ICAI Ernakulam
GST on Works Contract & Real Estate

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Real Estate & Works Contract in GST

- Article 366 (29A) – Deemed Sale
- VAT
- Service Tax

Works Contract

Works Contract & GST

- Taxability
- Documentation
- Unique provisions
- Compliances

Taxability of Works Contract – Schedule II

Composite Supply of **Services**

works contract as defined in clause (119) of section 2;

"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning **of any immovable property wherein transfer of property in goods** (whether as goods or in some other form) is involved in the execution of such contract;

Works Contract – Decoding of Definition

contract for building, construction, fabrication, completion, erection, installation, fitting out

improvement, modification, repair, maintenance, renovation, alteration or commissioning

of any immovable property wherein transfer of property in goods

Works Contract & Place of Supply

- Section 10 vs 12 of IGST
- Section 12 (3)
- The place of supply of services,—
- (a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or Supplies in territorial waters.— estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

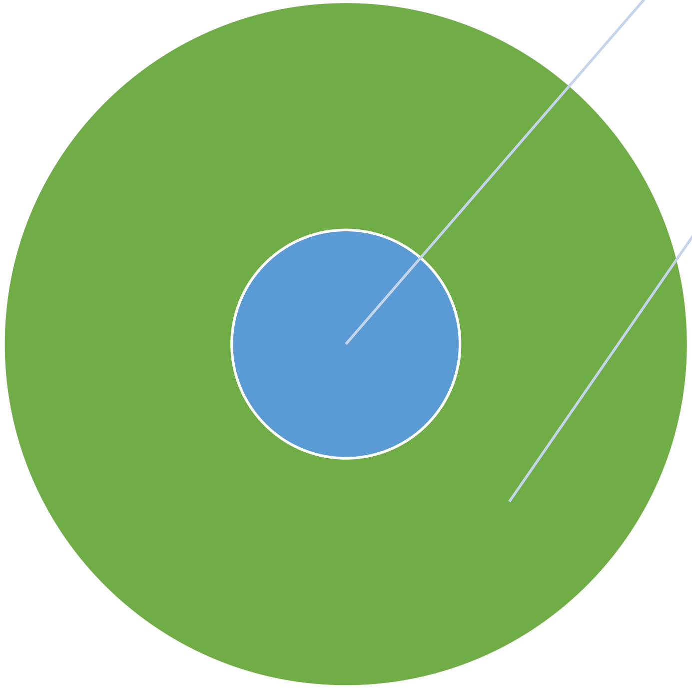
Works Contract & Place of Supply

- Section 12 (3)
- The place of supply of services,—

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Where the immovable property or boat or vessel **is located in more than one State or Union territory**, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Valuation – Works Contract specific



Section 15 (2)

- Bhayana Builders

Section 15 (3)

Value of Supply

Section 15 (2) (d)

Interest also includible

Affirmed by Circular 221

GST on Works Contract

- Section 2 (33)

"**continuous supply of services**" means a supply of services which is provided, or agreed to be provided, **continuously** or on recurrent basis, under a contract, for a **period exceeding three months** with **periodic payment obligations** and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;

Invoice & Time of Supply

- Continuous Supply of Service
- Invoice
  - Payment due date available in contract
  - Payment due date NOT available in contract
  - Based on an Event

Few Jargons decoded

- M – Book
- EPC
- BOT
- PPP
- Annuity Method
- Hybrid Annuity Method

Hybrid Annuity Method

- government provides 40% of the project cost as construction support
- remaining 60% is paid as annuity payments over the operations period
- The **government is responsible for revenue collection and toll fee** management

Taxability of Real Estate – Works Contract Service

Works Contract (no land)

18% with ITC

6 & 4 – Govt. Contractors

Upto 31st Dec 2021

- Central Government,
- State Government
- Union territory
- a local authority
- a Governmental Authority or
- a Government Entity

From 1st Jan 2022

- Central Government,
- State Government
- Union territory
- a local authority
- ~~a Governmental Authority or~~
- ~~a Government Entity~~

Notification 11/2017 – CGST (Rate)

