REVIEW OF RESEARCH

GOODS & SERVICE TAX (GST) AND ITS IMPACT ON INDIAN REAL ESTATE INDUSTRY

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ABSTRACT:

Real estate sector is more significant in India today, in the sense that it is the second largest employment Provider after agriculture and it is expected that this sector would contribute around 11% of India's GDP by 2020 (https://www.ibef.org/industry/indian-real-estate-industry-analysis-presentation). Because of its booming nature, the Government of India (GOI) has taken some measures along with the state governments to encourage the developers during the last few years, like, smart city Project, creation of National Urban Housing Fund in February, 2018 etc. Besides, the Pradhan Mantri Awas Yojona also accelerated the pace of the industry. The Security Exchange Board of India (SEBI) has allowed all kinds of investors to invest in Indian Real Estate, thus more FDI is expected to come in the industry in near future. In spite of all, an important reason for the growth of the industry in India is off course the implementation of Goods & Service Tax (GST) which came into effect on 1st July, 2017and it brought more transparency in the taxation system and GST also replaced multiple central and state levied taxes, like, central sales tax (CST), central excise, VAT, entry tax etc. for raw materials or inputs and service tax for input services, although state levied taxes like, stamp duty, registration charges still prevail in the GST regime. The study aims at the understanding of various provisions of the CGST Act, 2017, comparison between pre-GST & post-GST regime and also findings of GST-effect on Indian Real Estate Sector.

KEYWORDS*:* GST, Real Estate, ITC, VAT, RCM.

1.INTRODUCTION:

Indian Real Estate Sector used to face huge problem during the pre-GST regime due to the existence of multiple central and state levied taxes for input materials and input services at the different phases like inter-state transfer, intra-state transfer, entry of material from one state to another etc. but GST has replaced all these taxes and sale of under-construction building is only taxable under GST. Once construction is completed and completion certificate is issued, GST is not levied on such ready to sale property. During the pre-GST regime, the tax compliance was same, i.e. VAT was not levied after the completion of construction. As far as Input Tax Credit (ITC) is concerned, there were so many complications to avail the credit of input taxes like input-CENVAT was not allowed to set off against output-VAT etc., not only that ITC was allowed only on service Tax and VAT in few states. This problem was addressed in GST, still the developers who started construction before the implementation of GST and continued construction after the GST came into effect, had to face the same problem. But the total tax incidence has been minimised, as compared to pre-GST era, taxation system has become more transparent and tax evasion has been reduced. ITC was allowed to the developers even in the GST regime, with the objective that such benefit would be passed on the customers, so that price is minimised. But that was not happening significantly. Besides, the developers and their association CREDAI demanded reduction of GST rate and abolition of ITC continuously since the implementation of GST. Lastly, GST Council in its 33rd & 34th meeting held on 24.02.2019 and 19.03.2019 decided that GST shall be levied at the effective rate of 5% on residential properties outside affordable segment and 1% on affordable housing properties subject to the condition that ITC will be unavailable and 80% of inputs and input services shall be purchased from registered persons. On failure to reach 80% threshold limit, the builder will be liable to pay GST @18% on RCM (Reverse Charge Mechanism) basis, and it has come into effect on and from 1st April, 2019.

2. LITERATURE REVIEW:

The below mentioned literatures have been reviewed thoroughly due to unavailability of much more research papers in this field.

- **Vasanthagopal, 2011** in his study "GST in India: A Big Leap in the Indirect Taxation System" concluded that though the positive impacts are dependent on a neutral and rational design of the GST, balancing the conflicting interests of various stakeholders, full political commitment for a fundamental tax reform with a constitutional amendment, the switchover to a 'flawless' GST would be a big leap in the indirect taxation system and also give a new impetus to India's economic change.
- **Mawuli , 2014 considered, "**Goods and Service Tax-An Appraisal" and found that GST isn't useful for low-earning nations and does not give wide based growth to poor nations. Even if these nations like to implement GST then the rate of GST should be less than 10% for growth.
- **Kumar, 2014** examined, "Goods and Service Tax-A Way Forward" and inferred that execution of GST in India help in evacuating economic contortion by current indirect tax system and expected to energize fair-minded duty structure which is unconcerned with demographical areas.
- **Dhar Dubey et al., 2017,** studied 'An Enquiry into the Effect of GST on Real Estate Sector of India' and concluded that that GST along with the present changes in the real estate sector may slow down the pace of growth in the short run but in future, these changes will be beneficial for the growth and consolidation of the sector.
- **Shalini & Biswas, 2016,** in their study 'IMPACT OF GST ON INDIAN REAL ESTATE SECTOR' showed that cost of under construction residential unit will increase post GST implementation. This will be a hefty blow to industry, which is already suffering from slow sales. Industry bodies need to urgently engage with government to minimize this impact by clarifying position on works contract, composition scheme and already paid service tax and VAT by developers on under construction property.
- **Mishra, 2018,** in her study "IMPACT OF GST ON INDIAN ECONOMY" concluded that GST would eliminate economic distortions of taxation among states and would minimize complexity in taxation system. She further mentioned that individuals will be benefited by price cut due to GST and in consequence consumption would increase, more FDI would be attracted.

