

HOUSE JOURNAL

DECEMBER 2024



ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

(An ISO 9001 : 2015 Certified Organisation)

IN ASSOCIATION WITH



Presents

SPECIAL ISSUE

REAL ESTATE SUMMIT 2024

Theme: Navigating the complexities in Real Estate Sector

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6, Lyons Range, 3rd Floor, Unit - 2, Kolkata - 700 001

Phone : (+91-33) 2210-7724, 4060-8353

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Corporate Office : Godrej Genesis, Unit No. – 1603, Floor – 16th, Block – EP & GP, Sector – V,
Plot No. XI, Salt Lake City, Kolkata – 700 091

Registered Office : P-243, Lake Town, Block – A, Kolkata – 700 089

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Contents



- 01** RERA Transforming the Real Estate Business
CA Vinay Thyagaraj
- 06** GST and Real Estate
CA Jayesh Gogri
- 10** Life Goes Full-Circle for Revenue
Recognition in The Real Estate Sector
CA Neeraj Sharma
- 13** Real Estate Developers & Contractors- Percentage Completion Method (PCM)
or Complete Contract Method (CCM) – a never ending litigation
CA K. K. Chhaparia & CA Mayank Agarwal
- 18** 'Functionality Test' through the Safari Retreats Judgement
Rajarshi Dasgupta
- 21** Leaseholder's right to sub-lease immovable property
CA A Jatin Christopher
- 24** Disjunctive vs. Conjunctive : Dissecting State-Level Differences
on 'OR' in RERA
Ramya Hariharan & Rimcy Keshri
- 28** Typical income-tax issues for real estate developers under deeming
provisions of Section 43CA of Income-Tax Act, 1961
Basant Gadhyan
- 32** Status of Homebuyers Under The Waterfall Mechanism of IBC
Rohit Sharma & Ali Asghar
- 36** A New Dawn in the Real Estate Sector – RERA - The Real Estate
(Regulation & Development) Act, 2016
CA Gopal Krishna Lodha
- 39** Risk Management through Tokenization and
Dematerialisation in Real Estate Sector
Tirthankar Basu

Disclaimer

The articles and opinions published in this Journal reflect the individual views of the respective authors. The content presented herein is solely the perspective of the contributing authors and does not necessarily represent or reflect the views, policies, or opinions of ACAE. Our association serves as a platform for the dissemination of diverse ideas and scholarly works. While every effort is made to ensure the accuracy and integrity of the content, ACAE does not endorse or take responsibility for the views expressed in the individual articles.

Celebrating 65 Years of ACAE



Association of Corporate Advisers & Executive (ACA) was established in the year 1960 by 30 like-minded professionals who felt the need to create a common platform for professionals, businessmen, advisers and other stakeholders who could come together and discuss matters related to the trade and profession. Since then, the membership has grown to more than 1600 members and is growing stronger with the addition of more than 100 members every year. This journey of ACA is fuelled by the continuous ignition of knowledge and wisdom. Members of ACA have a diverse profile and include professional practitioners, corporate executives, industrialists and businessmen.

Theme for the Year 2024-25

The Theme for this year is “RISE”. I firmly believe that we as an Association, we as a Profession, we as a Society and we as an Individual have to RISE to meet the growing challenges and make best use of the opportunities that lay before us. To me, RISE means

To rise beyond...
To rise further...
To rise higher... and
To rise above.

RISE to meet your goals, to meet your ambitions, to complete your duty and to move ahead.

Hence, after Igniting Utkarsh, the most appropriate theme to carry forward the energy will be to RISE and move ahead with greater zeal.

I propose to focus on the following activities during the year:

1. R stands for Research related activities,
2. I for increasing the Industry connect,
3. S is to have greater focus on Skilling and Reskilling of our members, and
4. E will ensure creating an Edge for our members by overall development by creating opportunities for personality development, enhancing communication skills, increasing gender sensitivity and social skills. This will be done through debates, moot court, sports, drama, music, fellowship and other similar activities.

Thus, RISE will help our members to accomplish more in their professional and personal lives. I call upon all the members to participate in the Association's activities with full enthusiasm and also contribute your ideas in how we can make the initiatives better and better.

Link to YouTube video for Audio Video:

<https://youtu.be/9dHCS9w6t84?feature=shared>



Message by CA Tarun Kr. Gupta, President, ACAIE



Dear Madam/ Sir,

ACAIE is delighted to organise the Real Estate Summit on Dec 14, 2024 at The Park, Kolkata in association with CREDAI, Bengal. The theme for this year's Summit is Navigating the complexities in Real Estate Sector. This is the 8th edition of Real Estate focused Seminar which started in 2015. Since then, ACAIE has organised 7 editions till date, out of which 5 were in physical mode and 2 in virtual. We sincerely thank CREDAI Bengal and CREDAI India for being our Industry partners in all the editions.

The Real Estate sector is passing through a very promising phase wherein sales of residential, commercial, industrial and other properties has been growing quarter on

quarter. The demand for plotted land, warehouses, industrial parks has been growing, especially in the eastern part of the country as it is the passage for North East, Bhutan and Nepal too. However, with the introduction of WBRERA, GST and other aspects in compliances coupled with Urban Land Ceiling Act in West Bengal, issues in land acquisition and land title and multiple Authorities, the Real Estate sector is facing challenges in overall compliances. There is a need to have single window clearances, repeal of Urban Land Ceiling Act in West Bengal and digitization of land records, amongst other simplification and clarity in law. The Real Estate Conclave, 2024 has been curated especially to deal with these complex issues and how to navigate the same. Thus, the theme of the Summit is Navigating the complexities in Real Estate Sector. The Summit will have Panel Discussions on the Industry and Joint Development Agreement (JDAs). The Summit will also have focused sessions on RERA, GST and Accounts & Audit. Speakers and Panelists from across the country will dwell on critical issues concerning the Real Estate Sector.

ACAIE has always been at the forefront in professional and industry related programmes. ACAIE organised a Business Delegation to GIFT City, India's first smart city, and IFSCA, financial SEZ.

ACAIE has also been organizing conferences, conclaves, summits, symposia, seminars, workshops, group discussions, lecture meetings, memorial lectures, debates and panel discussions on a regular basis to keep its members updated on all the issues of professional interest. ACAIE had initiated and established the first annual corporate awards in West Bengal in association with The Economic times, popularly known as "ET Bengal Corporate Awards" which has recognized achievement of Corporate Bengal for the past more than a decade.

This is the 1st House Journal of ACAIE for the Tern 2024-25 and I am happy to note that this is focused on Real Estate. I wish all the participants of the Summit a very happy learning session.

Best Regards

CA Tarun Kr. Gupta
President

#RISE
#Celebrating65years

Date: Dec 08, 2024
Place: Kolkata

Message by Mr Sidharth Pansari, President, CREDAI Bengal



We are delighted that ACAIE is hosting its Real Estate Summit this year on the 14th of December in Kolkata. The theme of your Summit is '**Navigating Complexities in the Real Estate Sector**' and CREDAI Bengal is happy to partner with you for this edition as **Industry Partner**. We have had a long association over the last few years collaborating for your realty conference and our real estate fraternity looks forward to being a part of your summit this year too.

Currently the real estate scenario in India exhibits great perseverance and growth prospects despite a world which is at great turmoil. The RBI's GDP growth projection of 7.2% for FY 2024-25 and the stable interest rate environment seems to give an uptick to

investor sentiment. Real estate stakeholders remain optimistic but as the sector

continues to grow, it is important that we address the existing challenges and look out for avenues coupled with correct timing for sustaining this growth.

Over the last five years, the real estate sector in India has witnessed expansive policy changes to make housing a basic right for every Indian citizen. Policies are being re-worked and programmes rolled out to make the sector achieve its policy goals and as the apex association for real estate with close to 15,000 members pan-India, CREDAI has been a trustworthy partner in realising that intent.

The implementation of WBREERA in West Bengal have made us commit to paving the way for the growth of consumer confidence, self-policing, adopting best practices and laying a strong and transparent foundation for the future of real estate in Kolkata and all other Tier 2 and Tier 3 cities of the state.

As responsible stakeholders, our approach to the compliance and regulatory framework is sacrosanct. Challenges are multi-pronged as the pace of policy changes is rapid. Greater corporatisation of the real estate workforce and dedicated personnel have made everyday challenges easier to grapple. Training is key to imbibing best practices and I feel more and more developers are investing in it.

CREDAI Bengal has over the years demonstrated a strong resolve to adapt and I'm glad that other ancillary sectors that lend their expertise and services to us have also partaken of the challenges and chipped in efficiently. At ACAIE you too have been in the thick of regulations, legislations, compliances and new laws. It will be interesting to hear from a vertical which supports the real estate industry in these above matters and to learn your point-of-view on the collective challenges before us.

Once again I am happy that CREDAI Bengal is partnering your day long Summit "**Navigating the Complexities in Real Estate Sector**" and I congratulate ACAIE for organizing this full day Summit which will see experts from across the country sharing their vast experience in facing challenges in the legal, taxation and insolvency etc connected to real estate.

Best Wishes for the Summit.

Sidharth Pansari

President

CREDAI Bengal

Date : December 08, 2024

Place : Kolkata

Message by CA Anup Kumar Luharuka

Chairman, Real Estate Committee & House Journal Committee



Dear Esteemed Members of ACAIE,

As the Chairman of the Real Estate Committee and House Journal Committee, it is both an honour and a privilege to extend my heartfelt welcome to all esteemed participants of the **Real Estate Summit 2024**.

ACAIE is delighted to present the Real Estate Summit 2024, scheduled for December 14th at The Park, Kolkata,

This year's theme is "Navigating the Complexities in the Real Estate Sector." This marks the 8th edition of our Real Estate-focused seminar, which began in 2015.. We extend our sincere gratitude to CREDAI Bengal and CREDAI India for being our industry partners and support throughout all these editions.

It's great to talk about something that's at the core of almost everything that surrounds us in terms of opportunities, or thinking about the future of our Country, Real estate shapes how we live, work, and grow.

Analysing the latest trends of the market, real estate is often seen as a game for the wealthy or a complex maze for the rest of us. The truth is, real estate is more than just a transaction—it's a powerful weapon to build wealth, create communities, and secure our future. As of now, real estate is more than just bricks and mortar.

The main catch to succeed in real estate, you have to think long-term. Yes, the markets are volatile they instantly move up and down, but the real value comes from understanding the long-term potential of the property. It's not just about timing the market—it's about location, vision, and knowing how to turn projection into perfection. Therefore, keeping track of current trends and numbers is a pre-requisite to succeed in this sector.

The introduction of GST has simplified the process, offering clarity and consistency to Builders, Investors, and Buyers alike. By reducing the tax burden and eliminating cascading taxes, it opens the door to more efficient project execution, lower costs, and greater accessibility for the end consumer.

However, with great opportunity comes responsibility for real estate developers and stakeholders, maintaining transparency and adhering to sound financial practices is not just a regulatory requirement—it is a mark of credibility. Proper audits, accurate accounts, and timely reporting are what separate successful, sustainable businesses equip from those that falter. Investors, lenders, and homebuyers need confidence, and that confidence comes from knowing that every project is built on solid financial foundations. In today's world, trust is the currency of business, and maintaining transparent, accurate records is the best way to build that trust.

The future of real estate is not just about building properties; it's about building a culture of integrity and transparency. With GST simplifying the tax process, with audits ensuring transparency, and with RERA protecting the rights of every stakeholder, we are setting the stage for an industry that is more reliable, more accountable, and more prosperous than ever before.

As we conclude, I want to extend my heartfelt thanks to ACAIE for their constant support, energy, and dedication to the community. We are not merely a professional group; we are a family bound by a common drive for excellence.

CA Anup Kumar Luharuka

9830299827

anup@adplco.com

Date : December 08, 2024

Place : Kolkata

Chairman of Real Estate Committee

Chairman of House Journal Committee



THE MOST AWAITED REAL ESTATE SUMMIT 2024

14
DEC
2024

The Park, Kolkata
SATURDAY | 10 AM to 5 PM

PROGRAMME SCHEDULE

Time	Sessions	Details
09:30 – 10:00	Registration	
10:00 – 11:00	Inaugural Session	Guest of Honour Sushil Mohta President CREDAI West Bengal
11:00 – 12:00	Panel Discussion – Industry Perspective	Panelists: Ashok Saraf , Director, Sugam Griha Nirmaan Ltd. Vivek Kajaria , Vice Chairman, Diamond Group Apurva Salarpuria , Sr. Vice President, CREDAI Bengal and Managing Director, Salarpuria Group Moderator: Parvez Khalid , Head – East India, CBRE
12:00 – 13:00	Critical aspects related to RERA	CA. Vinay Thyagaraj Practicing Chartered Accountant Bengaluru
13:00 – 14:00	LUNCH	
14:00 – 15:00	Critical aspects related to GST	CA. Jayesh Gogri Practicing Chartered Accountant Mumbai
15:00 – 16:00	Critical aspects related to Accounts & Audit in Real Estate sector	CA. Neeraj Sharma Director, Provedam Advisors New Delhi
16:00 – 17:00	Panel Discussion – Joint Development Agreement (JDA)	Panelists: CA. K K Chhaparia , Practicing Chartered Accountant - Income Tax & Benami Adv. Rajeev Ginodia , R. Ginodia & Co., Advocates - Legal CA. Rajarshi Dasgupta , Aquilaw - GST CA. Vivek Newatia , Practicing Chartered Accountant - Accounting / Audit Moderator: CA. Arun Kr. Agarwal Practicing Chartered Accountant

EXECUTIVE COMMITTEE 2024 - 2025

Office Bearers



CA Tarun Kumar Gupta
President



CA Niraj Kumar Harodia
Vice President



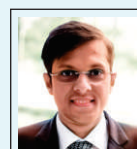
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Vice President



CA Shivani Agarwalla
General Secretary



CA Mohit Bhuteria
Joint Secretary



CA Vivek Newatia
Treasurer

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CA Anup Kumar Luharka



CA Ayush Jain



CA Debayan Patra



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CA Raj Kumar Lakhota



CA Rashmi Chhawchharia



CA Sanjib Sanghi



CA Shubham Khaitan



CA Sumit Bihani

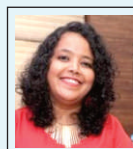
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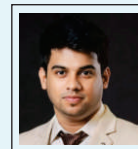
Mr. Sumit Binani
Immediate Past President



CA Laxmi Narayan Mandhana



CA Renu Modi



CA Rohit Prasad



CA Siddhant Jajodia



CA Vikash Goel

Special Invitees

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GROUPS and SUB-COMMITTEES	CHAIRPERSON	CO-CHAIRPERSON	MENTOR
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Theme Conclave & Related Programs	CA. Vivek Newatia	CA. Roshan Kr. Bajaj CA. Hemant Kr. Lakhotia CA. Pramod Kr. Agarwal CA. Gaurav More CA. Sunil Singhi CA. Anup Kr. Banka	CA. Sushil Kr Rungta
R & D Publications	CA. Vivek Newatia	CA. Roshan Kr. Bajaj CA. Hemant Kr. Lakhotia CA. Pramod Kr. Agarwal CA. Gaurav More CA. Sunil Singhi CA. Anup Kr. Banka	CA. Sushil Kr Rungta
Allied Laws			
Theme Conclave & Related Programs	CA. Raj Kr. Lakhotia	CA. Harsh Gadodia Adv. Rahul Parasrampuria Adv. Ramesh Kr. Patodia	CA. Santanu Ghosh
R & D Publications	CA. Raj Kr. Lakhotia	CA. Harsh Gadodia Adv. Rahul Parasrampuria Adv. Ramesh Kr. Patodia	CA. Santanu Ghosh
Archive			
Digital Library	CA. Debayan Patra	CA. Anup Kr. Luharuka CA. Sanjib Sanghi CA. Rashmi Chhawchharia CA. Renu Modi	CA Jitendra Lohia
Archive (Safekeeping, Indexing & Publication)	CA. Debayan Patra	CA. Anup Kr. Luharuka CA. Sanjib Sanghi CA. Rashmi Chhawchharia CA. Renu Modi	Shri. Sumit Binani
Common Interest Circles			
ACAE Debating Circle	CA. Shivani Agarwalla	CA. Sanjay Diwakar CA. Gagan Kedia CA. Alice Singh	CA. Ashok Kr. Barat
ACAE Music Circle	CA. Niraj Kr Harodia	CA. Sumit Modi CA. L N Mandhana	Shri. Sumit Binani
ACAE Elocution Circle	CA. Shubham Khaitan	CA. Bharat Kr. Baid CA. Manish Raj Dhandharia CA. Alice Singh	CA. Ashok Kr. Barat
ACAE Drama Circle	CA. Debayan Patra	CA. Krishanu Bhattacharyya CA. Rashmi Chhawchharia	Shri. Sumit Binani
ACAE Sports Circle	CA. Harsh Satish Udeshi	CA. Pawan Kr. Patodia CA. Amit Sethi	CA. Pramod Kr. Mundra
ACAE Heritage & Learning Tours Circle	CA. Tarun Kr. Gupta	CA. Pradeep Modi CA. Renu Modi CA. Jitesh Kr. Gutgutia CA. Rikky Agrawalla	CA. Vivek Agarwal

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Corporate Laws			
Theme Conclave & Related Programs	CA. Mohit Bhuteria	CA. Shiv Khemka CA. Basant Gadhyan Adv. Rahul Parasrampur	CA. Santosh K Roongta
R & D Publications	CA. Mohit Bhuteria	CA. Shiv Khemka CA. Basant Gadhyan Adv. Rahul Parasrampur	CA. Santosh K Roongta
Dept. Coordination & Representation	CA. Mohit Bhuteria	CA. Suman Chaudhury CS. Ravi Varma CS. Arun Khandelia Ranjeet Kanodia	CA. Santosh K Roongta
Direct Tax			
Theme Conclave & Related Programs	Adv. Ramesh Kr Patodia	CA. Saurabh Gupta CA. Gopal Krishna Lodha CA. Ravi Kr. Shah CA. Prakash Patwari	CA. Madhav Pd. Sureka
R & D Publications	Adv. Ramesh Kr Patodia	CA. Saurabh Gupta CA. Gopal Krishna Lodha CA. Ravi Kr. Shah CA. Prakash Patwari	CA. Madhav Pd. Sureka
Dept. Coordination & Representation	Adv. Ramesh Kr Patodia	CA. Anup Kr. Sanghai CA. Nilima Joshi CA. Anand Kr. Tibrewal CA. P R Kothari	CA. Sushil Kr. Pransukhka
Flagship Events			
Annual Conference	CA. P D Rungta	CA. Arun Kr. Agarwal	All Esteemed Past Presidents
Memorial Lecture	CA. Niraj Kr Harodia	Adv. Ramesh Kr. Patodia	CA. Rakesh Jain
ET Bengal Corporate Awards	CA. Jinesh S Vanzara	CA. Anand Chopra CA. Kamal Nayan Jain Advocate Arvind Agrawal	
Fellowship			
Residential Picnic	CA. Siddhant Jajodia	CA. Rohit Prasad CA. Renu Modi CA. Anita Tosniwal	CA. P D Rungta
Domestic Residential Seminar	CA. Vasudeo Agarwal	CA. Rajesh Agarwal CA. Gopi Kishan Agarwal	CA. Indu Chatrath
International Residential Seminar	CA. Vasudeo Agarwal	CA. P D Rungta CA. Anup Kr. Sanghai	Adv. Arvind Agrawal
Movie Nights, IPL, etc.	CA. Rohit Prasad		CA. Vasudeo Agarwal
Diwali, Picnic, Holi	CA. Niraj Kr. Harodia	CA. Renu Modi CA. Anita Tosniwal CA. Amrish Kr. Bhuwania	CA Anup Kr. Sanghai
Group Discussion			
Group Discussion	CA. Niraj Kr. Harodia	CA. Manish Raj Dhandharia CA. Priyanshi Agarwal CA. Chimpul Lal Agarwal	CA Madhav Pd. Sureka

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GROUPS and SUB-COMMITTEES	CHAIRPERSON	CO-CHAIRPERSON	MENTOR
Indirect Tax			
Theme Conclave & Related Programs	CA. Shubham Khaitan	CA. Ishan Tulsian CS. Aditya Singhanian CA. Swapnil Jain CA. Gagan Kedia CA. Manish Raj Dhandharia CA. Anup Luharuka Sakshi Jhajharia CA. Abhishek Tibrewal	CA. Arun Kr. Agarwal
R & D Publications	CA. Shubham Khaitan	CA. Ishan Tulsian CS. Aditya Singhanian CA. Swapnil Jain CA. Gagan Kedia CA. Manish Raj Dhandharia CA. Anup Luharuka Sakshi Jhajharia CA. Abhishek Tibrewal	CA. Arun Kr. Agarwal
Dept. Coordination & Representation	CA. Shubham Khaitan	Adv. Rajeev Agarwal CA. Surabhi Bohra CA. Manish Raj Dhandharia CA. Anup Luharuka	CA. Arun Kr. Agarwal
Industry & Commerce			
Business Connect Sessions	Shri. Sunil Goenka	CA. Rajiv Harlalka	CA. P D Rungta
MSME Connect Sessions	CS. Pragya Jhunjhunwala	Shri. Vibhor Tandon CA. Hari Ram Agarwal CA. Bishnu Basia	CS. Mamta Binani
MOUs with Industry Associations	CA. Anup Kr. Sanghai	CA. Ravi Kr. Patwa CA. Santosh K Roongtaa CA. M P Sureka	CA. Amitav Kothari
Legal Clinics at Industry Associations	CA. Manish Raj Dhandharia and CA. Renu Modi	CA. Shital Khemka CA. Aditya Dhanuka	CA. Ashis Kr. Ray
Information Technology			
Theme Conclave & Related Programs	CA. Sanjib Sanghi	CA. Sumit Bihani CA. Devarshi Bhuwalka CA. Sarita Agarwal CA. Rohit Prasad CA. Siddhant Jajodia CA. Bharat D Sarawgee	CA. Jitendra Lohia
R & D Publications	CA. Sanjib Sanghi	CA. Sumit Bihani CA. Devarshi Bhuwalka CA. Sarita Agarwal CA. Rohit Prasad CA. Siddhant Jajodia CA. Bharat D Sarawgee	CA. Jitendra Lohia
Insolvency & Bankruptcy Code (IBC)			
Theme Conclave & Related Programs	CA. Rashmi Chhawchharia	CA. Arun Kr. Gupta CA. Nitin Daga CA. M C Gupta	Adv. R R Modi
R & D Publications	CA. Rashmi Chhawchharia	CA. Arun Kr. Gupta CA. Nitin Daga CA. M C Gupta	Adv. R R Modi

