CASE STUDY - 1
INDIRECT TAX PERSPECTIVE

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To understand the tax implications of the society redevelopment case highlighted above, we will now examine the impact on each of the parties involved:

(*Note: The levy of dual GST in India is implemented through a series of inter-connected legislations i.e., Central Goods and Service Tax Act, 2017 – "CGST Act", Respective State Goods and Service Tax Acts and Integrated Goods and Service Tax Act, 2017. Since the provisions are similarly applicable across the legislations, reference to the provisions of the CGST Act should include reference to respective state GST Acts as well, unless specifically mentioned. There is a basic assumption that the above project is registered under the RERA provisions as well.)*

2. The existing/ old individual society members

- Receipts of money for discussion of potential GST impacts:
  - Corpus – Rs. 20 lacs
  - Hardship Compensation – Rs. 10 lacs
  - Rent Compensation – Rs.80,000/- p.m. for next 48 months
- The terms and conditions of any redevelopment project shall be enshrined in a registered "Development Agreement" executed between the existing/ old individual society members and the developer.
- In the present case, the answer to understanding the GST impact of the above receipts of monies lies in the fundamentals of GST.
- Section 9 of the CGST Act provides for a levy of tax on all intra-state supplies of goods or services or both. Hence, levy of GST rests on two aspects:
  i. there must be a "supply"
  ii. the supply must be of "goods" or "services" or both.
- The scope of supply is explained in Section 7 of the CGST Act and the relevant extract is reproduced hereunder:

  "7. Scope of supply

  (1) For the purposes of this Act, the expression "supply" includes-

  *(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person **in the course or furtherance of business**"*

  ……
- The aspect of goods or services is discussed subsequent paras. Here, while discussing the scope of supply, it is of utmost importance that the receipt of money should be '*in the course of furtherance of business*'

- The term "business" has been defined u/s 2(17) of the CGST Act and the relevant portion is reproduced below:

  "2. (17) "business" includes -

  (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

  (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

  (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;"

  ….

- The definition of 'business' uses the word 'includes' while defining what business would mean under GST. It is well known that when a definition clause uses the word 'includes', it is generally used to enlarge the meaning of the words and phrases occurring in the body. Even in general parlance, when it comes to old/ existing society members, no one in their rightful mind would consider the activity of entering into a redevelopment transaction as a 'business' activity.

- Further, can it be said that the existing/ old society members are in the 'trade' or 'commerce' or 'manufacture' or 'profession' or 'vocation' or 'adventure' or wager' of giving their home for redevelopment to receive such a sum of money? The answer is a clear "NO" because none of the above terms lend any meaning to the transaction at hand from the perspective of the old/ existing society members. Entering into agreements for the redevelopment of homes is neither an ancillary nor incidental activity of any 'trade' or 'commerce' or 'manufacture' or 'profession' or 'vocation' or 'adventure' or wager' for the existing/ old society members.

- Sub-clause (c) of Section 2(17) of the CGST Act also would not be triggered here because the ambit of sub-clause (c) tries to exclude volume, frequency, continuity or regularity provided that the activity/ transaction falls under sub-clause (a) in the first place. For Example, a trader of good, who occasionally functions as broker to facilitate a sale of flat, is able to execute only a deal or two in a year and sometimes none for a year. The activity of functioning a broker is first covered vide 'commerce' and then, sub-clause (c) strengthens the business element by eliminating the volume/ frequency aspect in closing deals for the sale of flats. In the present, as explained above, the execution of an agreement for redevelopment of home is not a business transaction from the perspective of the old existing society member.

- Hence, the scope of "supply" which requires existence of 'business' element in a transaction is not present here, when viewed from the perspective of the old/ existing society members.

- Secondly, now for a moment let's assume that the condition regarding 'business' element is not applicable in the present case, then, is it a case of supply of 'goods' or 'service' by the old/ existing society members that has resulted in the receipt of sums of money highlighted above?

- The term 'goods' is defined under section 2(52) of the CGST Act to mean every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. Since in the instant case, the subject matter of the transaction is an immoveable property, it is evident that there is no supply of goods.

