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Mona Ajmera

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THANE
KALYAN-DOMBIVLI
MIRA VIRAR
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PALGHAR BOISAR
BHIWANDI
SHAHAPUR-MURBAD
URAN-DRONAGIRI
ALIBAG
KARIAT-KHALAPUR-KHOPOLI

To,
Shri Devendra Fadnavis
Hon'ble Deputy Chief Minister,
Hon'ble Finance Minister
Government of Maharashtra,
Mantralaya, Mumbai

M.R.
29.12.22
लिपिक
उपमुख्यमंत्री यांचे कार्यालय
महाराष्ट्र शासन
मंत्रालय, मुंबई ४०० ०३२

Sub: Request your kind attention towards the issues pertaining to Real Estate Sector due to certain provisions of GST on real estate industry.

Respected Sir,

We would like to highlight and bring to your notice, certain provisions of the Goods and Services Tax ('GST') applicable to the Real Estate Industry have drastically impacted the customer sentiment as well as the business viability. As a result, many real estate projects have become costly and unviable and the end customer, particularly the low and middle income groups are bearing the burnt of the same. Further, many real estate project have been stalled and there are no takers for new projects which is negatively impacting the GDP and the employment generation of State of Maharashtra.

With this background, we submit various issues at hand and the relief that is being sought, in a detailed manner. The details of issues and the relief sought along with the rationale for seeking the relief have been enclosed herewith as separate exhibits.

Your kind consideration and immediate action to our suggestions will be highly appreciated. If need be, we are ready to meet Hon'ble Dy. Chief Minister, to discuss this further.

Thanking you for your continuous support.

Yours faithfully,
For CREDAI-MCHI

Boman Irani
Boman Irani
President

D. R. Ajmera

Dhaval Ajmera
Hon. Secretary

Encl: As above

ISSUES TO BE ADDRESSED FOR REAL ESTATE SECTOR

I. NO GST ON THE UNITS HANDED OVER TO SOCIETY MEMBERS, SLUM DWELLERS, MHADA, AND LAND-OWNERS IN REDEVELOPMENT PROJECTS

- As a result of rapid urbanization, metropolitan cities, as well as Tier I/ Tier II cities, face a critical constraint of scarcity of land and resources. To address the said issue, redevelopment/joint development have become essential for urban areas.
- Under the redevelopment arrangement, the developers, at its own cost, undertake redevelopment of old and dilapidated buildings (or rehabilitation of slums). The Society Members, Slum Dwellers, MHADA or landowners, etc. (collectively herein after referred to as 'Owners') are allotted the apartments in the new building and the balance inventory is sold by the developer to the independent buyers. Developer's income is the amount of money received from independent buyers minus the total cost of development, which includes the value of units handed over to the Owners.
- Furthermore, it will be pertinent to note that the developer or real estate company follows sound business practices by factoring in the cost of building flats that are given to Owners while determining the price offered to independent buyers. GST on such a pricing charged to independent customers is discharged by the developer.
- Presently, in case of redevelopment projects, GST is being levied at the rate of 5%/1%, as the case may be on the apartments handed over to Owners. Further, the value of the developer's first sale agreement is being considered as the value of apartments handed over to the Owners, for the purpose of levy of GST. Without prejudice, the services rendered to the Owners is that of Works Contract Services whereas the services rendered to independent buyers is that of Construction Services and therefore, valuation methodology is irrational, and the prices are not comparable.
- **Relief Sought:** GST on the apartments handed over to the Owners should be waived off or alternatively, suitable clarification should be issued to the extent that GST can be charged at 18% on the works contract service (valued at construction cost only) along with proportionate input tax credit for the units which are provided to the Owners.

