

# Subodh Vora & Co.

## Chartered Accountants



# GST Issues- Real Estate

May 2022



# Real Estate- GST Rates

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**Chartered Accountants**

## New Scheme

- **Residential Real Estate Projects ('RREP')**

Carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;

Affordable residential apartment	1% w/o ITC
Non Affordable residential apartment	5% w/o ITC
Commercial apartments	5% w/o ITC

- **Real Estate Projects**

Same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016)

Affordable residential apartment	1% w/o ITC
Non Affordable residential apartment	5% w/o ITC
Commercial apartments	12% with ITC

## Old Scheme

- **For 01.07.2017 to 31.03.2019 &**

- **Ongoing project as on 31<sup>st</sup> March 2019 wherein Annexure A was filed**

Affordable residential apartment (upto 24.01.2018)	12% with ITC
Affordable residential apartment (wef 25.01.2018)	8% with ITC
Non Affordable residential apartment	12% with ITC
Commercial apartments	12% with ITC

**Burning Issues  
in Real Estate**

**1**

**Development Rights/ TDR/ FSI**

**2**

**Society Redevelopment**

**3**

**GST on Other Charges**

**4**

**New Scheme- 80% Registered Purchases**

**5**

**Old Scheme- GST ITC Reversal**



# DEVELOPMENT RIGHTS/ TDR/ FSI

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## Purchase of Dev Rights from Society/ Land owner (Residential)

Date of Transfer	Tax Implication	Forward charge/ RCM	Payment of Liability	Valuation	Exemption
Transferred before 01.07.2017	Service Tax not applicable	N.A.	N.A.	N.A.	N.A.
Transferred between 01.07.2017 upto 31.03.2019	18%	Forward Charge	At the time of possession	Market Value of Agreement	NIL
Transferred after 01.04.2019	18%	Reverse Charge	At the time of possession	Value of similar flats from independent buyer	To the extent of flats sold before OC

*\* Brihnmumbai Developer Association- Bom High Court*

## Purchase of Dev Rights from Society/ Land Owner (Commercial)

Date of Transfer	Tax Implication	Forward charge/ RCM	Payment of Liability	Valuation	Exemption
Transferred before 01.07.2017	Service Tax not applicable	N.A.	N.A.	N.A.	N.A.
Transferred between 01.07.2017 upto 31.03.2019	18%	Forward Charge	At the time of possession	Market Value of Agreement	NIL
Transferred after 01.04.2019	18%	Reverse Charge	At the time of possession	<b>Value of similar shops from independent buyer</b>	<b><u>NIL</u></b>

