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Ref. No. MCHI/PRES/18-19/176

March 2, 2019

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

कर सहायक,
राज्यकर आयुक्त,
वस्तु व सेवा कर विभाग,
महाराष्ट्र राज्य मुंबई.
यांचे कार्यालय.

Sub: Representation on proposed GST amendments for Real Estate Sector

Respected Sir,

Real Estate agreements are long term contracts and of a continuous supply. In the current GST regime, the developers are allowed full credit of GST, accordingly the benefits of GST credit have already been factored in the sale prices of residential units.

Now as per the council recommendations, it is proposed that GST rates of 1% for affordable housing and 5% for normal housing shall be applicable without any ITC credits. There are various transitional issues in respect of ongoing contracts, some of which are discussed as under:

- Transition of the existing sales contracts/transactions which has been entered prior to 1st April 2019 and ITC benefits already passed on to the Home Buyers:**

Issue

Loss of Input Tax Credit already passed on to customers for complying with anti-profiteering provision:

- In case of sale transactions entered on or after 01.07.2017, probable ITC is factored in sales price
- In respect of flats sold earlier, benefit of ITC is passed on to customers in respect of installments due on or after 01.07.2017

Builder will not be entitled to ITC on construction done on or after 01.04.2019 in respect of such flats. This would be a substantial amount.

The same is illustrated with the following example:

	Regular		Affordable (MMR) *	
Particulars	Existing	New	Existing	New
Selling Price	100	100	100	100
GST	12	5	8	5
Price + GST	112	105	108	105
Less: ITC	7	NIL	7	NIL
GST Paid to Government	5	12 (5 +7)	1	12 (5 +7)
Amount available with Developer	100	93	100	93
Additional burden due to change in policy		7		7

* Unit area less than 60 sq. mtr. having price of more than 45 Lakhs.

Representation:

- Concessional GST rate should apply to new Sale Transactions done on or after 01.04.2019
- Existing rates should continue to apply on Sale Transactions entered on or before 31.03.2019
- Builder should be allowed to take proportionate ITC in respect of such transactions

Rationale:

- The pricing for all sales in the existing regime has been done on basis of GST (or earlier, ST) having ITC and hence, the same is allowed to be continued for such partly implemented contracts till such time that the contract is completed.
- Developers have already sold flats worth thousands of crores. Due to contractual terms and provisions of MahaRERA, developers may not be in a position to increase the pre-agreed sales price. This would result into unbearable loss of about 5% to 7% on its Revenue.
- Today most of the developers have sold flats under deferred payment scheme wherein the buyers paid only 5% to 20% of the Agreement value and rest of the payment will be due on receipt of Completion of Flat and possession. It is more than likely that Completion of such flats will happen in new Tax Regime wherein, no Input Tax Credit is allowed. In all such cases it is important that contract executed are allowed to continue at GST Rate so applicable at the time when contract was executed with Full Input Tax Credit.

2. Unutilised GST credit with Developers

There is significant unutilized GST input tax credit with developers which is available for offset against future sales / GST liability.

Representation:

- Accumulated ITC balance should be allowed to be carried forward as vested rights and utilized for discharging future tax liability.

Rationale

- Government has already recovered tax on construction cost
- If not allowed to be carried forward, the price of flat may escalate
- Neither buyer nor developer should be penalized for sudden change in policy
- GST is a consumption tax
- GST is just a pass through for business entity
- GST is not a tax on business entity

3. GST rates on Construction Contractors/ Sub Contractors :

Currently the Works contract services for houses for upto 60 Sqmt carpet area in an affordable housing project is chargeable @ 12% (irrespective of the value of houses). Now definition of affordable housing has been changed for the purposes of levy of GST to customer. It is recommended that:

Option 1: The GST rates on all sub contracts shall also be reduced @ 12%.

Option 2: Definition of affordable housing for the purposes of determining the rate chargeable on inward supplies should be kept the same as before and the

new rates to be made applicable only on contract between the developers and consumers.

Option 3: For the purposes of ongoing projects as on 31.3.2019, the definition of affordable housing to be kept the same as before.

Rationale

If the GST rates on construction contracts are not reduced the cost of construction will increase substantially. Also by reduction in the rates without any input tax credit to developers will not have any major impact on the Govt. revenue.

4. GST Rates on Work Contract Services for Slums and redevelopment buildings

In Mumbai city due to lack of open / virgin land, the redevelopment mainly happens under following schemes:

- Slum Rehabilitation Schemes
- Redevelopment of old cessed and tenanted buildings
- Redevelopment of old buildings of society.

These constitutes pre-dominant segment of real estate sector impacting housing for lower income group, middle income group and higher middle income group.

