

# Finer Issues in Real Estate Sector and Works Contract in GST

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**Abstract:** Real estate industry is one of the major industries performing in growth & development of the country. After a drastic halt in pandemic, Real estate industry has again picked up to rise. Many projects which were shut in middle of 2020, are in the completion stage now. "Currently making up 7% of the GDP, the real estate industry is predicted to increase that to 10% by 20251. The industry in India is expected to be worth USD 1 trillion in the next years as the country strives for a USD 5 trillion economy2.

Though there is lot more potential for this industry to grow but being unorganised, real estate faces many challenges with respect to compliances of taxes, employment, litigations & managing cost profitability of projects etc. It is very crucial for builders & Developers to maintain all the internal & external aspects of a project like Quality of Structure, Cost, Profit margin, Sales, following rules regulations, compliance with Government policies, Labour Management etc.

Few of the recent reforms in Taxation Norms (GST- March 2019) & RERA Regulations play not less than a revolutionary role in Real Estate Industry. Keeping these recent changes in consideration what challenges /Issues are being faced by this industry and various segment of people operating in real estate industry are discussed in brief

**Keywords:** Real estate sector, GST, RERA, Problems & Challenges faced, Concerns, Suggested solutions

## I. INTRODUCTION

Real Estate is one of the booming industries of economy. Because whether its need or for the sack of investment and growth of immovable properties are always seen with potential of development. Any real estate project is generally of 2 years to 10 years of gestation and if we go through last decade to look into changes/reforms made in taxation for real estate, we will find taxation system has been rolled up for four times in last decade with all minor /major changes.

Period	Tax Regime
01.07.2010 to 30.06.2012	Positive list-based service tax and vat applicable for building material supply
01.07.2012 to 30.06.2017	Negative list-based service tax and vat applicable for building material supply
01.07.2017 to 31.03.2019	GST old scheme (Real Estate)
01.01.2019 till date	GST new scheme (Real Estate) Notification dated 29.03.19

While handling any Real Estate project, a project promotor, developer or builder face certain challenges. It may be related to operational management of project (e.g. Labour, maintaining profitability procurement of material etc.) or any compliance related challenge (Related to any act applicable on real estate) here we shall be discussing the practical issues faced by Real Estate industry & Works contracts pertaining to GST Act & RERA

## II. LITERATURE REVIEW-

Harshita Shukla, (2023) "Five key challenges faced by the real estate sector"

Author in this study says that like other industries Real estate is also integral part of global economy so the growth and profitability of this sector. The five factors that impact/ Challenge the real estate sector are (1) Economic Volatility and

Market Fluctuations (2) legal complications and Regularity Hurdles (3) Technological Disruption and Innovation (4) Rising Costs And Affordability Concerns (5) Changing Consumer Preferences And Expectations  
Abhishikta Munjal (2023) “The Indian Real Estate Market - Future and Challenges”

Writer has highlighted the current and upcoming scenarios in real estate industry. After covid 19 sales in real estate market has been shot up and high in Q1 2022 since from 2015 statistic. Writer says currently market prices of input material are too high due to inflation and applicable taxes and real estate being one of the industries where still there is lot of dependency on labour. Two of the crucial things required in real estate sector are Land and funding both going in scarcity leading to lot of challenges.

Avneesh Sood, (2023) “The Impact of GST On the Indian Real Estate Sector”

Real estate is most essential sector in the economy contributing almost 6 to 7 percent of GDP of India, as this sectors contribution is not limited to GDP, Employment but also development of infrastructure. One of another big challenge tis industry faced was Pre and post GST challenges. Pre GST various Taxes were levied and complex structure was there this resolved with one nation tax GST. But since after GST also there are various filed in Real estate sector that require clarity in GST

### **III. ISSUES**

#### **Levy of GST on additional FSI**

Explanation of Issue: - Floor space index (FSI) is maximum permissible floor area that can be built on particular piece of land. If a builder needs additional space to make more floor than he can approach the local municipal authorities. So additional FSI is a “grant or permission” by local municipal authority to land owner or builder/ developer for making additional floor over & above normal FSI. Thus it’s not a “service” but permission or grant, still GST @ 18% is charged on additional FSI/premium FSI.

