




ERNAKULAM BRANCH OF SIRC OF ICAI

invites you to a

Virtual CPE Seminar on **Impact of RERA** on Accounts, Taxation & Audit

22 SATURDAY
MAY 2021

 11 am - 1 pm
by **Webex**

2 CPE
Credit
Hours

Speaker:

CA. Ramesh Prabhu

Mumbai

Register in advance*

Online Registration will close at
12 midnight on 21st May 2021

Delegate Fees:
EKM ARS Members- Nil,
Other CA's- Rs.236/- incl.GST

* CPE Meeting Link will be enabled in your
www.kochiicai.org login dashboard

IMPACT OF RERA

Accounting

- **RERA A/c**
- **As per iGAAP Percentage Completion Method**
- **Difference between iGAAP and IND AS**

Income Tax Implications

- **Capital Gain u/s 50C**
- **Business Income u/s 43CA**
- **Other Income u/s 56(2)(x)**

GST Implications

- **Schedule – III – GST exempt**
- **Input Tax Credit on Immovable property**
- **GST during Development of Real Estate Projects**

Audit Implications

Company Audit

Income Tax Audit

RERA Audit

DISTINCT AND UNIQUE FEATURES OF REAL ESTATE

✓ Durability

Real estate investments can be extremely durable and build multi-generational wealth

✓ High Risk Area

Large Number of frauds being Highlighted on Periodic Basis

✓ High Start - Up Cost

✓ Diversion of Funds

✓ illiquid nature industry
Real estate is considered illiquid because it can't be easily sold

✓ Delay in Delivery
Of Projects

✓ Lack of Transparency
Real estate works very differently, when an investor buys a property, there is a risk that the seller is hiding information.

✓ High level of uncertainties
in Management Estimates

Section - 1

RERA: Key Impact Areas and Imperatives for Successful Transition

Key Impact Areas: Business Practices

Registration of Project:

Registration of all new and ongoing projects and prohibition on marketing and selling before registering the project.

Disclosure of Project

Status: Project details to be updated on website of Authority: apartments booked, approvals obtained, Construction progress etc.

Utilization of Funds:

70% of receipts to be used for construction and land cost only and to be deposited in separate bank account.

Promoters' Responsibilities:

Responsibilities towards obtaining completion certificate, maintenance, formation of society, conveyance deed etc.

Registered Agreement

for Sale: Mandatory for accepting sum more than 10% of cost of apartment, plot or building as an advance payment or application fee.

Rights and Duties of

Allottees: Refund along with interest in case of delay, non-completion of project or non adherence with the terms and conditions.

Consent of buyer for modifications: Specific consent of buyer and written consent of two-thirds of allottees for any changes other than minor additions or alterations.

Defect Liability Period:

Rectification of defects or fulfilment of obligation if brought to notice within 5 years from date of possession.

Real Estate Agents:

Requirement of registration of RE agents with RERA authority. Registration number to be quoted in every sale facilitated.

Key Impact Areas: Business Processes

Legal and Regulatory Compliance

- Project approvals
- Allotment letter, Agreement for sale, conveyance deed
- Quarterly project updates

Planning and Designing

- Project layout and plan
- Project specifications
- Development works

Sales and Marketing

- Soft sales / Pre-Sales
- Marketing of project
- Advertisement and Collaterals
- Project Web site
- Real estate agents

Finance and Accounts

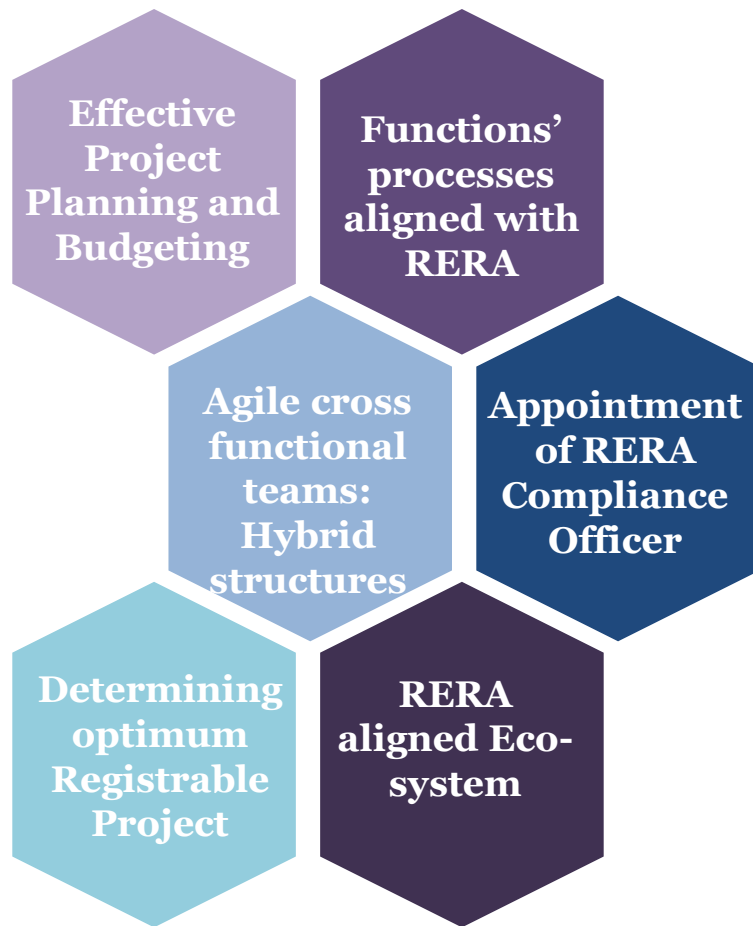
- Cash flow planning and fund utilization
- Revenue recognition
- Chartered Accountant's verification of fund utilization

Construction and Quality

- Timely project execution
- Adherence with quality standards
- Adherence with project and amenities specifications
- Defect liability period

Adequate co-ordination and deliberations amongst these functions at the planning stage are critical for project execution in line with the Provisions of the Act

Imperatives for successful transition from non-regulated to regulated sector:



Developers need to revisit their business practices and operating models to transition and navigate smoothly in regulated environment.

With increasing focus on governance, transparency and customer empowerment, inconsistent approach and arbitrary decisions are

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Audit Implications

- Company Audit
- Income Tax Audit
- RERA Audit

Section - 2

Bone of Contention: Application of 70:30 Provision

Overview of regulatory provisions: 70:30 requirement

Registration of Project

Declaration and Affidavit u/s 4(2)(1)(D)

Disclosure of:
1. Land cost
2. Construction cost
3. Estimated cost of RE project

Enabling Rules

Withdrawal of amounts for new projects

Withdrawal of amounts for ongoing projects

Relevant Definitions and Guidance

Guidance for determining land cost

Guidance for determining cost of construction

Estimate cost of RE project Section 2(v)

What constitutes land cost...

Land Cost

- The costs incurred by the Promoter for acquisition of ownership and title of the land parcels proposed for the real estate project, including its lease charges, which shall also include overhead cost, marketing cost, legal cost and supervision cost;
- Premium payable to obtain development or redevelopment rights;
- Amount paid for acquisition of TDR;
- Premium for grant of FSI, including additional FSI (if any), fungible FSI; and any other instruments permissible under the Development Control Regulations;
- Consideration payable to the outgoing developer to relinquish the ownership and title rights over such land parcels;
- Amounts payable to State Government or Competent Authority or any other Statutory Authority of the State or Central Government, towards Stamp Duty, transfer charges, registration fees etc.; and
- ASR linked premiums payable by any Promoter as per requirement of any Law, rules or regulations for obtaining right for redevelopment of lands owned by Public Authorities;
- In case of inheritance or gift: the cost of land shall be reckoned on basis of the value of the land as ascertained from the ASR prepared under the provisions of the Maharashtra Stamp Act, relevant on the date of registration of the real estate project
- In case of rehabilitation scheme: On site expenditures such as clearance of land of encumbrances for temporary transit accommodation, construction of rehabilitation buildings and any other overhead costs

What constitutes cost of construction...

Cost of Construction

All such costs, incurred by the Promoter, towards the on-site and off-site expenditure for the development of the Real Estate project including:

- Payment of Taxes, Fees, Charges, Premiums, Interest etc. to any Competent Authority or Statutory Authority of the Central or State Government under any laws or rules or regulations of the time being in force
- Principal sum and interest, paid or payable to any financial institutions including scheduled banks or non-banking financial companies etc. or money-lenders (under the Maharashtra Money-Lending Regulation Act, 2014) for the Real Estate Project,
- Excludes loan obtained from banks, non-banking finance companies or money-lenders, for the purpose of purchase of land for the project or for obtaining the development rights over such land.

Application of 70:30 provision for ongoing projects

1	Prospective Application	70% of the amount to be realized from the allottees shall be deposited in such separate account
2	Deposit of 100% of amount realized in separate bank account in certain case	In the event where the estimated receivables of the ongoing project is less than the estimated cost of completion of the project , then 100% of the amount to be realized from the allottees shall be deposited in the said separate account
3	Certification by Project Architect, Engineer, and practising Chartered Accountant	<p>Certificate from Project Architect: certifying the percentage of completion of construction work of each of the building / wing of the project</p> <p>Certificate from Engineer: for the actual cost incurred on the construction work of each of the building / wing of the project</p> <p>Certificate from practising CA: for the cost incurred on construction cost and the land cost and proportion of the cost incurred on construction and land cost to the total estimated cost of the project</p>
4	Determining maximum amount that can be withdrawn from separate account	(Cost incurred on construction + land cost incurred) certified by Chartered Accountant determine maximum amount that can be withdrawn by promoter from the separate account

Application of 70:30 provision for ongoing projects

Illustrative example:

Particulars	Estimated Amount	Amount Incurred Scenario 1	Amount Incurred Scenario 2
Land cost	200	200	100
Cost of construction	75	20	30
Other costs	25	5	10
Total Project Cost /Incurred	300	225	140
Amount in separate bank account		10	150
Maximum amount that can be withdrawn from separate account:		220	130
Percentage of completion of the project Formula		$220/300*100$	$130/300*100$
Percentage of completion of the project		73.33%	43.33%
Under RE Guidance Note			
Percentage of project completed	Construction cost incurred/ Const Estimate	$20/75*100=$ 26.67%	$30/75*100=$ 40%

ACCOUNTING ISSUES IN REAL ESTATE ENTITIES

ACCOUNTING

PERCENTAGE OF COMPLETION METHOD

GUDANCE NOTE(2012) UNDER iGAAP

(Indian Generally Accepted
Accounting Principles
(standards))

IND AS115 replacing IND AS 11/18/

**Guidance Note(
withdrawn)**

BASIC DEFINITION IN REAL ESTATE BUSINESS

Real Estate refers to	<u>Land as well as Building and rights in relation thereto.</u>
Entities who undertake such activity are generally referred to by different terms such as	<u>'real estate developers',</u> <u>'builder's or</u> <u>'property developers'</u>
'Project' Means	Project is the <u>smallest group of units/plots/saleable spaces</u> Which are <u>linked with a common set of amenities</u> which is essential for their intended effective use

ACCOUNTING FRAMEWORK FOR REAL ESTATE



AS 7- Construction Contract - Economic Substance of Construction



AS 9- Revenue Recognition- Any Transaction of Real Estate which are in substance of goods



Guidance Note on Accounting for Real Estate issued b ICAI- Percentage Completion Method



Real Estate (Regulation and Development) Act, 2016- For Increasing the reliance of customers by qualitative and timely delivery of real estate properties.

