

A low-angle, upward-looking photograph of several tall skyscrapers in a city. The buildings are made of dark glass and steel, with many windows reflecting the sky and some showing interior lights. The perspective creates a sense of height and scale, with the buildings converging towards the top of the frame. The sky is a pale blue with some light clouds.

GST CHANGES - JOINT DEVELOPMENT AGREEMENT

DEVELOPER'S POINT OF VIEW

(CRISP MATERIAL – NOT IN DEPTH)

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BASIC DETAILS

- 1) a) There has been complete change in the GST taxability for real estate sector w.e.f 1st April 2019. Therefore, all related provisions i.e. the rate of GST, person liable to pay GST, timing of GST payment, related exemption etc. are different up till 31st March 2019 and from 1st April 2019.
- 1) b) In this document we shall go through the changes on taxability for joint development agreement before and after 1st April 2019.
- 1) c) **This document discusses compliances only from Developer's point of view & not landowner's.**

FOR REFERENCE ONLY

JDA & ITS TAXABILITY UNDER GST

Joint Development Agreement: An arrangement whereby a landowner contributes his land for the construction of a real estate project and developer undertakes the responsibility for the development of property, obtaining approvals, performing legal formalities and marketing the project. The landowner enters into an agreement and gives a General Power of Attorney to the developer, assigning him duty to obtain the mandatory approvals from various authorities and allows the developer to enter the land and do all necessary things for undertaking the construction.

Types of Joint Development Agreement:

1. Area Sharing Agreement
 - ☐ Pure Residential Project
 - ☐ Pure Commercial Projects
 - ☐ Residential cum Commercial Projects
2. Revenue Sharing
3. Combination of Area & Revenue Sharing

2) A) Taxability of JDA under GST:

Taxable Limbs or Taxable Events in such arrangement are as follows: (Refer Note below)

- ❖ Revenue Sharing or Area Sharing - Transfer of development right from landowner to developer.
- ❖ Area Sharing – Provision of construction services by developer to landowner in lieu of development rights given.

Note: Above taxable events are restricted to the possibility of tax liability arising due to JDA arrangement.

2)A) i) Transfer of Development Right from Landowner to Developer:

Projects as recognized by GST Law (same as RERA):

REP: Any project other than a RREP is a “Real Estate Project”.

RREP: A “Residential Real Estate Project” means a „Real Estate Project” 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 project.

I. POSITION UP TO 31st MARCH 2019:

- a) Type of agreement: Revenue or Area or Both
- b) Type of Construction: Residential or Commercial
- c) Rate of GST: 18 percent. (Supply of “service” being development right supplied or given to developer SAC 9972).
- d) Payable by: Landowner on Forward charge. (NN 11/2017- Other real estate services)
- e) Timing of Liability:
 - i. Monetary Consideration (Revenue Sharing):

As per Section 13 (GST payable in month of issue of Invoice *if invoice issued within 30 days of receipt of payment* otherwise month of receipt of payment, basically immediately on receipt of payment from developer)
 - ii. Non-monetary consideration (Area Sharing):

Up to 24th Jan 2018: As per Section 13.
From 25th Jan 2018 to 31st March 2019: GST was payable when there is transfer of possession or rights in the constructed area by entering in to conveyance deed or similar document e.g. issue of allotment letter. (NN 4/2018)
- f) Value of Supply: As per Rule 27 of the CGST Rules (Open Market Value, Similar Apartment – of like kind, quality value etc.) (with 1/3rd land deduction)

II. POSITION AFTER 1st APRIL 2019:

FOR RESIDENTIAL APARTMENTS IN THE PROJECT

(So, it can be a residential project or commercial project or both, but the following applies to residential apartments)

a) Type of agreement: Revenue or Area or Both (Monetary or Non-Monetary Consideration)

b) Rate of GST: Lower of :

$$\begin{aligned} & \text{Un-booked carpet area of Residential apts. on date of} \\ = & \frac{\text{Issue of OC}}{\text{Total carpet area of **residential Apartments** in project}} \times 18\% \text{ of Value of Development Right} \\ & \text{(Value as per Next Point (i))} \\ = & 1 \text{ or } 5 \text{ percent as applicable of the value of residential apartments remaining} \\ & \text{un-booked on the date of OC (Value as Next point (ii)).} \end{aligned}$$

(How to determine the area which is un-booked on the date of OC?)

An apartment booked on or before the date of issuance of completion certificate or first occupation of the project shall mean an apartment which meets all the following three conditions, namely-

- i. part of supply of construction of the apartment service has time of supply on or before the said date; and*
- ii. consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date; and*
- iii. an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.)*

c) Value of Supply:

- i. Value of Development Right (DR) against non-monetary consideration in the form of residential or commercial apartments shall be deemed to be equal to value of similar apartments charged by promoter from independent buyers nearest to the date on which such DR or FSI is supplied to the promoter.
- ii. Value of portion of residential or commercial apartments remaining un-booked on the date of issuance of OC shall be deemed to be equal to the

value of similar apartments charged by the promoter nearest to the date of issuance of OC.

d) Payable by: Developer under RCM as per above mentioned method.

e) Timing of Liability: Date of completion (Date of issue of CC/OC) *(even if monetary consideration is given – ONLY FOR RESIDENTIAL APTS.)*

(For commercial apartments in a RREP – & monetary consideration given - TOS – shall be immediately. For non-monetary – Date of OC)

f) Exemption: Exemption has been provided for the supply of service of TDR/FSI ON OR AFTER 1st April 2019 for construction of residential apartments (NOT COMMERCIAL APARTMENTS) by a promoter in a project which is booked before the date of issuance of OC/CC.

(Amt. of exemption available for construction of residential apartments in the project:

GST payable on TDR or FSI (incl. addl. FSI) or both for construction of the project X carpet area of the residential apartments in the project
÷ Total carpet area of the residential and commercial apartments in the project)

(NN 04/2019-CT (Rate) dated 29th March 2019)

FOR **COMMERCIAL** PROJECT (REP) or **COMMERCIAL APARTMENTS** in a RREP

- a) Type of agreement: Revenue or area sharing
- b) Rate of GST: 18 percent
- c) Payable by: Developer under RCM (NN 5/2019 dated 29th March 2019)
- d) Timing of Liability:

- i. Monetary Consideration (Revenue Sharing):

As per Section 13 (GST payable in month of issue of Invoice if invoice issued within 30 days of receipt of payment otherwise month of receipt of payment, basically immediately on receipt of payment from developer)

- ii. Non-monetary consideration (Area Sharing):

Date of issuance of OC (NN 6/2019 dated 29th March 2019)

- e) Value of Supply: Full value of Development Right against consideration in the form of construction of apartments shall be deemed to be equal to the total amount charged for similar apartments in the project from the independent buyers nearest to the date on which such development right or FSI is supplied to the promoter less the value of transfer of land i.e. 1/3rd deduction. (NN 3/2019 dated 29th March 2019)

END OF DOCUMENT

In case of any feedback or queries, please mail it to ca.kac.tax@gmail.com

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