

**Virtual Refresher Course on
Goods and
Services
Taxes**

**GST for builders and
developers
with special reference to
Joint Development
Agreement**

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Real Estate & Works Contract

- Before GST
- Transition to GST
- Taxability in GST
- Position during 2017-2019
- Position from 2019 April onwards

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Real Estate & Works Contract in GST

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

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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.

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Transition to GST

M/s Builder Ltd entered into a JV for construction of 100 apartments in the land belonging to Land owner Mrs. Landlady.

Contract was entered on 1st April 2014

Construction completed on 1st April 2018

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Taxability of Real Estate – Schedule II

construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, **except where the entire consideration has been received after issuance of completion** certificate, where required, by the competent authority **or after its first occupation**, whichever is earlier

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Taxability of Real Estate

Schedule III

Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building

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Taxability of Real Estate – 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;

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Taxability of Real Estate - RERA

“**real estate project (REP)**” means the

- development of a building or a building consisting of apartments,
or
- converting an existing building or a part thereof into apartments,
or
- the development of land into plots or apartments, as the case
may be,

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Taxability of Real Estate - RERA

“real estate project” means

- for the purpose of selling all or some of the said apartments or plots or building, as the case may be,
- and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

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Taxability of Real Estate - GST

“Residential apartment” - an apartment intended for residential use as declared to the RERA or to competent authority;

“Commercial apartment” - an apartment other than a residential apartment

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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 - RERA

“carpet area” means

- the net usable floor area of an apartment,
- **excluding** the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but
- **includes** the area covered by the internal partition walls of the apartment

Taxability of Real Estate - GST

“**affordable residential apartment**” shall mean, -

- (a) a **residential apartment**
- (b) having **carpet area** not exceeding **60 square meter** in metropolitan cities or **90 square meter** 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 **forty five lakhs rupees**

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No	Situation	
i	Affordable in RREP	1.5%
ia	Other than i above in RREP	7.5%
ib	Commercial in RREP	7.5%
ic	Affordable in REP	1.5%
id	Other than i above in REP	7.5%
le	Ongoing opted for ITC	12%

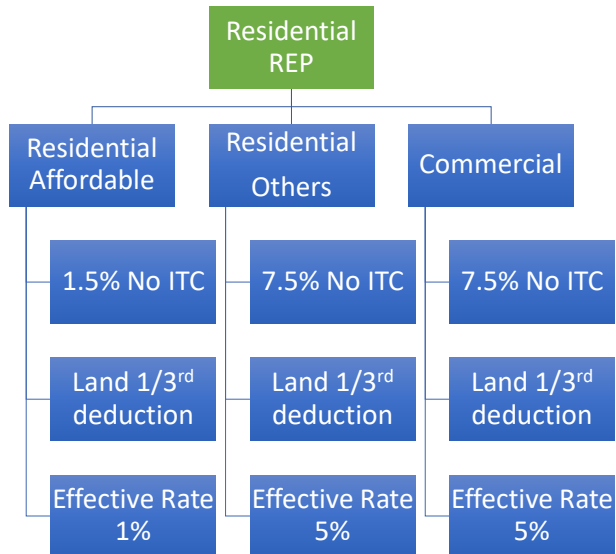
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Taxability of Real Estate – Construction Service



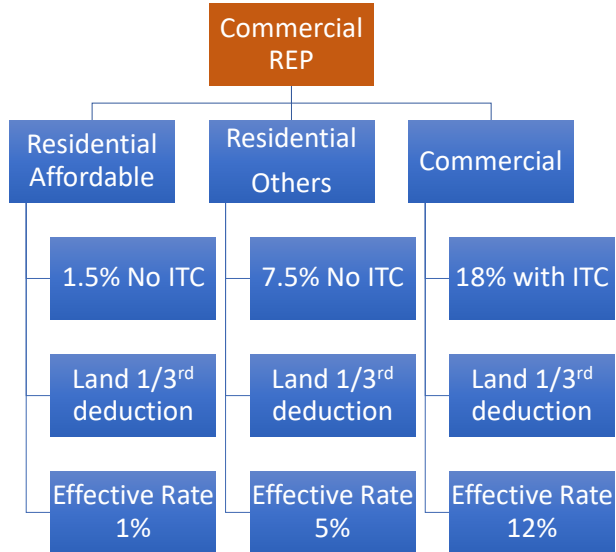
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Taxability of Real Estate – Construction Service



