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Ref. No. MCHI/PRES/18-19/171

March 2, 2019

To,
Hon'ble Shri Arun Jaitley
Minister for Finance,
Government of India
North Block,
New Delhi - 110 001

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 has 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 follow:

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

Issue

How to recover Input tax benefit already passed on to customers for complying with anti-profiteering provision?

- In case of agreement executed 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 flat such flats

The same is illustrated with the following example:

Particulars	Regular		Affordable	
	Existing	New	Existing	New
Selling Price	100.00	100.00	100.00	100.00
GST	12.00	5.00	8.00	5.00
Collection from Customer	112.00	105.00	108.00	105.00
Less: ITC recovered	7.00	-	7.00	-
GST Paid to Government	5.00	5.00	1.00	5.00
Amount available with Developer	107.00	100.00	107.00	100.00

Additional burden		7.00		7.00
Net Outflow for Customer	112.00	112.00	108.00	112.00
Action to be taken by Developer		Increase the price by 7		Increase the price by 7

Representation:

- Concessional GST rate should apply to agreements executed or transaction done on or after 01.04.2019
- Existing rates should apply for agreements entered on or before 31.03.2019
- Builder should be allowed to take proportionate ITC in respect of such flats

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.

2. Unutilised GST credit with Developers

There is significant unutilized GST input 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; or
- Accumulated ITC balance should be refunded in cash

Commercial Perspective:

- 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

Policy Perspective:

- 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 for inward supplies should be kept the same as before and the new rates are made applicable only on contract between the developers and consumers.

Option 3: For the purposes of ongoing contracts as on 24.2.2019 or 31.03.2019, the definition of affordable housing 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% 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 hereinbelow:

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
- All new Sale of redevelopment project should be taxed at 1%.

Rationale:

- 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 and thane city; and
 - Rs. 75 lakhs 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. Refund of GST on Cancellation of Flats

Representation:

- Notification should clearly provide for adjustment of tax refunded to buyer on cancellation of flats against output tax liability
- There should not be time limit for such adjustment

Rationale:

- Construction projects run for 3 to 5 years
- It is possible that flat booked in 1st year is cancelled in 3rd or subsequent year
- There is no provision in present law allowing adjustment of tax paid on cancelled flat and it ultimately becomes burden on flat buyer

MY PRAYERS

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2. Unutilised GST credit with Developers :

- Accumulated ITC balance should be allowed to be carried forward as vested rights and utilized for discharging future tax liability; or
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3. **GST rates on Construction Contractors/ Sub Contractors :**
 - 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 for inward supplies should be kept the same as before and the new rates are made applicable only on contract between the developers and consumers.
 - Option 3 : For the purposes of ongoing contracts as on 24.2.2019 or 31.03.2019, the definition of affordable housing be kept the same as before.
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 - Rehab Component of redevelopment project should be taxed at 1% and ITC should be allowed
 - All new Sale of redevelopment project should be taxed at 1%.
5. **Affordable Housing cost in MMR :**
 - Limit of Rs. 45 lakhs to qualify for affordable house should be raised to:
 - Rs. 1.5 crores for Mumbai and thane city; and
 - Rs. 75 lakhs for rest of MMR
6. **Refund of GST on Cancellation of Flats :**
 - Notification should clearly provide for adjustment of tax refunded to buyer on cancellation of flats against output tax liability
 - There should not be time limit for such adjustment

I do hereby sincerely 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.

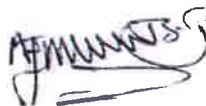
I look forward to your confirmation of a convenient date and time for a meeting.

Thanking you,

Your sincerely,
For CREDAI-MCHI



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary