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Ref. No. MCHI/PRES/19-20/067

October 18, 2019

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

क.स. महायुक्त,
राजस्व विभाग,
वस्तु व सेवा कर विभाग,
महाराष्ट्र सरकार,
मध्य कार्यालय.

Sub: Issues and suggestions relating to GST on Construction services in the Real Estate Sector

Respected Sir,

Greetings from CREDAI-MCHI

We express our sincere thanks for giving us time to explain the various GST issues faced by the Real Estate sector during our meeting on 1st October 2019.

CREDAI-MCHI is an apex body consisting of members from the Real Estate Industry among Mumbai Metropolitan Region (MMR). It is the most prominent and the only recognized body of Real Estate Developers in Mumbai and MMR. We bring together members dealing in Real Estate Development on one common platform to address various issues facing the Industry. With a strong Membership of over 1400 leading Developers in Mumbai, CREDAI-MCHI has expanded across MMR, having its own units in the region of Thane, Kalyan-Dombivli, Mira-Virar, Raigad and Navi Mumbai. CREDAI-MCHI is recognized by Government of Maharashtra and the Central Government and helps in meeting their objectives of providing housing, which is a basic necessity.

As you are aware that, we are 2nd highest employment generating sector in India after Agriculture. We at CREDAI-MCHI are aligned to the vision of our Hon'ble Prime Minister of "Housing for All" by 2022. With the recent impact of global economy, we are facing few sustainability challenges. One such challenge in making real estate affordable for all is solving past and present issues under GST.

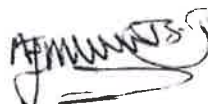
The issues highlighted in the below submission, have an adverse impact on majority of real estate developers across Maharashtra catering to the housing needs of middle and working class and require your immediate attention.

Thanking you,

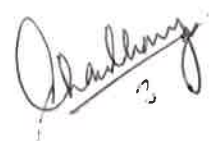
Yours Sincerely,
For **CREDAI-MCHI**



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv S. Chaudhary MRICS
Chief Operating Officer

Current provision	Facts for the issue	Suggestion for Rationalization
A. GST Rate Scheme - Optional		
The new revised GST scheme for real estate which is effective from 1st April 2019 does not allow availment of ITC for residential projects and requires all residential projects to charge new GST at flat rate of 5% / 1%	1. New revised scheme has resulted into increase in construction cost due to burden of input GST majorly in tier 2 and 3 cities 2. Maintaining records for residential projects with commercial area being more than 15% is a challenge and this option to go for rates with ITC availment would help in such cases	Option to choose from two schemes: 1. New revised scheme of 5% / 1% with no ITC availment and fulfilment of all related conditions like 80/20 rule 2. Avail ITC with a reduced effective output GST rate of 8% (3% for affordable housing units) (old scheme) Allow Developer to select the appropriate option on project to project basis whenever he enters into a new project
B. Residential Projects		
B.1 Affordable Housing Units		
A dual threshold of sale value 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	Our data suggests that approximately 85-90% of housing units fall within the INR 45 lakhs to INR 1 Crore bracket. Further for cities like Mumbai the value of INR 45 lakhs is very less and hence it is difficult to find units which qualify as affordable units in such cities. This shall ensure that the Indian population enjoys the benefit of reasonable and quality housing choices under the affordable housing scheme.	Following definition of "Affordable Housing Unit" may be adopted in all GST schemes: 1. Affordable housing unit means a unit either costing up to INR 75 lakhs (for cities other than metro)/ INR 1.50 Crore (for metro cities) or unit with carpet area as defined under RERA that do not exceed 60 sqm in the metros and to 90 sqm elsewhere.
B.2 Development Rights		
B.2.1 GST on Development Agreements		
GST under schedule III exempts only supply of 'land' and not 'benefits arising out of land'. This results in a possibility that Development agreements which transfer benefits in land may attract GST.	The real estate sector works on multiple models and one such model is by way of transfer of development rights to the developer by the landlord. The land-owner receives consideration in monetary or non-monetary form. This transaction can be termed as an indirect sale of land. In	For Cases from 1st July 2017 to 31st March 2019: A one-time exemption for all such cases upto 31st March 2019. This will help Developers to free up some portion of the real estate inventory which is blocked due to increase in cost on account of GST applicability