*\* Brihnmumbai Developer Association- Bom High Court*

## Purchase of TDR from Open Market (Residential + Commercial)

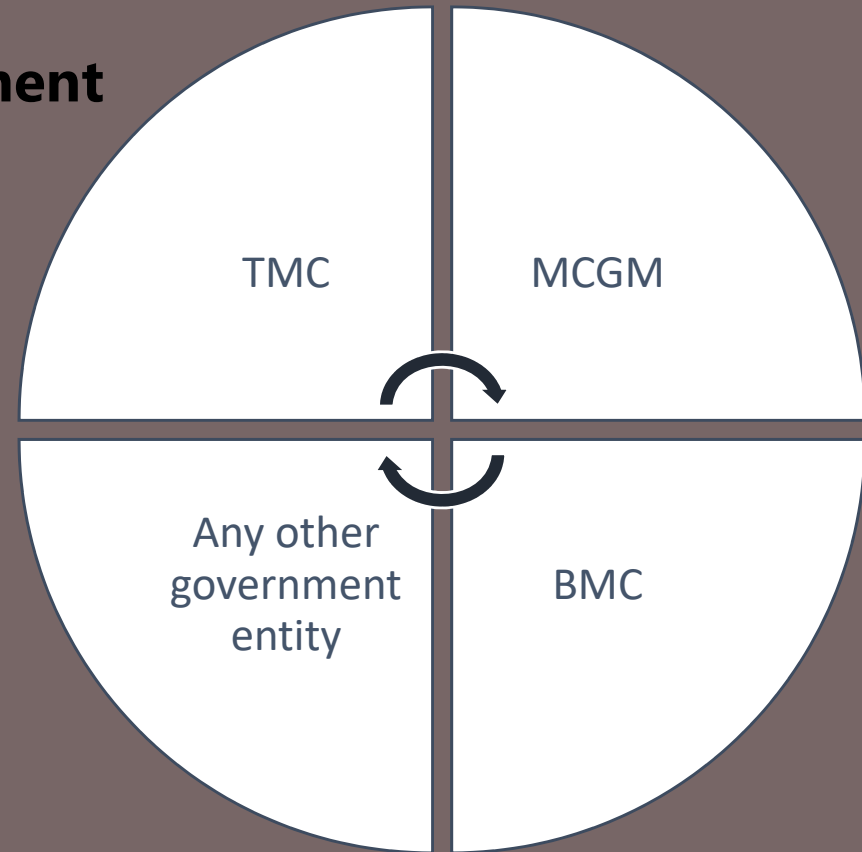
Date of Transfer	Tax Implication	Forward charge/ RCM	Payment of Liability	Valuation	Exemption
Transferred before 01.07.2017	Service Tax not applicable	N.A.	N.A.	N.A.	N.A.
Transferred between 01.07.2017 upto 31.03.2019	18%	Forward Charge	At the time of agreement	Transaction Value	NIL
Transferred after 01.04.2019	18%	Reverse Charge	Residential- At the time of possession  <u>Commercial- At the time of agreement</u>	Transaction Value	Residential- To the extent of flats sold before OC  <u>Commercial- No Exemption</u>



## Purchase of TDR/ FSI from government

### Notification No 14/2018 dt 26.07.2018:

- Neither a supply of goods nor services goods nor services.
- No GST implications





# RE-DEVELOPMENT

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# Construction of Rehab Flats for Society/ Land Owner/ tenants

Date of agreement	Tax Implication	Payment of Liability	Valuation
Before 01.07.2017	Service Tax @4.5%	Milestone basis	110% of Const of Construction
Between 01.07.2017 upto 31.03.2019	<ul style="list-style-type: none"> <li>Affordable residential- 8% with ITC</li> <li>Non Affordable Residential- 12% with ITC</li> <li>Commercial- 12% with ITC</li> </ul>	At the time of possession	110% of Cost of provision of Service
After 01.04.2019	<p>RREP:</p> <ul style="list-style-type: none"> <li>Affordable residential- 1% w/o ITC</li> <li>Non Affordable Residential- 5% w/o ITC</li> <li>Commercial- 5% w/o ITC</li> </ul> <p>REP:</p> <ul style="list-style-type: none"> <li>Affordable residential- 1% w/o ITC</li> <li>Non Affordable Residential- 5% w/o ITC</li> <li>Commercial- 12% with ITC</li> </ul>	At the time of possession	Value of similar flats from independent buyer

\* Brihnmumbai Developer Association- Bom High Court

\* Vasantha Greens (Service tax)- Supreme Court

- ❑ Society undertakes construction by appointing works contractor
- ❑ Works Contractor to levy GST @ 18% on services provided by him to the society
- ❑ No GST on development of the buildings since the entire construction is done by the works contractor
- ❑ GST @ 5%/1% applicable on flats sold to outsiders by the society
- ❑ Whether GST applicable on flats constructed and transferred by society to own members?

