

GST ON JDA AND REAL ESTATE TRANSACTIONS

GST



LAND DEVELOPMENTS

18%
GST

GST 1%



LAND DEVELOPER

GST 3%



DEVELOPED PROPERTIES



REVERSE ENGINEERING

5%



18%



AFFORDABLE HOUSING

5%



UNDER-CONSTRUCTION PROPERTIES



REAL ESTATE TAX

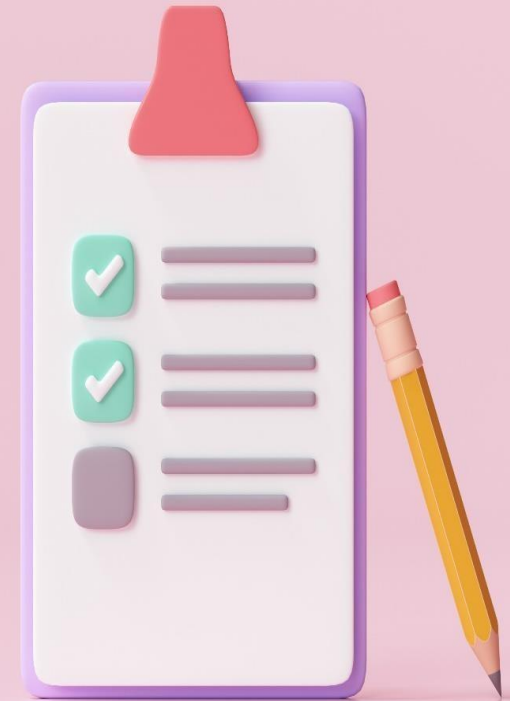


UNDER-CONSTRUCTION

AFFORDABLE HOUSING

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- 6. GST on Construction of Commercial Complex.**
- 7. GST on Development of plots.**



JOINT DEVELOPMENT AGREEMENT

- Contractual arrangement between a landowner and a builder
- The landowner provides their land to the builder, who then undertakes the responsibility of developing the property.
- In return, the landowner receives a share in the developed property, typically in the form of flats or units



TYPES OF REAL ESTATE BUSINESS

1. Construction of Residential Complex

2. Construction of Commercial Complex

3. Development of Plots

TRANSACTIONS IN EVERY REAL ESTATE BUSINESS

Transactions in every real estate business

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graph TD; A[Transactions in every real estate business] --> B[Transfer of developmental rights by land owner to the developer]; A --> C[Constructions services by developer to land owner]; A --> D[Sale of flats/plots by builder to customer]; A --> E[Sale of flats/plots by land owner to customer];
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Transfer of developmental rights by land owner to the developer

Constructions services by developer to land owner

Sale of flats/plots by builder to customer

Sale of flats/plots by land owner to customer

CONSTRUCTION OF RESIDENTIAL COMPLEX

Residential
Complex

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graph TD; A[Residential Complex] --> B[If JDA entered between 1st July 2017 to 31st March 2019]; A --> C[If JDA entered on or after 1st April 2019];
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If JDA entered between 1st
July 2017 to 31st March 2019

If JDA entered on or
after 1st April 2019

CONSTRUCTION OF RESIDENTIAL COMPLEX

GST interlinking with RERA

□ The definition of 'real estate project' is defined vide Explanation 3(ix) to mean the same meaning as assigned to it as per Section 2(zn) of Real Estate (Regulation and Development) Act, 2016 [RERA laws].

Real Estate Project (REP): Development of buildings/land or apartments for sale, including common areas.

Residential Real Estate Project (RREP): REP where **commercial area** \leq 15% of total carpet area.

Residential Apartment: Apartment intended for residential use as declared to RERA.

Promoter (Section 2(zk)): Includes landowners who get projects constructed.

CONSTRUCTION OF RESIDENTIAL COMPLEX

If JDA entered between 1st July 2017 to
31st March 2019

Transfer of
developmental rights
by land owner to the
developer

Constructions services by
developer to land owner

Sale of flats by
builder to customer

Sale of flats by land
owner to customer

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered between 1st July 2017 to 31st March 2019

1. Transfer of developmental rights
by land owner to the developer

Taxable or
not

Forward Charge
or Reverse Charge

Value of
Supply

Rate of
Tax

Time of
Supply

Input Tax
Credit

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ If JDA entered between 1st July 2017 to 31st March 2019.
- Transfer of developmental rights by land owner to the developer

Taxable or not

SUPPLY, Sec.7 (1) (a): -

- All forms of supply of **Goods or Services** (or) both such as sale, transfer, Barter, Exchange, License, Rental, Lease (or) Disposal.
- Made (or) agreed to be made for a **consideration**.
- By a person in the course (or) furtherance of **business**

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ If JDA entered between 1st July 2017 to 31st March 2019.
- Transfer of developmental rights by land owner to the developer

Taxable or not

SUPPLY, Sec.7 (1) (a): -

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- Made (or) agreed to be made for a **consideration**.
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CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ If JDA entered between 1st July 2017 to 31st March 2019.
- Transfer of developmental rights by land owner to the developer

SUPPLY

Transfer of development rights falls under the ambit of transfer or this activity falls under the expression “LICENSE”, It qualify as Supply.

CONSIDERATION

Section 2(31) of the CGST Act, CONSIDERATION **Includes:**

- Any payment (or) agreed to pay.
- Whether in money (or) in the form of money.
- ❖ The land owner will receive the builtup area as consideration.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Transfer of developmental rights by land owner to the developer

BUSINESS

As per Sec 2(17) of CGST Act, 2017 “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 (a) above;
- (c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Transfer of developmental rights by land owner to the developer

As per Section-7(1A) read with Para 5(b) of Schedule-II

“Supply of services” Construction of 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.”

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
- **Transfer of developmental rights by land owner to the developer**

Sec 7(2) read with Para 5 of Schedule III:

- **Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.**
- Since the transfer of development rights pertaining to land are not akin to sale of land, the transaction of transfer of development rights would not fall under the ambit of Entry 5 and accordingly be out of the purview of Schedule III.
- As discussed in the evolution of taxability of TDRs, the view that TDRs are benefit arising from land and hence can be called as 'immovable property' to be out of the definition of 'service' would no longer help the land owners under GST regime, since the Schedule III has used the expression 'land' instead of earlier 'immovable property' in service tax regime. Thereby chance to the land owners to take the plea that TDRs are benefit arising out of land and hence to be covered under Schedule III would be minimal. This appears to be a conscious decision by the legislation paving way for tying the loose ends that exist prior to GST regime on taxation of TDRs.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ If JDA entered between 1st July 2017 to 31st March 2019.
 - Transfer of developmental rights by land owner to the developer

➤ Whether the exemption available under section 11

Notification No 12/2017 - CT(R) deals with exemption from payment of taxes for services.

