



**Minutes of the 34<sup>th</sup> GST Council Meeting held on 19<sup>th</sup> March, 2019**

The 34<sup>th</sup> Meeting of the GST Council (hereinafter referred to as 'the Council') was held on 19<sup>th</sup> March, 2019 through video conference under the Chairpersonship of the Hon'ble Union Finance Minister, Shri Arun Jaitley (hereinafter referred to as the Chairperson). A list of the Hon'ble Members of the Council who attended the meeting is at **Annexure 1**. A list of officers of the Centre, the States, the GST Council and the Goods and Services Tax Network (GSTN) who attended the meeting is at **Annexure 2**.

2. The following agenda items were listed for discussion in the 34<sup>th</sup> Meeting of the Council:

1. Confirmation of the Minutes of 33<sup>rd</sup> GST Council Meeting held on 20<sup>th</sup> and 24<sup>th</sup> February 2019
2. Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government
3. Decisions of the GST Implementation Committee (GIC) for information of the Council
4. Decisions/Recommendations of the IT Grievance Redressal Committee for information of the Council
5. Recommendations of the Joint Committee (Fitment Committee and Law Committee) on Real Estate Sector
6. Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal
7. Any other agenda item with the permission of the Chairperson  
(i): Approval of the draft Removal of Difficulty Order for giving effect to the decisions of 32<sup>nd</sup> GST Council Meeting for MSME sector (including small traders)
8. Date of the next meeting of the GST Council

**Preliminary Discussion:**

3. The Hon'ble Chairperson welcomed the Members for the 34<sup>th</sup> Meeting of the Council. He stated that before taking up the Agenda items, there were some important formal items, which he wished to take up. He placed on record the appreciation of the services of late Manohar Parrikar to the GST Council. He was the Chief Minister of Goa and former Defence Minister of India and also held the portfolio of Finance Minister of Goa and attended 13<sup>th</sup> and 22<sup>nd</sup> Meetings of the Council. He stated that it was unfortunate that he passed away on 17<sup>th</sup> March, 2019 and, on behalf of the Council, he placed on record his deepest condolences towards the family and expressed that the departed soul may rest in peace.

3.1. The Hon'ble Chairperson stated that he was informed that due to redistribution of work in the State of Karnataka, Shri Krishna Byre Gowda, the erstwhile Member of the Council, had been replaced by Shri Bandeppa Kashempur, Minister for Co-operation, Karnataka. He observed that Shri Byre Gowda attended most of the meetings of the Council and made very valuable contributions and always displayed a very positive attitude because of which he earned high respect of his peers and colleagues. On behalf of the Council, the Hon'ble Chairperson placed on record the deepest appreciation for the services rendered by Shri Krishna Byre Gowda to the Council. He added that since the new Council Member from

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Karnataka could not participate in this meeting, he would be formally welcomed when he came to attend the Council meetings.

3.2. The Hon'ble Chairperson further stated that it was a matter of pride and happiness that on 15<sup>th</sup> March, 2019, the Hindu BusinessLine gave to the GST Council an award of 'Changemaker of the Year'. He accepted the award on behalf of the Council from the former Prime Minister of India, Dr. Manmohan Singh. The Hon'ble Chairperson displayed the Trophy and the Certificate received and informed that he had advised the Council Secretariat to make required number of copies of the Certificate and to send copies to each State for the Hon'ble Council Member of the State and other relevant functionaries of the State dealing with GST matters. With these remarks, he invited the Secretary to take up the formal Agenda items.

**Agenda Item 1: Confirmation of the Minutes of 33<sup>rd</sup> GST Council Meeting held on 20<sup>th</sup> and 24<sup>th</sup> February 2019**

4. The Secretary introduced this Agenda item and stated that the Minutes of the 33<sup>rd</sup> GST Council Meeting (hereinafter referred to as 'the Minutes') were circulated in advance and two comments had been received till now.

4.1. He informed that a communication had been received from the State of Maharashtra to slightly change the version of the Hon'ble Minister from Maharashtra recorded in paragraph 25.23 of the Minutes and for the sentence (last four lines) starting with "He suggested ..." and ending with the words "...by including the cost of land", it was requested to delete the following portion "rather than by including the cost of land" as the Hon'ble Minister did not refer anything about the cost of land. The proposed change, in strike through mode, would be as follows: 'He suggested that these two models should be considered by the Council for being taxed only on the construction cost ~~rather than by including the cost of land.~~' The Council agreed to the suggestion.

4.2. The Secretary further informed that a communication had been received from the State of Rajasthan to make a change in the version recorded in paragraph 25.24 of the Minutes of the Hon'ble Minister from Rajasthan, by substituting the expression "He also suggested that criterion for affordable housing should be housing with carpet area of 100 sqm or 120 sqm and houses with a carpet area lower than this should be exempt from tax." with the following: 'He also suggested that it should be left to the State to decide what area may be allowed for affordable and non-affordable housing projects.' The Council agreed to this suggestion.

4.3. The Hon'ble Minister from West Bengal stated that during the last Meeting of the Council on 24<sup>th</sup> February, 2019, at the fag end of the discussion on Agenda item relating to real estate sector, he had suggested to consider making the new proposed taxation rates for real estate sector optional for the on-going projects. He requested that his view should be suitably incorporated in the Minutes. The Council agreed to this suggestion.

5. For **Agenda item 1**, the Council decided to adopt the Minutes of the 33<sup>rd</sup> Meeting of the GST Council with the following change:

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5.1. In paragraph 25.23 of the Minutes, to modify the version of Hon'ble Minister from Maharashtra to read as follows: 'He suggested that these two models should be considered by the Council for being taxed only on the construction cost'.

5.2. In paragraph 25.24 of the Minutes, to modify the version of the Hon'ble Minister from Rajasthan by replacing the sentence "He also suggested that criterion for affordable housing should be housing with carpet area of 100 sqm or 120 sqm and houses with a carpet area lower than this should be exempt from tax." with the following: 'He also suggested that it should be left to the State to decide what area may be allowed for affordable and non-affordable housing projects.'

5.3. To suitably incorporate in the Minutes of the Council Meeting on 24<sup>th</sup> February, 2019, in the Agenda item relating to real estate sector, that the Hon'ble Minister from West Bengal suggested to consider making the new proposed taxation rates for real estate sector optional for the on-going projects.

**Agenda Item 2: Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government**

6. The Secretary stated that Notifications, Circulars and Orders issued after 20<sup>th</sup> February, 2019 (i.e. the date of 33<sup>rd</sup> GST Council Meeting) and till 12<sup>th</sup> March, 2019 were required to be ratified by the Council. He invited Shri Upender Gupta, Principal Commissioner (GST Policy Wing), CBIC, to apprise the Council about the details. The Principal Commissioner (GST Policy Wing), CBIC, made a presentation on this issue, which is attached as **Annexure 3** of the Minutes. The Secretary proposed that the Council may ratify the Notifications, Circulars and Orders. The Council agreed to the same.

7. For **Agenda item 2**, the Council approved the deemed ratification of the following Notifications, Circulars and Orders issued by the Central Government after 20<sup>th</sup> February, 2019 (the date of 33<sup>rd</sup> Council Meeting) and till 12<sup>th</sup> March, 2019 which are available on the website, [www.cbic.gov.in](http://www.cbic.gov.in).

Act/Rules	Type	Notification/Circular/Order Nos.
CGST Act/CGST Rules	Central Tax	9 to 14 of 2019
	Central Tax (Rate)	2 of 2019
UTGST Act	Union territory tax	2 of 2019
	Union territory tax (Rate)	2 of 2019
Circulars	Under the CGST Act	92 to 93 of 2019
ROD Orders	Under the CGST Act	3 of 2019
	Under the UTGST Act	2 of 2019

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7.1. The Notifications, Circulars and Orders issued by the States which are *pari materia* with above Notifications, Circulars and Orders were also deemed to have been ratified.

**Agenda Item 3: Decisions of the GST Implementation Committee (GIC) for information of the GST Council**

8. The Secretary invited the Principal Commissioner (GST Policy Wing), CBIC, to brief the Council on this Agenda item. The Principal Commissioner (GST Policy Wing), CBIC, made a presentation, which is attached as **Annexure 3** to the Minutes. He stated that after the 33<sup>rd</sup> Council Meeting, the GIC met once and took certain decisions relating to amendments to CGST Rules, issue of circulars clarifying certain issues and the deferment of e-Wallet scheme and extending exemption from IGST and Cess on the imports made under Advance Authorisation/EPCG/EOU schemes up to 31<sup>st</sup> March, 2020. He added that one decision of GIC was taken by circulation to settle an additional IGST amount of Rs.20,000 crore on *ad hoc* basis. He stated that the decisions of the GIC were placed before the Council for information.

9. For **Agenda item 3**, the Council took note of the decisions taken by the GIC between 24<sup>th</sup> February 2019 (date of conclusion of 33<sup>rd</sup> GST Council meeting) and 12<sup>th</sup> March, 2019.

**Agenda Item 4: Decisions/recommendations of the IT Grievance Redressal Committee for information of the Council**

10. The Secretary invited the Principal Commissioner (GST Policy Wing), CBIC, to brief the Council on this Agenda item. The Principal Commissioner (GST Policy Wing), CBIC, made a presentation relating to the decisions/recommendations of the 5<sup>th</sup> Meeting of the IT Grievance Redressal Committee (ITGRC) held on 5<sup>th</sup> March, 2019 (attached as **Annexure 3** to the Minutes). He informed that during this meeting, 224 TRAN-1 cases were deliberated and ITGRC decided to allow 80 cases. The Secretary suggested that the Council may take note of the decisions of ITGRC. The Council agreed to the same.

11. For **Agenda item 4**, the Council took note of the decisions/recommendations of the 5<sup>th</sup> Meeting of the IT Grievance Redressal Committee.