The Government has provided some relief to the developers constructing residential units from the development rights received on or after 1st April 2019. As per revised GST scheme for real estate sector which became effective from 1st April 2019, Developers have been given a partial exemption on such type of transactions.	these transactions the stamp duty is payable rendering it equivalent to the sale of land. Similarly, Income tax act also recognizes these transactions as sale of land and accordingly charges capital gain tax. In case of agreement to sell land, land is transferred to transferee being the developer, whereas in case of Development Agreement, the land is transferred along with constructed building to the unit buyer. Thus, underlying intention of both agreements is to transfer land. By taxing these transactions under the GST Act as "Service rendered", in effect land component is being subjected to GST which is against the basic principle of GST Act that GST cannot be charged on land component. Further, such taxation leads to cash flow mismatches and imposes burden on the working capital on an existing cash starved cash flows, even if tax credit is available. Lastly, in a typical built up area sharing agreement, the allotment is made on the date of completion which renders GST paid by the landowner as ineligible for ITC since there is no output liability to be adjusted against the same. This leads to escalation in costs adversely impacting affordability. Giving the requested benefit will help lot of developers in all parts of India to sell constructed inventory at a reasonable sale price and release themselves from the burden of interest. Providing a one-time relief to past cases aligned with an already implemented scheme	on land component of the transaction. For Cases from 1st April 2019: An unconditional exemption be granted on all development rights transferred based on the premise that it is nothing but an indirect sale of land.
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	for new projects effective 1st April 2019, also reduces chances of litigation. <i>For Cases from 1st April 2019:</i> The conditional exemption granted to residential units post 1st April 2019 results into GST being loaded on completed units (indirectly). In other words, for a project under development rights arrangement all the units whether being sold before completion or post completion are being loaded with GST cost. Hence the exemption on development rights transferred for residential projects should be unconditional which will give required relief to units sold post completion.	
B.2.2 GST on TDR Scrips		
GST under Schedule III exempts only supply of 'land' and not 'benefits arising out of land'. This results in a possibility that TDR Scrips which transfer benefits in land may attract GST.	1. TDR is actually sale of land acquired for reservation. Land Owner has choice to either take money or TDR. Since Local Body has shortage of funds, Land owner gets TDR. 2. As per Sec. 2(14) of MRTP Act, 1966, <u>Land includes benefits to arise out of land</u>, and things, attached to the earth or permanently fastened to anything attached to the earth. 3. As per Sec. 126 of MRTP Act, 1966 – Consideration for the acquisition of land required for public purpose specified in plans can in the form of: (a) by agreement by paying an amount, agreed to, or (b) in lieu of any such amount by granting the land-owner or the lessee, an amount equivalent to the value of the lessor's interest to	An exemption on all transfer of TDR scrips should allowed. Similarly, trading in TDR scrips should be exempted. Under Transfer of Development Rights (TDR) is a benefit derived from land and such transfer of development right should be excluded from definition of Service under Sec 2(102) of CGST Act.

	be determined by any of the said <u>authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894, Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free from all encumbrances.</u> (c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894 and the land (together with amenity, if any, so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the Land Acquisition Act, 1894, as the case may be shall vest absolutely from all encumbrances in the Planning Authority, Development Authority, or as the case may be, an Appropriate Authority; 4. In view of above, supply of Transferable Development Rights (TDR), being benefits arising out of land should be exempted from GST to bring down the cost of taxes in construction of houses and bring clarity on the issue of applicability of GST on such transactions. 5. The partial exemption given by revised GST scheme should be changed to an unconditional exemption	
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	6. Trading in TDR scrips should be exempted for following reasons: ➤ TDR being a right generated out of land should be given unconditional exemption Under the current scheme, TDR is subject to RCM payable by Developer and if trading in TDR is taxed, then it results into double taxation (one by all legs of traders upto final sale to Developer and another by Developer under RCM)	
B.3 GST on Long Lease Premium		
GST under schedule III exempts only supply of 'land' and not 'benefits arising out of land'. This results in a possibility that Long Lease arrangements which transfer benefits in land may attract GST. The Government has provided some relief to the developers constructing residential units under long lease arrangements entered into on or after 1st April 2019. As per revised GST scheme for real estate sector which became effective from 1st April 2019, Developer have been given a partial exemption on such type of transactions.	Land parcels in many parts of India are provided on long lease basis including Government agencies, such as Development Authorities. Generally, Land-owner allows the bidder a period of 45-75 days to make the full payment of long lease premium. Land-owner in certain cases can also extend the period of payment subject to interest for the delay. Once the full payment is received, the land parcel is handed over by entering into a Long Lease Agreement for a period of more than 30 years. Similar to Development rights arrangement, this is also an indirect sale of land. In these transactions the stamp duty is payable rendering it equivalent to the sale of land. Further, these transactions do not qualify under the definition of or "goods" or "services" under the GST Act. By taxing these transactions under the GST Act as "Service rendered", in effect land component is being subjected to GST which is against the basic principle of GST Act that GST cannot be charged on land component.	For Cases from 1st July 2017 to 31st March 2019: There are many cases where the Developer has paid EMD and/ or few instalments of long lease premium. In such cases the lease agreement was yet to be entered as on 31st March 2019 and the period of lease is going to start on or after 1st April 2019. The Developer in such cases could not apply for commencement without a lease agreement. Due to revised GST scheme, these cases do not qualify as ongoing project. Hence, the Developer has no other choice but to pay GST at 5% / 1% and forgo input tax credit (which was charged on long lease premium paid). The quantum of GST paid to Land-owner for all such cases has now become cost to the Developers. To deal with this situation, we suggest the following measures could be adopted: Option 1 - All projects where GST was paid on land component but was not allowed as input credit (due to reasons listed above) be allowed an option to still opt