Suggested solution: - Granting additional FSI is not a service and just a permission, accordingly there shouldn’t be any GST on it, as it increases cost burden for end customer.

#### **No GST applicable, If the immovable property is sold after First Occupation (FO) or Completion Certificate (CC) whichever is earlier- Redundant words**

Explanation of Issue: - Para 5 of schedule III read with para 5(b) of schedule II of CGST Act says “If any consideration for a property is received after issuance of CC or FO whichever is earlier then promotor or builder need not to be liable for GST”.

Here words after its First Occupation (FO) are redundant and confusing. FAQ No.29 issued by CBI&C, circular F No.354/32/2019- TRU dated 7/5/2019 say First Occupation means very First Occupation in a project according with laws, rules & regulations of state/central govt. or any other authority. So just staying in apartment before CC is not “First Occupation” rather it shall be considered illegal if person stays in property before CC/OC”.

Thus, the words “or after First Occupation” in the mentioned para of the act gets redundant/meaningless in act.

Suggested solution: - Redundant words which doesn’t add on to clarity but creates confusions or misinterpretation should be removed

#### **Deeming provision on “Value of Land”**

Explanation of Issue: - As per Schedule III of CGST Act, Value of land is neither considered as sale of goods nor considered as supply of service thus exempt from GST. Deeming provision for Value of Land for the purpose of calculating exemption, shall be deemed to be the 1/3<sup>rd</sup> of the amount charged for a property/flat etc”.

A promotor/builder has no option to take actual value of land in considering the exemption- FAQ No 36 issued by CBI&C, Circular No.F.354/32/2019-TRU dated 7/5/2019.

Here issue are

In many large/metro cities land cost is much higher than 33% of total value. In such cases, the promotor is supposed to pay GST on much higher value ultimately, it’s a burden to end consumer.

Deeming provision cannot override a section and the value cannot exceed as specified in sec 15 of act red along with relevant valuation rules in act (sec 15- value of taxable supply).

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Suggested solution: - Actual value of land should be exempt rather than deeming it to be 33% which may go wrong in various large cities.

**GST on Prime Location Charges (PLC), External Development Charges (EDC), Parking space charges (PSC), Club membership & Maintenance service**

Explanation of Issue: - PLC, EDC, PSC all these types of charges are naturally bundled with the cost of flat, one can say it's a by-product of flat sold. So, charging GST on the flat amount along with the cost of naturally bundled services is absolutely fine. Problem arises with club membership charges which is not naturally bundled service and the maintenance service which is provided by promotor till a housing society or RWA (Resident Welfare Association) is formed. Club membership fees/deposit is taxable @ 18% in the hands of promotors. maintenance service is also charged to GST and promotor is liable for same without exemption of Rs.7500 per month which is available to housing societies & RWA's for each flat owned.

Suggested solution- Club membership deposit/fee should be charged in the hands of club & not to builder as it's not a naturally bundled service with flat. Similar exemption of Rs.7500 per month to promotor/builder shall be provided as its available to any housing society or RWA for each owner of flat. Any amount of maintenance charged above Rs 7500 per month per flat is chargeable to GST @ 18% on the total amount of maintenance changes. Same rule should be applied to promotor as he just a temporary mediator. Government can decide a period till which promotor can collect the maintenance charges.

**Point of taxation in case of Transfer of development rights/FSI/Long term lease before 31.03.2019**

Explanation of Issue: - As per notification 4/2018-CT (Rate), dated 25-1-2018, till 31<sup>st</sup> March 2019 "Liability of promotor and land owner arise at the time when transfer of possession or right in constructed property is transferred by any conveyance deed or similar sort of agreement.

Thus, even if the CC is not obtained but conveyance deed etc. documents is signed, GST liability arises for landlord here the concern that needs to be highlighted is, in my humble view tax liability should not arise even when promotor just identify some flats which shall be given to land owner at later stage. Promotor is required to pay Suggested solution- This is taken care in the act after 01.04.2019

**Reverse charge on TDR/FSI, which was not the case till 31-03-2019**

Explanation of Issue: - Up to 31-03-2019 landowner liability arises when flats are given with possession to landowner by signing conveyance deed. Here 2 issues are till 31-03-2019. It was forward charge i.e. Primary liability is with landowner in case of transfer of development right or FSI but after 31-03-2019 promotor needs to pay GST arising on TDR.

