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Ref. No. MCHI/PRES/18-19/112

January 9, 2019

To,
Shri Upender Gupta
Principal Commissioner & Commissioner,
GST Policy Wing, CBEC
Room No. 159 A, North Block,
New Delhi - 110 001

Sub: Request for carrying out certain changes with respect to in levy of GST for the Real Estate sector

Respected Sir,

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.

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.

This representation concerns the problems being faced by the real estate industry and its customers considering the applicability of GST on following transactions:

1. Rationalization of rates of GST

- a. One of the most critical issues faced by the Real Estate Industry is the high transaction cost for acquiring a house under construction for the citizen has risen substantially and become unaffordable as illustrated below:

	Pre-GST	Post-GST (with land cost deduction)	Post-GST (without land cost deduction)
Stamp Duty	5.00%	6.00%	6.00%
VAT	1.00%	-	-
Service Tax	4.50% / 3.75%	-	-
GST	-	12.00%	18.00%
Total Tax Cost	10.50% / 9.75%	18.00%	24.00%

- b. Incidental cost of Stamp Duty and GST being 18% / 24% of value of a flat is a huge burden for a citizen buying a house in metro cities especially when they put their life time savings in buying a house, in addition to taking a new home loan. This will consequently result into slowing down the demand in already sluggish real estate market in most of the big cities.
- c. What is important to understand from input tax credit perspective is that not all the costs that are incurred by the Developer suffer GST. For e.g. land cost, approval cost, finance cost and employees cost does not attract GST. Therefore, contrary to the fliers/advertisements regarding the impact of GST on real estate, especially in metro and big cities, the proportionate increase in the eligible input tax credit under GST is not commensurate with the rate increase of GST on sale of unit under construction by the Developer. The impact of additional input tax credit available on materials and contracts in GST regime is very nominal as compared to hike in effective tax rate particularly in cases where the actual land cost is in multiples of the construction cost.
- d. In the earlier regime, the total tax incidence was 5.50% / 4.75% of cost of flats (service tax 4.50% / 3.75% plus VAT 1%) with input tax credit for Service Tax which has now risen to 12% with input tax credit on Goods and Services. This increase in rate of taxation by 6.50% / 7.25% is not offset by input tax credit of Goods.
- e. This incidence on the actual consumers is bound to increase the cost of housing; and the same will not be socio-economically desirable.

Representation and suggestion:

(A) The applicable tax rate of GST be reduced as under whilst allowing deduction of 1/3rd deduction towards land and input tax credit of Goods and Services-

- 5% for Affordable Housing Category and
- 12% for others / Non-Affordable Category

Or

(B) Price of real estate varies vastly across the country; thereby, a standard land abatement rate is not justifiable. Hence, as a trade facilitation measure, a composite scheme of 5% GST (affordable housing charged at 0 %) may be brought in where input credit may not be allowed.

This scheme should be introduced as an option and not made compulsory as trade facilitation measures need to be an option and not binding. Developer should also get an option to adopt different system to different project carried out by same entity.

It may be pertinent to note here that during the VAT regime, a similar scheme was made available by the government.

2. Tax implications on purchase of development rights, transferrable development rights (TDR), floor space index (FSI) and tenancy rights:

a. Relevant statutory provisions:

Section 9 of CGST Act stipulates GST levy on supply of Goods and/or Services. Section 2(52) of CGST Act defines 'goods' to mean every kind of movable property other than money and securities. Thus, immovable property is not 'goods'.

'Service' is defined u/s 2(102) of CGST Act to mean 'anything other than goods, money and securities'.

Immovable property, not being goods, will be a 'service' as defined u/s 2(102) of CGST Act.

Clause 5 of Schedule III to CGST Act excludes following from scope of supply:

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

b. Concerns and issues:

Schedule III excludes sale of land and building from the scope of supply making it non-taxable.

However, the development rights, Transferrable Development Rights (TDR) and Floor Space Index (FSI) are rights arising out of land. Same will not be regarded as land per se and hence transfer of development rights, FSI, TDR, etc. will be regarded as supply of service.

An apprehension, therefore, is that acquisition of development rights, TDR and FSI will be liable to GST at the rate of 18%.

- c. In our Country, especially in all Metropolitan cities, i.e., large cities, practically all projects are done on joint development basis or redevelopment of land belonging to old societies or tenanted buildings or slums or structures on lands belonging to the Government due to non-availability of virgin land. This involves transfer of development rights or buying FSI / TDR in lieu of conveyance of the land.
- d. Maharashtra State government treats development rights at par with conveyance of land and levies 6% stamp duty on transfer of development rights / FSI. The levy of GST on development potentials, therefore, amounts to double taxation. The aggregate tax / duty incidence would be 24% (18% GST + 6% Stamp Duty) of land value. Further, developer is required to discharge such liability upfront on execution of development agreement making most of the projects unviable and non-starter.
- e. Levying CGST on such rights under GST tantamount to taxing land, which may not be the legislative intent of the government as government does not intend to tax the land under GST.
- f. The litigation may arise as to constitutional competence of Central Government to levy tax on development rights as power to tax land and the rights in and over the land is granted to State Government under entry 18 of List II of Schedule 7 of the Constitution.

g. Erstwhile position in service tax:

Section 65B(44) of the Finance Act, 1994 excluded transfer of immovable property from scope of 'service'.

Under General Clauses Act, the term 'immovable property' is defined to include any benefits arising out of land.

The development rights, FSI, TDR, etc. being benefits arising out of land, same was 'immovable property' not liable to service tax.

Representation and suggestion:

We fervently request the government to make following amendment to clause 5 of Schedule III of CGST Act, 2017:

Existing Clause:

"Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building."

Suggested Clause:

"Transfer of land, development rights and all such benefits / rights arising out of the land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building."

The real estate industry has been severely affected on account of such increase in rate of tax under GST and levy of GST on grant of Development Rights & TDR. It is accordingly submitted that the above points may be considered and implemented so as to provide the much-needed impetus to the industry.

Our Representation and suggestion:

1. (A) The applicable tax rate of GST be reduced as under whilst allowing deduction of 1/3rd deduction towards land and input tax credit of Goods and Services-
5% for Affordable Housing Category and
12% for others / Non-Affordable Category

Or

(B) Price of real estate varies vastly across the country; thereby, a standard land abatement rate is not justifiable. Hence, as a trade facilitation measure, a composite scheme of 5% GST (affordable housing charged at 0 %) may be brought in where input credit may not be allowed.

This scheme should be introduced as an option and not made compulsory as trade facilitation measures need to be an option and not binding. Developer should also get an option to adopt different system to different project carried out by same entity.

It may be pertinent to note here that during the VAT regime, a similar scheme was made available by the government.

2. Clause 5 of Schedule III of CGST Act, 2017 be amended read as under so as to exclude the following from preview of GST:

“Transfer of land, development rights and all such benefits / rights arising out of the land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”

Should your good self require any further information / clarification on the issues set out in the Representation, we shall be glad to provide the same. We shall be happy to explain the same in person if desired.

Yours sincerely,
For CREDAI-MCHI



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv S. Chaudhary MRICS
COO, CREDAI-MCHI

CC:

1. Hon'ble Shri Narendra Modi, Prime Minister, Government of India
2. Hon'ble Shri Arun Jaitly, Minister for Finance, Government of India