

GST in Real Estate : Opportunities and Challenges



Ghaziabad- Zone 2



Real Estate Sector in India

- ✓ The real estate sector in India has come a long way by becoming one of the fastest growing sector in India
- ✓ The growth of the industry is attributed mainly to a large population base, rising income level and rapid urbanisation
- ✓ The sector comprises of 4 main sectors viz housing, retail, hospitality and commercial.
- ✓ The Housing Sector is the one which has a major share above the other sub sectors
- ✓ This sector has transformed from being un-organised to dynamic and organised sector.
- ✓ This sector is expected to reach USD 1 trillion in market size by 2030 and by 2035 it will contribute 13% of GDP.
- ✓ Currently, it contributes around 7.8% of GDP and is largest employment provider after agriculture.



Real Estate Sector in UP

- ✓ Initially started in NCR region.
- ✓ Some interesting observations...

Year	No. of Registration in UP RERA
2018	258
2019	161
2020	161
2021	174
2022	250

An interesting Fact is that 66% of registration in the year 2022 is from non-NCR region and 34% is from NCR region



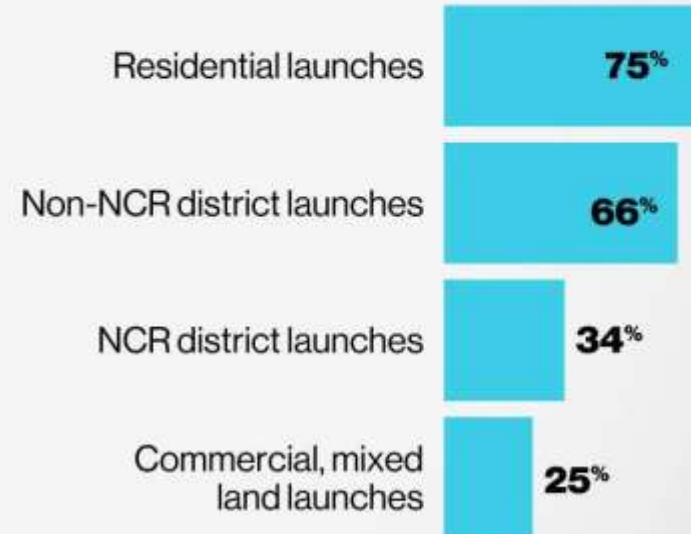
BusinessToday.In

25% RISE IN NEW PROJECT REGISTRATION IN UP: HIGHLIGHTS

New projects registered (Units)



Source: UP Rera





Real Estate Boom in UP

- Uttar Pradesh Real Estate Regulatory Authority (UP RERA) has received 250 applications for new project registrations in the housing, commercial and mixed land use category in 2022.
- However, the regulatory authority had received around 125 applications during the same period, last year
- Lucknow, Kanpur, Varanasi, Bareilly, Prayagraj, Agra, Mathura are among the top districts of non-NCR districts in new project registration.
- Apart from these popular locations, applications have been received from areas like Amroha, Shahjahanpur, Gonda, Bahraich, Sultanpur, Firozabad, Lalitpur districts, showing an upward trend of group housing and the rising impact of real estate regulation among promoters of these districts.

UP Govt. Plans For Real Estate Industry



- Uttar Pradesh administration sees the real estate sector as a critical pillar in the state's objective of becoming a \$1 trillion economy.
- According to an official statement on Saturday, the state government expects to invest Rs7.3 lakh billion in real estate over the next five years.
- Ghaziabad, Gautam Buddh Nagar, and Meerut in the National Capital Region in the state's western zone will receive special attention.



New Township Policy, 2023: to help the real estate sector

- The Uttar Pradesh Township Policy 2023 was approved by the state government to stimulate private investment and offer advanced township facilities to the population.

Investment of ₹ 10,000 Crores in 10 Smart Cities of UP

- This project also aims for infrastructure development in 10 cities of UP and will act as catalyst for real estate development in these cities.
- Urban population of UP will see an upward trend in next 5 years, which will require another 64 lakhs houses in next 5 years.



