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Ref. No. MCHI/PRES/18-19/137

To

Shri Rajiv Jalota (I.A.S.)

Commissioner

Sales Tax, Maharashtra State

GST Bhavan, Mazgaon,

Mumbai - 400 010.

[Signature]
28/1/19
कर सहायक,
राज्यकर आयुक्त,
वस्तु व सेवा कर विभाग,
महाराष्ट्र राज्य मुंबई.
यांचे कार्यालय.

January 28, 2019

Sub: Realignment of GST on Real Estate

Respected Sir,

As you may be aware, Confederation of Real Estate Developer's Associations of India (CREDAI) is the apex organization representing 12,000 developers across 23 states and 189 cities. CREDAI members are active partners of Government in the mission of Housing for All by 2022. Over one million affordable housing units have been launched by CREDAI members since April 2017. In addition to advocacy for housing, CREDAI embraces a wider social agenda with its members having trained more than 1 lakh construction workers and ensuring zero discharge of solid waste from more than 1.60 lakh apartments.

Further, Maharashtra Chamber of Housing Industry (MCHI), a founder member of Confederation of Real Estate Developers' Association of India (CREDAI), is a society registered under the Societies Registration Act, 1860 and under the Bombay Public Trust Act, 1950. MCHI is a recognized association having as its members, various firms and/or companies engaged in the business of development and redevelopment of immovable properties, who provide the majority of the housing (exceeding 90%) in and around the city of Mumbai. MCHI is well known for initiating and successfully espousing the cause of its members at various forums, Government, Urban Local bodies, etc.

Goods and Services Tax (GST) has benefitted entire trade and industry by eliminating multiple indirect taxes and levies. However, real estate is an exception to this rule since in addition to GST, it is also subjected to stamp duties. With implementation of Real Estate (Regulation and Development) Act in May, 2017, real estate industry is also going through an institutional transformation with all the consequent vulnerabilities. This is at a time, when the sector is expected to participate in the national mission of 'Housing for All by 2022' and in general contribute to economic growth commensurate with its share of GDP at 7%. While a number of complications arising out of GST need to be addressed to ensure that GST is neutral in its impact on the sector, after due deliberations in CREDAI we submit the top 3 concerns of the industry and our suggestions thereon which need to be addressed immediately.

1. Abatement of land cost for housing under GST

GST is stipulated at 18% in case of sale of under construction flat. After allowing for presumptive deduction for land cost at 1/3rd of sale value, the effective tax rate comes to 12%. Deduction of 33% is not commensurate with cost of land in metros. It is for this reason that under service tax regime, abatement of 70% on gross amount

was permitted vide notification number 26/2012. Further, many elements of cost such as approvals, finance and employee costs are not eligible to tax credit which needs to be taken into account.

The sale of fresh under construction units has come to a halt as there is no GST on completed units. Hence, it is absolutely urgent to adopt a transparent, objective and non-discretionary system of allowing for abatement of land cost while at the same time targeting the relief to end- consumers.

Considering the diverse nature of real estate development which spans from affordable (sale price of Rs 2500/- per sq ft to 4500/- per sq ft) to Luxury development (sale price of Rs 7500/- per sq ft to Rs 25000 per sq ft) from Metro cities to Tier 2 and 3, we believe that there cannot be one rule that fits all.

Recommendation: Keeping this in view, we submit the following for recalibrating the incidence of GST on real estate-

Recommendation 1

The abatement for land component on may be increased from 33.33% to 60% resulting in an effective rate of 7.2%.

Similarly, the effective rate for affordable housing should be 4.8% after considering 60% deduction for land component.

We propose that in addition to the above change in the existing law, government should provide an option to the Developer to opt for a composition scheme. The composition scheme should be at the option of the developer to opt in lieu of the existing scheme as amended.

Composition Scheme

Reduce the GST rate to 5% with no input tax credit with a special dispensation for affordable housing with rate of GST being 0% and no input tax credit subject to procurement of 60% of material from registered dealers. This scheme should be allowed to be qua project.

Note: The composition scheme shall make the price of the Budget Housing (sale price of Rs 2500/- per sq ft to 4500/- per sq ft) higher than the current prevailing rates due to non-availability of the input tax credit.

The condition of 60% procurement of material from registered dealers in place of 80% is being suggested in view of the Government looking to encourage sourcing from Medium and Small Enterprises and towards this end has increased the threshold of compulsory registration under GST from Rs. 20 lakh to Rs. 40 lakh.