Vide Entry 41A, the services by way of TDR on or after 01.04.19 for construction of **residential apartments** by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate subject to certain conditions. However, the said exemption is made available from 01.04.19 to the land owner.

- ❖ Hence, Transfer of TDR's is taxable under GST.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Transfer of developmental rights by land owner to the developer

Tax mechanism

- As supply of TDR is covered under RCM ,as per entry 41a of notification 12/2017, it is taxable in the hands of developer since 1st April 2019 and the business clause related to /RCM there will be the period from 1st July 2017 to 31st March 2019. Hence TDR is covered under RCM

Rate of Tax

- GST Rate for TDR based on SAC→ 999799→18%
- Since, there is no particular rate of tax prescribed for TDR, the rate of tax should be determined using the residual entry covered under 'other miscellaneous services' classified under Group 99979.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Transfer of developmental rights by land owner to the developer

Value of Supply

- As Sec 15 applicable only when supplier and recipient are not related and price is the sole consideration,
- In JDA price is never the sale consideration for supply, hence as per Sec 15(4) the valuation of TDR has to be determined.
- As per sec 15(4) read with rule 27, rule 30, rule 31 of valuation are applicable for TDR.

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ **If JDA entered between 1st July 2017 to 31st March 2019.**

▪ **Transfer of developmental rights by land owner to the developer**

❑ **Rule 27-Value of supply of goods or services where the consideration is not wholly in money**

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,-

(a) be the open market value of such supply;

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality; (d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 **in that order.**

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Transfer of developmental rights by land owner to the developer

❑ **Rule 30 - Value of supply of goods or services or both based on cost**

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be **one hundred and ten percent of the cost of production** or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered between 1st July 2017 to 31st March 2019.

▪ Transfer of developmental rights by land owner to the developer

□ Rule 31 – Residual method for determination of value of supply of goods or services or both

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of Section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Transfer of developmental rights by land owner to the developer
 - ❖ The land owner can also opt the valuation method as prescribed under Circular 151, though the valuation for construction services was dealt therein. Economically, the value of TDRs should reconcile with the value of construction services (Further, the valuation mechanism prescribed in Circular 151 is brought for valuation of TDRs for JDAs which were entered after 01.04.19.
 - ❖ Para 1A of Notification No 12/2017 - CT (R) states that value of supply of service by way of transfer of development rights by a person to the developer against consideration in the form of residential or commercial apartments shall be deemed to be equal to the value of similar apartments charged by the developer from the independent buyers nearest to the date on which such development rights is transferred to the developer.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Transfer of developmental rights by land owner to the developer

Time of Supply

- The time of supply of services (point of time when the liability to pay tax arise) is determined by the provisions of Section 13 of CGST Act.
- However, considering the special nature of this particular service, the Central Government has issued Notification No 4/2018 - CT (R) dated 25.01.18, which details the time of supply of services for the supply of TDRs. Accordingly, the time of supply for services by way of TDRs shall arise at the time when the developer transfers possession or the right in the constructed complex to the person supplying the TDRs by entering into a conveyance deed or similar instrument. This implies that time of supply shall arise at the time when the project is fully constructed and the possession towards the Land owners share of built-up area is transferred, which usually happens after completion of the project.

CONSTRUCTION OF RESIDENTIAL COMPLEX

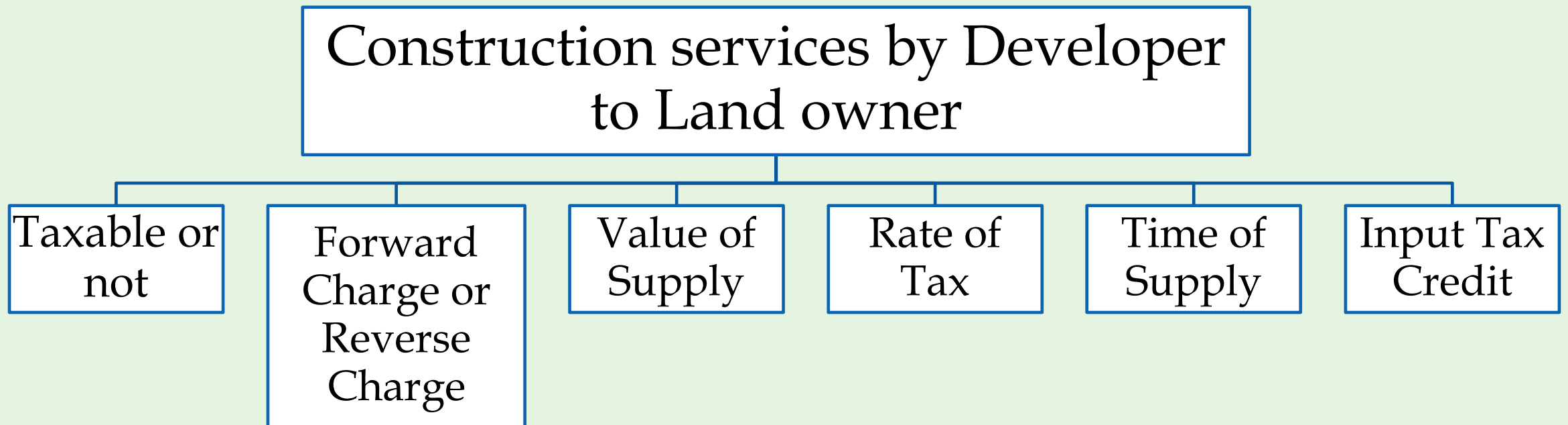
- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Transfer of developmental rights by land owner to the developer

Availability of ITC

- GST paid at the time of supply of TDR's, Developer can avail same as ITC against Sale of flats by Developer to Customer

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered between 1st July 2017 to 31st March 2019.



CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered between 1st July 2017 to 31st March 2019.

- Construction services by Developer to Land owner

Taxable or not

- As per Sec2(102) **service** means making other than goods
- Section 2(119) defines 'works contract' as 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 execution of contract. Hence, the transaction or activity of construction provided by developer to land owner would fall under the ambit of 'works contract'. Consequently, it can be concluded that this part of the '**supply**' has been satisfied.
- ❖ The developer will receive the **consideration** of land (is form part of the developer's flat or builtup area), for the construction services provided by developer to land owner.

