NIRC OF ICAI • CONCLAVE ON REAL ESTATE

GST Masterclass

# GST on Real Estate

## Hotel Hyatt — Delhi

*6th September 2026 | Legal Provisions • Notifications • Case Laws*

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SESSION ROADMAP

# What This Masterclass Covers

*From the statutory foundation to the Supreme Court's latest word on real estate GST*

**1**

## Legal Framework

Sections 7, 9 & 15 | Schedule II & III | Circular 177 | Rules 27–31

**2**

## Key Definitions

Promoter | REP / RREP | Affordable Housing | Carpet Area | TDR / FSI

**3**

## Notifications 03–08 of 2019

Rate card | Conditions | RCM | TDR exemption | Time of supply

**4**

## Impact on JDAs

Four-leg framework (T-1 to T-4) | Area vs revenue share | Long-term lease

**5**

## Summary of Case Laws

Munjal Bhatt | Gujarat Chamber | Provident Housing | Prahitha | Shrinivasa | Safari Retreats

**6**

## Thank You

Open discussion & questions

SECTION 1

# Legal Framework

## Sections, Rules, Circulars & Notifications

*Section 9 & 7 | Schedule II & III | Circular 177 | Section 15 | Rules 27–31 | Section 2(33) & 31(5)*

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# What Is Taxed, Who Pays, What Is Exempt

### Sec 9(1)
**Forward Charge**

Levy of CGST on intra-State supplies at a rate ≤ 20%, on value under Section 15. Paid by the supplier.

### Sec 9(3)
**RCM — Specified**

Recipient pays GST on notified supplies. KEY: TDR/FSI to a promoter is taxed under RCM via N/N 05/2019.

### Sec 9(4)
**RCM — Unregistered**

When an unregistered person supplies to a registered person, the recipient pays. Used for the 80% procurement shortfall (N/N 07/2019).

### Sec 148
**Deferral Power**

Empowers Government to notify a special time of supply. Used by N/N 06/2019 to defer tax to OC / CC.

### SCHEDULE II — Supply of SERVICES (taxable before CC / first occupation)

• Lease / tenancy / licence to occupy land
• Lease / letting out of building for business
• Renting of immovable property
• Construction of a complex intended for SALE — unless entire consideration is received after CC or first occupation

### SCHEDULE III — NOT Taxable (neither goods nor services)

• Sale of LAND → outside GST
• Sale of BUILDING after Completion Certificate OR first occupation → outside GST

CUT-OFF: CC or first occupation, whichever is earlier. Before → taxable service. After → outside GST.

# Construction vs Sale of Land — the Dividing Line

## Schedule II, Para 5(b)

Deemed a SUPPLY OF SERVICE

*"Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly,* ***except where the entire consideration has been received after issuance of completion certificate****, where required, by the competent authority or* ***after its first occupation, whichever is earlier."***

"Competent authority" includes a registered architect, a chartered engineer, or a licensed surveyor — not only the local sanctioning authority.

## Schedule III, Para 5

NOT a supply — outside GST

***"Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building."***

Per Circular No. 177/09/2022-TRU (Q.14): land sold as-is, or after levelling / laying drainage, water or electricity lines, remains "sale of land" — no GST either way. (See next slide.)

# Is Sale of Levelled / Developed Land Taxable?

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**Q.14 Whether sale of land after levelling, laying down of drainage lines, etc., is taxable under GST**

### CBIC's Answer (paras 14.2 – 14.4)

- As per Sl. No. (5) of Schedule III of the CGST Act, 2017, ‘sale of land’ is neither a supply of goods nor a supply of services.

- Land may be sold either as it is, or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. Sale of such developed land is also ‘sale of land’ and is covered by Sr. No. 5 of Schedule III — it does not attract GST.

- CAUTION: any service provided for development of land (levelling, laying of drainage lines etc., as may be received by developers) shall attract GST at the applicable rate for such services — only the eventual sale of the land stays outside GST.

# Section 15 — Determining the Value of Supply

**Is the transcation value ascertainable, are the parties unrelated, and is the price the sole consideration?**

**YES — all three**

**Use S.15(1) transaction value**
+ S.15(2) inclusions (taxes, incidental expenses, interest/penalty for late payment, subsidies)
− S.15(3) discounts
**= FINAL TAXABLE VALUE**

**IF ANY ANSWER IS NO**

**S.15(4) applies:**
value determined 'as may be prescribed' — the **Valuation Rules 27 to 31** (see next slide).

### Why This Matters for Real Estate

JDA / TDR exchanges rarely have a simple cash price — the landowner is paid in constructed area, not money. That takes the transaction straight to Rule 27 (consideration not wholly in money) and Rule 28 (related-party transfers), which is exactly why these rules dominate JDA litigation.