**Agenda Item 5: Recommendations of the Joint Committee (Fitment Committee and Law Committee) on Real Estate Sector**

12. Introducing this agenda note, the Secretary stated that a joint meeting of the Fitment Committee and the Law Committee took place on 6<sup>th</sup> March, 2019 to discuss the operational issues. The Joint Committee consisted of representatives of 9 States in the Law Committee and 11 States in the Fitment Committee. Decisions of the joint meeting were circulated to Members of both the Committees on 7<sup>th</sup> March, 2019. The draft notifications, rules and documents were also prepared as per the decisions of the joint meeting of the Committees and were circulated on 11<sup>th</sup> March, 2019 requesting comments/ suggestions by 13<sup>th</sup> March, 2019. Comments received from members were examined jointly by both the co-convenors of the Fitment Committee and the amendments proposed in the draft of the Notifications, Rules and the Circulars were finalized. Thereafter, final draft notifications, rules and documents were forwarded to GST Council Secretariat on 15<sup>th</sup> March, 2019.

12.1. He further stated that that since the Model Code of Conduct due to elections was in force, a reference was made to the Election Commission on 12<sup>th</sup> March, 2019 for their

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permission to implement the decisions of the 33<sup>rd</sup> Council Meeting regarding the GST rates on Real Estate Sector (1% and 5%) and the issue of Removal of Difficulty Order for Composition Scheme for suppliers of service (6% tax rate). Approval from Election Commission was received on 14<sup>th</sup> March, 2019 to implement the same. However, the Election Commission had imposed certain conditions that the decisions of today's meeting approving the procedure should be restricted to the substantive decisions already taken and no new decision could be taken. Further, it was also mentioned by them that no briefing to public or press on today's meeting should be done by any political functionary. The Hon'ble Chairperson thereafter stated that the Secretary may do the briefing.

12.2. The Secretary then requested Shri Manish Sinha, Joint Secretary, TRU II to apprise the Council on the main points relating to Draft Rules, Circulars and Notifications placed before the Council. JS TRU II made a presentation on this issue, which is attached as **Annexure 4** of the Minutes. The salient points of the presentation are summarized below: -

12.3. While making presentation, JS TRU II stated that as the Secretary had already informed the Council, the decisions of the Council had to be confined to the operationalization of the decisions of the 33<sup>rd</sup> GST Council Meeting which were as follows:

- a. GST should be levied at effective GST rate of 5% without Input Tax Credit (ITC) on residential properties other than affordable segment;
- b. GST should be levied at effective GST rate of 1% without ITC on Affordable Housing properties.
- c. The definition of 'affordable housing' was also decided to cover a residential house/flat of carpet area of upto 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities with value upto Rs. 45 lakh (for both metropolitan and non-metropolitan cities).
- d. Metropolitan Cities were decided to include Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).
- e. Tax on development right, such as TDR, JDA, lease (premium), FSI shall be exempted only for under construction residential property on which GST was payable.
- f. The new rate to become applicable from 1<sup>st</sup> of April, 2019.
- g. Details of the scheme would be worked out by an officers' committee and shall be approved by the GST Council in a meeting to be called specifically for this purpose.

12.4. JS TRU II thereafter stated that the Meeting of the joint committee, that took place on 6<sup>th</sup> March, 2019, used the credit flow data and various permutation of headline tax rates to arrive at the effective rates of 1% and 5% for the Real Estate Sector. The overview of the Drafts circulated from Document No 1 to 7 were explained in the presentation. The first document i.e. **Document 1** was not only to notify the rates for affordable residential apartments and other than affordable residential apartments by amending the Notification No. 11/2017- CT (R), but it also laid down the method of accounting for achieving the threshold limit of 80% purchases from the Registered Suppliers. It also sought to create a new rate of 18% on supply of services other than TDR, FSI (including additional FSI), Long Term Lease by an unregistered person to a promoter with conditions as mentioned therein. **Document 1A** contained illustrations to transitional provisions while **Document 2** sought to exempt supply of TDR, FSI (including additional FSI), Long Term Lease of land (against upfront payment in the form of premium, salami, development charges etc.). Similarly, **Document 3** was for notifying tax liability on promoter under sub-Section (3) of Section 9 (RCM) on receipt of

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services from unregistered person, namely Transfer of Development Rights or FSI (including additional FSI) and Long Term Lease of Land (against upfront payment in the form of premium etc.). **Document 4** was to notify shifting of the date on which liability to pay tax on TDR, FSI and Long-Term Lease would arise to the date of issuance of Completion Certificate for construction of Real Estate Project (REP) / Residential Real Estate Project (RREP) under Section 148 of CGST Act. **Document 5** was for invoking Reverse Charge Mechanism (RCM) under Section (4) of Section 9 of CGST Act, to make the promoter liable to pay tax on shortfall from minimum purchase of specified goods and services from registered suppliers under RCM. **Document 6** was to notify a new rate of 18% on supply of any goods other than Capital Goods and Cement falling under chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975), by an unregistered person to a promoter by amending notification No. 1/2017- CTR, while **Document 7** was amendment to Rule 42 and 43 of CGST Rules for Real Estate Sector.

12.5. He thereafter explained about the applicable rate of tax in various situations as per the decision of the Council translated into the draft legislation and various conditionalities attached to it. He further explained that the definition of apartment, promoter, Real Estate Project (REP), carpet area etc. had been adopted from Real Estate (Regulation and Development) Act, 2016. Further, Metropolitan cities for the purpose of this scheme were Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) and he requested States to send inputs on Geographical limits to be prescribed by Centre and States for the Metropolitan Areas, in case any modification was desired.

12.6. He also explained the details regarding the TDR/ JDA, FSI, Long Term Lease etc. as occurring in the draft proposal to achieve tax parity between under construction and ready to move property in as much as supply of TDR, FSI, Long Term Lease (premium) of land by a landowner to a developer was proposed to be exempted with certain conditions like,-

- i. Constructed apartments that were to be sold before issuance of completion certificate; tax was to be paid on them (either 1% or 5%, as the case might be).
- ii. Exemption of TDR, FSI, Long Term Lease (premium) shall be withdrawn in case the flats were sold after issue of completion certificate.
- iii. Such withdrawal of exemption should be limited to 1% of value in case of Affordable Houses and 5% of value in case of other than Affordable Houses.

This would achieve a fair degree of taxation parity between under construction and ready to move property.

12.7. He further explained that the liability to pay tax on TDR, FSI, Long Term Lease (Premium) should be shifted from land owner to builder under Reverse Charge Mechanism (RCM) to address the problem of cash flow. Further, the builder shall be liable to pay tax on TDR, FSI and long-term lease (premium) to the extent these rights were used in construction of flats that were sold after issuance of Completion Certificate. The date on which builder shall be liable to pay tax under RCM in respect of flats sold after issuance of completion certificate was also being shifted to the date of issue of completion certificate.

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12.8. The transitional issues were also explained to the Council in the presentation for computing ITC to be allowed or lapsed. he explained about the proposed amendments to GST Rules *vis-à-vis* (a) finalization of ITC at the end of the project as well as financial year wise and (b) apportionment of ITC based on area of commercial and residential apartments in the project.

12.9. He, thereafter, placed the drafts of Notifications, Rules and Orders as explained above for approval of the Council so that once approved, the same could be issued after vetting by the Ministry of Law and Justice, Government of India, to be effective from 01<sup>st</sup> April, 2019. He further added that inputs / comments / suggestions received from States in relation to the draft notifications etc. shall be examined in consultation with the Ministry of Law and Justice, Government of India at the time of vetting. He also suggested that proposals received from the States of Maharashtra (on value cap, JDA/ SDA etc.) and Punjab (exempting lease of land for setting up of industrial parks), might be referred to GoM on Real Estate for examination or to the Fitment Committee in view of the operation of the Model Code of Conduct as these issues were not connected to the decision of the 33<sup>rd</sup> GST Council Meeting.

12.10. He further explained that as far as the proposition from the State of West Bengal was concerned, the case study had not been presented in the slide because it was in extreme situations where Hon'ble Minister from West Bengal had an apprehension that the price of Affordable Housing might go up. The Hon'ble Minister from West Bengal immediately corrected him and stated that his letter should not be mis-represented as he had never mentioned that it was an extreme case. In fact, he had mentioned that the calculation of price rise was based on a survey done by the officials of West Bengal Government.

12.11. The Hon'ble Chairperson invited the views of the Members of the Council on the draft Notifications, amendments to Rules, clarifications etc. The Hon'ble Minister from Maharashtra stated that he had proposed three issues for consideration of the Council in the last meeting also and which required further discussion. These were:

- a. Firstly, Mumbai was such a city where people converged from all over the country in search of jobs and hence slums such Dharavi, the biggest slum of Asia had come up which was also a concern of the country. Further, there were many buildings which were as old as 150 - 200 years and during rainy season, some of these buildings collapsed leading to loss of life and property. Maharashtra Government had decided for rehabilitation and redevelopment of these to a great extent through Slum Rehabilitation Authority (SRA) or redevelopment by developers which did not yield any significant return to the developer as he had to hand over houses under SRA to the original residents without any charge while redevelopment was entirely his responsibility. So, the rate of tax on this type of construction should be 1% and not 5%.
- b. Secondly, Mumbai was the most densely populated Metropolitan City having 21,205 persons per sq.km. When one talked of smart city, it implied that the work place should be near to the residence otherwise most of the time was lost in travelling. In view of the same, the Maharashtra Government had decided to provide affordable houses near the work places in Metropolitan area. However, it was difficult to stick to the guidelines of area upto 60 sqm and value upto Rs. 45 lakh, in view of Mumbai being the costliest city in India and ranking 13<sup>th</sup> in the world. Hence, the threshold of Rs. 45 lakh for Affordable Houses may be raised to Rs. 75 lakh in case of Mumbai MMR.

