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ITC On Inward Goods Or Service Exclusively Used For Exempted Supply Is Allowed Under GSTA Deliberate Mistake?



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1. Introduction

The input tax credit is considered as the backbone of the GST regime. Eligibility and availment of the Input Tax credit in the Pre-GST regime and even in the GST regime is always a litigated matter. The intention of the Government is very clear that Input tax credit shall be allowed for all the goods and services, including capital goods, which should be used for business purposes only. So accordingly the law under GST has been drafted, at first instance, all input tax credit is allowed under section 16 of the CGST Act, 2017 and then the government has disallowed and restricted the credit under section 17 of the CGST Act and respective SGST Act's.

2. In Pre-GST Regime

In excise and service tax regime the common cenvat credit attributable to input, input services, and capital goods is governed by rule 6(3) and 6(4) of Cenvat credit rules 2004. As per rule 6(4), no credit of capital goods used exclusively in the manufacture of exempted goods or in providing exempted services. So common credit of capital goods used in the manufacture of taxable and exempted goods or in providing taxable and exempted services was fully allowed.

As per rule 6(3), the Cenvat credit of input and input services used in the manufacture of taxable and exempted goods or in providing taxable and exempted services was allowed on a proportionate basis.

However, there were basically two options

- a) Avail the full credit on a provisional basis and reverse the credit at year-end (refer rule 6(3A)).
- b) Avail full credit and pay 6% of the value of exempted goods and pay 7% of the values of exempted services.

The principle of VAT is that input tax credit is available only when tax is payable on his output. If some of the supplies are taxable and some are exempt, the taxable person can take the only proportionate input tax credit.

3. Under GST Regime

As we know, for onward 1st July 2017 the GST Act came into force firstly vide notification no. 9/2017 dated 28th June 2017. Chapter V of the CGST Act provides the provisions in relation to ITC and State GST law has also made corresponding law in respective SGST law. The provisions of CGST in respect of ITC equally applies to IGST Act vide section 20 of IGST Act, 2017.

For availing the ITC under GST, it should satisfy all the condition and requirement of Chapter V of CGST Act, 2017 i.e. following shall be satisfied a) It should be used by registered person and credit of input tax charged on any supply of goods or services or both are used or intended to be used in the course or furtherance of his business b) satisfy 4 conditions of section 16(2) and c) shall pass through the restrictions and condition imposed under Section 17 of said act.

*Section 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”.

So, it is clear from above, that input tax credit can be taken by an only registered person as defined under section 2(94) of CGST Act, 2017 which is as follow:

“registered person” means a person who is registered under section 25 but does not include a person having a Unique Identity Number”

But as per section 23, “The following persons shall not be liable to registration, namely:—

- a. Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act.”

Hence, the intention of the Government is very clear that if any person is not liable to pay GST then there should be no burden on such person to get registered under GST law or we can say, if he is exclusively engaged in supplying of exempted goods or services then he is not required to get registered and hence no credit will be available to an unregistered person.

As per Section 17 of CGST Act, 2017 which provide the restrictions/ conditions for availing credit and block the credit of goods or services used for other than business purpose or exempted supplies, is as follows

- 1) “Where the goods or services or both are **used** by the registered person **partly** for the purpose of **any business and partly for other purposes**, the amount of credit shall be restricted to so much of the input tax as is attributable to the **purposes of his business**.
- 2) Where the goods or services or both are **used** by the registered person **partly** for effecting **taxable supplies** including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act **and partly** for effecting **exempt supplies** under the said Acts, the amount of **credit shall be restricted** to so much of the **input tax as is attributable** to the said **taxable supplies** including zero-rated supplies”.

Now, the method of calculation the ITC eligible for the purpose of business and taxable supplies is given under Chapter-V of CGST Rules, 2017 under rule no. 42 (for input and input service) and 43 (for capital goods).