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# Rules 27–31 — Valuation Rules

*Critical for JDA, exchange transactions, and related-party dealings*

### Rule 27

***Consideration not solely in money***

OMV; if unavailable → value of like kind; if unavailable → 110% of cost. USED IN JDA: TDR given for apartments — value = OMV of similar apartments at the date of TDR transfer.

### Rule 28

***Related parties / distinct persons***

OMV; or value of like kind; or as per Rules 30/31. Applied when the TDR exchange is between related entities.

### Rule 29

***Agent–principal supply of goods***

90% of the price charged by the recipient to unrelated buyers, OR OMV — whichever is lower.

### Rule 30

***Cost-based valuation***

110% of the cost of production / acquisition / provision of service. Fallback when Rules 27–29 cannot determine value.

### Rule 31

***Residual method***

Reasonable means consistent with Section 15 principles. The last resort.

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# When Must the Invoice Be Raised?

### Section 2(33) — "Continuous Supply of Services"

*"A supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations, and includes such supply as the Government may, subject to such conditions as it may specify, notify."*

Four tests: (1) continuous / recurrent supply (2) under a contract (3) period exceeding 3 months (4) periodic payment obligation. A JDA construction service to a landowner routinely satisfies all four.

### Section 31(5) — Invoice Timing

(a) **Due date ascertainable from contract**

Invoice on or before the due date of payment.

(b) **Due date NOT ascertainable**

Invoice before or at the time the supplier receives the payment.

(c) **Payment linked to an event**

Invoice on or before the date of completion of that event.

SECTION 5

# Case Laws

## Five Judgments Every Real-Estate Practitioner Must Know

*Munjal Bhatt | Gujarat Chamber | Provident Housing | Prahitha | Shrinivasa | + Safari Retreats on ITC*

# Munjaal Manishbhai Bhatt v. Union of India

*Gujarat High Court • SCA No. 1350/2021 • 06.05.2022 • 2022:GUJHC:21067-DB*

**ISSUE:** Is the mandatory 1/3rd land deduction under Para 2 of N/N 11/2017-CT(R) constitutionally valid, or ultra vires where actual land value is clearly ascertainable?

## Ruling — Read Down, Not Struck Down

- Section 15(1) mandates transaction value as the price actually paid or payable. A deeming fiction can operate only where actual value is NOT ascertainable — here, the booking agreement separately and distinctly quantified land and construction, and Revenue never challenged that bifurcation.
- The Court's central holding: "When the statutory provision requires valuation in accordance with the actual price paid and payable for the service and where such actual price is available, then tax has to be imposed on such actual value. Deeming fiction can be applied only where actual value is not ascertainable."
- Para 2 was READ DOWN, not struck down: the fixed 1/3rd deduction is now OPTIONAL — available only where the actual land value is genuinely not ascertainable. Where the agreement separately states land value, GST is computed only on actual construction consideration.
- Excess tax collected was ordered refunded with 6% interest within 12 weeks.

***Status:*** *The Union of India's Special Leave Petition against this ruling remains pending before the Supreme Court — the issue is sub judice.*

# Gujarat Chamber of Commerce & Industry v. Union of India

*Gujarat High Court • (2025) 170 taxmann.com 251 • 03.01.2025*

**ISSUE:** Does assignment/transfer of leasehold rights in a GIDC industrial plot (99-year lease) to a third party attract GST as a "supply of service"?

## Ruling — Assignment Is a Sale of Immovable Property, Not a Service

- There are two distinct transactions: (1) GIDC's original grant of the long-term lease — a supply of service, since ownership stays with GIDC; and (2) the lessee-assignor's sale/transfer of leasehold rights to a third party — which divests the assignor of ALL rights and is "nothing but transfer of an immovable property."
- Leasehold rights are "benefits arising out of land" under the General Clauses Act, the Registration Act and the Transfer of Property Act — hence themselves immovable property. A 99-year (or long-term) lease for premium is as much an alienation as sale or mortgage.
- Held (paras 63, 67 & 83): the assignment falls under Para 5 of Schedule III (sale of land/building) read with Section 7(1)(a) and Schedule II, and is NOT a "supply of service" — hence NOT subject to GST under Section 9.
- Followed by the Bombay High Court in Shrinivasa Realcon (see later slide) and by the Nagpur Bench in Aerocon Cushions.