					01 Jan 2022 to 17 Jul 2022		
Whom To	Original Works	Other than Original Works	What for	Upto 31 Dec 2021	CG, SG, UT or LA	GA - GE	18 Jul 2022 onwards

Whom To	Original Works	Other than Original Works	What for	Upto 31 Dec 2021	01 Jan 2022 to 17 Jul 2022		18 Jul 2022 onwards
					CG, SG, UT or LA	GA - GE	
CG, SG, UT or LA	construction, erection, commissioning, installation, completion, fitting out,	repair, maintenance, renovation, or alteration	Historical Monument or Archaeological site	12%	12%	18%	18%
GA - GE			Canal, Dam or irrigation				
			Pipeline or conduit for Water Supply Water Treatment Sewerage Treatment or Disposal				
Original Contractor			Above by Sub-Contractor				

Whom To	Original Works	Other than Original Works	What for	Upto 31 Dec 2021	01 Jan 2022 to 17 Jul 2022 CG, SG, UT or LA	 GA - GE	18 Jul 2022 onwards
-	construction, erection, commissioning, installation, completion, fitting out,	repair, maintenance, renovation, or alteration	a. road, bridge, tunnel, or terminal for road transportation for general public b. a civil structure under Jawaharlal Nehru National Urban Renewal Mission (JNNURM) or Rajiv Awaas Yojana (RAY) c. Redevelopment of Slums - PMAY d. Beneficiary led house construction - PMAY e. EWS affordable housing - PMAY f. Houses under CLSS for EWS / LIG / MIG-1 / MIG-2 - PMAY g. Pollution control / Effluent Treatment plant (not in factory) h. Funeral, Burial / Crematorium Structure i. Section 12AA / 12AB registered for cooking / distribution of Mid-day meals scheme	12%	12%	12%	18%
			Funeral, Burial / Crematorium Structure 14th Jun 21 to 30th Sep 21	5%	-	-	-

					01 Jan 2022 to 17 Jul 2022		
Whom To	**Original Works**	**Other than Original Works**	**What for**	**Upto 31 Dec 2021**	**CG, SG, UT or LA**	**GA - GE**	**18 Jul 2022 onwards**
-	construction, erection, commissioning, installation, completion, fitting out,	-	(a) railways, including monorail and metro (b) a single residential unit otherwise than as a part of a residential complex c) Low cost houses (60 Sq. mts) d) Post Harvest Storage (incl Cold storage) e) Mechanised food grain handling (excl. Alcoholic beverage)	12%	12%	12%	18%