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered between 1st July 2017 to 31st March 2019.

- Construction services by Developer to Land owner
- ❑ Construction services are covered under **business** definition as per **Sec 2(17)**.
- ❑ Sec 7(2) Para 5 of schedule III Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
 - Para 5(b) of Schedule II states that construction of complex, building, civic structure or part thereof, including a complex or building intended for sale to buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate or after its first occupation, whichever is earlier as supply of services.

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ **If JDA entered between 1st July 2017 to 31st March 2019.**

- Construction services by Developer to Land owner

➤ Hence, the said activity of construction provided by developer to land owner for a consideration amounts to supply and not falling within the ambit of Schedule III, the said supply attracts tax.

- ❖ There is no exemption for this particular service which gets mentioned under Notification No 12/2017 - CT (R) and accordingly remains taxable.

Tax Mechanism

- ❖ The developer is liable to pay tax as per forward charge mechanism.

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ **If JDA entered between 1st July 2017 to 31st March 2019.**

- Construction services by Developer to Land owner

Rate of Tax

- The rate of tax for the supply of construction services has to be examined based on the Notification No 11/2017 - CT (R), which deals with rates of taxes that are applicable for services. On a perusal of said notification, which was in existence during the said period of time, it would be evident, the rate of tax would be 18% as per Entry 3(i) of Notification No 11/-2017 CT (R).
- When applied the deduction available for transfer of land, which is prescribed at 1/3rd of total amount as per Para 2, the effective rate would be 12% ($18\% \times \frac{2}{3}$). The effective rate of 12% will be applicable only when the developer adopts the value on a conservative basis (the value of first agreement of sale entered by developer with his ultimate customer, which definitely includes the value of undivided share of land).

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Construction services by Developer to Land owner

Rate of Tax

- If the developer intends to adopt the value as per Rule 30 (110% of cost of construction), then the deduction for the transfer of land would not be eligible, since the 110% of cost of construction does not include any value towards transfer of land.
- ❖ Hence, the rate of tax that is applicable to residuary works contract would be applicable, that is 18%. In other words, the developer will be eligible to take a deduction of 1/3rd towards transfer of land, only if the value adopted for construction services include the value of land.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Construction services by Developer to Land owner

Value of supply

- ❑ Rule 27-Value of supply of goods or services where the consideration is not wholly in money
- ❑ Rule 30 - Value of supply of goods or services or both based on cost

Rule 31 - Residual method for determination of value of supply of goods or services or both.

The developer can also opt the valuation method as prescribed for determination of value of TDRs for JDAs which were entered after 01.04.19. Para 2A of Notification No 11/2017 - CT (R) states that, where a person transfers development right to a developer against consideration, wholly or partly, in the form of construction service in respect of such apartments shall be deemed to be equal to the total amount charged for similar apartments in the project from the independent buyers nearest to the date on which such development rights is transferred to the developer, less the value of transfer of land, if any, as per Para 2.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ If JDA entered between 1st July 2017 to 31st March 2019.
 - Construction services by Developer to Land owner

Time of Supply

The time of supply of services (point of time when the liability to pay tax arise) is determined the provisions of Section 13 of CGST Act. However, considering the special nature of this particular service, the Central Government has issued Notification No 4/2018 - CT (R) dated 25.01.18, which details the time of supply of services for the supply of construction services.

Accordingly, the time of supply for services for construction services, shall arise at the time when the developer transfers possession or the right in the **constructed complex** to the person supplying the TDRs by entering into a conveyance deed or similar instrument. This implies that time of supply shall arise at the time when the project is **fully constructed and the possession towards the land owners share of built-up area is transferred** Which usually happen after completion of the project.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Construction services by Developer to Land owner

Availability of ITC

- For the construction services provided to the land owner, The land owner can avail ITC against the GST payment on sale of flats to customer by land owner

CONSTRUCTION OF RESIDENTIAL COMPLEX

Special consideration

Timing of Invoice for Construction Services from Developer

- If the land owner intends to sell prior to issuance of completion certificate, he needs the invoice, from the developer (definitely not at the end of the project), to use against his output.
- If land owner not intends to sell prior to issuance of completion then he needs the invoice at the end of the project, to conserve on his cash flows.

VASANTHA GREEN PROJECTS JUDGMENT

➤ **Facts of the Case:**

➤ **Agreement Structure:**

- ✓ Out of total 167 Villas Developer constructed; **60 villas given** for landowners in exchange for land rights.
- ✓ Retained **137 villas** for sale to buyers.

➤ **Compliance:**

- ✓ Service tax paid on the entire sale value of villas sold to buyers, which included land cost.

VASANTHA GREEN PROJECTS JUDGMENT

Key Rulings:

➤ **Integrated Tax Base:**

- ✓ Villas for landowners = consideration for land rights.
- ✓ Land cost included in villa sale price, on which service tax was already paid.

➤ **No Double Taxation:**

- ✓ No separate tax liability for villas given to landowners.

➤ **Implications:**

- ✓ Recognizes JDAs as barter systems with a unified tax approach.
- ✓ Prevents double taxation on consideration for land rights.

➤ **Conclusion:**

- ✓ Service tax liability is appropriately discharged; no additional liability arises for landowners' share.

CONSTRUCTION OF RESIDENTIAL COMPLEX

Sale of flats by Developer

Taxable or not

Forward
Charge or
Reverse Charge

Value of
Supply

Rate of Tax

Time of
Supply

Input Tax
Credit

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ If JDA entered between 1st July 2017 to 31st March 2019.
 - Sale of flats by Developer

Taxable or not

- Sale of flats falls under the ambit of transfer; It qualify as Supply.
- The developer receive the money or money equivalent as consideration.
- Para 5 of Schedule [III](#), Sale of land and, subject to Para 5(b) of Schedule [II](#), Sale of building.
 - Para 5(b) of Schedule-II “Supply of services” Construction of 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 or occupancy certificate, where required, by the competent authority or after its first occupation, whichever is earlier.”

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered between 1st July 2017 to 31st March 2019.

