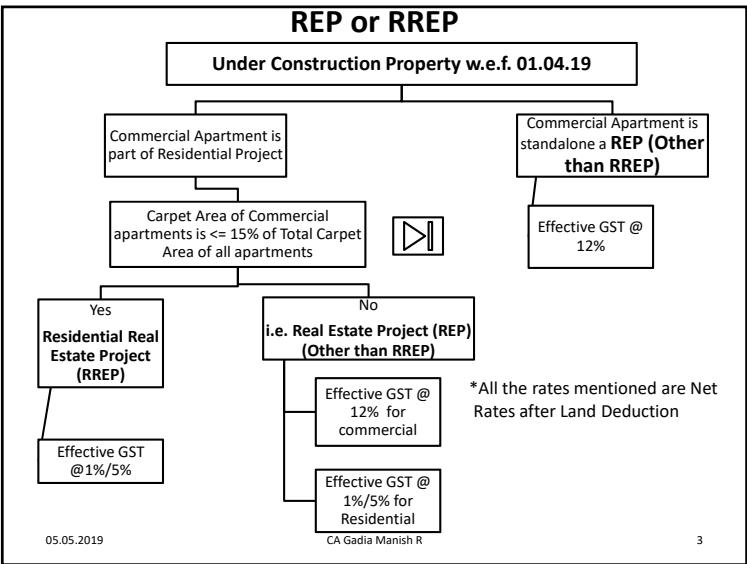




Amendments in Real Estate



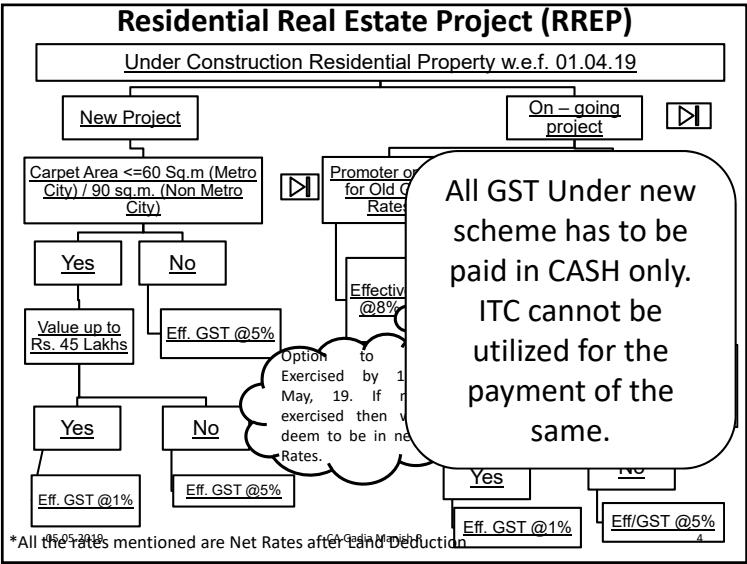
CA Gadia Manish R
 Cell: +919820537986
 Email: manish@gmj.co.in

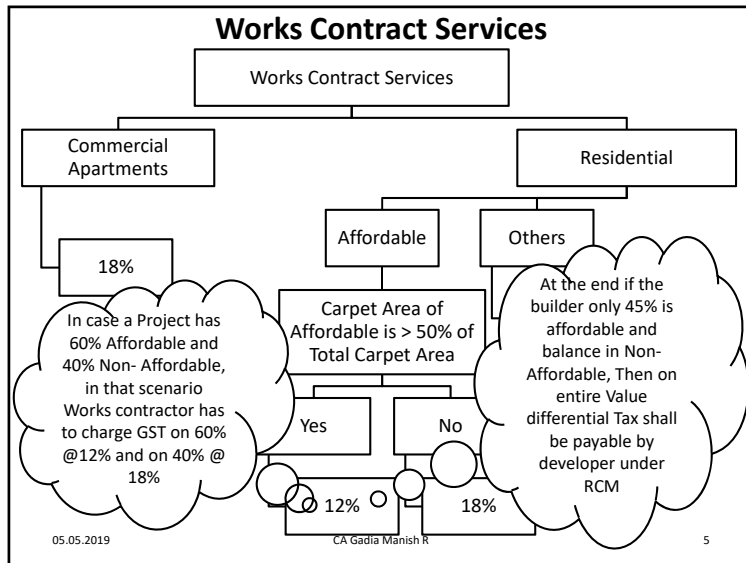


Rate of Tax under old law

Particulars	Service Tax (ITC of input services)	VAT (No ITC)	Total	GST (ITC- Input, input services & capital goods)
Sale of under-construction flats / units	4.50%	1%	5.50%	12% / 8%
Joint development – Owner’s Area	4.50% or 6%	Nil	4.50% or 6%	Construction: 12% / 8% or Works Contract: 18%
Redevelopment of society – Rehab flats	6%	Nil	6%	Works Contract: 18%