GST Collection from Real Estate in UP

No. of Dealers	20-21 (Collection in cr)	21-22 (Collection in cr)	22-23 (Collection in cr)	% growth
176	105.95	138.54	228.05 (+64.	+64.61



Zone-wise collection in real estate sector :

SN	Name of Zone	No of dealers	20-21	21-22	22-23	% (up or down) 21-22 to 22-23
1	Agra	3	1.31	3.45	5.31	53.94
2	Aligarh	3	1.71	2.15	1.87	-12.88
3	Ayodhya	3	5.91	7.79	9.53	22.34
4	Bareilly	1	2.21	0.07	0.34	407.64
5	Etawa	0	0	0	0	0
6	GB Nagar	81	42.48	77.44	130.1	67.97
7	Ghaziabad I	26	11.21	12.01	13.08	13.56
8	Ghaziabad II	9	26.26	10.63	25.44	139.32
9	Gorakhpur	2	0.35	0.61	1.17	93.09
10	Jhansi	4	0.44	0.82	1.55	89.89
11	Kanpur I	7	3.87	3.33	10.15	204.51
12	Kanpur II	3	0.08	0.36	1.18	230.45
13	Lucknow I	5	1.58	1.9	2.11	10.84
14	Lucknow II	20	14.46	18.46	28.7	55.48
15	Meerut	5	0.38	1.61	1.56	-2.77
16	Moradabad	0	0	0	0	0
17	Prayagraj	5	1.02	1.44	2.198	52.05
18	Saharanpur	4	24.86	18.13	16.37	-9.71
19	Varanasi I	3	2.8	1.05	1.77	68.57
20	Varanasi II	2	0.79	4.27	2.76	-35.43



Taxation in Real Estate Sector

- Taxation in real estate sector is very complex because of Composite Supply of various goods and services.
- It becomes even more complex because gestation period of a real estate project varies from 2-10 years and might involve different tax regimes.

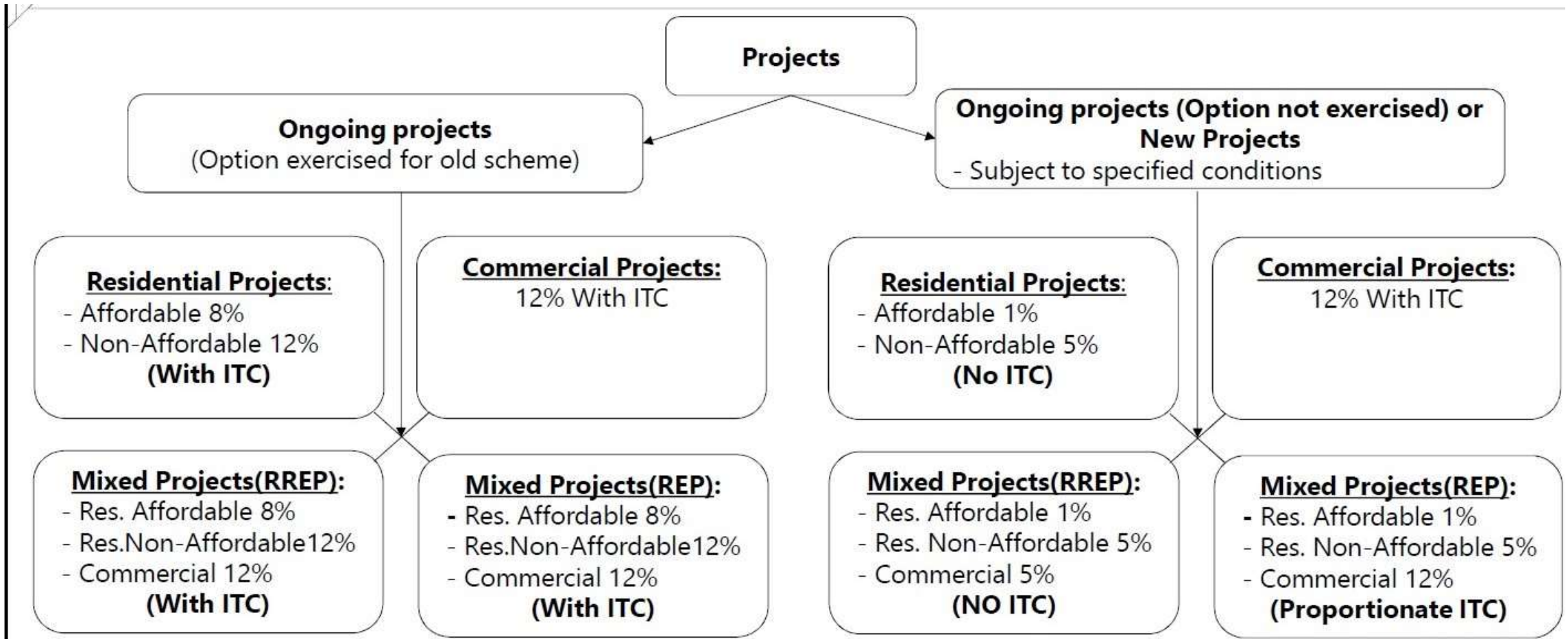
Type of Project	GST rate (upto 31st March, 2019)	GST Rates (from 1st April, 2019 onwards)
Affordable Housing Projects	8% (with ITC)	1% (without ITC)
Non-Affordable Housing Projects	12% (with ITC)	12% (with ITC) and 5% (without ITC)
Commercial Projects	12% (with ITC)	12% (with ITC)

