

A trowel with a wooden handle and a metal blade is shown applying a thick layer of grey mortar to a red brick wall. The bricks are laid in a traditional pattern, and the mortar is being spread between them. The background is a clear blue sky with some wispy white clouds. The text is overlaid on the image in a bold, yellow, italicized font with a black outline.

GST on Real Estate Industry – Practical issues

***- CA. Prasanna Krishnan. V,
Chennai***

I bought a flat in Lakdi Ka Pul area. Land value evidenced by registered deed is Rs. 70 lakh. Construction value is Rs. 50 lakh. But my builder says that land value for GST purpose is certainly Rs. 40 lakh only. GST charged on Rs 80 lakh. Then what is the meaning of State Authority stamped registration records ?



**If a Promoter Developer
pays any building permit
fees to a Corporation or
Municipality after
27.07.2018, whether the
same does not attract
any reverse charge
liability undoubtedly -
since exemption is given
by Notfn 12/2017 – CT R!**





If a Promoter Developer in a JDA is not able to get all or some of the flats booked before the date of completion. On receipt of the completion certificate, he is to sell 'immovable property' only. State stamp duty shall be there; but, no GST shall be there

**Land sold by
landowner to
Developer. Developer
sells completed flat to
landowner. GST law is
not applicable to any
transfer of immovable
property at all. In
fine, no GST on JD!!**



**In a JDA, the Developer
hands over the land
owner the flats agreed
upon for LO.**

**Before that LO enters into
agreement with a buyer to
*sell the flat.***

**Is the LO, who sells
immovable property liable
to pay GST for the above
mentioned deal?**



What is the big change required in understanding the Concept of 'Works Contract' WEF 01.07.2017?



Ref: Sec 2 (119) of CGST Act 2017 –

“Works contract” means 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**



Thus the big shift is quite evident. Works contract under GST law refers to works relating to immovable property only.

If so, what about works on movable properties (machines / vehicles / furnitures etc)?

GST on Construction of Residential complex

Chapter 9954

**^ From
01.04.2019
(subject to
exceptions; it
was 9%+9% till
31.03.2019)**

**Rate[^] = CGST 3.75% + SGST 3.75% on
construction value**

**Place of Supply = Location of
immovable property [Sec 12 (3) (a)]**

**Property not the one with completion
certificate; construction to happen**

**If consideration is for land and
construction, then 1/3rd of Gross shall
be land value; 2/3rd shall be
construction**

GST on Construction – Government Contracts

** WEF 12 01 2018 -Sub contract covered herein too*

Chapter 9954-
Construction,
erection,
commissioning,
installation,
completion,
fitting out,
repair,
maintenance,
renovation or
alteration

WEF 22.08.2017

**Rate = CGST 6% + SGST 6% on
construction value**

**Historical monument, archaeological
site etc**

Canal, dam or irrigation works

**Pipeline, conduit or plant for (i) water
supply (ii) water treatment, or (iii)
sewerage treatment or disposal**

GST on Construction – Supply to Governments

Chapter 9954-

“Government
Contract” =?

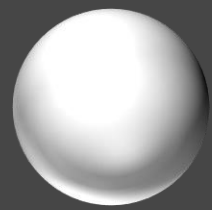
Central Government / State
Government / Union territory

A local authority

A Governmental Authority

A Government Entity*

**This entity should have got work from
Governments / LA – 39/2017 IT (R) -13.10.2017*

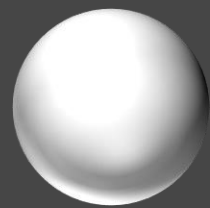


12% Special Works Contracts

A road, bridge, tunnel, or terminal for
(Public) Road Transportation

Jawaharlal Nehru National Urban
Renewal Mission or Rajiv Awas
Yojana

HFAUM/ PMAYU/ EWS (?) /LIG
housing (?)/ MIG housing (?)
(25 01 2018)



12% Special Works Contracts (Contd...)

A pollution control or effluent treatment plant, except located as a part of a factory

A structure meant for funeral, burial or cremation of deceased

Building owned by an entity registered under the Income-tax Act, - used for CGs Midday meal scheme (25 01 2018)

12% Special Works Contracts (Contd...)

*** WEF 25 01 2018 - Covers Sub Contract also**

Chapter 9954-

To the Central Government, State Government, Union Territory, [a local authority, a Governmental Authority or a Government Entity]

by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of

Non Commerce – civil structures

Predominantly – Education / Clinical / Art purpose

Residential complex for Self Use / Employees / Specified persons

5% Government Contracts (Earth work oriented)

Chapter 9954-

Involving predominantly earth work (that is, constituting more than 75 per cent of the value of the works contract)

provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.

