

GST and its Effects on the Real Estate companies

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Abstract

GST is reshaping real estate landscapes. It is an indirect tax implemented by governments to consolidate all taxes under one umbrella. After agriculture, the real estate sector is the most pivotal and largest sector in India. It contributes 6-8% to our country's GDP. It addresses our country's overall housing and infrastructure needs. The need for GST regulation in the real estate sector is to reduce fraud in the construction industry. By overseeing commercial activities and transactions within the real estate sector, the real estate regulation act 2016 aims to protect consumer interest and confidence for purchase of property and enhance transparency to stakeholders. This sector alone controls the demand and supply of more than 100 materials such as cement, sand, manpower, plywood, and steel etc. Prior to RERA, there was no clarity in pad area, payment terms and charges etc. GST has solved long term problems like valuation and supply, but there are still some grey areas that need evaluation.

This white paper provides insights into identifying the GST and its effect on the real estate sector. We look at the impact of RERA on small, medium, and large fixed sector industries in India. Main reason for this article is to assess the impact of the coastal part of GST on India, also this article aims to express the impact of past and current scenarios of GST on the construction industry. This article analyzes the origin, meaning, purpose, backfire, provision, loopholes in the legislation, impact of the law and finally discusses various highlights of key issues.

Keywords: RERA, Real estate, GST, construction Industry, Taxation

I. INTRODUCTION

India is a country of diversity, united by the force of democracy and our constitution. Since Independence, we have implemented various reforms in indirect tax, two major ones being Value Added Tax and Service Tax.

The Goods and Services Tax (GST) is a comprehensive tax levy on the manufacturing, sale, and consumption of goods and services at a national level. It simplifies the giant tax structure and supports the economy's growth.

GST is an indirect tax at all stages to bring about uniformity in the system. Although the GST structure has been announced, there is still confusion about which tax rate will apply to the real estate and construction industry.

The Real Estate Regulation and Development Act (RERA) 2016 is a revolutionary act in the

history of the Indian real estate sector. It is introduced to boost investment in the real estate sector and protect home buyers' interests. The Act encourages fair practices and aims to improve transparency in the Real Estate Sector. It was much needed to improve the market sentiment and preserve customer investments.

Although the GST Act, 2017, does not specifically define the real estate sector, it generally means property consisting of land, buildings, and natural resources such as crops, minerals, or water. It also includes an interest vested in it and is an item of real property and more buildings or housing in general. The business of real estate, the profession of buying,

selling, or renting land, buildings, or housing is also covered.

There are four types of real estate:

1. Residential 2.commercial 3.industrial 4. Land.

Residential includes both new construction and resale homes.

Commercial includes shopping centers and strip malls, medical and educational buildings, hotels and offices.

Industrial includes manufacturing buildings and property, as well as warehouses. The buildings can be used for research, production, storage, and distribution of goods.

Land includes vacant land, working farms, and ranches, and subcategories within vacant land include undeveloped, early development or reuse, subdivision, and site assembly.

II. REVIEW OF LITERATURE

India Brand Equity Foundation: Indian real estate Industry Report (2019): this report analyses the subsectors of the real estate sector, its market size and GDP contribution of this sector. The report also analyses the future prospects and investments and development of the real estate sector. This report is based on the data released by the Department of Industrial Policy and Promotion (DIPP). It also takes into consideration the government initiative like PM awasYojna, Smart Cities etc. which has given a boost to the Real Estate Sector.

C.A. Sumit Das (2018):Overview of GST in Real Estate Sector: The study further discussed the schedule II of CGST Act which includes Supply of services, works contract and composite services and also talks about input tax credit in this sector. The article suggests that GST shall help in reducing the overall cost of construction and hence shall benefit the consumer. It also suggests that the government should immediately implement the anti profiteering provisions so that it will help to achieve the goal of reduced cost.

Margeshrai (2020): The industry is critical to the economic prosperity of any country. India accounts for 6 to 8% of the country's GDP. India has undergone significant improvements since the implementation of the. Developers and

builders have been concerned about the high GST rate. By decreasing the GST rates on real estate developments, the Indian government has provided tremendous assistance.

Lp leaders (2021): The old GST scheme did not benefit consumers because it did not meet their expectations of lower prices, and that the new scheme has been changed in such a way that, despite meeting consumers' expectations, developers still suffer because of restrictions placed on their ability to claim credits. As a result, a strategy that balances the expectations of customers and developers is required.

Financial Express (2022): The elimination of the ITC on GST applied to real estate purchases will result in a number of benefits for homeowners. To begin with, while the ITC benefits should have been passed on to the homeowner in theory, their actual implementation was far from ideal. Many developers never consider the benefits of the ITC for the end-customer when pricing their residential units, resulting in regular inflation of property rates by adding unused ITC to their overall project expenses.