Suggested solution: - In case of TDR, if landowner is a registered person, then primary liability should be on forward charge and not on reverse charge.

**Criteria for Affordable house**

Explanation of Issue: - Affordable Residential Apartment means any apartment whose carpet area is

i) Not exceeding 60 sqmts in metropolitan cities

or

ii) Not exceeding 90 sqmts in non-metro cities

And

iii) Gross amount charged for flat is not more than 45 lakhs

Here issue is, area differentiation is being considered looking into locality of metro & non metro cities but amount limit is not considered. If we look practically then in the range of 45 lakhs, we can get just around 30 sqmts area, both the criteria can't be served in case of metro cities, where as in non-metro cities you get around 90 sqmts area in 45 lakhs.

So, if a middleclass person wants to take more than 1 BHK (i.e., more than 30 sqmts) but not exceeding 60 sqmts area in metro cities. Then he will certainly not fall in category of affordable house.

Suggested solution: - Reconsidering amount limit for metro cities so that it matches for the area of property up to 60 sqmts

ITC (Input Tax Credit) on construction of any immovable property used for business purpose

Explanation of Issue: - ITC is not available for construction of any immovable property which is used for furtherance of business purpose, whether its construction by third party on contract basis or by owner ITC is not available. Even though the constructed property is used for letting out & GST is paid on Rental Income then also ITC is not allowed. There is an interesting case study of “Safari Retreats Private Ltd vs Chief Commissioner of Central Goods & Service Tax (Orissa High Court)<sup>3</sup>. Here Orissa high court allowed to take ITC on constructed property as GST was charged on Rental Income generated from same property but this case is pending with supreme court for attainment. There is various other AAR which disallow ITC on such immovable properties.

Here issue is sec 17 (5)(d) of (GST act restricting the seamless flow of credit injustice & contradictory to rational of GST. Restriction of ITC can be understood where there is breakage of chain in tax, accordingly here ITC should be allowed when GST is charged on the income generated by such immovable asset.

Suggested solution: - ITC should be allowed, awaiting supreme court’s judgement for referred case study.

Petitioner / Applicant	SAFARI RETREATS PRIVATE LIMITED AND ANOTHER
Respondent	CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICE TAX & OTHERS
Court	Orissa High Court
State	<b>Odisha</b>
Date	Apr 17, 2019
Order No.	W.P.(C) No.20463 OF 2018
TR Citation	2019 (4) TR 2241

**No ITC available to Builders /Promotors on purchase of Building Material Supply etc. and also, they are supposed to make 80% of total purchases of Input material (used for construction of property) from a registered dealer ultimately less benefit of the scheme and cost remains almost same for the end user.**

Explanation of Issue: - Promotors/Builders can avail concessional rate of 1% & 5% of GST by satisfying certain condition and few of the condition is

“Input tax credit shall not be availed”.

&

At least 80% Input & Input services (other than TDR /FSI etc.) should be procured from registered dealer. On shortfall promotor/builders liable for paying GST on RCM

For cement, if procured from unregistered dealer shall be liable for GST under RCM.

[Notification 3/2019- Central Tax (Rate) 3/2019- Integrated Tax (Rate) dated 29 March 2019]

Here issue is when ITC benefit is not flown to builder/promotor and 80% of inputs need to be procured from registered dealer and 100% of cement needs to be procured from registered dealer then it inflates the cost of project and the benefit of “affordable housing scheme/concessional GST rates” on affordable houses reduces to the large extent. On top of it we also need to consider that cement was charged @ 12.5% of vat earlier after GST its 28%. This gives a big hit on costing part of flats and ultimate benefit that reaches to consumer is very minimal.

Suggested solution: - Reduction of GST rate on cement and also if same 80/20 rule can be applied in case of cement as well that shall be beneficial for end users.

**How houses in India gets expensive practical issue**

Explanation of Issue: - A builder/promotor has to sell the property at a minimum price of “circle rate” per Sqft. Builders/promotors keep their property rates 2 times/3 times of circle rate but while registering the property a price around “circle rate” is considered and balance payment of flat builder receives in cash. This leads to corruption.