▪ Sale of flats by Developer

- Completion certificate For states, where there is no Requirement for any Government or authority to issue a completion certificate, then the same has to be obtained from an architect registered with Council of Architecture constituted under Architects Act, 1972 or a chartered engineer registered with Institute of Engineers (India) or licensed surveyor of the respective local body of the city or town or village or development or planning authority.
- First occupation to mean the first occupation of the project in accordance with the laws, rule and regulations laid down by the Central Government, State Government or any authority in this regard.

Consideration Received before OC /CC	
Yes	No
↓	↓
Service	Not a supply
↓	↓
✓ GST	X GST

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered between 1st July 2017 to 31st March 2019.

- Sale of flats by Developer
- Tax mechanism
 - As it is not covered under RCM , the same would be taxable to pay by developer under Forward charge.
- Rate of Tax
 - As per Entry 3(1) of Notification No 11/2017 - CT (R) prevailing at t point of time has specified the rate of tax as 18%.
 - The effective rate for the services provided by the land owner to his ultimate customer, in instance, where consideration is received prior to completion certificate or first occupation, whichever is earlier, will be 12% (18% - 18*1/3). The said Para 2 has been struck down by *Gujarat High Court in Munjaal Manishbhai Bhatt*. Accordingly, the land owner may ascertain the actual value of land involved and claim deduction, instead of standard 1/3rd. If the land owner does not want to get into the said complexity, he can proceed with the standard deduction.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Sale of flats by Developer

Value of Supply

- As per Para 2 of Notification No 11/2017 -(R) provides that where the services involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ If JDA entered between 1st July 2017 to 31st March 2019.
 - Sale of flats by Developer

Time of Supply

- The time of supply of services (point of time when the liability to pay tax arise) is determined by the provisions of Section 13 of CGST Act 2017. Since the services provided by developer to his ultimate customer would fall under the definition of 'continuous supply of services) as laid down vide Section 2(33), the time of supply has to be determined with the help of Section 13 read with Section 31(5) of CGST Act 2017.
- "**Section 2(33): Continuous supply of services**" means 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 supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Sale of flats by Developer

Time of Supply

- **Section 31(5) in The Central Goods and Services Tax Act, 2017:** Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,--
 - (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
 - (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
 - (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Sale of flats by Developer

Availability of ITC

- On sale of Residential property, Developer can avail ITC against Sale of flats by Developer to Customer
- End customer cannot avail ITC.

CONSTRUCTION OF RESIDENTIAL COMPLEX

Sale of flats by land owner

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graph TD; A[Sale of flats by land owner] --- B[Taxable or not]; A --- C[Forward Charge or Reverse Charge]; A --- D[Value of Supply]; A --- E[Rate of Tax]; A --- F[Time of Supply]; A --- G[Input Tax Credit];
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Taxable or not

Forward
Charge or
Reverse Charge

Value of
Supply

Rate of Tax

Time of
Supply

Input Tax
Credit

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ **If JDA entered between 1st July 2017 to 31st March 2019.**

- Sale of flats by land owner

Taxable or not

- Even though the actual construction would not be carried on by land owner it would be deemed that he has actually constructed the flat at built up area, since the person entered in contract it will be customer
- So the Transaction of sale by Land owner is taxable.

Tax mechanism

- As it is not covered under RCM , the same would be taxable to pay by developer under Forward charge

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered between 1st July 2017 to 31st March 2019.

- Sale of flats by land owner

Rate of Tax

- As per Entry 3(1) of Notification No 11/2017 - CT (R) prevailing at t point of time has specified the rate of tax as 18%.
- The effective rate for the services provided by the land owner to his ultimate customer, in instance, where consideration is received prior to completion certificate or first occupation, whichever is earlier, will be 12% ($18\% - 18 \times \frac{1}{3}$). The said Para 2 has been struck down by **Gujarat High Court in Munjaal Manishbhai Bhatt**. Accordingly, the land owner may ascertain the actual value of land involved and claim deduction, instead of standard 1/3rd. If the land owner does not want to get into the said complexity, he can proceed with the standard deduction.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Sale of flats by land owner

Value of Supply

- As per Para 2 of Notification No 11/2017 -(R) provides that where the services involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Sale of flats by land owner

Time of Supply

- The time of supply of services (point of time when the liability to pay tax arise) is determined by the provisions of Section 13 of CGST Act 2017. Since the services provided by developer to his ultimate customer would fall under the definition of 'continuous supply of services) as laid down vide Section 2(33), the time of supply has to be determined with the help of Section 13 read with Section 31(5) of CGST Act 2017.

CONSTRUCTION OF RESIDENTIAL COMPLEX

- ❖ **If JDA entered between 1st July 2017 to 31st March 2019.**
 - Sale of flats by land owner

Availability of ITC

- On sale of Residential property, Land owner can avail ITC against Sale of flats by Land owner to Customer
- End customer cannot avail ITC.

CONSTRUCTION OF RESIDENTIAL COMPLEX

If JDA entered on or after 1st April 2019

Transfer of developmental rights by land owner to the developer

Development of land by developer

Sale of buildings by builder to customer

Sale of buildings by land owner to customer

CONSTRUCTION OF RESIDENTIAL COMPLEX

Transfer of developmental rights by
land owner to the developer

Taxable or not

Forward Charge
or Reverse
Charge

Value of
Supply

Rate of Tax

Time of
Supply

Input Tax
Credit

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered on or after 1st April 2019

- Transfer of developmental rights by land owner to the developer

Taxable or not

Tax Applicability:

- Under Section 9 of the CGST Act, **landowner supplies development rights (TDR)** to the developer.
- Developer is the recipient of service, and landowner is generally **exempt** from paying tax if conditions are met.

Exemption Notification: Entry 41A of Notification 12/2017-CT (R):

- TDR for construction of **residential apartments** is exempt if:
 - Project qualifies as a Real Estate Project (REP) or Residential Real Estate Project (RREP).
 - Apartments are intended for sale, and full consideration is not received after completion certificate or first occupation.

TDR is exempt in the hands of land owner: Since under this scenario, we are dealing with construction of residential project (which contains residential apartments) and TDRs are supplied after 01.04.19, we can conclude that the land owner will be eligible for exemption under Entry 41A.

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered on or after 1st April 2019

- Transfer of developmental rights by land owner to the developer

Tax mechanism

- TDS is taxable under RCM. However, the obligation to pay tax under reverse charge on TDRs is not automatic. The same depends upon the status of sale of flats/built-up area of developer as on the date of issuance completion certificate. In simple words, if the developer manages to sell all his share of flats/built up area before issuance of completion certificate, then there will not be any obligation to pay on TDRs under reverse charge. The obligation to pay arises only when the developer has unsold stock as on the date of issuance of completion certificate (there is an ambiguity, whether the unsold has to be seen from the developer or from the land owner or for the entire project).