05.05.2019 CA Gadia Manish R 2





TDR / FSI / Long Term Lease Premium

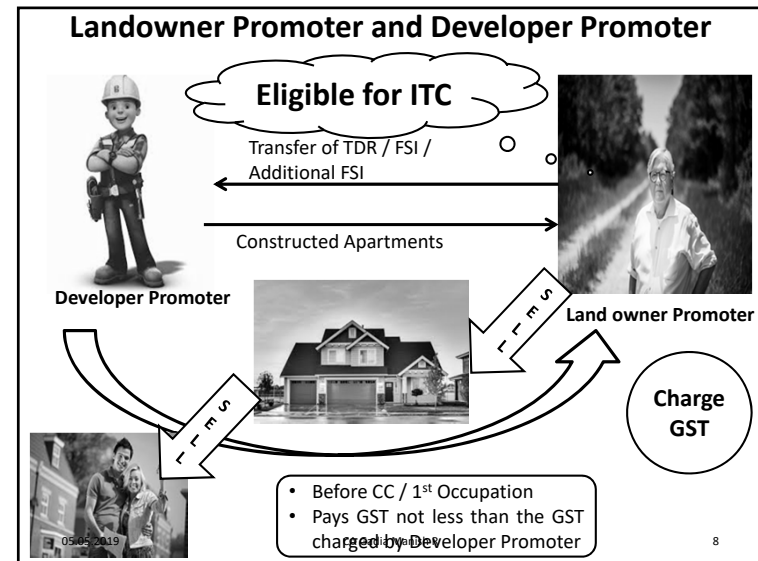
- In JDA/Redevelopment Agreement, transfer of development right by land owner/society is exempt but Rehab construction services provided by developers to Land owner/Society/SRA will still be taxable at 12% or 18%
- In case of JDA, builder shall pay tax on owner's (landlord) area:-
 - At the time of completion certificate or first occupation, whichever is earlier
 - On the value of total amount charged for similar apartments in the project to independent buyers nearest to the date of transfer of development right [Para iv of Notification No. 3/2019 – CT(R)]

05.05.2019 CA Gadia Manish R 7

TDR / FSI / Long Term Lease Premium

- Exemption granted in respect of development rights, TDR, FSI and leasehold premium(Lease period of 30 years or more) used for **construction of residential properties liable to GST**. No such Exemption in case of Commercial.
- Exemption to apply to transfer of development rights pursuant to Joint Development Agreement (whether area share or revenue share) for residential complex for sale allotted to Landowner.
- Development rights, TDR, FSI, Leasehold land used for following will still be liable to GST @18%:
 - Construction of commercial premises
 - Construction of factory, corporate house, malls, commercial complex for letting out, etc. (for own use)
 - Construction of Residential Complex intended for sale after completion

05.05.2019 CA Gadia Manish R 6



Landowner Promoter and Developer Promoter - Issue

Developer Promoter **Land owner Promoter**

Eligible for ITC

Charge GST

- Before CC / 1st Occupation
- Pays GST not less than the GST charged by Developer Promoter

GST Payable at the Time of Possession

Sale before possession

05.05.2019 CA Gadia Manish R 9

RCM

- Builder shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year.
- Builder shall submit the above details in the prescribed form electronically on the common portal by end of the quarter (30th June) following the financial year.
- Tax liability on the shortfall of inward supplies from unregistered person to be added to output tax liability in the month of June following the end of the financial year.
- Mandatory payment of tax under RCM on cement procured from unregistered person irrespective of stipulated shortfall
- Monthly payment of tax under RCM on following procurement from unregistered persons:
 - Cement (at 28%);
 - Capital goods (at applicable rates)

05.05.2019 CA Gadia Manish R 11

TDR/ FSI/ Additional FSI - RCM

Transfer of TDR / FSI / Additional FSI / Long Term Lease Premium

Value of Supply of Services by way of transfer of development rights or FSI by a person to the promoter 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 promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter.

