



THE CHAMBER OF TAX CONSULTANTS

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Indirect Tax Study Circle Meeting

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Real Estate Sector - issues and Recent Developments.

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CASE STUDY 1 – JOINT DEVELOPMENT AGREEMENT

Land Owner, Y ('Mr. Y') is an individual who owns certain land in Mumbai. He is interested in the development of the said land however lacks the expertise. ABC Private Limited, ("Developer") is engaged in the business of real estate development and is looking for undertaking a project in Mumbai.

Both the Parties agrees to enter into a Joint Development Agreement ("Development Agreement"). As per the Development Agreement, the entire cost in relation to the project which *inter-alia* includes approvals and construction cost, will be borne by the Developer. The sharing ratio has been agreed, let say 45: 55 (45% Mr. Y and 55% Developer). The Developer is contemplating two options as stated below to fulfill its obligation under the Development Agreement –

Option – I - 'Area Sharing' Model

Earmark the constructed areas and transfer it to Mr. Y as per the Development Agreement. The sale proceeds of the said 40% area shall be recorded in the books of Mr. Y.

Option – II - 'Revenue Sharing' Model

40% of the revenue arising from the sale of the flats will go to Mr. Y.

Other conditions are as follows;

1. The governing document is the Development Agreement between Developer and Mr. Y.

Area Sharing –

Developer will issue an Allotment Letter for each of the flats earmarked to Mr. Y to enable him to sell the flats in the open market.

Revenue Sharing –

2. Developer will execute the MOFA 'Agreement to Sell' for all the flats and Mr. Y will be a confirming party to this agreement.

Queries

- a) Applicability of GST on the transaction between Developer and Mr Y under both the options i.e. Area Sharing and Revenue Sharing –
 - In the hands of Developer
 - In the hand of Mr. Y
- b) In terms of the Notification No. 04/2018 Central Tax (Rate) dated 25.01.2018 what would be the Time of supply under both the option
 - the hands of Developer
 - In the hand of Mr. Y

CASE STUDY 2 – SOCEITY REDEVELOPMENT

1.1. Deepjyoti Co-operative Housing Society ('Society') is a housing society formed in the year 1990 for the Project 'Deepjyoti'. Considering the condition of the buildings, the Society is contemplating the option of redevelopment of the buildings. ABC Group ('Developer') has approached the Society to undertake redevelopment of the property owned by Society by demolition of the existing building and construction of a new building in place thereof. The redevelopment agreement provides for the obligations of the Society / members of the Society and the Company. Generally, the respective obligations are as follows:

Obligations of the members of the Society

- i. To grant development rights to the Company for redevelopment of the Property;
- ii. To vacate the property for carrying out redevelopment activity;
- iii. Depending on the terms of the agreement, the Society should give approval for accepting new members (fresh sale units) as members of the Society and to issue share certificates to them.

Obligations of the Company

- i. Demolition and reconstruction of the Property as per agreed parameters and obtaining necessary approvals for the same;

- ii. Allocation of units among members of the Society free of cost;

Query

- a) Applicability of GST on the transaction between Developer and Society
- b) In case the Society is not registered what would be the implication?
- c) What would be the Time of supply?
 - the hands of Developer
 - In the hand Society

CASE STUDY 3 – AFFORDABLE HOUSING SCHEME

PQR Ltd ('PQR, 'Developer') has a huge land parcel of around 50 acres in thane on which it intends to construct flats. Following is the status -

1. PQR has got the master plan approved by the Authorities for the complete land parcel i.e. 50 acres
2. The total development plan has been divided in 5 phases.
3. Each Phase will have units with different sizes catering to different customer segment.
4. Currently, PQR is treating Phase 1 as the Project for the purpose of registration under RERA and has accordingly applied along with all the necessary compliances / approvals as prescribed under the said ACT.
5. First phase has FSI of approx. 100000 sq. ft. The details of the allocated units are as follows –

| Unit Size (Carpet Area) | FSI used |
|-------------------------|----------|
| 35 sq. mtrs | 30000 |
| 55 sq. mtrs | 30000 |
| 85 Sq. mtrs | 20000 |
| 105 Sq. mtrs | 20000 |

6. Developer wants to avail the concessional rate of GST under the recently inserted Affordable Housing Scheme having infrastructure status [Notification 11/2017 – Central Tax (Rate) dated 28.06.2017 (as amended from time to time)]

Queries

- Whether the Developer can claim concessional rate of GST for Phase 1?
- Whether the units constructed by the Developer qualify as Low-Cost House?
- How to determine the infrastructure status of the scheme?