ACCOUNTING APPROACH FOR DIFFERENT REAL ESTATE TRANSACTION

S.NO	REAL ESTATE TRANSACTION	ACCOUNTING APPROACH
1	Sale of plots of <u>land without any development</u>	AS-9 Revenue recognition
2	Sale of plots of <u>land with development</u> in the form of common facilities like laying of roads	Percentage completion method based on As 7 Construction contracts
3	<u>Development and sale of residential and commercial unit</u> , row houses, independent houses, with or without an undivided share in land.	Percentage completion method based on As 7 Construction Contracts

ACCOUNTING APPROACH FOR DIFFERENT REAL ESTATE TRANSACTION

S.NO	REAL ESTATE TRANSACTION	ACCOUNTING APPROACH
4	Acquisition, utilisation and transfer of development rights.	Based upon AS 9 Revenue recognition. Conditions to be fulfilled : a) Title to the development rights is transferred to the buyer, and b) It is not unreasonable to expect ultimate realisation of revenue .
5	<u>Redevelopment of existing buildings</u> and structures.	Percentage completion method based on AS 7 Construction Contract

ACCOUNTING APPROACH FOR DIFFERENT REAL ESTATE TRANSACTION

S.NO	REAL ESTATE TRANSACTION	ACCOUNTING APPROACH
6	<u>Joint development agreements</u> for any of the above activities.	Percentage completion method based on AS 7 Construction Contracts
7	<u>Construction/ development of land</u> on contract	Percentage completion method based on AS 7 Construction Contracts

AS-9 –REVENUE RECOGNITION

(Completed Service Method)

Following Conditions to be Satisfied-

Risk and Rewards have been transferred



Seller does not retain effective control over goods



No. significant uncertainty exist regarding collection



AS -7- CONSTRUCTION CONTRACTS (Percentage Completion)

The percentage completion method should be applied in the accounting of all real estate transactions/ activities where

- **THE ECONOMIC SUBSTANCE IS SIMILAR TO
CONSTRUCTION CONTRACTS**

Some further indicators of such transactions / activities are:

✓ **Duration- 12**

Months & the Project commencement date and project completion date fall into different accounting periods.

Some further indicators of such transactions / activities are:

- ✓ Common Features of construction contracts- land development , structural engineering, architectural design, construction**
- ✓ Interdependence or interrelation- Between completion of a number of common activities and /or provision of common amenities.**
- ✓ The construction or development activities form a significant proportion of the project activity.**

FIXED PRICE CONTRACT AND COST PLUS CONTRAC

Revenue Recognition

Fixed price Contract

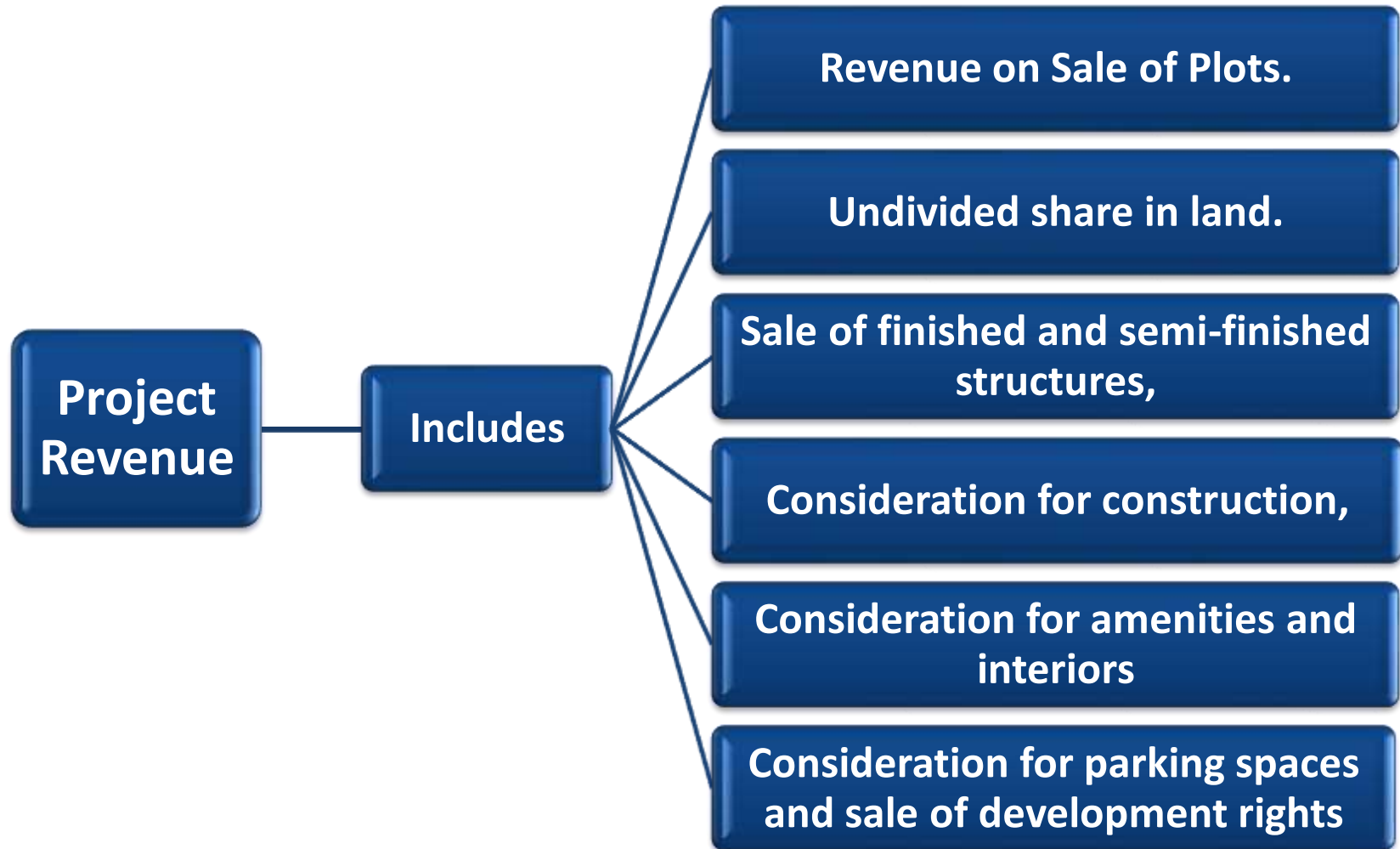
Percentage Completion Method(PCM)

Cost Plus Contract

Percentage Completion Method (PCM)

**KEY DEFINITIONS FOR
UNDERSTANDING ACCOUNTING OF
PERCENTAGE COMPLETION METHOD**

KEY DEFINITIONS- PROJECT REVENUE



KEY DEFINITIONS- PROJECT COST (Inclusions)

❖ Project Cost

1. Cost of land and cost of development rights

- ✓ Cost related to acquisition of land
- ✓ Development rights in the land or property
- ✓ Registration charges
- ✓ Stamp Duty
- ✓ Brokerage costs

KEY DEFINITIONS- PROJECT COST (Inclusions)

❖ Project Cost

2. Cost that is attributable to project activity in general and cannot be allocated to specific projects

- ✓ Insurance
- ✓ Cost of design and technical assistance that is not directly related to specific project
- ✓ Construction or developments overheads

KEY DEFINITIONS- PROJECT COST (Inclusions)

❖ Project Cost

3. Construction and development costs

- ✓ Site labor cost
- ✓ Depreciation for Plant and equipment used for project
- ✓ Cost of hiring plant and equipment
- ✓ Cost of moving plant, equipment from project site etc.
- ✓ Warranty cost.

KEY DEFINITIONS- PROJECT COST (Exclusion)

General administration costs

Selling costs

Research and development costs

Depreciation of idle plant and equipment

Cost of unconsumed or uninstalled material delivered at site and

payments made to sub- contractors in advance of work performed

PRE-CONDITIONS FOR APPLYING PCM

<p><u>Total PROJECT REVENUES</u> can be estimated reliably</p>	<p>It is probable that the <u>ECOMOMIC BENEFITS</u> associated with the project will flow to the enterprise</p>
<p>The <u>PROJECT COSTS</u> to complete the project and the <u>STAGE OF PROJECT COMPLETION</u> at the reporting date can be measured reliably</p>	<p>The <u>PROJECT COSTS</u> attributable to the projects can be clearly identified and measured reliably so that actual project costs incurred can be compared with prior estimates</p>

CONDITIONS FOR REVENUE RECOGNITION BY

(1) All **critical & necessary approval** for commencement of project have been obtained

This includes, where applicable

- Environmental and other clearances
- Approval of Plan, designs
- Title t land or other rights to development / construction
- Charge in land use

(2) **Expenditure** incurred on construction and development costs **is more than 25 % of the total construction and development costs**

Construction and development cost excludes the cost of land

CONDITIONS FOR REVENUE RECOGNITION BY

(3) At least **25% of the saleable project area is secured by contracts or agreements with buyers-** Eligibility condition only

(4) At least **10% of the total revenue as per the agreements of sale or any other legally enforceable documents are realized** at the reporting date in respects of each of the contracts- Eligibility Condition only.

This Limit of 10% is to looked on individually in respect of each agreement.

COST AND REVENUE RECOGNITION FORMULA

Cost To Be Recognised= Cost incurred Till date *(Area Sold/ Total Saleable Area)	Revenue To Be Recognised = Consideration Agreed for Area Sold * Sage of Completion
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Note: Revenue is recognized only in respect of those agreements where 10% criteria of realization is met.

COMPUTATION OF STAGE OF COMPLETION

❖ Stage of Completion For Computation of Revenue

Project Cost Method

✓ Stage of Completion=
Cost incurred till Date/
Total Estimated Cost

Other Methods

✓ Surveys of work
done
✓ Technical Estimation

Note:

1. In other methods, revenue recognized cannot exceed revenue as per project cost method
2. For computation of Stage of completion for calculation of revenue by project cost method, cost of land is to be considered.

Example on Percentage Completion Method

TOTAL SALEABLE AREA	40,000 sq.ft.
Estimated Project Costs (This Comprises land cost of Rs. 600 crores and construction of 600 crores)	Rs. 1200 crores
Cost incurred till end of reporting period (This includes land cost of Rs. 600 crores and construction cost of Rs. 120 crores)	Rs. 720 crores (Construction cost 120 crores which is less than 150 crores i.e 25% of 600 crores)
Total Area Sold till the date of reporting period	10,000 Sq. ft.
Total Sale Consideration as per Agreements of Sale executed	Rs. 400 crores

Example on Percentage Completion Method

TOTAL SALEABLE AREA	40,000 sq.ft.
Amount realized till the end of the reporting period	Rs. 100 crores (Exceeding 10% of 400 crores)
Percentage of completion of work	60% of total project cost including land cost
	Or
	20% of total consideration cost

Conclusion:

At the end of the reporting period the enterprise will not be able to recognize any revenue as reasonable level of construction, which is 25% of the total construction cost, has not been achieved, although 10% of the agreement amount has been realized.