Shall Arise on or before the date of possession or earlier.

GST on Additional FSI / Long Term Lease Premium on unsold Flats @ 18%. Hence GST payable on the same would be Rs.5,40,00,000/- However not exceeding 5%. Actual Payable = Rs.1,50,00,000/-

05.05.2019 CA Gadia Manish R 10

RCM - Case Studies

RCM - Case Studies

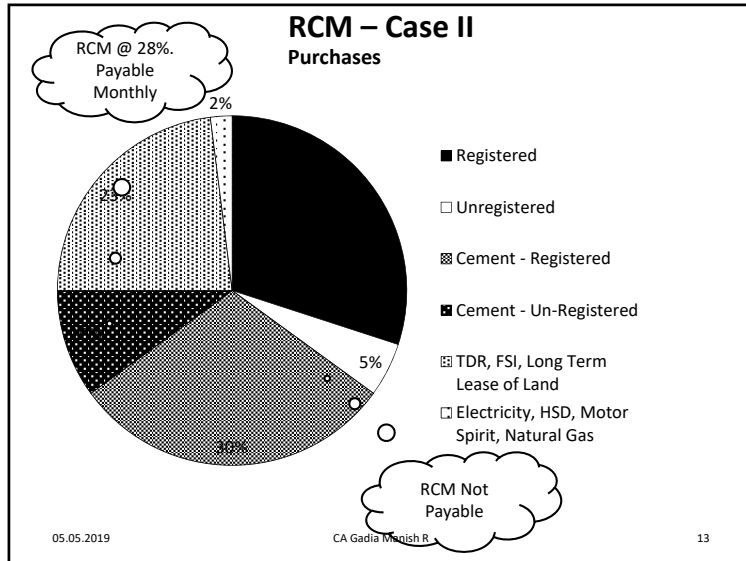
- Registered (25%)
- Unregistered (25%)
- Cement - Registered (17%)
- Cement - Un-Registered (12%)
- TDR, FSI, Long Term Lease of Land (2%)
- Electricity, HSD, Motor Spirit, Natural Gas (2%)

RCM @ 28% Payable Monthly

Anything Paid under RCM will be treated as Purchased from Registered Person E.g. GTA

RCM @ 18% Payable @ end of F.Y. on 10% Short fall

05.05.2019 CA Gadia Manish R 12



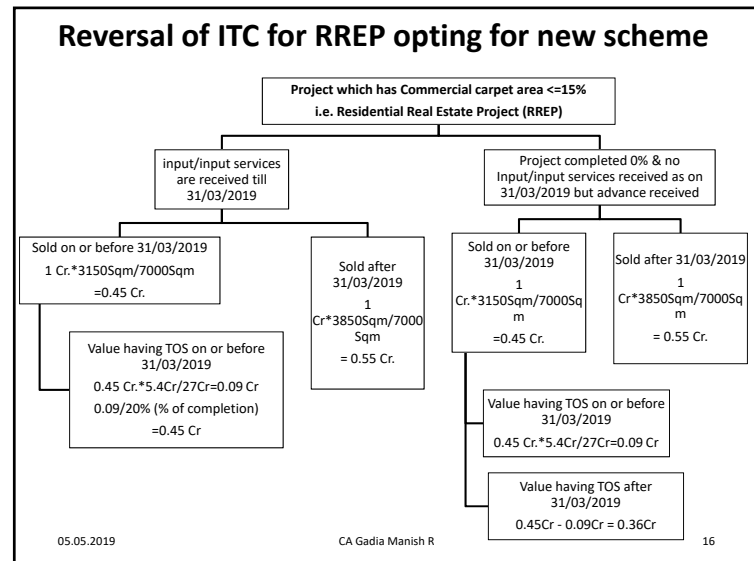
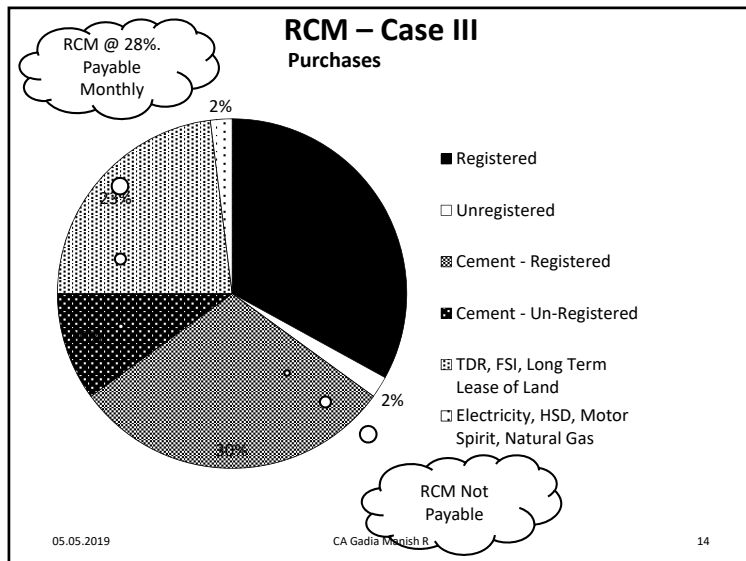
Reversal of ITC for ongoing RREP opting for new scheme