- The term 'service' is defined under section 2(102) of the CGST Act to mean anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

- On going through the above definition of service, it is evident that the term service has been loosely defined under GST. A literal reading of the definition indicates that anything which is not classifiable as 'goods' would be a 'service'. However, the context here requires that a purposive interpretation is adopted rather than literal interpretation of the definition. The purposive interpretation would suggest that the transaction should bear an essential character of 'service.'

- What is the essence of 'service'? Reference can be drawn to the erstwhile Service Tax law (and the CBIC has also done the same while issuing clarifications vide Circular No. 178/10/2022-GST dated 03.08.2022), wherein 'Service' was defined as any activity carried out by a person for another for consideration. The concept 'activity for a consideration' involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done without such a relationship i.e., without the express or implied contractual reciprocity of a consideration would not be an 'activity for consideration'. The element of contractual relationship, where one supplies goods or services at the desire or another, is an essential element of 'service.'

- Here, the old/ existing society members do not undergo hardship/ relocation 'at the desire of' the developer; the old existing society members do not receive the compensations (include the rent) for doing any activity at the behest of the developer. Hence, the essential character of 'service' is missing when the sum of money is received by the old existing society members. Hence, even the second limb is not satisfied in the present case when the transaction is analyzed from the perspective of the old/ existing society members. Hence, the levy of GST fails.

- As a result, the receipt of corpus, hardship compensation and rent will not attract the levy of GST in the hands of the old existing society members.

II. <u>The society</u>

- No GST impact for any of the above transactions in the hands of the "Society" - ABC Co-operative Housing Society Ltd.

III. <u>The developer – "Best Developer Limited"</u>

- The way GST provisions have evolved in the last few years in this real estate sector and especially for redevelopment activities, it feels like that one project where the all problems from erstwhile laws were not thought through and only after the rollout of GST, it was decided to tackle them as and when they arose. Sometimes, it feels very similar to the story of the Mumbai roads and the potholes. It is only when the rains lash the city, the responsible party awakens to do damage control rather than ensuring smooth/ good quality roads are built in the first place.

- For the sake of brevity, the analysis of business is not done again because it is accepted and understood that the developer is in the business of developing and redeveloping real estate projects. There is an activity of redevelopment undertaken by the developer and so, let's dive in detail analyzing the activity performed, who are/ aren't the recipients of this supply and what are provisions of the law that get triggered in the course of this activity.

A. Transactions with new independent buyers (i.e., sale of available area of 33,800 sq. ft at an approximate rate of 45,000/- per sq. ft)

- As explained earlier, the subject of tax under GST is "supply". The scope and meaning of the term supply have been dealt with under section 7(1) of the CGST Act. Supply is wide enough to cover all types of sale, transfer, barter, exchange, license, rental, lease, disposal of goods or services for a consideration in the course or furtherance of business.

- The activity of construction/ redevelopment is indeed in the course of conducting the business of the developer and when analyzing the transactions with new independent buyers, there will be certain agreed considerations that shall flow from the new/ independent buyers to the developer. Hence, there is no iota of doubt that such a transaction will qualify as a "supply" for the purpose of this case.

- Once a transaction qualifies as "supply" under Section 7(1) of the CGST Act, then, Schedule II provides whether the said transactions will be deemed to be supply of goods or supply of service (in accordance with Section 7(1A) of the CGST Act). The relevant extract of the provisions of the law is reproduced hereunder:

  "7. Scope of supply

  (1) …..

  (1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II."

  …..

  " Schedule II - Activities or transactions to be treated as supply of goods or supply of services

  ….

  5. Supply of services

  The following shall be treated as supply of services, namely:

  (a)….

  (b) 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."

- To fall under the scope of Para 5(b) of Schedule II above, a portion of the consideration (may be part or may be full), should be received from the new independent buyer(s) before the issuance of the completion certificate. In such a case, the said supply by the developer shall be treated as supply of service.