Rule 42: Prescribe the manner for determination of input tax credit in respect of input and input services and its reversal. The input tax credit in respect of inputs or input services, which attract the provisions of section 17(1) or 17(2) of CGST Act, being partly used for the purposes of business and non-business, or partly used for effecting taxable supplies including zero-rated supplies and exempted supplies, shall be attributed to the purposes of business or for effecting taxable supplies

Rule 43: If capital goods are partly used for taxable goods and partly for exempt goods, the ITC on capital goods is available on proportionate basis [just like ITC on common input goods and input service]. Subject to the provisions section 16(3) [i.e. not claiming depreciation on tax portion of capital goods], the input tax credit in respect of capital goods, which attract the provisions of section 17(1) and 17(2) [i.e. partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies], shall be attributed to the purposes of business or for effecting taxable supplies So, after co-joint reading of section 17(2) of CGST act, 2017 read with rule 42 and 43 of CGST Rules, 2017 accordingly two interpretation follows:

- One may argue that sub-section (2) read with rule 42 and 43 deny only the ITC on goods and services used commonly for effecting Exempted and Taxable supply. i.e. section 17(2) has no power to deny the ITC of goods or services used for exclusive exempted outward supply.
- The other may argue that when credit of common Input tax credit on goods and service used for both exempted and taxable supply is denied then the ITC of goods or services used for exclusive exempted

outward supply can be allowed.

However author is of view no.2 above as it seems the intension of law as well as government is that ITC of goods or services used for exempted supply shall not be allowed. Further we should apply also apply the **Mischief rule** as applied by courts in many cases, when any "mischief and defect" is found in reading the statute is question then it should be interpreted in order to discover legislature's intention.

For example in many cases, like a Company A Ltd which has its taxable business of construction of roads taxable having HSN 9954 under the heading "Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public". But A Ltd is also providing another service having HSN 9954 under the heading "Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex" which is exempted via Notification No. 12/2017 dated 28th June 2017 as amended. So accordingly, the company is providing both taxable and as well as exempted services is required to follow the provisions of section 17(2) of CGST Act, 2017 read with rule 42 and as well as rule 43 of CGST Rules,2017. And required to reverse the proportionate input tax credit of goods and services used in relation to exempted supply.

In a recent Advance Ruling pounced by Authority for Advance Ruling (AAR) - Tamilnadu in the case of M/s Royal Care Speciality Hospital Limited via order no. 46/ARA/2019 dated 26th September 2019, the Authority had occasion to consider similar issue and in the facts of the said case, while considering the question 'whether ITC is eligible inward supply which is directly used in supplying of exempted outward supply, the Authority ruled as under:-

"The applicant is not eligible for credit of tax paid on the input service used exclusively for providing exempted services of health services to in patients such as laundry services used for in patients. For Input services such as housekeeping, leasing of equipment used for both exempt supply of health services to in patients and taxable supply of medicines etc. to outpatients, the appropriate ITC eligible is determined by Rule 42 of the CGST Rules 2017 and TNSGST Rule as amended read with Section 17 (2) of CGST/TNGAT Act 2017."

Further, in Pre-GST regime under excise law, as per the Supreme Court judgment in the case of KCP Ltd. Vs. CCE (2013), it was held that if excise duty is not paid on final product, there would not be any question with regard to getting Cenvat credit on the duty paid on the inputs. Hence intention of law has to be kept in mind.

And as per CCE Vs. Modi Rubber (2001) (SC 3 Member bench), it was held by supreme court that no Cenvat credit of duty paid on input is available if final product is exempted from duty. Furthermore, if free services or goods are provided on which no tax is payable, Cenvat credit of input taxes is also not available to assessee and same intension has been taken in GST under section 17(5)(h) of CGST Act,2017 "goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples".

One has to **interpretate the law according to the Principle of Harmonious Construction** which is similar to the idea of broad or purposive approach. "Constitutional provisions should not be construed in isolation from all other parts of the **Constitution, but should be construed as to harmonize with those other parts**". Hence on co-joint reading of above provision it can be clearly see that intension of law makers/government is very clear in disallowing the input tax credit in all the situation where ever no GST is paid by tax payer on outward supply whether in the case of exempted outward supply, non- taxable outward supply, loss of input of final goods etc. Hence, it is very clear that Input tax credit of goods or services or both used for an exempted outward supplying

is not allowed.

On the other hand if a registered person using the flaw in language of CGST Act, 2017 has availed and utilised the input tax credit of goods and services used exclusively for the exempted supply. Then if any judgment or clarification is issued by government may result in reversal or paid in cash along with interest under section 50 of CGST Act, 2017.