III. SCOPE

This research mainly focuses on how the RERA and GST are applicable in the real estate sector of our country. The RERA act is applicable throughout India except in the state of Jammu and Kashmir. It applies not only to residential houses but also to plots, buildings, apartments, and commercial projects.

IV. NEED FOR THE STUDY

The real estate sector is the most important sector in our economy. It is recognized as one of the leading sectors in India, expected to grow by 30% over the next decade, and it is the second-largest employer after

agriculture. Real estate can be classified into four sectors: Housing, Hospitality, Retail, and Commerce. GST aims to unify India with the principle of One Nation, One Market, One Tax. The real estate sector contributes a solid 5-6% to the GDP. In the past, the real estate sector was embroiled in taxation issues, leading to ambiguity. Among the 14 sectors, the construction industry ranks third in terms of its contribution to the economy. The real estate sector is strongly connected with various industries such as paints, tiles, cement, steel, fittings, and furnishings.

V. OBJECTIVES

- To analyse the effect of GST on the Indian real estate sector.
- To propose statements that can be added to the systems would benefit both parties.
- To understand the extent to which the RERA & GST Act has affected the real estate sector & reduced the risk of the buyer.
- To understand the benefits of implementing GST.

VI. RESEARCH METHODOLOGY

This is a descriptive cum conceptual research paper, which studies the concept and framework of GST based on past literature, books, journal, research papers, articles etc. The study is based on secondary data. The secondary data is collected through published sources like news, journals, and also accessing web sites/internet.

VII. RERA AND ITS MAJOR ASPECTS

RERA was implemented to enhance transparency and consistency in the real estate sector. Prior to RERA, consumers and suppliers encountered numerous issues without recourse, as there were no established guidelines or regulations. Consumers bore the brunt of these issues, particularly concerning delays. Despite some lingering challenges, RERA addresses these through key provisions:

Security:

All project funds are now deposited into designated escrow accounts, ensuring

transparency and accountability in financial transactions.

Transparency:

Buyers must be furnished with all project-related documents and information, and no modifications can be made without their consent, facilitating smoother transactions.

Equity:

RERA mandates fair practices, including precise carpet area specifications, and builders are liable for costs associated with project delays.

Quality:

Builders are obligated to rectify any defects within five years of purchase, ensuring quality standards are upheld. Deficiencies must be addressed within 30 days.

Authorization:

Registration is a prerequisite for advertising or selling a property, ensuring regulatory oversight and consumer protection.

VIII. RERA UNDER OLD REGIME

While GST, touted as 'one nation one tax,' has absorbed most indirect taxes (except Customs) across various sectors, the real estate sector remains an exception. The indirect taxes previously imposed in the real estate sector haven't been entirely included under GST. Stamp duty continues to be levied in real estate transactions by respective states. Efforts by the GST Council are underway to integrate stamp duty into GST. Under the previous tax regime, taxes such as Value Added Tax, Service Tax, Stamp Duty, and Registration Charges were applicable. In the GST era, residential buildings intended for sale, either partly or wholly, will attract a 12% GST. However, sellers will have full access to input tax credits. Previously, states with composite VAT required developers to pay lower VAT rates on

the total property value without providing any input tax benefits

Tax	Percent age
VAT	1 to 4%
Service tax Registration charges	4.5% 0.5 to 1%
Stamp duty charges	5 to 7%

IX. RERA UNDER NEW REGIME

The sale of under-construction properties is subject to GST, meaning GST applies before the receipt of the Occupancy Certificate (OC). Initially, GST was set at 18% or 12% for specified affordable housing projects, with a standard 33% abatement towards the land value. Thus, the effective GST rate for under-construction properties was 12% or 8% of the entire agreement value, compared to around 5.5% (4.5% Service Tax and 1% VAT) under the composition scheme with limited credits in the pre-GST regime. It's important to note that GST does not cover stamp duty, so GST is applied in addition to the stamp duty, around 5%, payable on the agreement value. This has resulted in a total tax burden of around 17%-13%, leading to cost escalations for final consumers in the sector.

The GST rates are as follows: (new or on going)

- GST at 1% without Input Tax Credit (ITC) for affordable housing properties.
- GST at 5% without ITC for residential properties other than the affordable segment.
- GST at 12% with ITC for commercial properties other than specified ones, which will attract GST at 5%.

X. IMPACTS OF RERA

After the implementation of RERA, it can reduce fraud and enhance transparency, accountability, and responsibility in the real estate sector. The law aims to eliminate problems within the industry like mis-selling and project delays. Builders and developers are now required to register with RERA before starting their projects. This reduces unfair trade

practices in the real estate sector. Under RERA, risks and unreasonable delays in completing any project are primarily borne by consumers, ensuring that costs are borne by developers and builders. The introduction of GST has also impacted the real estate sector. Property transaction costs may increase by 6% if developers do not pass on input credit to buyers. Nevertheless, stamp duty remains applicable, irrespective of whether the property is under construction or constructed.