Example on Percentage Completion Method

- Continuing the above example

<p>If the work completed till end of reporting period is (This includes land cost of Rs. 600 crores and construction cost of Rs, 180 croes</p>	<p>Rs. 780 crores</p>
<p>Percentage of completion of work would be</p>	<p>65% of total project cost including land cost or 30% of construction cost</p>

Example on Percentage Completion Method

- **CONCLUSION**

The enterprise would be able to recognize revenues at the end of the accounting period. The revenue recognition and profits would be as under:

Revenue recognized (65% of Rs.400 crores as per Agreement of sale)	Rs. 260 crores
Proportionate cost (10,000 sq.ft / 40,000 sq.ft) X 780 crores	Rs. 195 crores
Income from the project	Rs. 65 crores
Work in progress to be carried forward Rs.780-195=	Rs. 585 crores

KEY ISSUES IN ACCOUNTING BY PERCENTAGE COMPLETION METHOD

ISSUE -1 ONEROUS CONTRAC

CONTRACT COST EXCEEDING CONTRACT R BOOK LOSS IMMEDIATELY

The amount of such a loss is determined irrespective of:

- ✓ Commencement of project work; or
- ✓ The stage of completion of project activity

Contract Price	8 Crore
Cost incurred till date	4 Crore
Estimated further cost	6 Crore
Estimated Total cost	10 Crore
Loss to be recognized immediately	2 Crore

ISSUE -2 SINGLE CONTRACT Vis-avis SEPARATE CONTRACT

SEPARATE CONTRACTS

Where a contract covers a number of assets, the construction of each asset should be treated as a separate construction contract when:

- Separate Proposal submitted for each asset**
- Each asset is subject to separate negotiation**
- Cost and revenue of each asset can be identified**

ISSUE -2 SINGLE CONTRACT Vis-avis SEPARATE CONTRACT

SINGLE CONTRACT

Group of contracts, with single or several customers treated as a single contract when:

- Negotiated as a single package**
- Closely interrelated part of a single project with overall profit margin**
- Performed concurrently or in a continuous sequence.**

ISSUES- 3 Changes are treated as changes in accounting

The Percentage Completion Method is applied on a cumulative basis in each reporting period

Contract Price	500 Crores
POC 2018-2019	0.6
Revenue Recognized 2018-2019	300 Crore
Revised Contract Price	400 Crore
POC 2018-2019	0.6
Revenue that should have been recognized	240 Crore
Revenue to be reversed in 2019-20 due to change in estimate	(60 Crore)

ISSUE- 4 Changes arising out of cancellation of contracts

In such cases any revenues attributable to such contracts previously recognized should be reversed

Contact Price	500 Crore
POC 2018-2019	0.6
Revenue Recognized 2018-2019	300 Crore
No work done in 2019-20 and the customer canceled the Contract	
Revenue that have been recognized	300 Crore
Revenue to be reversed	(300 Crore)

ISSUE -5 Uncertainty relating to collectability arises

AS PER AS 9 when uncertainty relating to collectability arises,
IT IS MORE APPROPRIATE TO MAKE A SEPARATE PROVISION TO REFLECT UNCERTAINTY, rather than to adjust the amount of revenue already recognized.

COVID-19 RELATED CHALLENGES

COVID-19 RELATED ADDITIONAL CHALLENGES

- ✓ COVID – 19 as ADJUSTING EVENT
- ✓ INVENTORY VALUATION
 - Decline in NRV
 - Delay in expected date of completion
- ✓ EXTRAORDINARY OR EXCEPTIONAL ITEMS
- ✓ Impact on RECOVERABILITY ITEMS CUSTOMERS
- ✓ GOING CONCERN ASSESSMENT
- ✓ UNCERTAINTY ABOUT ESTIMATED TOTAL REVENUE AND TOTAL COST
- ✓ Increased LABOUR COST due to migration of labour

**ERRORS IDENTIFIED BY
FRRB AND EXPERT ADVISORY
COMMITTEE OPINIONS**

ERRORS IDENTIFIED BY FRRB (FINANCIAL REPORTING REVIEW BOARD)

- ✓ **Incorrect Accounting Policy Co For Revenue Recognition under**
- ✓ **25% of Project Cost (Total Cost) Considered inadvertently including land cost**
- ✓ **Disclosure of methods used to determine the state of completion of contracts not done**
- ✓ **Disclosure of amount of contract revenue recognized not done**
- ✓ **Inventory revaluation – contradiction of AS 2 “ Valuation of Inventories”**

EXPERT ADVISORY COMMITTEE OPINIONS

1. **Onerous Contract : Excess of Cost over Revenue is to be recognized immediately**
2. **Revenue Sharing : Real Estate Developer will book only his share of revenue and not the gross revenue of the whole project**
3. **Provision For Warranty : Provision for warranty shall be considered as part of total cost of project**
4. **Temporary Income Earned : Temporary income earned on the funds of real estate shall be classified as “ Other Income”**

AUDIT RELATED ISSUES

KEY AUDIT CHALLENGES- REAL ESTATE SECTOR

✓ QUALITY OF EVIDENCES
Not Reliable

✓ **CONTINGENT LIABILITY –**
Uncertainty regarding estimation of out flow of resources

✓ **SOURCING AND FINANCING OF CAPITAL**

✓ **Diversion of Funds**

✓ **OVER STATEMENT OF INVENTORY**

✓ **REGULATORY REFORMS**

✓ **RELATED PARTY TRANSACTIONS**

✓ **COMPLEX FUNDING LOANS**

✓ **SIGNIFICANT CASH TRANSACTIONS**

✓ **FINANCIAL PRESSURE ON COMPANY INCREASING LIKELIHOOD OF FRAUDS**

ADDITIONAL CHALLENGES FOR AUDITOR IN COVID

WHY COVID-19 HAS POSED ADDITIONAL CHALLENGES TO AN AUDITOR?

- As discussed above, COVID-19 has **DISRUPTED BUSINESS ACTIVITIES** significantly which increases fraud Risk factors related to

**Supply
Chain
Transactions**

**Expenditure
significant
increase in
Labor Cost**

**Impact on
Sale Price**

**Cancellation
of Contracts**

**Liquidity
Constraints**

QUALITATIVE IMPROVEMENT IN AUDIT REPORTING –KEY AUDIT

Are key Audit Matter Applicable on Unlisted Companies?

- No, KAM are not applicable on unlisted companies, but it can be provided VOLUNTARILY as better practice for

Qualitative
Improvement in
Audit Report.

High Level of
Uncertainties
involved in various
Management
Estimates

Users
Understanding of
the Entity

QUALITATIVE IMPROVEMENT IN AUDIT REPORTING –KEY AUDIT

Key audit matter	Why is it a key Audit Matter
Revenue Recognition	<p>Significant judgment and estimates involved in:</p> <ul style="list-style-type: none">➤ Determining fair value of underlying revenue in joint developments➤ Risk of revenue being recognized in incorrect period.➤ Uncertainty regarding booking and cancellation in this regard
Valuation of inventories and advances paid towards land procurement	<p>NRV determination requires estimation of:</p> <ul style="list-style-type: none">● Prevailing market conditions● Estimated future selling price● Completion and selling cost

QUALITATIVE IMPROVEMENT IN AUDIT REPORTING –KEY AUDIT

Key audit matter	Why is it a key Audit Matter
Investments in subsidiary and associate entities	Significant Judgment and estimates involved in determining: <ul style="list-style-type: none">✓ Indicators of impairment of investment✓ Recoverable Amounts of the investment✓ Key Assumptions used in determination of fair value / value in use.
Recognition and measurement of deferred tax assets	<ul style="list-style-type: none">❖ Based on the Projected profitability❖ Assumptions affected by expected future market or economic conditions.

QUALITATIVE IMPROVEMENT IN AUDIT REPORTING –KEY AUDIT

Key audit matter	Why is it a key Audit Matter
Recoverability of loans / financial instrument to subsidiaries and joint ventures	<ul style="list-style-type: none">• Huge risk in respect of the recoverability of the loans/ financial instruments.• Significant judgment is involved as to the recoverability of the working capital and project specific loans/ financial instruments.
Claims litigations and contingencies	Judgment involved in: <ul style="list-style-type: none">• Estimating the possible outflow of economic resources based on legal counsel opinion• Determination of provision to be created / contingent liability disclosed
Assessment and recoverability of trade receivables (Expected credit losses)	<ul style="list-style-type: none">• Due to size and high level of management judgment involved in analyzing the recoverability of trade receivables

AUDIT REPORTING – EMPHASIS OF MATTER OR OTHER MATTER PARAGRAPH

- Auditor can include Emphasis or matter / other matter paragraph in their report highlighting the impact
 - ✓ Of the uncertainties caused by Covid-19
 - ✓ On the entity's operations
 - ✓ And the management's steps to overcome it.

GOING CONCERN ASSESMENT

Why Going Concern Assessment is Important as an Auditor?

- Post COVID-19 Going Concern has come into limelight owing to following significant Business Impact.

SINGNIFICANT
DISRUPTION
IN THE
CONSTRUCTI
ON BUSINESS
OPERATIONS
DUE TO
LOCKDOWN

HUGE
DOWNFALL
IN DEMAND
Owing to
the global
economic
downturn

AVAILABLE
LIQUIDITY is
continuing
to dwindle

COLLECTIONS
ARE
CONSTANTLY
DIMINISHING

NET
LIABILITY/
NET
CURRENT
LIABILITY
position is
worsening

INCOME TAX

DEFINITION

- Capital Assets defined
- Assets can be short term/long term/business assets
- Different revenue streams taxed differently

**STAMP DUTY VALUE
50C/43CA**

**SHORT TERM /
LONG TERM**

**HELD THROUGH
COMPANY
11UA IMPLICATIONS**

**OTHER FORMS OF
REVENUE LIKE
RENT, DIVIDEND,
RENT STRUCTURE
ETC.**

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Income Tax Audit

RERA Audit

GST

DEFINITION

- Excluded from definitions of goods, covered under services
- Land and Building “as Such” excluded from GST
- Notification 3/2019 dt 29.03.2019