- What happens when the entire consideration from a particular new buyer is received after issuance of completion certificate from the relevant authority? (the case highlights that close to 30% of total area available for sale to new/ independent buyer would remain unsold as on date of completion certificate i.e., for this 30% of the area, entire sale consideration shall be received after the receipt of the completion certificate)

- Section 7(2) of the CGST Act read with Schedule III of the CGST Act would be triggered in such a case. Section 7(2) of the CGST Act provides an over-riding effect over Section 7(1) of the CGST Act and treats certain transactions as neither supply of goods nor supply of services i.e., such a transaction would not attract the levy of GST because the underlying transaction is deemed to be neither a supply of goods nor services by the law itself. The relevant extract of the provisions of the law in this regard is reproduced hereunder:

  7. Scope of supply

  (1) …..

  (1A) …

  (2) Notwithstanding anything contained in sub-section (1):

  (a) activities or transactions specified in Schedule III; or

  (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council

  Shall be treated neither as a supply of goods nor a supply of services"

  …..

  "Schedule III - Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

  1, 2, 3, 4…….

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

- The 23a (5) of Schedule III with respect to sale of building is subject to Para 5(b) of Schedule II meaning that the outcome of Para 5(b) of Schedule II will have a bearing on Para (5) of Schedule III. Only if the sale of a building does not get classified as a 'Supply' under Para 5(b) of Schedule II, only then will it be covered by Para (5) of Schedule III as neither a supply of goods nor services. Hence, only when the entire consideration is received from the new/ independent buyer after issuance of completion certificate from the relevant authority, the said transaction will be treated as neither a supply of goods nor services and will not attract GST.

- The below table summarizes the above analysis:

Consideration	Receipt by Developer	GST Taxability
Part consideration (i.e., part consideration is after completion certificate)	Before completion certificate	Yes
Whole consideration	Before completion certificate	Yes
Whole consideration	After completion certificate	No

- Once we are through with the taxability, we now analyze the applicable GST rate for the taxable transactions. As highlighted in the facts of the case, the developer has opted for new scheme applicable after for all projects commencing after 01.04.2019.

- Accordingly, Entry 3(ia) of Notification 11/2017-CT(Rate) dated 28.06.2017 (updated from time to time), the said supply of construction services of a residential flat is liable to CGST at 3.75% (and corresponding SGST at 3.75%) in the present case, subject to deduction of one-third value towards transfer of land. Hence, the effective GST rate applicable comes to 5% [(3.75 + 3.75) – 1/3 of (3.75 + 3.75)]

- The above concessional rate of 5% of GST comes with certain conditions provided by the said rate notification entry and the same have been dealt with in the next section.

B. Things to keep in mind w.r.t. inward supply/ procurements

- The first and foremost condition associated with this concessional rate of 5% is that the developer shall not be eligible for claim of any input tax credit for this project. The entire tax liability must be paid in cash i.e., by debiting the electronic cash ledger on the GST portal. The tax paid under RCM in accordance with Section 9(3) of the CGST Act, shall also not be eligible for claim of credit to the developer.

- Secondly, the value inputs and input services procured by the developer (other than grant of development rights/ long term lease of land/ FSI, including additional FSI/ electricity, Diesel/ Natural Gas/ Motor Spirits) should be from registered suppliers to the extent of at least 80% of the total procurements. This condition is commonly referred/ understood as the '80:20 Rule' in this industry. In case, there is a shortfall i.e., such procurements from registered suppliers are below the threshold limit of 80%, then, tax under reverse charge mechanism is payable by the Developer to extent of such shortfall at 18%. In case, cement is procured from unregistered vendor, then tax under RCM is payable on such cement procurement at the rate applicable to cement i.e., 28%.

- The applicability of the above '80:20 Rule' has to be analyzed every year and the impact of the same has to be reported in Form GSTR 3B for June following the end of the financial year or before.