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- c. Thirdly, Real Estate Sector in Mumbai was facing crisis. Only 10% to 20% flats were being sold during construction and builders were sitting with vacant constructed flats in their hands. If benefit of ITC was disallowed to the sector, it would go into further crisis affecting also the banks along with the builder/developer. Thus, in the transition period, should allow GST rate of 12% and 8%, as applicable, along with the ITC. Although revenue was a concern for the Council, but to move the country ahead, Council should also think that instead of providing subsidy under affordable housing projects, environment should be created where people were enabled to obtain good quality housing under these projects at affordable rates.

12.12. The Hon'ble Deputy Chief Minister of Gujarat congratulated the Chairperson and all the Members of the Council for receiving the award from the ex-Prime Minister of India and expressed hope that the Council would continue to work as it had been doing. He supported the views expressed by the Hon'ble Minister from Maharashtra regarding raising the Rs. 45 lakh threshold limit to Rs. 75 lakh for affordable housing for metro cities as well as the proposal to tax slum redevelopment at 1%. He also stated that ongoing projects with partially sold flats where deposits had already been taken at old tax rates should be allowed an option to continue at the old tax rate.

12.13. The Hon'ble Chief Minister of Puducherry thanked the Hon'ble Chairperson and the Members of the Council for conducting the work of the Council in a dedicated manner. He also stated that as was observed by the Hon'ble Minister from Maharashtra in case of Mumbai, it was necessary to reclassify the cities as well as to modify the plinth area definition due to conditions varying from city to city. Keeping all areas at par among States would not give justice to contractors as well as buyers. He also stated that criteria needed to be worked out so as to differentiate between flats already constructed and sold out and those remaining unsold by taking suggestions from the Ministers in the Council since Real Estate Sector was in doldrums. Thus, before the issue of notification, further discussion was required on the issues pointed out by him.

12.14. The Hon'ble Minister from Rajasthan stated that during the Council Meeting held on 24<sup>th</sup> February 2019, most of the States were of the view that value cap should be left to the States and now the views in the meeting expressed by Ministers from the States of Maharashtra, Gujarat and Puducherry were again advocating that view. He stated that the Affordable Housing value cap in the non-metro areas should be Rs. 30 lakh and not Rs. 45 lakh as was being suggested. Even RBI lending guidelines for interest subsidy scheme for Affordable Houses confirmed this. Hence, the Council should revisit the issue and leave the decision to the States; otherwise the States would lose revenue heavily.

12.15. The Hon'ble Minister from Punjab congratulated the Law Committee and the Fitment Committee on the efforts that they had made to draft the notifications. He stated that as Council Members, either we swim together or sink and expressed his apprehension that Council was about to initiate a scheme which did not seem to be workable and perhaps which an aberration was in GST with no precedence in the world. Real Estate was a complex, evasion prone sector and the proposal would have a great impact on revenue as was evident from CPWD and NBCC figures where net of ITC, tax was 5% to 7% but actual payment in case of others in cash was not even 1/3<sup>rd</sup> of it. He observed that the difference in two was because of large amount of ITC reversal in respect of completed properties which had not been done yet. The 40-page notification before the Council with a bundle of exceptions carved out by invoking extraordinary power under various sections, like Section 9,15,16,148 would





result in maintaining a new set of accounts project wise for both i.e. future as well as ongoing projects instead of registration wise maintenance of books of accounts as prevailing now. The credit was claimed and utilized through returns; and returns would have to be reopened in view of the proposed retrospective legislation. The sum and substance of invoking all these powers, and all these exceptions would result in a draconian law with no achievement except optics. Further, there was no clarity about how certain provisions would be enforced leaving them to be discussed in the officers committee meeting, since all Members would get busy in elections. In his opinion, there was even a possibility of double taxation in the proposed law. Thus, he suggested that the scheme might be kept in abeyance and recommended extensive trade consultation. Further, since some portion would be in ITC chain while the other portion would be outside the chain, there would be high chance of diversion of supplies and loading value of one portion to the other, resulting in revenue evasion. Hence, he concluded that the State of Punjab maintained its initial suggestion that this sector should not be out of the ITC chain. However, if it was inevitable to adopt the proposal, then both the residential and commercial real estate should be brought under the proposed tax scheme where higher tax rate based on data might be prescribed for commercial construction without ITC. Thus, segregating ITC between portions of the project should be avoided. He added that the case for long term leasing needed discussion, which had been forwarded to the GoM on Real Estate.

12.16. The Hon'ble Minister from Goa congratulated the Chairperson and all the Council Members for the award. He praised the functioning of the Council under the present Chairperson, who performed a fine democratic balancing act given the fact that the Members at times advocated different views, but ultimately settled into decisions reflecting the real federal structure of the country. Hence, GST had been a resounding success and was being appreciated all over the world. Real Estate Sector was a complicated and dynamic sector. In the GoM, various issues were discussed that concerned the Council and now again on the eve of election, Council was revisiting various issues on which the decisions had already been taken. The Council had already decided the tax rates of 1% for affordable and 5% without ITC for non-affordable housing with full awareness that this might have far reaching consequences. Further, both black and white money were used extensively in this sector and the emphasis should be to generate maximum revenue without affecting the sector adversely as this sector was one of the biggest generators of employment and was in real crisis. The main reason for crisis was the perception about high rate of tax of 12% leading to many builders having stopped building while buyers had stopped purchasing. Now, after rate reduction, the builders were of the view that at least their concerns had been heard and the sector might start moving. He was of the view that it was a work in progress and the issues such as commercial construction, exclusion of land value etc. could be considered appropriately, as and when required. However, as of now, Council had to decide the issues within the guidelines of the Election Commission *vis-à-vis* the 33<sup>rd</sup> Council Meeting decisions. The GoM may continue its work on the fresh proposals and come up with its recommendations which might be considered after the election.

12.17. The Hon'ble Minister from West Bengal raised a question whether the Council could digress under the Model Code of Conduct from the decisions already taken in the 33<sup>rd</sup> GST Council Meeting i.e., raising Rs. 45 lakh threshold for Affordable Housing in view of the various proposals placed before the Council by the Hon'ble Ministers from Maharashtra and supported by Gujarat. He thereafter drew attention to page no. 134 to 138 of the agenda note where various complicated formulae had been prescribed for dealing with ITC reversal of the

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ongoing projects which had complicated the feedback loop in it. Thus, with all these formulae, a massive complication would be thrust on under construction projects. Unlike Mumbai, in West Bengal, 93% of the project registrations had flats which were below Rs. 45 lakh. Thus, he proposed that instead of a complicated formula for ITC reversal, an option be given to developer for ongoing projects to continue under the old tax rates with ITC or to go for the new tax rates with the suggested reversal formula. He also mentioned that a survey had been done by the officers of West Bengal which indicated that even Affordable Housing would undergo a price escalation under the proposed scheme. Further, every increased complication would lead to rent seeking behaviour due to more interpretation capacity of the system, negotiation and more so it would be prone to generation of black money. Thus, he suggested that from 1<sup>st</sup> April 2019, Council should make new rates of 1% and 5% without ITC effective on all new projects, while provide an option to the ongoing projects as on 31<sup>st</sup> March 2019 to either continue with the old rates of 8% and 12% with ITC or to adopt the new tax rates (provided it was allowed as per the Model Code of Conduct). Otherwise, it would lead to price escalation and huge complication.

12.18. The Hon'ble Chairperson rephrased the submissions of the Hon'ble Minister from West Bengal that he was suggesting to provide the option to the builder in case of ongoing projects in place of pro-rata calculations suggested in the Agenda. The Hon'ble Minister from West Bengal confirmed and stated that there would be no complication then and a business man would have no interpretation issues in maintaining his books of accounts. He further stated that as Punjab had been advocating, he also agreed that long term lease and Transfer of Development Rights for Residential Real Estate Projects should be completely exempt similar to the exemption given by the Council to long term leases for Industrial plots.

12.19. The Hon'ble Deputy Chief Minister of Bihar stated that since the Model Code of Conduct was in operation, the Council had to discuss within the framework of the decisions already taken by the Council. He had also discussed the matter with various builders and stakeholders as to whether they would like to join the new proposed scheme of taxation or continue with the old tax rates with ITC. Feedback received reflected that for new projects, 1% and 5% without ITC for Affordable and non-Affordable Houses respectively seemed acceptable and Bihar agreed with Maharashtra, Gujarat, West Bengal and other States in this regard. However, for ongoing projects, reversal would be an issue creating a liquidity problem due to huge reversals that might be required as part of the proposed scheme. Thus, Council might define the term 'ongoing' with reference to a project (whether 80% complete or just started etc.) and provide the option to address the issue. Further, he drew attention on page no.135 of the agenda note wherein as per the explanation to Section 80, the Commissioner had been given power to fix the monthly installment for payment of the ITC reversal amount. In his opinion, the Commissioner should not be given any discretionary power and it should be inbuilt in the mechanism. He also suggested that since the annual returns would be filed in September 2019, any difficulties arising during the implementation of the notification might further be addressed to modify the Rules and Notifications further, after the election was over. He agreed to all other proposals in the agenda items except that the Council should consider the issue of ongoing projects.