3.OBJECTIVE OF THE STUDY

The study involves two objectives,

1. To understand the provisions of the CGST Act, 2017 applicable to real estate sector;
2. To make comparison between pre-GST & post-GST era as far as real estate is concerned and their impact on Developers and Buyers.

4.RESEARCH METHODOLOGY

The is a descriptive study which is completely based on secondary data, collected from different published research papers, journals, news papers, websites etc. and data have been presented and analysed with the help of various tables, charts, diagrams etc.

5.PROVISIONS OF CGST ACT, 2017 REGARDING REAL ESTATE SECTOR:

- Sec. 2(19): "**capital goods**" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;
- Sec. 2(30): "**composite supply**" signifies a supply made by an taxable person to a recipient comprising at least two taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;
- Sec.2(98): "**reverse charge**" signifies the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (*3*) or sub-section (*4*) of section 9, or under sub-section (*3*) or sub-section (*4*) of section 5 of the Integrated Goods and Services Tax Act;
- Sec. 7(1)(a): "**supply**" includes– all types of supply of goods or services or both, for example, sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- Sec. 16(1): Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take **credit of input tax** charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.
  Source: http://gstcouncil.gov.in/sites/default/files/gst-glance/gst-book-acts.pdf

6.COMPARISON BETWEEN PRE-GST & POST-GST TAX COMPLIANCE

The following two tables show the pre-GST and post-GST tax implication of Real Estate Sector.

Table No. I: pre-GST Taxability of Real Estate

Nature of Transaction	Applicable Tax	Taxable Value	Rate of Tax
Goods portion of work contract	VAT	70% of construction value arrived at after standard deduction of 30% (which is total contract value less land value) provided towards 'labour and like charges', where the same are not available based on actual.	1% to 4%
Service portion of work contract	Service Tax	40% of construction value (total contract value less land value) to be deemed as the taxable value for computing Service Tax.	4.5%

Source: Compiled by the Author

Note: VAT was state-levied and Service Tax was central-levied. As well as, VAT varied from state to State. Input Tax Credit was available on VAT & Service Tax, but only in few states.

Table No. II: post-GST Taxability of Real Estate

Particulars	Applicability	Rate of Tax	Input Tax Credit
On ready-to-move (RTM) properties for which completion certificates are issued	Not applicable – Because Sale of building is treated as activity or transaction which shall be treated neither as a supply of good nor a supply of service as per SCHEDULE III of CGST Act,2017	-	Not available
On Under Construction Properties (For Homes Purchased Under Credit-Linked Subsidy Scheme)	Applicable as supply of services as per Schedule I of CGST Act, 2017	8%*	Available
On Under Construction Properties (Other than above)	Applicable as supply of services as per Schedule I of CGST Act, 2017	12%*	Available
On Re-sale Property	Not Applicable	-	Not Available
On Land purchase and sale	Not applicable. As per Schedule III, sale of land is neither supply of goods nor services.	-	Not available
Works contract	Applicable	18%	Available
Composite supply of works contract	Applicable	18%	Available
Composite supply of works Contract to Government Authorities	Applicable	12%	Available
Composite supply of works contract – for use by general public	Applicable	12%	Available
Composite supply of works contract – Affordable Housing	Applicable	12%	Available

Source: https://cleartax.in/s/gst-real-estate-sector-affect

Note: * indicates the effective tax rate i.e. after abatement of 1/3rd of the contract value for the value of Land.

7. Present Changes in GST Rules in respect of Real Estate

The following decisions were taken by the GST Council in the 34th meeting held on 19thMarch, 2019 regarding GST rate on real estate sector:

7.1Option in respect of ongoing projects:

1. The promoters shall be given a one -time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 01.04.2019) which have not been completed by 31.03.2019.

2. The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply.

7.2New tax rates:

3. The new tax rates which shall be applicable to new projects or ongoing projects which have exercised the above option to pay tax in the new regime are as follows.

