

GST शास्त्र-Redevelopment agreements – Taxability & other aspects (Part 2)

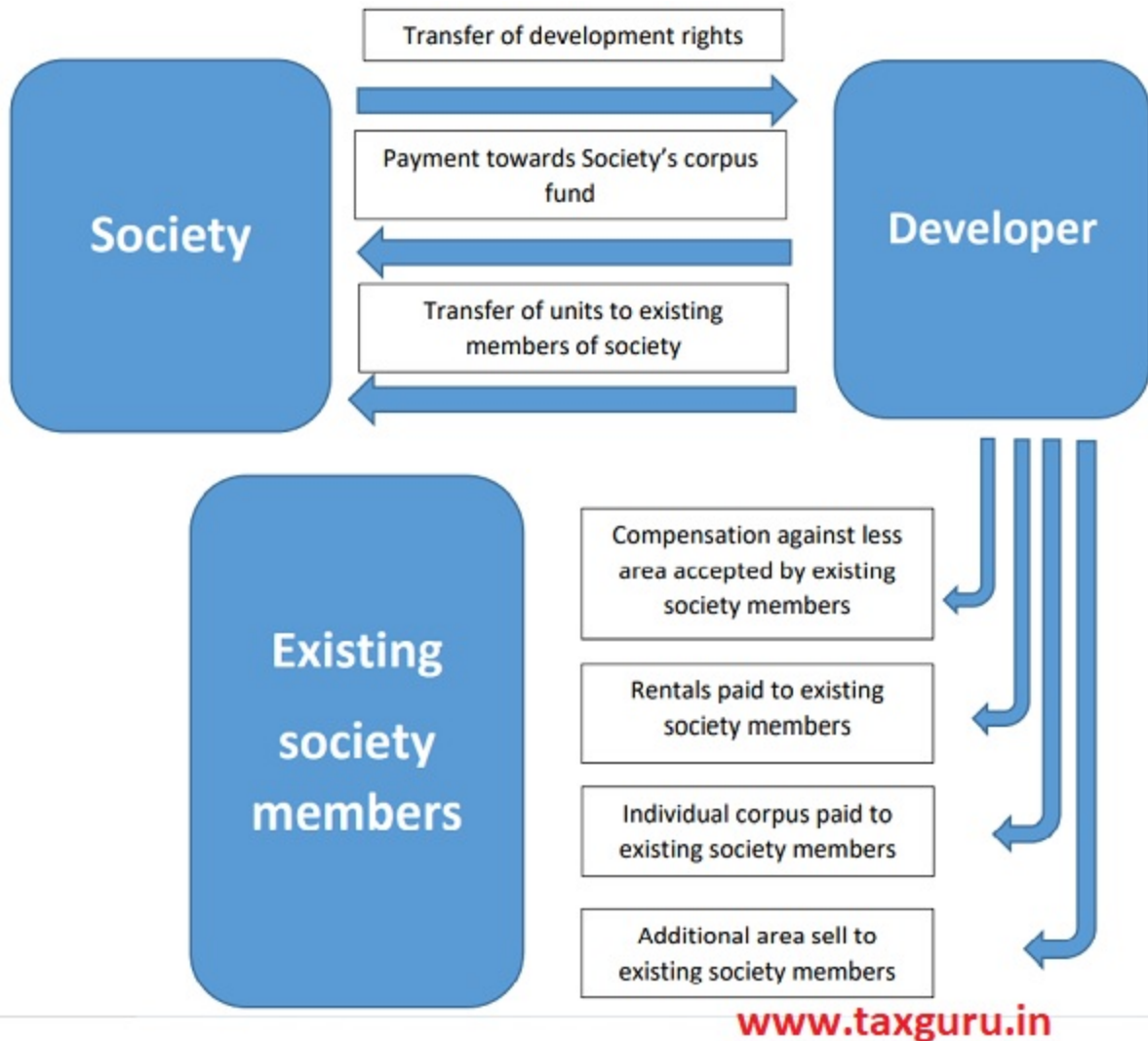
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CA Yogesh Ingale 26 Apr 2021 2,724 Views 1 comment Goods and Services Tax | Articles
Introduction :

In the real estate industry, redevelopment agreements are often observed model. Societies, after few years of constructions, undergo redevelopment of the property. In such type of model, generally 3 parties are involved viz. society, developers and existing society members.