**INPUT CREDIT
FOR OWN
CONSUMPTION**

**IMPLICATION OF
2019
AMENDMENTS**

**GST DURING
CONSTRUCTION
AND ONCE IT IS
IMMOVABLE
PROPERTY**

CONTENTS OF TOPIC

RATE STRUCTURE

CONDITIONS

TDR/FSI/LEASE

ITC CALCULATION

**PROPOSED BY GST COUNCIL IN 33RD MEETING
HELD ON 24TH FEBRUARY 2019**

RATE REDUCED FROM 12%/8% TO 5%/1%

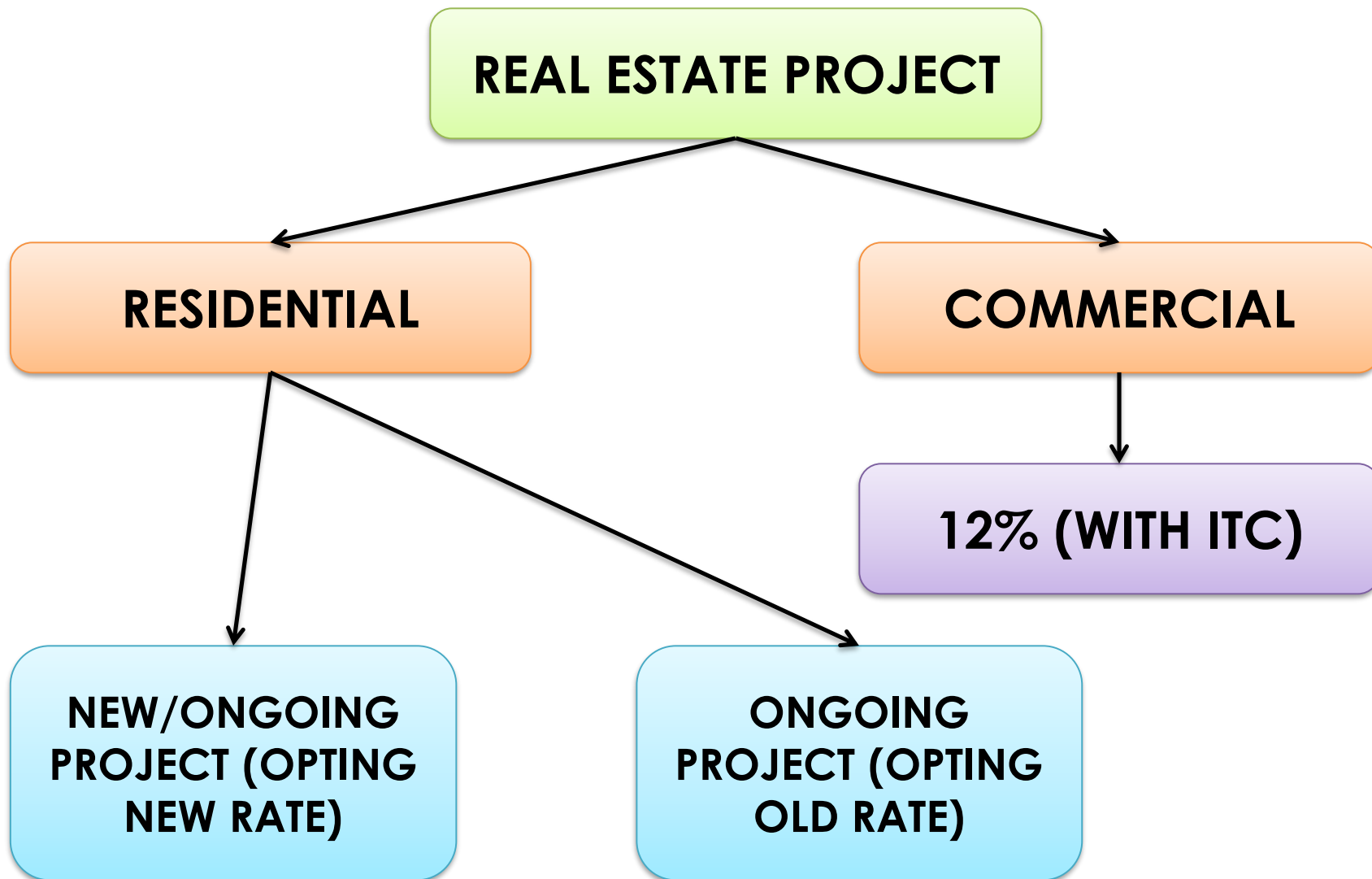
ITC WILL NOT BE AVAILABLE

**CHANGES MADE EFFECTIVE FROM 1ST APRIL
2019**

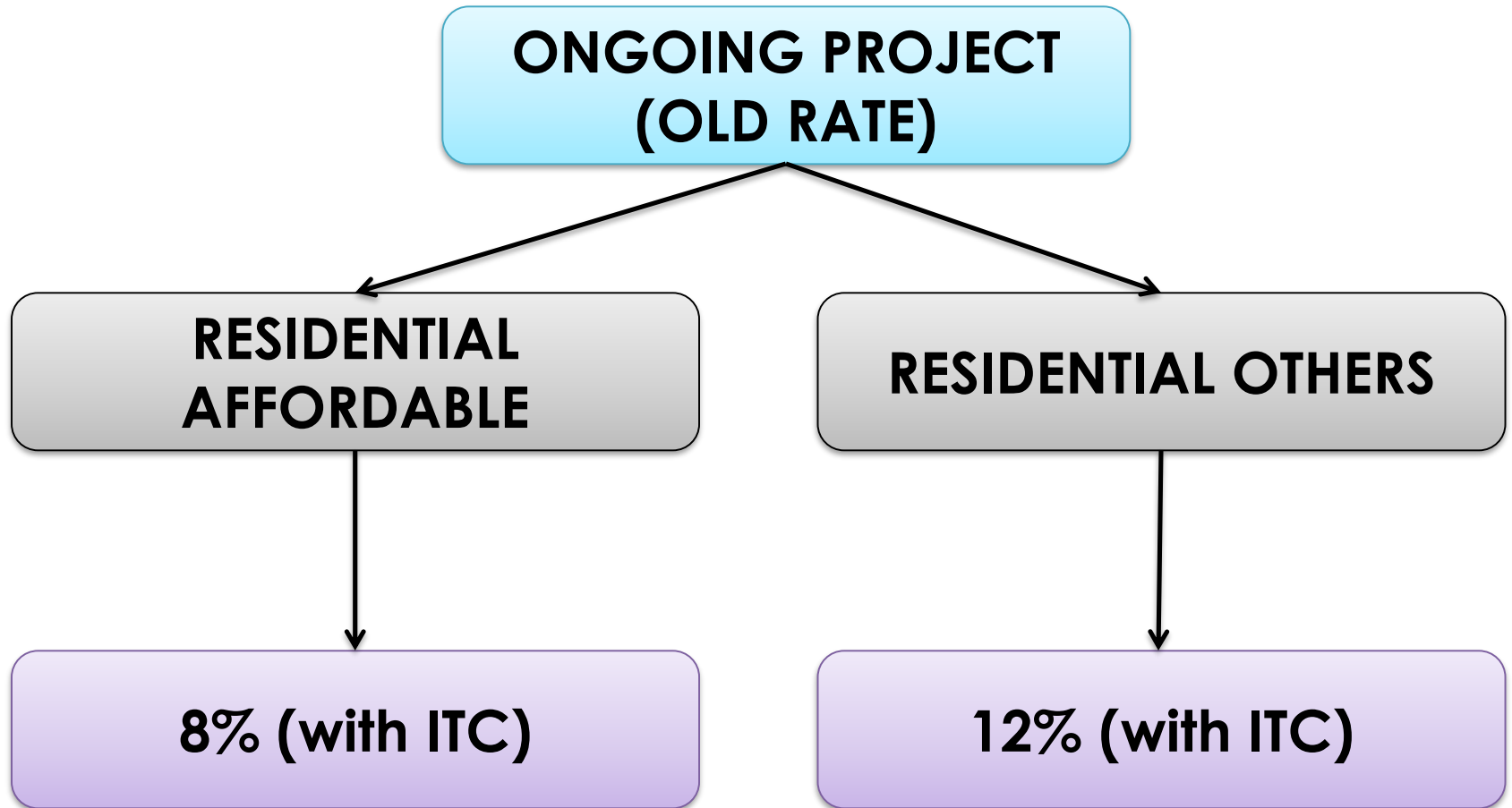
NOTIFICATIONS ISSUED ON 29TH MARCH 2019

NOTIFICATION NO 3/2019 CENTRAL TAX RATE

REAL ESTATE PROJECT



REAL ESTATE PROJECT

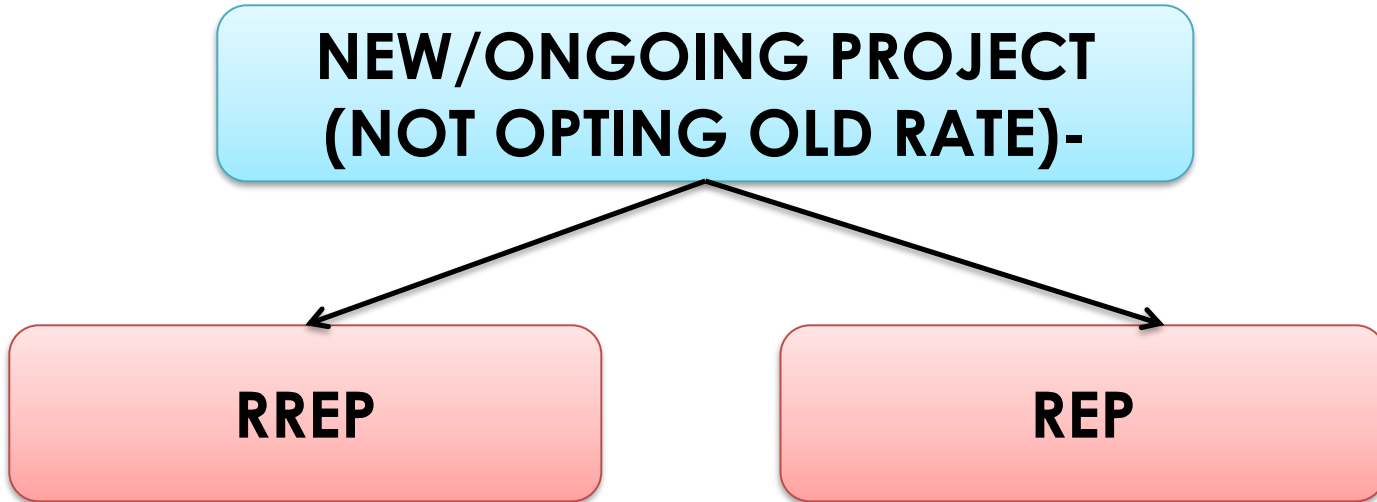


REAL ESTATE PROJECT

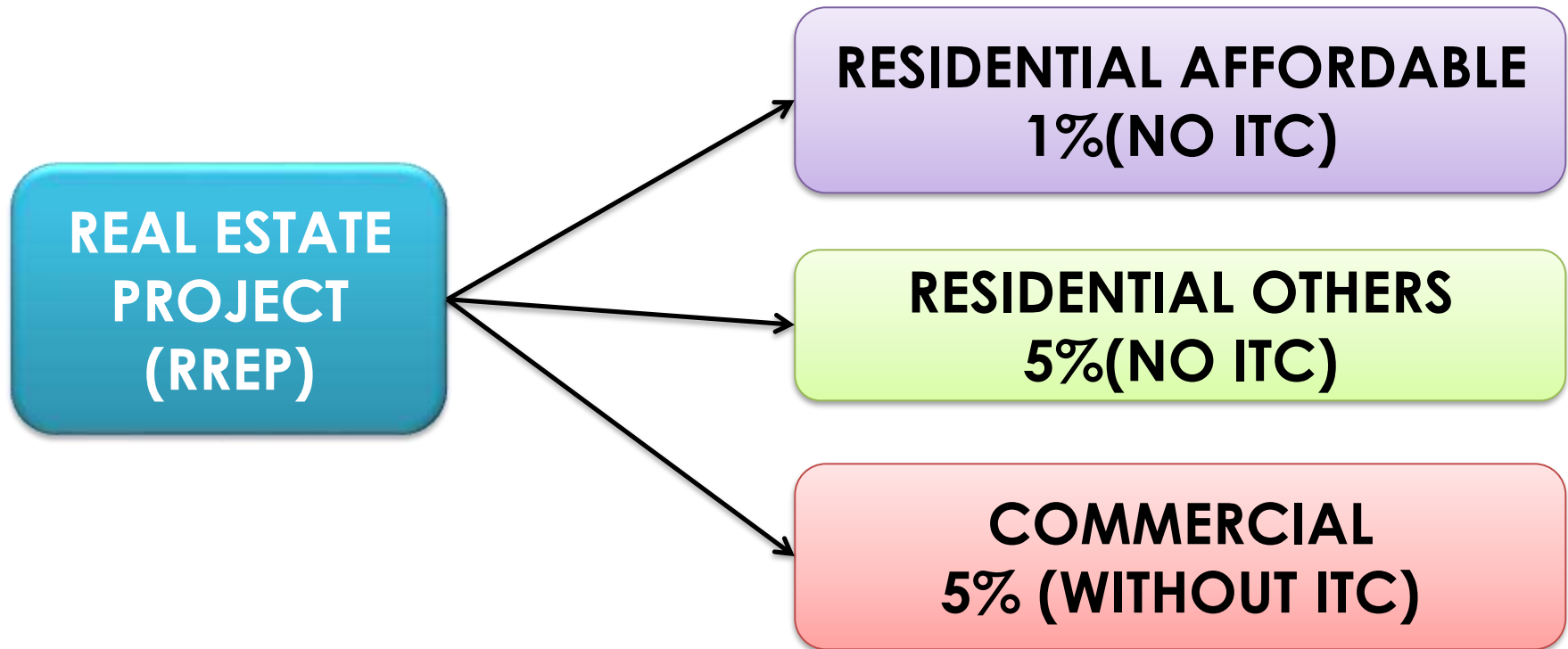
**NEW/ONGOING PROJECT
(NOT OPTING OLD RATE)-**