CASE STUDY 4 – SLUM REHABILITATION SCHEME UNDER SRA (PART A)

Sadguru Developers ('Sadguru') is very active in slum rehabilitation projects ('Project') in and around Mumbai. The Project is approved as a Scheme of the SRA wherein Sadguru acts as developer for Projects and in return of such construction

and associated activities, the Company gets consideration in the form of additional FSI from the SRA, commercial potential of which can be exploited by them. The modus operandi for in-situ rehabilitation of slum dwellers under SRA is as follows

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- a) The Project (to be undertaken by the developer with consent of co-operative society of slum dwellers) is submitted by the developer to the SRA;
- b) The proposal is scrutinized by SRA and accepted, if found in order;
- c) The developer provides alternative accommodation to slum dwellers as per guidelines of the SRA
- d) The construction of rehabilitation building is commenced post receipt of Letter of Intent ('LOI') from the SRA;
- e) Post construction, the SRA issues identity cards to slum dwellers eligible for allotment of unit;
- f) The units constructed by the developer are allotted to slum dwellers by the SRA;
- g) The SRA permits construction on 'Sale Component' as per provisions of the Scheme

Query –

- Whether the construction service towards rehab building liable to GST?
- If yes, can Sadguru avail the credit of the GST paid on rehab building?
- Whether the Project qualifies as in-situ rehabilitation scheme under PMAY and thereby eligible for concessional rate of GST?
- Whether the benefit is available to the buyers in the sale building?

CASE STUDY 5 – SLUM REHABILITATION SCHEME UNDER SRA (PART B)

In a Scheme of SRA, the SRA issues Letter of Intent (LOI) to Sadguru. LOI specify the available FSI in respect of the total Scheme which inter-alia includes the FSI available towards the sale component. The ratio of the rehab area to sale area is approx. 60:40. Further, the size of the units to be constructed and handed over to SRA will be of approx. 30 sq. mtrs.

Query –

- Whether Sadguru can treat the Project as affordable housing scheme?
- How will the utilization of FSI be computed for the purpose of infrastructure status in an SRA Project?

CASE STUDY 6 – CREDIT LINKED SUBSIDY SCHEME

XYZ Developer ('XYZ', 'Developer') has started a new residential project in Virar in which most of the units are 1BHK with ticket size of approx. Rs. 30 – 40 Lacs. The target customer is a mid-income group with annual income of 15-20 lacs. XYZ has

been informed that the government has also included Credit Linked Subsidy Scheme wherein if a flat is purchased by customers with annual income upto Rs. 18 lacs than it may be eligible for concessional rate of GST

Query –

- Whether XYZ can levy concessional rate of GST based on the income proof of the Customer?
- If not, what is the procedure for determination of the 'Beneficiary' for the purpose of availing the concessional rate?
- Whether the benefit is available to all eligible customers who qualifies as 'Beneficiary'?
- Safeguard to be applied by XYZ in respect of flats sold under the CLSS Scheme?

CASE STUDY 7 – LEASEHOLD LAND

Vardaman Developers has been allotted a leasehold land by CIDCO. Vardaman has got the lease deed registered on which the it has paid stamp duty. Vardaman plans to construct high end residential flats on the said leasehold land. It has also got the plan approved by the Municipal Corporation and registered the Project under RERA.

Query –

Considering the fact that project is on a leasehold land, Developer wants to know whether the abatement towards land deduction will be available on sale of flat to the units sold under the Project?

Whether the position will remain same in case the leasehold land is a privately-owned land?

CASE STUDY 8 – CONCESSIONAL RATE OF GST TO SUB-CONTRACTOR

Dunlop Developers is having a project in Pune which fulfill the conditions prescribed for an affordable housing scheme to which concessional rate of GST is available. Dunlop has awarded a 'Lock and Key' contract to Pune Construction Limited (Contractor).

Considering the location of the project and the current market scenario, Dunlop is selling the flats at discount. Due to this, Dunlop is envisaging a situation where there may be an overflow of credit since the output liability will be liable to 8% however the Contractor will charge 18% on the services.

Query –

- Whether the Contractors of Dunlop are also eligible to avail the concessional rate of GST?
- If yes, whether Contractor may also have the possibility of inverted duty structure?