12.20. The Hon'ble Chairperson summarized the discussion and stated that the 34<sup>th</sup> GST Council Meeting was limited to giving effect to the decisions of the last Council meeting, and Council could not take any new decision. However, Council could meet to give effect to the

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policy decision with respect to whatever was decided earlier so that notifications, circulars, rules, regulation etc. could be issued. He further observed that the Hon'ble Ministers from various States had expressed their views on various subjects e.g. Punjab on long term lease, Rajasthan felt that the value limit for affordable housing be left to the States, while Maharashtra felt that Rs. 45 lakh was inadequate threshold for determining Affordable Housing in Mumbai. Hence, though there were limitations of elections, he had an open mind and suggested that the Members could decide that all these new issues which were raised such as those relating to re-development, SRA, long term lease rights, raising valuation limits etc. should be referred to the GoM for further deliberation. However, the specific issue that had been raised by the Hon'ble Minister from West Bengal regarding giving option to the builders for opting to pay tax at old rates (i.e. 12% & 8% with ITC) for all ongoing projects started up to 31<sup>st</sup> March 2019 instead of adopting the complicated formula based pro rata ITC reversal as suggested in the agenda, could be taken up for consideration. However, for all new projects, the new tax rate of 1% and 5% without ITC should be applicable. He further stated that the Hon'ble Minister from West Bengal was of the view that even for Affordable Housing, there would be a price escalation while the Central Government officers felt that the rates fixed were revenue neutral. It seemed from the discussions that Bihar also supported the views of the Hon'ble Minister from West Bengal to give an option to the builders to pay tax at the old rate for the ongoing projects. Hence, he proposed that GoM could consider and recommend on the new issues raised in the meeting, which the Council Secretariat would keep track of and Council meeting could be held immediately after elections to decide the pending issues. Thus, in the meeting, the Council might decide on the specific issue of option on pro-rata ITC reversal for ongoing projects as raised by the Hon'ble Minister from West Bengal. Thereafter he invited the members to provide their views on the issue of option for ongoing projects, so that it could be settled.

12.21. The Hon'ble Deputy Chief Minister of Delhi sought clarification as to whether the issue of option for the ongoing projects was being referred to GoM or not, to which, the Hon'ble Chairperson clarified that it was not being referred to the GoM and the Council had to take a decision on this issue. He further clarified that it was covered within the clearance of the Election Commission for the meeting since it was related to the decision on transition. The Hon'ble Minister from Punjab stated that he preferred that there should not be any option for all the ongoing projects as on 31.03.2019 to avoid complication, and from 1.04.2019, all projects should be covered in the new scheme. He stated that he was agreeing with the proposition of West Bengal only with a variation that there should not be any option for ongoing projects and after 01.04.2019, all projects should be covered by the new tax rate. The Hon'ble Chairperson asked the Hon'ble Minister from West Bengal to clarify his proposal once again. The Hon'ble Minister from West Bengal stated that, all ongoing projects should be given an option to continue with old rates of 8% and 12% with ITC till 31.03.19 or to adopt the complicated formula for ITC reversal as suggested under the new scheme of taxation @ 1% and 5% without ITC. The Hon'ble Chairperson asked Members to avoid cocktail of both the proposals, as it would lead to assessment problems. Shri V.K. Garg, Advisor (Financial Resources) to Hon'ble Chief Minister of Punjab raised a question as to when a builder sought to give option whether it was option for a project / an entity / registration; since as an entity he might have 50 projects while in GST law, the concept was only of registration. The Hon'ble Chairperson intervened and clarified that option to be given was for a building that had started. The Secretary stated that the proposal made by Punjab would lead to accounting problems. Further, in taxation it was a settled position that persons kept accounts for the

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transition period to avoid confusion / complexities later. Advisor, Punjab further suggested that it would have to be prescribed that new projects started on or after 01.04.19 would have to obtain a fresh registration and accounts would have to be kept separate.

12.22. The States of West Bengal, Bihar, Delhi, Odisha, Rajasthan, Uttar Pradesh, Tamil Nadu, Gujarat, Goa, Jammu & Kashmir, Andhra Pradesh, Assam, Himachal Pradesh, Haryana, Jharkhand, and Karnataka expressed their view in favor of providing an option for all ongoing projects as on 31.03.2019.

12.23. The Hon'ble Minister from Haryana mentioned regarding definition of a project, or the entity or the colony; that there might be some confusion persisting about the 'ongoing project' even in the Town Planning Department of Government of Haryana. He further added that ongoing project sometimes might be defined to include the entire colony, sometimes they might try to include the entire license of the developer and at times it might be limited to a building. Hence, some standardization exercise was required for definitions including the definition of an ongoing project. The Hon'ble Chairperson suggested that the definition should mean a building construction which had commenced prior to 31<sup>st</sup> March, 2019. However, he added that the officers would clearly draft the definition so that there was no misuse. The Hon'ble Minister from West Bengal stated that the existing draft notification already contained the definition of REP (Real Estate Project) which was already before the Council. However, he suggested that the final definition should be circulated to all the States so that before it was notified, all the States could give their views on the same. The Secretary stated that the definition of the 'Ongoing Project' in the notification would be to include the *building which had commenced prior to 31<sup>st</sup> March, 2019 and would have the option whether to go for a suggested formula as drafted or continue with the old formula.* The Hon'ble Chairperson concluded that the GST Council Secretariat might consult with all the States before finalizing the definition, so that, there was no misuse of the transition. Thus, before finalization of the definition, the Secretariat would invite views of Punjab, West Bengal and also Haryana. He further observed that, consensus seemed to be in the favor of the proposition of the Hon'ble Minister from West Bengal.

12.24. Dr. T.V. Somanathan, ACS and Commissioner, State Taxes, Tamil Nadu suggested that a onetime opportunity be given to each dealer so that he could make his own calculations as to which option in aggregate was beneficial to him and then decide about the option to be exercised. The option to be exercised would be whether to come in the scheme or not to come in this scheme; which should be a one-time exercise.

12.25. The Hon'ble Chairperson agreed that it was a good suggestion and stated that a date should be fixed for it in the notification in addition to the clarity in the definitions. He thereafter concluded the discussion that it seemed that the suggestion of Dr. Mitra seemed to have found favor with the members of the Council to which the Hon'ble Minister from West Bengal replied that it was a collective idea which had only been articulated by him. The Hon'ble Deputy Chief Minister of Bihar expressed that instead of giving extraordinary power to the Commissioner for reversal of ITC and payment of tax in installments, the same should be inbuilt in the mechanism. The Hon'ble Chairperson in response stated that an authority had to supervise the reversals in installment; otherwise the developers might misuse the facility. JS TRU II was requested to clarify the provision, who stated that, since the Real Estate Sector was not in a good health, the recovery of payments was proposed to be done in installments (12 installment, 18 installment and likewise). As per law, now also the power to allow deposit

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of tax dues in installment rested with the Commissioner; and hence no new provision had been suggested. Section 80 has already given power to the Commissioner under CGST Act and the same section has been re-produced in the agenda item. The Secretary thereafter read out the relevant portion of Section 80, *"On an application filed by a taxable person, the Commissioner, may for reasons to be recorded in writing, extend the time of payment or allow payment in installment"*.

13. For **Agenda item 5**, after discussing the operational details for implementation of the recommendations made by the Council in its 33<sup>rd</sup> Meeting for lower effective GST rate on construction of houses as well as the modalities of the transition, the Council approved the following: -

13.1. **Option in respect of ongoing projects:** The promoters to be given a one-time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking had both started before 01.04.2019) which could not be completed by 31.03.2019. The option to be exercised once within a prescribed time frame and where ever the option not exercised within the prescribed time limit, new rates to apply.

13.2. **Applicability of new tax rates:** The new tax rates to be applicable to new projects or ongoing projects which have exercised the option to pay tax in the new regime subject to decision at paragraph 13.1. above, as follows:

(i) New rate of 1% without input tax credit (ITC) on construction of affordable houses to be available for,

- a. all houses which meet the definition of affordable houses as decided by the Council (area 60 sqm in metros / 90 sqm in non- metros and value upto Rs. 45 lakh), and
- b. affordable houses being constructed in ongoing projects under the existing Central and State housing schemes presently eligible for concessional rate of 8% GST (after 1/3<sup>rd</sup> land abatement).

(ii) New rate of 5% without input tax credit to be applicable on construction of:

- a. all houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on all instalments payable on or after 01.04.2019.
- b. all houses other than affordable houses in new projects.
- c. commercial apartments such as shops, offices etc. in a Residential Real Estate Project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

13.3. **Conditions for the new tax rates:** The new tax rates of 1% (on construction of affordable houses) and 5% (on other than affordable houses) to be available subject to following conditions, -

- a. Input tax credit shall not be available,
- b. 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. If purchase from registered person is less than 80%, tax shall be paid by the builder @ 18% on RCM basis. However, tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

*PA Aggarwal*

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13.4. **Transition for ongoing projects opting for the new tax rate:** Ongoing projects (buildings where construction and booking both had started before 01.04.2019) which had not been completed by 31.03.2019 opting for new tax rates shall transition the ITC as per the prescribed method.

- a. The transition formula for residential projects to be based on extrapolation of ITC to percentage completion of construction as on 01.04.2019 to arrive at ITC permissible for the entire project. Thus, transition would be based on a simple pro rata based formula such that credit would be allowed in proportion to booking of the flat and invoicing done for the booked flat subject to a few safeguards.
- b. For a mixed project (both commercial and residential) transition would allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax would be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.

13.5. **Treatment of TDR / FSI and Long-Term Lease for projects commencing after 01.04.2019:** The following treatment shall apply to TDR/ FSI and Long Term lease for projects commencing after 01.04.2019:

- a. Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer to be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax was paid on them.
- b. Exemption of TDR, FSI, long term lease (premium) to be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal to be limited to 1% of value in case of Affordable Houses and 5% of value in case of other than Affordable Houses.
- c. The liability to pay tax on TDR, FSI, long term lease (premium) to be shifted from land owner to builder under the Reverse Charge Mechanism (RCM).
- d. The date on which builder to be liable to pay tax on TDR, FSI, Long Term Lease (premium) of land under RCM in respect of flats sold after completion certificate to be shifted to date of issue of Completion Certificate.
- e. The liability of builder to pay tax on construction of houses given to land owner in a JDA to be also shifted to the date of completion.

13.6. **Amendment to ITC rules:** ITC rules to be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in Real Estate Projects. The changes would clearly provide procedure for availing Input Tax Credit in relation to commercial units, as such units would continue to be eligible for Input Tax Credit in a mixed project.

13.7. Notifications covering the above decisions to be made effective from 01.04.2019 and the notifications to be issued after vetting by the Joint Committee of Law and Fitment and thereafter by the Union Law Ministry.