XI. IMPACT ON PROPERTY PRICES

One significant aspect of GST's effect on real estate is its influence on property prices. Initially, there was speculation that GST would result in reduced property prices due to the input tax credit benefit for developers. However, this anticipated reduction did not materialize as developers struggled to pass on the benefits to buyers due to factors such as rising construction costs, regulatory changes, and market conditions.

XII. IMPACT ON COMMERCIAL REAL ESTATE

In addition to residential real estate, the commercial real estate segment also felt the impact of GST. The leasing and renting of commercial properties were brought under the purview of GST, leading to changes in the dynamics of the rental market. GST introduced a uniform tax rate on commercial rentals, simplifying the taxation process for businesses.

XIII. IMPACT ON SECONDARY MARKET TRANSACTIONS

The implementation of GST had a notable impact on the secondary real estate market, particularly regarding

resale properties. In the pre-GST era, resale transactions were not subject to service tax. However, with the introduction of GST, certain changes occurred. While the first sale of a property after its completion was exempted from GST, subsequent resale transactions became subject to the new tax regime. This shift in taxation dynamics influenced the secondary real estate market, leading to adjustments and considerations for buyers and sellers alike.

XIV. IMPACT ON REAL ESTATE INVESTMENTS

GST had implications for real estate investments as well. With the introduction of GST, certain tax inefficiencies associated with indirect taxes were reduced, making real estate investment more attractive for investors seeking long-term gains.

XV. IMPACT ON CONSTRUCTION MATERIALS, SERVICES, AND PROPERTY TRANSACTIONS

Construction Materials: GST applies to a wide range of construction materials, including cement, steel, bricks, and other inputs used in real estate development. The tax rates on these materials vary, with most falling under the 18% or 28% tax slab. Developers can claim Input Tax Credit (ITC) for the GST paid on these materials, which reduces the overall cost of construction.

Construction Services: Services provided by developers and builders, such as construction, design, and engineering services, are subject to GST. The tax rate on these services is 18%. Developers can claim ITC for the GST paid on these services, effectively reducing their tax liability.

Property Transactions: GST is applicable to certain property transactions, such as the sale of under-construction properties. The applicable tax rate depends on factors like the stage of construction and the property's classification (affordable housing or non-affordable housing). Fully constructed properties, however, are typically exempt from GST.

XVI. IMPACT ON INDIAN ECONOMY

Three policies, including RERA, have had a negative impact on the property market, leading to a slowdown. RERA has directly affected small developers, builders, and contractors, particularly in metropolitan areas, due to the lack of employment opportunities.

XVII. INPUT TAX CREDIT (ITC) MECHANISM AND ITS IMPLICATIONS

Input Tax Credit (ITC):

ITC is a fundamental feature of GST that allows businesses, including real estate developers, to claim credit for the GST paid on inputs (construction materials and services) against the GST collected on the final product (the constructed property). In the real estate sector, ITC is crucial for developers as it helps reduce their overall tax liability.

Implications of ITC:

The availability of ITC has several implications for the real estate sector:

Cost Reduction: ITC reduces the cost of construction for developers, as they can offset the GST paid on materials and services against their GST liability, leading to potential cost savings.

Price Dynamics: Developers have the flexibility to adjust property prices based on the availability of ITC. If they pass on the benefit of ITC to buyers, it can lead to more competitive property prices.

Compliance and Documentation: To claim ITC, developers need to maintain accurate records and ensure compliance with GST regulations. This has led to improved documentation and transparency in the sector.

Consumer Impact: ITC can potentially lead to lower property prices for buyers if developers choose to pass on the benefits. However, this varies depending on market dynamics and developer decisions.

XVIII. OPPORTUNITIES

Over the past few years, numerous policy changes have impacted the real estate sector (RES). The Indian government, in collaboration with state governments, has implemented a series of measures to foster industry growth. The government's focus on urban development underscores its commitment to securing additional funding, enhancing transparency, and promoting the adoption of renewable energy among major stakeholders through policy interventions. Additionally, the Prime Minister unveiled a new public-private partnership (PPP) policy aimed at catalysing private investment in affordable housing. The Indian Union budget aims to further accelerate growth, infrastructure spending, poverty reduction, and fiscal accountability management. Notably, the allocation to the infrastructure sector for the financial year 2023-2024 has reached an all-time high of INR 1.3 lakh crore.