RREP

REP



REAL ESTATE PROJECT



Meaning of RREP

Residential Real Estate Project shall mean a REP in which the carpet area of the commercial apartments is up to 15% of the total carpet area of all the apartments in the project

REAL ESTATE PROJECT

OTHER THAN AFFORDABLE

CGST Rate:	3.75%
SGST Rate:	3.75%
Total Rate:	7.5%
Less value of land (1/3)	2.5%
Effective rate	5%

RESIDENTIAL AFFORDABLE

CGST Rate:	0.75%
SGST Rate:	0.75%
Total Rate:	1.5%
Less value of land (1/3)	0.5%
Effective rate	1%

DEFINITION OF AFFORDABLE RESIDENTIAL APARTMENT

- In terms of size, having carpet area up to
 - ✓ 60 square meter in metropolitan cities
 - ✓ 90 square meter in cities other than metropolitan cities
- In terms of cost-
the gross amount charges is up to Rs 45 lakhs

DEFINITION OF AFFORDABLE RESIDENTIAL APARTMENT

➤ Metropolitan cities

Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR)

VALUATION OF FLATS

Complete value of flats

Value of land

Ancillary charges recovered by builder (e.g. preferential location charges, development charges, car parking charges)

COMPLETED PROJECT

When any two of the following events are completed before 31st March 2019

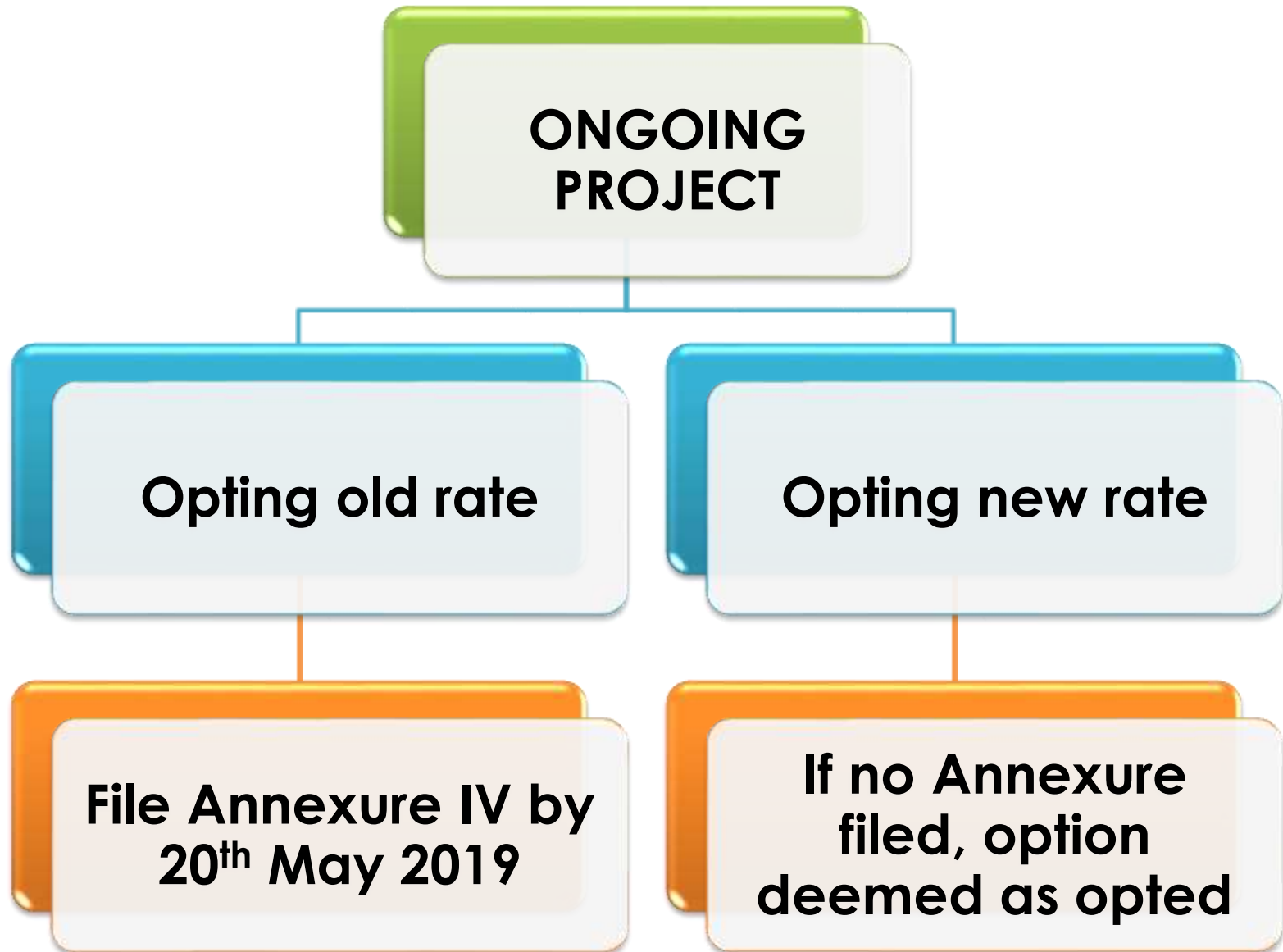
- ❖ Completion certificate, by a competent authority
- ❖ Its first occupation

Old rates will be applicable with ITC

NEW PROJECT

- Projects which will start after 1st April 2019**
 - ✓ **New rates will be applicable**
 - ✓ **ITC will not be available**
 - ✓ **Other conditions to be complied with**

ONGOING PROJECT



MEANING OF ONGOING PROJECT

Project satisfying all given conditions

- **Commencement certificate by competent authority, if required, issued up to 31st March 2019**
- **Certified by architect/ chartered engineer/ licensed surveyor that construction of project started up to 31st March 2019**

MEANING OF ONGOING PROJECT

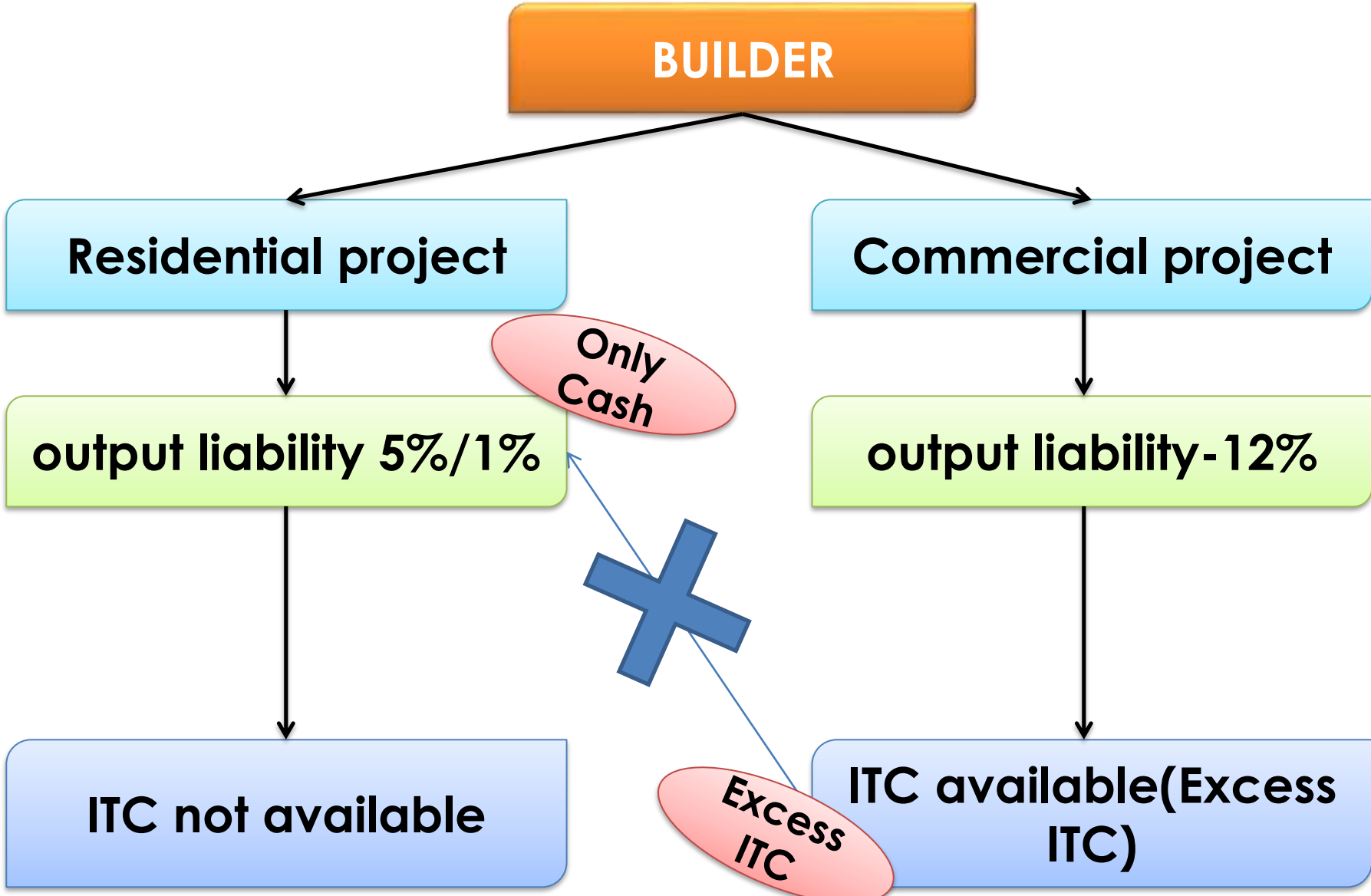
- **Completion certificate not issued on first occupation of project not taken place up to 31st March 2019**
- **Apartments under project booked, partly or wholly, & amount credited to bank a/c of builder up to 31st March 2019**

Pay either at new rate or old rate as per choice

CONDITIONS GIVEN FOR NEW RATE

- **ITC will not be available except to the extent specified**
- **Output liability to be paid in cash, ITC can't be used**