S. NO.	Details of Real Estate Project having commercial carpet area <= 15%		
	A	B	C
1	No. of apartments in the project	100 units	
2	No. of residential apartments	90 units	
3	No. of commercial apartments	10 units	
4	Carpet area of each apartment	70 Sqm	
5	Total Carpet area of the residential apartments	6,300 Sqm	2*4
6	Total Carpet area of the commercial apartments	700 Sqm	3*4
7	Total carpet area of the project	7,000 Sqm	5+6
8	Value of each apartment	0.60 Crore	
9	Total Value of all residential apartments	54 Crore	2*8
10	Total Value of all commercial apartments	6 Crore	3*8
11	No. of residential apartments booked before transition	40 units	
12	No. of commercial apartments booked before transition	5 units	
13	Total Carpet area of the apartments booked on or before 31.03.2019	3,150 Sqm	(11+12)*4
14	Value of booked apartments	27 Crore	(11+12)*8
15	Percentage invoicing of booked apartments on or before 31.03.2019	20.00%	
16	Total value of supply of apartments having time of supply on or before 31.03.2019	5.4 Crore	14*15
17	Total ITC availed (utilized or not) on inputs and input services upto 31.03.2019 (including transitional credit)	1 Cr	

Additional Details for Type I

% of completion as on 31.03.2019 as per RERA	20%
--	-----

05.05.2019 CA Gadia Manish R 15



Additional condition for ITC reversal

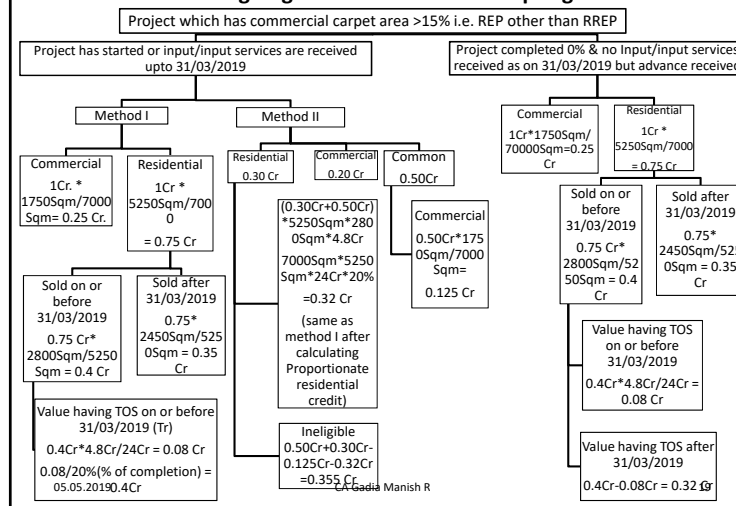
- Reversal to be worked out project wise.
- Separate calculation of CGST, SGST/UTGST, IGST
- Reversal to be done before due date for filing of return for September, 2019 (i.e. **20th October, 2019**).
- Reversal to be done by utilizing ITC balance lying in the electronic credit ledger and/or by making cash payment.
- Application can be made in in Form GST DRC – 20 to Commissioner for seeking extension of time and instalments for payment.
- The Commissioner has discretionary power to permit extension of time for period not exceeding 24 months.
- If Value of procurement of inputs/input services upto 31st March 2019 exceeds the actual consumption by more than 25% of actual consumption, then jurisdictional commissioner may allow ITC on the basis of per unit consumption based on documents certified by a Chartered Accountant.