Investors or people with black money buy more due to this & this sort of demand raises the normal prices of flats and also government revenue is corrupted.

Suggested solution: - Any law or ruling that can stop this corruption

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#### IV. OBJECTIVES

Real Estate is a booming industry and directly co-related to growth of the economy. Taxation system is one of the important factor that plays role in growth of an Industry. Sudden outbreak of covid 19 pandemic had led to the implementation of stringent lockdown activities resulted in halt of various construction & development activities. This research intends to analyse the following objectives

Analyse the Challenges faced by Real Estate Industry after drastic amendments in GST Act (Notifications, March 2019) Projects were completely stopped after above GST amendments due to COVID lockdowns. Now Real Estate industry is again into boom, projects are operating at normal capacity. That's a perfect time to analyse pre & post scenario of GST in Real Estate by analyzing the troubles in Real Estate

Observing and finding the problems/Hurdles in Real estate industry and what can be the suggested solutions.

What are the Positive outcomes of GST & RERA implementation

#### V. RESEARCH METHODOLOGY

Research methodology is the way a researcher intends to tell how he or she has carried her research and tried to prove his stated facts. There are various ways of conducting research methodology we have selected Interview & Survey methods to conduct this research. Data collection method was through interview Questionnaire. 12 Interviews were done and 75 questionnaires were collected as research data from Builders and Buyers.

#### VI. DATA COLLECTION, SUGGESTIONS AND RECOMMENDATION

Based on data collected in interview and questionnaires we came to understanding that 98% of builder's promoters developers were aware of the New notifications of GST applicable to real estate sector. 55% Builders, Promoters & developers were with the opinion that this scheme is challenging to understand as various rules regulation are applicable on different aspects of real estate, different rates and forward and reverse charge mechanism makes it very complicated to understand. 68% of Builders, Promoters & developers felt this scheme has organised their projects in more efficient way. 25% Builders, Promoters & developers agreed increase in profit margins due to this scheme launch 35% were not sure on this. 37% Builders, Buyers, Promoters & developers felt this scheme to be overall beneficial for them, though the compliance mechanism has increased after implementation of GST & RERA but at the same time ratio of transparency has increased for buyers, economic opportunities and market variants.

#### VII. CONCLUSION

RERA and GST have contributed a lot for bringing up the transparency at the end of buyers investors and economy as whole. There are still some lacunas with respect to managing things on builders and contractors side which impacts the other variants of the real estate industry and ultimately the economy. Some of the burning issues are being highlighted. GST has various effects in different industries with different products. Government policy with respect to GST in real estate was to give benefit to a common buyer to buy an affordable house at cheaper rates, more rule, regulations and extra compliances for builders & developers was to streamline the industry and to be par with RERA Act as well. Overall GST has brought up lot of positive changes in Real Estate industry with respect to increased revenue (market size), GDP, FDI and compound annual growth rate. According to a market report of Real Estate industry "Real Estate Market is expected to exhibit CAGR of 9.2% during 2023 to 2028" (Imarcgroup.com). Accordingly, GST has overall positive impact on economic growth with respect to real estate industry.

#### REFERENCES

- [1]. Harshita Shukla, (2023) "Five key challenges faced by the real estate sector"
- [2]. Abhishikta Munjal (2023) "The Indian Real Estate Market - Future and Challenges"
- [3]. Avneesh Sood, (2023) "The Impact of GST On the Indian Real Estate Sector"
- [4]. <https://www.clicbrics.com/blog/challenges-in-real-estate-industry>
- [5]. <https://www.greenscapedgroup.co.in/blog/indian-real-estate-sector-and-the-current-challenges/>
- [6]. [https://old.cbic.gov.in/resources//htdocs-cbec/gst/FAQ\(II\)-Real-estate-sector-1405.pdf](https://old.cbic.gov.in/resources//htdocs-cbec/gst/FAQ(II)-Real-estate-sector-1405.pdf)
- [7]. <https://taxguru.in/goods-and-service-tax/hc-allows-set-off-itc-received-construction-gst-payable-rent.html>