CONDITIONS GIVEN FOR NEW RATE



CONDITIONS GIVEN FOR NEW RATE

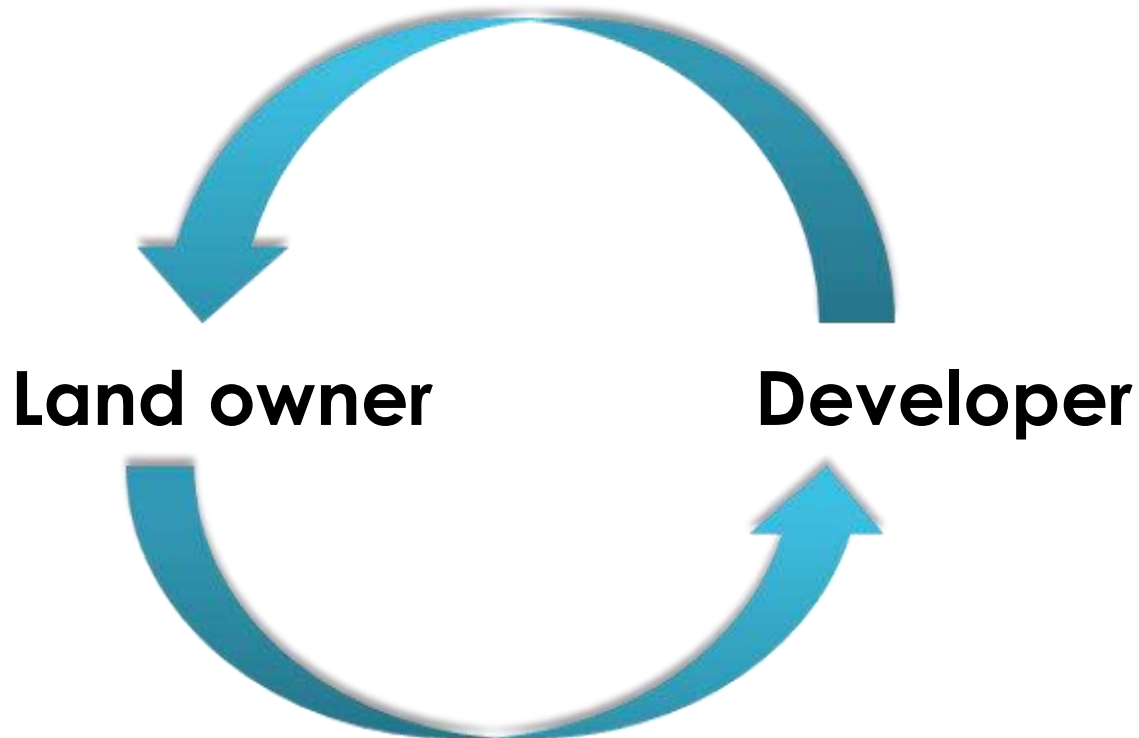
- **Tax to be paid in RCM on purchase of cement from unregistered person at applicable rate i.e. 28%**
- **80% of the purchases of project to be from registered person**
- **Purchased 70% supplies from registered supplier**
- **Tax to be paid under RCM on shortfall (10%)@18%**

CONDITIONS GIVEN FOR NEW RATE

- **Shortfall to be seen project wise and FY wise**
- **For FY 2019-20, tax to be paid under RCM on shortfall at 10% @ 18% by return of June 2020**

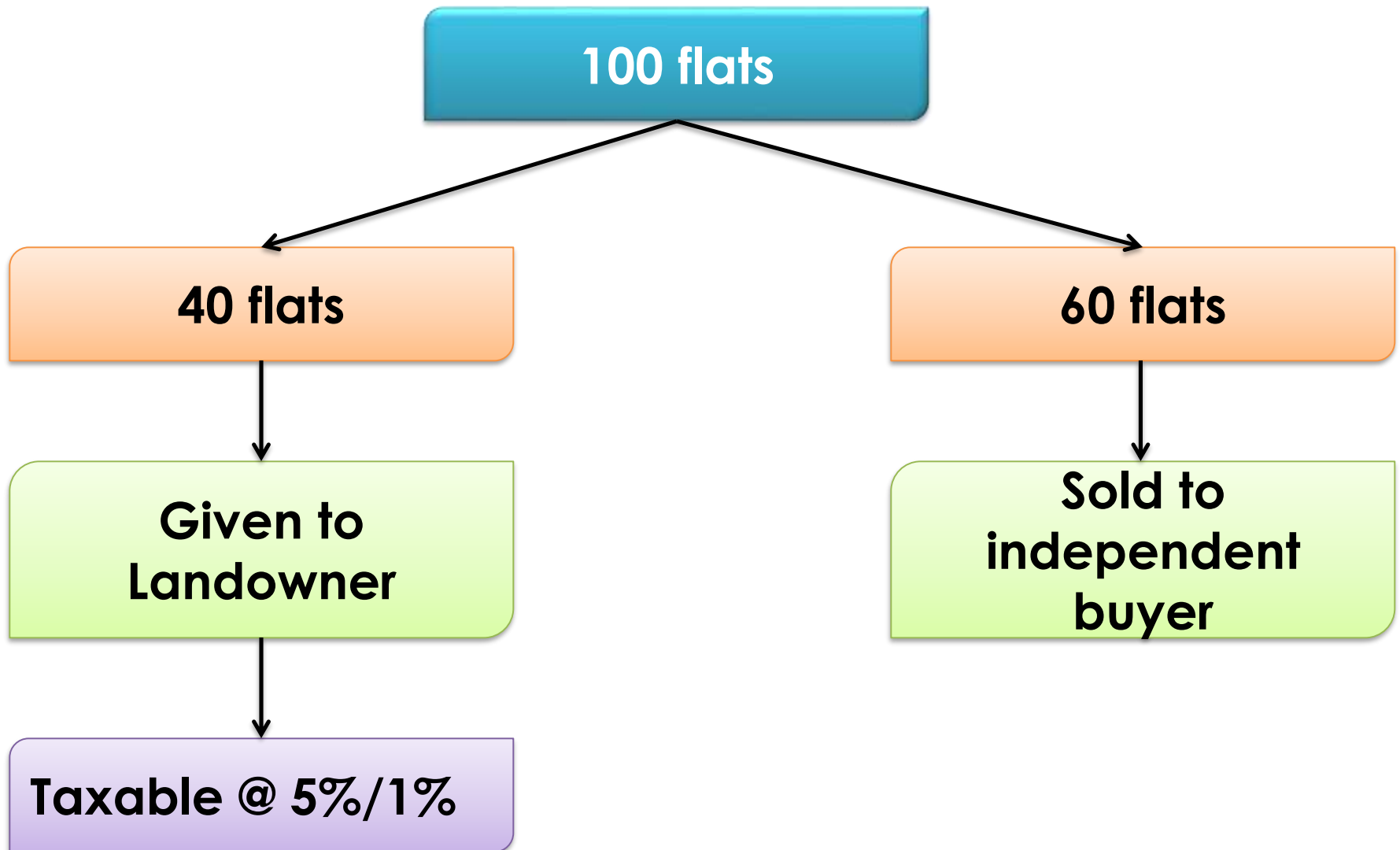
TRANSFERRABLE DEVELOPMENT RIGHTS(TDR)/ FLOOR SPACE INDEX(FSI)/LONG TERM LEASE

Constructed flats

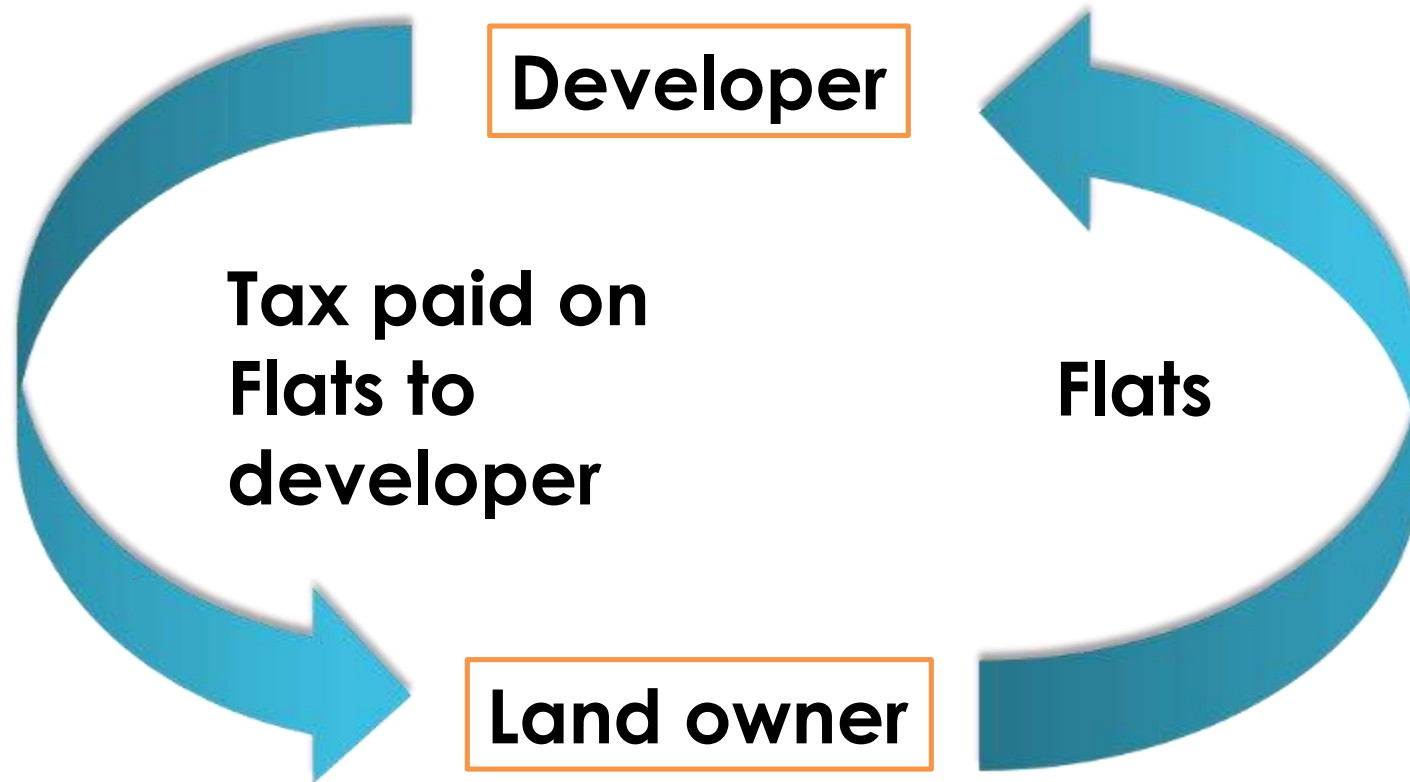


Irrevocable right to use land(TDR)