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered on or after 1st April 2019

- Transfer of developmental rights by land owner to the developer

Rate of Tax

- GST Rate for TDR based on SAC→ 999799→18%
- Since, there is no particular rate of tax prescribed for TDR, the rate of tax should be determined using the residual entry covered under 'other miscellaneous services' classified under Group 99979.

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered on or after 1st April 2019

- Transfer of developmental rights by land owner to the developer

Value of Supply

- STEP-1:- Entry 41A of Notification no 12/2017 provides mechanism to arrive value as per Para-1A The value as per Para 1A of Notification no 12/2017 is the value of fis agreement of sale entered by developer with his ultimate customers near to the JDA.
- STEP-2:- Entry 41A of Notification No 12/2017 - CT (R) provides the formula for arriving the tax payable under reverse charge as an amount which stands as proportion to the amount arrived in Step - I to the carpet area of residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation to the total carpet area of residential apartments in the project.
- STEP-3:- The proviso to the Entry 41A states that the tax payable which is arrived in Step - II cannot exceed 5% of value of residential apartments which are remaining un-booked on the date of issuance of completion certificate or first occupation.

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered on or after 1st April 2019

- Transfer of developmental rights by land owner to the developer

Time of Supply

- Date of Completion Certificate/Occupancy Certificate whichever is earlier as per entry 41A of notification no 12/2017.

Availability of ITC

- If it is in a project started on or after 1st April 2019, As per Entry 3(id) of Notification No 11/2017 - CT (R) as amended by Notification No 4/2019 - CT (R), specifies the rate of tax as 7.5 % (effective 5%) for Sale of Non-Affordable Flats or 1.5% (effective 1%) Affordable Flats from 01st April 2019 above rate of tax comes with various conditions.
- The developer is **not eligible** to take credit on his purchase of inputs and input services.

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered on or after 1st April 2019

- Transfer of developmental rights by land owner to the developer

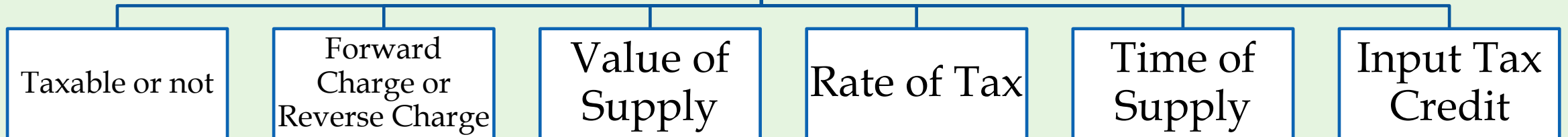
Affordable residential apartment?

- An affordable residential apartment is one in which:
 - **Carpet area** is up to 60 square meters for metropolitan cities;
 - Carpet area is up to 90 square meters for cities and towns other than metropolitan cities **and**;
 - The gross amount charged by the builder is not more than **Rs.45 lakh**.

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered on or after 1st April 2019

Construction services by Developer to Land owner



CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered on or after 1st April 2019

❖ Construction services by Developer to Land owner

- The same provisions which are applicable to JDA entered between 1st July 2017 to 31st March 2019, are also applicable to Construction of flats when JDA entered even after 1st April 2019. except for the following.
- **Major Differences.**
 - The time of supply which was in existence in form of Notification No 4/2018 - CT (R) was made inapplicable for JDAs which are entered post 01.04.19. The time of supply for JDAs which entered post 01.04.19 is guided by Notification No 6/2019 - CT (R) dated 29.03.19.
 - The time of supply under Notification 6/2019 - CT (R) is left open to the discretion of the land owner and developed subject to the outer limit being specified. This gives a lot of flexibility for the land owner and developer to choose the time of supply to meet their needs as to the credit options. Hence, the time of supply for JDAs entered post 01.04.19 is more flexible than what was in existence for the period prior to 01.04.19.

CONSTRUCTION OF RESIDENTIAL COMPLEX

Sale of flats by Developer

Taxable or not

Forward
Charge or
Reverse Charge

Value of
Supply

Rate of Tax

Time of
Supply

Input Tax
Credit

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered on or after 1st April 2019

❖ Sale of flats by Developer

- The same provisions which are applicable to JDA entered between 1st July 2017 to 31st March 2019, are also applicable to Construction of flats when JDA entered even after 1st April 2019. except for the following.
- **Major Differences.**
- Rate of Tax in case of sale of flats sold by Builder to End customer in Residential Complex ,The effective rate for the services provided by the developer to his ultimate customer, in instance, where consideration is received prior to completion certificate or first occupation, whichever is earlier, will be 5% (7.5% - 7.5%*1/3). The said Para 2 has been struck down by *Gujarat High Court in Munjaal Manishbhai Bhatt*.
- Accordingly, the developer may ascertain the actual value of land involved and claim deduction, instead of standard 1/3rd. If the developer does not want to get into the said complexity, he can proceed with the standard deduction. Further, the above rate of tax comes with various conditions. As discussed earlier, the developer is not eligible to take credit on his purchase of inputs and input services. Apart from the said condition, there is a proviso which states that the value of inputs and input services received from registered suppliers during the financial year (or part of the financial year in the year where the completion certificate or first occupation, whichever is earlier, takes place) falls short of the threshold of 80% then the tax shall be payable by the developer on value of input and input services comprising such shortfall at the rate of 18% or any applicable rate on reverse charge basis.
- ITC is not available for developer when sale of Residential complex.

CONSTRUCTION OF RESIDENTIAL COMPLEX

Sale of flats by Land owner to customer

Taxable or not

Forward Charge or Reverse Charge

Value of Supply

Rate of Tax

Time of Supply

Input Tax Credit

CONSTRUCTION OF RESIDENTIAL COMPLEX

❖ If JDA entered on or after 1st April 2019

❖ Land owner to customer

➤ Major Differences.