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**Agenda Item 6: Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT)**

14. Introducing this agenda item, the Secretary stated that Chapter XVIII of the CGST Act, 2017 provides for the Appeal and Review Mechanism for dispute resolution under the GST Regime. Section 109 of this Chapter under CGST Act empowered the Central Government to constitute, on the recommendations of Council, by notification, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal (GSTAT) for hearing appeals against orders passed by the Appellate Authority or by the Revisional Authority. Explaining the background further, he stated that a Writ Petition No.655/2018 was filed by M/s. Torqus Pharma Pvt. Ltd before the Hon'ble High Court of Uttar Pradesh (Allahabad Bench) regarding setting up of GSTAT Bench in the State. The Taxpayers contended that in the absence of any Appellate Tribunal Bench, their right to appeal had become redundant as the officers pressurized the taxpayers to pay the tax and the taxpayers had no remedy to file an appeal against any erroneous orders. Further, during the proceedings, the Hon'ble Court had expressed their displeasure and asked Central Government Counsel to indicate the timeline about formation of GSTAT vide Order dated 8.3.2019. Accordingly, an affidavit had been filed before the Hon'ble Court that an Agenda would be placed before the GST Council in the 34<sup>th</sup> Meeting. Accordingly, the agenda was placed before the Council to take note of these developments so that setting up of the Tribunals could be expedited.

14.1. He further informed that the Department of Revenue, Government of India had also earlier written to the States to provide their opinion as to where they would want the Principal and the State Benches of the Tribunal to be located as per sub-section 6 of Section 109 of CGST Act, 2017. Accordingly, reports were received from 19 States and Puducherry. Subsequently report from one more State, viz. Andhra Pradesh (suggesting Principal Bench at Vijayawada and Area Benches at Vishakhapatnam and Tirupati) and the UT of Delhi (suggesting Principal Bench at New Delhi with no area bench) had been received. Report was awaited from the remaining 10 States.

14.2. He added that since report was pending from 10 States, these States should expedite sending the information about the number of State Benches of GSTAT required as well as the places where they were required to be set up. In the next hearing before the Hon'ble Court, a suitable reply regarding setting up of GSTAT could be filed. Shri Ashok K.K. Meena, Principal Secretary, Finance Department, Government of Odisha stated that for Odisha, they would like to propose State Bench either at Bhubaneswar or at Cuttack, and that this information would be sent in writing too.

15. For **Agenda item 6**, the Council took note of the developments regarding the formation of the GSTAT i.e. the numbers of Benches and the places where to locate them.

**Agenda Item 7: Any other agenda item with the permission of the Chairperson**

**Agenda Item 7(i): Approval of the draft Removal of Difficulty Order for giving effect to the decisions of 32<sup>nd</sup> GST Council Meeting for MSME sector (including small traders)**

16. The Principal Commissioner (GST Policy Wing), CBIC introduced this Agenda item. He explained that as per the decision of the Council in its 32<sup>nd</sup> Meeting held on 10<sup>th</sup> January, 2019, a Composition scheme for the service providers had been notified and taxpayers

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availing this notification would need to follow the provisions contained in Section 10 of the CGST/SGST Act. He explained that in this Agenda item, as per the recommendations of the Law Committee, it was proposed to issue a Removal of Difficulty Order to provide that the provisions of Section 10 and Section 18 of the CGST/SGST Act and the Rules made thereunder, as applicable to a person paying tax under Section 10 shall also apply to a person paying tax under Notification No. 2/2019-Central Tax (Rate) dated 7.3.2019 under which Composition scheme had been notified for service providers. He sought approval of the Council for the draft Removal of Difficulty Order annexed to the Agenda note and proposed that the same may be issued after legal vetting by the Union Law Ministry. The Hon'ble Minister from West Bengal supported the proposal. The Council approved the proposal.

17. For **Agenda item 7(i)**, the Council approved the Removal of Difficulty Order, as recommended by the Law Committee, placed as part of the Agenda notes. It further approved that the Order shall be issued after vetting by the Union Law Ministry.

**Other Issues**

18. The Hon'ble Deputy Chief Minister of Delhi stated that regarding settlement of IGST, he had met the Hon'ble Chairperson and discussed the issue. He stated that he had been informed that the settlement had been done till February, 2019 and suggested that before 31<sup>st</sup> March, 2019, one more *ad hoc* settlement of IGST should be done, while for the past, the matter may be resolved as per the suggestion of the Hon'ble Chairperson and the Council could be apprised about it. The Hon'ble Deputy Chief Minister of Bihar also suggested to do one more IGST settlement during March, 2019. The Hon'ble Deputy Chief Minister of Gujarat also supported the proposal to do one more *ad hoc* settlement of IGST to the States before the end of March, 2019. The Hon'ble Chairperson stated that the issue would be looked into.

18.1. The Hon'ble Chairperson stated that before the General Elections, this was possibly the last meeting of the Council unless it was required to meet for some emergent clarification. He observed that till now, 34 Meetings of the Council had been held and a very large number of man hours had been spent in these meetings. It was heartening to see that Members came to the Meetings with open mind and their political colours outside the Council did not impact economic decisions taken in the Council. He added that the decisions were always arrived at by consensus and where it was felt that it was difficult to reach a consensus, either decision was not taken or the issue was referred to a Group of Ministers before being taken up again for consideration by the Council on the basis of the revised formulation. He observed that the same practice was observed even today where the Council agreed to an alternative formulation from the Hon'ble Minister from West Bengal regarding transition provision for taxation in the real estate sector. He stated that in view of the delicate balance of federalism where Centre and States cooperate and take various decisions by consensus, on behalf of the Council, he expressed the hope that the same precedent of taking decision by consensus shall continue in future also.

18.2. The Hon'ble Minister from Punjab stated that he wanted to record his appreciation for the Hon'ble Chairperson for conducting the meetings of the Council in a very democratic manner. The Hon'ble Minister from West Bengal echoed the sentiments of the Hon'ble Minister from Punjab and stated that full credit went to the Hon'ble Chairperson for creating an environment of seeking consensus across all political parties and ideas through his patience

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where many contentious issues of ticklish nature were discussed and decided through the collective effort of all the Members of the Council. The Hon'ble Deputy Chief Minister of Delhi also expressed his appreciation to the Hon'ble Chairperson for conducting the meetings in a very democratic manner, He stated that a specific reference should be recorded in the Minutes regarding the remarkable role of the Hon'ble Chairperson in conducting the meetings of the Council in a very democratic manner. The Hon'ble Chairperson observed that the sentiments expressed by the individual Ministers may be treated as the sentiment of the Council and its healthy traditions may be continued in future, irrespective of the composition of the Council post the General Elections. The Hon'ble Minister from Goa stated that after the General Elections, the first meeting of the Council could be held in Goa if not at Delhi.

**Agenda Item 8: Date of the next meeting of the GST Council**

19. This Agenda item was not taken up for discussion.
20. The meeting ended with a vote of thanks to the Chair.

(Dr.A.B.Pandey)

Secretary, GST Council

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**Annexure 1**

**List of Hon'ble Ministers who attended the 34<sup>th</sup> GST Council Meeting on 19<sup>th</sup> March 2019**

Sl No	State/Centre	Name of Hon'ble Minister	Charge
1	Govt of India	Shri Arun Jaitley	Union Finance Minister
2	Govt of India	Shri S.P. Shukla	Minister of State (Finance)
3	Bihar	Shri Sushil Kumar Modi	Deputy Chief Minister
4	Delhi	Shri Manish Sisodia	Deputy Chief Minister
5	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
6	Goa	Shri Mauvin Godinho	Minister for Panchayat
7	Haryana	Capt. Abhimanyu	Minister, Excise & Taxation
8	Jammu & Kashmir	Shri K. K. Sharma	Advisor to Governor (I/c Finance)
9	Jharkhand	Shri C.P. Singh	Minister - Department of Urban Development, Housing and Transport
10	Maharashtra	Shri Sudhir Mungantiwar	Finance Minister
11	Manipur	Shri Yumnam Joykumar Singh	Deputy Chief Minister
12	Puducherry	Shri V. Narayanasamy	Chief Minister
13	Punjab	Shri Manpreet Singh Badal	Finance Minister
14	Rajasthan	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development and Housing, Law and Legal affairs, Parliamentary affairs
15	Tamil Nadu	Shri D. Jayakumar	Minister for Fisheries and Personnel & Administrative Reforms
16	Uttar Pradesh	Shri Rajesh Agarwal	Finance Minister
17	West Bengal	Dr. Amit Mitra	Finance Minister