Land cost in metros is much higher than 60%. It is noteworthy that under Service Tax regime, abatement of land was allowed at 70% and the 60% proposed under option 1 is still way lower. Hence, providing an option to the developer to choose between the rate of 5% with no input tax credit and 7.2% with input tax credit is necessary in the interest of ensuring that incidence on the ultimate home buyer retains proportionality.

2. Recognising development rights, transferrable development rights (TDR), floor space index (FSI) and tenancy rights to be transactions of immovable property under GST

Under the GST law, immovable property, not being goods, will be a 'service' as defined u/s 2(102) of CGST Act. However, Clause 5 of Schedule III to CGST Act excludes only the following from scope of supply:

- Sale of land
- Sale of building (other than under-construction sale of flats/unit)

In other words, land and sale of building post occupancy certificate is excluded from GST under Schedule III of CGST Act. This exemption continues the same treatment to land as under Service Tax regime where the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 excluded from its scope and activity that merely constitutes 'a transfer of title in goods or immovable property, by way of sale, gift or in any other manner'.

Under General Clauses Act, the term 'immovable property' is defined to include any benefits arising out of land. There is ample case law to demonstrate that development rights in case of joint development agreements or redevelopment projects with societies, TDR, FSI or grant or transfer of tenancy rights or long term leases are rights arising out of land / building. Recognizing the issue, Government has clarified the time of supply for a transaction involving consideration against development rights in the form of construction service [Area Share Arrangement] to be the date of conveyance deed or of any other similar instrument including allotment letter [vide Notification No 01/2018 Central Tax (Rate) dated 25.01.2018]. However, this is insufficient and inadequate to take care of the fundamental problem because allotment letter effectively renders the sale liable to GST from the start of the project involving development rights.

Recommendation: The scope of supply should be amended to exclude all types of transfers in respect of rights arising out of immovable property such as development right, TDR, FSI, tenancy rights, long term lease, or any other transaction on which stamp duty is payable.

3. Taxability of Long Term Lease Premium

'Lease Premium', on long term leases is liable to GST since no exemption has been granted in respect thereof in Entry 5 of Schedule III which applies to transaction involving Sale of Land only and not to the long term lease. Long Term Leasing is an alternative to sale of land due to variety of reasons such as legal restrictions, regulatory constraints etc. Generally, Government authorities especially Town Development Authority, Industrial Development Corporations, Municipalities prefer to allot parcels of land to Developers on long term leases for a period upto 99 years. Titles which are conferred upon the allottee includes title to possess, sub-lease, mortgage etc. and are recognized as ownership. Stamp duties are also levied on the long term lease of more than 30 years on same rates as sale of land.

Recognizing the problem, Government exempted 'Lease Premium' charged by State Government Industrial Corporation and other specified entities in respect of industrial plots and other specified plots by virtue of Entry No 41 of the Notification No 12/2017-CTR. However, no such specific exemption is granted for Lease Premium charged in respect of other leases. The result is that the viability of the

projects based on lease hold land is adversely affected as compared to projects on free hold land.

Recommendation: Hence, on the same lines as for industrial plots under the Notification No. 12/2017, CREDAI recommends exemption from payment of GST on the lease premium charged by various authorities for leasehold rights of residential and commercial plots.

4. GST in respect of Slum Rehabilitation Project (SRA Project) under the SRA Authority (for eg. Dharavi) and Redevelopment of Old Buildings (for eg. BDD Chawl etc)

The modus operandi adopted in SRA Project is as follows -

- a) The Project (to be undertaken by the developer with consent of co-operative society of slum dwellers) is submitted by the developer to the SRA;
- b) The proposal is scrutinized by SRA and accepted;
- c) The developer provides alternative accommodation to slum dwellers as per guidelines of the SRA
- d) The construction of rehabilitation building is commenced post receipt of Letter of Intent ('LOI') from the SRA;
- e) The units constructed by the developer are allotted to slum dwellers by the SRA;
- f) The SRA permits construction on sale building as per provisions of the Scheme.

Similarly, Developer undertakes redevelopment of the property owned by the 'Society under Redevelopment Scheme' by demolition of the existing building and construction of a new building in place thereof for which the Society / members of the Society grant the development rights in favour of the Developer which is ultimately used for the construction of the sale building.

The reason for undertaking the construction of a rehab building under both the Schemes is to construct the sale building. The nature of transaction is similar to purchase of FSI / TDR from market with the difference that in case of purchase from market the developer would be required to pay consideration in monetary terms whereas in the instant case, the consideration is non-monetary.

Consequently, the construction service provided to SRA and Society though being an output service, is also an input service without which Developer will not be able to construct sale building. In the event the credit of GST, paid on such construction service is not allowed than it would result in double taxation and contrary to the larger scheme of GST.