- The above provisions can be summarized in a tabular working as under:

Particulars	Reference	Amount
Total inward procurement for the financial year	(A)	xxxx
Less: procurements specifically excluded (grant of development rights/ long term lease of land/ FSI, including additional FSI/ electricity, Diesel/ Natural Gas/ Motor Spirits)	(B)	(xxxx)
Less: procurements not amounting to supply (E.g. Compensation/ hardship paid to old members – as discussed above)	(C)	(xxxx)
Total Procurements for 80:20 Rule	(D) [A-B-C]	XXXX
Less: Exempt supplies (as per actual notification)	(E)	(xxxx)
Balance taxable procurements	(F) [D-E]	XXXX
20% of the amount determined under (D) above	(F)	xxxx
Supplies from URD less Supplies on which tax is already discharged under RCM (E.g. Lawyers/ GTA, etc)	(G)	xxxx
If (F – G) is positive, then threshold of 20% is not breached. If (F – G) is negative, i.e., supplies from URD is higher than 20%, then it is a shortfall	(H)	XXXX
CGST @ 9% and SGST @ 9% i.e. 18% on (H) is payable under RCM on or before GSTR 3B of June after then end of the financial year.		XXXX

- This above exercise needs to be done each year until the end of the project (i.e., receipt of completion certificate). Needless to say, the above payment of tax under RCM would not be eligible for claim of input tax credit to the developer.

C. Transactions with old/ existing society members

- There are two types of transactions with the old/ existing society members in the present case – (i) providing the original area plus 35% additional area (totaling to i.e., 16,200 sq. ft.) free of cost and (ii) some old/ existing members would additionally purchase more area from the developer at a discounted rate.

I. Transaction of allotment of 16,200 sq. ft to old existing society members

- The redevelopment agreement generally provides that the existing members grant development rights in respect of the area owned by the existing society to the developer and in exchange for the same, the developer shall provide them with existing area and some additional free area as permanent alternate accommodation (i.e., 16,200 sq. ft in this case) as free of cost.

- The intention of the developer in such cases is to really provide a free of cost new accommodation (i.e., new flat) to the old/ existing society members. There is really no revenue earned from the existing members but only from the new members. In other words, the area allotted to the existing members represents a cost for the developer which forms a part of the calculations to determine the sale price for the new buyers.

- It is important to highlight here that Notification No. 6/2019 – CT (Rate) dated 29.03.2019 prescribes that the developer (i.e., 'promoter developer' in terms of the notification) will discharge GST on the construction service provided by him against the consideration in the form of development rights at the time when the completion certificate is received. Further, Para 2A of Notification No. 11/2017 – CT (Rate) dated 28.06.2017, as updated, specifies that the value of such construction service to old existing society members in respect of the new flats shall be deemed to be equal to the total amount charged for similar flats in the same project from the independent buyers nearest to the date on which such development right is transferred to the promoter (i.e., first sale to a new independent buyer must be considered).

- Considering the ad hoc deduction provided towards the land value, effectively GST @ 5% becomes payable on the date of the receipt of the completion certificate (or Occupation Certificate – OC, in some cases) in case of residential apartments given free of cost to the old existing members under forward charge basis.

- Contrary to the above view prescribed in the notifications issued by the CBIC, the GST Law imposes a tax on the transaction value and no tax is payable on free supplies except in specific instances listed in Schedule I. Since the developer and the old existing society members are not related persons, the provisions of Schedule I are not attracted and therefore GST cannot be demanded on such free supplies.

- As highlighted above, the cost of construction of free flats for the old existing society members is always factored in the flats sold to the new independent buyers and hence, tax is already paid on the said value of construction services. Any interpretation to impose a tax on the area allotted free of cost to the existing members would result in double taxation, which should ideally be avoided in an indirect taxation.

- The above aspect was considered under the erstwhile Service Tax regime by the Hyderabad Tribunal in the case of Vasantha Green Projects vs. Commissioner of GST [2019 (20) GSTL 568 (Hyderabad Tribunal)] wherein a view was taken that no service tax is payable on the area allotted free of cost to existing members in a redevelopment project. The said decision is pending before the Supreme Court. The said decision does represent a correct judicial interpretation and the said principles would equally apply under the GST Law as well.

- Further, Section 2(31) of the CGST Act envisages a scenario whereby the consideration for the supply is paid by a person other than the recipient of service. It is therefore possible to argue that even if there are services rendered to existing owners, the consideration for the said services is received from the new independent buyers. This interpretation would also be in consonance with the agreement which would expressly permit the developer to enter into sale agreements with third parties and appropriate the sale proceeds in this regard.