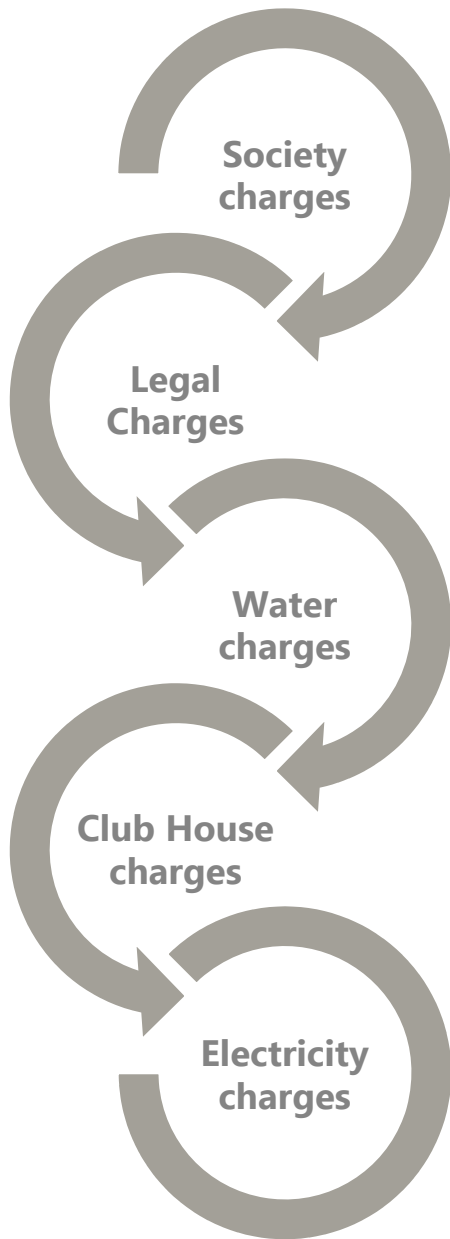
## **SELF REDEVELOPMENT MODEL**

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# OTHER CHARGES

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## **GST ON OTHER CHARGES...**

### **Composite Supply**

- S. 2(30) composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;
- S. 8. Tax liability on composite and mixed supplies.— The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—
  - (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and



# BUILDER NEW SCHEME 80:20 RESTRICTION

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•The promoter has to maintain project wise account of inward supplies from registered and unregistered supplier.

80% of the value of input and input services should be from GST registered suppliers.

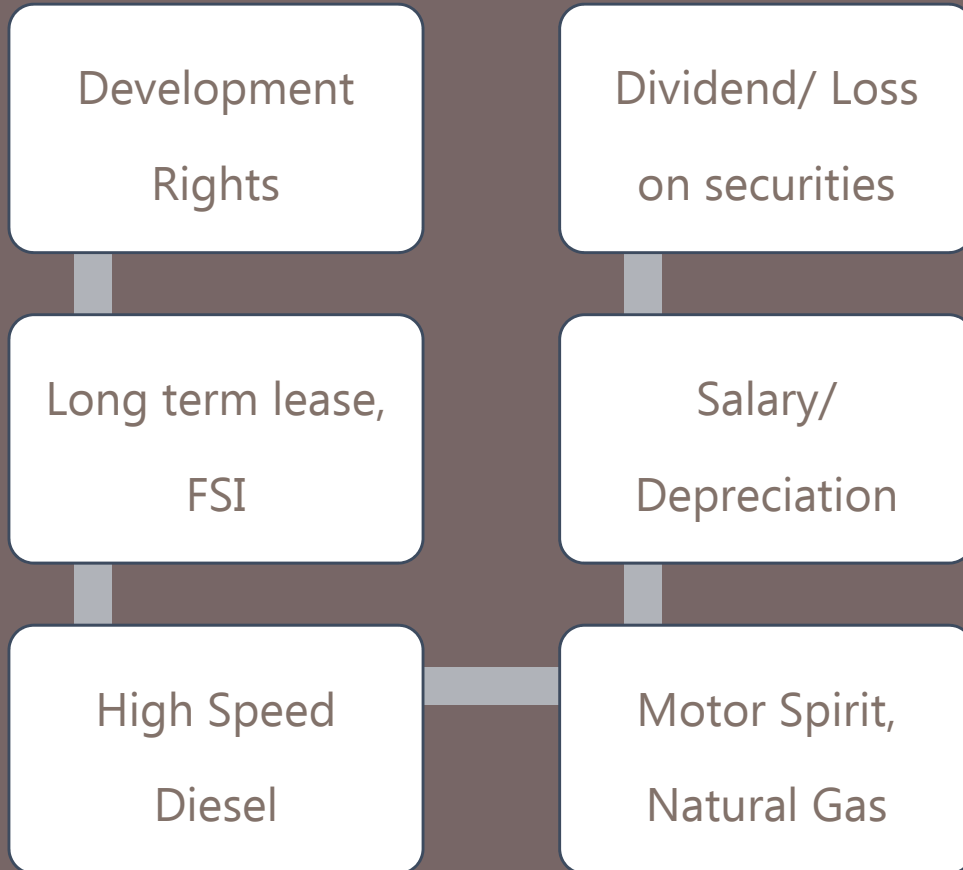
Any shortfall of registered purchases below 80%, GST under RCM @ 18% has to be paid in GSTR 3B of June month following the end of financial year.