II. TRANSFER OF DEVELOPMENT RIGHTS ('DR') TO BE TREATED AKIN TO SALE OF LAND.

- To address the issue of land scarcity in metropolitan cities such as Mumbai and to avoid large sum getting blocked in the purchase of land, the developer undertakes joint development and redevelopment project, wherein the landowner or society transfers the land (via DR transfer) to the developer who uses its expertise in construction/development of a project, and accordingly, jointly, the landowner/Society and the developer, develop the project for the end customer.
- When the aforementioned transaction is closely examined, it becomes clear that, regardless of the nomenclature employed, the transfer of DR involves the transfer of land to the developer, who then sells the land to the end users who buy the apartments in the Project. In view of the above, the transfer of DR should be treated as akin to sale of land, and GST should not be exigible on the same.
- **Relief Sought:** The transfer of DR should be treated as akin to sale of land, and GST should not be exigible on the same or alternatively, an un-conditional exemption should be given to

all types of grant of DR, long term lease premium arrangements, transfer of DR by way of DRCs with retrospective effect

III. RECONSIDERATION OF THE DEFINITION OF 'AFFORDABLE HOUSING'

- At present, the residential apartment fulfilling the following criteria are classified as 'affordable apartments under GST:

Particulars	Conditions
Metropolitan Cities	Carpet area < 60 sq.m
	Gross amount < INR 45 lakhs
Non-metropolitan cities	Carpet area < 90 sq.m
	Gross amount < INR 45 lakhs

- The cost of constructing residential apartments includes various costs such as the cost of land, the cost of materials such as cement, sand, and so on, as well as the component of labour charges. The cost of land, as well as materials such as cement, sand, and bricks, has risen dramatically in recent years. Labor costs have also risen significantly. With no ITC available to the developer, the GST paid on the procurement of these goods and services adds to the developer's over-cost burden, resulting in an increase in the price of the apartment. As a result, while the majority of residential projects meet the criteria of constructing residential apartments within the prescribed carpet area, these projects fall outside the definition of affordable housing due to the gross value limit of INR 45 lakhs.
- It is also worth noting that the Government has introduced a number of schemes for affordable housing, most of which have only one requirement: the size of the floor. However, for GST, an additional condition of a monetary limit of INR 45 lakhs has been imposed, which eventually is not benefiting and thereby not able to achieve the real purpose of the introduction of the lower rate of tax.
- Therefore, while there is a restriction in terms of carpet area and rightly so, the monetary limit of INR 45 lakhs on the value of flats is not commensurate with the costs related to it in the present times and the same should either be abolished or enhanced, which in turn will help to bring more projects under its ambit and let a greater number of people avail the benefits offered.
- Relief Sought:** Definition of affordable apartment should be reconsidered in as much as the condition of limit of gross value should be removed. Alternatively, the limit of such gross value should either be enhanced for metropolitan cities or separate limit should be stipulated regionally

IV. OPTION TO CHOOSE BETWEEN SHCME of 12%GST (8% FOR AFFORDABLE HOUSING) WITH ITC AND COMPOSITION SCHEME OF 5% 5% (1% FOR AFFORDABLE HOUSING) WITHOUT ITC.

- The developer is not permitted to claim the credit for input tax paid during the process of acquiring goods and services under for Project starting 01.04.2019 onwards. The majority of Goods & Services purchases made in the Real Estate business is liable to 18% GST. Since no advantage from input credit is permitted now that the composition plan has been implemented, this has led to a corresponding increase in building costs. This is leading in the increase of cost which is being eventually passed on to the consumers. The fundamental goal of providing society with inexpensive and middle-class homes is thus defeated. This would also be against the spirit of the GST Act which provides for free flow of credit across the supply chain and leads to double taxation.
- **Relief Sought:** It is respectfully submitted that, regardless of whether the Project is residential or commercial, the developers should be given an option to choose between 12% GST rate with ITC (Assessment scheme) and 5% GST rate without ITC (Composition Scheme).