(i) New rate of 1% without input tax credit (ITC) on construction of affordable houses shall be available for, (a) all houses which meet the definition of affordable houses as decided by GSTC (area 60 sq.m in non- metros / 90 sq.m in metros and value up to RS. 45 lakhs), and (b) affordable houses being constructed in ongoing projects under the existing central and state housing schemes presently eligible for concessional rate of 8% GST (after 1/3rd land abatement).

(ii) New rate of 5% without input tax credit shall be applicable on construction of, - (a) all houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019. (b) all houses other than affordable houses in new projects. (c) Commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

7.3Conditions for the new tax rates:

4. The new tax rates of 1% (on construction of affordable) and 5% (on other than affordable houses) shall be available subject to following conditions,- 2 (a) Input tax credit shall not be available, (b) 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

Table No. III: GST Rates effective from 1st April, 2019

Particulars	**Extant**	**Proposed**
Affordable Housing (%)	8	1
Others (%)	12	5
Input Tax Credit (ITC)	Yes	No
Affordable Housing:		
Area (sq. Metre)	60	60-90
Value (Rs. in Lakh)	N.A.	45

Source: PIB, Kotak Institutional Equities

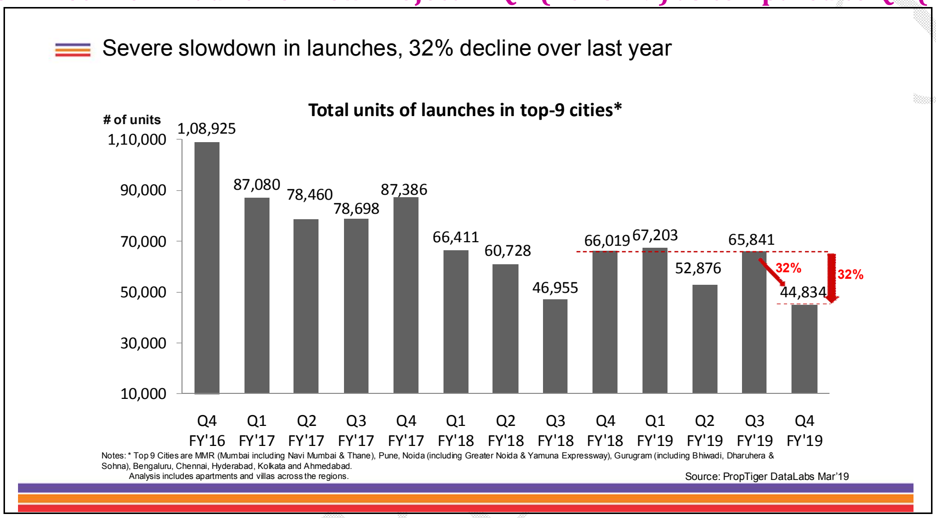
Table No. IV: Computation of impact of GST revision on net property prices

Non-Affordable Segment:	Case-I	Case-II	Case-III
Price (Rs. per sq.ft.)	15000	10000	5000
Construction Cost (Rs. per sq.ft.)	2300	2300	2300
Input Tax Credit	414	414	414
Extant GST:			
GST @ 12%	1800	1200	600
Price (Net of Input Credit)	16,386	10,786	5,186
Proposed GST:			
GST @ 5%	750	500	250
Price (without input tax credit)	15,750	10,500	5,250
Savings (Rs./sq.ft.)	636	286	(64)
Savings (%)	3.9	2.7	(1.2)
Affordable Segment:			
Price (Rs. per sq.ft.)	3,500	4,000	5,000
Construction Cost (Rs. per sq.ft.)	1,500	1,700	2,000
Input Tax Credit	270	306	360

Extant GST:			
GST @ 8%	280	320	400
Price (Net of Input Credit)	3,510	4,014	5,040
Proposed GST:			
GST @ 1%	35	40	50
Price (without input tax credit)	3,535	4,040	5,050
Savings (Rs./sq.ft.)	(25)	(26)	(10)
Savings (%)	(0.7)	(0.6)	(0.2)