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**Annexure 2**

<b>List of Officials who attended the 34<sup>th</sup> GST Council Meeting on 19<sup>th</sup> March 2019</b>			
1	Govt. of India	Dr. A. B. Pandey	Revenue Secretary
2	Govt. of India	Dr. Krishnamurthy Subramanian	Chief Economic Adviser
3	Govt. of India	Shri Pranab Kumar Das	Chairman, CBIC
4	Govt. of India	Ms Ameeta Suri	Member (GST), CBIC
5	Govt. of India	Dr. John Joseph	Member (Budget), CBIC
6	Govt. of India	Shri Sandeep M. Bhatnagar	Member, CBIC
7	Govt. of India	Dr. Rajeev Ranjan	Special Secretary, GST Council
8	Govt. of India	Shri Manoj Sethi	CCS, CBIC
9	Govt. of India	Shri Upender Gupta	Pr. Commissioner (GST), CBIC
10	Govt. of India	Shri G. D. Lohani	Joint Secretary, TRU I, DoR
11	Govt. of India	Shri Manish Kumar Sinha	Joint Secretary, TRU II, DoR
12	Govt. of India	Shri S. K. Rehman	ADG, GST, CBIC
13	Govt. of India	Shri Rajesh Malhotra	ADG (M&C)
14	Govt. of India	Shri N. Gandhi Kumar	Deputy Secretary, DoR
15	Govt. of India	Shri Pramod Kumar	Deputy Secretary, TRU-II, DoR
16	Govt. of India	Shri Parmod Kumar	OSD, TRU-II, DoR
17	Govt. of India	Shri Ravneet Khurana	Joint Comm., GST Policy Wing, CBIC
18	Govt. of India	Shri Susanta Mishra	Technical Officer, TRU-II, DoR
19	Govt. of India	Shri Shashikant Mehta	OSD, TRU-II, DoR
20	Govt. of India	Shri Harish Y. N	OSD, TRU-II, DoR
21	Govt. of India	Shri Siddharth Jain	Dy. Comm, GST Policy Wing, CBIC
22	Govt. of India	Shri Achin Garg	Asst. Comm, GST Policy Wing, CBIC
23	Govt. of India	Shri Paras Sankhla	OSD to Union Minister
24	Govt. of India	Shri Mahesh Tiwari	PS to MoS
25	Govt. of India	Dr. Vikash Shukla	Media Advisor to RS
26	GST Council	Shri Shashank Priya	Joint Secretary
27	GST Council	Shri Dheeraj Rastogi	Joint Secretary
28	GST Council	Shri Rajesh Agarwal	Director
29	GST Council	Shri G. S. Sinha	Director
30	GST Council	Shri Jagmohan	Director
31	GST Council	Ms Ujjaini Datta	Director
32	GST Council	Shri Arjun Meena	Under Secretary
33	GST Council	Shri Rakesh Agarwal	Under Secretary
34	GST Council	Shri Rahul Raja	Under Secretary
35	GST Council	Shri Mahesh Singarapu	Under Secretary
36	GST Council	Shri Krishna Koundinya	Under Secretary
37	GST Council	Shri Sarib Sahran	Superintendent
38	GST Council	Shri Umed Singh Rawat	Superintendent
39	GST Council	Shri Sandeep Bhutani	Superintendent
40	GST Council	Shri Vipul Sharma	Superintendent


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41	GST Council	Shri Amit Soni	Superintendent
42	GST Council	Shri Anis Alam	Superintendent
43	GST Council	Ms Sangeeta Dalal	Inspector
44	GSTN	Shri Prakash Kumar	CEO
45	GSTN	Ms Kajal Singh	EVP (Services)
46	Govt. of India	Shri Kishori Lal	Pr. Commissioner, Chandigarh Zone, CBIC
47	Govt of India	Shri Yogesh Agrawal	Commissioner, Meerut Zone, CBIC
48	Govt of India	Shri S K Sharma	Commissioner, Lucknow Zone, CBIC
49	Govt of India	Shri R S Maheshwari	Commissioner, Bhopal Zone, CBIC
50	Govt. of India	Shri S. Kannan	Pr. Commissioner, Chennai Zone, CBIC
51	Govt. of India	Shri Javed Akhtar Khan	Commissioner, Ahmedabad Zone, CBIC
52	Govt. of India	Shri Sanjay Mahendru	Commissioner, Mumbai Zone, CBIC
53	Govt. of India	Shri Viney Kumar Paul	Commissioner, Guwahati Zone, CBIC
54	Govt. of India	Shri A R S Kumar	Commissioner, Hyderabad Zone, CBIC
55	Govt. of India	Shri M Srihari Rao	Commissioner, Vishakhapatnam Zone, CBIC
56	Govt. of India	Shri Nitin Anand	Commissioner, Ranchi Zone, CBIC
57	Andhra Pradesh	Dr D. Sambasiva Rao	Special Chief Secretary, Revenue
58	Andhra Pradesh	Shri J. Syamala Rao	Chief Commissioner, State Tax
59	Andhra Pradesh	Shri T. Ramesh Babu	Commissioner, State Tax
60	Andhra Pradesh	Shri D. Venkateswara Rao	OSD to Spcl Chief Secretary, Revenue
61	Arunachal Pradesh	Shri Anirudh S Singh	Commissioner (Tax & Excise)
62	Arunachal Pradesh	Shri Tapas Dutta	Assistant Commissioner, State Tax
63	Arunachal Pradesh	Shri Nakut Padung	Superintendent, State Tax
64	Arunachal Pradesh	Shri Teli Ngomdir	Superintendent, State Tax
65	Assam	Shri Anurag Goel	Commissioner, State Tax
66	Bihar	Dr. Pratima	Commissioner cum Secretary, State Tax
67	Bihar	Shri Arun Kumar Mishra	Additional Secretary, State Tax
68	Bihar	Shri Sanjay Kumar Mawandia	Special Commissioner, State Tax
69	Bihar	Shri Rajesh Kumar	Additional Commissioner, State Tax
70	Bihar	Ms Sima Bharti	Joint Commissioner, State Tax
71	Chhattisgarh	Ms. Reena B. Kangale	Secretary cum Commissioner, State Tax
72	Chhattisgarh	Shri K R Jhariya	Additional Commissioner, State Tax
73	Chhattisgarh	Ms. Nimisha Jha	Joint Commissioner, State Tax
74	Chhattisgarh	Shri Deepak Giri	Dy. Commissioner, State Tax
75	Chhattisgarh	Shri Manish Mishra	Dy. Commissioner, State Tax

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76	Chhattisgarh	Shri Narendra Verma	Dy. Commissioner, State Tax
77	Delhi	Ms. Renu Sharma	Pr. Secretary, Finance
78	Delhi	Shri H. Rajesh Prasad	Commissioner, State Tax
79	Delhi	Shri Rajesh Goyal	Addl. Commissioner (Policy), State Tax
80	Delhi	Shri L S Yadav	Asst. Commissioner (Policy), State Tax
81	Goa	Shri Dipak Bandekar	Commissioner, State Tax
82	Gujarat	Shri Arvind Agarwal	ACS, Finance
83	Gujarat	Dr. P.D. Vaghela	Chief Commissioner, State Tax
84	Gujarat	Shri Sanjeev Kumar	Secretary (Economic Affairs) Finance Department
85	Gujarat	Shri Ajay Kumar	Special Commissioner, State Tax
86	Haryana	Shri Sanjeev Kaushal	Addl Chief Secretary, E & T Dept
87	Haryana	Shri Amit Kumar Agarwal	Commissioner, State Tax
88	Haryana	Shri Vijay Singh	Addl Commissioner, State Tax
89	Himachal Pradesh	Shri Jagadish Chander Sharma	Principal Secretary (Excise & Taxation)
90	Himachal Pradesh	Shri Rajeev Sharma	Commissioner, State Tax & Excise
91	Himachal Pradesh	Shri Sunil Kumar	Addl. Commissioner, State Tax & Excise
92	Himachal Pradesh	Shri Rakesh Sharma	Joint Commissioner, State Tax & Excise
93	Himachal Pradesh	Shri Anupam Kumar Singh	Dy. Commissioner, State Tax & Excise
94	Jammu & Kashmir	Shri P K Bhatt	Commissioner, State Tax
95	Jharkhand	Shri Prashant Kumar	Secretary cum Commissioner, State Tax
96	Jharkhand	Shri Ajay Kumar Sinha	Addl. Commissioner, State Tax
97	Jharkhand	Shri Brajesh Kumar	State Tax officer
98	Karnataka	Shri Srikar M.S.	Commissioner, State Tax
99	Kerala	Ms. Tinku Biswal	Commissioner, State Tax
100	Madhya Pradesh	Shri Manu Shrivastava	Pr. Secretary, State Tax
101	Madhya Pradesh	Shri D. P Ahuja	Commissioner, State Tax
102	Madhya Pradesh	Shri Sudip Gupta	Jt. Commissioner, State Tax
103	Maharashtra	Shri Rajiv Jalota	Commissioner, State Tax
104	Maharashtra	Shri Dhananjay Akhade	Joint Commissioner, State Tax
105	Manipur	Ms Jaspreet Kaur	Commissioner, State Tax
106	Manipur	Shri Y. Indrakumar Singh	Asst. Commissioner, State Tax
107	Meghalaya	Shri L Khongsit	Jt. Commissioner, State Tax
108	Meghalaya	Shri G G Marbaniang	Asst. Commissioner, State Tax
109	Meghalaya	Shri K War	Asst. Commissioner, State Tax
110	Meghalaya	Shri B Wallang	Asst. Commissioner, State Tax
111	Meghalaya	Shri N L Sohliya	Superintendent, State Tax