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SUB-COMMITTEES FOR THE YEAR 2024-2025

GROUPS and SUB-COMMITTEES	CHAIRPERSON	CO-CHAIRPERSON	MENTOR
Joint Programmes			
Moot Court Competition	CA. Shivani Agarwalla	CA. Shubham Khaitan CA. Manish Raj Dhandharia	CA. Pulak Kr.Saha
Corporate Quiz	Shri. Sumit Binani	CA. Sumit Bihani CA. Raj Kr. Lakhotia	CA Jinesh S Vanzara
Economic Summit with Ceners-k	Shri. Sumit Binani	CA. Sumit Bihani CA. Raj Kr. Lakhotia	CA. P R Ramesh
Inter Association Cricket Tournament	CA. Alok Jain	CA. Naveen Bardia CA. Harsh Agarwal	CA. Pramod Kr. Mundra
Joint Programme with EIRC of ICAI (Business Restructuring & Financing Summit)	CA. Tarun Kr. Gupta	CA. Ayush Jain	CA. Mohit Bhuteria
Joint Programmes on Financial Literacy	CA. Swati Singhanian	CA. Shubham Khaitan CA. Debayan Patra	CA. Rishi Khator
Joint Programme with EIRC of ICSI	CA. Anup Kr. Luharuka	CS. Anil Kr. Dubey CS. Sandip Kr. Kejriwal CS. Rupanjana De	CS. S.M.Gupta
Membership			
Membership Growth & Coordination	CA. Niraj Kr. Harodia	CA. Anup Kr. Luharuka CA. K M Tibrewal CA. Sandip Dey CA. Rahul Mandawewala CA. Pooja Kakrania CA. Deepika Bagri CA. Debayan Patra CA. Rahul Losalka CA. S R Barasia	CA. R N Rustagi
Members in Industry			
Programs for Members in Industry	CA. L N Mandhana	CA. Ajay Kr. Patodia CA. Atul Modi	CA. (Dr.) Abhijit Sen
R & D Publications (Industry specific Research document)	CA. L N Mandhana	CA. Ajay Kr. Patodia CA. Atul Modi	CA. (Dr.) Abhijit Sen
Member Services			
ACAE Rewards Programme	CA. Raj Kr. Lakhotia	CA. Siddhant Jajodia CA. Rohit Prasad	CA. Ketan Satnalia
ACAE Opportunities Community	CA. P D Rungta	CA. Ravi Sureka CA. Mukesh Kr. Jhawar	CA. K P Khandelwal
Members Inclusivity Committee	CA. Debayan Patra	CA. Manish Raj Dhandharia CA. Raj Kr. Lakhotia CA. Renu Modi	Shri. Sumit Binani
Office Admin			
Public Relations & Press & Media / Social Media	CA. Siddhant Jajodia	CA. Sakshi Jhajharia CA. Priyanshi Agarwal CA. Sumit Bihani CA. Prateek Chaudhury	President ACAE
ACAE website and Mobile App	CA. Rohit Prasad	CA. Sakshi Jhajharia CA. Priyanshi Agarwal CA. Sumit Bihani CA. Prateek Chaudhury	President ACAE
Nomination	Shri. Sumit Binani	CA. Tarun Kr. Gupta CA. Niraj Kr. Harodia	

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SUB-COMMITTEES FOR THE YEAR 2024-2025

GROUPS and SUB-COMMITTEES	CHAIRPERSON	CO-CHAIRPERSON	MENTOR
Infrastructure	CA Anand Chopra	CA. R S Jhawar CA Jinesh S Vanzara	
Legal Compliances	CA. Niraj Kr. Harodia	CA. Arun Kr Agarwal	CA. Sanjay Bhattacharya
Finance	CA Jinesh S Vanzara	CA. Kamal Nayan Jain CA. Vivek Agarwal	
ACAE Logo Review	CA Kamal Nayan Jain	CA. Jitendra Lohia CA. Vivek Agarwal	CA. R S Jhawar
Vision Development	CA Jinesh S Vanzara	Advocate Arvind Agrawal CA. Jitendra Lohia CA. Vivek Agarwal	
ACAE Merch Shop and Branding (ACAE AV)	CA. Niraj Kr. Harodia	CA. Vanika Choudhury CA. Sukrit Sinha	President ACAE
Publications			
ACAE Journal	CA. Anup Kr. Luharuka	CA. Siddhant Jajodia CA. Priyanshi Agarwal CA. Renu Modi CA. Chimpu Lal Agarwal	CA. H K Agrawal
Monthly Newsletter	CA. Tarun Kr. Gupta	CA. Siddhant Jajodia CA. Renu Modi	CA. H K Agrawal
R & D Publications			
Women's Rights	CA. Shivani Agarwalla	CA. Abhishek Agarwal CA. Vikash Kr Banka	CS. Mamta Binani
Entrepreneurship, Start-Ups and MSME	CA. Vikash Goel	CA. Swati Singhania Shri. Vibhor Tandon	CA. Rishi Khator
Life after Death	CA. Raj Kr. Lakhotia	Adv. Arup Dasgupta CA. S S Gupta	CA. Sanjay Bhattacharya
Use of Information Technology in day-to-day practice	CA. Sumit Bihani	CA. Devarshi Bhuwalka CA. Sarita Agarwal	CA. Sanjib Sanghi
Students' Development			
Industry Visit	CA. Manish Raj Dhandharia	CA. Mayur Agrawal CA. L N Mandhana	President ACAE
Personality Development and Communication Skills	CA. Manish Raj Dhandharia	Ms. Anupriya Chowdhary CA. Gopal Kr. Khetan	President ACAE
Court/ Tribunal visit	CA. Manish Raj Dhandharia	CA. Vishnu Kr. Tulsyan CA. Ankit Loharuka	President ACAE
Theme Conclave			
Real Estate	CA. Anup Kr Luharuka	CA. Pradeep Kr. Agarwal CA. Neha Chhawchharia	CA. Arun Kr. Agarwal
Wealth Conclave	CA Kamal Nayan Jain	CA Nitesh Kr. More CA Vikash Jain CA. Abhishek Jhawar	CA. P D Rungta

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65th Foundation Day Celebrations			
Coffee Table Book	CA. Jitendra Lohia	CA. Rashmi Chhawchharia CA. Renu Modi CA. Sumit Bihani	Shri. Sumit Binani
65th Foundation Day Celebrations	Shri. Sumit Binani	CA. Madhav P Sureka CA. Anup Kr. Sanghai	CA. Anand Chopra

Glimpses of Previous Real Estate Conclaves



Rebooting for Real Edge held
on Saturday, 18TH June, 2016 at The Park Kolkata



Embracing the complexities held
on 5th September 2015 at The Park, 2015



Real Estate at Crossroads!
Saturday, the 22nd July, 2017
at The Lalit Great Eastern Kolkata



Challenges in Changing Times!
Saturday, the 9th June, 2018 at The Park, Kolkata



Navigating the Undercurrents!
The Lalit Great Eastern Kolkata on Saturday, the 8th June, 2019



Mr. Sushil Mohta

Luminary in the realm of real estate, **Mr. Sushil Mohta**, the Chairman of Merlin Group of Companies has a profound legacy spanning close to four decades, Mr. Mohta stands as a stalwart in the industry.

His extensive expertise encompasses the development of diverse real estate projects, ranging from Residential Complexes and Townships to Shopping Malls, Hospitality ventures, IT Office Complexes, and Industrial Estates. His visionary leadership has left an indelible mark on the real estate landscape.

In addition to his role as Chairman of Merlin Group, Mr Mohta is the President and Founder member of CREDAI West Bengal and serves as the current Chairman of the IGBC Kolkata Chapter. His active involvement in policy formulation and real estate legal frameworks reflects his commitment to steering the industry towards sustainable development and environmental well-being.

He is a leader whose contributions have not only shaped skylines but also defined the industry's commitment to responsible growth.



Shri Ashok Saraf

Ashok Saraf is the founder of Sugam Homes, one of West Bengal's leading real estate developers. With a track record of delivering over 150 buildings comprised of about 3000 apartments, including iconic ones like Sugam Park and Sugam Serenity, Mr. Ashok has built a strong reputation for excellence in MIG housing. Beyond real estate, Mr. Ashok is the Vice President of CREDAI Bengal and a director at Dot & Key Wellness Pvt. Ltd. He is also the Managing Director of family's investment office. Mr. Ashok's leadership and strategic vision continue to shape West Bengal's real estate and entrepreneurial landscape.



Shri Vivek Kajaria

Vivek Kajaria, Managing Director of Super Diamond Nirman Pvt. Ltd., His real estate brand is called DIAMOND GROUP and till now have developed over 60 lakh sq ft. They have wide experience in commercial as well residential projects. DIAMOND HERITAGE a 4 lakh sq ft commercial building is the first heritage redevelopment project in Kolkata. They also own and operate DIAMOND PLAZA a 3.50 lakh sq ft neighborhood mall near Kolkata's airport. We are part of the consortium that developed a 61 storied residential building called THE 42, the tallest tower in eastern India. Currently they have 5 projects under development totaling 35 lakh sq ft. They have started a new vertical, developing grade A Warehouses. We have made 3,50,000 sq ft warehouse near Kolkata and rented to Flipkart. Presently they have started construction of warehouses on 30 acres.



CA Apurva Salarpuria

Mr. Apurva Salarpuria is a Chartered Accountant by qualification and started his career with the Assurance division of KPMG in Bangalore. In 2005, he joined the SALARPURIA GROUP as executive director. Apart from residential real estate the group is one of the largest developers of IT parks. The group's IT parks house some of the world's top IT companies including Microsoft, Hewlett Packard, Motorola, TCS, Infosys, Siemens, CISCO, Oracle and many more.

Apurva also created the Hospitality vertical of the group and setup the Novotel Hotel and residences which is a 340 room hotel in New Town, Kolkata also a partner in the JW Marriott Hotel Kolkata. He is also currently Senior Vice President of CREDAI Bengal. He has also been chairman and has been chair for ICC national committee on Tourism and a member of the Managing committee of the Hotel and Restaurant Association of East India.

He has initiated substantial investments in consumer brands including successful ones like Bira beer, Epigamia greek yoghurt, Paperboat drinks, DesignCafe Mca eine, Vahdam teas and many more. He is also one of the founding partners in a exciting new experimental commerce venture called Broadway.



Mr. Parvez Khalid

Parvez Khalid is the Associate Executive Director and Kolkata Office Head at CBRE South Asia, where he drives business growth in real estate consultancy across Eastern India and Bangladesh. His expertise spans office leasing, logistics, retail, and corporate advisory, managing high-profile clients like Unilever, PwC, and HSBC. Parvez's leadership extends to overseeing multi disciplinary services such as project management and investment services. Previously, as Eastern Region Head at ICICI Bank, he executed critical projects across East India. A graduate of Calcutta University, Parvez is a respected figure in corporate real estate and continues to influence the industry's development in the region.



CA Vinay Thyagaraj

CA Vinay Thyagaraj is a Fellow Chartered Accountant and the co-founder of Venu & Vinay, Chartered Accountants, which operates across nine cities. He is renowned for his work in taxation, business consulting, and real estate advisory. Vinay has delivered over 320 sessions on RERA, taxation, and business consulting for prominent institutions like ICAI and ICSI. He co-authored a respected publication on Maharashtra & Karnataka RERA laws and practice manual and serves as a Governing Council Member of National Real Estate Development Council (NAREDCO). Vinay is also deeply committed to social causes, serving as a trustee at Nele Foundation, and has served over 4000+ Destitute Children with its 12 Centres.



CA Jayesh Morarji Gogri

CA Jayesh Morarji Gogri is a prominent entrepreneur, tax expert, and academician. As Managing Director of GSC Intime Services Pvt Ltd. His client list includes leading name in the sectors like Banking, Real Estate, Fertilizers, Chemicals, Steel, Logistics, Engineering, Pharmaceuticals, Agriculture, Energy, Textile, Medical and Retail. He has served clients from more than 10 countries. His focus areas have been advisory, litigation and coaching in the areas of tax, law, and systems. He was Vice President of Indirect taxes at SKP Cross Border Consulting Private Limited (now Nexdigm) as well as a Partner at MZSK Associates (now BDO). Recently, he was nominated as “Outstanding Professional – Practice” for prestigious CVOCA Entrepreneurship and Leadership Awards 2024. He is a founder member of Jain Youth Forum (JYF). JYF is focussed on social activities by aiding thousands of needy people in housing, medical, employment and directing youngsters towards betterment of their goals. Recently, JYF has received an appreciation letter dated 15.01.2024 from the Prime Minister of India, Mr. Narendra Modi.



CA Neeraj Sharma

Neeraj Sharma is the Founder and CEO of Provedam Advisors Pvt. Ltd., offering tailored advisory services in strategic growth, governance, and risk management. Previously, at Grant Thornton India, Neeraj led the firm's real estate practice and was instrumental in securing major clients and also his selected achievement includes Part of the India Leadership team and member of Governance & Strategic committee at the firm (Grant Thornton in India), as National Head of Real Estate & Infra sector, changed the market standing of the firm, and have been a regular speaker in key forums (FICCI, CII, PHD, NAREDCO). His expertise spans corporate governance, audits, and complex financial advisory. A Chartered Accountant and MRICS, Neeraj is a sought-after speaker at industry forums like FICCI and CII. Known for his leadership and mentoring skills, Neeraj has guided senior professionals, further solidifying his reputation as a trusted advisor in the financial and business sectors.



CA K.K. Chhaparia

K.K. Chhaparia is a seasoned Chartered Accountant and Insolvency Professional with over three decades of expertise in tax advisory and corporate restructuring. He has advised several high-profile real estate entities in Eastern India and collaborated closely with the Income Tax Department. K.K. Chhaparia is known for his work on corporate amalgamations, demergers, and income tax cases, and frequently contributes to professional literature and seminars. A regular lecturer at the National Academy of Direct Taxes, he has held leadership roles in various organizations, including the Lions Club and professional study circles, impacting the broader accounting and tax community. He has been Past President of Views Exchange Chartered Accountants Study Circle, EIRC as well as Past President of Lions Club of Calcutta (Tollygunge).



Adv. Rajeev Ginodia

Rajeev Ginodia is an Advocate with over 35 year of experience and a solicitor of England and Wales and the Senior Partner at R. Ginodia & Co., specializing in Real Estate, Corporate Law, and Family & Private Client matters. A top scholar with prestigious awards, Rajeev is recognized for his expertise in West Bengal's property laws. He has made significant contributions to CREDAI Bengal and various legal forums. Rajeev is also a member of legal bodies such as the Law Society of England & Wales. His dedication to the legal profession extends beyond practice, as he actively participates in elite clubs and business groups, balancing his professional achievements with family and social commitments.



Shri Rajarshi Dasgupta

Rajarshi Dasgupta, Executive Director & National Head of GST, customs & Indirect Tax Dispute Resolution at Aquilaw, is an authority on indirect taxes, GST, and dispute resolution. He advises multinational corporations, state governments, and trade bodies on tax compliance and cross-border taxation. Rajarshi is also a certified Data Privacy Lead Assessor, helping organizations with privacy policies and data agreements. Recognized as the "Leading Taxation Professional of 2023," he has spoken at prestigious forums like the London School of Economics and serves in leadership roles within various taxation chambers and professional associations. His expertise continues to shape India's taxation landscape. His Chamber affiliations includes:-

- The Confederation of Indian Industry
- Federation of Indian Chambers of Commerce and Industry
- Bengal Chamber of Commerce and Industry
- Indian Chamber of Commerce

The Associated Chambers of Commerce & Industry of India



CA Vivek Newatia

CA. Vivek Newatia is a practicing Fellow Chartered Accountant and a Registered Valuer (IBBI), Certified FA&FD and a Management Graduate from University of London. With over 17 years of professional experience in handling assignments relating to diverse services in areas of Enterprise Valuation, Statutory, Forensic & Investigative Audits, Corporate Finance & Business Restructuring, Turnaround Strategy, Mergers & Acquisitions, Takeovers, Spin-off, Negotiations of Joint Ventures, Business Advisory Services, Handling & Addressing Regulatory Issues. He is currently serving as a special invitee in Accounting Standard Board and a member of Ind-AS/ IFRS and in various Advisory Group. He has served as a co-opted member of the Expert Advisory Committee of ICAI, Committee of International Tax ICAI, Research Committee ICAI and Corporate & Allied Laws Committee EIRC ICAI.



CA Arun Kumar Agarwal

CA Arun Kumar Agarwal is a prominent expert in Indirect Taxation, specializing in GST, Central Excise, Customs, VAT, and Service Tax. He is the founder of ARS Management Consultancy Services and a director at multiple companies, including GSC Cross Border Solutions and Dum Dum Commo Trade. Mr. Arun has been an influential consultant for national and multinational businesses, providing strategic advisory in both private and public sectors. He has served as a faculty member for various training programs for revenue officials and is actively involved in the GST & Indirect Taxes Committee of ICAI. Mr. Arun is also a regular speaker and corporate trainer, delivering sessions on taxation laws across India. An accomplished author, his books on West Bengal VAT and GST have been widely acknowledged. His contributions extend to media, where he frequently appears on TV and radio to discuss taxation topics.

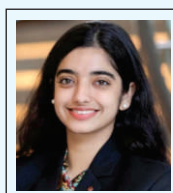
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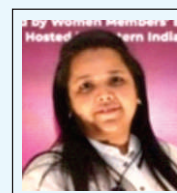


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SHIVANI AGARWALLA

**Makes India proud again
at IKMF World Championship 2024.**

CA. Shivani Agarwalla, General Secretary of ACAE secures Gold for India in Snatch with 864 repetitions becoming India's First CMS Athlete in Marathon format in Snatch.

With more than **25 countries** and **150 Athletes**,
India is proud of her feat.

This is Shivani's 6th Gold Medal in Kettlebell
World Championships.

**ACAE wishes her all the best in her future endeavours.
May she keep inspiring all of us.**

TEAM ACAE

RERA Transforming the Real Estate Business

CA Vinay Thyagaraj
Practicing Chartered Accountant
Bengaluru



The Real Estate (Regulation and Development) Act 2016, commonly known as RERA, has indeed been a significant milestone in the regulation and development of the real estate sector. Over the past 7 years, RERA has played a crucial role in bringing transparency, accountability, and fairness to the real estate market, benefiting both homebuyers and developers. As we are in the 8th year of its implementation, let's continue to work towards ensuring the goals of RERA are met and that the real estate sector continues to thrive in a regulated and ethical environment.

Over 7 years RERA has significantly improved the regulatory framework governing the real estate sector in India, leading to greater transparency, accountability, consumer protection, improved trusts, confidence in investors, inflow of foreign investments, equality amongst all the promoters. Its implementation has contributed to the overall growth and development of the real estate market while safeguarding the interests of homebuyers.

The Real Estate (Regulation and Development) Act (RERA) has brought about several notable achievements in India since its implementation -

1. **Transparency:** RERA mandates that all real estate projects (both residential and commercial) must be registered with the regulatory authority. This requirement ensures that all project details, including approvals, timelines, and financial aspects, are disclosed to potential buyers transparently.
2. **Accountability:** Developers are required to adhere to strict timelines for project completion as per the commitments made in the registered plans. Any delays or deviations

must be adequately justified and compensated to homebuyers, fostering accountability in project execution.

3. **Consumer Protection:** One of the primary objectives of RERA is to protect the interests of homebuyers. The Act establishes clear guidelines for developers regarding project specifications, quality of construction, and possession timelines, reducing instances of fraud and malpractices.
4. **Dispute Resolution:** RERA provides for the establishment of Real Estate Regulatory Authorities (RERAs) at the state level to adjudicate disputes between developers and homebuyers quickly and efficiently. This mechanism ensures timely resolution of grievances, enhancing consumer confidence in the real estate market.
5. **Promotion of Fair Practices:** RERA prohibits unfair trade practices and ensures that developers maintain transparency in advertising and marketing of real estate projects. This has led to a more ethical conduct within the industry, promoting fair competition and fostering trust among stakeholders.
6. **Boost to Institutional Financing:** With increased transparency and accountability, institutional investors and financial institutions have gained confidence in the real estate sector. This has led to greater availability of financing options for developers, facilitating timely project completion and delivery.
7. **Legacy stalled real estate projects** have become a persistent challenge in many

regions, casting a shadow over the real estate sector's growth and impacting both developers and homebuyers alike. These projects, often marred by a combination of financial, regulatory, and operational issues, remain incomplete, leaving behind a trail of unfinished structures and unfulfilled promises. For developers, these stalled projects represent a drain on resources, tied up in investments with uncertain returns, while for homebuyers, they result in delayed possession, financial strain, and anxiety about the fate of their investments. The legacy of stalled projects underscores the need for concerted efforts from regulatory authorities, financial institutions, and industry stakeholders to address underlying issues, expedite resolution mechanisms, and restore confidence in the real estate market. Only through collaborative action and innovative solutions can these stalled projects be

revived, ensuring that the sector moves forward with resilience and integrity, leaving behind a legacy of lessons learned and a commitment to better practices for the future.