- Rate of Tax in case of sale of flats sold by land lord to End customer in Residential Complex ,The effective rate of tax as 7.5 %(effective 5%) for Sale of Non-Affordable Flats or 1.5%(effective 1%) Affordable Flats from 01st April 2019. Where consideration is received prior to completion certificate or first occupation, whichever is earlier, will be 5% ($7.5\% - 7.5\% \times \frac{1}{3}$).
- As per Notification No 11/2017 - CT (R) which was amended by Notification No 4/2019 - CT(R) has stated that the land owner is **eligible to take credit** of taxes paid to the developer, if the land owner is selling his share of flats prior to issuance of completion certificate or first occupation, whichever is earlier.
- The conditions as provided in Notification No 11/2017 - CT (R) as amended by Notification No4/2019 - CT (R) states that the land owner should not pay tax which is not less than the amount of tax charged from him on construction of flats by the developer. In simple words, the land owner has to pay more tax than what he has paid to the developer for the construction services. That is to say, the land owner has to do mandatory value addition.

CONSTRUCTION OF COMMERCIAL COMPLEX

Commercial Complex

```
graph TD; A[Commercial Complex] --> B["If JDA entered between 1st July 2017 to 31st March 2019"]; A --> C["If JDA entered on or after 1st April 2019"];
```

If JDA entered between
1st July 2017 to 31st
March 2019

If JDA entered on or
after 1st April 2019

CONSTRUCTION OF COMMERCIAL COMPLEX

If JDA entered between 1st July
2017 to 31st March 2019

Transfer of
developmental
rights by land owner
to the developer

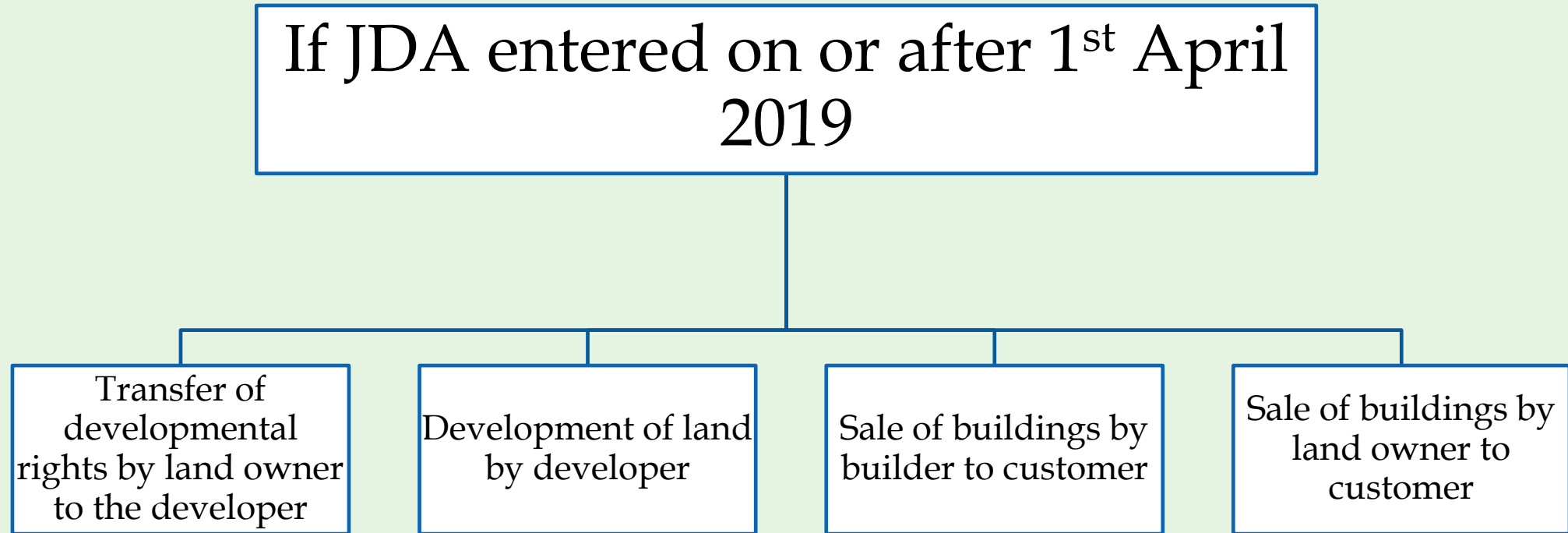
Development of land
by developer

Sale of buildings by
builder to customer

Sale of buildings by
land owner to
customer

The same provisions which are applicable to construction of Residential complex when JDA entered between 1st July 2017 to 31st March 2019 are also applicable to Construction of Commercial Complex when JDA entered between 1st July 2017 to 31st March 2019

CONSTRUCTION OF COMMERCIAL COMPLEX



The same provisions which are applicable to construction of Residential complex when JDA entered between 1st July 2017 to 31st March 2019 are also applicable to Construction of Commercial Complex when JDA entered on or after 1st April 2019.

SUPREME COURT'S LANDMARK RULING ON ITC FOR COMMERCIAL PROPERTIES

Case Overview

Background: Safari Retreats Private Limited is a real estate company involved in mall construction and leasing.

Issue: Safari Retreats built a shopping mall and wanted to claim ITC on the materials and services used. However, **Section 17(5)(d)** of the CGST Act blocked ITC on **immovable property**.

Legal Question: Can ITC be claimed on goods and services used for construction, given that the property is leased rather than sold?

SUPREME COURT'S LANDMARK RULING ON ITC FOR COMMERCIAL PROPERTIES

Court's Decision:

The Hon'ble supreme court emphasized the **functionality test**. If the property is an essential tool for conducting business (like malls or hotels that generate rental income), it functions like "**plant or machinery**". Thus, ITC should NOT be denied.

The Court remanded the matter back to tax authorities.

Significance:

If the Property is vital for generating taxable revenue (like renting out spaces), you could claim ITC on the goods and services used in construction. This case marks a win for tax fairness and opens the door for more strategic ITC claims.

Impact: Potential tax savings for leasing businesses and greater clarity on GST compliance.

