CREDAI-MCHI

Ref. No. MCHI/PRES/22-23/428
Date : 28/3/2023

To,
Shri Rajeev Kumar Mittal (I.A.S.)
Commissioner Sales Tax /GST
GST BHAVAN, 8th floor,
R.N. 829, E Wing,
Mazgoan - Mumbai-10

Sub: Minutes of the meeting dated 24.2.2023 with a delegation of our members and our proposed way forward in relation to various issues of GST affecting the Real Estate Sector in Mumbai MMR Region.

Respected Sir,

At the outset let us begin by thanking you profusely for giving our delegation an extremely patient hearing as we tried to appraise you of the various issues/challenges affecting our Industry in relation to GST. We were thoroughly impressed by your in-depth knowledge of the subject along with your willingness and look at the various issues from our perspective.

As per our discussions in the said meeting, please find attached herewith a brief summary of our discussions along with our request/recommendation for each issue for your consideration/feedback. Through this constant consultative process and with your active support and participation we wish to get these issues streamlined for the betterment of our Industry.

Sr. No	Discussions held in the meeting	Our Suggestions/Recommendations
1	**GST Charged on flats given free of cost to tenants/ slum dwellers/MHADA Occupants/ Existing flat owners:**	
	• Through various FAQs and demand received by some of the members for GST on Rehab Flats (Word "Rehab" is used for all flats which are given free of cost, be it to slum dwellers, existing occupants, society redevelopments, MHADA occupants, tenants etc.), the Department is seeking to treat provision of flats free of cost to existing occupants as a separate output service and charge GST thereupon by putting a notional value of consideration being a market value thereof. • This leads to double taxation as value of Rehab is already included in sale component which is offered for GST	• This issue is peculiar to Mumbai MMR region and it is the regulations prevalent in the city which mandates the construction of Rehab Houses. DCPR2034 being designated legislation have the power of statute and once the statute demands the functioning in a particular manner, GST cannot be charged on such actions governed by the regulations and imposed upon the developers. • The Developers are not in the business of constructing free houses. The imposition of construction of rehab house is effectively shifting the burden of redevelopment of the city from the public to the private domain.

- Vasantha Greens Judgement (service tax) has cleared laid down that any service for internal consumption (construction of rehab flats) shouldn't be taxed as long as the final product which in our case is the sale flat, is subject to tax (which it is).

- For Example
  - Plot of Land Area: 10,000 sq.mtrs.
  - Land Rate as per RR= Rs 100,000/ sq.mtrs.
  - Residential rate as per RR: 2,15,000/sq.mtrs.
  - Existing construction used by tenants: 10,000 sq.mtrs.
  - FSI available on redevelopment: 2 plus Fungible
  - Area to existing tenants: 13500 sq.mtrs.
  - Area for Sale: 13500 sq.mtrs.
  - Construction area: (13500 + 13500)*1.6 = 43200 sq.mtrs.
  - Cost of Construction: (43200* 10.764 * Rs 3000 psf) = 140 crores
  - GST on Input for both rehab and sale (average 18%) = 25 crores (NO ITC)
  - Premium FSI cost = (5000 sq.mtrs. * 100,000 * 60%) = 30
  - TDR Cost (5000 sq.mtrs. * 100,000 * 50%) = 25
  - Fungible cost (3500* 100,000 * 50%) = 17.5 crores
  - MCGM & other costs (assumed at Rs.500 psf): 25 crores
  - Total Cost= 262.5 crores
  - Sales : Rs 290 Crores
  - Profit before Tax: Rs 27.5 Crores
  - GST on Sale = 14.5 crores (paid by customers)
  - GST on Rehab (sought to be charged by Department) = 14.5 crores
  - Profit After GST burden on Developer = Rs 13 Crores
  - GST charged on GST on input: 1.25 crores

- We humbly request you consider the spirit of the entirety of the transaction and the fact that the construction of rehab houses is only a means to an end and not the end itself.

