raheja
Jayesh Shah
Sanjay Chhabria
Rasesh Kanakia

HON. JOINT SECRETARIES
Navin Makhija
Sandeep Runwal
Shailesh G. Puranik
Dhaval Ajmera
Pratik Patel

JOINT TREASURER
Nayan Bheda
Munish Doshi

CO-ORDINATORS
Sandeep Shah
Tejas Vyas
Shailesh Sanghvi
Pritam Chivukula

COMMITTEE MEMBERS
Jagdish Ahuja
Jitendra Jain
Deepak Gundecha

INVITEE MEMBERS
Praful Shah
Rajesh Prajapati
Sachin Mirani
Nikunj Sanghavi
Rajeev Jain
Shyamal Mody
Digant Parekh
Rushank Shah
Samyag Shah
Jayesh C. Shah
Sunny Bijlani
Sahil Parikh
Naman Shah
Suhail Khandwani
Ricardo Romell

PAST PRESIDENTS
Dharmesh Jain
Vyomesh Shah
Paras Gundecha
Pravin Doshi
Mohan Deshmukh
Mofatraj Munot
Rajnikant Ajmera
Late G. L. Raheja
Late Lalit Gandhi
Late Babubhai Majethia

CREDAI-MCHI UNITS
PRESIDENT, THANE
Ajay Ashar

PRESIDENT, KALYAN-DOMBIVLI
Ravi Patil

PRESIDENT, MIRA VIRAR CITY
Ashit Shah

PRESIDENT, RAIGAD
Ateeque Khot

PRESIDENT, NAVI MUMBAI
Prakash Baviskar

Ref. No. MCHI/PRES/19-20/058

September 30, 2019

To,
Shri Rajiv Jalota (I.A.S)
Commissioner
State Tax, Maharashtra State
GST Bhavan, Mazgaon,
Mumbai - 400 010.

कर नियंत्रक,
राज्य कर विभाग,
वस्तु व सेवा कर विभाग,
महाराष्ट्र राज्य मुंबई,
यांचे कार्यालय.

Sub: Request for consideration of pending GST issues adversely impacting Real Estate Sector

Ref: Meeting held with Hon'ble Shri Sudhir Mungantiwar, Minister of Finance, Planning and Forest Department on 18 Sep. 2019 at 11:00 am

Respected Sir,

This has reference to our Meeting held with Hon'ble Shri Sudhir Mungantiwar, Minister of Finance, Planning and Forest Department on 18th September 2019 at 11:00 am at his residence, wherein we had represented certain issues and suggestions relating to GST on Construction Services, which are negatively impacting on the Real Estate Sector.

As directed by the Hon'ble Minister to further take up these issues to your goodself, we are representing the same as follows;

Representation on GST for Real Estate Sector :

1. GST on Development Rights

As you are aware that the real estate sector works on multiple models, one of which is by way of transfer of development rights to the developer for executing construction activity. Under this model the landowner parts away with his land for a consideration to be received in monetary or non-monetary form.

In most of these cases, the landowner at some stage of the construction activity (start, middle or end), gives away his ownership in the land component. Given this, it can be termed as an indirect sale of land. Even the stamp duty acts across India, consider it as a transaction equivalent to sale of land.

Service tax to some extent and now GST, tries to give it a flavor of service transaction attracting tax. In other words, land component is being subjected to GST by treating it as service of transfer of development rights. This is against the basic principles of the Constitution of India that GST cannot be charged on land component.

Assuming for the time being that the credit being eligible on payment of tax on such development rights, still there is a blockage of capital, that too merely on account of the allotment of area to the landowner which does not provide any cash inflows to make payment of such liabilities.

Further, in a typical built up area sharing, the allotment is made on the date of completion since the landowners intend to own such property for investment or own residence. The payment of GST by the landowner on the

date of completion makes the Input Tax Credit (ITC) as ineligible since there is no output liability to be adjusted against the same. The law doesn't even permit refund of such ITC to the developers under the refund mechanism. Such investment in the overall project considering the ITC on development being no more an eligible credit makes the developers to consider it as cost and mark up in the sales price making the overall unit cost to go up and no more as affordable.