DEVELOPMENT OF PLOTS

Development of Plots

```
graph TD; A[Development of Plots] --> B["If JDA entered between 1st July 2017 to 31st March 2019"]; A --> C["If JDA entered on or after 1st April 2019"];
```

If JDA entered between
1st July 2017 to 31st
March 2019

If JDA entered on or
after 1st April 2019

DEVELOPMENT OF PLOTS

If JDA entered between 1st July
2017 to 31st March 2019

Transfer of
developmental
rights by land owner
to the developer

Development of land
by developer

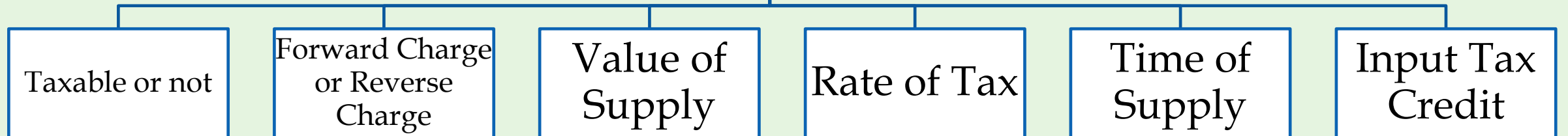
Sale of plots by
builder to customer

Sale of plots by land
owner to customer

DEVELOPMENT OF PLOTS

❖ If JDA entered between 1st July 2017 to 31st March 2019

Transfer of developmental rights by land owner to the developer



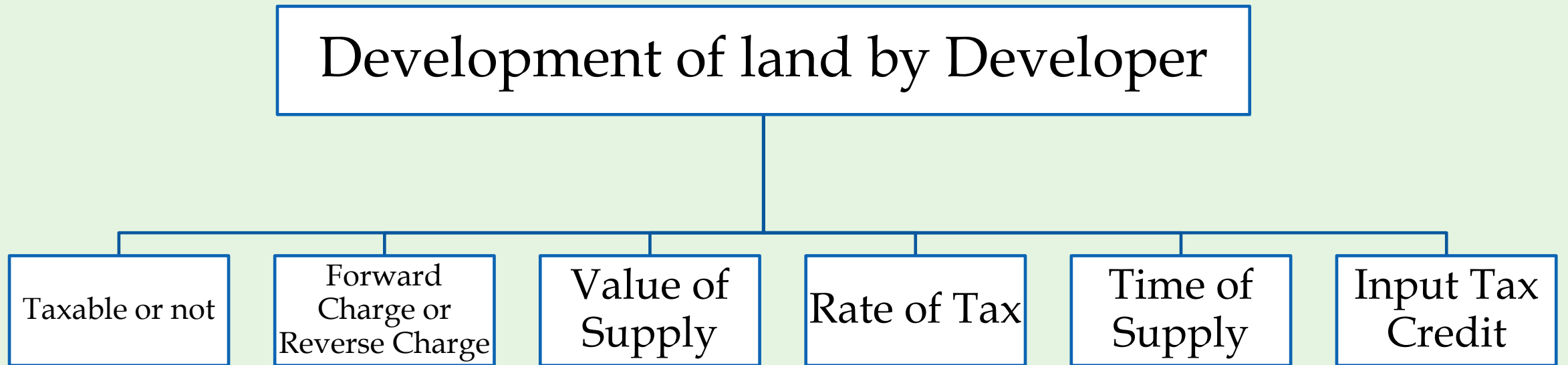
DEVELOPMENT OF PLOTS

- ❖ If JDA entered between 1st July 2017 to 31st March 2019
 - ❖ Transfer of developmental rights by land owner to the developer

- The same provisions which are applicable to construction of Residential complex when JDA entered between 1st July 2017 to 31st March 2019 are also applicable to Development of plots when JDA entered on or after 1st April 2019. Except for the following
 - Regarding the valuation of TDR valuation, value that adopted for payment of tax under provisions of income tax laws can be applied for GST purpose also.

DEVELOPMENT OF PLOTS

❖ If JDA entered between 1st July 2017 to 31st March 2019



DEVELOPMENT OF PLOTS

- ❖ If JDA entered between 1st July 2017 to 31st March 2019
- ❖ Development of land by Developer

□ The same provisions applicable for construction of Residential complex where JDA entered between 1st July 2017 to 31st March 2019 are applicable for development of plots. Except for the following the provisions

➤ Regarding Value, developer may opt the value adopted by land owner for payment of tax on supply of TDRs on the grounds of commercial principles.

➤ The rate of tax for the supply of construction services has to be examined based on the Notification No 11/2017 - CT (R), which deals with rates of taxes that are applicable for services. On a perusal of said notification, which was in existence during the said period of time, **it would be evident, the rate of tax would be 18% as per Entry 3(ii) of Notification No 11/-2017 CT (R). Hence, the developer has to value the services using Rule 30 and applying 18% on such value.**

DEVELOPMENT OF PLOTS

❖ If JDA entered between 1st July 2017 to 31st March 2019

Sale of plots by Developer

```
graph TD; A[Sale of plots by Developer] --> B[Where Developer offers Stamp Duty on the entire amount received from Customer.]; A --> C[Where Developer does not offer Stamp Duty on the entire amount received from Customer.];
```

Where Developer offers Stamp Duty on the **entire** amount received from Customer.

Where Developer does **not offer** Stamp Duty on the entire amount received from Customer.

DEVELOPMENT OF PLOTS

- ❖ If JDA entered between 1st July 2017 to 31st March 2019.
- ❖ Sale of plots by Developer

Where Developer offers Stamp Duty on the entire amount received from Customer.

Taxable or not

Forward Charge or Reverse Charge

Value of Supply

Rate of Tax

Time of Supply

Input Tax Credit

DEVELOPMENT OF PLOTS

- ❖ If JDA entered between 1st July 2017 to 31st March 2019
 - ❖ Sale of plots by Developer

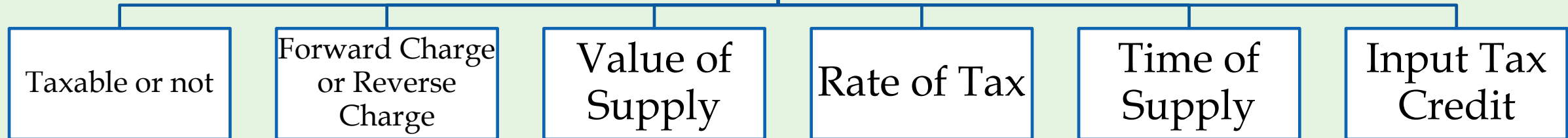
If the developer pays stamp duty on the entire amount received from customer

- It is evident that the transaction still only sale of land, Further, the **Gujarat High Court in the matter of Munjaal Manishbhai Bhat** has held that the Entry 5 of Schedule III covers the developed land.
 - ❑ View of the above discussion, our view is that the sale of plot to customers would fall under the expression 'sale of land' in Entry 5 of Schedule III and accordingly **no tax** is required to be paid on such transaction, subject to a condition that developer pays stamp duty on the entire value received from the customers for sale of plot.
 - ❑ Further, Para 14 of Circular 177/09/2022-TRU dated 03.08.22 has clarified that sale of developed land would also cover under Entry 5 of Schedule III and accordingly no tax is required to be paid

DEVELOPMENT OF PLOTS

- ❖ If JDA entered between 1st July 2017 to 31st March 2019.
- ❖ Sale of plots by Developer

Where Developer does not offer Stamp Duty on the entire amount received from Customer.