TRANSFERRABLE DEVELOPMENT RIGHTS(TDR)/ FLOOR SPACE INDEX(FSI)/LONG TERM LEASE



TRANSFERRABLE DEVELOPMENT RIGHTS(TDR)/ FLOOR SPACE INDEX(FSI)/LONG TERM LEASE



TRANSFERRABLE DEVELOPMENT RIGHTS(TDR)/ FLOOR SPACE INDEX(FSI)/LONG TERM LEASE

LAND OWNER

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graph TD; A[LAND OWNER] --> B[Sells flats Before CC]; A --> C[Sells flats after CC]; A --> D[Does not sell]; B --> E[GST payable on output & ITC available]; C --> F[No GST payable & no ITC available]; D --> G[No GST payable & no ITC available];
```

**Sells flats
Before CC**

**GST
payable
on output
& ITC
available**

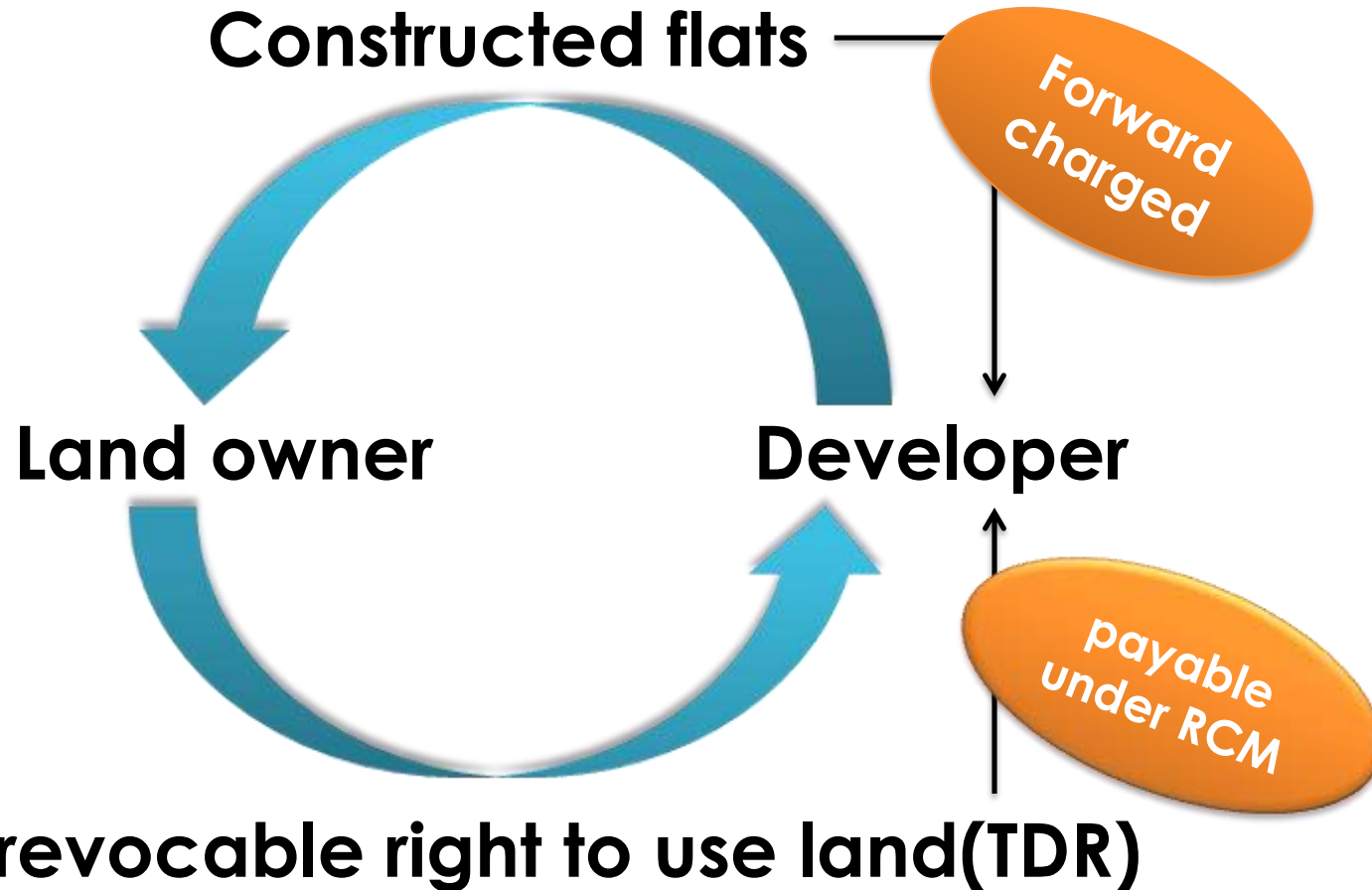
**Sells flats
after CC**

**No GST
payable &
no ITC
available**

**Does not
sell**

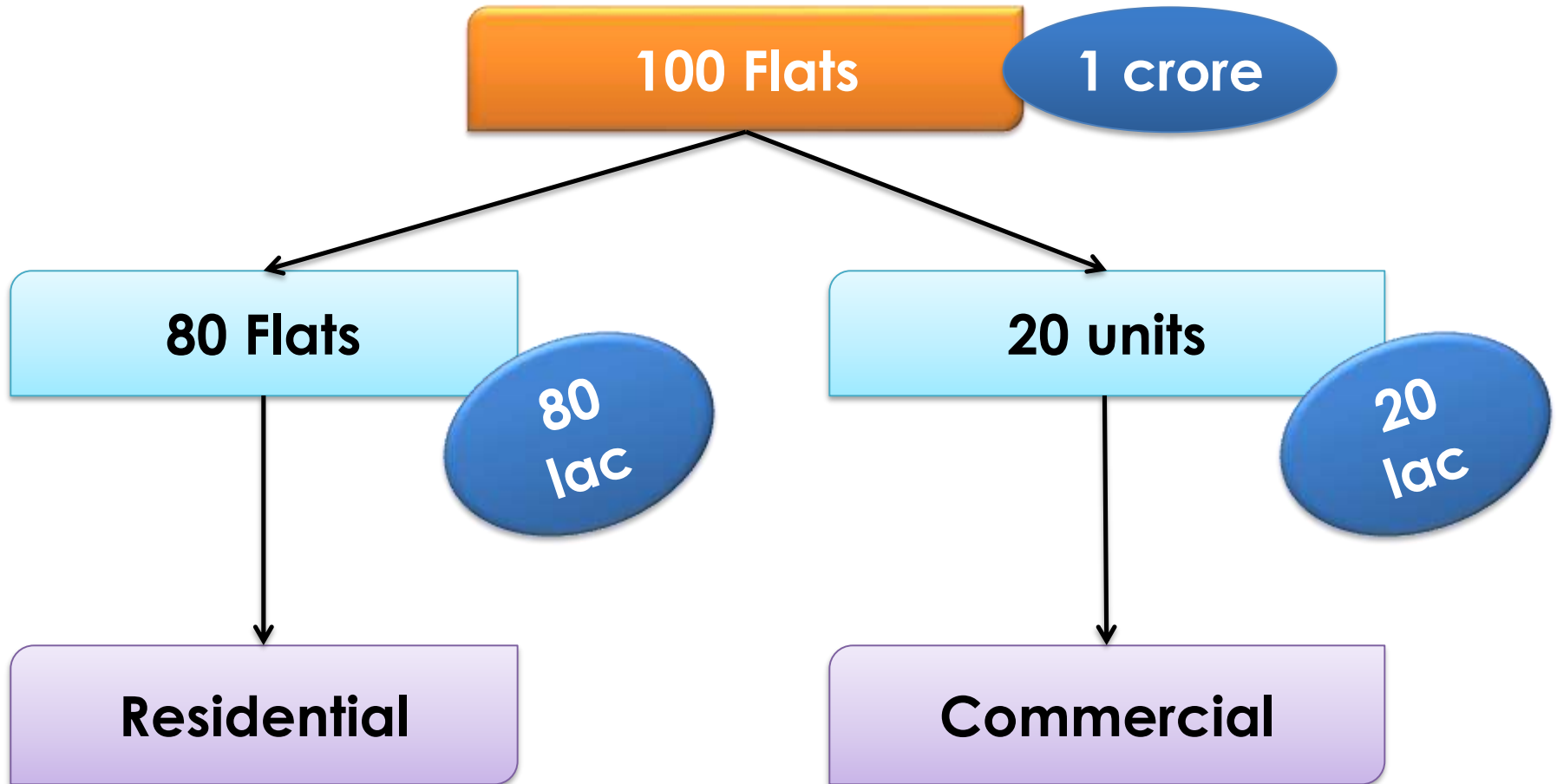
**No GST
payable &
no ITC
available**

TRANSFERRABLE DEVELOPMENT RIGHTS(TDR)/ FLOOR SPACE INDEX(FSI)/LONG TERM LEASE

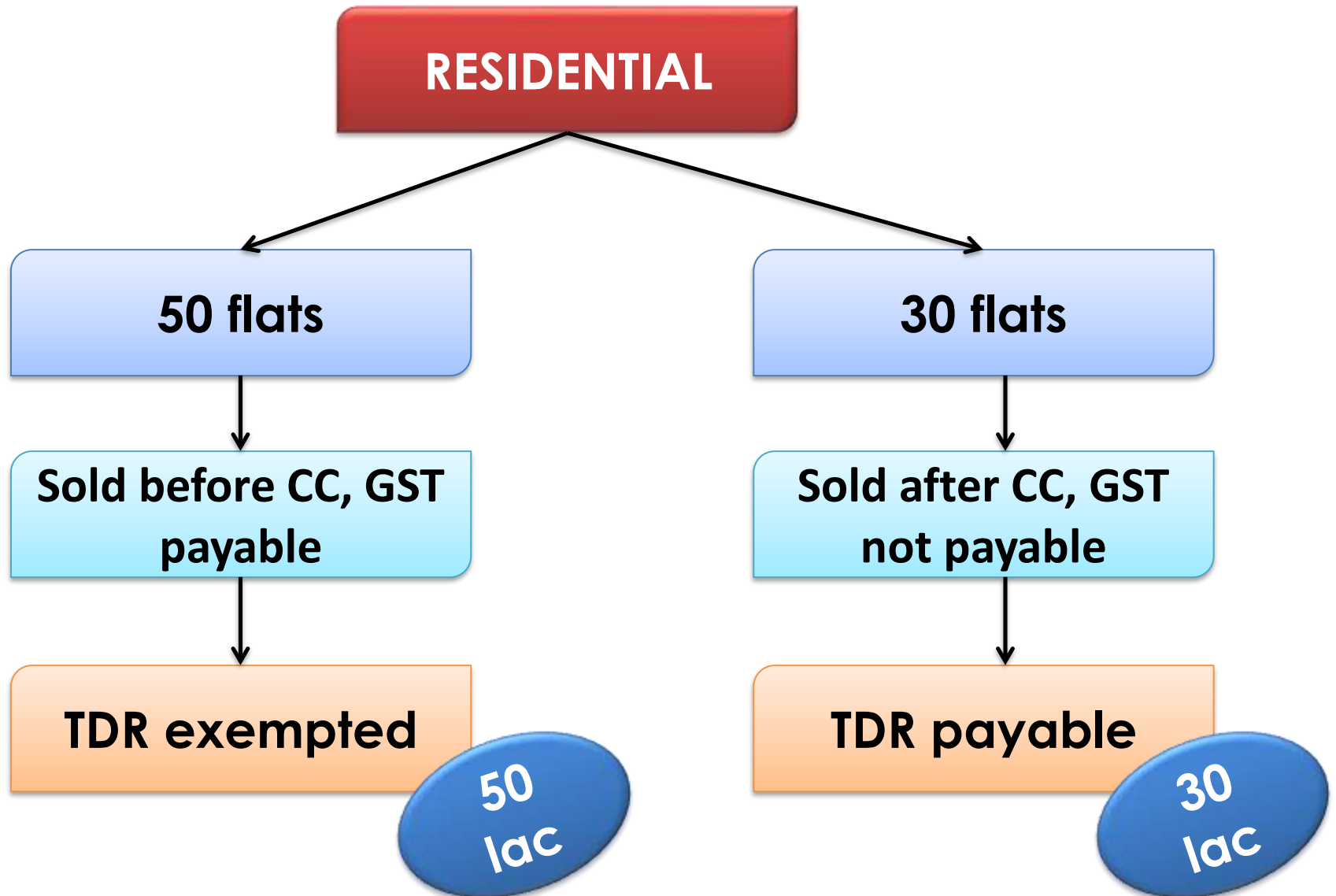


**Time of supply, Receipt of CC, or First Occupation,
whichever is earlier**

GST APPLICABLE & EXEMPTED ON TRANSFERRABLE DEVELOPMENT RIGHTS(TDR)/ FLOOR SPACE INDEX(FSI)/LONG TERM LEASE



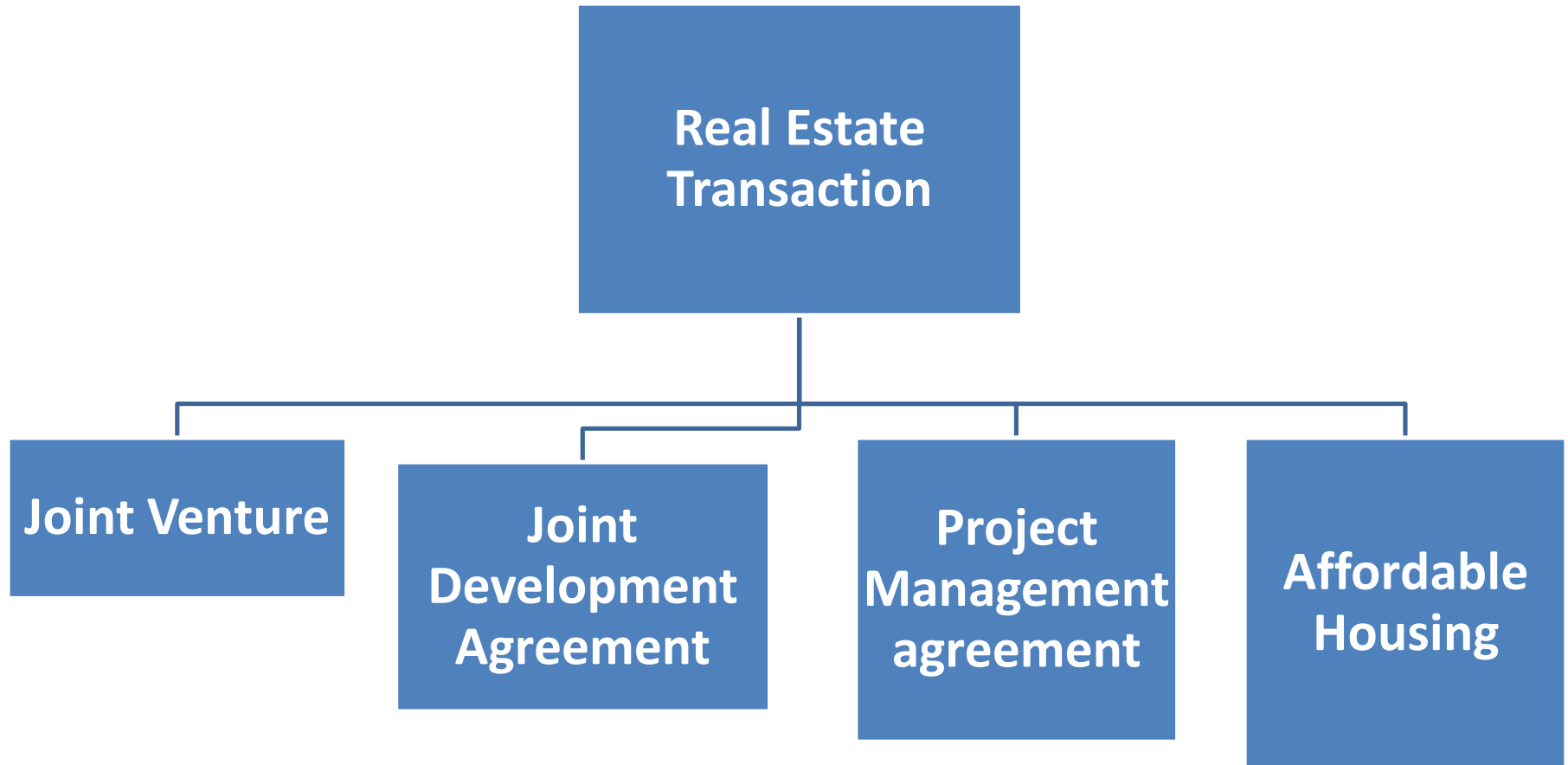
TRANSFERRABLE DEVELOPMENT RIGHTS(TDR)/ FLOOR SPACE INDEX(FSI)/LONG TERM LEASE



TAX PAYABLE ON TDR PERTAINING TO 30 FLATS

- **Value of TDR pertaining to 30 flats (i.e. 30 lacs)* applicable rate of GST**
- **Output liability on 30 flats (at rate of 5% or 1%, as the case may be) whichever is less**

INCOME TAX ON real estate sector



Joint Venture

A Joint venture is a business arrangement where in two or more parties agree to pool their resources to achieve a common business objective. Under this structure , all the parties retain some control over the entity with a defined set of activities to be executed by each of them.

In real estate sector a Joint Venture Is typically formed in one of the following ways

Joint Venture

Pooling of resources - Pooling of resources involves the formation of a JV entity in which the real estate assets are contributed by the developer and funding is provided by the investors. The developer and investors enter into a joint venture agreement to capture the rights and obligation of the parties in the project. There are various tax and regulatory implications to be kept in mind by both the parties while entering into such a structure.

Joint Venture

i) Taxation in hands of the developer

a) On transfer of assets to the JV - The developer shall be liable to pay capital gains tax depending on the period of holding of immovable property at following rates

LTCG (Property held for more than 24 months) - 20%

STCG (Property held for less than 24 months) - 30%

Further indexation benefit shall be available while computing capital gains on transfer of a long term capital asset

Joint Venture

b) Property held as stock in trade – In case the land is held as stock in trade, transfer of immovable property shall be taxed as business income in hands of the developer.

Further section 50C/ 43CA of the IT Act provides that where an immovable property, held as a capital asset or stock in trade, is transferred at a value less than the stamp duty value (being the ready reckoner rate), then such stamp duty value shall be deemed to be consideration for such transfer and the developer shall be liable to pay tax based on such enhanced consideration.

Joint Venture

(ii) Taxation in hands of the investor – Section 56(2)(x) provides that where any person receives certain properties (including shares and securities, immovable property) for a consideration which is less than its FMV, then such deficit shall be taxed in the hands of the recipient of such property. Therefore, while issuing Shares to investor(s), the company should ensure that the shares are issued at the FMV as per guidelines provided in this section

Joint Venture

(iii) Direct tax in hands of the JV entity -

Where shares are issued, implications under section 56(2)(viib) of ITA should be analysed. Section 56(2)(viib) of ITA provides that where a company issues shares at a value higher than its face value, then the amount received by the company in excess of the FMV determined by income tax provisions shall be taxed as income in the hands of the company. Therefore, while issuing the shares to the investor(s), the company should ensure that the shares are issued at the FMV as per the guidelines provided in this section.

Joint Venture

(b) JV in existing Business - Under this structure, the investor(s) would infuse funds into an existing SPV of the developer containing the real estate project. Alternatively, the investor(s) may purchase shares from the developer or existing investor(s) by way of secondary sale. Similar to the 'pooling of resources' structure above, the developer and investor would enter into a JV agreement to record the rights and obligations of the parties.

Joint Venture

(i) Direct Tax in hands of the developer