05.05.2019

CA Gadia Manish R

17

Reversal of ITC for ongoing REP other than RREP opting for new scheme



Reversal of ITC for ongoing REP opting for new scheme

S. NO.	Details of Real Estate Project having commercial carpet area > 15%		
	A	B	C
1	No. of apartments in the project	100 units	
2	No. of residential apartments	75 units	
3	Carpet area of each apartment	70 Sqm	
4	Total Carpet area of the residential apartments	5,250 Sqm	2*3
5	Value of each residential apartment	0.60 Crore	
6	Total Value of all residential apartments	45 Crore	2*5
7	No. of commercial apartments	25 units	
8	Total Carpet area of the commercial apartments	1750 Sqm	3*7
9	Total carpet area of the project	7,000 Sqm	4+9
10	No. of residential apartments booked before transition	40 units	
11	Total Carpet area of the residential apartments booked before transition	2800 Sqm	3*10
12	Value of booked residential apartments	24 Crore	5*11
13	Percentage invoicing of booked residential apartments on or before 31.03.2019	20.00%	
14	Total value of supply of residential apartments having time of supply on or before 31.03.2019	4.8 Crore	12*13
15	Total ITC availed (utilized or not) on inputs and input services upto 31.03.2019 (including transitional credit)	1 Cr	

Additional Details for Method I

% of completion as on 31.03.2019 as per RERA	20%
--	-----

Additional Details for Method II

% of completion as on 31.03.2019 as per RERA	20%
ITC utilised for commercial apartments	0.20 Cr
ITC utilised for residential apartments	0.30 Cr
ITC utilised for both	0.50 Cr

05.05.2019

CA Gadia Manish R

18

Conditions for ITC

- where **percentage invoicing** is more than the percentage completion and the difference between percentage invoicing (per cent. points) and the percentage completion (per cent. points) of construction is more than 25 per cent. points; the value of percentage invoicing shall be deemed to be percentage completion plus 25 percent. points;
- where the value of invoices issued on or prior to 31st March, 2019 exceeds the consideration actually received on or prior to 31st March, 2019 by more than 25 per cent. of **consideration actually received**; the value of such invoices for the purpose of determination of percentage invoicing shall be deemed to be actual consideration received plus 25 per cent. of the actual consideration received; and
- where, the **value of procurement** of inputs and input services prior to 1st April, 2019 exceeds the value of actual consumption of the inputs and input services used in the percentage of construction completed as on 31st March, 2019 by more than 25 per cent. of value of actual consumption of inputs and input services, the jurisdictional commissioner or any other officer authorized in this regard may fix the Te based on actual per unit consumption of inputs and input services based on the documents duly certified by a chartered accountant or cost accountant submitted by the promoter in this regard, applying the accepted principles of accounting.

05.05.2019

CA Gadia Manish R

20

Factors to be considered for exercising the option

- Cost-benefit analysis and future projections for each project
- Accumulated ITC balance
- Marketability of unsold flats, if selling price is enhanced
- Developers capacity to absorb reversal of ITC
- Liquidity position
- Unsold inventory
- Implications of anti-profiteering

05.05.2019

CA Gadia Manish R

21

Issues

- Builder was selling affordable house and charging 8% tax till 31.03.2019. Due to cap of Rs.45 lakhs, the houses in the project does not fall in definition of 'Affordable Residential Apartment' on or after 01.04.2019. Builder intends to opt for old scheme of taxation as there is huge ITC accumulation for this project. What will be applicable tax rate in such case?
- In case builder does not opt for old scheme, what will be tax rate applicable to erstwhile affordable houses?
- Builder has reversed ITC of Rs. 1 crore before 31st March, 2019 on account of non-payment to vendors within 180 days from the date of invoice [Proviso to Section 16(2) of the Act].
 - Builder was entitled to avail such credit back on payment to the vendors.
 - What will be the status of such availment if builder goes for new scheme of taxation?
- How to take ITC if to be availed in future?