	Further, this leads to escalation in costs adversely impacting affordability. Either of the options suggested, would provide a breather to such projects and help them be at par with the other projects which qualified as ongoing and took input credit of the GST paid on long lease premium. <i>For Cases from 1st April 2019:</i> The conditional exemption granted to residential units post 1st April 2019 results into GST being loaded on completed units (indirectly). In other words, for a project under long lease premium arrangement all the units whether being sold before completion or post completion are being loaded with GST cost. Hence the exemption on long lease transferred for residential projects should be unconditional which will give required relief to units sold post completion. <i>Other Issues:</i> Annual premiums recovered over an above one-time long lease premium are nothing but payment towards land and hence the benefit should also be extended to such amounts paid. Clarification on delayed payment charges would help authorities like CIDCO to stop recovering GST on such charges wherein in the principle services is exempted.	for old scheme (and continue to enjoy benefit of input credit) Option 2 - Government should allow a one-time refund scheme for all such projects wherein the GST component was paid on land and the same was not allowed as input credit For Cases from 1st April 2019: An unconditional exemption be granted on all long lease arrangements based on the premise that it is nothing but an indirect sale of land. Other issues: Exemption on annual premiums recovered under the long lease arrangements should also be exempted Clarification should be issued that late fees recovered for delayed payment of premium would be in the nature of premium only and hence covered under the valuation of long lease premium amount (which is exempted)
B.4 GST on Re-Development and Rehabilitation Projects		
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	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	<u>In Respect of Slum Rehabilitation Scheme</u> <u>Being an important socio-economic scheme to achieve the Government's avowed objective to provide 'Housing For All' by the year 2022, SRA</u>

customers taking into consideration the value of similar units.	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. Under the revised scheme, 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. 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. 1. Such taxation on the	<u>construction deserves a special tax treatment under GST legislation.</u> <u>To meet the aforesaid objective:</u> a. <u>An exemption should be granted for construction/ works contract services provided to SRA in respect of rehabilitation area by the developers; and</u> b. <u>SRA Developers should be allowed to utilize ITC in respect of rehabilitation area for discharge of GST payable on saleable area.</u> <u>In respect of Redevelopment Projects:</u> 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. 2. 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".
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	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.	
B.5 Time of supply for units sold by Land-owner		
As per the literal interpretation of Notification 3/2019, a developer-promoter should be eligible to apply the lower rate of 5%/ 1% (without input tax credit) on construction of apartments for the landowner. It appears that the intention of allowing input tax credit to the landowner (of such GST charged by the developer) is to ensure that the effective GST payable on landowner's share of units should be same as that of the GST paid by developer on sale of units to developer's customers. However, due to different time of supply being prescribed for Developer, the Land-owner is likely to not get any benefit of ITC (on account of GST charged by the Developer to Land-owner) while making payment of GST	This will bring parity in time of supply for Developer and Land- owner and hence allow Land-owner ITC of GST charged by the Developer	Allow Land-owner to also pay GST as per time of supply applicable to Developer ie at the end of the project
C. Commercial Construction		
C.1 GST on development rights used for commercial construction		
GST law till 31st March 2019	As you are aware, GST is	The special rate of tax to the