- Under the circumstances in order to boost the real estate development of the city and remove uncertainty we request you humbly consider our request to do away from seeking to charge GST on rehab flats given free of costs to existing occupants/ members/ tenants/ slum dwellers etc.

	• Therefore, it can be seen from the above example that the Developer is paying 10% GST on sale component (5% by customers and 5% to be borne by him) For example, there are 100 existing tenants: The GST for each of them would Rs 14.5 lacs for each flat received free of cost) • As can be seen from the above example, the GST sought to be charged on Rehab is making the project and development unviable. • Leading to Tax on Tax • Leading to Double Taxation as value of Rehab is already included in sale • Cascading effect of GST is nullified.	
2	**Reconsideration of definition of affordable housing:**	
	Affordable housing definition for new projects is controlled by a dual threshold limit in terms of area and value of the flats, the same being: **In metro cities** Carpet area <60 sq.mtrs Gross amount < 45 lacs **In non metro cities** Carpet area < 90 sq.mtrs Gross amount < 45 lacs • It has been our long standing demand to define affordable housing only on the basis of RERA carpet area. • Affordability is a relative concept and cannot be valued in absolute terms with one fits all value across the country	• It is our request that Mumbai MMR real estate is extremely different than the entire country. The Real estate prices of a London, or a New York or a Tokyo are not comparable to any other city in their respective country. Mumbai has a similar standing in India. Surrounded by water on all sides, land in Mumbai is a scarce resource. Add to that the airport within the city and there is an added limitation on vertical expansion. The fact that it's the financial capital of the country there is a rush to be a part of the Mumbai/MMR growth story. These factors ensure that prices in Mumbai are through the roof.

- It can be undeniable that a permanent alternate Accommodation given to a slum dweller is affordable housing. If that be the case then all such houses of 300 sq.ft. carpet given to slum dwellers should be affordable housing. As the rehab flats given to slum dwellers cannot be sold for 10 years they don't have any value as such and are valued under valuation rule 30 for sake of GST. However, in a hypothetical example let's assume that a slum dweller wants to sell the house after the cooling period of 10 years. Even after 10 years the nature of the house remains the same and it's still the most AFFORDABLE of structured housing that one can find in Mumbai. In most parts of the city this flat as per RR rates would be more than 45 lacs.

Example
Bandra (Zone 25/150)
(300*1.2/10.764*253880)= **84.92 Lacs**
Andheri (Zone 40/208)
(300*1.2/10.764*166100)= **55.56 lacs**
Dahisar (Zone 89/410)
(300*1.2/10.764*136100)= **45.52 lacs**
Worli (Zone 13/98A)
(300*1.2/10.764 *348400)= **1.16 crores**
Malad (Zone 61/290)
(300*1.2/10.764*147390)= **49.30 lacs**

This just shows the problem with the definition wherein it fails to cover even the most affordable form of housing in Mumbai.

- The fact remains that there are no open plots in mumbai and hence the sale price of 65 lacs per house of 60 sq.mtrs as calculated through an example, is not attainable even in far flung outposts of Mumbai like Dahisar etc.

- For Mumbai MMR there should be no threshold of value (45 lacs) and affordable housing should be defined as "HOUSES BELOW 60 sq.mtrs."

- Alternatively using the average cost of FSI of around 15,000 the affordable houses in Mumbai should be given a threshold limit of 1 crore. Further once the limit of 1 crore is set it should be increased on a yearly basis as per the cost of inflation index to keep it relevant year on year.

- The minimum size of flat which can be constructed in Mumbai as per DCPR 2034 is of 300 sq.ft. Therefore, in any redevelopment of societies, MHADA, tenancies etc the minimum area given to existing users is 300 sq.ft. Similar to calculations above even the minimum area which is considered the bare necessity for human inhabitation is falling outside the realm of affordable housing as per the definition provided in GST.