05.05.2019

CA Gadia Manish R

23

Issues

- Is new scheme of taxation is optional or mandatory?
 - Whether ITC benefit granted by statute can be withdrawn through rate notification?
 - The concessional rate prescribed is subject to certain conditions. Whether non-compliance of such conditions give an opportunity to continue old scheme (with ITC) for ongoing as well as new project?
- What is the significance of term "One time option"?
 - Whether option once exercised, does it become irrevocable?
 - Can one amend option selected inadvertently? Does he have a choice atleast before 10th May 2019?
- Whether option is to be exercised qua:
 - Unit? Financial Year? Project? Entity?
- Whether different options can be exercised in respect of different buildings in same plan layout?
- Whether one can exercise different options in respect of flats sold before 31st March 2019 and flats to be sold thereafter?

05.05.2019

CA Gadia Manish R

22

Information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of particular situation.

CA Gadia Manish R.
manish@gmj.co.in

Ph :+919820537986

05.05.2019

CA Gadia Manish R

24

TO RECEIVE REGULAR GST UPDATES
Save +91 98205 37986 in your contacts &
<YOUR NAME>_<Name of Study Circle>



SEND TO +91 9820537986

Follow me on **@manishgadia_gst**

Add manish@gmjca.in to your contacts &



Sub: "START_UPDATES"

Email to manish@gmjca.in

05.05.2019

CA Gadia Manish R

25

Explanations to Rate

- **Carpet Area** means Carpet Area as per RERA.
- **Metro Cities** are Bengaluru, Chennai, Delhi NCR (Limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (Whole of MMR)
- For the purpose of calculating **Value** the Gross Amount shall be sum total of:-
 - Consideration charged for Flats
 - Amount charged for the transfer of land or undivided share of land, as the case maybe including by way of lease or sub-lease
 - Any amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.
- **Promoter** means Promoter as per RERA.



05.05.2019

CA Gadia Manish R

27

Determination of REP or RREP

- Whether the area of Club House, Gym, Community Hall, Parking, etc. are to be considered as area for residential or Commercial Use for the purpose of calculating 15% area of commercial Apartment.

As per the Definition of Residential Apartment, it has to be an apartment meant for residential use. However the above apartments are not meant for use as residence.

As per Definition of Commercial Apartment, anything that is not residential is commercial. Does this imply that the area of the above mentioned apartments would be included in Commercial area?

Or that these areas have to be excluded from commercial as well as Residential?

- **"Residential apartment"** shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;
- **"Commercial Apartment"** shall mean an apartment other than Residential Apartment.



05.05.2019

CA Gadia Manish R

26

"Ongoing Project"

- (a) **commencement certificate** in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is **certified** by any of the following **that construction of the project has started on or before 31st March, 2019:-**
- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
 - (ii) a chartered engineer registered with the Institution of Engineers (India); or
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.
- (b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub-clause (a) above that construction of the project has started on or before the 31st March, 2019;
- (c) **completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;**
- (d) **apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.**

Explanation.- For the purpose of sub- clause (a) and (b) above , construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.

05.05.2019

CA Gadia Manish R

28

Definitions

- "**commencement certificate**" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan;
- "**competent authority**" as mentioned in definition of "commencement certificate" and "residential apartment", means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;
- **an apartment booked on or before the 31st March, 2019** shall mean an apartment which meets all the following three conditions, namely- (a) part of supply of construction of which has time of supply on or before the 31st March, 2019 and (b) at least one instalment has been credited to the bank account of the registered person on or before the 31st March, 2019 and (c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the 31st March, 2019



05.05.2019

CA Gadia Manish R

29

Explanation for TDR

- "an **apartment booked on or before** the date of issuance of completion certificate or first occupation of the project" shall mean an apartment which meets all the following three conditions, namely-
 - (a) part of supply of construction of the apartment service has time of supply on or before the said date; and
 - (b) consideration equal to at least one instalment has been **credited to the bank account** of the registered person on or before the said date; and
 - (c) **an allotment letter or sale agreement** or any other similar document evidencing booking of the apartment has been issued on or before the said date.
- "**floor space index (FSI)**" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built."



05.05.2019

CA Gadia Manish R

31

RERA Definitions

1. "**carpet area**" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation.— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be.

2. "**promoter**" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or 9 of 1932. 6 of 2009.

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;



05.05.2019

CA Gadia Manish R

30