***Status:*** *The Supreme Court dismissed the Revenue's SLP in the related Aerocon Cushions matter (22 May 2026) and formally dismissed the main batch of SLPs against Gujarat Chamber itself (21 July 2026).*

# Provident Housing Ltd. v. Union of India & Ors.

*High Court of Bombay at Goa • 21.08.2025*

**ISSUE:** Does GST liability on construction services under a JDA (dated 13.10.2017) arise on execution of the JDA, or upon transfer of possession/right in the completed property under N/N 04/2018-CT(Rate)?

## Ruling — Liability Tracks Conveyance, Not the JDA Date

- Background: under a JDA dated 13.10.2017, Revenue initially treated the date of execution of the JDA as the time of supply for the developer's construction service to the landowner, and ₹7 crore was deposited under protest during investigation.
- Notification No. 4/2018-CT(Rate) (25.01.2018) fixes the time of supply: liability to pay tax on construction service (and on development rights) arises only when the developer transfers possession or the right in the completed structure to the landowner, by conveyance deed, allotment letter or similar instrument.
- Held: GST liability in a JDA does NOT arise on the date of execution of the JDA (even where the JDA pre-dates the notification) — it arises only when the developer conveys the completed property to the landowner.
- This confirms the same principle applied via N/N 06/2019 for the post-April-2019 scheme: JDA taxation follows completion, not signature.

# Prahitha Construction Pvt. Ltd. v. Union of India

*Telangana High Court • W.P. No. 5493/2020 • 09.02.2024 • 2024 SCC OnLine TS 3994*

**ISSUE:** Is transfer of development rights under a JDA a "sale of land" excluded from GST under Schedule III Entry 5, or a taxable "supply of service"? (Incidental challenge to N/N 4/2018-CT(R), as amended by N/N 23/2019.)

## Ruling — TDR Transfer Is Taxable, Not a Sale of Land

- Background: under a JDA dated 28.12.2017, the developer was given permissive possession of ~10.12 acres at Hyderabad Knowledge City to build an IT/ITES commercial complex; landowners would later receive built-up area and convey the proportionate undivided share of land (UDS) to the developer.
- The Court rejected the argument that the JDA results in a sale of land: only a separate conveyance deed, executed AFTER completion of development, transfers the UDS — the JDA by itself does not transfer ownership.
- Held (para 34): there are two distinct taxable supplies — transfer of development rights by the landowner, and construction services by the developer — both taxable under Section 7 read with Entry 5(b) of Schedule II. "Under no circumstances can the aforesaid two supplies be termed as sale of land under Entry 5 of Schedule III."
- N/N 05/2019's RCM on TDR/FSI was upheld as valid.

# M/s Shrinivasa Realcon Pvt. Ltd. v. Dy. Commissioner CGST, Nagpur

*Bombay High Court (Nagpur Bench) • WP No. 7135/2024 • 08.04.2025*

**ISSUE:** Does the right granted to a developer, under a private development agreement, to construct on the owner's land qualify as "Transfer of Development Rights (TDR) or FSI" under Entry 5B of N/N 05/2019 — attracting GST under RCM?

## Ruling — A Private Development Agreement Is Not TDR/FSI Under Entry 5B

- Background: the developer was appointed to construct a multi-storey complex on an 8,000 sq. ft. plot. Under the development agreement (07.01.2022), consideration was ₹7 crore plus two apartments; two SCNs demanded GST under Entry 5B of N/N 12/2017 (as amended 29.03.2019).
- Held: TDR/FSI as contemplated by Entry 5B "cannot be related to the rights which a developer derives from the owner under [a private] agreement of development" for constructing the building for the owner in exchange for a share of built-up units.
- Entry 5B applies only to an actual, standalone transfer of TDR/FSI (e.g. from a planning authority) — not to development rights granted under an ordinary bilateral development agreement.
- Both show-cause notices were quashed and set aside; this ruling was rendered consistently with, and cites, the Gujarat Chamber line of reasoning (see Case Law 2).

# Section 17(5)(c) & (d) — Blocked ITC

*ITC not available — two clauses that decide every real-estate ITC dispute*

### Sec 17(5)(c) — Works Contract Services for Immovable Property

ITC NOT available on WORKS CONTRACT SERVICES used for CONSTRUCTION OF IMMOVABLE PROPERTY on own account.

**Exception 1:** ITC IS available if the WCS is used for FURTHER SUPPLY of works contract services (sub-contractor → main contractor).
**Exception 2:** Plant & Machinery — ITC available even for its construction.