V. GRANT OF BENEFIT OF ITC IN CASE OF THE CONSTRUCTION OF COMMERCIAL PROPERTY MEANT FOR LEASE AND LICENSE:

- There are primarily two commercial real estate models: Lease Models and Sale Models (referred to collectively as "Models"). The transaction in both Models is similar in the sense that GST is levied on the output supply in both Models. When a commercial property is built with the intention of renting it out, the government receives a new stream of GST revenue from the rentals generated by the leasing of the commercial property, albeit over time. However, the authorities have treated both Models differently in terms of the availment of the ITC of the GST paid on the inputs and input services consumed in the construction of the property. Such disparity has a cascading effect on the construction costs incurred for commercial properties intended to be leased, rendering the Lease Model completely unviable for developers. Furthermore, the denial of ITC results in double taxation of the same transaction, i.e., GST is paid at 18% on the inputs consumed in the construction of the building, and GST is discharged at 18% on the rentals generated from the leasing of the apartments in the same building. Reference can also be made to the case of Safari Retreats Private Limited vs. Chief Commissioner of CGST [TS-350-HC-2019(ORI-NT)], wherein the Hon'ble Orissa High Court holds that the input tax credit for goods and services used in the construction of the mall cannot be denied under Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 ('CGST Act').
- Therefore, to ensure free flow of ITC, avoid double taxation, and aid commercial real estate developers in leasing business by bringing in parity, it is necessary to allow ITC in the case of commercial properties intended to be leased. This would also help India preserve its competitive edge over other nations where the cost of real estate is higher and thereby attracting industries, including startups and information technology. It would also strengthen the office market. This will provide India a competitive advantage.

VI. Relief Sought: A suitable clarification be issued allowing the commercial real estate developers to set off GST paid on goods and service used in construction of commercial property for leasing.

VII. ISSUANCE OF CLARIFICATION IN RELATION TO THE AVAILABILITY AND VALIDITY OF THE BENEFIT OF CONCESSIONAL RATE OF GST UNDER ENTRY 3(IE) OF THE RATE NOTIFICATION

- On the recommendation of the GST Council at its 47th meeting, CBIC has issued Notification No. 03/2022- Central Tax (Rate), dated 13.07.2022('Notification') thereby amending the Rate Notification. The Notification has inter alia omitted the Entry 3 (iv), (v), and (vi) (hereinafter collectively referred to as the 'Deleted Entries') of the Rate Notification, administering the

concessional rate of GST on the composite supply of works contract services provided with respect to specified projects inter alia undertaken under specific schemes, namely, Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana etc.

- It is pertinent to note that, Vide Notification no. 3/2019 – Central Tax Rate, dated 29.03.2019 ('Notification no. 3/2019'), the promoter was given benefit of concessional rate of GST inter alia under Entry 3(ie) of the Rate Notification, on the output supply of construction services provided qua any of the schemes specified in the Deleted Entries. With the amendment to the Rate Notification, the Deleted Entries specified in the Entry 3(ie) of the Rate Notification have been omitted. In consequence thereof, an ambiguity prevails as to the validity and availability of concessional rate of GST to the promoter providing construction services qua the schemes specified in the deleted Entries 3(iv), 3(v) and 3(vi).
- In this regard, the following factual position may assume importance
 - (a) Entry 3(ie) of the Rate Notification has not been omitted and hence it continues to remain available, subject to fulfilment of other conditions. Had the intention been to discontinue the benefit under the said Entry 3(ie), the same would have been explicitly provided.
 - (b) The schemes mentioned in the deleted Entries 3(iv), 3(v) and 3(vi), qua which the benefit is given in Entry 3(ie), are still valid and have not been discontinued.
 - (c) The benefit under Entry 3(ie) is not inter-connected to the Deleted Entries
- We would like to most humbly submit that housing has always been a top priority for the Government, and this is clear from the different programmes that it has come up with over the years. Under the "Pradhan Mantri Awaas Yojna," the government has made several plans, such as "In-situ slum re-development," "Credit-Linked Subsidy Scheme," and the "Maharashtra Housing Development Corporation," in order to reach its goal of "Housing for All" by 2022. Also, different tax breaks have been announced for affordable housing under the Income Tax Act. The goal of all of the above programs and benefits has always been to make housing affordable and easy for everyone in the country to get. However, the deletion of these entries under GST Law, combined with an increase in construction and land prices, and the fact that no credit is available to the developer, has resulted in one of the most significant impediments to the Government's goal of 'Housing for All'
- **Relief Sought:** It is humbly stated that the validity of the Entry 3(ie) of the Rate Notification can be certainly construed from the aforementioned factual position. However, in order to avoid interpretational differences and confusion, we humbly request that a suitable clarification be issued elucidating that the Entry 3(ie) of the Rate Notification is still valid and the benefit of concessional rate of GST provided therein is still available to the promoters