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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

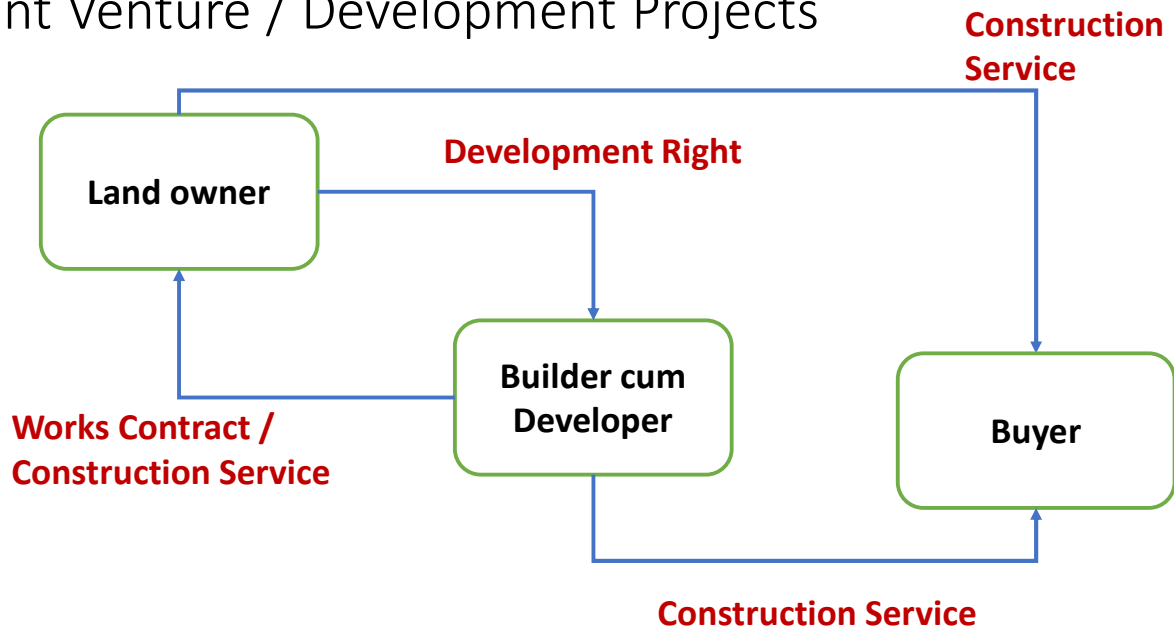
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Joint Venture / Development Projects



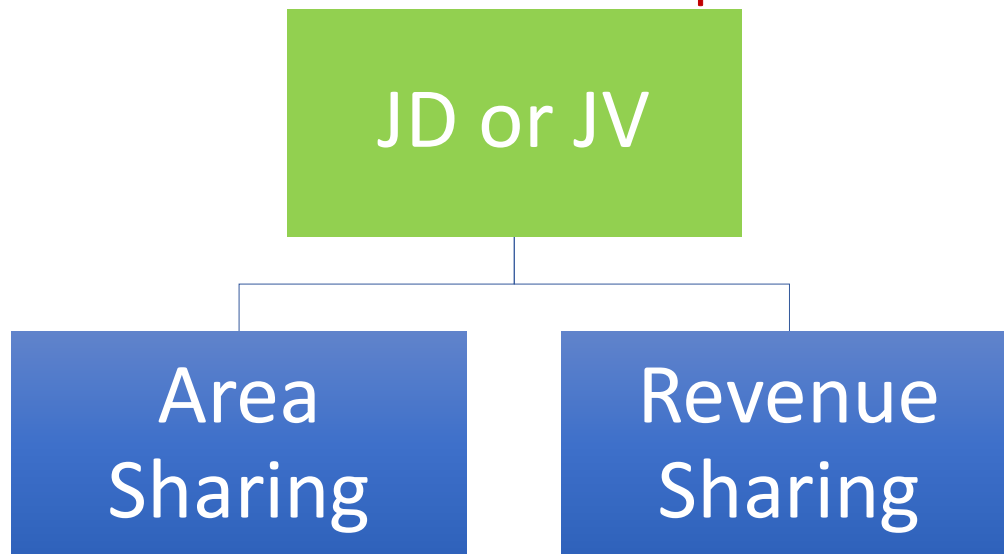
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Joint Venture vs Joint Development