Issue:

- Work carried out by developer for SRA, MMRDA and old societies, being a works contract services, will continue to be taxed at 18%/12% even after 01.04.2019
- The tax incidence in respect rehab flats allotted to SRA, old tenants and society members are borne by the builder / developer. It forms part of project cost ultimately factored into sale price of saleable units.

The same is illustrated herein below:

Sr. No.	Particulars		Vacant Land	Redevelopment
1	Project Duration		3 Years	7 Years
2	Sales area generated	sft	10,000	10,000
3	Selling Price psft (excluding GST)	Rs. psft	14,000	14,000
4	Land Cost / Redevelopment Construction Costs	Rs. Crore	3.00	3.00
5	GST on Land Cost / Redevelopment Construction Costs	Rs. Crore	0	0.54
6	Total Land Cost	Rs. Crore	3.00	3.54
7	Extra GST burden cost	Rs. Crore	0.00	0.54

Representation:

- Rehab Component of redevelopment project should be taxed at 1% and ITC should be allowed
- On all above referred redevelopment projects, the saleable flats should be taxed at 1% as against 5%.

Rationale:

- In current GST regime Redevelopment projects are taxed more than the vacant land project.
- Builder is entitled to development potentials for providing such rehab construction services
- Rehab construction cost is nothing but a cost of acquiring land rights/ development rights
- In substance, input tax on rehab construction services is a tax on development rights / land potentials
- Government has made policy decision to exempt development rights, TDR, FSI, etc.
- Such benefit should be granted to projects done under above schemes
- Rehab constructions is in nature of socio-economic services and it helps government to achieve its avowed
- objective of "Housing for All by 2022" and "Cities free of Slums"
- This will make development under such schemes feasible for the developers

5. Affordable Housing cost in MMR

The cost of house of 60 sq. mt. in MMR area will always be above Rs. 45 lakhs due to high land prices. None of such house in MMR area will qualify for concession rate of 1% for affordable house. This makes the relief illusionary for citizens of this area.

Representation:

- Limit of Rs. 45 lakhs to qualify for affordable house should be raised to:
 - Rs. 1.5 crores for Mumbai (MCGM limits) and Thane;
 - Rs. 1 crores for rest of MMR

Rationale:

- Cost of house of 60 sq. mt. in MMR area will always be above Rs. 45 lakhs due to high land price
- None of such house in MMR area will qualify for concession rate of 1% for affordable house
- This makes the relief redundant for home buyers in this area

6. GST exemption on TDR/JDA, long term lease (premium), FSI etc :

It is stated in the Press Release dated 24th February 2019 on recommendations of the 33rd GST Council meeting that Intermediate tax on development right such as TDR, JDA, lease (premium), FSI shall be exempted only for such residential property on which GST is payable. In MMR region as well as other cities, the developers carry out development of housing project which has mix of residential as well commercial units and also some of the units would get sold after completion.

Representation:

- Any project having upto 20% of the total area for commercial units should be considered as residential housing project for purpose of the GST exemption.
- Exemption in respect of GST on TDR/JDA, long term lease (premium), FSI etc. should not be denied on flats/units remain unsold on the date of Occupation Certificate.

Rationale:

This would bring finality/certainty in respect of Tax position and also smoothen the Assessment process.

OUR PRAYERS

1. Concessional GST rate (5% and 1%) should apply to new Sales Transaction done on or after 01.04.2019.
2. Accumulated ITC balance should be allowed to be carried forward as vested rights and utilized for discharging future tax liability
3. The GST rates on all sub contracts relating to Affordable House should be kept unchanged @ 12%. Definition of affordable housing for this purposes should be kept the same as before.
4. Rehab Component of redevelopment project should be taxed at 1% and ITC should be allowed.

Saleable flats/units in Redevelopment Projects should be taxed at 1%.

5. Threshold Limits of Rs. 45 lakhs to qualify for affordable house should be raised to Rs. 1.5 crores for Mumbai (MCGM limits) and Thane; and Rs. 1 crore for rest of MMR.
6. Project having Commercial Units upto 20% of the total project area should be considered as residential housing project for purpose of the GST exemption on TDR/JDA, long term lease (premium), FSI etc.

Exemption in respect of GST on TDR/JDA, long term lease (premium), FSI etc should not be denied on flats /units remaining unsold on the date of Occupation Certificate.

We hereby humbly request for an immediate appointment for our delegation to sit and discuss the above critical issues in person with you. 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.

We look forward to your confirmation of a convenient date and time for a meeting.

Thanking you,

Your sincerely,
For CREDAI-MCHI



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv Chaudhary MRICS
Chief Operating Officer