was aligned giving similar treatment to both types of construction ie residential or commercial. However, with effect from 1st April 2019 under the revised GST scheme for real estate sector, commercial construction was not given treatment at par with residential construction. Commercial units are subject to GST at 12/5% as compared to residential units which are subject to 5/1%. Similarly, the exemption from GST on development rights is also not given to commercial units. Lastly, the developer is required to maintain all details for availment of credits in cases where the commercial portion of the project crosses a particular limit (REP cases).	applicable on construction services provided by the builder/ developer. When a developer provides these services, the nature of the activity does not change whether it results into creation of residential unit or commercial unit and hence giving exemption benefits only to residential units is not just. Along with Housing for All, the current government also focuses on skill development, entrepreneurship development, self-employment generation opportunities, assistance in setting up businesses by way of Mudra loans, etc. Commercial units ie shops, offices, godowns, etc play a vital role in fulfilling this aspiration of budding businesses. By giving it a differential treatment and making it unviable for the developer to construct and businesses to buy commercial properties, the government is not helping its own purpose. We request you to give commercial properties an equal treatment in terms of exemption from development rights taxability. This will be a welcome step for most of the tier two and three cities wherein in majority of the projects have mix construction. It will help is increasing sales of commercial units and reduce the compliance burden for developers to maintain dual records in case of mix projects.	commercial units under an RREP is welcome. However, such rate of tax is on top of the tax to be paid on the development rights procured for the commercial area which is not even eligible as ITC. We request you to extend the exemption available to residential units to such commercial units as well which are part of the RREP. Further, since the development rights is nothing but an indirect sale of land, GST on such rights used for commercial construction should also be exempted without any conditions.
C.2 Benefit of ITC should be extended to commercial developments for leasing		
ITC on inputs and input services used in construction of an immovable property is	The language in the provision suggests that the restriction shall apply to commercial developments meant for sale;	It is therefore requested that a suitable clarification may be issued, that the restriction from credit eligibility (of

restricted as per section 17(5)(c) and 17(5)(d) of the Central Goods and Services Tax Act, 2017 ('CGST Act'). As per existing law, ITC on construction of immovable property (Capital Asset) is ineligible credit under GST	while from an intention and parity in taxation standpoint, the benefit of input tax credit ought to be extended to commercial developments for sale as well as lease; given payment of full GST on the output side. In a writ petition filed by M/S Safari Retreats Private Limited on this issue, the Hon'ble High Court of Orissa has held that input tax credit on goods and services used for construction of buildings intended for lease should not be restricted by provisions of section 17(5)(c) and 17(5)(d) of CGST Act. The ruling further holds that, any such restriction would need to be appropriately read down on grounds of parity in taxation (of properties meant for lease and those sold under construction) as well as to enable unfettered trade and commerce.	construction and works contract services except to the extent of those used for similar output services), under section 17(5)(c) and 17(5)(d) of the CGST Act, is not applicable for commercial developments for lease, taking into account the output GST being paid on such rentals.
C.3 GST Rate on Commercial Leasing		
GST at rate of 18% is levied on commercial leasing services	This will help boost the sale and onward leasing of commercial premises.	GST rate on commercial leasing be reduced to 12%
D. Other Issues/ Suggestions		
D.1 Reduction in GST rate of key inputs and input services		
Present GST rates: ➤ Cement 28% ➤ RMC, steel, flooring, doors and windows 18% ➤ Electrical, plumbing, sanitary items 18% ➤ Labour charges/ Services 18%	At present, affordable housing is subjected to GST at 1% and other housing is subjected to GST at 5%. However, unlike all other goods and services the benefit of input tax credit is denied to the sector. It is in this context that GST rates on the procurement side becomes relevant for this sector. Specifically, cement constitutes a major component of construction cost (almost 10-15%) for any real estate project. Similarly, rate of labour and contract services is currently 18%.	GST rate on most of these components should be reduced to offset the non-availability of ITC.

	These rates need a re-think as they are a major part of the cost of construction. Also, the fact that cement is the major raw material for all infrastructure projects, reducing its rate will also boost the infrastructure development and reduces its cost to the Government (who is the ultimate recipient of services in case of infrastructure projects).	
D.2 Time Limit for issuance of credit notes for 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. GST paid at the time of booking/ milestones should be allowed to be reversed by issuance of credit note at the time of cancellation of booking. Keeping a time limit for reversal of such GST paid impact the builder and customer both. In the light of hardship to real estate sector and end customers, the law may be amended to cater to the hindrance in making refund application on cancellation of units booked under Service tax regime and cancelled under GST regime.	Issuance of credit note and reversal of GST paid should be allowed without any limit. Section 34 of CGST Act be amended to allow to issue credit note on cancellation of flat to enable builders to adjust the tax refunded on cancellation against tax payable for the month in which such cancellation happens or in subsequent months. It is suggested that 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.

All our submissions above are aimed at fulfilling the vision and aspirations of the Government of India. By taking into consideration the above representation, the Ministry is only going to further show its commitment in solving the current financial situation and taking the economy on the path of \$5 Trillion.

For CREDAI-MCHI



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv S. Chaudhary MRICS
Chief Operating Officer