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Joint Venture vs Joint Development

- Taxability of Services
 - JV to Members
 - Member to JV
 - Between Members
- Tax treatment of Cash Call

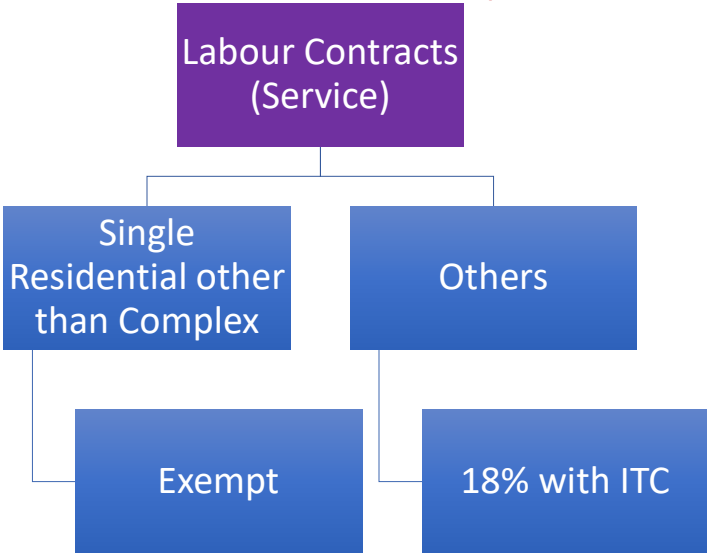
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Labour Contract – Taxability



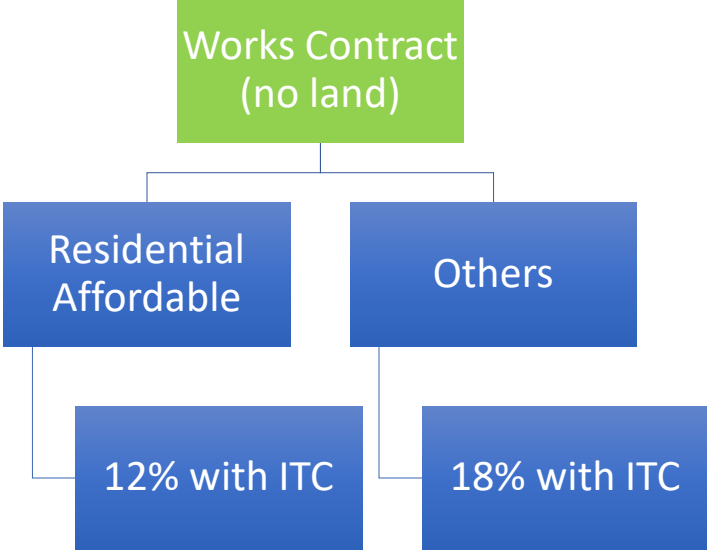
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Taxability of Real Estate – Works Contract Service



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Real Estate - Landowner

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

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Real Estate - Landowner

Taxability

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

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Real Estate - Landowner

Taxability

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

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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 1/3 rd	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.