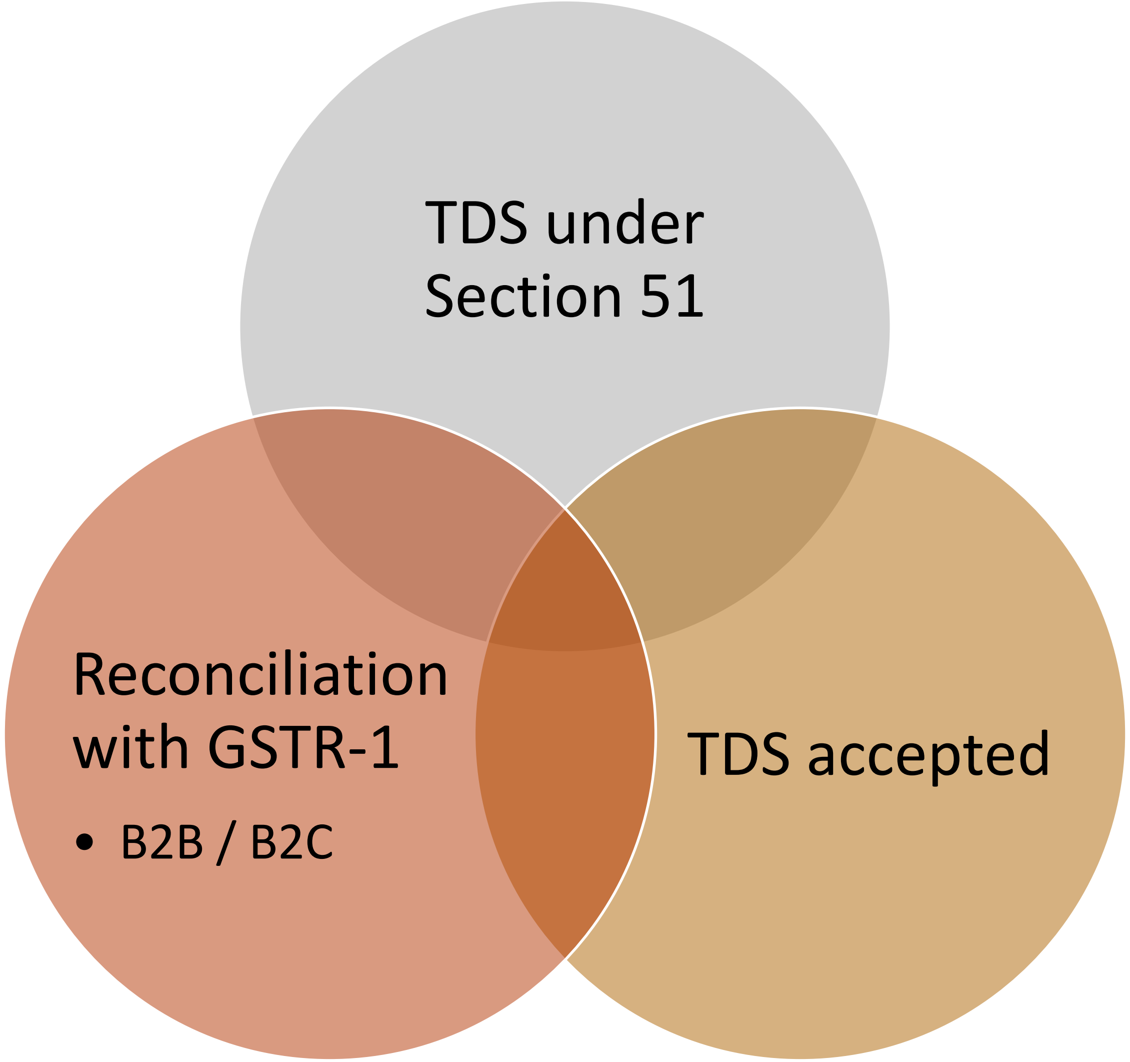
					01 Jan 2022 to 17 Jul 2022		
Whom To	**Original Works**	**Other than Original Works**	**What for**	**Upto 31 Dec 2021**	**CG, SG, UT or LA**	**GA - GE**	**18 Jul 2022 onwards**
CG, SG, UT or LA	construction, erection, commissioning, installation, completion, fitting out,	repair, maintenance, renovation, or alteration	a. meant predominantly for use other than for commerce, industry, or any other business or profession	12%	12%	18%	18%
GA - GE			b. predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment				
			c. residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III				
Original Contractor			Above by Sub-Contractor				

					01 Jan 2022 to 17 Jul 2022		
Whom To	**Original Works**	**Other than Original Works**	**What for**	**Upto 31 Dec 2021**	**CG, SG, UT or LA**	**GA - GE**	**18 Jul 2022 onwards**
CG, SG, UT or LA	-	-	Predominant EARTHWORK (> 75% of Works contract)	5%	5%	12%	12%
GA - GE							
Original Contractor			Above by Sub-Contractor				
-	-	-	offshore workscontract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles	12%	12%	12%	12%

Labour Contract – Taxability

- Labour Contracts (Service)
  - Single Residential other than Complex
    - Exempt
  - Others
    - 18% with ITC

GSTR – 7 vs Works Contract



Real Estate Construction Services

Land

- Land Development Service
- Developed Plots

Real Estate Construction Service

Area Sharing

Revenue Sharing

Real Estate

GST on Real Estate

Taxability Change Timeline

2017 *Upto June* — **Pre-Transition**

2017 *1st July* — **GST – Phase 1**

2019 *1st April* — **GST – Phase 2**

Taxability of Works Contract – Schedule II

Composite Supply of **Services**

works contract as defined in clause (119) of section 2;