The Ministry of Housing and Urban Affairs (MoHUA) had constituted a Committee under the Chairmanship of **Shri Amitabh Kant**, G 20 Sherpa (Ex-CEO, NITI Aayog) vide its Order No. O-17024/1059/2017-Housing Section-MHUPA Part (9)/EFS-9138424 dated - 31.03.2023 to examine all the issues related to legacy stalled Real Estate projects and suggest various ways to complete these legacy stalled projects.

The detailed report and minutes of the meetings of the committee can be downloaded from [https://mohua.gov.in/upload/uploadfiles/files/report\(1\).pdf](https://mohua.gov.in/upload/uploadfiles/files/report(1).pdf)

STAKEHOLDERS under RERA – INTERESTING TO KNOW	
Promoters - (RERA) places significant responsibilities on promoters (landowners, builders, developers, development managers) to ensure T, T, T (Transparency, Trust and timely delivery) of projects. Understanding these responsibilities is crucial for promoters to comply with the law and harness the opportunities RERA presents.	Agents – 70 % of the real estate transactions happens through the agents / brokers. In order to professionalize the real estate brokerage sector in India by ensuring that agents operate with transparency, accountability, and fairness, thereby enhancing consumer confidence and protecting the interests of homebuyers. RERA has detailed the functions of agents in section 10.
Professionals – To aid regulators and support stakeholders, the RERA has identified and included Architects, Engineers, Chartered Accountants, and Legal Professionals as part of the Act. These professionals play a vital role in upholding the objectives of the RERA Act. Refer Section 4(2)(L)(D) and Section 56.	Allottees (home buyers) - RERA aims to create a fair and transparent real estate sector by clearly defining the rights and responsibilities of allottees, thereby ensuring their protection and fostering trust between allottees and promoters – Refer Section 19
Authorities and Appellate – RERA being the regulatory authority for the Real Estate Industry, the Act has a provision to appoint the Authority and the Appellate (consisting of 1 Chairperson and minimum 2 members) to administer and also hear the complaints of the Aggrieved parties.	Bankers and Lenders - Their involvement is crucial for maintaining financial discipline and stability within the real estate sector. RERA includes provisions requiring that funds collected from allottees be deposited in a separate bank account, which must be used exclusively for that specific project. Bankers and lenders play a vital role in this process by ensuring the release of funds only after obtaining the necessary certificates from the relevant professionals

Important Dates under RERA

Sl No	Provision of the RERA Act	Details	Section
1	Prior Registration of Real Estate Project	Obtain the RERA registration on receipt of the Sanctioned plan (may be postponed if the intention is not to sell immediately)	Sec 3 / Sec 4
2	Quarterly Updates	Within 7 days from the end of each Quarter	Sec 11 read with WB Rule 16(1)(d)
3	Annual Audit of Accounts	Within 6 months from the end of financial year	Sec 4(2)(L)(D)
4	Obtaining Professional Certificates – a) Architect, b) Engineer, and c) Chartered Accountant	Architect, Engineer, and Chartered Accountant in Practice certificates shall be obtained for each withdrawal of funds from the RERA Designated bank account.	Sec 4(2)(L)(D)
5	Reporting of Completion	On completion of 100% development (internal and development) works in the project. Report within the same quarter of completion	Circular
6	Application for Extension of End date for the project	Within 3 months before the end date of registration	Sec 6 read with Rule
7	Modification Application	Prior / post-approval of the authority for any modification in the Registration Application depending on the modification/amendment.	Sec14
8	Formation of Association of Allottees	shall be formed within three months of the majority of allottees having booked the plot/apartment	Sec 11
9	Transfer of Title	within three months from date of issue of occupancy certificate.	Sec 17
10	Refund/Return of amount on Cancellation	Within 45 days of Such Cancellation	Sec 18 read with WB Rule 18
11	Conveyance of plot/apartment	Conveyance deed after receipt of Occupancy certificate	Sec 17
12	Hand- over a. the necessary documents b. plans	Within thirty days after obtaining the occupancy certificate	Sec 17

SI No	Provision of the RERA Act	Details	Section
	c. including common areas to the association of the allottees		
13	Structural Defect warranty by the Promoter	Five years from the date of handing over to the allottee	Sec 14
14	Attend to Structural Defect by the Promoter	Promoter to rectify such defects without further charge, within thirty days from the date of notice	Sec 14
15	Grant of Registration by the authority for the real estate project	Within 30 days from the date of application	Sec 5

SI No	Post RERA Practices
1	Prior Registration of Real estate projects is mandatory – section 3
2	Authority either grants or rejects the application for registration within 30 days – Section 5
3	Details of registration granted by RERA and project details available on RERA portal/website of the Authority – Section 11
4	RERA Registration Number shall be displayed at Project Site
5	All advertising or marketing collaterals shall carry Rera Registration Number - Print, hoarding, social media, SMS, Television etc – section 11
6	Landowner is also Called as promoter under RERA and responsibilities like builder and developers – Section 2
7	Project End date is mandatory for every real estate project – the promoter shall complete the project development as per the end date
8	Mandatory opening of a Separate Bank Account for Each project and follow 70 % Rule
9	Any modification in the sanctioned plan shall require 2/3 rd Consent of the Allottees - Section 14
10	The promoter shall enable the Formation of Allottee Association once major bookings are done in the project as per Section 11
11	Mention the Carpet Area in all documents (marketing offer documents, agreement, sale deed etc)
12	Defect Liability is for 5 years - consider the cost of attending / rectifying such defects as part of the cost of the project and Title Defect – Lifetime, no limitations
13	Agreement for Sale shall be registered as per local laws
14	Handing over of the common areas, project land to the Association of Allottees as per Section 17 of the Act

Un resolved / Support needed for better growth and certainty to all the stake holders –

1. **Non-Registration of Projects and Agents:** Despite the statutory requirement, some developers and real estate agents continue to operate without registering their projects or themselves under RERA. This non-compliance undermines the Act's objectives of transparency, accountability, and consumer protection, necessitating stricter enforcement measures.
2. **Consumer Awareness and Redressal Mechanisms:** Despite efforts to raise awareness, many consumers remain unaware of their rights and the recourse available under RERA. Strengthening consumer education initiatives and improving accessibility to dispute resolution mechanisms are essential to empower homebuyers and ensure timely redressal of grievances.
3. **Clarity on formation of Association of Allottees.** Government to provide clear and uniform guidelines on the formation and functioning of the Association of Allottees. Appointment of Competent authority, framing the regulations, Standardized procedures, thresholds, and timelines can help streamline the process and ensure consistency across states.
4. **Implementation of Section 17 of the RERA Act 2016 –** Conveyance of common Areas to the Association of the Allottees. All State Governments to frame the policy and implement how to convey the common Areas to the Association of the Allottees under Group Housing Schemes for the homebuyers to get the better title of the project land.

5. **Recommendation and implementation for digitisation of Land Records** will lead to more transparency, reduction in litigation, financial burden and lead to good practices under Real Estate Sector
6. **Single Window Clearance Approvals** will enable the speed and efficient way of delivering the projects by all stakeholders
7. **Seamless availability of funds and financial assistance –** government and banks should encourage, extend seamless funding to the real estate project will enable the project be completed within time and available to the market.
8. **Filling vacancy of Members, Chairpersons of Authority, Appellate without delay-** Government shall fill the vacancy of Members, Chairpersons of Authority, Appellate without delay for continuous and effective functioning of RERA

In conclusion, the implementation of RERA over the past seven years marks a significant milestone in the evolution of the real estate sector in India. While challenges remain in achieving full compliance and addressing systemic issues, RERA has laid a strong foundation for promoting transparency, accountability, and fairness in real estate transactions. Looking ahead, continued collaboration between stakeholders, effective enforcement of regulations, and ongoing reforms will be essential to sustain the positive momentum and realize the full potential of RERA in shaping a vibrant and sustainable real estate market

The author CA Vinay Thyagaraj, partner at M/s. Venu & Vinay, Chartered Accountants, can be reached at vinay@vvnv.ca



GST and Real Estate



CA Jayesh Gogri

Managing Director of GSC Intime Services Private Limited
Mumbai

1. **Introduction:** It may be interesting to understand the GST implications on various phases and dimensions of real estate. Present article attempts to throw some light on the same and some issues connected to such tax implications
2. **Land acquisition :**
 - a. **By way of purchase of land (Conveyance) :**

Entry no. 5 of Schedule 3 of the Central Goods and Services Tax Act, 2017 provides that sale of land is neither supply of goods nor supply of services. In view of which, GST is not applicable on the sale of land.
 - b. **By way of purchase of development rights :**
 - i. At times, instead of selling the land, the land owner may prefer to sale only development rights in respect of land. Such rights may be sold as it is without taking any approvals or it may be sold after taking approvals and paying due premia to the concerned authorities, which is popularly known as, FSI- Floor Space Index.
 - ii. Consideration may be received in the form of money or in the form of constructed area.
 - iii. Exemption is granted to sale of such rights if such rights are used for construction of residential units, subject to the condition that all such residential units are sold before the first occupation takes place or completion certificate has been issued in respect of such building by a competent authority.
 - iv. In case of failure to comply with the above conditions, GST is payable on the deemed market value of the unsold units.
 - v. Moreover, GST would be payable on the development rights which represents commercial portion of the project
 - vi. It may be crucial to ascertain whether any exemption at all is needed for the development rights which emerge out of the land.
 - vii. As per various legal enactments connected to real estate, any right arising out of land nothing but 'land'.
 - viii. If the development rights are considered to be 'land' as per these provisions and also as per various judicial pronouncements, there is no GST which is applicable on the sale of such development rights and therefore, one may conclude that no exemption is required to exempt the transaction.
 - c. **Joint Development :**
 - i. In case of joint development, land is brought by the landlord and the builder brings construction wherewithal. Both of them work together with a common objective of constructing and selling of units or sharing of such units
 - ii. In various judicial pronouncements it is being held that in case of a joint venture, JV partners are not rendering services to each other. No tax should be levied for the activities done by JV partners for the JV. In fact, JV partners together render services to the end consumer. Tax if at all, should be levied when the supply happens to such end consumers from JV.
 - iii. Initially, Department also used to subscribe to the above view. However, later on it took a complete 'U' turn and in subsequent circulars

it was held that JV is an AOP (Association of Persons) and JV partners are distinct of such AOP. Therefore, any activity done by JV partners to JV is also a supply and therefore the tax should be levied thereon.

- iv. Finally, clause (aa) was introduced to Section 7(1) which defines the term 'supply'. Which reads as ..

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation .- For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

- v. However, one may still argue that the important ingredient of 'consideration' is still missing in the case of JV and therefore, the contribution made by each JV partner to the JV whether in the non-monetary form, cannot be considered to be 'supply'

d. Lease of land :

- i. One more form of acquisition of land could be taking it on lease.
- ii. Normally, lease period of land runs into a longer span like 39 years, 99 years or 999 years
- iii. In case of perpetual lease premium, courts and stamp duty authorities have been taking a stand that it is nothing but 'transfer'
- iv. Therefore, it was possible to take a view that lease premium is different from lease rent and lease premium is not subject matter of GST.
- v. However, in the case of Builders Association of India, Mumbai High Court held that GST is applicable on lease premium. This view also got affirmed by Supreme Court (SC). In view of this, lease premium also may get taxed. However, it

may be important to note that certain crucial aspects relating to the taxability of lease premium were left unexamined by the SC in this case.

- vi. Long term lease premium is exempted on a similar footing as in case of 'development rights' as discussed in para 1.b above.

3. Construction- Works contract :

The concept of 'works contract' has always been a subject matter of mystery, confusions and debates in the past indirect tax regimes.

The term as it is defined under the GST law reads as under:

"Works contract means a contract for building, construction, fabrication, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in other form) is involved in the execution of works contract."

The phrase encompasses all the execution activities related to real estate- immovable property and most importantly buildings. The important ingredient of the definition of 'works contract' is – 'transfer of property in goods'. The same is explained by various courts on various occasions. The activity has been classified as 'service' as per the CGST Act and taxed at the rate of 18%.

Input tax Credit (ITC) on works contract is a grey area. Since the inception of GST. Section 17(5)(c) of the CGST Act denies ITC in respect of works contract services except the following three cases:

- a. The expense is not capitalised
- b. The works contract service is in relation to plant or machinery
- c. Works contract service is an input service for further supply of works contract service

Moreover, ITC on any service or goods for construction of an immovable property is not allowed if the same is on the own account of the recipient.

Recently, SC has allowed ITC in respect of services other than works contract services used for construction of an immovable property, if such

immovable property is further let out on which applicable GST is being paid. However, the judgment appears to provide more questions than answers in relation to the ITC on construction of immovable property.

4. Sale of constructed units :

a. Under construction:

- i. The rate notification prescribes the rate of GST applicable on the supply of residential units and commercial units as 7.5% (3.75% CGST + 3.75% SGST) and 18% (9% CGST+9% SGST) respectively.
- ii. However, deduction of 33% is available towards land portion involved in the units. This makes effective rates to be 5% and 12%
- iii. In case of residential units, there is also a sub-category of 'affordable housing' on which effective rate of tax is 1%
- iv. It may be surprising to note that the rate notification prescribes plethora of conditions for residential units- such as 80% purchases from registered suppliers and No ITC etc., failure to which may lead to denial of 5% rate.
- v. If the rate of 5% is not available then what will be the rate of GST on supply of residential units?
- vi. In the opinion of author, two possible situations may arise if the conditions prescribed for 5% rate of GST are not fulfilled:
 1. No tax at all- There is nothing in the Notification to provide for the rate of tax in respect of land + goods + services case. Notification, prescribes rates only for either 'works contract services' (goods + services) or for construction services (only services)
 2. Tax at normal rates on the construction portion with full ITC and full deduction of land value
- vii. The unresolved question is can one choose not to follow the entry in the rate notification which prescribes rates which are with conditions
- viii. The person- a consumer, who is reselling his unit to another person in an under construction building may not be subjected to tax for two

important reasons:

1. The sale of under construction unit is not in the course or furtherance of his business
 2. He is not supplier of any construction services, he simply sells his right, title and interest in an immovable property, though incomplete
- ##### b. Sale of Ready to move units:
- i. The units in respect of which either 'completion certificate' has been obtained from the 'Competent authority' or where the occupation has already taken place, are treated as neither supply of goods nor supply of services.
 - ii. It may be noted that even if a very small part of consideration has been received by the supplier of such constructed units even one day prior to the date of 'completion certificate' or 'first occupation', the whole value of such unit can become taxable.
 - iii. There could be certain situations where the supplier has already applied for the 'completion certificate' to the 'competent authority' based on the certificate issued by the authorized architect or civil engineer or licensed surveyor, but the 'competent authority' is taking unreasonably long time to issue the 'completion certificate'. Neither the law nor any circulars provide any clarity on such situations.
 - iv. In most of the local authority laws, there is a provision of deemed completion if such 'competent authority' fails to issue the 'completion certificate' within stipulated period, the same is deemed to be granted. In such situations, GST should not be applicable.
 - v. In many laws, it is the 'Architect' who is supposed to issue 'completion certificate' based on which the local authority issues 'Building completion certificate' or 'occupation certificate'. In such cases, whether 'completion certificate' granted by the Architect would be sufficient for the purposes of non- levy of GST- is also a question of the industry. In the opinion of the author the answer lies in affirmative.

5. Renting of :

a. Land :

- i. Renting of land per se was not considered to be a subject matter of union levy. Service tax regime, kept specifically renting of land out of the levy
- ii. However, with the introduction of GST, the question arose in respect of taxability of renting of land
- iii. Recently Supreme Court (SC) upheld the levy of GST on leasing of land, though it left open few important aspects

b. Buildings :

- i. The case of tax on renting of immovable property is pending before 9 members bench of SC
- ii. Presently, it appears that the industry has more or less accepted the levy because of availability of ITC
- iii. The rate of GST is 18% except the cases where there are specific exemptions are notified one of which is renting of residential dwellings for the residential purposes

6. Maintenance

a. By builders:

- i. Maintenance by the builders which is done as per

the regulatory requirements may not get taxed if the surplus is handed over to the society after its formation

- ii. Mere reimbursement of expenses on cost to cost basis incurred for the users of units may not be subjected to GST

- iii. However, any maintenance which is of nature other than above, may attract GST

b. By society:

- i. Normally, maintenance collected by societies is in nature of 'contribution' not in the nature of 'consideration'

- ii. The concept of mutuality, though vitiated by the retrospective amendment of the scope of 'supply' by way of insertion of clause (aa) in Section 7(1) of the CGST Act; presence of 'consideration' is a must in any transaction to attract levy

7. Conclusion: GST issues on land and buildings are no less than the amount of battles fought in the world for the land. Due to the huge stakes involved, in the future also there is a high possibility of tax disputes. As an advisor, the author likes to find tailor made solutions for each of the issue, as every issue is unique and different in terms of facts, volumes and policies of the taxpayers.



Life Goes Full-Circle for Revenue Recognition in The Real Estate Sector

CA Neeraj Sharma
Founder and CEO

Provedam Advisors Private Limited



Real estate is a cyclic business and over the decades we have seen different operating cycles, some short and some taking slightly medium term in their operation. Incidentally, the accounting considerations for real estate companies have also kept the pace of changes, alongside the various cycles. Whilst, some changes were triggered by the regulations ie. India Inc Adopting Indian Accounting Standard (Ind AS), the other changes have come into being, with the businesses evolving over the years, with new models of operations. The standard setters and various industry led associations have been quite vigilant in their roles and have been recommending changes to the accounting norms. It is very critical that, financial reporting portray the substance of the transactions for a true and fair picture of results of operations.

Recording of Revenues – Early days of practices and guidance

Revenue or the top line is a key metric for any corporate and real estate companies were no exceptions, while recording of revenues is relatively simpler in case of sale of goods or services, it posed significant challenges for companies in the real estate sector. This is also meant hard time for all the stakeholders of the financial reporting – the accountants, the auditors, banks and even the regulators in some instances.

Way back in early 2000, most of the companies followed the practice recognizing revenues aligned with the registration of properties or transfer of ownership in the name of the customers which entailed the recognition of revenue, when the project got completed or units are handed over to the customers/ buyers of those units. In 2006, Institute of Chartered Accountants of India (ICAI) issued a guidance note, on recognition of revenue by Real

Estate Developers. This Guidance note recommended principles for recognition revenue arising from real estate sales and provided guidance on the application of principles for revenue recognition as enumerated in AS 9, i.e. transfer of significant risks and rewards of ownership, consideration is fixed or determinable and it is not unreasonable to expect ultimate collection.

This was also the time, when most of the companies in real estate were targeted listing and this method of revenue recognition suited the companies, as they could recognize the revenues before the completion of the projects in line with the construction activity for the projects and at the same, tax authorities were happy to see an upswing in their tax collections. This led to the application of Percentage of Completion Method (PoCM) for real estate companies.

As the construction activity increased over the years, businesses practices evolved and new models of development/ business started emerging. Standard setters realized that, the current revenue recognition method was not able to address the new business realities (Joint development arrangements, launching of projects into different phases etc) and also was quite generic in certain areas of application, hence, leaving lot of judgment in the hands of prepares of financial information, leading to lot of different practices, which could not be challenged due to certain gaps in the current Guidance note. It is also pertinent to note that, at this time authorities also certain developers taking advantages of those gaps in the GN and hence, impacting the overall image of the real estate market and undue hardships to the customers.

With those learnings and feedbacks, ICAI came out with significant changes in the earlier literature and issued a revised GN – “Guidance Note on Accounting

for Real Estate Transactions (Revised 2012)". Some of the major changes brought in by the revised GN have been summarized below:

1. Definition of a "Project" was introduced: since there were varied practices in the market in terms of how the developer used to launch a project.. multiple towers or multiple phase and linked to the key amenities of that particular project. This definition tried to capture the possible options.
2. It was also decided to link the commencement of the revenue recognition with some regulated process, to bring certainty for the project to be viable and at the same time, complied with the current regulatory guidelines. One of the conditions of revenue recognition, was linked to critical approvals being made necessary for commencement of the project have been obtained. We had earlier seen practices of launches happening, without getting some of the important clearances from the authorities
3. There was also lot of debate which happened around, what should be the reasonable of stage of the project, which could trigger revenue recognition. Hence, 3 points or conditions were added to address this problem:
 - a. Stage of completion was recommended to start the revenue recognition. A rebuttable presumption of 25 percent was suggested as a reasonable level of development in a project.
 - b. Atleast 25% of the saleable project area is secured by contracts or agreements with buyers.
 - c. Atleast 10 % of the total revenue as per the agreements of sale or any other legally enforceable documents are realised at the reporting date in respect of each of the contracts and it is reasonable to expect that the parties to such contracts will comply with the payment terms as defined in the contracts.

These changes pushed lot of consistency in accounting and disclosures of revenues for companies in the real estate sector.

Another big change hit the fraternity, when India Inc decided to adopt new set of standards, which ere aligned to global practices, something that India had committed as part of their WTO obligations. Wef April 1, 2017 India moved to new set of standards, which were designated as Indian Accounting Standards (Ind AS) after getting notification from Ministry of Corporate Affairs (MCA).. This was done in a phased manner with some benchmarks relating to net worth and listed/ non-listed criteria.