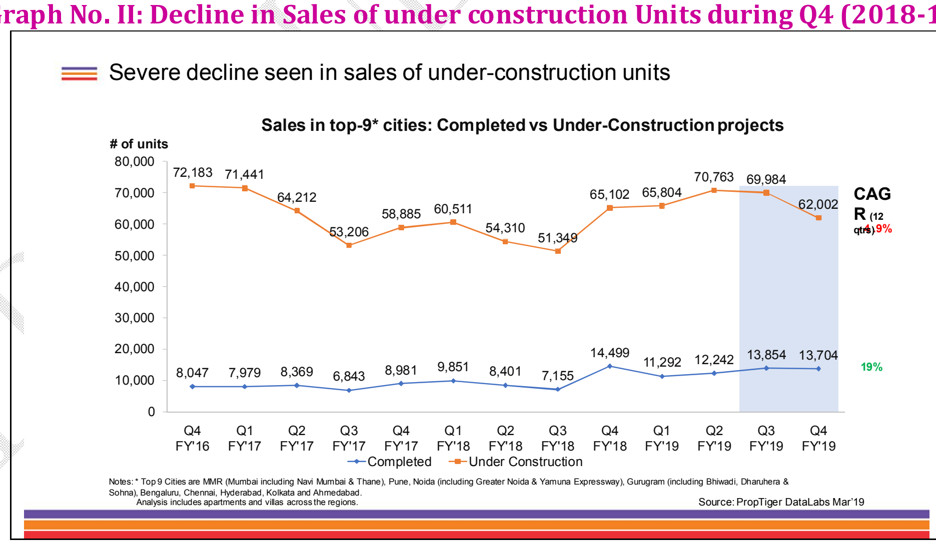
Source: PIB, Companies, Kotak Institutional Equities estimates

Graph No. I: Decline in Launch of New Project in Q4 (2018-19) as compared to Q4 (2017-18)



Source: https://www.proptiger.com/guide/post/real-estate-report-q4-2019-proptiger-datalabs-report

Graph No. II: Decline in Sales of under construction Units during Q4 (2018-19)



Source: https://www.proptiger.com/guide/post/real-estate-report-q4-2019-proptiger-datalabs-report

8. IMPACT ON BUILDERS/ DEVELOPERS

During the pre-GST era, the Developers had to pay multiple taxes like, VAT, Entry Tax, and Service Tax etc. for input material and input services but input tax credit was available only for Service

Tax and VAT and only in few states. There were some restrictions also to set off input tax against output tax. Besides, for Service Tax central registration and for VAT state-wise registration were in force. In the post-GST regime, all these taxes have been subsumed to GST; such legal hazard had been eradicated. Cost of construction came down and as now they can avail ITC, building has become more attractive.

On the other hand, to calculate ITC at every stage of production it's really a difficult task for the builders, since this is to pass on the buyers. So buyers may defer their buying decision till the final stage. Besides, the developers are now bound to show all the expenditures in their books of accounts, since to avail input tax credit now it is mandatory that the said amount of input tax shall be credited to the electronic credit ledger of such person. So suppression of facts and figures have been reduced.

9. IMPACT ON BUYER

During the pre-GST regime, buyers used to pay multiple central and state levied taxes, but after the implementation of GST, they are chargeable to a single tax, GST at the rate applicable to them. But like the pre-GST era, state levied taxes, such as, stamp duty, registration charges still prevail. Since under the previous tax regime, VAT rates of the states were different, as well as, ITC for VAT were available only in few states, price varied state to state.

The buyers will get benefited with the decisions taken by the GST council recently regarding GST rate cut and amendment to ITC rules that already came into effect on and from 1st April, 2019.

10. CONCLUSIONS

Though Real Estate Sector is so much important now a days, as far as employment, government revenue generation and growth rate of the economy are concerned, there were a huge amount of ambiguity and lack of clarity during the pre-GST era, which was addressed properly by implementing GST. In spite of that the Building developers had a demand since the implementation of GST to reduce the GST rate and withdraw ITC. At last Government fulfilled their demand partially and GST council has proposed that ITC rules shall be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in real estate projects.

But it can be observed that all types of buyers would not be benefited with the reduced GST rate (subject to the unavailability of ITC benefit) which is evident with the **Table No. IV.** The table shows that in case of non-Affordable Housing Segments benefit is more as price is more, while in case of Affordable Segments the buyers would be looser but with the increase in price, loss would be minimised.

The buyers are in ambiguity, whether they would be benefited or not with the recent changes in GST rule, that came into effect on 1st April, 2019. That's why they have deferred their buying decision, which is evident with Report published by Prop Tiger.com (a quarterly analysis of India's nine key housing markets i.e. cities).

Graph No. I shows that new launch of housing projects has come down by 32% in the 4th quarter of 2018-19 over the same quarter of 2017-18. As well as, Graph No. II shows that there is a severe declining trend of the sale of under construction projects in the last quarter of 2018-19. These are mostly the impact of the transition of GST.

In general, it can be concluded that GST system has brought more transparency in the indirect taxation system as well as in the Real Estate Sector and tax evasion has been minimised. Both Developers and Buyers of the Real Estate Sector are expected to be benefited in the long run, with the continuous revision of GST rules and the growth of the industry would be sustained.

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