

Specific compliances under GST- Real Estate Sector

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GST on real estate has been a contentious issue especially with real estate sector in India facing a challenging time over the last few years. Tremendous changes have been made under real estate sector after 01.04.2019, which has increased compliance burden on the taxpayers. In order to run the business smoothly without having any penal consequences, the taxpayers are required to comply with certain procedural requirements and discharge tax liabilities within the stipulated time. In this article, we have made an attempt to summarize the specific compliances that are to be followed under real-estate sector to avoid any penal consequences from the department.

A. September related compliances

As we are aware that under GST the month of September is very important for making any adjustments or rectifications for the transactions made in previous financial year. Let us see what all compliances a person engaged in real estate is required to do in the Sep return for the transactions made in previous financial year.

i. ITC Reversal

Applicable projects – The person who has opted to pay GST @ 18% on residential projects which were commenced before 01.04.2019 (i.e., ongoing projects) and commercial projects.

Monthly reversal¹: From the date of commencement of project on the basis of carpet area for the flats intended to be sold after the receipt of completion certificate or first occupation of the project, whichever is earlier (hereinafter referred to as **Completion date**) or to be retained.

Final reversal²: Assuming that, Completion date is in F.Y 2020-21, the final reversal should be calculated on ITC availed on input and input services from the beginning of the project till the Completion date, on the basis of carpet area of unsold units as on Completion date.

If the ITC reversed monthly > final reversal, then such excess credit reversed can be re-claimed by Sep following the year in which such Completion date occurs.

¹ Rule 42(1) of the CGST Rules, 2017

² Rule 42(4) of the CGST Rules, 2017

If the ITC reversed monthly < final reversal, then such short amount should be reversed by Sep following the year in which Completion date occurs, along with interest from the first day of April of next financial year till the date of payment

Example:

- Total carpet area of project = 10,000 sq. ft
- Total carpet area of units unsold on completion date = 3,500 sq. ft
- Total ITC availed in the project = Rs. 5,00,000
- Completion date: 20.12.2020
- ITC reversed monthly till Completion date = Rs. 80,000
- Final ITC reversal = Rs. 5,00,000 * 3,500/10,000 = Rs. 1,75,000.
- ITC still to be reversed by Sep = Rs. 1,75,000 – Rs. 80,000 = Rs. 95,000 (along with interest from 01.04.2021 till the date of payment).

Further, it should be noted that ITC reversal should be done for each project separately. If it is not possible to determine ITC availed for each project, then same should be determined on reasonable basis i.e., on the basis of carpet area of each project in terms of rule 42(6) of the CGST Rules, 2017.

ii. Refund adjustments- Credit Note

GST invoices would be issued to the customer based on the milestone mentioned in the agreement being a continuous supply of service in terms of section 2(32) of the Act read with 31(5) of the Act. In case if the flat is cancelled by the customer, credit note is to be issued and adjusted against the output tax liability.

In terms of Sec 34 of the Act, adjustment of tax liability can be made only if such credit note was disclosed in the GST return not later than the month of Sep, following the end of the FY to which such advances pertain

Example:

M/s. X Ltd has received a booking in May'20, for which an invoice amounting to Rs. 10 lakh is issued on 20.05.2020. However, the said flat was cancelled and the credit note for the same was issued on 01.04.2021. In such case, M/s. X Ltd can adjust the credit note with other tax liability in case if the same is disclosed by Sep'21 return. If the said credit note is not disclosed by Sep'21 return, then the option of refund can be explored.