- The land costs, construction costs, cost of labour and materials is all extremely high in a city like mumbai vis a vis other parts of the country and even the cost of constructing a house under 60 sq.mtrs would be higher than 45 lacs.

- The average cost of FSI for development under any regulation is around 15,000 per sq. feet. This includes development under regulation 30A, 33(5), 33(10), 33(7), 33(9) or any other regulation of DCPR 2034. The cost includes the land cost, rehab cost, transit rent costs, cost of construction of sale, admin costs, premium costs, fungible costs, selling and marketing costs and interest costs. If we assume a flat of 60sq.mtrs i.e. 645 sq.ft. **the cost of construction of the same is around 96 lacs.**

- Let's assume someone had a open plot in Mumbai. The cost of even the cheapest land is around 50,000 sq.mtrs as per RR. If we consider 2 FSI, then cost for every sq.mtr constructed would be 25,000 per sq.mtr (50,000/2FSI)

	• Cost of construction as per RR is 30,250 per sq.mtr. However for constructing 60 sq.mtrs one would have to construct around 96 sq.mtrs. (60*1.6 Thumb rule of Carpet area is to construction area) to factor in the basements, parking, lift lobbies, staircases, passages, niches, elevational features etc.
	
	 • Therefore, costs of construction would be as follows
	   Land Rs. 25,000 per sq.mtrs. (to factor in 2 FSI the cost of land is divided by 2)
	   Construction (30250*1.6) = Rs. 48400 per sq. mtr.
	   Total basic cost excluding admin, interest, marketing cost (25,000 + 48400) = Rs 73400
	   Premium costs is (73400*0.30) = 22020 (As per thumb rule premiums are 30% of Project cost)
	   Cost for a 60 sq.mtrs. house is (95420*60) = Rs 57,25,200/-
	   Profit of 15%= 8,58,780
	 Minimum sale price of a 60 sq.mtrs home in Mumbai even if we do not consider admin costs, interest, GST cost etc. = Rs. 65lacs	

3	**Option to choose between scheme of 18% less land abatement of 6% ie. Effective rate of 12% or 8%(affordable housing) with ITC or composition scheme of 5% or 1% (affordable housing) without ITC:**	
	ITC is the fundamental pillar of GST to ensure that there is a cascading effect of tax and that there is taxation only on the value addition at every stage of progression. • ITC was removed for the fear that some developers were not passing on the benefit of ITC to the customer and were alleged to be profiteering. • With a view to stop a few rotten apples who were more of an anomaly rather than a norm, the regime was sought to be oversimplified to have a one fit all scheme for ever developer i.e. composition scheme of 5% or 1%.	• Request is to provide 1 time option to developer to choose between 18% (12% for affordable) GST with ITC or 5%(1%) ITC without ITC. • Provision of option should be project wise • This would put to rest all the litigation pursued by various developers and trade associations against the removal of ITC as being ultra vires the act. Reduction of litigation would provide clarity to the industry which would spur on development • No loss to the exchequer in either case