While for large corporates, IND AS was adopted however, the accounting for companies for real estate companies were in a slightly confused state, given the overlaps of certain Ind AS and revised guidance note being present there. It was clarified for the companies to follow the revised GN for revenue recognition

Introduction of IND AS 115: Tough walk from PoCM to CCM

When things seemed to get settled for accounting, a new standard on revenue recognition was notified and made applicable from April 1, 2018. IND AS 115, Revenue from Contracts with Customers.

This new standard on revenue recognition changed the fundamentals of how one looked and applied the revenue standard from the perspective of transfer of risks & rewards to completion of performance obligations of parties in a contract. It had a detailed 5 step application, summarized as below:

1. Identify the contract with the customer
2. Identify the contractual performance obligations
3. Determine the transaction price
4. Allocate the Transaction price is allocated to the performance obligations
5. Recognise revenue when (or as) performance obligations are satisfied

Strictly looking at the application of the various steps above to a real estate transaction, the performance obligations of a developer are being completed, ONLY when he is able to complete the construction, obtain all the necessary approvals and is ready to handover

the project to the customers and not anytime before that, coinciding with his performance obligations getting satisfied in the contract.

The first year of transition for companies created a havoc for companies in real estate, since the application of the new standard changed the timing of the revenue recognition completely and moved from on-going recognition, matching with the construction

activity in a project to, towards the end of the project, when practically the project is being handed over to the customers.

A very simple depiction of revenues under both the methods, taking a project life cycle of say 4 years, with a construction activity being even across all 4 years, with a total revenue of 100 cr.

Years	Revenue recognition under the Revised Guidance Note	Revenue recognition under Ind AS 115
Y1	25	Nil
Y2	25	Nil
Y3	25	Nil
Y4	25	100

The above also led to lot of skewness in the numbers being reported by the listed players in the real estate sector. Companies had to make explanatory statements in their results/ annual report and this also led to a complex situation under the Income Tax Act, in terms of the running project for which some portion of revenues were already recorded in the earlier years. It is also important to note that, for companies on which IND AS is not applicable yet, will continue to follow the revised guidance note issued by the ICAI.

As part of the transition to IND AS 115, a significant portion of revenues, related costs and the resultant profit was reversed through the reserves and all of us witnessed the below headlines post implementing IND AS 115.

“Ind AS 115 causes Revenue Deferral amongst major Real Estate Developers”



Real Estate Developers & Contractors- Percentage Completion Method (PCM) or Complete Contract Method (CCM) – a never ending litigation



CA K. K. Chhaparia
FCA, ACS., DISA (ICAI), IP



CA Mayank Agarwal
FCA

BACKGROUND

An important issue which has recently been a subject matter of litigation in Real Estate Transactions is when to recognize the revenue in a project which takes more than a year for its completion—Proportionately over the period of contract or on completion of contract.

The Accounting Standards issued by The Institute of Chartered Accountants of India (ICAI) and Companies (Accounting Standards) Rules, 2006 have dealt this issue vide AS-7 (Construction Contracts, revised 2002) and AS-9 (Revenue Recognition), read with other Accounting Standards, such as AS-2 (Valuation of Inventories), AS-16 (Borrowing Costs), AS-13 (Accounting for Investments) etc. The ICAI has also issued 'Guidance Note on Recognition of Revenue by Real Estate Developers' in 2006. However, this was superseded by Guidance Note on 'Accounting for Real Estate Transactions' in 2012. The Income Tax Act is silent on this issue. Though ICDS-III deals with Construction Contracts, but the same is not applicable for real estate developers. There was an attempt to bring specific ICDS for real estate developers and Exposure Draft was issued for comments. However, the said Exposure draft didn't see the light of the day. In this article I have tried to analyze various controversies and litigations surrounding accounting and taxation aspects.

Before discussion on this issue, it may be relevant to briefly summarize historical perspective of AS-7. The AS-7 (prior to revision in 2002) applied to enterprises carrying on real estate development activities, whether as developers or as contractors. The said AS-7 (prior to revision in 2002) allowed both percentage completion method and complete contract method,

at the discretion of the assessee. However, after revision in 2002, the revised AS-7 applied only to contractors. In the revised AS-7, percentage completion method became mandatory for contractors. Thus, real estate developers were no longer governed by AS-7. Thus, the revenue recognition of real estate developers started being governed by AS-9, which principally stipulate that revenue should be recognized when 'significant risk and reward of ownership' is transferred.

The Income Tax Act is silent on the issue as to when 'significant risk and reward of ownership' shall be deemed to be transferred. In commercial parlance, the significant risk and reward of ownership is generally perceived to be transferred at the time of delivery of goods/ transfer of possession and/or transfer of title to the property. However, the Guidance Note issued by ICAI has prescribed percentage completion method may be followed by real estate developers, even though there is no transfer of possession or transfer of title. Again, IND AS-115 stipulates its own method of revenue recognition based on transfer of 'control'. The issue has arisen controversies not only as taxation side but also as accounts perspective. In this article, an attempt has been made to highlight the recent controversies and trends and tried to make a reconciliation of the same.

Before discussions on the issue, I would like to refer to Apex Court judgment in *J.K. Industries Vs. UOI [297 ITR 176 (SC)]* which has laid special emphasis on Accounting Standards even for tax purposes. In the said judgment, it has been inter-alia observed:

- *In its origin, an accounting standard is the policy document*

- *Today under advanced accountancy, matching principles recognizes not only costs against revenue but also against the relevant time period to determine the periodic income. Therefore, the matching principle today forms an important component of accrual basis of accounting.*
- *The adoption of Accounting Standard and of accounting income as taxable income will avoid distortion of accounting income which is the real income.*

Thus, if Income Tax Act is silent on the issue, the Accounting Standards shall be taken as important basis for deriving taxable income, subject to specific exemptions, allowances and disallowances under Income Tax Act.

Now let us analyze the Accounting standards with respect to real estate developers and contractors.

ACCOUNTING STANDARDS and GUIDANCE NOTES

AS-7 (Construction Contracts)

As stated earlier, AS- 7 was revised in 2002 (w.e.f F. Y 2003-04) in line with International Accounting Standards (IAS). The revised AS-7 was made applicable on Construction contractors only, and not on real estate developers. The salient features of revised AS-7 can be summarized as under:

- Revised AS-7 ceased to apply on Real Estate Developers and was thus applicable for Construction Contractors only.
- The Revised AS-7 allowed accounting on Percentage Completion Method only. Thus, as per AS-7(Revised), Construction Contractors have to compulsorily account on Percentage Completion Method, subject to the condition that outcome of the contract can be reliably estimated. The outcome of the contract can be reliably estimated when the following conditions are fulfilled:
 - Total contract revenue can be measured
 - Expected profits can be measured
 - Costs and stage of completion can be measured.

Thus, with the revision of AS-7, Real Estate Developers were required to follow AS-9.

AS-9 (Revenue Recognition)

After revision of AS-7, real estate developers (and not contractors) were governed by AS-9, which is applicable in general for enterprises engaged in sale of goods, rendering of services etc. As per Para 6.1 of AS-9, the key criteria to determine recognition of revenue are *when the seller has transferred the property in the goods to the buyer for a consideration. The transfer of property in goods, in most cases, results in or coincides with the **transfer of significant risks and rewards of ownership** to the buyer. However, there may be situations where transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership. Revenue in such situations is recognized at the time of transfer of significant risks and rewards of ownership to the buyer.*

It was widely believed after revision of AS-7, real-estate developers have to compulsorily follow Complete Contract Method (CCM) as per AS-9, in sharp contrast with real estate contractors who have to follow Percentage Completion Method (PCM) as per AS-7(revised).

Guidance Note on Real Estate Developers: 2006 (Revised in 2012)

As stated earlier, the ICAI has also issued 'Guidance Note on Recognition of Revenue by Real Estate Developers' in 2006. However, this was superseded by Guidance Note on 'Accounting for Real Estate Transactions' in 2012 to clarify the issue as to whether real estate developers shall account income on Project Completion Method or under Percentage Completion Method, proportionately over the period of the project.

Concept of 'significant risk and reward of ownership': Para 3.3 of the Guidance Note states, *"the point of time at which all significant risks and rewards of ownership can be considered as transferred, is required to be determined on the basis of the terms and conditions of the agreement for sale. In case of real estate sales, the seller usually enters into an agreement for sale with the buyer at initial stages of construction. This agreement for sale is also considered to have the effect of transferring all significant risks and rewards of ownership to the buyer provided the agreement is legally enforceable and subject to the satisfaction of conditions which signify*

transferring of significant risks and rewards even though the legal title is not transferred or the possession of the real estate is not given to the buyer. Once the seller has transferred all the significant risks and rewards to the buyer, any acts on the real estate performed by the seller are, in substance, performed on behalf of the buyer in the manner similar to a contractor. Accordingly, revenue in such cases is recognized by applying the percentage of completion method on the basis of the methodology explained in AS 7, Construction Contracts.

Para 4.2 of the Guidance Note states, "The completion of the revenue recognition process is usually identified when the following conditions are satisfied:

- (a) *The seller has transferred to the buyer all significant risks and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with ownership;*
- (b) *The seller has effectively handed over possession of the real estate unit to the buyer forming part of the transaction;*
- (c) *No significant uncertainty exists regarding the amount of consideration that will be derived from the real estate sales; and*
- (d) *It is not unreasonable to expect ultimate collection of revenue from buyers.*

Para 4.3 of the Guidance Note states, "Where transfer of legal title is a condition precedent to the buyer taking on the significant risks and rewards of ownership and accepting significant completion of the seller's obligation, revenue should not be recognized till such time legal title is validly transferred to the buyer."

Thus, on combined reading of Para 3.3, 4.2 and 4.3, the revenue could be recognized on Percentage Completion Method when significant risk and reward of ownership is transferred and the seller retains no effective control on the real estate. As per GN, transfer of possession of the real estate unit is not a mandatory condition for treating transfer of control. However, the agreement may provide that the transfer of legal title is a condition precedent to the buyer taking on the significant risks and rewards of ownership. In such scenario, revenue should not be recognized till such

time legal title is validly transferred to the buyer. Thus, one need to carefully evaluate the terms and conditions of the contractual arrangement before coming to conclusion when significant risks and rewards of ownership have been transferred.

Revenue can be recognized on PCM basis only when the outcome of a project can be reliably estimated: Clause 5.33 of the Guidance Note states that, "there is a rebuttable presumption that the outcome of a real estate project can be estimated reliably and that revenue should be recognised under the percentage completion method only when the events in (a) to (d) below are completed.

(a) *All critical approvals necessary for commencement of the project have been obtained. These include, wherever applicable:*

(i) *Environmental and other clearances.*

(ii) *Approval of plans, designs, etc.*

(iii) *Title to land or other rights to development/ construction.*

(iv) *Change in land use*

(b) *When the stage of completion of the project reaches a reasonable level of development. A reasonable level of development is not achieved if the expenditure incurred on construction and development costs is less than 25 % of the construction and development costs.*

(c) *Atleast 25% of the saleable project area is secured by contracts or agreements with buyers.*

(d) *Atleast 10 % of the total revenue as per the agreements of sale or any other legally enforceable documents are realised at the reporting date in respect of each of the contracts and it is reasonable to expect that the parties to such contracts will comply with the payment terms as defined in the contracts."*

Thus, revenue can be recognized when project has advanced to a particular stage as well as minimum saleable area has been booked backed with advances from the buyers.

Computation Method to be followed for PCM: As discussed above, the principle of recognizing revenue is governed by AS-9 read with Guidance Notes. However, the computation machinery is governed by AS-7. In other words, once PCM is to be followed by

real estate developer, then mode of computation of income is governed by methodology as per AS-7.

Summing up: Therefore, it can be summarized that the Guidance Note requires determining the economic substance of the real estate activities undertaken by the real estate developers.

- a. In case, the economic substance of the real estate activity is similar to delivery of goods, principles prescribed in AS-9 are applied.
- b. In case, the economic substance of the real estate activity is similar to Construction Contracts, principles prescribed in AS-7 are applied.

Revenue Recognition under IND AS – 115

Another important limb of accounting of revenue by real estate developers is covered by Ind AS 115. Real estate developers who are liable to follow the IND AS method of accounting, are governed by IND AS 115 to deal with Revenue from Contracts with Customers. It focuses on the “control approach” for revenue recognition.

Recognition - Five Step Model

Step 1 : involves identifying the contracts with the customers. An entity shall account for a contract with a customer only when the contract is approved and parties are committed to perform their respective obligation, and the entity can identify each party's rights regarding the goods or services to be transferred as well as payment terms. There should not be doubt of collection of consideration amount.

Step 2: An entity shall recognize revenue when (or as) the entity satisfies a performance obligation by transferring a promised good or service (i.e. an asset) to a customer. An asset is transferred when (or as) the customer obtains control of that asset.

Step 3: involves determining the Transaction Price. The contract should not have clause, vide which it can be cancelled, renewed or modified.

Step 4: includes allocating the transaction price to the performance obligations. The objective when allocating the transaction price is for an entity to allocate the transaction price to each performance obligation (or distinct goods or service) in an amount that depicts the amount of consideration to which the entity expects to be entitled in exchange for

transferring the promised goods or services to the customer.

Step 5: governs that the Revenue Recognition is made when performance obligations are satisfied.

Thus, for entities governed by Ind-AS, the revenue should be normally recognized on CCM basis. However, in case of Joint Development Agreements, the revenue should normally be recognized on PCM basis.

ICDS Exposure draft on Real Estate Activities:

In order to avoid conflicts and confusion among the real estate developers regarding the method of accounting, an ICDS exposure draft explaining the revenue recognition process of real estate activities was introduced. They were introduced in line with the Guidance Note issued by ICAI. However, as mentioned earlier, the Exposure draft didn't see the light of the day.

Synopsis

To summarize, it is important to note that the Guidance Note is not mandatory in nature. It is in close conformity with the applicable Accounting Standards and IND AS. Yet it can be stated that in case of any conflicts or inconsistency, the accounting principles elucidated in the Accounting Standards and IND AS shall prevail, i.e. for all the real estate developers who are liable to follow IND AS method of accounting, upon them the provisions stated in IND AS 115 shall apply. For entities upon whom IND AS method of accounting is not applicable, they shall be governed by the provisions of AS 9 (for the purpose of recognizing revenue) and AS 7 (for the purpose of methodology of accounting of construction contracts).

INCOME TAX LITIGATIONS AND JUDGMENTS

Further, various judicial pronouncement and landmark judgements have been passed that form a basis against the core problem of whether revenue shall be recognized in Percentage Completion Method or Complete Contract Method. Some of the extracts of the relevant case laws have been dealt by me in chronological order of their occurrence, which I believe are important for the readers:

Timeline 1: Case relating to year in dispute prior to 1st April, 2003 i.e. when AS 7 was applicable:

In a number of judgments, the courts have laid down

that it is the discretion of the real estate developer to choose between CCM or PCM as a method of revenue recognition. This decision was in line with the old AS – 7. However, this is not relevant now, as the provisions of AS 7 have undergone changes and new guidelines have been issued by ICAI. One such instance is *IT Meerut Vs Hyundai Heavy Industries Co. Ltd* [210 CTR 178/29 ITR 482/161 Taxman 191(SC)]: '*Lastly, there is a concept in accounts which called as the concept of Contract Accounts. Under that concept, two methods exist for ascertaining profit for contracts, namely, "Completed Contract Method" and "Percentage of Completion Method". To know the result of his operations, the contractor prepares what is called as Contract Account which is debited with various costs and which is credited with revenue associated with a particular contract. However, the rules of recognition of costs and revenue depend on the method of accounting. Two methods are prescribed in Accounting Standard No. 7 They are- "Completed Contract Method" and "Percentage of Completion Method".*'

Timeline 2: Case relating to year in dispute after 1st April, 2003 i.e. when AS 7 became inapplicable to real estate developers and accounting was to be done as per AS-9 read with the guidance note:

Case 1: Adoption of CCM approved by court: To take one instance, in the case of *Surinder Pal Singh & Co. Limited vs. ITO* (2010) [35 ITD 296 (ASR)], it was held that since the assessee has maintained regular books of accounts by following recognized Contract Completion Method of accounting consistently, the Assessing Officer is not justified in rejecting the method of accounting followed by the assessee. So, the addition made by the Assessing Officer was deleted and nullified.

Case 2: Adoption of PCM approved by court: To take one instance, in the case of *Bhagyanagar Constructions Private Limited vs. ITO* [46 ITD 236 (Hyd)], it was held that, '*We have heard both the parties at length. The issue for adjudication before us is to see whether in a contract work the profit accrues from year to year or it accrues only after the completion of the contract. In this regard, we have taken assistance of certain accounting methods of long-term contracts and have perused certain books like Batliboi's Advanced Accounting, to arrive at the*

conclusion. After due consideration of all the facts of the case, we are to the view that the profit in a long-term contract should be taxed on year to year basis. It is a dangerous proposition to recognise, that the profit accrues only after the completion of a contract. Such a proposition is liable to be abused by dishonest taxpayers. We have also gone through certain judicial authorities to which we will advert later, and find that it is a judicially recognised proposition that in the case of a contract, in order to ascertain the income, one need not wait till the contract is completed and that it is open to the Revenue to estimate the profit on the basis of receipts in each year of construction, although the contract is not complete. It is therefore, not necessary for the Assessing Officer to wait till the completion of the contract to tax the business profit in the case of an assessee.

In this view, we are supported by the decision of the Delhi High Court in the case of Tirath Ram Ahuja (P.) Ltd. v. CIT [1976] 103 ITR 15. On the facts of that case, the High Court held that "in the case of a contract, one need not wait till the contract was completed in order to ascertain the income and it was open to the Revenue to estimate the profit on the basis of the receipts in each year of the construction although the contract was not complete.....". Our view is also strengthened by the finding of the Patna High Court in the case of Sukhdeodas Jalan v. CIT [1954] 26 ITR 617.'

In my view, the judgment in the case of Bhagyanagar referred above was passed in particular facts of the case and cannot have universal application.

Finally – PCM or CCM

To conclude, real estate contractors are to follow Percentage Completion Method (PCM) as per AS – 7 revised. The real estate developers on whom Ind-AS applies, have to follow CCM method, excepting in cases, where the developers have entered into Joint Development Agreements. Other real estate developers have option to follow PCM or CCM. However, once PCM is followed, it should conform to Guidance Note. The conditions of adopting the method of revenue recognition must be considered appropriately and once a method is adopted in accounts, the same should ideally be adopted for computation purposes consistently in accordance with the applicable Accounting Standards.

'Functionality Test' through the Safari Retreats Judgement



Rajarshi Dasgupta
Executive Director, Head of Tax, AQUILAW

Introduction

The idea behind introduction of Goods and Services Tax ('GST') in 2017 was to reduce the cascading effect of taxes and allow seamless flow of credit in the hands of the assessee doing businesses, which otherwise was distorted in the previous regime on account of multiple state and federal taxes. The reduction of the cascading effect allows businesses to claim credit at every stage of the value addition chain. The ushering in of the GST regime has aided in the national goal of 'One Nation, One Tax' and has proactively walked towards the unification of the country by systematically dividing the powers between the centre and the state. From a global perspective, any GST/VAT Law works on the principle of 'value addition' wherein tax is to be paid by any business **only** on the basis of actual value added by them and the Indian GST is no exception to this rule. However, the Indian GST laws on account of the federal structure created aberrations and certain transactions like transfer of immovable property still remain outside the purview of GST. Further, it carries some legacy issue which was prevalent under the erstwhile indirect tax regime which has been subject matter of litigation. One such area is with respect to ITC on immovable property. Immovable properties and any services in relation to the same were always put outside the ambit of indirect taxation due to it being a prerogative of the State rather than the Centre. This levy flew from Entry 49 of List II of the Constitution of India. The nature of such levy of tax in relation to immovable properties gave rise to a variety of disputes such as the state's right to tax minerals etc. Dispute also existed on levy of service tax in relation to renting of immovable properties. To curb any dispute in relation to rental income generated through immovable property, the

Finance Act of 2010 created a taxation right with the Central Government with retrospective effect from 2007. However, due to the presence of the Constitutional entry, disputes were raised with regards to such levy by many taxpayers which resulted in it reaching the Delhi High Court in 2009 in the case of **Home Solution Retail India v. Union of India [2009 (14) STR 433 (Del)]**, wherein the imposition of service tax liability on renting of immovable property was struck down and held as ultra vires. However, an amendment was introduced in the Finance Act, 2010 which further neutralised the effect of the earlier judgement. Similar challenge was mounted under the GST Law, before the Bombay High Court in the case of **Myrayash Hotels Private Limited vs. The Union of India [2020 (1) TMI 1088 (Bombay High Court)]**. The Bombay High Court repelled the challenge and held that the GST Law could levy GST on renting/ leasing of immovable property.

What GST had to offer

GST Law however carved out exceptions for allowing tax credit against immovable property. The exceptions were two folds; (i) with respect to works contract services, tax credit was allowed on the condition that the said inward supplies were being utilised for provision of works contract services & (ii) inward supplies for construction of immovable property in relation to plant or machinery. Since, tax credit was not fully allowed by the GST Law against immovable property, this issue again became a point of contention between the taxpayers and tax authorities. Recently, the Hon'ble Supreme Court in the case of **Chief Commissioner of Central Goods And Service Tax & Ors. Vs. Safari Retreat Private Limited & Ors. [2024 (10) TMI 286-Supreme Court]** delivered a ruling on the issue, thereby settling the dispute.