*Uses 'plant AND machinery' — defined in the Explanation to Section 17 (excludes land, buildings, civil structures, telecom towers, pipelines).*

### Sec 17(5)(d) — Goods/Services for Own Construction

ITC NOT available on goods or services received for CONSTRUCTION OF AN IMMOVABLE PROPERTY (other than plant or machinery) on own account — even if used in the course or furtherance of business.

Uses 'plant OR machinery' — deliberately different from clause (c). Not defined in the Act — a broader, factual enquiry.

**Buildings are excluded from 'plant and machinery' — but can still be 'plant' for clause (d) if they pass the Functionality Test (Safari Retreats, SC 2024 — next slide).**

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CASE LAW | INPUT TAX CREDIT — REMANDED

# Chief Commissioner CGST v. Safari Retreats Pvt. Ltd.

*Supreme Court of India • Civil Appeal No. 2948/2023 • 3 October 2024 • 2024 INSC 756*

## Supreme Court Holds:

- Section 17(5)(c) & (d) are constitutionally valid.
- "Plant or machinery" (clause (d)) is deliberately wider than "plant and machinery" (clause (c)) — not a drafting mistake.
- Functionality Test: a building CAN be "plant" if it is a tool of the trade, not merely the setting for it — a factual determination case by case.

**Outcome:** Sections 17(5)(c) and (d) remain on the statute book. Whether a particular building (mall, hotel, warehouse) qualifies as "plant" — and so unlocks ITC — is a question of fact, to be determined case by case applying the Functionality Test.

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# The Statutory Distinction the Court Relied On

*Add this beside the existing Safari Retreats slide — the clauses are not interchangeable.*

### Section 17(5)(c)

works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

### Section 17(5)(d)

goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

**Note the drafting: clause (c) uses "plant and machinery"; clause (d) uses "plant or machinery".**

# Supreme Court Language and the Functionality Test

*Chief Commissioner CGST v. Safari Retreats Pvt. Ltd., 2024 INSC 756*

*"If it was a drafting mistake, as suggested by learned ASG, the legislature could have stepped in to correct it. However, that was not done. In such circumstances, it must be inferred that the legislature has intentionally used the expression 'plant or machinery' in clause (d) as distinguished from the expression 'plant and machinery', which has been used in several places. As the expression 'plant or machinery' appears to be intentionally incorporated, it is not possible to accept the contention of the learned ASG that the word 'or' in clause (d) should be read as 'and'."*

### Functionality Test

A building can qualify as "plant" if it is so essential to the carrying on of the business that it functions as a tool of the trade rather than merely the setting in which the trade is carried on. Mall, hotel, warehouse — each is a question of fact. The Court remanded for that determination.

### "Own account"

Construction of a commercial property for leasing or licensing is not "on his own account" in the conventional sense. Even so, ITC still requires the immovable property to qualify as "plant or machinery" under the functionality test.

# The Retrospective Amendment (2025)

- **The Text Change:** The government changed the wording in Section 17(5)(d) from "plant **or** machinery" to "plant **and** machinery".
- **The Date:** This change applies back in time (retrospectively) starting from July 1, 2017—the launch date of GST.
- **Overriding Courts:** A new explanation was added to override past court orders, including the *Safari Retreats* decision.

SECTION 2

# Key Definitions

## Promoter, REP, RREP, Affordable Housing, Carpet Area & TDR

*Section 2(zk) & 2(zn), RERA 2016 | N/N 03/2019-CT(R) | Section 2(119), CGST Act*

# Works Contract & Promoter

### Works Contract — Section 2(119), CGST Act

*"A contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract."*

### Promoter — Section 2(zk), RERA 2016

(a) a person who constructs or causes to be constructed an independent building or apartments, or converts an existing building into apartments, for the purpose of selling all or some of the apartments to other persons, and includes his assignees; or

(b) a person who develops land into a project, whether or not the person also constructs structures on plots, for the purpose of selling to other persons all or some of the plots — and includes any other person who acts as a builder, coloniser, contractor, developer or estate developer.

# REP and RREP — Why the 15% Line Matters

### Real Estate Project (REP) — Sec 2(zn), RERA 2016

Development of a building or apartments, or converting an existing building into apartments, or development of land into plots or apartments, for the purpose of selling all or some of them. Includes common areas, development works, improvements, structures, easements, rights and appurtenances.