DEVELOPMENT OF PLOTS

❖ If JDA entered between 1st July 2017 to 31st March 2019.

❖ Sale of plots by Developer

When the developer does not offer stamp value on full value

- **Value of supply :** The value of supply is determined by Section 15 of CGST Act.
- The valuation methodology under Section 15(1) works out only, where the supplier and recipient of supply are not related and the price is the sole consideration of the supply.
 - ❖ Since, the developer and ultimate customer are not related and the price is the sole consideration of the supply, the valuation has to be done in accordance with Section 15(1).
- The said sub-section states that the value of services shall be the transaction value, which is the price actually paid or payable for the said supply of services.
 - Hence, the amounts that are agreed between the developer and ultimate customer would be the transaction value and accordingly the same shall be subjected to tax. The developer should also consider the inclusions which are mentioned in Section 15(2) before arriving the final value of supply which is to be subjected

DEVELOPMENT OF PLOTS

- ❖ If JDA entered between 1st July 2017 to 31st March 2019.
- ❖ Sale of plots by Developer

When the developer does not offer stamp value on full value

Rate of tax: It is evident that the services provided by developer to ultimate customer in this model shall be treated as works contract services and accordingly the rate of tax as specified in Entry 3(ii) of Notification No 11/2017 - CT(R) prevailing at the point of time shall be applicable, **which is 18%**. However, the said rate shall be applicable **only on value of services and not value of land.**

DEVELOPMENT OF PLOTS

❖ If JDA entered between 1st July 2017 to 31st March 2019.

❖ Sale of plots by Developer.

❖ When the developer does not offer stamp value on full value

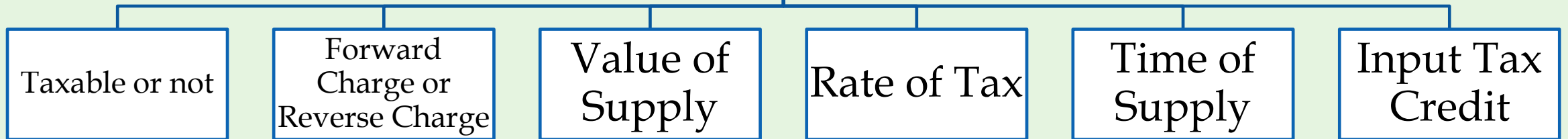
There is no specific mechanism to exclude the value of land. A view can be taken that only additional amounts that were received for development work should be taxed at 18%. However, the tax authorities may try to classify the said services as falling under Entry 3(i) of Notification No 11/2017 - CT (R) prevailing at the point of time, which has specified the rate of tax as 18%. This entry comes with a deduction towards value of undivided share of land.

Hence, the effective rate for the services provided by the developer to his ultimate customer, in instance, where consideration is received prior to completion certificate or first occupation, whichever is earlier, will be 12% ($18\% - 18 \times \frac{1}{3}$). However, the issue that remains unaddressed is that the deduction of 1/3rd of total amount received towards the land. That may be adequate for the construction of residential or commercial apartments, but would not be adequate in case of plots. This is obvious for reason that the value of land will be more than 2/3rd of the total amount received from the customer. The said Para 2 has been struck down by *Gujarat High Court in Munjaal Manishbhai Bhatt vs. Union of India*. Hence, if at all the said supply is taxable, then the actual value of land should be allowed as deduction and balance should only be subjected to tax.

DEVELOPMENT OF PLOTS

❖ If JDA entered between 1st July 2017 to 31st March 2019.

Sale of plots by Land Owner



The same provisions of Sale flats in Residential Complex by land owner when entered between 1st July 2017 to 31st March 2019 are applicable to sale of plots by Land owner when JDA entered between 1st July 2017 to 31st March 2019.

DEVELOPMENT OF PLOTS

❖ If JDA entered between 1st July 2017 to 31st March 2019.

❖ Sale of plots by Land Owner

- In the case of sale of plots by land owner, Since the entire amount is offered for stamp duty and we have concluded that the sale of developed plot is akin to sale of land, there is no requirement for any further examination.
- Further, Para 14 of Circular 177/09/2022-TRU dated 03.08.22 has clarified that sale of developed land would also cover under Entry 5 of Schedule III and accordingly **No tax is required to be paid.**

DEVELOPMENT OF PLOTS

If JDA entered on or after 1st April 2019

Transfer of developmental rights by land owner to the developer

Development of land by developer

Sale of plots by builder to customer

Sale of plots by land owner to customer

In case of development of plots, even if JDA is entered before or after 01st April 2019, the treatment will be same. Except the for JDA entered on or after 01st April 2019, time of supply will be determined as per Section-13(2). (Neither as per Notification 04/2018 nor as per 06/2019).



KRISHNA NIDDANA & CO
CHARTERED ACCOUNTANTS

CA KRISHNA NIDDANA'S PROFILE



CA Krishna Niddana.
B.Com, FCA, DISA,
FAFD.

Krishna Niddana is a Chartered Accountant and Founder partner of the firm and currently heading the litigation and representation, Audit and Review divisions of the firm. Has long standing experience of specializing in GST. Provided coaching services to 1000's of students on GST. Engaged as Faculty at NACIN for training GST officers. Shared number of opinions to peers among the CA Fraternity and Business Fraternity. He also having Certificate Course on Concurrent Audit of Banks from ICAI. His corporate experience includes working as consultant in one of the Big 4 for SOX Audit. His expertise includes –

- Representation for the GST Audit as per Section -65, GST summons as per section-70, Notices as per Section-73, 74,.
- Representation before Anti Evasion & Enforcement Department of GST.
- GSTR-9 & 9C review & Filing, GST Refunds.
- Forensic Audit and Fraud Detection Services.
- Statutory Audits, Tax Audits & Stock Audits.

CONTACT US

Mobile : +91 9000706048

Mail : krishna@knca.in

Website : www.knca.in

Address : Flat No: F-69, Block F, Madhura Nagar, Hyderabad, Telangana -500038.



THANK YOU