- Hence, it might be difficult for the Department to demonstrate that some consideration actually flowed from the old existing society members to the developer. At the same time, the above position will be litigative and will not be free from doubt. The developer may choose to adopt a conservative stand and not challenge the vires of the notifications issued in this regard. In such a case, the tax liability would be determined as under:**ParticularsValue**Agreed consideration for the 1st flat sold to a new independent buyer (A)xxxxxPer sq. ft rate of the above flat [B = (A) / area of the flat]xxxx per sq. ftValue as per Para 2A of Notification 11/2017 – CT (Rate) dated 28.06.2017 [C = 16,200 sq. ft * Rate determined as (B) above * 2/3]xxxxxxGST payable on the above [Amount determined at (C) above * 7.5% (Value already excludes 1/3rd component towards land)]xxxx

ii. Transaction of sale of additional area to old existing society members apart from the allotted area

- The GST law treats this transaction on par with supply of flats to new/ independent buyers.
- Hence, whatever additional area is purchased by the old existing society members over and above the allotted area of 16,200 sq. ft in the development agreement, such transaction shall be liable to the effective rate of GST @ 5% (explained above)
- The transaction rate (i.e., the discounted value = stamp duty ready reckoner rate per sq. ft – 20%) will be considered as taxable value for the purposes of GST and accordingly tax will be discharged on the same by the developer in due course.

D. Taxability of Transferable Development Rights (TDR)/ Floor Space Index (FSI)

- Section 9 of the CGST Act provides for a levy of CGST on all intra state supplies of goods or services or both. In general, the tax is required to be paid by the taxable person being the supplier of the goods or services or both. However, Sections 9(3) and 9(4) of the CGST Act empower the Government to notify cases where the tax will be paid by the recipient on 'reverse charge' basis i.e., RCM.
- Strictly going by the notifications issued, the following liability accrues in the hands of the developer under RCM:

  a. Notification No. 4/2019 - CT(Rate) dated 29.03.2019 amended the exemption Notification No. 12/2017 - CT(Rate) dated 28.06.2017 to introduce an Entry 41A in the list of exempted services whereby services by way of transfer of development rights (i.e., TDR) or Floor Space Index (i.e., FSI) (including additional FSI) on or after 1st April, 2019 are exempted conditionally. Effectively the condition stipulates that the developer shall pay tax under RCM on such value of TDR/ FSI proportionate to the unsold units at the time of receipt of completion certificate.

  b. Notification 5/2019 – CT (Rate) dated 29.03.2019 prescribes the reverse charge mechanism in this regard.

  c. It is further provided that the tax payable under RCM on TDR/ FSI shall NOT effectively exceed 1% of the value in case of affordable residential apartments and 5% of the value in case of residential apartments other than affordable residential apartments remaining unsold on the date of issuance of completion certificate or first occupation

- If the above notifications are accepted as is by the developer, then, at the time of receipt of the completion certificate, there will an RCM liability @ 18% to the extent of 30% of the unsold flats on the taxable value of TDR and any TDR/FSI procured from open market, subject to a maximum amount of 5% of the value of unsold flats (calculated based on last sale value before completion certificate).