Recommendation: The construction service provided to SRA and Society old & dilapidated buildings, cluster development, Dharavi, BDD Chawl redevelopment etc. and all other redevelopments, is a consideration for buying rights in the land / FSI / TDR and hence no GST should be applicable on such rehab constructions.

As the cost of such rehab flats is factored in sales price of saleable flats, developer is paying GST indirectly on entire project, payment of tax on rehab flats amounts to double taxation.

Rehab flats provided to SRA or society members, old & dilapidated buildings, cluster development, Dharavi, BDD Chawl redevelopment etc. and all other redevelopments, should be made zero rated. This will avoid double taxation and also enable developer to take input tax credit in respect of whole project (including rehab portion) and pass it on to customers. This will reduce cost of rehab flats. Such ITC should be allowed to use for payment of GST on sale components whether government comes out with 5% composition scheme or 8%/12% regular GST scheme.

5. Input Tax Credit (ITC) Reversal

In terms of the GST Regulations, sale of flats/units post issuance of the completion certificate is out of tax net and is not liable to GST. Accordingly, builders / developers are not charging / paying GST on such sale of completed units. Since the sale of completed flats / units is classifiable as 'exempt supply' it leads to Input Tax Credit Reversal of the **common** ITC. Currently, there is no clarity in the Input Tax Credit reversal provisions as how this common ITC has to be reversed.

Recommendation: On or after the date of obtaining completion certificate ITC reversal should be applicable only in respect of common ITC availed. Further no ITC reversal should be applicable in respect of ITC availed prior to the date of obtaining completion certificate.

6. Refund of GST on cancellation

As per existing law credit note for cancellation of booking and reversal of GST paid on same is allowed only till end of September of the next financial year. In real estate industry construction activity takes place over 2 to 5 years span. Due to this typical nature of the industry cancellations can take place anytime during this period.

Recommendation: Section 34 of CGST Act may be amended to allow issue of credit note on cancellation of flat enabling builders to adjust the tax refunded on cancellation against tax payable for the month in which such cancellation happens or in subsequent months. A similar facility of adjustment of tax paid against future liability must also be made available in respect of flats booked under the pre-GST regime being cancelled post implementation of GST.

7. Input Tax Credit in respect of immovable property

Under Section 17(5)(d), ITC on construction of immovable property (Capital Asset) is ineligible credit under GST. On the other hand, Section 15(1) provides that any rent received from the leasing of commercial property is chargeable to 18% tax under GST. Levying GST on rents of completed commercial immovable property while disallowing ITC on its construction results in double taxation.

Recommendation: ITC on the construction of immovable property for rent (and not for sale) should be permissible in its entirety.

8. Taxability of Relinquishment of Land Rights

Agreement to purchase is generally executed by and between the Land Owner and Buyer while entering into purchase of Land. Sometimes, the said agreement is cancelled due to incapacity of the Buyer to make payment on time, adverse economic conditions, unsuitability of land for the purpose of purchase etc. The

person who is causing the cancellation pays certain compensation to the other party. This compensation becomes subject to GST as Schedule III to the CGST Act, 2017, only excludes sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building from the purview of 'service'. Briefly put, relinquishment of right, though the right is in respect of land, does not qualify to be classified as 'Sale of Land' under GST as in terms of definition of sale given in section 54 of Transfer of Property Act requires transfer of ownership.

Recommendation: Land not being subject matter of GST, any transaction in Land whether involving transfer of ownership or other rights should not attract GST.

9. GST on charges paid to Municipal Authorities for various Approvals

Notification No. 13/2017 - Central Tax (Rate) dated 28 June 2017 provides that in respect of services supplied by the Central Government, State Government, Union territory or local authority to a business entity, the recipient business entity located in taxable territory is liable to pay tax under Reverse Charge Mechanism ('RCM').

Further, Notification No. 12/2017 - Central Tax (Rate) dated 28 June 2017 provides that services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution shall be exempt from GST. On prima facie reading of Article 243W, it is not clear whether various charges / fees paid to Municipal Corporation authorities for obtaining NOC and other approvals would fall under Article 243W and thus, exempt from GST.

Recommendation: It is requested to make relevant amendments in law so as to clarify that various charges / fees paid to Municipal Corporation authorities for obtaining NOC and other approvals are exempt and not liable for GST under reverse charge mechanism.

We shall be most grateful if you would please take a favourable view on the above recommendations at the earliest so that industry is released from the uncertainty surrounding GST.

Best Regards,
For CREDAI-MCHI



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv S. Chaudhary MRICS
Chief Operating Officer