The summary of above discussion is found in following table.

S.No.	Case	Pre GST Regime	Post GST Regime
1.	Common credit of input and input services	We have two option (excise and service tax): a. Avail full credit on actual basis, or b. Avail full credit and reverse 6% or 7% of value of exempted goods or services respectively.	Only one option- avail on actual basis.
2.	Common credit of capital Goods	Credit of capital goods used for common use was fully allowed. (Rule 6(4) of CCR, 2004).	Credit of capital goods used for common use has been allowed on proportionate basis (rule 43).

4. Conclusion

To Sum-up, we can clearly say that the intention of Government is not allowing the input tax credit of goods or services used exclusively for exempted supply. Whether it is merely a miss or intentionally omitted by the legislature can be clarified in recent time to come. But author is of view that it is well settled principle that the intension of law cannot be overlooked and hence ITC on inward goods or service exclusively used for exempted outward supply is not allowed under GST law.

The Real Estate (Regulation And Development) Act, 2016



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Present Conditions of Real Estate Projects

Para No. 181 Page No. 251-252 of the Judgment given By Hon'ble Justice R. G. KETKAR in case of Neelkamal Realtors Suburban Pvt. Ltd. & others Vs. Union of India WRIT PETITION NO. 2737 OF 2017, Bombay High Court, the Hon'ble court has observed that :

Para 181. There was no accountability as to entity or persons responsible and/or liable for delivering on several projects that were advertised and in respect of which amounts had been collected from individual purchasers. What was promised in advertisements / brochures, such as amenities, specifications of premises etc. was without any basis, often without plans having been sanctioned, and was far from what was finally delivered. Amounts collected from purchasers were either being diverted to other projects, or were not used towards development at all, and the developer would often be left with no funds to finish the project despite having collected funds from the purchasers.

For a variety of reasons including lack of funds, projects were stalled and never completed and individual purchasers who had invested their life-savings or had borrowed money on interest, were left in the lurch on account of these stalled projects. Individual purchasers were often left with no choice but to take illegal possession of premises offered to them under the guise of fit-outs etc., and without the developer having obtained an occupation / completion certificate, which in turn would be on account of a range of different acts of omission and commission such as non-adherence to the sanctioned plans, excess construction, lack of having obtained the requisite permissions etc. Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation / completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.

Objects & Reasoning For Introducing RERA Act, 2016

- to **establish the Real Estate Regulatory Authority for regulation and promotion** of the real estate sector
- to ensure **sale** of plot, apartment or building, as the case may be, or sale of real estate project, in an **efficient and transparent manner**
- to **protect the interest of consumers** in the real estate sector
- to **establish an adjudicating mechanism** for speedy dispute redressal
- to **establish the Appellate Tribunal** to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

Applicability of Law

Section 2, sections 20 to 39, sections 41 to 58, sections 71 to 78 and sections 81 to 92 were notified by the Central Government to come into effect from 1st May, 2016.

All Other sections come in to force from 01st May, 2017.

Parts of Rera Act, 2016

- Real Estate Regulatory Authority + Adjudicating Officer + Conciliation forum • Real Estate Appellate Tribunal
- Promoters (Builder)
- Real Estate Agents (Broker)
- Allottees (Consumer)

1. Real Estate Regulatory Authority

(i) Establishment of Real Estate Regulatory Authority

Regulatory Authority is required to be established within 1 year of the commencement of the Section 20. However, for speedy implementation of the Act, section 20 empowers the 'appropriate Government' to appoint an interim Regulatory Authority, until the establishment of the full time Authority.

(ii) Appointment of Chairman & Members of Real Estate Regulatory Authority

As per section 22 the Chairman and the Members of the Authority are required to be appointed by the appropriate Government on the recommendations of a Selection Committee comprising of the Chief Justice of the High Court (or his nominee), the Housing Secretary and the Law Secretary. The section also provides for the qualification etc. that are required for the appointment of the Chairman and the Members.