If supplied to Government entity, such entity should have got work from G/LA

**WEF 13 10 2017
(Ref: Ntn 39/2017)**

Covers – Works by contractor as well as sub contractors

How to decide that a body is 'Government' or not?

Central Board of Indirect Taxes and Customs has very clearly clarified in the FAQ issued by it too (<https://cbec-gst.gov.in/sectoral-faq.html>)–

Question 6: Would a statutory body, corporation or an authority constituted under an Act passed by the Parliament or any of the State Legislatures be regarded as 'Government' or "local authority" for the purposes of the GST



A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a 'local authority'. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively.



It is a settled position of law (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1).

Such a statutory body, corporation or an authority as a juridical entity is separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of 'local authority'. Thus, regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purposes of the GST Acts.



Pure Labour Contracts – Attract Nil Rate –

**Works pertaining
to the beneficiary-led
individual house
construction or
enhancement under the
Housing for All (Urban)
Mission/Pradhan Mantri
Awas Yojana.**

**works pertaining
to a single
residential unit
otherwise than as
a part of a
residential
complex**



Before we move to much debated or disputed 'GST on Joint Development Ventures—

**Note the Mega
changes in GST on
Construction
Industry.**

**With Effect From
01.04.2019**



Notification No. 3/2019-C.T.(Rate) provides for new rates for construction services in respect of specified units.

These new rates

- (i) mandatorily apply to projects commencing on or after 1st April, 2019 and**
- (ii) optionally to ongoing projects, in case the developer does not opt to pay tax at old rates, on the installments payable by the customer on or after 1st April, 2019 .**

GST on Construction of Residential Real Estate Project or Other than RREP -

No ITC

Chapter 9954

Rate = CGST 3.75% + SGST 3.75% on 'taxable value'

Taxable Value = Total Consideration (-) 1/3rd of TC being assumed land value

Property not the one with completion certificate; construction to happen

Know the concept of RREP and REP

**Just for easy academic reference (Not in law)-
Effective rate is $3.75 \times \frac{2}{3} = 2.5\%$
2.5%+2.5% on TOTAL CONSIDERATION (L + B)**

GST on Construction of RREP/REP – Affordable Housing Scheme

No ITC

**Chapter
9954**

**Rate = CGST 0.75% + SGST 0.75% on
'taxable value'**

**Taxable Value = Total Consideration (-) 1/3rd
of TC being assumed land value**

**Property not the one with completion
certificate; construction to happen**

**Just for easy academic reference -
Effective rate is $0.75 \times \frac{2}{3} = 0.50\%$
 $0.50\% + 0.50\% = 1\%$ on
TOTAL CONSIDERATION (L + B)**

The reduced rate is applicable where -

- ◆ ***such residential apartments constitute at least 50% of the total carpet area of all the apartments in the project; and***
- ◆ ***in respect of ongoing projects, the developer has not opted to pay GST at the old rates on such construction services.***

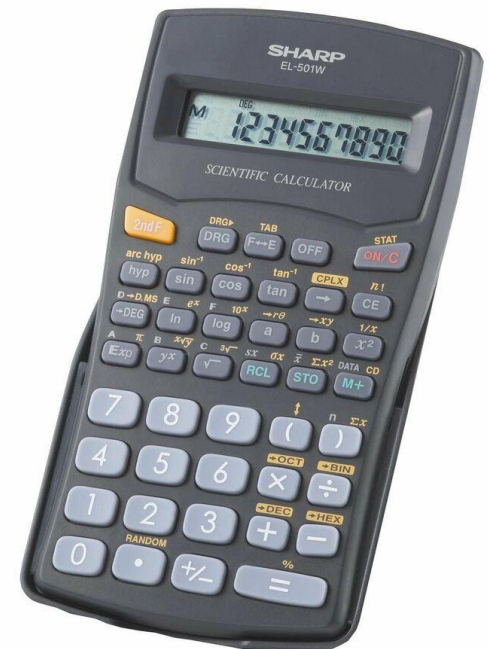
In case it turns out that the aforesaid criterion of 50% is not achieved at the end of the project, the shortfall in GST i.e. 6% is payable by the developer.

The residual GST rate for works contract services in respect of certain works under Notified Schemes remains 12%, and in all other cases remains 18%.