Snapshot of new rates effective after 1st April 2019

- Procurements 80% from registered dealers
- Shortfall 18% RCM
- Affordable area 60/90 SQM in Metro/ Non-Metro
- Gross Value < 45Lakhs



Snapshot- Amended scheme of taxation



Sale of completed flats/ commercial units (Post OC) – Not liable to GST



Important Advance Authority rulings in Real Estate Sectors

- Taxability of Preferential Location Charges (PLC)
 - IN RE: BENGAL PEERLESS HOUSING DEVELOPMENT COMPANY LIMITED
 - AAAR concluded that builder is charging an additional amount in the form of PLC
 - Such charges are separate services which has no association with the land and hence the abatement can not be available in respect of such PLCs.
- Taxability of External & Infrastructural Developmental Charges (EDC and IDC)
 - IN RE ASHIANA HOUSING LTD (GST AAR HARYANA)
 - The clause (a) of sub-section (2) of section 15 of the said Acts provides that the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.
 - In view of the above, the amount of statutory charges i.e. EDC and IDC, recovered by the applicant from buyers and paid further to respective government authorities will form part of value of taxable supplies being made by the Applicant.
- IN RE EDEN REAL ESTATES PRIVATE LIMITED
 - In this case AAAR West Bengal has decided that 18% GST would be payable on open car parking sale.



GST on Maintenance Charges of flats

SN	Is the aggregate T.O. Rs 20 Lakh or more in the FY?	Are the Maintenance charges per month per member > Rs 7500INR?	Is GST Registration required?	Is GST chargeable for any Goods/ Services supplied by the RWA?
1	No	No	No	No
2	Yes	No	No	No
3	No	Yes	No	No
4	Yes	Yes	Yes	Yes



GST on Joint Development Agreement (JDA)

- JDA is an agreement between land owner and developer, where land owner contributes his/her land and developer undertakes the responsibility for the development of the property, basically the land owner transfers developmental rights to the developer, which is called as Transfer of Development Rights (TDR)
- JDA are Commonly of 2 types
 - Area Sharing Agreement
 - Revenue Sharing Agreement



Liability of TDR under GST

Person Liable to Tax & Rate of Tax

Upto 31.03.2019 = **Landowner was liable to pay tax @18%** on supply of development rights (both commercial & residential) to the developers under FCM.

[S. No. 16(iii) of Notification No. 11/2017-CT(R) dt. 28.06.2017]

From 01.04.2019 = There will be **no liability in the hands of Landowner** irrespective of residential or commercial project for sale. However, liability to pay GST on TDR is **shifted on the developer @18%** being recipient of TDR service under **RCM** u/s 9(3).

[NN- 13/2017-CT (R) dt. 28.06.2017 as amended by N-05/2019-CT (R)] Dated: 29.03.2019]

TDR on residential Apartment **Exempted**

Services by transfer of TDR/FSI/LTL on or after 01.04.2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly is exempt, **except where entire consideration has been received after issuance of CC or OC.** [No.04/2019-CT(Rate)29.3.2019]

It implies that GST is payable in proportion to area of **flats remained un-booked** as on date of issuance of completion certificate or first occupation of project whichever is earlier.

It may be noted that exemption is not available for construction of **commercial apartments.**



Taxability of TDR under GST

Time of Supply (TOS)

Upto 24.01.2018

= As per Section 13

From 25.01.2018 to 31.03.2019 =

For monetary Consideration = As per Section 13 (Residen./Comm.)

For non-monetary Consideren. = Time when there is transfer of possession or rights in the constructed area by entering into conveyance deed or similar documents (e.g. allotment letter)(Residen./Comm.) [NN-04/2018]

W.e.f. 01.04.2019 = For developer TOS under RCM will be:

Residential Project = For monetary & Non-monetary consideration = On issuance of CC or First occupation whichever is earlier. [NN-06/2019]

Commercial Project = For monetary consideration
For non-monetary consideration

= As per Section 13

= On issuance of CC or First occupation whichever is earlier [NN-06/2019]

GST is not applicable in the following Construction related transactions/ activities



- Sale of complete Ready-to-move in flats after obtaining the Completion Certificate from the Local Authority.
- Re-sale of property
- Sale/ Purchase of Land



Challenges in GST Collection

1

Involvement of BLACK MONEY

2

Nature of real estate sector

3

Strong nexus among CAs, Accountants, Lawyers and Tax Evaders.