After making multiple submissions, the Ministry has provided some relief to the developers constructing residential units from the development rights received on or after 1st April 2019. Now due to revised GST scheme for real estate sector that became effective from 1st April 2019, we have been given a partial exemption on such type of transactions.

We need your urgent attention to provide us with a one-time exemption for all such cases upto 31st March 2019. This will help us to free up some portion of the real estate inventory which is blocked due to increase in cost on account of GST applicability on land component of the sale.

This will help lot of developers in all parts of India to sell off constructed inventory at a reasonable sale price and release themselves from the burden of interest.

Since the matter is contentious, it is likely to be in the court of law sooner or later. Providing a one-time relief to past cases aligned with an already implemented scheme for new projects effective 1st April 2019, the chances of litigation on the subject would be negligible.

If the above submission is acceptable to the your good self, we also request you to re-think on the basic premise of charging GST on land component and giving an un-conditional exemption to the following types of rights even for future cases:

- a. Assignment of right to purchase immovable property;
- b. Supply of additional FSI/ transferable development rights;
- c. Development rights under Joint Development Agreements;
- d. Transfer of TDR Scrip (generated out of compulsory/ optional acquisition of land)

Why are we seeking this benefit?

The moot reason is, in an economy where cash flows today play the most important role, the above model used by the developers, is one of the most sought after option wherein the cash outflow for land procurement is very minimum (in most cases nil). This helps in faster completion of the projects since the funds are used directly towards construction activity and not towards land procurement. If the above relaxation (which is aligned to the framework of the Constitution of India) is given, more and more projects will be executed on this model and it will result into reaching the target set under "Housing for All" at a faster pace.

2. Definition of Affordable Residential Units Needs Attention

The revised GST scheme has brought in a new definition of affordable housing. Presently, a dual threshold of INR 45 lakhs and carpet area of upto 90 sqm (in non-metropolitan cities/towns) or 60 sqm (in metropolitan cities)

has been prescribed for the lower GST rate of 1% to apply on affordable housing units.

The cost of a 60 sq.mtr. house in Mumbai Metropolitan Region (MMR) area will always be above Rs.45 lakhs due to high land prices. None of such houses within MMR shall qualify for concessional rates of 1%. This makes the relief illusory to citizens of MMR.

We request that the definition of Affordable Housing for the purpose of GST remain as those units upto 60 sq.mtrs. in metros OR costing upto Rs.45 lakhs.

It is also requested to consider limit of Rs.45 lakhs to qualify for affordable housing to be raised to :

- Rs.1.5 crores for Mumbai (MCGM limits) and Thane;
- Rs.1 crore for the rest of MMR.

Further, the area threshold for metropolitan cities may also be increased from 60 sq.m. to 90 sq.m. and for non-metropolitan cities from 90 sq.m. to 120 sq.m. in line with the PMAY Credit Linked Subsidy Scheme as also the current market and consumption trends. This shall ensure that the Indian population enjoys the benefit of reasonable and quality housing choices under the affordable housing scheme.

3. **GST on Re-Development and Rehabilitation Projects**

Another model more often used by developer is re-development of old building (or rehabilitation of slums) wherein existing members are allotted units and balance inventory is available for sale to the developer. Given the number of buildings reaching limits of structural safety increasing day by day, this model is very much prevalent in cities having old buildings/ structures and lack of space for horizontal expansion.

Till 31st March 2019, the Developer used to act as a works contractor for the existing members and charging them GST at 18% on the construction activity only. For the new customers buying units in such re-developed properties were subject to regular GST at effective rate of 12% after considering abatement for land component. However, under the revised GST scheme (effective from 1st April 2019), the notifications suggest that all such units given to existing members would be subject to GST at par with units given to new customers taking into consideration the value of similar units. Since the value of land is embedded in the value of units given to new customers and the same being considered as the value for existing members, the existing members are required to pay higher amount of GST even when they only receive works contract service.

- A. We request your good self to provide a suitable clarification and allow correct treatment to be given to construction services which are in the nature of works contract when provided to existing members.
- B. We do also request the government to reduce the GST rate on all the new units in redevelopment (old/dilapidated structures) and all rehab schemes, like but not limited to Society redevelopment, Old & dilapidated building redevelopment, Dharavi redevelopment, BDD Chawl redevelopment / Slum Rehabilitation schemes from 5% to 1% as such activity of builders is a

socio-economic one for the benefit of the society and helping to achieve the vision/motto of the government of "Housing for All".

