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GST on joint development agreements & transfer of development rights: Analysis



I was auditing one of the listed giants of India in real estate sector; while checking the books a thought came in my mind whether GST apply on JDA's and TDR's? Hence, I researched on this topic and decided to publish my analysis in this article.

Introduction

In India the real estate sector deals with complexity whether it is related to the regulatory compliance or indirect tax point of view i.e. applicability of Goods and Services Tax. Nowadays the taxation of JDA and TDR's is one of the hot topics in industry as both are the critical instruments for real estate development.

In this article I am going to discuss the legal framework, RCM applicability applicable rates, practical challenges, and industry-level trends that professionals, developers, and tax authorities are going through.

A short discussion on JDA

A Joint development agreement is a contract between a landowner and a developer to jointly develop real estate on the landowner's property. The landowner provides land, while the developer undertakes construction and project execution. In return, the landowner receives a share of the constructed units or project revenue.

Under GST, this arrangement gives rise to two principal supplies, that is the supply of TDR or FSI or lease rights by the landowner to the developer.

Jointly owned land

In cases where land is jointly owned by multiple individuals, such as co-owners in a family, or through a joint inheritance, or partnership, then each co-owner is treated as a distinct supplier under GST law, unless the property is owned by a registered entity like company or a firm.

As per *Section 2(17)(d)* of the CGST Act, activities relating to real estate transactions even if done occasionally or without profit motive are deemed as being in the course or furtherance of business when there is consideration involved.

Furthermore, *para 5(b) of Schedule II* classifies “agreeing to the obligation to do an act or to refrain from an act” as a supply of service, which directly covers the granting of development rights by landowners. Therefore, each co-owner must obtain GST registration individually if their share of consideration exceeds the threshold limit prescribed under Section 22 of the CGST Act.

Failure to register may lead to litigation, denial of input tax credit to the developer, and penal consequences. It is thus advisable to assess the individual tax positions of co-owners and ensure GST compliance before executing the JDA.

GST on TDR / FSI / long-term lease by landowner

Under *Schedule II (para 2)* of CGST Act, transfer of development rights (TDR) is treated as supply of service, but it should be noted that the sale of land is covered under *Schedule III* hence it should not be treated as a Supply, that's why GST is not applicable on land component of the agreement but supply of TDR that is a right to develop land is still treated as service, hence GST applies.

Taxability

Before 01.04.2019, or notification issued by the department, the TDR was taxable under forward charge but from 01.04.2019, department came up with the **notification No. 4/2019 of central Tax (Rate)**, which states GST component on supply of TDR/FSI/lease is exempt if the constructed flats are sold before the occupancy certificate or first occupation, and developer pays GST on construction services, but GST is applicable on proportionate TDR value corresponding to unsold flats at the time of OC.

This is payable by developer under reverse charge mechanism, for which the applicable Rate of GST will be 18%, that is on taxable value under SAC 9972 which deals with real

estate services.

GST on construction service given by developer to the landowner

Where the flats are handed over by the developer to the landowner in exchange for development rights, it is deemed as a supply of construction service by the developer, now let's discuss the rates applicable in that case through a table below:

Project Type	GST Rate	ITC Eligibility
Affordable housing	1%	No ITC
Other residential	5%	No ITC
Commercial (in RREP ?15%)	5%	No ITC
Commercial (others)	12%	With ITC

Now you might be wondering what is RREP?

Expanding it as residential real estate project, it refers to a real estate project in which the carpet area that means "the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment" of commercial apartments does not exceed 15% of the total carpet area of all apartments in the project.

This classification has been defined in GST law, particularly in the context of [Notification No. 11/2017 – Central Tax \(Rate\)](#), as amended by [Notification No. 03/2019 – Central Tax \(Rate\), dated 29.03.2019](#). The distinction is crucial as it governs the applicable tax rates and input tax credit eligibility for the developer.

As we discussed in table above, the projects qualifying as RREPs are subject to concessional GST rate of 1% for affordable residential units and 5% for other residential units, both without ITC benefit. The intent behind this classification is to differentiate residential projects from mixed-use or commercial-dominant projects.

For developers point of view, ensuring the project qualifies as an RREP can lead to simplified tax compliance and eligibility for certain exemptions, especially under reverse charge provisions for TDR/FSI and long-term lease transactions.

When a project will be deemed as affordable housing?

Affordable housing refers to residential units that are economically accessible to the section of society falling within the low-income group or economically weaker section. Under various government schemes, including the Pradhan Mantri Awas Yojana, affordable housing projects are intended to promote home ownership by making housing available at a price point that aligns with the financial capacity of the target group.

For GST purposes, as per [Notification No. 11/2017–Central Tax \(Rate\)](#) as amended, a

residential unit qualifies as affordable housing if in the case of metropolitan cities, the carpet area does not exceed 60 square meters and the value does not exceed ₹45 lakh; and in the case of non-metropolitan cities, the carpet area limit is extended to 90 square meters, with the same price ceiling. These criteria are critical as they determine eligibility for concessional GST rates of 1% and denial of input tax credit under the notified composition scheme for real estate projects.