(iii) Important Responsibilities of the Regulatory Authority

Apart from the day to day implementation of the Act and the Rules and Regulations made thereunder the immediate responsibility of the Regulatory Authority are:

- a) Registration of the real estate project and the real estate agent;
- b) Extension of registration of the real estate project and its revocation;
- c) Renewal of registration of the real estate agent and its revocation;
- d) As per section 34 the Authority is responsible to to maintain a website of records for public viewing of –
 - all projects registered with the Authority including details of projects as specified in the Act and the rules and regulations - to be disclosed on the website; details of promoters with photographs of promoters;
 - details of projects in case of revocation of registration or where any project penalized under the Act;
 - details of agents registered under the Act including his photograph and also of those agents whose registration has been revoked.
- e) As per section 32 the Authority may appoint one or more 'Conciliation forum' in consultation with appropriate Government.
- f) As per section 71 the Authority is required to appoint one or more 'adjudicating officer' in consultation

with appropriate Government.

- g) As per section 85 the Regulatory Authority is required to notify Regulations within 3 months of establishment.
- h) As per section 32 the Regulatory Authority is also required to make recommendations on various matters for the growth and promotion of a healthy, transparent, efficient and competitive real estate sector.
- i) Section 31 of the Act provides for filing of complaint by an aggrieved with the Regulatory Authority. The form and manner and the fees payable for filing the complaint are to be specified by Rules to be made by the appropriate Government.
- j) Section 29 provides that the Authority should endeavour to dispose of the questions / complaints as expeditiously as possible but not later than sixty days from the date of filing the same. However, where it could not be disposed of during the said period the Authority is required to record its reasons for the same.

2. Real Estate Appellate Tribunal

(i) Establishment of Real Estate Appellate Tribunal

As per section 43 of the Act, the Appellate Tribunal is required to be established within 1 year of the commencement of section 43. As section 43 has been notified with effect from 1st May, 2016, the Appellate Tribunal is required to be established maximum by 30th April, 2017. However, for speedy implementation of the Act, section 43 empowers the 'appropriate Government' to designate an existing Appellate Tribunal (under any other law in force) to function as an Appellate Tribunal under the Act.

(ii) Important Responsibilities of the Appellate Tribunal

The Appellate Tribunal is a quasi-judicial body, which is empowered to hear appeals from the orders / decisions / directions of the Regulatory Authority or the Adjudicating Officer, as the case may be. The form and manner and the fees payable towards filing the appeal and the manner for hearing and disposing the appeal are to be provided by Rules to be made by the appropriate Government.

(iii) Filling fees for Filing of Appeal Before Appellate Tribunal and Advance Deposit Section 43

- Filling Fees - as prescribed in Regulations
- Advance deposit for **Promoter Builder** before hearing of appeal by tribunal Against Penalty – 30 % of Penalty of higher amount decided by Tribunal Others – 100% of the amount to be paid to allottee including interest and compensation

(iv) Time Period to dispose of the Appeal by Appellate Tribunal

The Appellate Tribunal should endeavour to dispose of the appeal as expeditiously as possible but not later than sixty days from filing the appeal.

However, where the same could not be disposed of during the said period the Appellate Tribunal is required to record its reasons for the same. **(Section 44)**

Promoter's and their Liability under Rera Act, 2016

Section 3. (1) No promoter shall

- Advertise
- Market
- Book

- sell or offer for sale
- invite persons to purchase in any manner

any plot, apartment or building, as the case may be, in any real estate project or part of it, in any **planning area**, **without registering** the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are **ongoing on the date of commencement of this Act** and for which the **completion certificate** has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of **three months from the date of commencement of this Act**:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from

that stage of registration.

The Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 Notified on 27th October 2016

Rule 2(1)(h) "**ongoing project**" means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the **date of notification of these rules**:

- where services have been handed over to the Local Authority for maintenance.
- where common areas and facilities have been handed over to the Association for the Residents' Welfare Association for maintenance.
- where all development work have been completed and sale/lease deeds of sixty percent of the apartment/houses/plots have been executed.
- where all development works have been completed and application has been filed with the competent authority for issue of completion certificate.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

- where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

- where the promoter has received completion certificate for a real estate project prior to commencement of this Act;
- for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

Section 4 Application for Registration of Real Estate Project by Promoter

Section 4 of the Act provides for details / information and undertaking to be provided by the promoter to the Authority for registration of the project. The mechanism for registration i.e. the requisite forms to be filled, the

fees to be paid etc. are to be determined by the Rules made by the appropriate Government. In addition, the promoter is also required to append other / additional documents / information as specified in the Rules.