Study conducted by CBIC

- A study of top 88 builders across the country was done by CBIC, which has shown that their CASH GST payment is as low as 0.4% in Noida to 4.8% in Chennai with the average payment estimated as 1.7%.
- When these figures were compared with Govt. Construction entities like NBCC (National Building Construction Corporation Limited) and CPWD; the average CASH payment varies from 4.3% to 7%.
- Conclusion
 - ✓ *This shows that REAL ESTATE is one of the most evasion-prone sectors. Barring some of the large builders many players indulge in Cash payment and instead of sourcing goods, from registered entities they route it from un-registered entities, which enable them to make Cash payment and indulge in out of books transactions.*



Modes of Evasion

- Modes of evasion in this sector revolve around 3 factors

☐ No GST on
Flats after
Completion
Certificate

ITC Evasion

Other
Modes

No GST on Flats after Completion Certificate



- Builders display the booking amount of buyers as a loan from its subsidiary company and after the CC is obtained, the builders show that they have returned the full amount to the subsidiary company with interest and thus escape the GST liabilities of under-construction projects.
- Builders make a deal with the home purchasers and when the developers get CC, they annule the deal. After that, thay go under a new agreement; sometimes with the same purchaser and sometimes with a family members of the purchaser.
- Builders receive money from the purchaser in different accounts or Company and when the CC is obtained, they transfer it to the flat self.
- In their Balance-Sheet, builder show credit of amount from certain shell companies, which are actually non-existant. The un-decleared cash amount is channelised into their project through the help of these shell companies.



ITC Evasion

- The facility of ITC is not available to the builder on the inputs used for the units which are sold after issuance of CC and the same is to be liable to get it reverse. However, either no reversal or very less reversal of ITC then the actual is made by the builders.
- In case of builders, there is a tendency of bogus claim of ITC on services like man-power supply, legal services etc.
- With the residential/ commercial units are sold by a builder, charges/ fees for several other services such as Parking fees, Club charges, Gym Chargers are charged. Though GST from customers is charged on net of all these amounts, but the tax is paid only on the base price.



Other Modes

- There were many projects, which continued from VAT period to GST period. During VAT, some of the purchases of the builders attracted Excise-Duty (no ITC on this). After entering in GST period, there was single tax i.e. GST on which they could claim ITC. Now, in the new regime some of the construction materials were cheaper. The profit of cheaper items should be transferred to customers, but most of the builders did not transfer this benefit to the end customer. This attracts to anti-profiteering measures.
- The customers is suppose to pay installation of their payments on certain period, builders failing they have to pay certain interest. This interest amount also comes under GST ambit.
- In all the real estate projects, large amount of scrap is generated, which are further sold by the builders, but they don't pay GST on these transactions.



Checklist for Enforcement Officers

- Recce all the branches (disclosed/ undisclosed)
- Check **CRM Software** i.e. Customer Relationship Management S/W. This software records not only all the interactions and payments by the purchaser but also records all the procurements of the developer. Such is the importance of this software that while filing the returns, the developer match GSTR 3B , GSTR 1 data with CRM data.
- Check status of builder, its constitution (weather it is Private Limited, LLP , Proprietorship etc)
- Check Commencement Certificate i.e. start of the project and Occupation Certificate.
- Check Builder-Buyer Agreement (BBA).
- Check all the bank accounts
- Check weather the project is financed from any Bank (copy of bank agreement)
- Check flat booking invoices.
- Get brochure of the project and compare what was promised and what they have delivered.
- Check discount given to customer (if any)
- Check services like CA, architect, legal expenses and GST on these.
- Check date of transfer of project to RWA or date of CC.

Checklist for Sector Officers



- Get RERA Registration Application.
- Check JDA (Joint Development Agreement) terms and conditions like whether it is land sharing agreement or profit-sharing agreement.
- Check 26AS:
 - It gives information about TDS, TCS, Advance tax paid etc.
 - It also gives information about turnover details reported in GSTR 3B.
- Check payment of GST on these services
 - Repair and maintenance head
 - Advertising expenses
 - Sale promotion expenses
 - Common Area Usage charges
 - Sinking fund charges.



Contd..

- Check Column 5(O) of GSTR 9C; this part relates with “Adjustment in TO due to reasons not listed above”, it gives information about
 - Turnover considered as “Supply” under GST but not considered as income in the audited annual financial statement.
 - Turnover discovered as “Supply” during the course of audit, but not considered in books of account and from GSTR 9.

Many times builders use this to hide/ adjust their taxable supplies.

- Check fluctuations in booking rate.
- Check flat cancellation charges and see whether it is part of turnover or not.
- Check flat booking → cancellation → re-booking of same flat after obtaining CC.
- Check whether the same person or the family member has re-booked the same flat again to save GST.
- Check ITC claimed under each head (commodity-wise)
- Check registration status and payment to all the contractors in flowing format

SN	Name of the Contractor	GSTIN	Amount Paid / Date	TDS

Unregistered contractors can be identified and given registration.



THANK YOU