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To,
Shri Manoj Kotak,
Hon'ble Member of Parliament,
Member of Parliamentary Standing Committee on Finance & Commerce

Subject: Representation regarding key issues faced by the real estate sector under GST in Mumbai and Mumbai Metropolitan Region ('MMR')

Ref: Notification No. 3/2019 and No. 4/2019 both dated 29.03.2019

Respected Sir,

At the outset we introduce ourselves as CREDAI – MCHI, the apex body for private real estate developers in Mumbai and MMR. We represent the voice of thousands of our real estate member developers engaged in business of construction of residential/commercial/warehousing/mix use buildings including undertaking redevelopment projects such as Slum Redevelopment, MHADA redevelopment, redevelopment of dilapidated buildings etc in Mumbai and MMR region of Maharashtra.

We would like to draw your attention to two issues with respect to the levy of Goods and Services Tax ('GST') that are specifically impacting real estate development in Mumbai and the MMR region.

1. Units handed over to Slum Dwellers / Members of Cooperative Societies (free of cost) by a Developer under Re-Development / Slum Rehabilitation schemes

1.1 With scarcity of land and a large quantum of old and dangerously dilapidated buildings and large slum pockets in certain metros, Re-development of old buildings or rehabilitation of slums is a highly common development model. Here existing members/residents as part of the redevelopment schemes are allotted units free of cost by the developer in the New Development and the balance inventory is available to the developer for free sale in the open market.

1.2 The GST department is seeking to charge GST on the notional value of flats given free of cost to the old tenants/occupants/slum dwellers even though the flats are given without any consideration and GST on the sale value of flats sold to customers is already being charged and discharged by the developers which value already includes the value of flats given to existing tenants/occupants/slum dwellers, ingrained in the same.

1.3 This GST liability works out to be a very huge sum and since the Slum Dwellers and/or Society members are unable to bear this cost, the developer has to bear the burden of this GST cost which makes such projects unviable. It is as a result of this GST implications that most of the new redevelopment schemes are stuck and the Developers are unable to carry out such projects. As a result the Government is losing huge potential GST revenue which would be earned if such projects take off. It is important to highlight that, a lot of Members are living in old and dangerously dilapidated buildings as a result of a complete dead lock in such redevelopment schemes due to non-viability. The delay caused in the redevelopment of such dilapidated buildings is resulting in their collapse and grave loss of human life and property.

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- 1.4 At this point, it is also important to understand that the value of consideration received from the purchasers of the Developer's free sale units, include the value of cost incurred towards construction done for Slum Dwellers / existing members, which is nothing, but value of constructed area handed over to the Slum Dwellers / existing members. Given this, the units handed over to the Slum Dwellers / existing members under any Rehabilitation and Redevelopment schemes should not be subject to any GST. This is also accepted by Hyderabad CESTAT in case of Vasantha Green Projects vs CCT, GST (Appeal No. ST/31095/2017) and several other decisions.

- 1.5 **Recommendation:** GST should not be levied on units handed over to the existing members / slum rehabilitation schemes free of cost and a clarificatory circular/notification to that effect should be issued that GST is and never was applicable/chargeable on flats given free of cost to existing tenants/slum dwellers/occupants as the value of such flats is already ingrained in the value of flats sold in the open market which are subjected to levy and payment of GST.

2. Taxability of Transfer of Development Rights Certificate (DRC)

- 2.1 This is a commonly adopted method by the Government for compensating a landowner for acquisition of his land that is required by the Government for public purpose. Essentially, in lieu of the acquisition of the land, rights for constructing built-up area proportionate to the value of the land acquired is provided by the Government to the Landowners by way of a Development Rights Certificate ('DRC'). This DRC can be used (fully or partly) by the Landowners himself for constructing a building or can be freely transferred to any other Person / Developer. Further, the DRC effectively represents permission to construct a specified built-up area over and above the inherent FSI of the land as provided by the applicable development control regulations. This is nothing but a transaction akin to Sale of ownership rights in the Land. It is only because the government does not compensate the Land Owner in monetary terms does the Land Owner have to monetise the DRC by selling the same in the open market.

- 2.2 Reference is made to other allied laws wherein 'benefit' arising from the land has always been included within "land" or "immovable property". This includes:

- Real Estate (Regulation and Development) Act, 2016 - "Immovable property" includes land, buildings, rights of ways, lights **or any other benefit arising out of land** and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass
- General Clauses Act, 1987 - "Immovable property" shall include land, **benefits to arise out of land**, and things attached to the earth, or permanently fastened to anything attached to the earth
- Land Acquisition Act, 1894 - The expression "land" includes **benefits to arise out of land**, and things attached to the earth or permanently fastened to anything attached to the earth.
- Also, various judicial pronouncements have been made regarding benefits arising out of land and such decisions are in tandem with above acts. Few of the citations are:
 - ✓ DLF Limited vs Gurgaon I, Chandigarh Bench of tribunal;
 - ✓ Bahadur & other Vs. Sikandar MANU/UP/0016/1905;
 - ✓ Ananda Behera Vs. State of Orissa AIR 1956 SC 17;
 - ✓ Smt Dropadi Devi Vs. Ram Das AIR 1974 All 473;
 - ✓ Sadoday Builders (P) Ltd Vs. Jt Charity MANU/MH/0791;
 - ✓ Chheda Housing Development Corpn Vs. Bibijan Shaikh 2007 (2) Bom CR 587

- 2.3 Vide Notification No. 4/2019 of Central Tax dated 29.03.2019, Transfer of DRC, (in case where residential apartments are being constructed on such land), the Promoter/Developer of such project where such DRC is utilized, has to pay GST at the rate of 18% on the value of the DRC (under reverse charge mechanism), proportionate to the area in the project remaining unsold at the time of issuance of occupancy certificate or first occupation whichever is earlier.
- 2.4 In case of development of a commercial project such GST @ 18% on the value of the DRC has to be paid upfront at the time of sale of such DRC.
- 2.5 Under GST law, as per Schedule III, no GST is levied on sale of land. It is submitted that transfer of DRC be treated as akin to sale of (right in) land and hence, no GST should be levied on the same.
- 2.6 **Recommendation:**
- It should be clarified that any transaction of transfer of DRC should be viewed as akin to sale of land and hence, should be included in Schedule III of the CGST Act. Accordingly, there should be no GST implications on the same, either on the landowner or the Developer.
 - If not included under Schedule III, an un-conditional exemption should be given to all types of grant and transfer of DRCs.

CREDAI-MCHI sincerely believes that the above immediate relief measures would enable the Real Estate Sector to tide over the present crisis, remain afloat and ensure its sustenance and stability. The suggested relief measures would also pave the way for the robust growth of this crucial Sector and also in achieving the dream of Hon'ble PM of 'Housing For All by 2025'.

CREDAI-MCHI sincerely hopes that the suggestions for the immediate relief measures outlined above will be considered positively and the suggested measures will be announced expeditiously. We shall be grateful if an opportunity is provided to discuss the suggested measures via Video Conferencing or in person, on a suitable date and time, as may be advised.

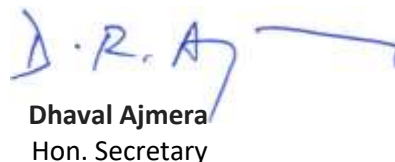
We request you to take the above submissions into consideration in the upcoming GST council meeting and provide the much needed relief to the real estate sector.

Thanking you.

Yours faithfully,
For CREDAI-MCHI



Boman Irani
President



Dhaval Ajmera
Hon. Secretary