Understanding the issues involved in *Safari Retreats*

In *Safari Retreats*, the company being in the business of constructing shopping malls for the purpose of renting. The company used inward supplies for the construction of immovable property. The items used were mainly steel, aluminium and wires along with consultancy services, architectural services, legal services and engineering services. The company was paying output tax on the services of renting of immovable property and availed tax credit on these items which was denied by the tax authorities. The company was able to successfully defend its right to avail tax credit before the Odisha High Court [2019 (5) TMI 1278 - Orissa High Court]. Thereafter, the matter travelled to the Supreme Court of India, which delivered its verdict recently. The pathbreaking decision not only upholds the validity of Section 17(5)(c) and (d) of the CGST Act but also enunciates the “functionality test” to determine whether a building, mall or warehouse other than a hotel or cinema theatre, plays the role of a 'plant' in the business of the assessee and accordingly could be considered for input tax credit (ITC). The Court has distinguished the phrase “plant **or** machinery” used in section 17(5)(d) vis-a-vis “plant **and** machinery” defined in Explanation to Section 17 and held that even a 'building' could be considered as 'plant', having regard to the business of the assessee and the role that the building plays therein. It is notable that the term 'plant' by itself, has nowhere been defined under the extant provisions of the GST law. Consequently, the interpretation of the term 'plant' under Section 17(5)(d) has to be understood in reference to the commercial parlance and trade understanding in which a particular business is carried out. For instance, previously the Supreme Court in the context of income tax has noted that even 'sanitary fittings' and 'pipelines' installed in a hotel may constitute a 'plant' as they represent an essential amenity for providing comfort and convenience to the residents of the hotel. In another case, it was held that even drawings, designs, charts, and other literature, not having any mechanical operation, may qualify as a 'plant' where they served as essential tools for the assessee's trade with enduring utility. A building

having insulated walls used as a freezing chamber has also been considered a 'plant' as it formed a part of the cold storage for the assessee. On the contrary, it has also been held that merely because some special fittings or controlling equipment is attached for the purpose of carrying on hotel business, it will not take it out of the category of building and make it a 'plant'. In another case, it was held that where the component parts can be treated as separate units having different purposes, it cannot be held that the building housing such components can be characterized as a 'plant'. Furthermore, where the assessee who had constructed a building having atmospheric controls like moisture, temperature and provision for filtered air in order to manufacture saccharine, the Delhi High Court has held that the building merely served as a 'setting' for carrying on the business and therefore, would not qualify as a plant.

It is important to recognize that in all these instances, the term 'plant' has been defined in relation to the 'specific trade or business' which was being conducted. Furthermore, the courts have generally focused on the utility or function that a particular article provides in support of that business. Thus, in light of the above, the question that whether a 'building' or a 'structure' merely functions as the premises wherein the business operations are undertaken or whether such 'building' plays an essential part in the business operations, becomes extremely relevant. This principle has been prescribed by the apex court as the 'functionality test' for determining whether a building constitutes a 'plant' or not. Accordingly, we may note that the 'functionality test' is an extremely dynamic concept which adapts to the particular nuances of the facts in each and every case.

Functionality test while determining availability of tax credit

The concept of functionality test works based on the predominant function for which the goods/thing is utilised. This test was generally used when goods have been classified in a manner wherein the taxable object was linked with its ordinary use. However, it is pertinent to note that the functionality test was never used to determine credit availability even in the

earlier indirect taxation regime. It is pertinent to note here and as specified herein above, the functionality as a test has been used in various income tax cases in order to understand plant and machinery and the same understanding has been borrowed in this case as well. This test will help the tax authorities to determine as to whether a plant or a machinery can be intrinsically linked to a business. The functionality test essentially states that the function of an immovable property must be categorically understood in order to determine its usage within the business. Further, the dominant function of the plant or machinery, if found as a core part of any business, availment of tax credit must be allowed on the same. The introduction of the functionality test ensures that businesses are given relief especially in cases where tax credit has been disallowed by the department due to a mere legislative gap without any application of mind. The Court at last, stated that there needs to be a factual analysis with the usage of the functionality test on a case-to-case basis in order to determine, whether the benefit of tax credit should be allowed to the taxpayer or not. With this test in place, the real challenge for the assesses now is to determine the applicability in their own facts and ascertain the availability of input tax credit. The opportunity really is to see if the reasoning and the interpretation enunciated in the **Safari Retreats (Supra)** judgment can be applied to other 'structures' such as prefabricated buildings, silos, warehouses, integrated cement or steel plants, dry docks, cold storage solutions, etc. which may qualify as a 'plant' based on their functionality towards the taxpayer's business and avail input tax credit thereon if the test laid down by the Supreme Court is met.

Way Forward

Moving further, it is also important to highlight that the **Safari Retreats (Supra)** judgment has also provided a definitive interpretation of the term "*on his own account*," while identifying it as one of the exceptions under Section 17(5)(d). This expression is interpreted to mean either (a) that the property is used for personal purposes rather than for providing a service, or (b) that it serves as a setting for conducting one's own business. Notably, the Court stated that the construction of immovable property does not qualify as on one's own account if the intention is to sell, lease, or license the same. However, the Court also mentioned that if the 'leased' premises qualify as "plant" under Section 17(5)(d), then ITC may be permissible for those premises. By virtue of these simultaneous observations, it becomes unclear whether the exceptions relating to the terms "plant or machinery" and "on his own account" function independently or in conjunction with one another. Further, the Supreme Court ruling has in unequivocal terms has held that tax credits could be curtailed by the Legislature and is not a matter of right. However, on count of functionality test deduced; use & nature of immovable property could emerge as an avenue for taxpayers to avail tax credit. Even though, the case of **Safari Retreats (Supra)** and other writ petitions involved have been remanded back to the High Court, a key principle has been set in motion by the Supreme Court. In conclusion, while the **Safari Retreats** judgment provides a glimmer of hope for taxpayers seeking to claim Input Tax Credit (ITC), it also introduces new challenges.



Leaseholder's right to sub-lease immovable property



CA A Jatin Christopher, Bengaluru

Introduction

1. Lessee holds 'right to user' of the immovable property. Lessee does not have all other rights that remain with the Lessor, save and except this 'right to user' of the immovable property. Lease is defined in section 105 of Transfer of Property Act to be a transfer of right to use, say, the immovable property. Right to sub-lease is available with Lessee, when it was never transferred at the time of entering into the lease. Not even grant of 'no objection' by Lessor can now confer right to re-transfer the Lessee's 'right to user' over the immovable property. What then is sub-lease?
2. Sub-lease is attempted to be GST as a *specie* of lease. Neither title of the document nor averments in such a document can amend the Lease Deed that only secured 'transfer' of right to user of the immovable property from the Lessor to Lessee.

No interest is conveyed under unregistered document

3. Where there is an interest in immovable property conveyed for a value greater than Rs.100, it can only be conveyed when reduced in writing and duly stamped and registered. This mandate flows from section 17 of Indian Registration Act. Any document that attempts to convey interest in immovable property without being registered is *non est* in law. And parties operating under the assumption that some interest in the immovable property is transferred are sorely mistaken, as learnt the hard way by Raja of Parikud in **Ananda Behara & Anr. v. State of Orissa & Anr. AIR 1956 SC 17** and the instructive words read as:

"Now a "sale" is defined as a transfer of ownership in

exchange for a price paid or promised. As a profit a prendre is immovable property and as in this case it was purchased for a price that was paid it requires writing and registration because of section 54 of the Transfer of Property Act. If a profit a prendre is regarded as tangible immovable property, then the "property" in this case was over Rs. 100 in value. If it is intangible, then a registered instrument would be necessary whatever the value. The "sales" in this case were oral: there was neither writing nor registration. That being the case, the transactions passed no title or interest and accordingly the petitioners have no fundamental right that they can enforce....."

4. Sub-lease agreement entered into between Lessee and Sub-lessee, even with a 'no objection' by Lessor can hardly uplift the defect in title due to (i) absence of Lessee's right to re-transfer under the original lease and (ii) non-registration of 'no objection' letter from Lessor. If Lease Deed could be amended by letters of no objection, then the public notice doctrine embedded in section 17 of India Registration Act will be rendered otiose.

Real nature of Sub-lease

5. Obligation of Lessee under section 108 of Transfer of Property Act is the restore possession over the immovable property back to Lessor on determination of lease. What is commonly, erroneously, referred as sub-lease is not a re-transfer of the right to user of immovable property conveyed by Lessor to Lessee, but merely a case of Lessee permitted the enjoyment of the benefits under the Lease Deed by the (so-called) Sub-lessee. In other words, this Sub-lessee is really an assignee of the benefits under an executed contract.

6. Executory contract is where some obligations remain to be performed. In a Lease Deed, Lessor has performed the 'transfer of right to user' and Lessee has completed payment of Lease Premium. After Lease Premium is paid, what remains in a Lease Deed is for Lessor to await restoration of possession along with payment of any agreed monthly rental and for Lessee is to enjoy the immovable property. It is this benefit that Lessee has acquired that (so-called) Sub-lessee is permitted to enjoy.

Illustration: 'A' buys a cinema ticket but is unable to go and watch the screening. 'A' invites 'B' to go and enjoy the screening. Exhibitor has sold the ticket to 'A'. But 'A' has not re-sold the ticket to 'B' due to lack of authority so to do. Instead, what 'A' does is merely to "assign" the benefits of an executed contract to be enjoyed by 'B'.

7. How a transaction appears is less relevant in law that what rights and obligations flow to the parties involved. And what any of the parties are called is even less relevant to the legal relations created and altered. Of the various rights and obligations of Lessee, obligation to restore possession back to Lessor at the end of Lease Duration is paramount. Lessee cannot be excused from this obligation at the end of Lease Duration. When (so-called) Sub-lease is entered into between Lessee and Sub-lessee, Lessee is not excused from obligations under the Lease Deed towards Lessor.
8. After the end of Lease Duration, Lessee tenders the possession back to Lessor to receive discharge from this obligation under the Lease Deed. Even where the (so-called) Sub-lessee carries out this function, Sub-lessee does not 'on account of' Lessee and not on 'own account'. After all, there is no privity of contract between Lessor and Sub-lessee to the exclusion of Lessee. Sub-lessee's actions *qua* Lessor are always 'on account of' Lessee.
9. It is not impossible, but uncommon, that a Lease Deed will transfer possession in immovable property to Lessee but also convey right to re-

transfer this right to user of the immovable property, due to the imminent prejudice to Lessor in being able to bring about suit for ejectment of the occupier at any time during Lease Duration. Lessee and Lessor stay bound to each other, regardless of intervening assignees or letters of 'no objection' extended by Lessor. Mulla on Transfer of Property Act (12th Edn. Page 873) that:

"Liability of the lessee after the transfer

*The section expressly enacts that the lessee by transferring the whole of his interest does not absolve himself from his contractual liability to the lessor. Notice to the lessor of the transfer does not affect the liability. **The original lessee is liable on his covenant, ie, by privity of contract and the assignee is liable by privity of estate.** There is no inconsistency between the liability of the two. The word 'only' shows that mere transfer does not absolve the lessee, and that the transfer couple with other circumstances may do so. **Thus, the liability of the lessee ceases when the lessor releases the lessee.** The release may be express or implied. The facts that the lessor served a notice on the assignee determining the lease, that the lessor filed a suit against the assignee describing the latter as lessee in the plaint and recovered judgement which, whoever, remained unsatisfied, have been held, in the last mentioned Bombay case [Bombay Municipal Corpn. V. Vasantlal (1938) ILR Bom 471], not to be enough to justify an inference that the lessor has released the lessee."*

10. For these reasons, it appears that **reference to 'transfer of leasehold rights' is really reference to 'assignment with consideration'**. When the Seller-Lessee will deny itself the rights, benefits and privileges that ensue payment of Lease Premium, it is a 'contract whose object is to refrain from enjoying those benefits'. Such a restriction accepted for a price, appears to be more harmonious with the real nature of this transaction and underlying subject matter of transfer *qua* rights of Seller-Lessee under the Transfer of Property Act.

Lease Premium

11. Say, lease for a duration of 50 years is agreed for a premium of Rs.50 crores. How much is the premium payable for the same lease but for a duration of 1 year? It would be a case of amortization treatment dictating the legal relations in a lease. Premium is Rs.50 crores for 1 year or 50 years. Upon payment of Rs.50 crores, lessee enters into possession of the immovable property and remains in possession for the next 49 years. Premium is the consideration for the lease. Premium is what puts lessee in possession. On collecting premium, lessor is dispossessed of the immovable property, for the duration of lease when possession will be restored.
12. Premium is outlay that is amortized over the duration of lease not because it is refundable on earlier cancellation but because of the enduring benefits of this outlay. Accounting prudence does not reflect the irrecoverable nature of the premium expended.

Unlimited right to user vested with Lessee

13. When Lessee is put in possession of the immovable property, right to occupy, use and enjoy the immovable property vested with Lessee is to the exclusion of the whole world including the Lessor herself, for the entire Lease Duration. Lessee is even permitted, duration permitting, to put up a structure on the immovable property (more accurately known as 'the demise') and enjoy that structure. Lessee is even permitted to license the structure to other licensees, subject, of course, to the obligation of restoration of possession under section 108(j) of Transfer of Property Act. This opens up new avenues for planning development of commercial not-for-sale real estate development due to the impact of GST on TDR in a conventional JDA that can adversely affect the IRR of such a project.

14. The maxim *quic quid plantatur solo, colo cedit* means "what is annexed with the soil goes with the soil" is not accepted as absolute rule of law in India. **The manner in which the rights to enjoy the building are secured by Buyer are independent of the manner in which the rights to enjoy the land on which such building is erected.** Each flows from the manner in which parties have come to contract for them separately although enjoyed conjointly. In other words, the rights to enjoy the land may flow from assignment of benefits from payment of Lease Premium but the rights to enjoy the building may flow from an outright transfer of property. Building is an immovable property independent of the land on which it is situated. As such, building erected by the Lessee on the Demise can be the subject matter of transfer as a separate immovable property, saved from the incidence by schedule III yet not tantamount to sub-lease of the land whereon this building is constructed.

Conclusion

15. Documents entitled 'sub-lease agreement' are subject to tax routinely and even classified under HSN 9972. But this is disharmonious with the first principles of Property law. When any defect in showing the 'taxing ingredients' in a notice of demand can be fatal to the recoverability of this demand, it is not one that can be routinely foisted on Lessee as if these ingredients are not essential. After all, notice of demand is a view canvassed by Revenue to impeach self-assessment carried out by Lessee. And without any curative power to rectify defects in the case sought to be made out by Revenue *vide* such notice of demand, the demand will need to be given *quietus* without even an opportunity to examine the nature of this sub-lease, 'so-called'.

Disjunctive vs. Conjunctive : Dissecting State-Level Differences on 'OR' in RERA



Ramya Hariharan
Founder, Citadel Law Chambers



Rimcy Keshri
Associate

Introduction

The Real Estate (Regulation and Development) Act, 2016 ("**RERA/Act**") was enacted to enhance transparency and accountability within the real estate sector. In furtherance of this objective, section 3 of RERA requires every real estate project to be registered with the authority, unless they satisfy the conditions for exemption stipulated in section 3(2) of RERA. Out of the exemption conditions specified in section 3(2) of RERA, interpretation of the exemption covered under sub-clause (a) of section 3(2) of RERA has been subject to debate with real estate regulatory authorities adopting conflicting interpretation. The crux of the debate lies in the interpretation of the word "or" in this section.

This article examines the divergent interpretation of the term "or" in section 3(2)(a) of RERA by real estate regulatory authorities across different states. By highlighting these disparities, it aims to explore the broader implications of how interpretation of a single word can influence the practical enforcement of a law.

Analysis of State-Wise Interpretation of Section 3(2)(a) of the RERA

Sub-section (2)(a) of section 3 of RERA states:

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

- a) 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;"

While real estate regulatory authorities of some states have treated "or" as disjunctive, suggesting that meeting any one condition i.e., condition relating to either the area of land or the number of apartments is sufficient to exempt the project from registration under RERA, others have read it conjunctively, essentially meaning that the project must have both, an area of land less than 500 square meters and fewer than eight apartments in order to qualify for non-registration. These differing interpretations have created inconsistencies in how the law is applied, leading to distinct legal obligations for developers depending on the jurisdiction of their real estate project.

States which have interpreted the word "or" conjunctively:

West Bengal – Pursuant to the proviso to section 3(2)(a) of RERA, the Government of West Bengal, Housing Department, RERA Cell issued a notification dated 6 June, 2023 ("**WB Notification**"),¹ whereby real estate projects were exempt from the requirement of registration "*where the threshold area of land proposed to be developed does not exceed two hundred square meters or the threshold number of apartments proposed to be developed does not exceed six apartments, as the case may be, inclusive of all phases, in the State of West Bengal.*" Pursuant to the notification, the threshold in terms of area of land

proposed to be developed, as well as number of apartments to be developed were reduced.

Subsequently on 19 September, 2024¹, the Government of West Bengal, Housing Department, issued a circular clarifying the meaning of section 3(2)(a) of RERA and the WB Notification. The circular states that *“where land to be developed by the said project is more than 200 square meters (2.99 katha) or where the number of flats / apartments / plots to be developed are more than 6 (six), those projects are compulsorily to be registered with WBRERA Authority. If any of the two conditions, as mentioned above, are fulfilled by any Real Estate Project, then the concerned Promoter is liable to compulsorily register the said project with the WBRERA Authority by submitting online Application for registration in the WBRERA website”*; thus interpreting the term “or” in section 3(2)(a) of the RERA conjunctively.

Bihar – In Birendra Kumar Singh v. M/s Arya Building Construction Pvt Ltd², by an interim order dated 24 August 2021, the Bihar Real Estate Regulatory Authority interpreted section 3(2)(a) of the Act and held that if either of the two conditions are not fulfilled, then the project gets covered under the Act.

Rajasthan – By an office order dated 8 March 2022³ released by the Rajasthan Real Estate Regulatory Authority (“**Rajasthan RERA**”), the authority decided that a real estate project is not required to be registered under the Act only if it satisfies both the conditions mentioned in section 3(2)(a) of RERA.

The aforementioned office order was further relied upon by Rajasthan RERA in Kundan Lal v. Harish Jasuja & Ors⁴, wherein, the authority held that *“when the word ‘OR’ is used between two conditions of a restrictive or prohibitory provision, it has the effect of ‘AND’. For example, if a provision says that you shall not do this or do that. This is how the word ‘or’ in clause (a) of sub-section (2) of section 3 of the Act has to be read.”*

Delhi – Vide a public notice dated 28 April, 2022, the Delhi Real Estate Regulatory Authority clarified that both the conditions will have to be satisfied for a real estate project in NCT of Delhi to qualify for exemption under section 3(2)(a) of RERA. The authority further

illustrated its stance by stating that *“even if six flats or two floors or four showrooms are being constructed as a Real Estate Project on a 501 square meter plot it would require registration with RERA, NCT of Delhi”*.

States which have interpreted the word “or” disjunctively:

Maharashtra – In M/s Geetanjali Aman Constructions vs. Hrishikesh Ramesh Paranjape (“**Geetanjali Case**”),⁵ the Maharashtra Real Estate Appellate Tribunal (“**MahaREAT**”) held that on happening of any of the two contingencies, a project needs no registration under section 3(2)(a) of RERA. It further stated that *“the unambiguous language of clause (a) of Section 3(2) of the Act of 2016 makes it clear that ‘or’ is to be read disjunctively and not conjunctively as conjunctive reading would make legislative intent redundant and would amount to changing the texture of the fabric which is not permissible in law.”* However, in Sanjay Jawaharlal Surana v. Kaushalya Developers,⁶ the MahaREAT gave a split decision, with one member interpreting the word ‘or’ conjunctively and the other member reading it disjunctively.

Post the Geetanjali case, vide circulars dated 11 October 2019⁷ and 9 June 2023⁸, the Maharashtra Real Estate Regulatory Authority (“**MahaRERA**”) had clarified the same position as taken in the Geetanjali case with respect to exemption of real estate projects from registration under the Act. Recently vide order no. 62/2024 dated 22 October 2024, the MahaRERA has once again clarified that the exemption will apply as long as any one of the condition is satisfied. This order supersedes the 2019 and 2023 circulars.

Goa – After the Geetanjali Case, the Goa Real Estate Regulatory Authority (“**Goa RERA**”) had issued an explanatory note on 18 January 2023⁹ clarifying that a project is registrable if it is constructed in an area of more than five hundred square meters comprising more than eight units inclusive of all phases. Subsequently, the Goa RERA released a circular dated 17 August 2023¹⁰, where it once again clarified that satisfaction of one of the conditions stipulated in section 3(2)(a) of the Act is enough to exempt a real estate project from registration.