Time of Supply

For landowner, the time of supply shall be earlier of possession or completion of units, and for developer it will be deemed supply on receipt of TDR (even if not monetary), though for GST payment it might be different.

Issues in Practical life

Tax authorities across various states notably in Maharashtra, Karnataka, Gujarat have started issuing notices to developers at the time of OC to enforce RCM liability on TDR related to unsold units or inventory. Many builders are contesting that what should be the method for valuation of flats, they are even facing the time of supply disputes, as well as whether the flats given to landowners are truly “sold”?

Valuation disputes under RCM

There is no uniform rule under CGST Rules for valuation, which is confusing the developers whether they should use circle rate or ready reckoner value, or use last sale price of similar flats. They are fully dependent on CA certificates for valuation benchmarking.

Landowner gaps in compliance

In area-sharing JDAs, landowners often fail to recognize they are recipients of construction service and liable under GST. It is common especially with the individuals or HUFs unfamiliar with taxation related aspects on real estate sector. In many cases, lapses in registration, results in blocked ITC or mismatch in GST returns, leading to notices and legal issues.

Nowadays, Industry is shifting towards **revenue-sharing models**, that means Developers increasingly avoid area-sharing JDAs to mitigate GST risks. Revenue-sharing JDAs where landowner is paid in money (not flats) are becoming popular as they avoid RCM issues, Simplify valuation, and do not trigger deemed construction service.

Planning by builders

To reduce RCM burden and streamline GST audit preparedness, they should maintain pre-OC flat sale records, conduct GST impact studies before executing JDAs, prepare TDR valuation memos for file noting, and also include GST indemnity clauses in JDAs.

Judicial and AAR Rulings

In the case of ***Gera Developers Pvt. Ltd. (AAR, Maharashtra)***, it was stated that the RCM on TDR applies only to unsold units at OC stage, In case of ***Elegant Infra (AAR, Delhi)*** it was stated that landowner receives construction service, hence, it is stated as supply of services on which GST is payable, next case law is ***Maarq Spaces Pvt. Ltd. (Karnataka)*** where it is stated that Self-invoice must be raised under RCM on OC date for GST purposes

These rulings have reinforced the need for developers to plan GST on TDR properly and track unsold inventory at OC.

Let's discuss the **compliance checklist** in detail:

Particulars	Details
Drafting of JDA with GST clauses	It should include valuation rules as well as RCM conditions
Identification of landowner GST status	Individual/HUF landowners may need registration
Maintain inventory register	Track sold/unsold status of plots till OC
Self-invoice under RCM	On date of OC for unsold flats
GST on construction service	Apply correct rate based on project classification

It should be complied with the consultation of GST Advisor or Chartered Accountant to avoid future notices or legal issues.

RCM on TDR / FSI / Long-Term Lease in a JDA

RCM applies when the developer receives development rights, FSI, or long-term lease from the landowner, and the exemption under [Notification 04/2019-CT\(R\)](#) does not fully apply that means, if any constructed units remain unsold at the time of issuance of completion certificate or first occupation, whichever is earlier.

Illustration

Suppose the landowner grants TDR to developer for constructing 100 flats, out of these, 80 flats are sold before OC, while 20 flats are unsold at OC date.

Now let's assume that, per unit market value is Rs. 50 lakh, Then the taxable value under RCM will be Rs. 50 lakh × 20 that will be Rs. 10 Cr, and the GST under RCM will be 10 Cr × 18% = Rs. 1.80 Cr which shall be payable by the developer, from the above illustration I made it clear that this tax i.e. RCM shall be applicable only on the portion attributable to unsold units at the time of OC or first occupation whichever is earlier.

Non applicability of RCM

If all units are sold before OC, and the developer discharges GST on construction under normal forward charge, then, no RCM on TDR is required. This exemption is as per Notification No. 4/2019 Central Tax (Rate) dated 29.03.2019 and Entry No. 41A/41B/41C, Notification 12/2017 Central Tax (Rate) (as amended).

Compliance for developer

First of all, developer should maintain the proper register relating to inventory or units sold and units that are unsold at the time of OC, value the unsold flats fairly and should be certified either by a CA or a registered valuer, also he must raise self-invoice on date of OC, and report under RCM in GSTR-3B, for which liability shall discharge through the cash ledger without any ITC.

Conclusion

GST on joint development agreements and transfer of development rights is a tricky area that requires careful attention. If flats are sold before the occupancy certificate then no GST under reverse charge is payable on TDR but if some flats remain unsold at OC stage, then GST under reverse charge must be paid by the developer on those unsold units. Builders must keep clear records of sold and unsold flats, do proper valuation, raise self-invoice for unsold units, and pay GST in time to avoid penalties.

Important GST notifications referred by me:

Notification No. 11/2017- CT (Rate) related to tax rates for construction services,
Notification No. 4/2019- CT (Rate) related to Exemption on TDR when flats sold before OC, Notification No. 13/2017-CT (Rate) related to services under RCM including TDR/FSI and notification No. 12/2017- CT (Rate) related to exemptions and updated entries 41A, 41B, 41C.

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Date: 2025-07-25