***Affordable housing scheme WEF 01.04.2019 –
Residential apartments in a project with carpet
area of up to 60 sq. m. in metropolitan cities or
90 sq. m. otherwise, and for which the gross
amount charged is not more than Rs. 45 lakhs***

60 Sq Mt = 645.84 Sq Ft

90 Sq Mt = 968.75 Sq Ft



How to bill for a works contract? Whether it is a Continuous Supply or not? What is the time of supply?

Residential Complex..?



What about 'free materials' supplied to Supplier by the Recipient of Works Contract?

Whether Re: Bhayana Builders' case is of any use in GST law too?

*Ref: Circular No 47/21/2018 dated 08.06.2018 –
1.2 Value Moulds and dies given by OEM to Component manufacturer does not merit inclusion in the value of supply in terms of section 15(2)(b) of the CGST Act 2017.*



Input Tax Credit Reversal –

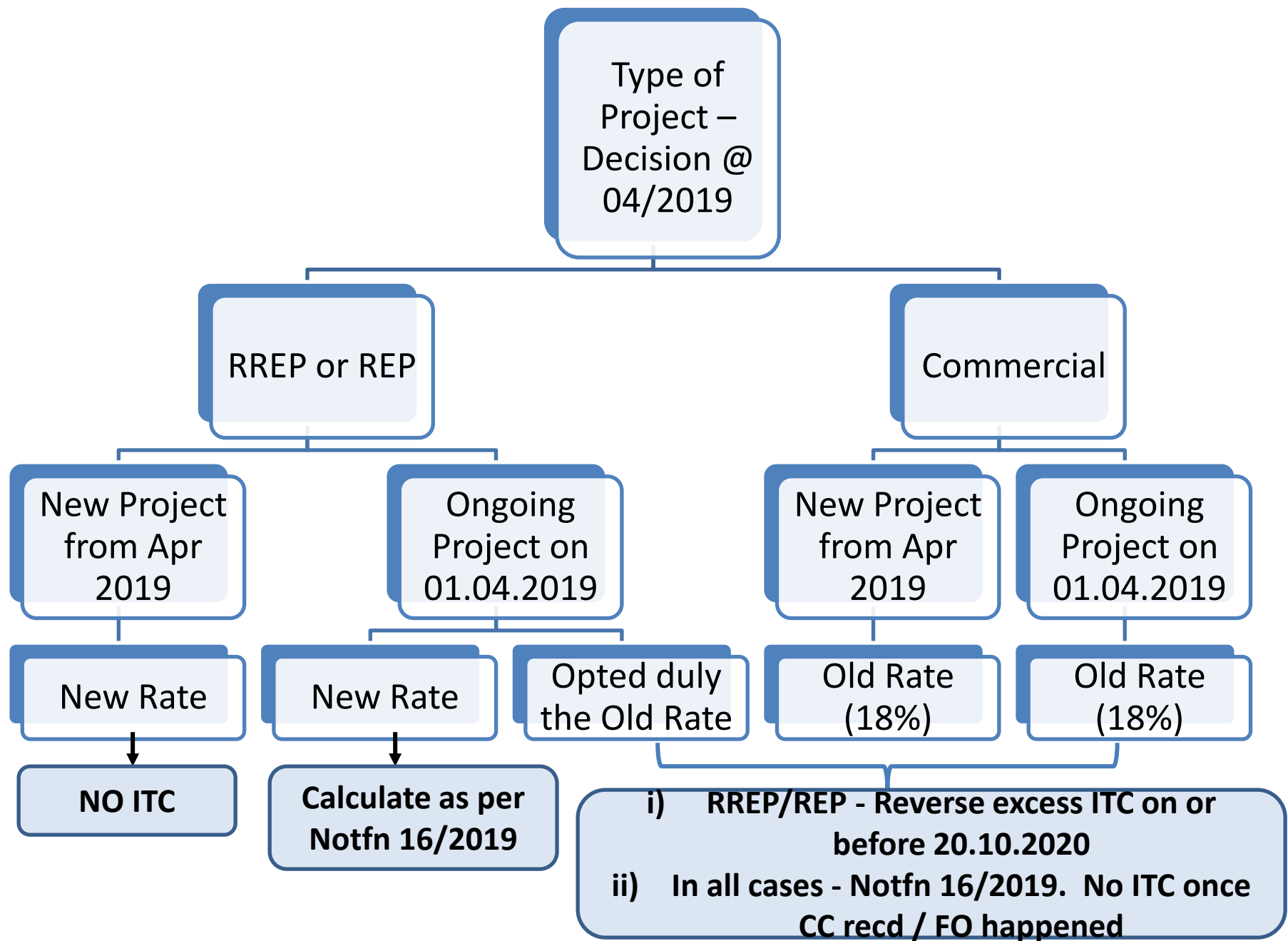
Earlier (Till March 2019), Rule 42 of CGST Act 2017 was to applied by Developer or Builders. Thus project wise reversal of ITC on completion was implied. But no strong law to enforce the same in flowing ITC through out the year – through out various projects.