In Deepti Agarwal vs. Isprava Vesta Private Limited,¹¹ the Authority stated that both the conditions in

section 3(2)(a) of RERA are distinct and are not interconnected with each other. It held that *“if any of the conditions is satisfied then the exemption would come into play and registration of the project would be exempted.”*

Odisha – By an order dated 15 July, 2021¹⁵, the Odisha Real Estate Regulatory Authority clarified that both the conditions of section 3(2)(a) of RERA are to be read disjunctively and not conjointly. It further stated that *“if the land area does not exceed five hundred Square meters, but the apartments proposed to be developed exceeds eight inclusive of all phases, there is no requirement of registration. Similarly, if land area is more than five hundred Square meters, but the apartment proposed to be developed exceeds eight inclusive of all phases, no registration is required to be taken from this Authority.”*

Tamil Nadu – In the year 2020, the Tamil Nadu Real Estate Appellate Tribunal (“**TNREAT**”), in the matter of M/s. Devinarayan Housing Board and Property Developments Private Limited v. Mr. Manu Karan, (“**Devinarayan Case**”)¹⁶ interpreted that the exemption conditions stipulated in section 3(2)(a) of the RERA should be read conjunctively. However, by an order dated 20 September, 2023, the Madras High Court set aside the decision of the TNREAT in the Devinarayan Case and held that *“on perusal of Report of the Standing Committee, it is clear that the word ‘or’ used in Section 3(2) (a) of the RERA has to be read disjunctively. Further, this Court would like to point out herein, though the word ‘OR’ is a conjunction, and if it is read conjunctively, it would make legitimate intention to become redundant, which is not possible in law.”*

Further, vide an office circular dated 12 October, 2023¹⁷, the Tamil Nadu Real Estate Regulatory Authority clarified that *“registration of real estate projects (buildings) shall be processed only where the area of land proposed to be developed exceed five hundred square meters and the number of apartments proposed to be developed exceed eight inclusive of all phases.”*

The aforesaid demonstrates the inconsistency in interpretation of section 3(2)(a) of the statute by the authorities of the various states. In this context it may

be useful to refer to the 30th Report of Standing Committee on Urban Development of The Real Estate (Regulation And Development) Bill, 2013 (“**Bill**”) dated February 2014 (“**Standing Committee Report**”). It appears from pages 24-25 of the Standing Committee Report that the Standing Committee had strongly recommended amendment to Clause (section) 3 for extending applicability of the Bill *“for residential construction upto 100 sq. mtrs, and/or number of apartments to be developed (not exceeding 3) instead of 1000 sq. mtrs (apartments not exceeding 12 in number) as proposed in the Bill.”* On July 30, 2015, the Select Committee of the Rajya Sabha after deliberation on this issue submitted its report recommending no changes relating to the word ‘or’ except the area and number of flats to be reduced for exemption. Though there were recommendations, as noted above, to use the words ‘and/or’ in clause 3, it is seen that the Bill introduced in 2015 in the Rajya Sabha retained the word ‘or’ in section 3(2)(a) of the Bill and was passed by the Rajya Sabha in the form of the Act as it exists today with the word ‘or’ in section 3(2)(a).

Reference in this regard may also be drawn to the de minimis exemption notification issued by the Ministry of Corporate Affairs, from time to time, exempting combinations from the applicability of the Competition Act, 2002, as the de minimis notification is also similarly worded as the provisions of section 3(2)(a) of the RERA Act. The exemption notification stipulates certain asset threshold and turnover threshold, upon the satisfaction of which a combination is exempt and the two conditions are separated by ‘or’. The de minimis notification has always been interpreted to mean that if any one of the condition i.e. either asset threshold or turnover threshold is satisfied, the combination is exempt i.e. satisfaction of both conditions is not required to avail the exemption.

It is a settled principle of interpretation that words in a statute should be interpreted literally and the courts while interpreting a statute should proceed on the footing that the legislature intended what it has said and cannot add words to a statute or read words into it which are not part of it, especially when a literal meaning of the same produces an intelligible result.¹⁸

The Supreme Court in *Commissioner, Customs Central Excise and Service Tax, Patna vs. M/s Shapoorji Pallonji and Company Private Ltd & Ors*,¹ while interpreting the usage of “or” in the definition of government authority in an exemption notification dated 30 January 2014 issued under the Finance Act, 1994 held that words should be read in their ordinary, natural and grammatical meaning and a different meaning cannot be assigned unless it leads to vagueness or makes the clause absolutely unworkable. The court in this case interpreted the word “or” as used in the exemption notification to denote an alternative, giving a choice.

The States by issuing circulars/office orders providing a conjunctive meaning to the word “or,” have in our view, attempted to reinterpret or modify the language of the legislation. Judicial precedents firmly establish that administrative circulars issued by State authorities cannot go beyond the framework of statutory provisions. In *Chairman and Managing Director, FCI v. Jagdish Balaram Bahira*,² the Supreme Court held that “*administrative circulars and*

government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. No government resolution or circular can override constitutional or statutory norms”. Similarly, in *Ajay Kumar Das v. State of Orissa*,³ the Supreme Court emphasized that government circulars cannot override statutory provisions and whatever be the efficacy of the executive orders or circulars or notifications, statutory rules cannot be altered or amended by such executive orders or circulars or notifications, nor can they replace the statutory rules.

Conclusion

Divergent interpretation of Section 3(2)(a) of the Act by various real estate regulatory authorities risk undermining the uniformity and efficacy of the legislation. A harmonized approach rooted in the Act’s plain language and legislative purpose is essential to ensure equitable and consistent application across all States. However, until this issue is finally adjudicated, the ongoing conundrum is bound to continue.

(Footnotes)

- 1 This article shall not be treated as an exhaustive analysis of interpretation of section 3(2)(a) of the Act across all states
- 2 No. 42-H4/2M-01/2023
- 3 Memo No. 315/H4/2M-10/24
- 4 CC/1834/2020
- 5 No. F.1(31)RJ/RERA2019/550
- 6 Complaint No. RAJ-RERA-C-2019-2818 and 13 other complaints, order dated May 9, 2022
- 7 Complaint No. SC10000672 and Complaint No. SC10000691
- 8 It may be noted that an appeal is pending before the High Court against the said decision.
- 9 Complaint No. SC10000491 date of order July 29, 2020
- 10 Circular No. 25/2019
- 11 Circular No. 25A/2023
- 12 F.No: 1/RERA/SOP/2019/73
- 13 F.No: 1/RERA / Circulars/2019/811
- 14 Complaint (3)/2018/1032 dated 30 December 2022
- 15 No. 2009/RERA/Misc(Regd)-25/21
- 16 Appeal No. 70 of 2019
- 17 Circular No: TNRERA/A4/9869/2023
- 18 Rohitash Kumar v. Om Prakash Sharma, 2013 (11) SCC 451

Typical income-tax issues for real estate developers under deeming provisions of Section 43CA of Income-Tax Act, 1961



Basant Gadhyan
Principal, Dhruva Advisors LLP

Section 43CA of the Income-tax Act, 1961 stipulates that if the consideration received for the transfer of an asset—other than a capital asset, being land or building—is lower than the value adopted, assessed, or assessable for the purpose of stamp duty by the relevant State Government (commonly referred to as the “stamp value”), then the stamp value shall be deemed to be the full value of consideration for the purpose of computing business income, rather than the actual transaction value.

This provision exposes real estate developers to potential tax liabilities when the consideration received for the transfer of property is lower than the circle rate, which is determined by the stamp duty authorities. Such discrepancies in valuation may arise due to various factors beyond the control of the developers. In light of this, the following discussion explores some of the key tax issues arising under Section 43CA, highlighting the complexities and challenges faced by stakeholders in the real estate sector.

1. *Whether circle rate value as on the date of allotment letter can be considered in place of date of agreement for sale which is executed at later date?*

In certain instances, real estate developers finalize the contractual obligations for the transfer of immovable property based on an allotment letter, with the formal agreement for sale being executed at a subsequent date. This scenario often arises when payments are received by the developer via banking channels based on the allotment letter, and the value mentioned therein is lower than the circle rate applicable on the date of the allotment letter due to passage of time / revision of circle rates by State Governments. In such cases, it may be argued that the value stipulated in the allotment letter should be sufficient to comply with the provisions of Section 43CA, even if the circle rate

on the date of the formal agreement for sale is higher than the transaction value as determined by the allotment letter.

Reference can be made to the decision of the Delhi ITAT¹ where the ITAT on first principles held that the circle rate on the date of agreement cannot be substituted for agreed and actual sale consideration determined in terms of allotment letter whereby the contractual obligations to transfer the plots had already been fastened in the earlier years. Noteworthy that robust documentation would hold the key to substantiate facts in such cases.

2. *Whether various charges collected by the developer would form part of actual sale consideration for the purposes of its comparison with the stamp duty value?*

It is a general industry practice in real estate industry that apart from basic sale consideration for the specified area of the property, the developer charges various other amounts such as floor rise, preferential location charges, car parking, club membership fee, power and security maintenance, external/ internal development charges, GST and other taxes, maintenance deposit for specified period etc. A question arises whether any charges other than the basic sale consideration would be considered as sale consideration received or accruing to the developer u/s 43CA(1) for the purposes of its comparison with the stamp duty value.

In addressing this issue, it is important to distinguish between charges that are directly linked to the constructed property being transferred to the buyer and those that are not. Charges such as floor rise, car parking, preferential location charges, and EDC/IDC should generally be included in the sale consideration for the purposes of Section 43CA(1), as these are directly connected to the

value of the constructed property and are often considered by stamp duty authorities when determining the stamp duty value. However, charges that are of a different nature—such as deposits, GST, and other taxes—should be excluded from the sale consideration for the purposes of Section 43CA(1), as they do not directly contribute to the value of the property being transferred. Therefore, such amounts should not be included in the comparison with the circle rate for determining the deemed sale consideration under Section 43CA.

3. *In case where there is a transfer of rights or interest in land/building (eg. development rights/ leasehold rights) by a developer to another developer, would sec 43CA be attracted?*

“Development rights” refer to the right to develop or construct on a piece of land. Typically, this involves a landowner authorizing another party, usually a developer, to carry out construction or development on the land. It is important to note that while the development right permits construction, the ownership of the land itself remains with the original landowner, who grants this right to the developer.

Provisions of Section 50C (in the context of capital gains) are typically limited to land or building and typically do not extend to rights in such land or building. This contrasts with Section 269UA, which specifically extends the provisions of the Act to cover rights or interests in land or buildings.

Various Courts² and Tribunal have consistently held that rights or interest in land or building are not encompassed by deeming provisions of Section 50C of the Act. Since provisions of Section 43CA are aligned to Section 50C, particularly with respect to deeming the value of land or building for the purposes of taxation, the judicial rulings on Section 50C of the Act shall equally apply to Section 43CA cases. In this regard, the decisions of Pune Tribunal³ is notable where it held that the provisions of Sections 50C and 43CA are *pari materia* and hence the decisions of Section 50C are applicable to Section 43CA.

In light of the above, and particularly considering the judicial reasoning under Section 50C, it can

be concluded that development rights—being distinct from land or buildings—do not fall within the ambit of Section 43CA. As such, the transfer of development rights by a developer should not attract the provisions of Section 43CA.

4. *Implications in case stamp duty borne by the developer and corresponding expenditure claimed as deductible expenditure for tax purposes under section 37*

As part of promotional strategies, real estate developers may offer various incentives to potential buyers, one of which could involve waiving the stamp duty and registration charges payable to the state government. This raises two key questions: (1) whether Section 43CA would be applicable in such cases, and (2) whether the costs incurred by the developer for stamp duty and registration charges can be claimed as deductible business expenses under Section 37.

In a case before the Raipur ITAT⁴, the assessee engaged in real estate business had sold units at values as determined by the stamp duty authorities and received such full consideration from the buyers. However, in order to promote its sales, it incurred the stamp duty and registration charges through a mutual agreement with the buyer and debited its Profit & Loss Account with such amounts as “sale registration charges”. The fact of incurrence of such expenditure by the developer was verified and not disputed by the tax department; although it alleged that the sale value of the property would have to be adjusted to the extent of such debits to the Profit & Loss account leading to applicability of section 43CA and disallowance of such expenses paid by the developer.

The ITAT held that as the assessee had sold all the properties/units at the market value as determined by the stamp valuation authority and had received the entire amount of sale consideration inclusive of stamp duty, there could be no occasion for triggering Sec 43CA. Furthermore, the Tribunal ruled that the expenses incurred by the developer were legitimate business expenses, incurred wholly and exclusively for the purpose of carrying on its business, and therefore allowable under Section 37.

In another case before the Chennai ITAT⁵, a

partnership firm engaged in real estate business adopted a unique method of accounting for sale of plots. The assessee increased the sale value in terms of Sec.43CA, and at the same time, debited difference between actual consideration and stamp duty value as business development expenses in its P/L and submitted that it had incurred certain expenses on sales including stamp duty and registration fees payable on registration of site. Except for making such oral statements, the assessee could not substantiate the incurrance of these expenses with supporting documentation. The ITAT held that the assessee had adopted a tool to nullify the effect of sec 43CA by accounting the difference between actual sale consideration and guideline value as sales income and corresponding debit of equal amount as business development expenses to arrive at a net effect of 'zero' for tax purposes. The ITAT redirected the matter to the AO to re-examine the matter also directing the assessee to furnish necessary evidence to substantiate its claims.

5. *Whether section 43CA would apply in case of land held as stock in trade given by landowner to developer under a JDA through a registered agreement with specified rights?*

This issue was examined by the Calcutta High Court⁶ wherein an assessee holding land had entered into a joint development agreement (JDA) for development of land wherein a specified portion of housing complex to be constructed by a developer would be allotted to the assessee. Initially, the tax department sought to treat the execution of the JDA as a transfer of capital assets, thus triggering capital gains tax in the hands of the landowner. However, the assessee argued that, since the land was held as stock-in-trade, the transaction would not attract capital gains tax. Subsequently, the tax department invoked section 43CA of the Act based on execution of the JDA. The Kolkata ITAT⁷ acknowledged that there was no definition in the Act in relation to a 'transfer of an asset being stock in trade' unlike the cases of transfer for capital gains purposes. Upon reviewing the terms of the JDA, the ITAT observed that there was no transfer of land under the agreement. The assessee remained the owner of the property throughout the development process, The

developer's role was limited to making the land saleable, and in return for construction, the developer was entitled to a portion of the stock-in-trade. The termination clause of the JDA also granted extensive rights to the assessee in case the developer failed to complete the housing complex as per specified timelines. Based on these facts and considering them to be identical to the case of CIT v Balbir Singh Maini⁸ (in the context of section 2(47)(v) read with section 53A of the Transfer of Property Act, 1882), the Calcutta High Court held that there was no transfer of ownership of the land under the JDA and therefore sec 43CA would not apply. The Court also noted that the JDA was registered under Rule 21 of the West Bengal Registration Rule, 1962 and was appropriately stamped under Schedule 1A, Article No. 4, 5(f) of the Indian Stamp Act 1899 at a fixed value and was not categorised by the Stamp Duty Authorities as transfer or conveyance under Article 23.

6. *In case where a developer raises a claim to refer the matter to a Valuation Officer and the AO does not consider it, would the addition based on stamp duty valuation be sustainable?*

Sub-section (2) of sec 43CA provides that provisions of sec 50C(2) and 50C(3) would be applicable for determining the value to be adopted for the purposes of transfer of the land or building. Under sec 50C(2), the tax officer is under obligation to refer the matter to the valuation officer if the developer claims that the fair market value is less than the stamp duty value. Several judicial pronouncements⁹ have reinforced the principle that the AO cannot unilaterally apply the stamp duty value when the developer disputes the valuation. Consequently, any addition made by the AO based solely on the stamp duty valuation, without referring the matter to the Valuation Officer, is likely to be disallowed in the appellate process.

In a recent decision, the Delhi ITAT¹⁰ held that the addition made by the AO basis stamp duty valuation was to be deleted as the AO failed to make a reference to valuation officer despite the assessee's specific objection to stamp duty valuation. The case involved sale of plots in a township by the assessee which involved areas allocated towards residence, hotel, school, commercial shop, group housing etc. Towards

the sale of hotel plot, which was located at a corner, the stamp duty authorities derived at a value 10% higher valuation than for other plots, considering it a preferential location. The assessee argued that as there was only a single hotel in the entire integrated township, there was no question of preferential location and therefore the matter ought to be referred to the valuation officer. The AO disregarded the assessee request and proceeded with the higher valuation adopted by the stamp duty authorities. Citing several previous judgements, the Delhi ITAT held that the action of the AO was erroneous and deleted the addition.

A related question in such scenarios arises as to whether there needs to be a specific claim by the developer through a letter to the AO to lodge the dispute or the fact that the amounts mentioned in the tax return would suffice as his claim in case the AO considers the stamp duty value to be higher than the value considered in the tax return. While there is no specific procedure prescribed in this regard, it is always in the best interest of the developer to explicitly communicate during assessment process that if the AO intends to adopt a value higher than that reported in the tax return, the matter be referred to the valuation officer in accordance with sec. 43CA(2) read with sec. 50C(2) and sec. 50C(3).

7. **Penalty provisions when additions made under sec 43CA on an estimated basis by AO**

Section 43CA, being a deeming provision for

taxation, raises the question of whether penalty can be imposed in cases where additions are made during the assessment proceedings based on the difference between the transaction value and the stamp duty value. The issue primarily revolves around the applicability of penalty under Section 270A of the Income-tax Act in cases where the addition is made under Section 43CA, particularly when such additions are based on an estimated difference in value rather than any deliberate concealment or underreporting of income.

In this connection, there are decisions from the Tribunal¹¹ on the lines that where deeming provisions are applied for addition of income, neither concealment of income nor under reporting of income can be established against the assessee as there is no active participation of the assessee can be established in such cases and therefore penalty under section 270A would not be applicable. However, it should be noted that this legal position is not fully settled. There have been instances where Tribunals have taken differing views, and the final stance on the matter by higher courts, including the High Courts, remains to be seen. Given that penalty provisions hinge on the intent and conduct of the taxpayer, it will be important to observe how future rulings clarify the applicability of Section 270A in cases where additions are made under Section 43CA.

- *Views expressed in the write-up above are purely personal*

(Footnotes)

- 1 Bal Krishna Gupta v ACIT [2023] 152 taxmann.com 567 (Delhi – Trib)
- 2 Greenfield Hotels & Estates (P.) Ltd. [(2017) 77 taxmann.com 308 (Bom.); Ritz Suppliers Pvt. Ltd. [I.T.A. No. 1945/Kol/2019]; Voltas Ltd. v. ITO [(2016) 74 taxmann.com 99 (Mum-Trib.)]; Noida Cyber Park [2021] 123 taxmann.com 213 (Delhi - Trib.)
- 3 Buttepatil Properties v. ITO SMC Bench Pune [ITANo. 682/PUN/2018; Assessment Year: 2014-15]
- 4 ACIT v Mahavir Infracon Private Limited 2023 (4) TMI 470 – ITAT Raipur (ITANo. 92/RPR/2021)
- 5 ACIT v Brownland Properties 2022(10) TMI 681 – ITAT Chennai (ITANo. 3315/Chny/2019)
- 6 PCIT v Emporis Properties (P) Ltd. [2023] 151 taxmann.com 64 (Calcutta)
- 7 Emporis Properties v PCIT [2023] 147 taxmann.com 280 (Kolkata – Trib)
- 8 [2017] 86 taxmann.com 94 (SC)
- 9 Sunil Kumar Agarwal v CIT [2014] 47 taxmann.com 158 (Cal); Rajddep Sodhani v ITO [2024] 159 taxmann.com 1584 (Kol- Trib.); ITO v Aditya Narain Verma 154 DTR 62 (Del Trib); ACIT v Tarun Agarwal 75 DTR 299 (Agra Trib); KK Nag Ltd v Addl CIT [2012] 52 SOT 381 (Pune)
- 10 ACIT v Ridgeview Developers (P) Ltd. [2024] 165 taxmann.com 45 (Delhi - Trib)
- 11 Alrameez Construction v CIT / NFAC, Delhi [2023] 152 taxmann.com 382 (Mumbai Trib); Jaibalaji Business Corporation v ACIT [2023] (2) TMI 421 – ITAT Pune (ITANo. 840/Pun/2022)

Status of Homebuyers Under The Waterfall Mechanism of IBC



Rohit Sharma
Partner
Consultpreneurs LLP
Advocates & Solicitors
Mumbai



Ali Asghar
Student At
National Law Institute University
Bhopal

THE CONUNDRUM

The conundrum facing homebuyers under the Insolvency and Bankruptcy Code (IBC) in India primarily revolves around their status and rights as creditors in the insolvency process of real estate developers. The IBC was initially designed without adequate provisions to protect homebuyers, treating them as "other creditors" rather than granting them the status of financial creditors. This classification significantly limited their rights and ability to influence the corporate insolvency resolution process (CIRP).

Section 5(7) – "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

ARE HOMEBUYERS FINANCIAL CREDITORS?

In *Nikhil Mehta v. AMR Infrastructure [2017] 137 CLA 163 (NCLT)* the court held that the amounts invested by the homebuyers were not mere sale transactions, but would indeed come under the ambit of financial debts under section 5(8) of the IBC⁵². The NCLAT held that allottees are indeed, financial creditors.

The same was followed in the case of *Anil Mahindro & Anr vs. Earth Iconic Infrastructure (P) Ltd*, in both the decision it was held that an allottee was neither an operational creditor nor a financial creditor unless an allottee was assured returns, in which case, it would be a financial creditor.

Amendment to IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 – Inserted Rule 8A – as per which Home Buyers are "Class of

Creditors as Financial Creditors. Any person claiming to be a creditor in a class is to submit claim with proof to the interim resolution professional under FORM CA.

2018 Report of the Insolvency Law Committee – it noted that disbursements of funds by potential homebuyers were typically made against the delivery of a future asset, namely the residence. Upon failure of the project, money is repaid, based on the time value of money. This further cemented the position of the homebuyer as a financial creditor.

2018 Amendment to IBC – Section 5(8)(f) was introduced which explicitly recognizing homebuyers who have made payments against the allotment of a unit in a real estate project as "financial creditors." This empowerment enabled them to initiate the CIRP against defaulting developers.

Section 5(8)(f) – (8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

In the case of home buyers, the amounts raised under the contracts of home buyers are in effect for the purposes of raising finance, and are a means of raising finance. Thus, the Committee deemed it prudent to clarify that such amounts raised under a real estate project from a home buyer fall within entry (f) of section 5(8).