***KEY: A REP can include BOTH residential and commercial apartments in one project.***

### Residential REP (RREP) — Clause (xix), N/N 03/2019

A REP where the carpet area of the COMMERCIAL apartments is NOT MORE THAN 15% of the total carpet area of all apartments in the REP.

Commercial carpet area > 15% → **REP** (not RREP)

Commercial carpet area ≤ 15% → **RREP**

# Two Faces of the Same “Promoter”

*N/N 03/2019-CT(R) splits the statutory promoter into two functional roles*

### Developer-Promoter

A promoter who CONSTRUCTS or converts a building into apartments, or develops a plot for sale.

Role in JDA: receives TDR from the landowner and constructs the project. Pays GST on construction services to the landowner (T-2).

### Landowner-Promoter

A promoter who TRANSFERS land or development rights/FSI to a developer-promoter for construction of apartments, and receives constructed apartments against such rights — selling them to buyers independently.

Role in JDA: receives T-2 construction service; uses the resulting ITC on T-4 sales.

# Affordable Residential Apartment

*Clause (xvi)(a), N/N 03/2019-CT(R) — BOTH conditions must be satisfied*

### Metropolitan Cities

**Carpet Area ≤ 60 sq.m. AND Gross Amount ≤ ₹45 lakh**

Bengaluru, Chennai, Delhi-NCR (Delhi, Noida, Gr. Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata, Mumbai (whole MMR).

### Other Cities & Towns

**Carpet Area ≤ 90 sq.m. AND Gross Amount ≤ ₹45 lakh**

All cities and towns other than the metropolitan cities listed on the left.

**GROSS AMOUNT =**

(A) Construction consideration + (B) Amount charged for land / undivided share of land, including by way of lease or sub-lease + (C) Any other amount charged by the promoter — including Preferential Location Charges (PLC), development charges, parking charges, common-facility charges, etc.

*If EITHER condition fails (carpet area exceeds the limit OR gross amount exceeds ₹45 lakh) → the apartment is NOT "affordable" → the higher rate applies.*

# Carpet Area & TDR / FSI

### Carpet Area — Section 2(k), RERA 2016

The NET USABLE FLOOR AREA of an apartment.

EXCLUDES: area under external walls, service shafts, exclusive balcony/verandah, exclusive open terrace.

INCLUDES: area under internal partition walls.

Carpet area ≠ super built-up area — it alone decides the affordable-housing classification and the RREP 15% threshold.

### Floor Space Index (FSI) & TDR

**FSI:** ratio of a building's total floor area to the size of the plot on which it is built.

**TDR (Transferable Development Rights):** also called Additional FSI — compensation in the form of FSI/development rights granted by Central or State Government for surrender of land; transferable in part or whole.

**GST treatment:** TDR and Additional FSI stand on the SAME footing — both attract RCM on the developer-promoter (N/N 05/2019) and both qualify for the Nil exemption for residential construction (N/N 04/2019).

SECTION 3

# Notifications 03 to 08

## of 2019 — The New GST Scheme for Real Estate

*Rates | Conditions | RCM | TDR Exemption | Time of Supply | Goods RCM | Effective 1 April 2019*

# Notification 3/2019 — The GST Rate Card

*Effective 1 April 2019 — rates shown are the CGST component prescribed by the notification itself*

**0.75%**

**Affordable Residential**

RREP & REP — new scheme, cash-paid, ITC restricted

**3.75%**

**Other Residential / Commercial (RREP)**

New scheme — cash-paid, ITC restricted

**6%**

**Works Contract (Affordable) / Old-Scheme Option**

≥50% affordable carpet area | ongoing projects opting old rate

**9%**

**Residual Construction Services**

With-ITC scheme — general construction not otherwise listed

***CGST rates shown; an equal SGST/UTGST applies for the total GST liability. Land value is deemed 1/3rd of the total amount charged (Para 2) — the taxable base is the remaining 2/3rd.***

# Mandatory Conditions for the New-Scheme Rates

*Applies to items (i), (ia), (ib), (ic) & (id) — the new lower rates without ITC*

### 1. Cash Payment Only

Tax must be paid IN CASH by debiting the electronic CASH LEDGER only. The electronic CREDIT LEDGER (ITC balance) cannot be used to pay this output tax.

### 2. ITC Blocked (except Annexure I/II)

ITC on goods and services used for supplying the service is NOT available, except to the limited extent prescribed in Annexure I (REP) or Annexure II (RREP) for transitional ongoing projects (as on 31.03.2019).