The Regulatory Authority is required to register the project, if in compliance with the Act and the Rules and Regulations, within 30 days of the application having been received by the Authority.

If the application for the registration of the project is not complete as required under the Act or the Rules and Regulations made there under, the Authority may grant an opportunity to the promoter to complete the application in all respects. However, in case of non-compliance the Authority has the power to reject the application, only after giving an opportunity to the promoter of being heard.

Section 5 of the Act provides that the Authority has to decide on the application within 30 days of its receipt. It further provides that in case the Authority fails to take a decision within the said period of 30 days the project shall be deemed to be registered.

As per section 4, the **validity of the registration** granted to a project shall be the period declared by the promoter under section 4(2)(I)(C), at the time of making the application for registration, within which he would complete the project.

Role of an Advocate / Chartered Accountants Section 4(2)(I)(D)

Section 4(2)(I)(D) provides that the promoter shall maintain a 'separate account' for every project undertaken by him wherein seventy percent of the money received from the allottees shall be deposited for the purposes of construction and land cost. The account has to be self maintained and is not an escrow account requiring the approval of the Authority for withdrawal.

First proviso to Section 4(2)(I)(D) clearly provides that the funds can only be used for construction and land cost.

As per section 4(2)(I)(D) first and second proviso, the promoter is required to withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project. In addition, the promoter is permitted to withdraw from the separate account **after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:**

As per section 4(2)(I)(D) third proviso, the promoter is required to get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Functions and Duties of Promoter

(a) Quarterly updation on Website of authority details of

- apartment or garages booked
- list of approvals taken
- list of pending approvals
- status of project etc.

(b) Registration details and website address under RERA to be mention in Advertisement, prospectus etc.

(c) At the time of booking all the details and schedule of state wise completion to be disclosed

(d) Responsible for all obligation functions under act, rules, regulation, agreement to sale towards allottees and

association of allottees

- (e) Responsible for taking OC and CC
- (f) Enable for formation of an association of allottees/RWA within 3 months of majority of allottees booked the flat.
- (g) Execution of deed in favor of allottee and of common area in favor of association of allottee
- (h) Maintenance of project till the project is handed over to the RWA
- (i) Pay all the amount for he is responsible for paying.
- (j) Can cancel the allotment as per term of agreement to sale
- (k) Be liable for veracity for advertisement and prospectus and if false claims made then liable for refund along with interest and compensation if demand and if allottee stay with project the liable for compensation. (Section 12)
- (l) More than 10% of the cost of apartment can only be taken after executing registered agreement to sale as notified by government (Section 13).
- (m) Be responsible for sanctioned plan and project specifications and cannot change without taking approval from 2/3 of allottees
- (n) Be liable for 5 years from the date of possession (i) Structural Defect (ii) Workmanship Quality and provision of services (Section 14)
- (o) In case defective title of land can be sued during unlimited time (Section 14)
- (p) If project is transferred to third party then approval from 2/3 allottees and also approval from authority (Section 15)
- (q) The new promoter will be bind from all old agreements (Section 14)
- (r) Insurance of the project is required to be done (Section 16)
- (s) Copy of oc and cc to be handed over to allottees or RWA (Section 17)
- (t) Liable for executed registered conveyance deed (Section 17)
- (u) If timely possession not given or project is abandoned on time to the allottees then liable for interest and compensation if allottees wants possession (Section 18)
- (v) If refund demanded then refund the amount along with interest and compensation (Section 18)

Penalties on Promoter

- For non registration of project U/s 3 then penalty up to 10% of estimated cost of project **{Section 59(1)}**
- Project not registered even after direction or orders of authority then further penalty of up to 10% of estimated cost of project and imprisonment up to 3 years **{Section 59(2)}**
- Penalty for submitting false documents while taking registration U/s 4 – up to then 5% of estimated cost of project **(Section 60)**
- Penalty for violation of other section other than Section 3 and 4 – up to 5% of estimated cost of project **(Section 61)**
- Penalty for non comply order or direction of RERA Authority – Every day penalty during such default up to 5% of estimated cost of project **(Section 63)**
- Penalty for non comply order or direction of RERA Tribunal – Every day penalty during such default up to 10% of estimated cost of project or imprisonment up to 3 years or both **(Section 64)**

Agents's and their Liability under Rera Act, 2016

4. (i) Section 9 Application for Registration of Real Estate Agent

No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section.