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# MINUTE BOOK

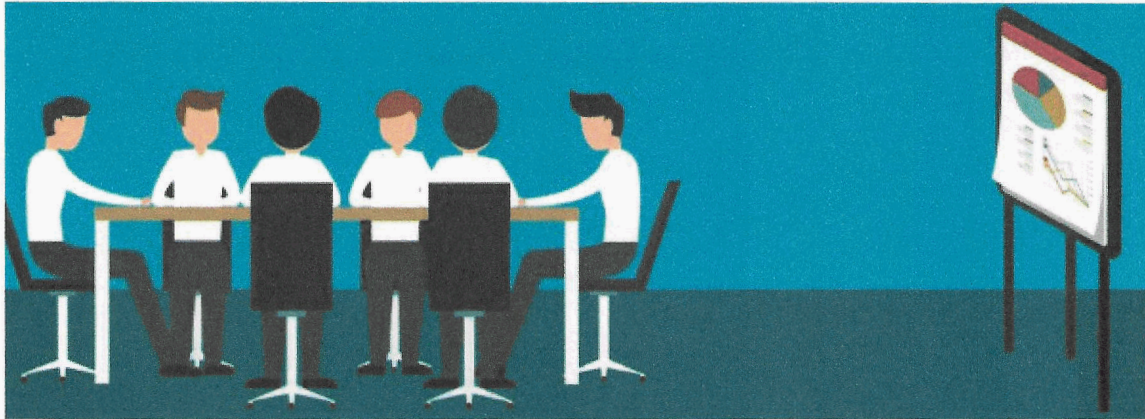
112	Mizoram	Shri Vanlal Chhuanga	Commissioner & Secretary, Taxation Department
113	Mizoram	Shri Lalthansanga	Jt. Commissioner, State Tax
114	Mizoram	Shri C. Vanlalchhuana	Dy. Commissioner, State Tax
115	Mizoram	Shri Hrangthanmawia	Assistant Commissioner, State Tax
116	Nagaland	Shri Y Mhathung Murry	Addl. Commr, State Tax
117	Nagaland	Shri Wochamo Odyuo	Addl. Commr, State Tax
118	Nagaland	Shri Lima Imsong	Deputy Commissioner, State Tax
119	Odisha	Shri Ashok K. K. Meena	Pr. Secretary, Finance Deptt.
120	Odisha	Shri Bishnupada Sethi	Commissioner, State Tax
121	Puducherry	Shri S. Manickadeepan	Jt. Commissioner, State Tax
122	Punjab	Shri M. P Singh	ACS-cum-Financial Commissioner (Taxation)
123	Punjab	Shri V. K. Garg	Advisor (Financial Resources) to CM
124	Punjab	Shri Vivek Pratap Singh	Excise & Taxation Commissioner
125	Punjab	Shri Pawan Garg	Dy. Excise & Taxation Commissioner
126	Rajasthan	Dr. Prithvi Raj	Secretary Finance (Revenue)
127	Rajasthan	Shri Preetam B. Yaswant	Commissioner, State Tax
128	Rajasthan	Ms Meenal Bhosle	OSD, Finance
129	Rajasthan	Shri Ketan Sharma	Addl. Commissioner, GST, State Tax Dept
130	Rajasthan	Shri Arvind Mishra	Joint Commissioner, State Tax
131	Sikkim	Smt. Dipa Basnet	Secretary-cum-Commissioner, State Tax
132	Tamil Nadu	Dr. T.V Somanathan	ACS/Commissioner, State Tax
133	Tamil Nadu	Shri Ka. Balachandran	Pr. Secretary, CT and Registration Deptt.
134	Tamil Nadu	Shri K Gnanasekaran	Additional Commissioner, State Tax
135	Tamil Nadu	Shri C. Palani	Jt. Commissioner, State Tax
136	Telangana	Shri Somesh Kumar	Principal Secretary (Finance)
137	Telangana	Shri Anil Kumar	Commissioner of State Tax
138	Telangana	Shri Laxminarayan Jannu	Addl. Commissioner, State Tax
139	Tripura	Shri Nagesh Kumar B	Chief Commissioner, State Tax
140	Tripura	Shri Ashin Barman	Superintendent, State Tax
141	Uttar Pradesh	Shri Alok Sinha	ACS, State Tax
142	Uttar Pradesh	Ms Amrita Soni	Commissioner, State Tax
143	Uttar Pradesh	Shri Vivek Kumar	Addl. Commissioner, State Tax
144	Uttar Pradesh	Shri C P Mishra	Joint Commissioner, State Tax
145	Uttar Pradesh	Shri Sanjay Kumar Pathak	Joint Commissioner, State Tax
146	Uttarakhand	Shri Piyush Kumar	Addl. Commissioner, State Tax
147	Uttarakhand	Shri Vipin Chand	Addl. Commissioner, State Tax
148	Uttarakhand	Shri Rakesh Verma	Jt Commissioner, State Tax
149	West Bengal	Shri H K Dwivedi	ACS, Finance
150	West Bengal	Ms. Smaraki Mahapatra	Commissioner, State Tax
151	West Bengal	Shri Khalid A Anwar	Senior Joint Commissioner, State Tax

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Annexure 3

## 34<sup>th</sup> Meeting of GST Council



### Deemed ratification & GIC / IT-GRC Decisions

## Agenda



- **Agenda No. 2** - Deemed Ratification of Notification / Circulars issued post 33<sup>rd</sup> Meeting of GST Council
- **Agenda No. 3** - Decisions taken by the GIC post 33<sup>rd</sup> Meeting of GST Council for information of the GST Council
- **Agenda No. 4** - Decisions / recommendations of the IT Grievance Redressal Committee post 33<sup>rd</sup> Meeting of GST Council for information of the GST Council



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## Agenda No. 2

### Deemed Ratification (1/1)



- Ratification of following notifications, circulars & orders issued post 33<sup>rd</sup> meeting (dated 20<sup>th</sup> February, 2019) of GST Council:

Act/Rules	Type	Notification / Circular / Order Nos.
CGST Act/CGST Rules	Central tax	9 to 14 of 2019
	Central tax (Rate)	2 of 2019
UTGST Act	Union territory tax	2 of 2019
	Union territory tax (Rate)	2 of 2019
Circulars	Under the CGST Act	92 to 93 of 2019
ROD Orders	Under the CGST Act	3 of 2019
	Under the UTGST Act	2 of 2019

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## Agenda No. 3

### GIC decisions post 33<sup>rd</sup> GST Council Meeting (1/4)



#### Decision in 25<sup>th</sup> GIC meeting (05.03.2019)

- Amend CGST Rules to allow for using FORM GST DRC-07 for orders issued under section 52, 62, 63, 64, 122, 123, 124 and 127 of the CGST, Act.
- Amend CGST Rules to allow for issuing notice using FORM GST DRC-01 under section 52, 122, 123, 124, 125, 127, 129 and 130 of the CGST, Act.
- Minor amendments in Rule 100 and 142 along with amendments in related FORMS i.e. FORM DRC-01, FORM DRC-02, FORM DRC-07, FORM DRC-08, FORM ASMT-13, FORM ASMT-15, FORM ASMT-16, FORM CPD-02

✓ Decision not implemented yet

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**Agenda No. 3****GIC decisions post 33<sup>rd</sup> GST Council Meeting (2/4)****Decision in 25<sup>th</sup> GIC meeting (05.03.2019)**

- Issuing of Circular clarifying various doubts related to treatment of sales promotion schemes under GST

✓ Circular No. 92/11/2019-GST dated 7<sup>th</sup> March 2019 issued

- Issuing of corrigendum to circular on levy of GST on Tax Collected at Source under Section 206 (C) of Income Tax Act, 1961.

✓ Corrigendum to Circular No. 76/50/2018-GST issued on 7<sup>th</sup> March 2019

- Extension of due date for furnishing FORM GSTR-3B and FORM GSTR-1 for the period April, 2019 to June, 2019

✓ Notifications No. 11/2019 – CT, 12/2019 – CT & 13/2019 – CT, all dated 7<sup>th</sup> March 2019 issued

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**Agenda No. 3****GIC decisions post 33<sup>rd</sup> GST Council Meeting (3/4)****Decision in 25<sup>th</sup> GIC meeting (05.03.2019)**

- Issuing of circular on the nature of supply of priority sector lending certificate i.e. intra-State or inter-State

✓ Circular No. 93/12/2019-GST dated 8<sup>th</sup> March 2019 was issued

- Deferring e-Wallet scheme and extending duty exemptions from IGST and Cess on the imports made under the AA/EPCG/EOU schemes upto 31<sup>st</sup> March 2020

✓ Decision not implemented yet

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**Agenda No. 3****GIC decisions post 33<sup>rd</sup> GST Council Meeting (4/4)****Decision by Circulation (06.03.2019)**

- Proposal to settle an additional IGST amount of Rs. 20,000 crore, 50% to the Centre and 50% to the States, on ad hoc basis

✓ Order No. F. No. S-34011/21/2018-ST-1 DoR dated 6<sup>th</sup> March 2019 issued

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**Agenda No. 4****Decisions/recommendations of the ITGRC (1/3)****IT grievance redressal process**

- Circular No. 39/13/2013 dated 03.04.18 prescribing the procedure for taxpayers for lodging their grievance due to technical glitch in the GST system was issued
- GIC to act as IT Grievance Redressal Committee (IT-GRC) for resolving problems of the taxpayers who have not been able to file their documents such as TRAN-1, GSTR-3B / GSTR-1 or Registration/ migration etc. due to technical glitches at Common Portal
- Taxpayers are required to submit their grievance application of technical glitch to the designated field nodal officer of State /Center along with evidence

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## Agenda No. 4



### Decisions/recommendations of the IT-GRC (2/3)

- Field nodal officers to examine the taxpayers application and the supporting evidence and if it is prima facie found to be a case of technical glitch then send the issues after collating with their remarks/ recommendation to the GSTN Nodal officer by email
- GSTN issued a SOP on 12.04.18 which is to be followed by the Nodal officers of the States / Center while referring the technical glitches to GSTN

### **IT Grievance Redressal Committee (IT-GRC) meetings**

- Five meetings of IT-GRC have been held till now
- Four meetings were held on 22.06.18, 21.08.18, 26.10.18 & 12.02.19
- **Fifth IT-GRC** meeting was held on 05.03.2019 and after examination and deliberation on 224 TRAN-1 cases, IT-GRC decided to allow 80 cases

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## Agenda No. 4



### Decisions/recommendations of the IT-GRC (3/3)

- Total 1463 TRAN-1 cases (including cases where writ petitions have been filed in various High Courts) were presented in five meetings of IT-GRC out of which a total of 650 cases have been approved
- Total 258 TRAN-2 cases have also been approved

### **Implementation of the Decisions of IT-GRC**

- TRAN 1 filing has been enabled for the approved taxpayers in the system
- E-mails have been sent by GSTN to the taxpayers asking them to file TRAN 1
- A total of around 1850 cases of TRAN-1 have been received from the nodal officers till 28.02.18 by GSTN
- Another lot of around 400 cases of TRAN-1 are being examined by GSTN and will be presented to the IT-GRC for decision

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Annexure 4



## 34<sup>th</sup> GST Council Meeting 19<sup>th</sup> March, 2019

### Scheme of presentation

- 33<sup>RD</sup> GST Council Decisions
- Joint Meeting of Law and Fitment Committee
- Overview of draft notification
- Transition provisions
- Amendment to GST Rules
- Proposal before GST Council

*Approved*

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### 33<sup>RD</sup> GST Council Decisions

- GST rate:
  - GST shall be levied at effective GST rate of 5% without ITC on residential properties outside affordable segment;
  - GST shall be levied at effective GST of 1% without ITC on affordable housing properties.
- Definition of affordable housing:
  - Shall be a residential house/flat of carpet area of upto 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities.
  - Value upto Rs. 45 lacs (both for metropolitan and non-metropolitan cities).
  - Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR)
- Intermediate tax on development right, such as TDR, JDA, lease (premium), FSI shall be exempted only for residential property on which GST is payable.
- The new rate shall become applicable from 1<sup>st</sup> of April, 2019.
- Details of the scheme shall be worked out by an officers committee and shall be approved by the GST Council in a meeting to be called specifically for this purpose. The meeting took place on 6<sup>th</sup> March, 2019.