### 3. JDA — Developer Must Pay GST to Landowner

Where a landowner-promoter transfers TDR/FSI to a developer-promoter for apartments: the developer-promoter SHALL pay GST on construction services to the landowner. The landowner gets ITC only if selling before OC/CC and paying tax ≥ tax charged by the developer.

# The 80% Registered-Procurement Test

*Minimum procurement threshold from registered suppliers*

### 4. 80% Procurement from Registered Suppliers

80% of all inputs and input services (by value) must be from REGISTERED suppliers each FY (or till OC/CC). RCM-paid items are deemed from registered suppliers. EXCLUDED from the test: TDR/FSI, long-term lease premium, electricity, HSD, motor spirit, natural gas.

### 5. Shortfall @ 18% RCM

If procurement from registered suppliers falls short of 80%: the promoter pays GST @ 18% on the shortfall value under REVERSE CHARGE. Calculated at FY-end, payable by June of the following FY. Ineligible ITC is reported in GSTR-3B Row 4(D)(2) every month.

### 6. Cement — RCM in the Month of Receipt

If CEMENT (Chapter Heading 2523) is received from an UNREGISTERED person: the promoter pays GST at the applicable rate under REVERSE CHARGE in the MONTH OF RECEIPT itself — no deferral to year-end. This prevents a cash-flow advantage from unregistered cement dealers.

DEVELOPMENT RIGHTS & FSI / TDR

# Notification 4/2019 — Exemption with a Claw-Back

*Nil rate on TDR/FSI transfer & long-term lease premium for residential apartments — but only up to what is booked*

TDR / FSI transfer or
long-term lease premium,
for RESIDENTIAL apartments

### Entries 41A / 41B

**NIL RATE — booked apartments**

An apartment is “booked” once: time of supply has occurred, at least one instalment is credited, and an allotment letter/agreement is issued — all on or before the completion/first-occupation date.

### Un-booked at Completion / First Occupation

Promoter pays GST on reverse charge, on the proportionate value attributable to unbooked residential apartments.

**0.5%**

cap — unbooked AFFORDABLE apartments

**2.5%**

cap — unbooked OTHER residential apartments

*Liability trigger: same as Notification 6/2019 — the date of completion certificate or first occupation, whichever is earlier.*

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# Notifications 5/2019 & 6/2019

*New RCM entries inserted into Notification 13/2017-CT(Rate)*

**Entry 5B**

Transfer of Development Rights or FSI (incl. additional FSI) for construction of a project by a promoter

**Entry 5C**

Long-term lease of land (30+ years) against upfront premium / periodic rent for construction of a project

*Liability under RCM sits with the promoter (the recipient), not the landowner/lessor.*

## Notification 6/2019 — Time of Supply

- Promoter receives TDR / FSI / long-term lease on or after 01.04.2019
- Consideration flows as construction service, cash, or upfront premium
- GST liability arises on: Completion Certificate — OR — First Occupation, whichever is earlier

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# Notifications 7/2019 & 8/2019

*Where a promoter falls short of the required procurement from registered suppliers*

*Section 9(4) triggers — the promoter pays RCM on three categories*

### Goods & Services Shortfall

Promoter pays RCM on the shortfall value against the minimum purchase requirement (excl. development rights / lease).

### Cement

RCM applies on cement (Chapter 2523) making up the shortfall — regardless of the general shortfall calculation.

### Capital Goods

RCM applies on capital goods supplied to a promoter for project construction.

### Rate: 9% CGST

Notification 8/2019 fixes 9% CGST (Schedule III) for shortfall goods RCM; cement & capital goods keep their own applicable rates.