Single registration will be given for entire state.

(ii) Section 10 Functions and Duties of Real Estate Agent

- (a) Agent RERA registration number to quoted in each sale effected by the Agent. (Section 9)
- (b) Maintain and preserve prescribed books of accounts, documents & record:
- (c) Not to sale projects which are not registered
- (d) To facilitate the possession of all the information and documents, as the allottee is entitled to at the time of booking
- (e) Not to involve any unfair trade practices either orally or in writing
 - Falsely represents that the services are of a particular standard or grade
 - Represents that the promoter or himself has approval or affiliation which such promoter or himself does not have
 - Makes false or misleading representation concerning the service
 - Permitting the publication of any advertisement any where of services that are not intended to be offered.

(iii) Penalties on Real Estate Agent

- For non registration or contravention of Section 9 & 10 then – penalty Rs. 10,000/- per day till default continue up to 5% of cost of plot, flat, apartment of building deal of which facilitated by him **(Section 62)**
- Penalty for non comply order or direction of RERA Authority – Every day penalty during such default up to 5% of estimated cost of plot, flat, apartment of building deal of which facilitated by him **(Section 65)**
- Penalty for non comply order or direction of RERA Tribunal – Every day penalty during such default up to 10% of estimated cost of plot, flat, apartment of building deal of which facilitated by him or imprisonment up to 1 years or both **(Section 66)**

Allottee's Right & Duties

5. (i) Section 19 Right and Duties of allottees

- (a) Entitled to obtain the information relating to sanctioned plan, layout plans as approved by competent authority or other information as per agreement for sale. (RTI)
- (b) Know Stage –Wise time schedule of completion, provision for water, sanitation, electricity and other amenities.
- (c) Right to take possession of property
- (d) Right to take refund along with interest and compensation
- (e) Right to take documents, plans of building after taking possession

- (f) Liability to make payment as per agreement to sale
- (g) Liability to pay interest in case of delay in payment
- (h) Interest may be reduced by builder after mutual agreement
- (i) Right & Liability to participate in formation of RWA
- (j) Liability to take possession within 2 months of OC and execution of conveyance deed within 3 months of OC

(ii) Penalties on Allottees

- Penalty for non-compliance with order or direction of RERA Authority – Every day penalty during such default up to 5% of cost of plot, flat, apartment of building purchase/book by him (**Section 67**)
- Penalty for non-compliance with order or direction of RERA Tribunal – Every day penalty during such default up to 10% of cost of plot, flat, apartment of building purchase/book by him or imprisonment up to 1 year or both (**Section 68**)

Right to Legal Representation

Section 56. The applicant or appellant may either appear in person or authorise one or more

- ✓ Chartered Accountants
- ✓ Company Secretaries
- ✓ Cost Accountants
- ✓ Legal Practitioners
- ✓ Any of its officers

to present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be.

Some Important Definitions

Section 2(b) "advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;

Section 2(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

Section 2(zg) "Person" includes,—

- (i) an individual;
- (ii) a Hindu undivided family;
- (iii) a company;
- (iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be;

- (v) a competent authority;
- (vi) an association of persons or a body of individuals whether incorporated or not;
- (vii) a co-operative society registered under any law relating to co-operative societies;
- (viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;

Section 2(zk) "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
 - (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 sell 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 there under;

Thanks

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SEMINAR ON E-ASSESSMENT UNDER INCOME TAX ACT



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**PRESENCE OF SMT. SMRITI IRANI JI, CABINET MINISTER
AND ICAI PRESIDENT - CA PRAFULLA CHHAJED JI
IN NATIONAL WOMEN CONFERENCE**



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- Multi Tasking
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- Loyalty/Credit points Management
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