B. Yearly compliances

i. Procurements from unregistered persons

- a) **Applicable projects:** The residential projects on which tax is paid @ 5% or 1.5%, the developer of the project should ensure that at least 80% of procurements are received from the registered persons during the financial year or part of financial year till the date on which Completion date occurs³.
- b) **Periodicity** – Every year from the commencement of the project till the Completion date.
- c) **Person liable** - Developer

To do - Required to assess the value of all input and input services received from both the registered and unregistered suppliers. If the value of procurements received from registered suppliers is not exceeding 80% of total inward supplies, then the Developer of the project is required to pay GST @18% under RCM for such shortfall. Expenses on which GST is payable under RCM would be considered as procurements made from the registered persons.

d) **Exclusion from calculation**

The following shall be excluded from the value of procurements, while calculating 80% limit:

- Amount paid towards grant of development rights
- Electricity
- High speed diesel
- Motor spirit
- Natural gas

- e) **Due date:** On or before the due date of furnishing GSTR-3B for the month of June of the following F.Y.

Note-1: Cement and capital goods should be procured from registered Vendors only. If not, GST on the same should be discharged under RCM by the developer.

Example:

- Total value of procurements: Rs. 10,00,000
- Purchase from registered vendors: Rs. 7,75,000
- % Of registered procurements = $7,75,000/10,00,000 * 100\% = 77.5\%$
- Shortfall in registered procurements = $80\% - 77.5\% = 2.5\%$

³ In terms of 3 proviso to explanation to entry 3 of notification No. 11/2017 – Central Tax Rate dated 28.06.2017

- On 2.5% of 10,00,000 GST should be paid under RCM @ 18%.

C. Project-end compliances

i. GST liability w.r.t. Joint Development Agreement

In order to pool up the resources for construction of real-estate projects, the Developer enters into an agreement named Joint Development Agreement (JDA) with the Landowners wherein the Landowners transfers the development rights on land to the Developer to develop the land and the Developer provides construction services to the Landowners by developing the land. Later, the constructed units would be shared between the Developer and the Landowner in their agreed sharing ratio. In this regard, let us understand the GST liability w.r.t JDA entered on or after 01.04.2019 for Residential & Commercial projects.

a) GST on construction services provided by the Developer to the Landowner:

Irrespective of the nature of project i.e., residential or commercial, GST on construction services is same for the all the JDA's entered after 01.04.2019. The Developer would be liable to pay GST on or before the Completion date, on the first sale value nearest to the date of JDA.

b) GST on transfer of development rights by the Landowner to the Developer:

The taxability on transfer of development rights would be quite different in case of residential projects when compared to commercial projects.

- **Commercial**

The Developer is made liable to pay GST under reverse charge mechanism (RCM)⁴ on or before the Completion date⁵ on the first sale value nearest to the date of JDA⁶.

- **Residential**

For JDA entered on or after 01.04.2019 for residential projects, exemption⁷ has been given from paying GST on transfer of development rights w.r.t units sold before the Completion date. However, w.r.t units sold after Completion date, the Developer would be liable to pay GST under RCM on or before the Completion date.

⁴ In terms of entry 5B of notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017

⁵ In terms of notification No. 06/2019 – Central Tax (Rate) dated 29.03.2019

⁶ In terms of explanation 1A to notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017

⁷ In terms of entry 41A of notification No. 12/2017 Central Tax (Rate) dated 28.06.2017

ii. Liability w.r.t works contract service for affordable residential apartments

- **Applicable Projects** - Affordable Residential GST @ 1.5% or ongoing projects on which GST @ 1.5% is opted⁸.
- **Periodicity:** Once after completion of project
- **Person liable:** The Developer who is undertaking works contract service for construction of a residential building from a works contractor and such contractor is charging GST @ 12% on such service.
- **Conditions for concessional rate:** The carpet area of affordable apartments is not less than 50% of the total carpet area of all the apartments in the project
- **If Condition not satisfied:** At the end of the completion of project, Developer should assess whether the carpet area of affordable apartments is not less than 50% of total carpet area of all the apartments in the project. If the carpet area of affordable apartments is less than 50%, then the Developer is required to pay GST @ 6% under RCM for such shortfall i.e., value of works contract service * 6% (18% - 12%).

For any query or feedback please write to monika@hiregange.com

⁸ In terms of entry 3(va) of notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017