SECTION 4

# Impact on Joint Development Agreements

## JDAs, Long-Term Leases & Real-World Scenarios

*Area Share | Revenue Share | T-1 to T-4 | Long-Term Lease | PLC & Circular 177*

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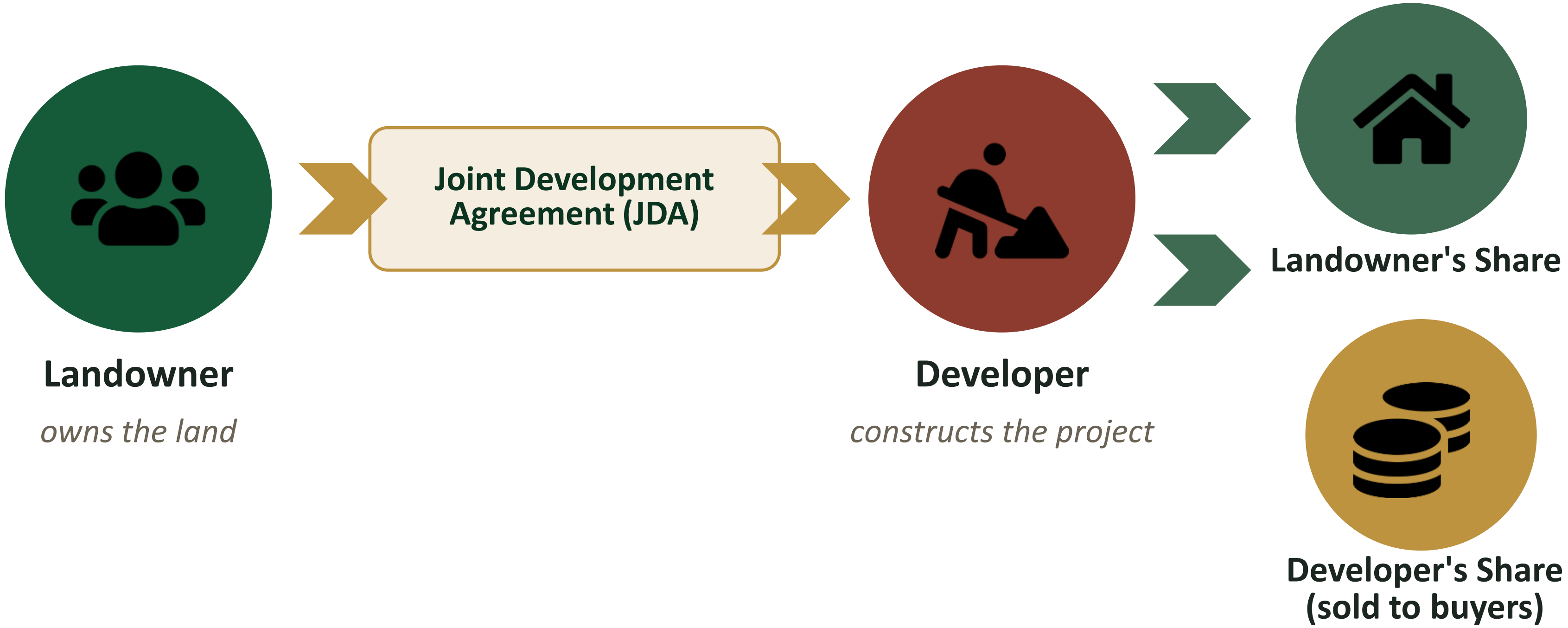
THE STARTING POINT

# What Happens in a Joint Development Agreement?




**Why it matters for GST**

A JDA is not one transaction — GST law treats the transfer of development rights and the construction service as separate, specifically-timed supplies.

**Schedule III, Entry 5, CGST Act, 2017:** "Sale of land" is neither a supply of goods nor of services — including developed land (levelling, drainage, etc.), per CBIC Circular No. 177/09/2022-TRU, para 14.

*Source: CGST Act 2017, Schedule III Entry 5; CBIC Circular No. 177/09/2022-TRU (03.08.2022), para 14*

# The JDA Four-Leg Framework

*GST treats a Joint Development Agreement as four distinct supplies — not one transaction.*

### T-1
**TDR / FSI**

Landowner → Developer

RCM on developer
N/N 05/2019 • 5B

### T-2
**Construction**

Developer → Landowner

Forward charge
N/N 06/2019 timing

### T-3
**Sale of units**

Developer → Buyers

New-scheme rates
0.75% / 3.75% CGST

### T-4
**Sale of units**

Landowner → Buyers

Area-share only
ITC from T-2 usable

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# T-1 and T-2 — Rights In, Construction Out

*Residential Area Share | N/N 03, 04, 05, 06 of 2019*

## T-1 • Transfer of Development Rights / FSI

| | |
|---|---|
| **Supplier:** | Landowner |
| **Tax payer:** | Developer-Promoter under RCM (N/N 05/2019, Sl. 5B) |
| **Time of supply:** | Deferred to OC/CC or first occupation (N/N 06/2019) |
| **Value:** | Para 1A, N/N 04/2019 — similar apartments nearest date of TDR transfer |
| **Rate:** | 18% GST (Heading 9972); Nil under N/N 04 for sold units |
| **ITC:** | Developer CANNOT avail ITC on the TDR tax paid |