•Purchase of cement from unregistered person is not to be counted in 80% and is compulsorily subjected to 28% GST under RCM and on a monthly basis

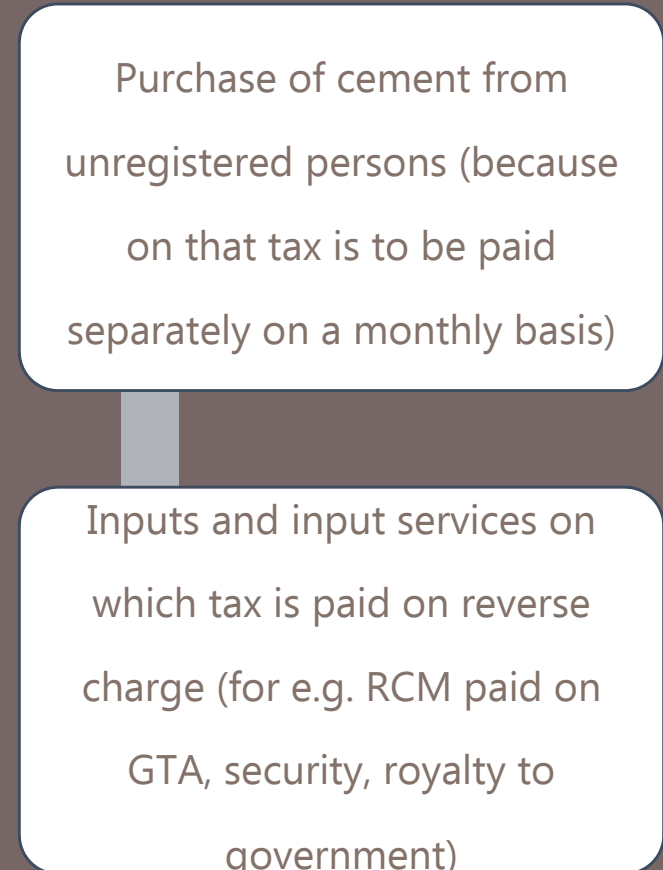
## 80/20 Restriction



## To be excluded from calculation



## To be counted in 80%



**What is to be counted and what is not to be counted?....**

## CONTENTIOUS ISSUE

- Whether to consider 'exempted good/ services in the 80/20 calculation?
  - Interest on Loans
  - Water Charges
  - Residential Rent payments
  - Alternate accommodation charges
- **FAQ No. 18 dated 14.05.2019**

18	<i>Whether the inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold?</i>	<i>Yes. Inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold.</i>
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# BUILDER OLD SCHEME POST OC

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## Rule 42 of CGST Rules

- ***Which all ITC to be considered for reversal?***  
*ITC availed from 01.07.2017 upto date of completion of project*
- ***How the reversal amount is to be calculated?***  
*ITC reversal in proportion of carpet area sold before OC and carpet area sold post OC*
- ***When is the ITC liable to be reversed?***  
*In September month GSTR 3B following the end of financial year in which OC is received*
- ***Is interest payable on such reversal?***  
*Yes, interest is payable from the first day of April of succeeding year in which OC is received till date of reversal*

# THANK YOU

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