In case the real estate project is already set up in a separate SPV and the investor is infusing the funds in the existing entity, there shall be no tax implications in the hands of the developer. Transfer of shares by developers/existing investor(s) to new investors shall attract capital gains tax depending on the period of holding at following rates.

LTCG (Property held for more than 24 months) – 20%

STCG (Property held for less than 24 months) – 30%

Joint Venture

Indexation benefit shall be available in the hands of the resident developer/investor while computing capital gains on the transfer of a long-term capital asset.

Joint Development Agreement–

Under a JDA, the landowner enters into an agreement (registered/unregistered) with a developer to develop a project along with a power of attorney providing the developer with rights such as development rights, rights to obtain necessary approvals and creating charge on land. In lieu of such development rights, the landowner is compensated in any of the following manner

- Fixed consideration; or**
- Fixed built-up area; or**
- Percentage of total realization**

Joint Development Agreement –

Tax Provision:

The tax issues differ where the asset is held as a capital asset or as stock in trade. These differences are discussed in detail below

Land held as capital asset - Section 2(47) of the ITA inter alia includes any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882. Under a JDA, the landowner parts with the possession of the land in lieu of certain built-up area or cash consideration or combination of both.

Joint Development Agreement –

There have been various decisions of high courts and tribunals which concluded that capital gains may be chargeable in the year of execution of the JDA, where all the material rights and interest in the property coupled with possession were transferred to the developer. This caused unnecessary hardship to landowners as they were liable to pay taxes in the year of signing the JDA on notional gains when the actual consideration would be received in the year the project was completed.

Joint Development Agreement –

The Finance Act, 2017, has introduced sub-section (5A) to section 45, which states that where an individual or HUF transfers a capital asset, being land or building, to a developer under a JDA with consideration to be received as a share in built-up area with or without cash payment, then it shall be deemed that transfer of capital asset arises in the year in which the completion certificate is issued by the authority for the project. However, where such individual or HUF transfers his share in the project before its completion, then the capital gains shall arise in the year of such transfer.

Joint Development Agreement -

Land held as stock in trade - If the land is held as stock in trade by the owner, provisions of capital gains are not attracted. Accordingly, following various judicial pronouncements, subject to facts, it may be concluded that income arising from a JDA is taxable based on the accrual concept as 'business income'. It must be noted that amendments made to the Finance Act, 2017, shall not apply to land held as stock in trade.

Project Management agreement -

A project management agreement refers to an agreement entered into by a project manager with a developer to supervise and manage the development of a real estate project. Under this agreement, a project manager typically does not assume any risks and responsibilities of the real estate project and the compensation is not linked with the performance of the project. The key tax and regulatory implications under this arrangement are given below.

Project Management agreement -

The amount received as compensation by the project manager shall be taxable as 'business income' in his hands. Further, the developer should be able to claim such project management fees as a tax deductible expense in its computation of income.

Affordable Housing -

Housing' refers to the development of household units to address the housing needs of low- and middle-income households. The government has devised various policy initiatives and tax exemptions in this regard, which are in line with its vision of 'Housing for All'

Taxation - In a bid to provide impetus to affordable housing, the Finance Minister introduced section 80-IBA in the Finance Act, 2016, which provides a profit-linked tax exemption. The section provides 100% tax exemption on the profits earned on an affordable housing project, subject to certain conditions.

Disclaimer

All the efforts are made to cover the important provisions of the law. The material contained herein is not exhaustive, and contains certain generalizations. The latest Provisions and Notifications must be viewed. The presenter is not responsible for any loss incurred on the actions taken based on the material presented. -----



**Thank you for Getting involved in
the discussion!**

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CHAIRMAN

MAHARASHTRA SOCIETIES WELFARE ASSOCIATION, MEMBER OF TASK FORCE FOR NPOS & CO-OPS OF MAHARASHTRA, CONVENER TO PREPARE GUIDANCE NOTE ON AUDIT OF DISTRICT AND STATE CO-OP BANKS –PUBLISHED BY PDC OF ICAI, CO-OPTED MEMBER OF CO-OP COMMITTEE (MAHARASHTRA) OF WIRC OF ICAI.