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Real Estate & Works Contract in GST

Transition to GST - Section 142 (11) (c)

where **tax was paid on any supply both** under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, **tax shall be leviable under this Act** and **the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law** to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

Taxability of Real Estate - GST

Residential Real Estate Project (RREP) shall mean

- a REP in which the **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;

Taxability of Real Estate - GST

"**<u>affordable residential apartment</u>**" shall mean, -

(a) a **<u>residential apartment</u>**

(b) having **carpet area** not exceeding **<u>60 square meter</u>** in metropolitan cities or **<u>90 square meter</u>** in cities or towns other than metropolitan cities and

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

(c) for which the gross amount charged is not more than **<u>forty five lakhs rupees</u>**

Taxability of Real Estate – Construction Service

- Residential REP
  - Residential Affordable
    - 1.5% No ITC
    - Land 1/3rd deduction
    - Effective Rate 1%
  - Residential Others
    - 7.5% No ITC
    - Land 1/3rd deduction
    - Effective Rate 5%
  - Commercial
    - 7.5% No ITC
    - Land 1/3rd deduction
    - Effective Rate 5%

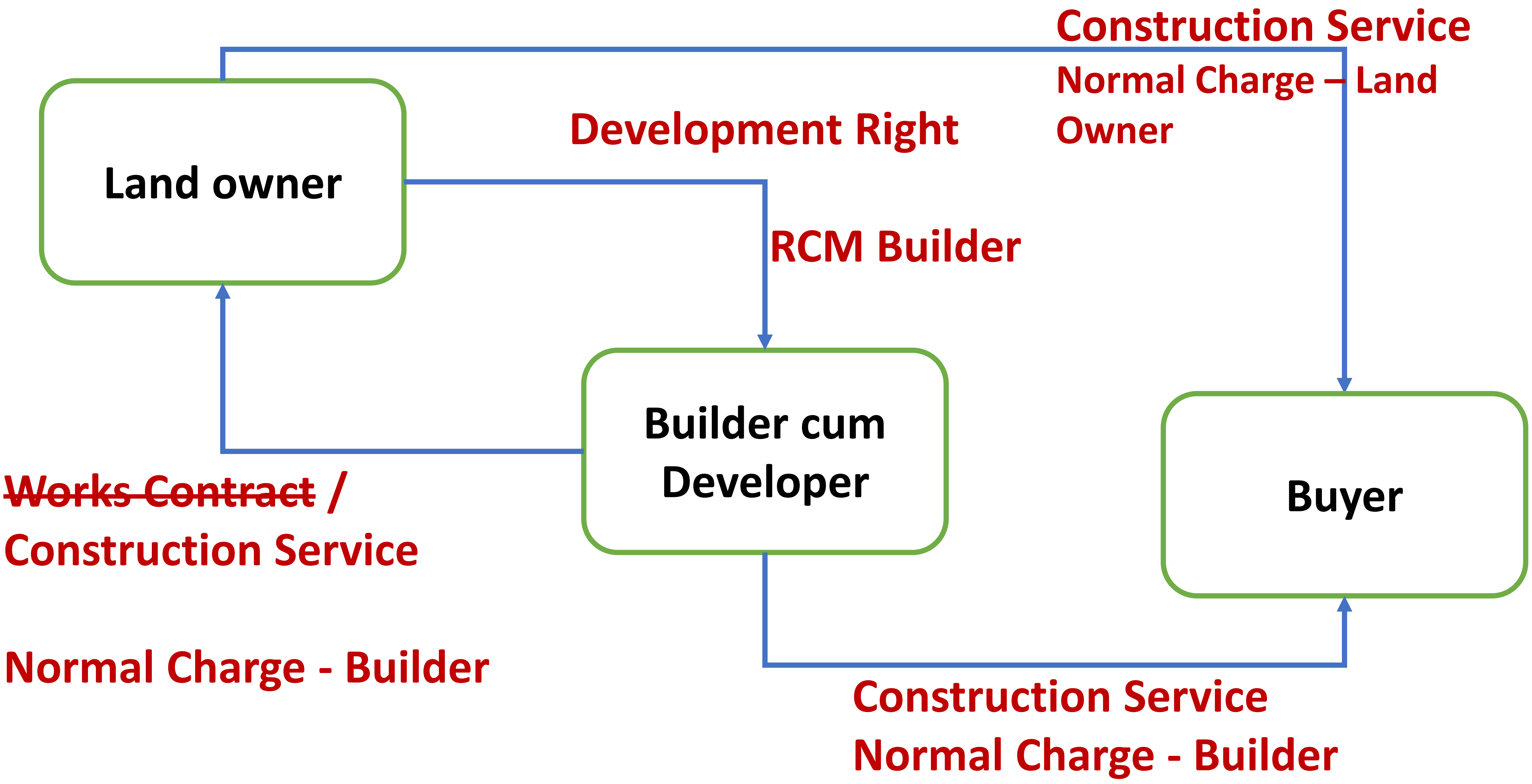
Taxability of Real Estate – Construction Service