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### Existing tax payout in the Real Estate Sector

Calculation of GST payable as per present rate structure						
Sl. No.	Category of Housing Unit	High Rise Building			Low Rise Building	
		Low end finish	Premium Quality	Affordable	Low end finish	Affordable
1	Cost of property (per sq. ft.)	4000	10000	3000	3000	2500
2	Cost of construction	1700	3000	1500	1400	1100
3	Input tax credit	280.5	495	247	231	181
4	GST payable (cash + credit)	480	1200	240	360	200
5	Net GST payable	199.5	705	0	129	19
6	Percentage GST Payable	4.99%	7.05%	0.00%	4.30%	0.76%

Source: NBCC  
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### Joint meeting of Fitment and Law committee

- Joint meeting of fitment committee and law committee took place on 6<sup>th</sup> March, 2019.
- 9 states in Law committee, and 11 states in Fitment Committee are members in the respective committee.
- Decisions of the joint meeting were circulated to all members of the members of both committees on 7<sup>th</sup> March, 2019.
- The draft notifications, rules and documents prepared as per the decisions of the joint committee was circulated on 11<sup>th</sup> March, 2019. Comments/ suggestions were requested by 13<sup>th</sup> March, 2019.
- Comments received from members were examined jointly by the conveners from State and Centre of the Fitment Committee.
- Final draft notifications, rules and documents were forwarded to GST Council secretariat on 15<sup>th</sup> March, 2019.
- Reference to Election Commission was made on 12<sup>th</sup> March, 2019
  - for implementing the GST rates (1% and 5%) on real estate sector and
  - issue of removal of difficulty order for composition scheme for suppliers of service (6% tax rete)
- Approval from Election Commission was received on 14<sup>th</sup> March, 2019 to implement the same

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### Overview of drafts circulated

Sl. No	Draft Document No	Purpose
1	1. -2019-CT (R)_Amnd Nf 11-2017 - CTR	A. To notify the rates for affordable apartments and non affordable apartments by amending the notification No. 11/2017- CT (R) B. Method of accounting for threshold limit of 80% C. To create a new rate of 18% on supply of services other than TDR, FSI (including additional FSI), long term lease by an unregistered person to a promoter
1A	1A. illustration	Illustration to transitional provisions
2	2. -2019-CT (R)_Amnd nf. no. 12-2017 - CTR	To exempt supply of TDR, FSI (including additional FSI), long term lease of land (against upfront payment in the form of premium, salami, development charges etc.)
3	3. -2019-CTR_Amnd to Nf no. 13-2017 - CTR	Putting tax liability on promoter under <u>sub-section (3)</u> of section 9 (RCM) on receipt of following services from unregistered person, namely transfer of development rights or FSI (including additional FSI) and long term lease of land (against upfront payment in the form of premium etc.)
4	4. -2019-CTR Sec 148 TDR	Shifting time of supply of TDR, FSI and long term lease to the date of issuance of completion certificate for construction of REP/ RREP under section 148 of CGST Act
5	5. -2019-CTR_ section 9 (4)	Invoking RCM under section (4) of section 9 of CGST Act, to tax TDR, FSI, long term lease and Cement when received by promoter from an unregistered supplier
6	6. -2019-CTR_Amnd nf 1-2017-CTR	To create a new rate of 18% on supply of any goods other than capital goods and cement falling under chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975), by an unregistered person to a promoter by amending notification No. 1/2017- CTR
7	7. Amendment to rule 42 and 43	Amendment to rule 42 and 43 of CGST rules for real estate sector.

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### Rate structure as per the new draft notification

Sl. No.	Description of service	Rate of GST	Condition
RREP	3 (ia) Construction of affordable residential apartments by a promoter in a residential real estate project (RREP)	1 %	• Credit of input tax charged on goods and services for construction of apartment has not been taken
	3 (ib) Construction of residential apartments other than affordable residential apartments by a promoter in a residential real estate project (RREP)	5 %	• 80 % of value of goods and services other than capital goods and services by way of grant of development rights, long term lease or FSI for construction of apartment shall be procured from registered supplier only;
	3 (ic) Construction of commercial apartments ( shops, offices, godowns etc.) by a promoter in a residential real estate project (RREP)	5 %	• where value of goods and services procured from registered suppliers during the financial year falls short of the threshold of 80%, tax shall be paid by the promoter on such shortfall at the applicable rates of 18% on reverse charge basis. Similar treatment for capital goods purchased from unregistered suppliers.
REP	3 (id) Construction of affordable residential apartments by a promoter in a real estate project (REP) other than a residential real estate project (RREP)	1 %	
	3 (ie) Construction of residential apartments other than affordable residential apartments by a promoter in a real estate project (REP) other than a residential real estate project (RREP)	5 %	• where cement is purchased from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis
	3 (if) Construction of commercial apartments (shops, offices, godowns etc.) by a promoter in a real estate project (REP) other than a residential real estate project (RREP)	12 %	No condition (ITC available)

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### Rate notification (new definitions)

- Definition of apartment, promoter, Real Estate Project (REP), carpet area etc. adopted from Real Estate (Regulation and Development) Act, 2016.
- “affordable residential apartment” is defined as per GST Council decision (including ongoing affordable housing schemes of state and center for which at least one installment has been paid before 01.04.2019)
- “residential real estate project (RREP)” is defined to mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP.
- Metropolitan cities for the purpose of this clause are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).  
**Geographical limits to be prescribed by Centre and States.**

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Draft details on TDR/ JDA, FSI, Long term lease etc.

- Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted

**Conditions**

- Constructed apartments are to be sold before issuance of completion certificate and tax is paid on them (either 1% or 5%).
- Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate.
- Such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.
- This will achieve tax parity between under construction and ready to move property.

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Draft details on TDR/ JDA, FSI, Long term lease etc.

**Liability to pay tax**

- The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under RCM.
- The builder shall be liable to pay tax on TDR, FSI and long term lease (premium) to the extent these rights are used in construction of flats that are sold after issuance of completion certificate.
- The date on which builder shall be liable to pay tax under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate. Similar change is also proposed in JDA.
- This is likely to address the problem of cash flow substantially.

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### Transition details: to be submitted by 30<sup>th</sup> September, 2019

$$T = T_x + T_e$$

ITC reversal (Tx) shall be calculated as under:

$$T_x = T - T_e$$

Where,

- (i) T is the total ITC availed (utilized or not) on inputs and input services used in construction of the RREP from 1.7.2017 to 31.3.2019 including transitional credit taken on 01.07.2017;
- (ii) Te is the eligible ITC attributable to construction of commercial portion in the REP and such construction of residential portion in the REP which has time of supply on or before 31.03.2019;
- (iii) Tx is the ITC to be taken or reversed on transition

**Tx is positive, i.e.  $T_e < T$ , the builder shall pay** the difference as part of output liability

**Tx is negative, i.e.  $T_e > T$ , the builder shall take ITC** on goods and services received on or after 01.04.2019

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### Transition details to find eligible ITC (Te)

$$T_e = T_c + T_r$$

Tc and Tr is credit attributable to commercial and residential portion in project respectively

$$T_c = T * \frac{\text{Carpet area of commercial apartments in the REP}}{\text{Total carpet area of commercial and residential apartments in the REP}}$$

$$T_r = T * F_1 * F_2 * F_3 * F_4$$

$$F_1 = \frac{\text{Carpet area of residential apartments in REP}}{\text{Total carpet area of commercial and residential apartments in the REP}}$$

$$F_2 = \frac{\text{Total carpet area of residential apartment booked on or before 31.03.2019}}{\text{Total carpet area of the residential apartment in REP}}$$

$$F_3 = \frac{\text{Such Value of supply of construction of residential apartments booked on or before 31.03.2019 which has time of supply on or before 31.03.2019}}{\text{Total value of supply of construction of residential apartments booked on or before 31.03.2019}}$$

$$F_4 = 1 / \% \text{ Completion of construction as on 31.03.2019}$$

- Te has been capped (limits have been prescribed) to address extreme situations.
- It has to be compiled for each of the taxes separately

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### Amendment to GST Rules

- Finalization of ITC at the end of the project as well as financial year wise to be done.
- Apportionment of ITC based on area of commercial and residential apartments in the project.

### Impact on pricing of installments for the existing bookings due to change in input tax structure

- The value of installment (base value + GST) in no case is expected to increase.
- In some cases the base value may go down leading to fall in price.
- In some cases base value may go up but the total consideration (value + GST) to be paid for an installment shall not increase in any case. It is expected that the developer will provide necessary justification for variation in base value.

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### Proposals before Council

- The draft notifications, rules, order may be approved.
- The same shall be issued after vetting by Ministry of Law and Justice, Govt. of India, to be effective from 01<sup>st</sup> April, 2019.
- Inputs/ comments/ suggestions received from states in relation to draft notifications etc. shall be examined in consultation with Ministry of Law and Justice, Govt. of India at the time of vetting.
- Proposals received from Maharashtra (on value cap, JDA/ SDA etc.) and Punjab (exempting to lease of land for setting of industrial parks), may be referred for examination to GoM or the Fitment Committee as they are not connected to the present proposal and also in view of operation of the Model Code of Conduct.

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