In 1st part, **GST शास्त्र : Redevelopment agreements - Taxability and other aspects (Part 1)**, we have analysed flow of transactions & 1st limb of transaction viz., transfer of development rights. In this article, we are going to analyse 2nd and 3rd limb of transactions. Flow of transactions have been re-produced for easy reference of the readers.

Flow of transactions :



Part II : Tax implications on 2nd limb of transaction i.e Supply of construction service - Rate of tax, Exemption, Valuation, Time of supply, additional points

Supply of construction service

a) Rate of Tax –

As per **notification no. 3/2019 – Central Tax (Rate) dt. 29th March, 2019**, new rates have been specified.

Applicability of new tax rates are as follows :-

Category of apartments	Definition	Tax rate
Affordable	Apartments having carpet area of upto 90 sq. mtr (968.75 sq. ft) in non-metro cities / upto 60 sq. mtr (645.84 sq. ft) in metro cities and having gross amount charged upto Rs. 45 lakhs	1% (Without ITC)

Non-affordable	Other than affordable apartment	5% (without ITC)
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b) Exemption – No exemption to construction service provided by developer to landowner

c) Valuation –

Valuation mechanism has been provided in **notification no. 3/2019 – Central Tax (Rate) dt. 29th March, 2019** as follows –

As per paragraph 2A of the said notification, Where a registered person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the **value of construction service** in respect of such apartments shall be deemed to be equal to the **total Amount charged for similar apartments** in the project **from the independent buyers**, other than the person transferring the development right or FSI (including additional FSI), **nearest to the date on which such development right or FSI (including additional FSI) is transferred** to the promoter, **less the value of transfer of land**, if any as per paragraph 2.

As per paragraph 2, value of land is deemed to be 1/3rd of the gross amount charged.

Hence, such value shall be calculated considering per square foot rate of **value of similar apartments** charged by the promoter **nearest to the date on which such development right is transferred**.

d) Time of supply -

As per entry (i) read with entry (d) of **notification no. 6/2019 – Central Tax (Rate) dated 29th March, 2019**, time of supply shall arise on the date of issuance of completion certificate for the project or on its first occupation whichever is earlier.

Hence, liability payable is deferred as prescribed above.

Part III : Tax implications on 3rd limb of transaction i.e transaction between developer and existing members of society

Following transactions will take place between developer and existing members of society –

(i) Rentals paid to existing society members as per type of units

(ii) Individual corpus paid to existing society members

(iii) Additional area sell to existing society members

(iv) Less area purchase from existing society members

Let's analyze these transactions one by one:

(i) Rentals paid to existing society members as per type of units

In this case, **service provider is society member and service recipient is developer.**

- If society member is registered under GST, he shall charge GST on rentals received. GST to be charged @18% being service in the nature of relinquishment of rights or tolerating an act.

- However, as per section 22, as mentioned above, if aggregate turnover in a financial year does not exceed Rs. 20 / 40 lakhs, as the case may be, such person is not required to take registration.

(ii) Individual corpus paid to existing society members

Same as point no (i)

(iii) Additional area sell to existing society members

In this case, **service provider is developer and service recipient is society member.**

Such additional area purchase like an independent sale by developer is akin to sale area by him to his independent purchasers.

Hence, in this case, GST to be charged as follows –

Category of apartments	Definition	Tax rate
Affordable	Apartments having carpet area of upto 90 sq. mtr (968.75 sq. ft) in non-metro cities / upto 60 sq. mtr (645.84 sq. ft) in metro cities and having gross amount charged upto Rs. 45 lakhs	1% (Without ITC)
Non-affordable	Other than affordable apartment	5% (without ITC)

(iv) Compensation against less area accepted by existing society members

In this case, **service provider is society member and service recipient is developer.**

- If society member is registered under GST, he shall charge GST on rentals received. GST to be charged @18% being service in the nature of relinquishment of rights or tolerating an act.

- However, as per section 22, as mentioned above, if aggregate turnover in a financial year does not exceed Rs. 20/ 40 lakhs, as the case may be, such person is not required to take registration.

*(Above article was written on 16th April, 2021 & jointly authored by CA. Yogesh Ingale, CA. Tushar Ajmera and CMA. Anuj Chordiya. Views expressed are strictly personal. **Analysis of amendment in clause (aa) of section 7 will be done separately.** For any queries & feedback, reach us at yogesh.ingale@talentax.in)*

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