	• Commercial development still provides a framework of ITC so why the disparity between the 2 different types of development. • Every development have different ingredients like some have high land cost percentage to total cost, some have high rehab cost to total cost and some have high construction cost to total cost etc and a one fits all framework is not conducive to development. • non provision of ITC is increasing cost of goods sold by 18% (approx.) which is a huge increase to digest for developers who are already working on extremely slim margins making the projects unviable. • Affordable housing schemes under PMAY generally work on the volume model and low margins and an 18% increase in cost has resulted in all these projects becoming unviable.	
4	**GST on Commercial Leasing:**	
	• The Department is seeking to invoke 17(5) of CGST Act to deny input tax credits for good and services used in construction of a building which is completely leased/rented out on its completion. • In WP 2043 of 2018, the Honourable Orissa High Court in Safari Retreats Matter has held *"In that view of the matter, in our considered opinion the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, in as much as keeping in mind the language used in (1999) 2'SCC'361(supra), the very purpose of the credit is to give benefit to the assessee. In that view of the matter, if the assessee is required to pay GST on rental income arising out of the investment on which he has paid GST, it is required to have input credit on the GST which is required to pay under section 17(5)(d) of the CGST Act.*	• CREDAI-MCHI urges to look at this issue in terms of the larger growth story of India wherein more and more warehousing /data centers/ knowledge parks have the potential to be set up in India but the developers are currently turned off by the lack of ITC on input goods and services used for construction of such centers which have the effect of making the project more expensive by 18%. Such increase in costs have a huge bearing on the strategic decision of the Developer whether to set up a building for leasing or putting it to alternate use as all options would be evaluated on the anvil of IRR to the company. Due to increase in cost by 18% due to non-availability of ITC, leasing options will never stand a chance against the opportunity cost of the Developer with other options. • **We humbly submit that the challenge in supreme court made by the Department should be withdrawn in the interest of larger growth potential of the country which is hampered currently due to the interpretation of 17(5) of CGST taken by the Department.**

5.	Transfer of Development rights to be treated akin to sale of land:	
	• In Mumbai, every 20 years the MCGM comes up with a DP plan for the city which designates various reservations for the city. The corporation doesn't have the money to purchase the land under the reservations from the land owner to develop it for the intended purpose. Thus started the concept of TDR. Instead of giving money to the land owner in lieu of land/reservation being handed over to the MCGM, the MCGM provided money's worth in terms of Transferrable Development rights certificate known as TDR/DRC which entitled the land owner to transfer equivalent "land rights" in terms of FSI on some other plot. Thus the land owner receives the money for the land transferred to MCGM from a private developer to whom the land owner transfers the land FSI of the TDR/certificate instead of receiving the same money directly from the MCGM. • It's the same as a person depositing money into a bank account and the bank issuing a debit card for the same. When the persons spend the money from the debit card, the same money is being spent through a different medium. Similarly, in this case the money received from sale of TDR is the same as money received from sale of land to MCGM as TDR is nothing but a substitute to such sale of land wherein due to the government's inability to pay money directly, it transfers the burden again from the public domain to the private domain through issuance of DRC certificate.	Sale of TDR should be removed from the ambit of GST as its akin to sale of land or interest in land.

	• For example a land owner has a plot of land admeasuring 10,000 sq.mtrs. on which as per DP plan 1000 sq.mtrs. is shown as DP road. The MCGM needs this plot of 1000sq.mtrs from the land owner to construct a road but doesn't have the money to purchase the 1000sq.mtrs land outright from the land owner. Hence MCGM provides a DRC certificate to the land owner worth 1000sq.mtrs. Now the land owner say sells 500sq.mtr each TDR from the DRC certificate to developer A and B respectively who will use the land rights so transferred to construct additional area on their plot as per regulations provided in DCPR 2034 which itself is a designated legislation. The money which it receives from A&B is nothing but money land owner should have received from MCGM for sale of 1000 sq.mtrs. land to MCGM. Due to its inability to expend the money directly, it transfers the burden unto private developers and hence TDR is nothing but a transaction in land and shouldn't be brought under the ambit of GST.	

After our marathon meeting we are convinced that you have grasped and appreciated the issues in relation to GST which are bogging down the Real Estate Industry of Mumbai MMR and seem keen on bringing about radical change in the interest of Fairness and Growth. Since some of the issues above are peculiar to Mumbai Real Estate, we would require all our support and assistance in putting the same across to the National Committee with representatives from all states wherein the hardships faced by Mumbai MMR would need to be impressed upon the members for a logical decision in that regards.

Looking forward to your continued support for the same.

Thanking you,
Yours faithfully,
For CREDAI-MCHI

Boman Irani   **Dhaval Ajmera**
President   Hon. Secretary