- Here, the intention of the Department is clearly evident viz., to require payment of GST on the unsold apartments on the date of the completion certificate.
- Recently, with slightly different set of facts (i.e., in the case of Joint Development Agreement), the Telangana High Court upheld the levy of GST on TDR in the case of Prahitha Construction Pvt Ltd vs. Union of India [2024-TIOL-623-HC-TELANGANA-GST].
- However, there is another school of thought as well. Firstly, it is important to highlight that the provisions of Section 9(3) & 9(4) of the CGST Act will be triggered only in a scenario where there is a levy created by Section 9(1) of the CGST Act in the first place. If any transaction is not covered by Section 9(1) of the CGST Act, then provisions of Section 9(3) & 9(4) would not apply to the same.
- In the previous discussion, we have already established that the old existing society members are not in the "business" of granting development rights for redevelopment. Hence, there is no supply by the old existing society members and therefore, the levy provided under Section 9(1) of the CGST Act fails. Now, if the levy under Section 9(1) of the CGST Act fails, can there be a liability under RCM fastened on the recipient?
- It is a settled legal proposition that the existence of an exemption/ reverse charge notification cannot by itself infer or presume the existence of a levy. In a particular case [Gypsy Pegasus Limited vs. State of Gujarat - 2018 (15) GSTL 305 (SC)], the conduct of musical programs was excluded from the provisions of levy of Entertainment Tax Act. A notification issued under the said Act also granted an exemption, however, subject to certain conditions. When the authorities attempted to demand the entertainment tax citing non-compliance with the conditions mentioned in the notification, the Supreme Court held that if the transaction is excluded from the levy itself, the exemption becomes redundant and the conditions mentioned in the said exemption notification have no relevance.
- Hence, there is a good argument to be made that since levy under Section 9(1) of the CGST Act fails, there should not be any tax payable under RCM in the hands of the recipient as well.
- Now let's assume for a moment that the condition regarding "business" is kept aside, can granting of TDR/ FSI be considered as a supply of 'goods' or 'service' to be covered within the scope of "supply"?
- In general understanding, TDR/ FSI is a right to develop the land. Essentially, land like any other asset is an immoveable property and a bundle of several rights that accrues to it. Several rights one may identify with land are development rights, possession right, cultivation right, etc.
- We have already understood what is 'goods' and 'services' under GST in the discussion above. Without re-iterating the same and relying on the Supreme Court decision in the case of Tata Consultancy Services Limited vs. State of Andhra Pradesh [2004 (178) ELT (022) SC], any property, whether tangible or intangible is classifiable as 'goods' if it has the following attributes, namely

- The Item should have utility
- The item should be capable of being bought and sold
- The item should be capable of being transmitted, transferred, delivered, stored and possessed

- The concept of 'transferability' provides the attribute of a thing becoming property, which can be further classified into moveable properties, immoveable properties, tangible properties or intangible properties. Some of these may constitute goods while some may not. When the concept of service is examined, it has to be examined vis-à-vis this aspect of transferability. If there is a possibility of 'transferability', it would NOT amount to be service.

- In the instant case, since the transaction is one that relates to a transfer of development rights in an immovable property, the same cannot amount to supply of 'service'. Therefore, the transaction does not qualify to be either a supply of 'goods' or a supply of 'service' and therefore the levy under section 9(1) of the CGST Act is not attracted.
- Further, Para 5 of Schedule III (discussed above - Activities or transactions which shall be treated neither as a supply of goods nor a supply of services) specifies that sale of land and sale of building as transactions which shall be treated as neither supply of goods nor supply of services. Another view could be taken that the purposive interpretation would suggest that the exclusion provided vide Para 5 of Schedule III should be applicable in the instant case and hence, transaction of TDR/ FSI would outside the purview of GST itself.
- More support can be can be drawn from Para 1(b) of Schedule II which classifies any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services. This entry however, falls short of specifically classifying transfer of right in immoveable property without the transfer of title within the scope of services.
- The above discussions must be taken with a pinch of salt that the Department will never agree to the above alternate tax positions. The same will have to be litigated as and when Department raises this query and the victory might not be achieved before the Tribunal stage.
- Coming back to our case, having accepted a position that due to the specific notifications issued in this regard, the grant of TDR/ FSI through the development agreement constitutes a taxable transaction, it is important to arrive at an appropriate value to discharge GST on the same.
- Rule 27 of the CGST Rules specifies that where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall be the open market value of such supply. The execution of the development agreement attracts stamp duty. For the said purpose, the development right is valued by the respective authorities. The value adopted for stamp duty calculation can be adopted under GST as well. For any TDR/ FSI procured from open market, the value paid in cash should be adopted for determining the taxable value.
- There is no specific rate entry under the rate notification and hence, it would attract 18% as applicable for residuary entry for real estate services under HSN 9972. Not to forget, the total liability will not exceed 5% of the value of unsold flats, where the value shall be calculated based on the last sale value before the completion certificate.
- Here's hoping that old existing society members, society and the developer are now in a position to take well informed decisions regarding their possible tax liabilities.

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