Why are we seeking this benefit?

With the lack of space being a major concern today, many cities are looking out for re-development of existing structures. In this process, the anomaly created by the revised GST scheme has completely halted the re-development projects wherein the existing member is made to face brunt of additional GST burden. Relief by way of clarification will again bring the stalled projects to work and move them towards completion. This will also help to bring the labour class back to employment in cities like Mumbai, Pune wherein such projects are at the forefront.

Such taxation on the development rights and the units provided to the existing landowners amounts to double taxation since the cost of construction of such units is the land cost to the developer which is also considered as output of the developer. Such equation of input as output results in rendering the project non-feasible. We request you to consider an exemption on transfer of development rights with respect to the Redevelopment projects.

4. GST Rate of 8% with ITC to be Restored

The real estate sector needs a rational GST rate with input tax credit being allowed. We have seen that the new GST rates without input credit are resulting into increase in cost and ultimately increase in prices of the under-construction units. We request your good self to re-think on the core principle of GST which was "seamless flow of credit" and allow the sector to avail input credit for all types of construction activity. As granting seamless input tax credit is the basic crux of indirect taxation laws, we do hereby humbly request the government to give the developers an option to pay GST @8% with input tax credit.

5. GST on Commercial Leasing to be made 5%

It may be pertinent to note here that Real Estate has been the most preferred sector for FDI, especially so post a slew of measures taken under EoDB and post RERA and introduction of REITS. Maximum FDI, more than \$ 25 Billion have come to India in the last 10 years in real estate, of which \$ 5 Billion in 2018 alone. It is owing to this factor that one cannot compromise on the commercial office/IT/warehousing space. The commercial segment is witnessing good growth riding on REITS and EoDB measures is remains a major growth area in India for the next 2 decades and plays a direct role in job creation.

However, owing to its price sensitiveness, commercial office spaces in Maharashtra have traditionally been challenged by cities like Bengaluru, Hyderabad and NCR where the rentals are relatively lower owing to lower land rates. A high GST rate of 18% on Commercial leasing only further alienates Businesses from opening shop or expanding their bases in Mumbai or elsewhere in Maharashtra, despite Mumbai being a commercial centre.

In order to arrest any further flight of jobs to other states and to make the state of Maharashtra once again the preferred commercial centre, we suggest that GST on commercial leasing be brought down to 5% from the current 18%.

6. **Extend the cut-off date to 31st October, 2019 under "Sabka Vishwas (Legal Dispute Resolution) Scheme, 2019" for cases covered under Audits**
Under the Indirect Tax Amnesty scheme "Sabka Vishwas (Legal Dispute Resolution) Scheme, 2019", an opportunity is provisioned for only those cases where SCN or Demand has already been issued before 30th June, 2019.

There are many cases where the afore-mentioned scheme cannot be availed of by the assesses if the audit began before the cut-off date of 30th June, 2019 but the SCN or Audit report was received post 30th June, 2019.

Considering the fact that LDRS is limited to SCNs where final hearing has not happened before cutoff date, which is going to be subjective as there is no concrete evidence to prove final hearing in all cases, it is recommended to extend the benefit to all pending cases where there is no order passed by the Department before cutoff date in respect of pending SCNs.

Besides, considering the complex nature of the Real Estate Industry and the legacy issues related to tax on redevelopment, reversal of credit on OC, TDR and other complex issues, i.e. GTA tax for under-construction property after abatement of 25% vs 30%, inclusion of additional charges in taxable value etc., extension of the cut-off date to 31st October, 2019 is utmost necessary, by which time, most of the audits will be closed / completed. Such an extension will enable the department and the assesses, who are deprived of the scheme owing to the cut-off date, to avoid unnecessary, time consuming and costly litigations by paying 30% or 50% of the disputed amount. A mere extension of the cut-off date shall create a win-win situation for the department as well as the Assessee.

We hereby draw your immediate attention on all the above listed issues; should the above issues not get addressed at the earliest possible, the negative impact of the same on the entire MMR Real Estate Market would be catastrophic.

Thanking you,

Yours Sincerely,
For CREDAI-MCHI



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv S. Chaudhary MRICS
Chief Operating Officer