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Real Estate - Landowner

Input Tax Credit

- Invoice by Builder – Developer
- Can it be used for Landowner share apartments disposal of liability?

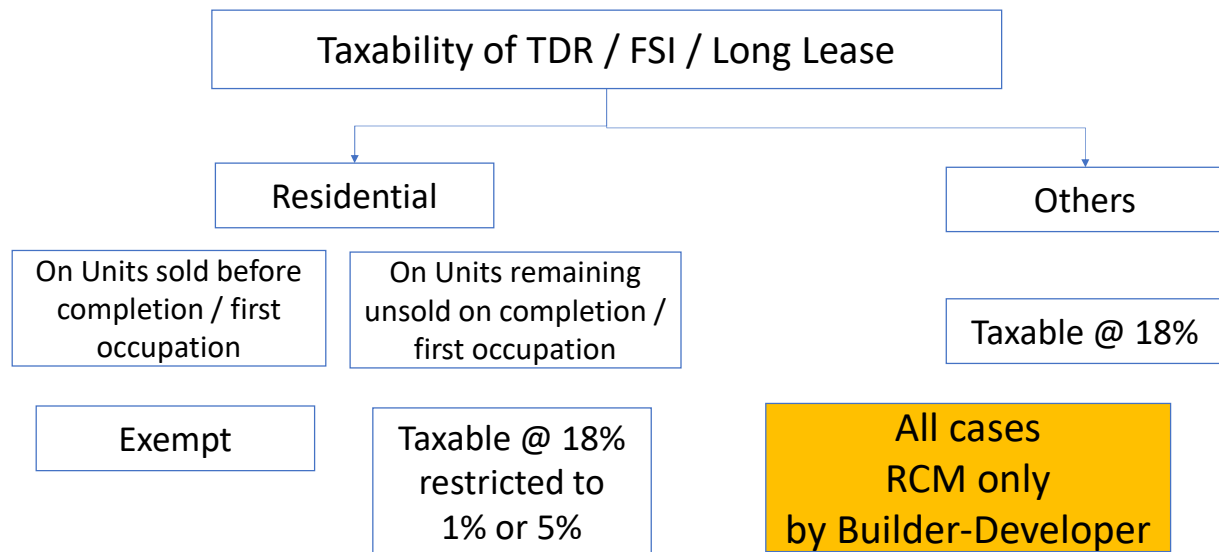
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Real Estate – Promoter RCM Liability



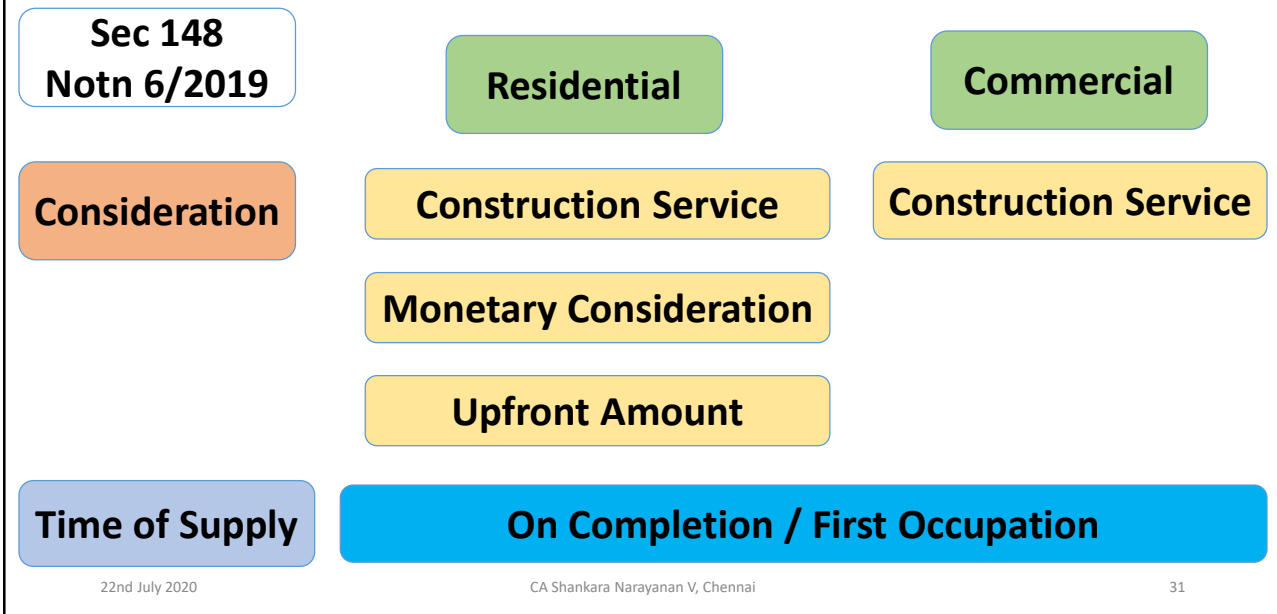
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TDR / FSI / Long Lease – RCM - Time of Supply