- Commercial REP
  - Residential Affordable
    - 1.5% No ITC
    - Land 1/3rd deduction
    - Effective Rate 1%
  - Residential Others
    - 7.5% No ITC
    - Land 1/3rd deduction
    - Effective Rate 5%
  - Commercial
    - 18% with ITC
    - Land 1/3rd deduction
    - Effective Rate 12%

Transition – 1st April 2019

- RREP & Residential Projects in-progress as on 31st March 2019
  - Opt for 5% or 1% (No ITC)
  - Opt for 12% (with ITC)
- RREP & Residential Projects Completed as on 31st March 2019
  - No Such Option

Joint Venture / Development Projects



Real Estate - Landowner

- Consideration involves ~~Works Contract~~ Construction Service by the builder-promoter
- Apartment / Building received as Consideration
- Taxability & ITC

Real Estate - Landowner

Taxability

- Valuation – Rule 27 – Consideration not entirely in money
  - OMV
  - Like Services
  - 110% of Cost

Real Estate - Landowner

Taxability

- Valuation – Rule 27 – Consideration not entirely in money
  - 1/3rd Deduction for Land

Real Estate - Landowner

	Prime Locality	Developing Locality
Land Cost	Rs. 11,000 per Sq.ft.	Rs. 5,000 per Sq.ft.
Construction Cost plus Profit	Rs. 2,500 per Sq.ft.	Rs. 2,500 per Sq.ft.
Selling Price	Rs. 13,500 per Sq.ft.	Rs. 7,500 per Sq.ft
Valuation of Apartment allocated to Landowner as per Notification 3/2019		
Reduction for Land Value 1/3rd	Rs. 4,500 per Sq.ft.	Rs. 2,500 per Sq.ft.
Taxable Value for GST	Rs. 9,000 per Sq.ft.	Rs. 5,000 per Sq.ft
Excess of Taxable Value over Construction Cost	**Rs. 6,500 per Sq.ft.**	**Rs. 2,500 per Sq.ft**

Real Estate - Landowner

Taxability

- Valuation – Rule 27 – Consideration not entirely in money
  - 1/3rd Deduction for Land - – **Gujarat HC** MUNJAAL MANISHBHAI BHATT

Real Estate - Landowner

Input Tax Credit

- Invoice by Builder – Developer
- June 2021 amendment to Notn 6/2021 CTR
- It CAN be used for Landowner share apartments disposal of liability

Real Estate – Promoter RCM Liability

- 80% of Inward Supplies Inputs & Input Services from Registered Persons
  - Exclusion – TDR, Electricity, HSD et all, Salary & Wages

Real Estate – Promoter RCM Liability

- Any Shortfall – Pay RCM @ 18%
- On Cement RCM @ 28%
- Above applicable only if opting for 1% or 5%

Other Compliances

- Project wise Accounts & Records
- 80% shortfall RCM shall be on paid on yearly basis

Few other points….

- Resident Welfare Association
  - Rs. 7,500/- Madras HC – Stay

- Corpus
  - Consideration ?

- Works Contract Services post Completion
  - ITC ?

Thank You

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