But, from 01.04.2019 unless one opts – if eligible – the old rates, there cannot be any Developer Promoter of REP/RREP in this country claiming ITC.

What about closing balance on 31.03.2019?





What is the surprising RCM applicable only for Developers who pay effectively 1%/5%?

Whether RCM attracting even 28% is there?



Work Contracts –

Whether any Compound Levy Scheme is applicable?

Ref: Sec 10 of CGST Act 2017 RTW Sch II thereto



Work Contracts –

I construct a Commercial Complex for a land owner as per Construction Agreement entered into.

What is the rate of GST from 01.04.2019?



Work Contracts –

I am a sub contractor to a main contractor carrying out 'Affordable Housing Project'.

What is the rate of GST from 01.04.2019?



Work Contracts –

Whether ITC is prevented for works contractors doing ‘pure commercial construction’ ‘sub contract to affordable housing scheme’?



- What about Joint Development Agreement?
- Whether Land Owner who is after all bartering (land <> specified flats) is liable to pay GST to Developer land lord?



Land owner retains this
part (1/4th land)*
- Say worth Rs 10 Crore

On the date of JDA, Developer gets right to hold this land
and later to transfer to prospective flat buyers
- Say, worth Rs 30 Crore

****Representing picture of unidentified, undivided
share of land - for academic purpose***

***Now, check and respond – Whether Developer
does any service to land owner or not?***



Out of 100 flats totally constructed in the project, 30 flats (presented in orange colour in the picture) are for the LO. 70 flats (presented in grey colour in the picture) are for the developer.



Total construction total cost of the project is 60 crore. Developer sells his each flat for gross price of Rs 1 crore (70 flats X Rs 1 Crore).

A) He pays GST on Rs 70 crore ‘effectively’ at 5% (No ITC)

B) He hands over 30 flats to LO without collecting any consideration in monetary terms from the latter; but collects GST on deemed value.



What is the deemed value?

***All time it has been Section 15 of the CGST Act
2017 RTW Rule 27 of the CGST Rules 2017.***



From 01.04.2019, same view was explicitly confirmed by CBIC vide its Notification No 03/2019 CT R, 04/2019 CT R and Specific FAQ in F.No. 354/32/2019-TRU dated 14.05.2019



***Specific FAQ
in F. No.
354/32/
2019-TRU
dated
14.05.2019***

26 . How to determine value of construction services provided by the promoter to land owner in lieu of transfer of development rights, when land owner is not registered?

Value of construction services provided by the promoter to land owner in such cases shall be determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers, other than the land owner, **nearest to the date on which such development right etc. is transferred to the promoter,** less the value of transfer of land, if any, *as* prescribed in paragraph 2 of Notification No 11/2017 CTR *(amended)* originally dated 28.06.2017.

What is the importance of Para 9 and 12 of decision in Re: Vasantha Green Projects Vs CCT Ranga Reddy GST Comm. (CESTAT – H Bad bench-2017)? Whether the decision valid even for GST law of present days?

What is the value of flat constructed for land owner by Developer – in case of JD Agreement Till 31.03.2019?

Whether Notification No 4/2018 – CT R is valid even after 01.04.2019 in respect of JDA dated till 31.03.2019?



What is Transfer of Development Right?

How to value it?

Who has to pay – land owner or developer?

**When to pay GST for the same
(Time of Supply)?**

**Representations to the CG on 'No
GST to LO in JDA'**



For JDA entered from April 2019 what is the value of flat constructed for land owner by Developer?

Who has to pay – land owner / developer?

What if all the flats got booked before the date of Completion Certificate/First Occupancy?

What if none or few of the flats did not get booked before the date of CC or FO?



QUESTIONS?



THANK YOU!

- CA. PRASANNA KRISHNAN. V

ca_dpvc@yahoo.co.in

cavpk@dpva.in