## T-2 • Construction Service to Landowner

| | |
|---|---|
| **Supplier:** | Developer-Promoter |
| **Tax payer:** | Developer-Promoter (forward charge, Sec 9(1)) |
| **Time of supply:** | Deferred to OC/CC (N/N 06/2019, clause (d)) |
| **Value:** | Para 2A — similar apartments nearest TDR transfer date, less 1/3rd land |
| **Rate:** | 0.75% / 3.75% CGST — affordable / other (N/N 03/2019) |
| **ITC:** | Developer: NO ITC. Landowner: CAN claim & use against T-4 sales |

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# T-3, T-4 & the Revenue-Share Variant

*End-customer sales follow the same rate card; area-share and revenue-share JDAs diverge here*

### T-3 • Developer Sells to End Customers

| | |
|---|---|
| **Tax payer:** | Developer-Promoter (forward charge) |
| **Time of supply:** | Date of advance or milestone (Section 13) |
| **Value:** | Transaction value less 1/3rd land (Para 2, N/N 11/2017) |
| **Rate:** | 0.75% / 3.75% CGST — affordable / other. Nil after OC/CC |
| **ITC:** | NO ITC — cash payment only |

### T-4 • Landowner Sells to End Customers (Area Share only)

| | |
|---|---|
| **Tax payer:** | Landowner-Promoter (forward charge) |
| **Time/Value/Rate:** | Same as T-3 |
| **ITC:** | CAN use ITC from T-2; must sell before OC/CC, pay tax ≥ T-2 tax |

**Revenue-Share JDA:** NO T-2 (no construction service to landowner) and NO T-4 (landowner receives a share of sale proceeds, not units). TDR value is determined with reference to the revenue share on sold units plus the estimated value of unsold units.

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# Long-Term Lease, PLC & Key Circulars

*N/N 04/2019 Sl. 41B | Circular 177/2022 | Circular 206/2023 | Circular 228/2024*

### Long-Term Lease — GST Treatment

Lease of 30+ years = supply of services (Schedule II, Entry 1). Upfront premium/salami is taxable at execution — BUT EXEMPT for residential construction under Sl. 41B of N/N 04/2019. Commercial/industrial long-term lease = TAXABLE @ 18% GST. For residential, RCM applies on the promoter for the unsold proportion at OC/CC (capped at 0.5%/2.5%).

### PLC — Circular 177/09/2022-TRU, dated 03.08.2022

Preferential Location Charges (floor premium, view premium) are INTEGRAL to the underlying lease/sale transaction. If the lease/sale is EXEMPT (residential land / long-term residential lease) → PLC is also EXEMPT. If TAXABLE (commercial) → PLC is taxable at the same rate. PLC cannot be treated as a separate service.

### Electricity — Circular 206/18/2023-GST, dated 31.10.2023

Electricity bundled with renting/maintenance = COMPOSITE SUPPLY, taxed as the principal supply. EXCEPTION: if charged at actuals per DISCOM/state-board tariff and the entity acts as a PURE AGENT → GST not applicable.

### RERA Collections — Circular 228/22/2024-GST, dated 11.07.2024

RERA is a ‘governmental authority’. Statutory collections by RERA are EXEMPT from GST under Sl. 4 of N/N 12/2017-CT(R), per the 53rd GST Council's recommendation.

# Six Judgments at a Glance

| Case | Court / Year | Status | Key Outcome |
|---|---|---|---|
| **Munjal Bhatt** | Gujarat HC, 2022 | Read Down | Mandatory 1/3rd land fiction is ultra vires — optional only where actual land value is not ascertainable. SLP pending. |
| **Gujarat Chamber** | Gujarat HC, 2025 | Allowed; SC dismissed SLP | Assignment of leasehold rights = transfer of immovable property. NOT taxable under GST. |
| **Provident Housing** | Bombay HC (Goa), 2025 | Allowed | JDA GST liability arises on conveyance of the completed property — not on the date of the JDA. |
| **Prahitha** | Telangana HC, 2024 | Dismissed | TDR transfer ≠ sale of land. Taxable under GST; Schedule III Entry 5 does not apply; N/N 05/2019 RCM valid. |
| **Shrinivasa Realcon** | Bombay HC (Nagpur), 2025 | Allowed | A private development agreement (no external TDR) ≠ TDR/FSI under N/N 05/2019 Entry 5B. SCN quashed. |
| **Safari Retreats** | Supreme Court, 2024 | Remanded | Sec 17(5)(c)&(d) valid. A building CAN be “plant” — Functionality Test decides, case by case. |

# Thank You

*GST on Real Estate — Conclave, NIRC of ICAI*

Questions & Open Discussion

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