XIX. TAX INCIDENCES AFTER INTRODUCTION OF GST AND RATE OF TAXES:

Particulars	Applicability	Rate of tax	Input tax credit
On ready to move properties for which completion certificates are issued	Not applicable-because sale of buildings is treated as activity or transaction which shall be treated neither as a supply of goods nor a supply of service as per schedule III of CGST act 2017.	-	Not available

On under construction properties.(for homes purchases under credit linked subsidy scheme)	Applicable as supply of service as per schedule I of CGST Act 2017.	8%	Available
On under construction properties(other than above)	Applicable as supply of service as per schedule I of CGST Act 2017	12%	Available
On resale properties	Not applicable	-	Not available
On land purchase and sale	Not applicable. As per schedule III, sale of land is neither supply of goods nor service.	-	Not available

Wor ks cont ract	Applicable	18 %	Av aila ble
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The above rates are effective from 01-04-2019 and are applicable to construction of residential apartments in a project which commences on or after 01-04-2019 as well as in on-going projects. However, in case of on-going project, the promoter has an option to pay GST at the old rates, at the effective rate of 8% on affordable residential apartments and effective rate of 12% on other than affordable residential apartments and consequently, to avail permissible credit of inputs taxes, in such cases the promoter is also expected to pass the benefit of the credit availed by him to the buyers.

Affordable Housing means:

Affordable residential apartment is a residential apartment in a project which commences on or after 01-04-2019, or in an ongoing project in respect of which the promoter has opted for new rate of 1% effective from 01-04-2019 having carpet area upto 60 square meter in metropolitan cities and 90 square meter in cities or towns other than metropolitan cities and the gross amount charged for which, by the builder is not more than forty five lakhs rupees. Cities or towns in the notification shall include all areas other than metropolitan cities as defined, such as villages. In an ongoing project in respect of which the promoter has opted for new rates, the term also includes apartments being constructed under the specified housing schemes of Central or State Governments. Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, and Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their geographical limits prescribed by the Government.

XX. RECOMMENDATIONS

1. It is imperative to hold government agencies accountable for delays in granting approvals. Implementing a single-window system for the disbursement of all regulatory approvals would streamline the process and ensure transparency.

2. Establishing mechanisms to monitor fund transfers from escrow accounts for land acquisition is crucial.
3. Both the central and state governments must work together to resolve any conflicts arising from RERA implementation, promoting smooth execution and avoiding unnecessary delays.
4. Considering the burden on smaller projects, exempting those up to 20,000 square feet from registration under the Act would ease regulatory pressure and support small-scale developers.
5. While acknowledging the commendable purpose of the Act, there is a need to simplify the compliance process, especially for small-scale projects, to ensure smoother registration and dispute resolution.

Regarding GST issues:

1. Consider reducing the GST rates on goods for residential real estate to promote affordability and stimulate demand in the housing market.
2. Extending GST exemptions to land allotted for non-profit institutions, educational institutions, hospitals, etc., would encourage investment in essential sectors and support social welfare initiatives.
3. Permitting procurement adjustments for the entire duration of the project would provide flexibility and support project management without compromising compliance.
4. Addressing the impact of GST rates on affordable housing is essential to ensure accessibility for low and middle-income buyers.

XXI. LIMITATIONS

- The study is limited to the number of research articles and books referred.
- Data are grouped and sub-grouped as per the requirement of the study.

XXII. CONCLUSION

The Indian real estate sector has experienced significant transformation through the implementation of

regulatory reforms such as RERA (Real Estate Regulatory Authority) and the introduction of the Goods and Services Tax (GST). These reforms have addressed long standing issues like opacity, accountability, and convoluted tax systems within the industry. RERA acts as a guardian, ensuring fair practices and timely project delivery to protect homebuyers and restore confidence in the market.

On the tax front, the GST has simplified the system by amalgamating multiple indirect taxes, enhancing efficiency. Initially set at 12%, the GST rate for construction was later reduced to 8% for affordable housing, aiming to broaden homeownership. However, the journey towards a balanced tax regime has involved ongoing adjustments to tackle various challenges and ensure equitable benefits distribution.

Despite the promise of these reforms, challenges persist, requiring stakeholders to remain vigilant. Developers are now obligated to maintain higher construction standards and provide warranties for structural defects, emphasizing accountability and consumer protection. The transition to the GST regime has yielded both positive and negative impacts, streamlining tax procedures and reducing construction costs through input tax credits, yet challenges remain in ensuring transparency and passing on benefits to homebuyers.

Moreover, the anti-profiteering clause mandates developers to pass on tax reduction benefits to consumers, indicating the government's commitment to curbing unjustified price increases. However, effective enforcement of this clause is crucial to ensuring compliance and preventing exploitation.

Looking ahead, the real estate sector is poised for further evolution as stakeholders navigate regulatory complexities and market dynamics. Collaboration between the government, industry, and consumers will be key in addressing emerging challenges and maximizing the benefits of these reforms. While short-term impacts may include minor price fluctuations and tax adjustments, the long-term outlook remains optimistic, with the GST expected to drive growth and innovation, benefiting developers and home buyers alike.

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