In the case of *Chitra Sharma v. Union of India 2018*

SCC OnLine SC 874 - the Supreme Court protected the interests of home buyers in projects floated by Jaypee Infratech Limited and directed the Committee of Creditors to be constituted afresh in accordance with the provisions of the Insolvency and Bankruptcy (Amendment) Ordinance, 2018, more particularly the amended definition of the expression “financial creditors”. The court further expressed apprehension that if homebuyers were placed in the last category of the creditor's list as per the waterfall mechanism in the insolvency resolution process, it would amount to gross injustice to the homebuyers.

This amendment of 2018 faced a challenge by a consortium of builders/ real estate developers before the Hon'ble Supreme Court in the case of

Pioneer Urban Land and Infrastructure Limited and Ors. Vs. Union of India and Ors (2019) 8 SCC 416

The constitutionality of 2018 amendments including homebuyer in the list of financial creditors was challenged in the grounds of being violative of Article 14 and Article 19(1)(g) read with Article 19(6) of the Constitution of India.

The Supreme Court rejected the challenges and upheld the 2018 Amendment Act's constitutionality. The Supreme Court observed, based on a reading and interpretation of Section 5(8)(f) of the IBC, that homebuyers/allottees were included in the main provision, Section 5(8)(f), from the beginning of the Code, with the Explanation being added in 2018 merely to clarify doubts about the status of homebuyers. The Supreme Court further held that interests of allottees in the insolvency of a real estate company must be protected.

Bikram Chaterji vs Union of India 2019 SCC OnLine SC 901

The Supreme Court noted that “if the real estate business has to survive in India, it has to be answerable to the public and has necessarily to uphold the trust reposed in builders/promoters”. The Court decided this case with the rationale that for a homebuyer to purchase a house, a major proportion of their life saving are invested with their real estate firm defaulting in their projects generally leads homebuyers to lose this large amount of their life

savings which often gets stuck for years.

THE 2020 AMENDMENT TO IBC

The IBC (Amendment) Act 2020 was incorporated to balance the scales between the allottees and real estate companies. It provided that a CIRP against the real estate corporate debtor can be initiated only jointly, by **not less than one hundred of such allottees** under the same real estate project or **not less than ten percent of the total number of such allottees** under the same real estate project, whichever happens to be less.

Further, as per the Amendment, matters already filed by individual Homebuyers but not yet admitted by the adjudicating authority prior to the commencement of the 2020 Amendment Act will be dismissed if they are not modified to meet the above-mentioned minimum threshold requirement within 30 days of the commencement of the 2020 Amendment Act.

Validity of 2020 Amendment

Manish Kumar V UOI 2021 SCC OnLine SC 30

The Apex Court upheld the validity of this amendment, which imposes a minimum threshold limit to initiate the insolvency process. The Court noted that in a real estate project, there could be hundreds or even thousands of allottees, and allowing a single allottee, acting as a financial creditor to make an application under Section 7 could potentially jeopardize the interests of other allottees.

INTRODUCTION OF REVERSE CIRP

Flat Buyers Association v. Umang Realtech Pvt. Ltd (2020) 158 CLA 59

The NCLAT in this case allowed the real estate corporate debtor to **continue its construction** activities in the face of an application under Section 7 of the IBC. This was done “in the interest of the allottees and survival of the real estate companies and to ensure completion of projects which provides employment to large number of unorganized workmen”.

The NCLAT in *Umang Realtech* also provided for the **segregation of projects** being developed by the same corporate debtor while holding that a corporate insolvency resolution process (“CIRP”) against one project should not affect the others.

It was found that individual allottees were filing insolvency petitions based on individual grievances and disputes rather than for the resolution of the corporate debtor. The challenge in using the usual CIRP route is that although allottees have been awarded the status of financial creditors, being unsecured financial creditors, they have limited voting rights and do not possess the expertise to assess the long-term sustainability of the Corporate Debtor. This leads to two unfortunate consequences for allottees.

Since allottees would usually be in favour of delivery of their property over return of monies invested, this would not be possible if the Corporate Debtor goes in liquidation, nor if the CoC reaches a conclusion. Even if the Corporate Debtor goes into liquidation, allottees' rights to distributable funds are still severely impacted as unsecured creditors.

In **Pankaj Mehta VS M/s. Ansal Hi-tech Township Limited 2024 SCC OnLine NCLAT 410**, the homebuyers' application for the initiation of the CIRP against Ansal Hi-Tech Township under Section 7 of the IBC was rejected by the Hon'ble NCLAT, which held that the homebuyers were associated with different projects. As a result, they fall short of the minimal requirement needed to initiate CIRP proceedings against the respondent (as per the 2020 amendment to IBC).

BALANCING THE RIGHTS OF HOMEBUYERS WITH SECURED CREDITORS' INTERESTS

The issue revolves around the claim of banks which are secured in nature by the assets of the company may overpower the claim of homebuyers who are unsecured financial creditors as the exists only a builder buyer agreement which is an agreement to sale a property to be created by the real estate developer against the timely payment of consideration by or on behalf of the homebuyer. The Rajasthan High Court have prioritised the claim of Homebuyers over that of banks.

In the case of **Union Bank of India v. Rajasthan Real Estate Regulatory Authority AIR 2022 Raj 85** the court held that banks are precluded from enforcing their security interests against real estate developers pursuant to Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement

of Security Interest Act, 2002 (SARFAESI Act), in a manner that compromises the rights of allottees. Essentially, the court observed that any recourse exercised by banks or financial institutions, in response to a default by a real estate developer under the ambit of the SARFAESI Act, shall be taken without causing any prejudice to the interests of homebuyers.

Although the above case doesn't include the application of IBC but it highlights the fact that the secured rights of secured creditor over assets shall not affect the rights of an unsecured homebuyer.

POSITION OF HOMEBUYERS WITH POSSESSION AND WITHOUT POSSESSION

Earlier, a homebuyer who had attained possession of the property was grouped together with homebuyers who had not yet acquired possession, in the circumstance of the builder encountering insolvency. In such a scenario, the sole recourse available was to be eligible for a refund.

Amendment to IBBI (Liquidation Process) Regulations, 2016 vide a notification dated 12.02.2024 – The amendment excluded flats / apartments, possession of which is given to the homebuyers, within a real estate project prior to the commencement of the liquidation process shall not be included within the liquidation estate of the corporate debtor. This ensures that properties transferred to homebuyers will be retained by them, notwithstanding the liquidation of the developer.

HOMEBUYER UNDER IBC VS HOMEBUYERS UNDER RERA

Vishal Chelani & Ors. v. Debashis Nanda (2023) 10 SCC 395

Facts: The appellants in this case were homebuyers invested in a real estate project developed by Bulland Buildtech Pvt. Ltd. (Developer). The Developer faced delays and did not complete the project in time. Aggrieved, the home buyers approached the Uttar Pradesh Real Estate Regulatory Authority and obtained a decree for a refund with interest. Simultaneously, proceedings were initiated against the Developer under the IBC, and a resolution plan was put forth.

Issue: The question before the SC was whether there should be differential treatment of Homebuyers under the category of IBC and RERA

Held: The apex court relied on the ruling in ***Natwar Agrawal (HUF) v. Ms Sakash Developers & Builders Pvt. Ltd.***, which established that an allottee in real estate project, who subsequently became a decree holder under the RERA continued to be a financial creditor in the class of home buyers and was governed by the threshold limit prescribed under Section 7(1) second proviso of the IBC.

Relying on Section 5(8)(f) of the IBC, the SC dismissed the artificial distinction made in the resolution plan. It asserted that seeking different remedies under the RERA did not alter the appellants' status as home buyers. The SC found it inequitable to treat a segment differently solely based on the ground that some had

elected to reclaim their deposits along with interest as ordered under the RERA and others had not.

The SC emphasized the overriding effect of Section 238 of the IBC and underscored the need for parity in the treatment of home buyers under Article 14 of the Constitution, which prohibits discrimination.

***Tarun Ahuja & Ors. V Puri Construction Private Limited* 2024 SCC OnLine NCLT 512**

NCLT Delhi held that regardless of whether homebuyer-allottees have sought recourse through RERA or NCDRC prior to approaching the Tribunal, their status as 'financial creditors' under Section 5(8) (f) of the IBC will remain unchanged.



A New Dawn in the Real Estate Sector – RERA - The Real Estate (Regulation & Development) Act, 2016



CA Gopal Krishna Lodha
Kolkata

India is witnessing rapid Urbanization. According to census 2011, India Urban Population was 37.7 crores, which is project to grow to about 60 crores by 2030. Urbanization in India has become an important and irreversible process, and it is an important determinant of national economic growth and poverty reduction.

In such Scenario, Real Estate Sector has important role to play. The Real Estate Sector contributed around 7% to India's GDP in 2018-2019 which is expected to grow to around 13% of India's GDP by 2025. It is the sector with strong forward and backward linkages, particularly with the core sectors of the economy, such as steel, cement, and other building materials and directly / indirectly impacts 270 different industries. Hence growth of Real Estate Sector has serious socio-economic gains to offer.

Issues in Real Estate Sector – Pre – RERA Reform

- ❖ Prior to the Real Sector Reforms, this sector was facing various issues and irregularities such as duping of homebuyers by builders through various malpractices, rampant use of black money, and diversion of fund and lack of accountability.
- ❖ In absence of any sector specific law, the homebuyers were constrained to seek remedy under laws such as Indian Contract Act & Consumer Protection Act, Which involved lengthy litigation processes. There was no mechanism for speedy grievance redressal mechanism to solve the genuine concern of stakeholders of the Sector.
- ❖ Issues like Delay in Project completion , one sided agreements , different rate of Interest for buyers and developers , absence of

accountability and transparency was very common to sector.

- ❖ There was also lack in dealing made by the Real Estate agents who were a very important stakeholders of the Sector, but were no regulated.
- ❖ Various terms like Super build up Area, Carpet Area, and Covered Area etc. were used arbitrarily by developers to their advantage. Developers used to mislead the homebuyers by making false promises regarding the amenities, facilities and features of the project leading to lack of transparency in the sector.

In view of the various issues plaguing the harmonious development of the real estate sector and to protect the interest of homebuyers, need for specific legislation was being felt for a long time which culminated in enactment of The Real Estate (Regulation and Development) Act, 2016 [RERA]. The Act had the benefit to all the stakeholders of the project especially to Developers and Homebuyers.

The Implementation of RERA and important features of RERA can be summarized as below:

- The Real Estate (Regulation and Development) Act, 2016 was passed by the Rajya Sabha on 10th March, 2016 and by the Lok Sabha on 15th March, 2016. The Bill passed by Parliament was assented to by the President on 25th March, 2016.
- Section 2, sections 20 – 39, sections 41 – 58, sections 71 – 78 and sections 81 – 92 notified for commencement with effect from **1st May, 2016.**

- Sections 3 to 19, section 40, sections 59 to 70, sections 79 to 80 notified for commencement with effect from **1st May, 2017**.
- The landmark legislation Real Estate (Regulation and Development) Act, 2016 (RERA), marking the beginning of a new era in the Indian real estate sector and a step towards reforming the real estate sector in India, encouraging greater transparency, citizen centricity, accountability and financial discipline.
- The core objective of this transformative legislation is to ensure regulation and promotion of real estate sector in an efficient and transparent manner and to protect the interest of home buyers.
- The Real Estate Act makes it mandatory for each state and union territory, to form its own regulator and frame the rules to govern the functioning of the regulator.
- Real estate projects need to be registered with State Real Estate Regulatory Authority. Promoters cannot book or offer these projects for sale without registering them. Real Estate Agents dealing in these projects also need to register with Real Estate Regulatory Authorities.
- **70%** of the collected amount from buyers must be deposited in an escrow bank account for construction of that project only and the withdrawals have to be certified by Architects, CA and Project Engineers.

The Benefits under the Real Estate (Regulation and Development) Act, 2016 to Developers are as follows:

- The Act eliminates fly-by-night operators from the sector promoting genuine developers. It infuses credibility by making the sector mature and transparent.
- Channelize investment into the sector.
- Act/Rules would restore investment sentiment of consumers.

- Regulatory mechanism will increase the confidence of the financial institutions in real estate sector.
- Proper regulatory mechanism of the Act will increase foreign investment (FDI, ECB) in the real estate sector.

The Benefits under the Real Estate (Regulation and Development) Act, 2016 to Consumers are as follows:

- RERA along with the Rules would ensure timely completion of projects. This is helping to achieve the vision of Hon'ble Prime Minister "HOUSING FOR ALL". It prevents diversion of funds and protects the buyers' interests.
- The Act helps to curb black money. It makes operations transparent – project information will be available – promoting informed choice for buyers. The Disclosure of 'Carpet Area' for sale curbs the unfair trade practices.
- "Agreement for Sale Rules" has ended the one-sided agreements and Buyer exploitation in the sector.
- Fast track dispute resolution mechanism through Real Estate Regulatory Authority and Appellate Tribunals across Country.
- Provision of equal rate of interest to be paid by the promoters and buyers, in case of default or delays thus brining equity in operations.

The Current Implementation Status of RERA can be summarised as:

- All States/UTs have notified rules under RERA except Nagaland, which is under process to notify the rules.
- 32 States/UTs have set up Real Estate Regulatory Authority (Regular - 27, Interim – 05). Ladakh, Meghalaya, Nagaland and Sikkim are yet to establish Real Estate Regulatory Authority.
- 29 States/UTs have set up Real Estate Appellate Tribunal (Regular -25, Interim – 04).

Arunachal Pradesh, Jammu & Kashmir, Ladakh, Meghalaya, Mizoram, Nagaland and Sikkim are yet to establish Appellate Tribunal.

- Regulatory Authorities of 30 States/UTs have operationalized their websites under the provisions of RERA. Arunachal Pradesh and Manipur are yet to operationalize.
- 27 States/UTs have appointed Adjudicating Officer. 9 States/UTs i.e., Arunachal Pradesh,

Bihar, Manipur, Meghalaya, Nagaland, Sikkim, Uttarakhand, Jammu & Kashmir, Ladakh are yet to appoint Adjudicating Officer.

- 1,31,873 Real Estate Projects and 88,775 Real Estate Agents have registered under RERA across the Country.
- 1,26,269 Complaints have been disposed-off by the Real Estate Regulatory Authorities across the Country

Source of Data used in the Article:

1. <https://mohua.gov.in>



Risk Management through Tokenization and Dematerialisation in Real Estate Sector

Tirthankar Basu



Re-Defining Real Estate

There are numerous differentiators that make Real Estate stand apart from every other asset class. It is the physical existence of demarcated land area that may or may not have a structural stacking that ends up being described as a property. Being immovable, locational significance is a key determinant of a property's valuation, along with its income potential. As a hybridised asset class beyond two dimensions, every property is incorporated with a services ecosystem through engineered amenities and operator staffing. Facilitations that are inherent in enabling its monetisation.

This physical asset may yield dividends through commercial usage. But unlike financial assets, Properties have perpetual commitments by way of maintenance, upgradation, preventive, contingency costs.

In Long term scenarios this 'ownership' makes more sense to be addressed as an 'entitlement', than an asset. That's why terms like TITLE Deeds and POSSESSION are used in their legal documentation.

Real Estate is one asset class with a diverse range of classification. By rudimentary definition, its 'access to space' is defined by physical units, say sq.ft. or sq. km. and so on.

But the most distinguishing factor that differentiates this asset class from every other is the establishment of its ownership. It is a lack of conclusive validation. Ever since Civil Society evolved to establish judiciary, jurisdictions, title deeds emerged. A property's Title Deed is a legal ledger, a paper trail of its ownership history going back to its origination. They act as a seal of assurance of the properties existence and entitlements. In return of the warranties, Registration Fee & Stamp Duty is levied as fees.

Paper trails over long periods of time subjected to legal interpretations and also has a supplemental component termed 'Possession'.

In fact, [Entitlement + Possession = Ownership]

Historical anecdotes

In the pre-1950s, whether Social Housing by PWD, Housing Board Initiatives or Private Developments, Real Estate was largely a contractors prerogative. Credibility was shaped and governed by sanctioning and governing bodies. Executions of repute gave rise to the definition of 'Builder'. As India witnessed Urban Planning initiatives at Municipal Levels, Real Estate beyond Social Housing was transaction was purely trust based and referral. 'Builders' turned 'Developers', run by first generation family offices.

Around the new millenia, need for scalability led to corporatization resulting in establishment of Real Estate as Industry Status. This era witnessed the phenomenon of 'land-banking' and valuation turmoil owing to speculative sales followed by recession.

Post 2010, reduced speculation, quicker turnaround has transformed Real Estate from being identified as Service based business. Barring Public Housing initiatives, Real Estate Development in India still is largely a family managed business, leveraging trust capital and getting recognised as a full fledged Service Industry. REAAS (Real-Estate-as-a-Service) that is offering a commoditized service. When a Developer confers 'possession' (nee ownership) to the 'customer' (nee buyer) he is providing a service for a 'serviced entitlement' beyond the volumetric access and privacy.

Tokenization of a Serviced Entitlement

The five factors that may mitigate issues in the Indian

Real Estate scenario, especially Housing are:

- Dematerialisation of Property Title Deeds
- Real Estate Trusts for Residential projects with Escrow Payments.
- Stringent Property Management linked with Municipal Governance.
- Housing Finance through Public Equity in Securitisation
- Digital Transferability for asset interpolation and liquidity.

Tokenization ends up in Dematerialisation and through which properties can exist in a National Depository, with multiplexed ESCROW for the 4Bs. [Banker, Buyer, Builder, Broker].

The booking of the property itself may be 'tokenised' wherein a two-way escrow account is established. Buyers can manage possessions seamlessly with least paperwork as the intermediary trust shall stand guarantee for the access/maintenance and operations. Access-card control can grant occupancy,

enabling secured monetisation of the units and preventing maintenance fee recovery challenges.

Property tokenisations can be secured by way of specific governance backed trusts which would confer the ownership to the trust, but is the access of the units, which would be transferable, which could be tenanted, and even collateralised.

Securitization of an asset (that meets tech standards that the Local authority, and all stakeholders recognise) and a central trust body. (Not like IRDA but Like an RBI in Real Estate that stands guarantee for currency notes)

Blockchain when established as a veritable technology for it incorporates an infallible public ledger that performs authentication of “transactions” over a global network. Blockchain when adopted as a public level introduces an element of “Trust” in those “transactions”. Blockchain goes beyond transactions that are financial in nature. Blockchain can be used to verify the state of a physical existence through third party interventions.

How Blockchain and Tokenization can mitigate a broad spectrum of risks in Real Estate sector :

Risk Spectrum	Stakeholders	Avenues
Operational Risks	Landlords/Asset Owners, Property Management entities, Occupiers	Tokenization in Property Management secures both asset owner and property management entity as it ensures service delivery and guarantees fee realization on performance.
Transaction Risks	Brokers/ Transaction Advisors, Landlords/Asset Owners, Occupiers	Blockchain in commercial leasing secures the interests of brokers as through smart contracts with lessors and lessees it ensures fee realization on event-based triggers, viz: performance of services or physical occupancy.

Risk Spectrum	Stakeholders	Avenues
Tenancy Risks	Landlords/Asset Owners, Occupiers	Blockchain in commercial leasing secures asset owners by way of occupier verification and smart contracts that are linked to security deposits in ESCROW accounts.
Occupancy Risks	Landlords/Asset Owners, Occupiers	Smart Contracts that govern service delivery, lease payments and maintain dynamic security deposits in ESCROW accounts.
Investment Risks	Retail Investors, Developers, Landlords/Asset Owners	Real Estate Trusts will be able to utilize the entire range of services that Blockchain incorporates in Real Estate through its entire lifecycle: from acquisition, leasing, managing and disposal.
Governance Risks	Landlords/Asset Owners and Government/ Local Authorities	Tokenization of Land Records and registering chainage of transfers in Government Records

The coming times will witness disruptive revolution in the real estate sector as the emerging differentiator will be the ones leveraging trust capital through an ecosystem of technologies involving Blockchain Tokenization at a public level.

About the Author

With more than 20 years in real estate, urban development, and Infrastructure sector, Tirthankar leverages his dynamic exposure across a wide range of asset classes with global consulting firms like Cushman & Wakefield, Capitaland, Knight Frank and JLL in urban research, master-planning & architecture, quality assurance, transaction advisory and proptech. Having lived and worked out of several Indian cities, he began his career by way of liaising with ULBs and government agencies like KMDA, Kolkata Municipal Corporation, West Bengal Housing

Board, and Kolkata Port Trust in urban redevelopment schemes, bid advisory for industrial land and PPP projects for mega projects like warehousing, IT-SEZs and integrated developments like the 5000-acre Dankuni Township project in West Bengal. He also served and was trained by HDB - Singapore Government in master-planning and architectural services in India during his engagement with Surbana-Jurong from 2004-2008, which included India's largest mass housing project - Sukhobrishti at New Town, Kolkata, West Bengal. In the midst of his career, he sold luxury real estate worth USD 35 mn., associated with PNB as a mortgage advisor for over 5 years, and brokered a USD 1 bn. licensing deal for 'Disney Homes' in 2013 for Knight Frank. In his pursuit of applying his learnings and insights, he also leads a forum named URBANALITICS that fosters independent thinking and thought leadership in ethical practices.

Courses conducted by ACAE Skills Academy

ACAE has launched the ACAE Skills Academy on Nov 23, 2024. The ACAE Skills Academy will deliver a hands-on, immersive and dynamic approach to education, making learning more interactive and relevant. Through specialized certification programs, the ACAE Skills Academy will enable members to upskill and reskill in line with evolving industry standards and demands. Let's come together to empower our members with the expertise and skills they need to lead in today's ever-changing world.