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Real Estate – Promoter RCM Liability

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

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Real Estate – Promoter RCM Liability

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

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Other Compliances

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

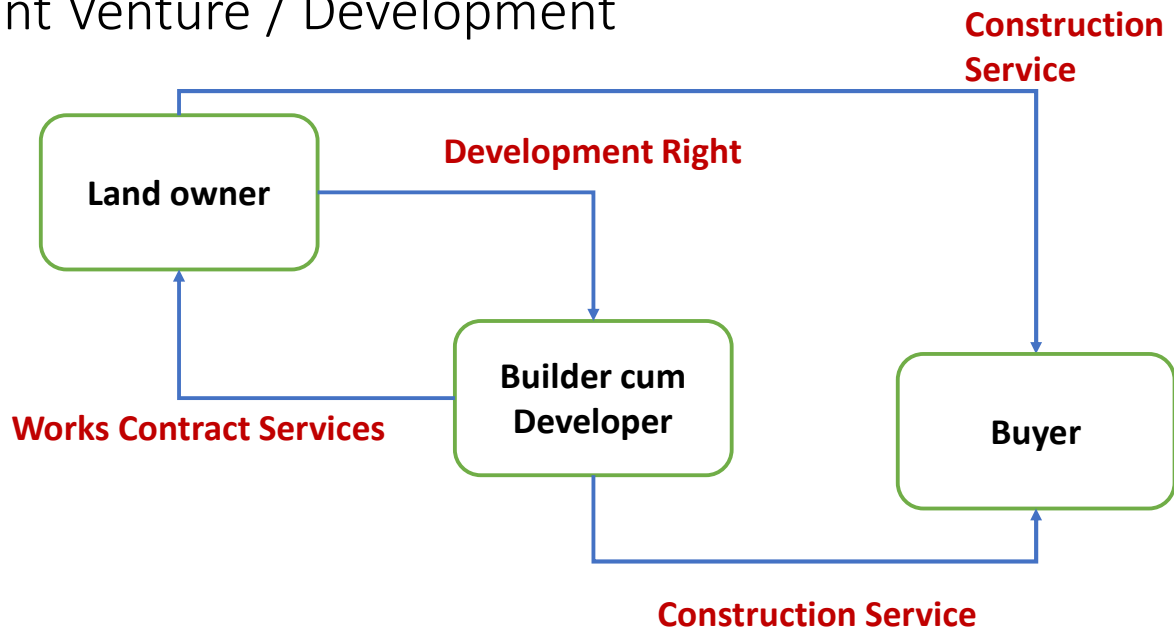
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Joint Venture / Development



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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

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Rule 42 & 43 – ITC Reversal

- Based on Carpet Area
 - Exempted
 - Total (incl. Commercial)

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Few other points....

- Resident Welfare Association
- Corpus
- Works Contract Services post Completion

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Thank you

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