

Athena Knowledge Sharing: AKS | 2021 | 6

JOINT DEVELOPMENT AGREEMENT (JDA) : LANDOWNER'S SHARE – ITC AND TIME OF SUPPLY

8 Minutes Discussion on You Tube: <https://youtu.be/qMN08Sex2ow>

AMENDMENT IN 43rd GST COUNCIL MEETING AND NOTIFICATIONS DT. 02.06.2021

1. In an Area Sharing Joint Development Agreement:
 - Landowner transfers development rights of their owned land to Developer, and
 - Developer develops and construct superstructure *inter-ala* for the land owner on Landowner's share of Land.
2. GST is chargeable on such construction service provided by Developer to the Landowner.
3. **Time of Supply:**
 - Until now, GST law provided that Developer is liable to pay GST on construction service provided to landowner in lieu of Development Rights at the time of issuance of Completion Certificate (CC) or first occupation (OC), whichever is earlier.
 - If Landowner further sell such allotted area (Flats) to other intended buyers before issuance of CC/OC, he is required to raise invoice and charge GST as when payment is due from buyer.
4. **Accumulation of ITC**
 - Since Landowner has to pay tax as and when payment is due from its buyers, he has to pay tax in Cash (if time of supply arises i.e. payments due from buyers prior to CC).
 - If Developer raise invoice and charge GST at the time of CC or First Occupation, it will result into accumulation of ITC in the hands of Landowner.
5. Even prior to this present amendment under discussion, the Author have been suggesting in such a situation that the Developer may charge and pay GST in advance i.e. even prior to date of issuance of CC/first occupation [*with due intimation to department about the same*] to eliminate the issue of accumulation of ITC in the hands of Landowner.
6. Now like Author's suggestion, the Government has made an amendment vide ***N.NO. 3/2019-CT(R) dt. 02.06.2021*** that the Developer can pay GST on the construction service provided to Landowners at any time on or before issuance of CC/OC.

7. In **Author's view**, it is mere a clarificatory amendment to remove the technical ambiguity of literal interpretation of *Notification No. 06/2019 -Central Tax (Rate) dated 29.03.2019*.

Utilization of ITC by Landowner for payment of tax liability on Residential Apartments

8. Entry No. 3 of tax rate Notification No. 11/2017-CT(R) have a condition in case of residential apartments that tax has to be paid through Cash only. Considering the technical language of the Notification, someone may literally interpret that although Landowner can avail the credit of GST charged by Developer but he is required to pay output tax on sale of such residential Flats through Cash only.
9. Although in **Author's view**, earlier also this was not the intent of the Government as it has specifically allowed the credit to Landowner. Now, through an explanation inserted vide *N.No 2/2021-CT(R) dt. 02.06.2021*, the Government has clarified this aspect that Landowner can utilize the ITC of tax charged by Developer to pay its outward tax liability on such residential apartments. The explanation inserted is quoted below:

“the landowner-promoter shall be eligible to utilize the credit of tax charged to him by the developer promoter for payment of tax on apartments supplied by the landowner-promoter in such project.”

Knowledge Sharing By:



Adv. (CA) Pawan Arora
Partner, Athena Law Associates
88000 91636, pawan@athenawassociates.com



CA Shivi Agarwal
Associate, Athena Law Associates

Date: 05th June 2021

Athena Knowledge Sharing : Our Efforts to share Knowledge

Request to provide your fair feedback on: <https://forms.gle/mtQZfMAn197ittLw9>

To receive AKS on Emails, you may share your details on above link.