Certificate Course on Advanced Excel & Tally from 12th - 14th Nov 2024

ACAE Skills Academy successfully completed its 1st Certificate Course on Advanced Excel & Tally from 12th - 14th Nov 2024. The course was a hands-on training programme wherein the resource persons made the sessions lively and interactive with real time examples. The Resource persons were CA Rishita Das, CA Sunny Agarwal and Mr. Gautam Chakraborty. CA. Sumit Bihani, Executive Committee Member was the Program Co-ordinator.



Certificate Course on GSTR 9 & 9C from 5 - 7 Dec 2024

ACAE Skills Academy successfully conducted a 3 Days Workshop on GSTR 9 & 9C from 5 - 7 Dec 2024. This was the 2nd course successfully completed by the ACAE Skills Academy. The participants got a first-hand practical understanding of GSTR 9 and 9C. All participants were provided with a Participation Certificate. The Resource persons were CA. Siddhant Jajodia, CA. Anup Luharuka and CA. Asha Jain. The programme was co-ordinated by CA. Shubham Khaitan, Chairman Indirect Tax Committee.



Inter Association Moot Court Competition

ACAE organised the ARS GST Moot Court Competition on Sat, Nov 23, 2024 from 2-5 PM at Bengal Chamber, 3rd Floor, Kolkata 700001

The GST Moot Court Competition saw participation of 8 Associations who competed against each other on matters related to GST. 16 Practicing Chartered Accountants competed in the event representing the respective Associations. The competition was judged by Sr. Adv. P.K.Das, Retd. Member, CESTAT, as Member (Judicial) and Sr. Adv. Vipul Kundalia, Standing Counsel for Central Government in Cal. High Court, as Member (Technical).

The winners of the competition were as follows:

1. Winners - VIP Road Chartered Accountants Association
2. 1st Runners Up - Vitta Salahkar Chartered Accountants Association, and
3. 2nd Runners Up - Views Exchange

It was a great learning session for all the participants and audience as well.



ACAE Album



GIFT City & IFSCA Business Delegation visit on 4 Dec 2024

ACAE successfully conducted a Business Delegation visit to GIFT City & IFSCA on Dec 04, 2024. The Business Delegation had meetings with officials of GIFT City, IFSCA, NSE IX, HSBC and Cyril Amarchand Mangaldas. The Business Delegation visit also conducted a City tour of GIFT City wherein they saw the Utility Tunnel, District Cooling Plant, Automated waste collection system and City Command & Control Centre. The Business Delegation visit met Mr. Sandip Shah, Head - IFSC & Strategy Dept. at GIFT City, Shri K Rajaraman, IAS (Retd.), IFSCA Chairperson and Ms. Bhawika Wanchoo, Chief Regulatory Officer at NSE IX.



The Business Delegation visit to GIFT City & IFSCA was a huge learning experience for all of us. ACAE had also developed a Primer document for the delegation so that they could have an overview of the opportunities at GIFT City & IFSCA. Softy-copy of the same can be accessed at the Resources link of www.acaekolkata.org. The document is also uploaded on GDrive at:



https://drive.google.com/file/d/1V-2sFXsFJ962HYnpuz1OLSd1Y_JGTpLU/view?usp=sharing

The visit was co-ordinated by CA. Tarun Kr. Gupta & CA. Niraj Harodia, Vice President.



ACAE Album

Business Restructuring and Financing Summit held on 5 Oct 24 (organised by EIRC of ICAI in association with ACAE CA Study Circle)

EIRC of ICAI jointly with ACAE CA Study Circle organized a 6 CPE Business Restructuring & Financing Summit at The Park on Oct 05, 2024. The Summit discussed various practical cases and options for business restructuring including regulatory and statutory approvals/ challenges. The Summit ended with a Panel Discussion on the topic Wealth Creation through Restructuring. We are sharing some glimpses of the event. We would encourage our members to attend such sessions in the future too as it provides an in-depth learning on various cross-cutting issues related to the subject.



Industry visit of Students on 15 Nov 2024

ACAE's Students' Development Sub-Committee successfully organised an Exposure Visit of Students to an Industry on Nov 15, 2025. The visit was attended by over 35 students at an edible oil refining factory near Kolkata.

The students appreciated the visit as it gave them an insight into the various Departments in an Industry e.g. refining, packaging, laboratory, quality control, admin, etc. Other aspects of safety & security, cleanliness, hygiene, CSR, energy conservation, Zero-waste, use of solar power, etc. were also discussed. Overall it was a very successful visit.

Our sincere thanks to the management of the factory for hosting us and CA. Manish Raj Dhandharia - Chairman, Students Development Sub Committee, for organising the Industry visit.



ACAE Deepawali & Bijoya Family Meet and Launch of Music Circle on Nov 11, 2024

ACAE held its annual Deepawali & Bijoya Family Meet on Nov 09, 2024 at the Ganges Barge, Kolkata. It was a very well attended event with more than 250 participants. ACAE also launched a Common Interest Circle known as the ACAE Music Circle at the Deepawali Get Together on Nov 09, 2024. We invite Members and their Families to join the Circle if you can sing, play any instrument or contribute in any manner



Visit to Kumhartuli on 22 Sep 2024

As the 1st programme of the new Executive Committee for the Term 2024-25, ACAE visited Kumartuli to seek blessings of Maa Durga.



Startup Programme in J&K held on 14-15 Oct 2024

The Indian Army's unwavering commitment to public welfare continues to strengthen community bonds in Kupwara. The Vajr Division and CII - Young Indians, with ACAE as the Knowledge Partner, hosted a Mentorship Program on October 14-15 at Roshan Mustaqbil Youth Centre, Kupwara, J&K.

We are thankful to CA. Swati Singhania and Mr. Aaqib Hussain for their presence as Mentors and taking ACAE to newer heights. I am sharing some pictures of the programme.



Business Connect Sessions:

Business Connect Session on the Topic Leveraging Enterprise Growth through Brand Building held on 25 Sep 2024.

ACAE organized a Business Connect Session on the Topic Leveraging Enterprise Growth through Brand Building at Silver Spring. It was a very enriching session with lots of discussion on how to build a brand, what does a brand signify, what are the values attached to a brand, what needs to be done to keep a brand going, etc. etc.



Business Connect Session on the topic Connect & Collaborate - The right mantra for sustainable business growth held on Oct 22, 2024 at Silver Spring

ACAE held its yet another successful Business Connect Session on Oct 22, 2024 at Silver Spring on the topic Connect & Collaborate - The right mantra for sustainable business growth.

The Panel comprised of (1) Dr. Debashish Sen, IAS (Retd.), (2) CA. Sunil Singhi, Partner V Singhi & Associates, (3) Mahesh Somani, Liyaans Properties, (4) Anand Sureka, Adhunik Infrastructures, (5) Ashish Gupta, Shivam Enerfuel and (6) Parimal Ajmera, The Calcutta Gujarati Education Society. The Moderator was CA. Bharat Baid. The Panel discussed about many important points in connecting and collaborating with the Government, employees, customers and all other stakeholders for a sustainable business.



IPA of ICMAI jointly with ACAE organised Seminar on the theme The Insolvency Resolution; Preparing for the Unknown on 21st Nov'24

IPA of ICMAI jointly with ACAE organised a Seminar on the Theme The Insolvency Resolution; Preparing for the Unknown on 21st Nov'24 at ACAE Emami Conf Hall. The Guest of Honour was CMA Chittaranjan Chattopadhyay, Central Council Member - CMA and Chairman of BFSI Board of ICMAI.

The Ld. Speakers were CA. (IP) Jitendra Lohia and CA. (IP) Pratim Bayal. Mr. G.S.Narasimha Prasad, Managing Director of IPA of ICMAI also flew down from Delhi especially to be present in the event.

2 CPE hours to the IPs was awarded. Special thanks to CA. Rashmi Chhawchharia, Executive Committee Member for organising the event.



ACAE Album



CA Tarun Kr. Gupta taking over as the 63rd President of ACAE on Sept. 14, 2024



CA Tarun Kr. Gupta, 63rd President of ACAE, along with the First Lady Mrs. Nitu Gupta, being felicitated at the AGM held on Sept. 14, 2024



Celebrating 64th Foundation Day of ACAE at the AGM held on Sept. 14, 2024



Celebrating 64th Foundation Day of ACAE at the AGM held on Sept. 14, 2024



Participation in GST Grievance Redressal Committee meeting held on Sept. 24, 2024



ACAE CA Study Circle organized a 3 CPE Seminar on Income Tax Returns and Audit on Sept. 20, 2024



3 CPE Seminar on Automation with Power Query and Data Security for CA Firms on Oct. 18, 2024 organised by ACAE CA CPE Study Circle



ACAE attends meeting on The Direct Tax Vivad Se Viswas Rules, 2024 on 22.10.2024

ACAE Album



Group Discussion on Analysing Vivad se Vishwas Scheme 2024 including latest Guidance Note on the same by CBDT on Oct. 23, 2024



3 CPE Seminar on the Topic GST - Recent Judgment and Amendments in GST on Oct. 26, 2024 organised by ACAE CA CPE Study Circle



3 CPE Seminar on Private Trusts held on Nov. 08, 2024 organised by ACAE CA CPE Study Circle



3 CPE Seminar on GST on 16 Nov., 2024 organised by ACAE CA CPE Study Circle



3 CPE Hrs Seminar on Income Tax - Vivad se Vishwas Scheme 2024 and Recent Judicial Pronouncement by the Hon'ble SC on 22 November 2024 organised by ACAE CA CPE Study Circle



3 CPE Hrs Seminar on Code of Ethics & Standards on Auditing on 29 Nov., 2024 organised by ACAE CA CPE Study Circle



3 CPE Hrs Seminar on Recent Changes in NBFC Sector on Fri, 6th December, 2024



Group Discussion on Recent IBBI Discussion Paper on Mediation, Liquidation & Monitoring Committee on 4th Dec' 24



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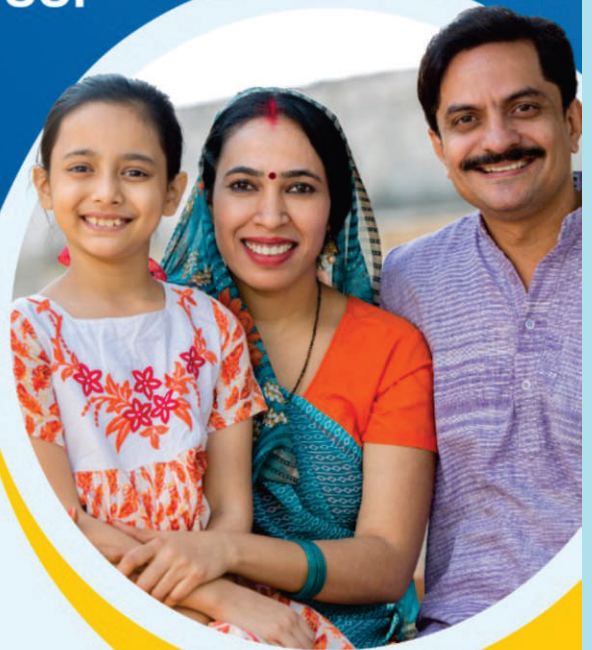
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Real Estate Summit 2024



CA. Tarun Kr. Gupta, President ACAE, CA. Arun Kr. Agarwal, Past President ACAE & Mentor Real Estate Summit, CA. K K Chhaparia, Panelist with Guest of Honour, **Mr. Sushil Mohta, President CREDAI West Bengal**



Registration in process



Cross – section of the audience

Inaugural Ceremony



Guest of Honour, Mr. Sushil Mohta, President CREDAI West Bengal being felicitated



Lighting of Inaugural lamp by dignitaries



CA. Anup Kr. Luharuka, Chairman, Real Estate Summit 2024 introducing the theme of the Summit 2024



CA Tarun Kr. Gupta, President ACAE delivering his Welcome address at Real Estate Summit 2024

Inaugural Ceremony (Contd.)



Release of ACAE House Journal – Special Issue on Real Estate by dignitaries



Group photo of Inaugural Session with Past Presidents and Executive Committee Members of ACAE



Mr. Apurva Salarpuria, Sr. Vice President, CREDAI Bengal & Managing Director, Salarpuria Group delivering his Inaugural speech



Guest of Honour, Mr. Sushil Mohta, President of CREDAI West Bengal delivering his speech



CA. Shivani Agarwalla, General Secretary being felicitated by Guest of Honour Mr. Sushil Mohta, President of CREDAI West Bengal for achieving her 6th Gold Medal in Kettlebell World Championships

1st Panel Discussion – Perspective of the Industry



Panelists being felicitated by ACAE



(L-R) Mr. Ashok Saraf, Director, Sugam Griha Nirman Ltd.; Mr. Vivek Kajaria, Vice Chairman, Diamond Group; Mr. Apurva Salarpuria, Sr. Vice President, CREDAI Bengal & Managing Director, Salarpuria Group; Moderator - Mr. Parvez Khalid, Head – East India, CBRE



CA. Nitin Daga, Member ACAE, giving his vote of thanks



CA. Manish Raj Dhandharia, Executive Committee Member, introducing the Panel

1st Technical Session on RERA



CA. Vinay Thyagaraj from Bengaluru who spoke on Critical Aspects Related to RERA being felicitated



CA. Vinay Thyagaraj delivering his speech



CA. Gopal Krishna Lodha introducing the topic



CA. Siddhant Jajodia Executive Committee Member, giving his vote of thanks

2nd Technical Session on GST



CA. Jayesh Gogri, Mumbai, speaking on Critical Aspects Related to GST



CA. Jayesh Gogri being felicitated by ACAE



CA. Niraj Kr. Harodia, Vice President, giving his opening remarks and introducing the topic



CA. Aditya Dhanuka, giving the vote of thanks

3rd Technical Session on Accounts & Audit



CA. Neeraj Sharma, Delhi, speaking on Critical Aspects Related to Accounts and Audit in Real Estate



CA. Neeraj Sharma being felicitated by ACAE



CA. Neeraj Sharma, Delhi, deliberating on the topic



CA. Sumit Bihani, Executive Committee Member giving the opening remarks

2nd Panel Discussion - Joint Development Agreement



(L-R), CA. K K Chhaparia, Adv. Rajeev Ginodia, CA. Arun Kr. Agarwal, CA. Rajarshi Dasgupta and CA. Vivek Newatia



Panelist being felicitated by ACAE



Panelist being felicitated by ACAE



Panelist being felicitated by ACAE



Panelist being felicitated by ACAE



Moderator being felicitated by ACAE



CA. Shubham Khaitan giving the opening remarks



CS. Aditya Singhania giving the vote of thanks



Group photo of the delegates with Panelists



ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

(Registered under the Societies Registration Act, 1860)

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APPLICATION FORM FOR MEMBERSHIP

To
The General Secretary,
Association of Corporate Advisers & Executives
6, Lyons Range, 3rd Floor, Unit - 2
Kolkata - 700 001

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Date of Receipt _____
Membership Approved on _____
Membership No. Allotted _____

Chairperson
Membership Development Sub-Committee General Secretary

Dear Sir,

Please ENROL me / us as a LIFE / GENERAL MEMBER of the Association. I / We agree to abide by the Memorandum and Rules & Regulations of the Association.

1. Name in Full (IN BLOCK LETTERS) : _____
2. Father's Name : _____
3. Date of Birth : _____
4. Academic and/or Professional Qualifications : _____
5. Occupation : _____
6. Name of the Concern with which associated : _____
7. GSTIN : _____
8. Designation : _____
9. CA / CS / ICWAI Membership No. : _____
10. Blood Group : _____ (Self) _____ (Spouse)
11. Date of Marriage : _____ Name of Spouse _____
12. Office Address : _____

13. Resident Address : _____

14. Telephone (Nos.) : (Off.) : _____ (Resi.) : _____ Fax : _____
Mobile : _____ E-mail : _____
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Proposed By : Name : _____

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Seconded By : Name : _____

ACAe Membership No. : _____ Signature : _____

NOTES : 1. Fee for Life Membership Rs. 11,800/- (for individuals only) (inclusive of GST)

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b) Annual Subscription Rs. 1770/- and Admission fees Rs. 1770/- (for individual) (inclusive of GST)

c) Annual Subscription will be half, if Membership Commences after 30th September of the year in which the membership is approved.

3. Cheques should be drawn in favour of Association of Corporate Advisers & Executives.

You can also fill the form online at :
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ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

Members admitted between 15th September, 2024 till 26th November, 2024

Sl.No.	Name	Category of Membership	Membership No.
1	CA. Manav Chhawchharia	LIFE	L1936
2	CA. Ayush Gupta	LIFE	L1937
3	Mr. Ashok Purohit	LIFE	L1938
4	CS. Sudhir Kumar Banthiya	LIFE	L1939
5	CA. Mohit Kabra	LIFE	L1940
6	CA. Niraj Jindal	LIFE	L1941
7	CA. Swastik Jain	LIFE	L1942
8	CA. Tulsiram Tibrewala	LIFE	L1943
9	CA. Arihant Maroti	LIFE	L1944
10	CA. Rajarshi Dasgupta	LIFE	L1945
11	CA. Pramod Kumar Gupta	LIFE	L1946
12	CA. Punam Singhanian	LIFE	L1947
13	Mr. Jitendra Kumar Rampuria	LIFE	L1948
14	CA. Anil Kumar Agarwal	LIFE	L1949
15	Mr. Ajay Chowdhary	LIFE	L1950
16	CA. Sanjeev Kumar Agarwal	LIFE	L1951
17	Adv. Pramod Kumar Banthiya	LIFE	L1952
18	CA. Vivek Jalan	LIFE	L1953
19	CA. Gaurav Agarwal	LIFE	L1954
20	CA. Vikram Saraogi	LIFE	L1955
21	CA. Sanjeev Kumar Goyal	LIFE	L1956
22	CA. Pawan Lohia	LIFE	L1957
23	CS. Atul Kumar Labh	LIFE	L1958
24	CA. Rahul Dewtia	LIFE	L1959
25	CA. Utkarsh Lohia	LIFE	L1960
26	Mr. B D Surana	LIFE	L1961
27	CA. Aman Tiwari	LIFE	L1962



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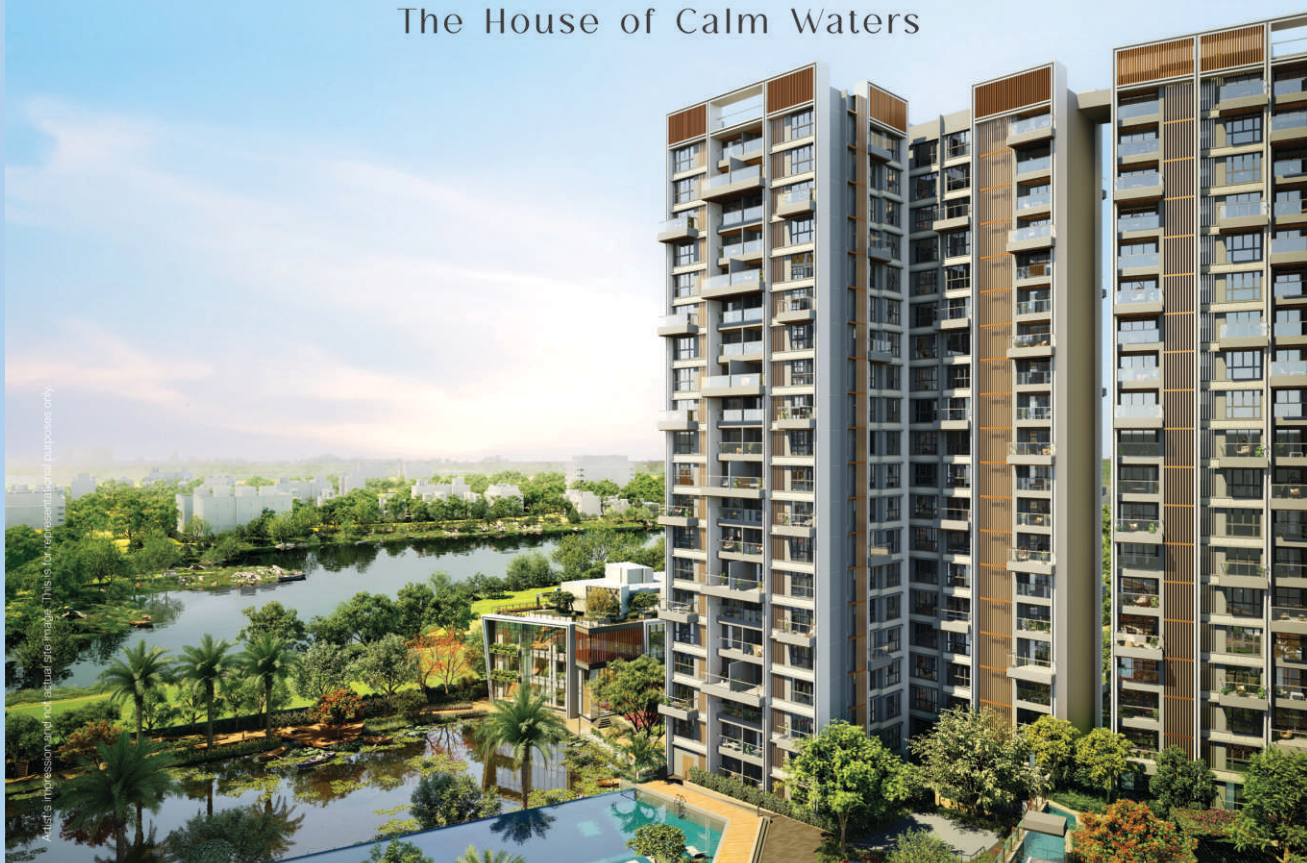
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