

September 25, 2024

**Comments on GST as submitted before the Hon'ble Supreme Court vide
Action taken Report -VI submitted on 11.10.2022**

“A. Suggestions/ Comments from the Homebuyers on the Revised Payment Plan

1. That this Hon'ble Court was pleased to direct the new management vide its Orders dated 17.08.2022 as under:

“11. In view of the above recommendations, we pass the following order:

- (i) Funds receivable from homebuyers and from unsold inventory be committed only for construction purposes and should not be diverted for any other purpose to ensure uninterrupted construction (subject to such further orders as may be passed by this Court periodically);
- (ii) The Revised Payment Plan proposed by the Management of Unitech in terms of which the home buyers would be required to make payments shall be uploaded on the web portal of Unitech within forty-eight hours;
- (iii) The home buyers who wish to make their suggestions in response to the proposed payment plan would be at liberty to email them to the Board of Management of Unitech; CA 10856/2016 10
- (iv) The suggestions, if any, that are received will be collated and placed before this Court separately so as to facilitate the passing of orders by this Court in regard to the payment plan to be adhered to by the home buyers;
- (v) The Board of Management shall together with the payment plan also upload Document IV (contained in the working papers before this Court) containing the tentative time-line for the completion of the residential projects; and
- (vi) The Board of Management has also sought a direction to the banks to ensure the timely release of unpaid home loans already sanctioned to homebuyers. In the event that the home buyers have any suggestions in that regard, the same may be placed before the Board of Management of Unitech in the same manner as indicated above, which will be considered on the next date.”

2. That as directed by the Hon'ble Court, the Revised Payment Plan along with the said Document IV containing the tentative time-lines for completion of the residential projects was uploaded on the website of the Company on 19.08.2022. A copy of the same, along with a covering Notice, is attached as **Annexure -3**.

3. The Homebuyers were requested to send their comments/ suggestions on the Revised Payment Plan to a dedicated email ID, paymentplan@unitechgroup.com, created and activated for the purpose, and mentioned in the Cover Note of the Notice.

4. That a total of 797 emails have been received on the said email ID from 06.08.2022 till 30.09.2022. Some emails were found to be spam and were discarded. As such, 736 relevant

emails have been taken into consideration. De-duplication on the basis of e-mail id was performed on these 736 emails and 233 duplicate emails were identified. This leaves 503 unique emails relevant to the subject. A perusal of each of these shows that multiple issues have been mentioned in a number of these emails, The gist of these emails containing multiple suggestions/ comments is broadly summarised as under:

Sr. No.	Subject	Comments/ Suggestions/ Observations from the Homebuyers
(i)	GST	<p>A total of 102 emails pertain to GST. Homebuyers have raised following points:</p> <ul style="list-style-type: none"> (i) Service Tax of 3.09% was applicable at the time of booking of the residential Unit. GST of approx. 5% has come into force much later and is becoming applicable primarily due to inordinate delay in the project. (ii) As in the case of Amrapali, Hon'ble Supreme Court may order GST amount equivalent to applicable Service Tax at that time to be payable by the Homebuyers. In Amrapali, the court receiver is charging Service Tax/ GST @ 3.75% as specified by Hon'ble Supreme court. (iii) The burden of increased tax liability due to applicability of GST should be borne by Unitech and no extra burden should be put on Homebuyers as they have suffered a lot due to delay. A tax difference of 2% will be there on this account.
	Management Response	<p>A. Background</p> <ul style="list-style-type: none"> (i) The incidence of Service Tax on Residential Properties was levied for the first time from 01.07.2010, vide Notification No. 01/2006-ST dated 01.03.2006, issued by the Ministry of Finance, further amended vide Notification No. 29/2010-ST dated 22.06.2010. The rate of Service Tax was 10% but the effective rate was only 2.5% since the Taxable Value was kept at 25% of the amount charged from the Homebuyers. In addition, Education Cess @ 3% of the Service Tax amount was also applicable. (ii) From 01.04.2012, the rate of Service Tax was revised from 10% to 12%. In addition, Education Cess @ 3% of the Service Tax amount was also applicable. However, on the basis of Notification No. 26/2012-ST dated 20.06.2012, and Notification No. 02/2013-ST dated

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		<p>01.03.2013, the tax structure was further classified on the basis of carpet area and the amount charged for the Units, as mentioned herein below:</p> <p>(a) In case the carpet area is less than 2,000 square feet and the amount charged is less than Rs. 1.00 Crore for each Unit, the Service Tax would be levied on 25% of the amount charged from the Homebuyers.</p> <p>(b) In rest of the cases, the Service Tax would be levied on 30% of the amount charged from the Homebuyers.</p> <p>(iii) The rate of Service Tax was further revised to 14% subject to the same conditions as enumerated above, with effect from 01.06.2015. However, the incidence of Education Cess was withdrawn.</p> <p>(iv) From 15.11.2015, Swachh Bharat Cess (SWC) @ 0.5% of the taxable value was made applicable, making the total Service Tax Liability @ 14.5%.</p> <p>(v) All types of Construction Complexes were notified to pay Service Tax on 30% of the Gross Value from 01.04.2016, vide Notification No. 08/2016 – ST dated 01.03.2016.</p> <p>(vi) From 01.06.2016, Krishi Kalyan Cess (KKC) @ 0.5% of the taxable value (30% of gross value) was made applicable, taking the total Service Tax Liability @ 15%. This position remained effective till 30.06.2017 when GST was introduced from 01.07.2017.</p> <p>(vii) The incidence of Service Tax and other accompanying Cesses, as applicable on Residential and Commercial Properties, is tabulated herein below for clarity:</p> <table border="1" data-bbox="703 1666 1402 2018"> <thead> <tr> <th data-bbox="703 1666 778 1765">Sr. No.</th> <th data-bbox="778 1666 951 1765">Period</th> <th data-bbox="951 1666 1062 1765">Service Tax</th> <th data-bbox="1062 1666 1214 1765">Education Cess on ST</th> <th data-bbox="1214 1666 1310 1765">SWC</th> <th data-bbox="1310 1666 1402 1765">KKC</th> </tr> </thead> <tbody> <tr> <td data-bbox="703 1765 778 1895">1</td> <td data-bbox="778 1765 951 1895">01.07.2010 to 31.03.2012</td> <td data-bbox="951 1765 1062 1895">10%</td> <td data-bbox="1062 1765 1214 1895">3%</td> <td data-bbox="1214 1765 1310 1895">-</td> <td data-bbox="1310 1765 1402 1895">-</td> </tr> <tr> <td data-bbox="703 1895 778 2018">2</td> <td data-bbox="778 1895 951 2018">01.04.2012 to 31.05.2015</td> <td data-bbox="951 1895 1062 2018">12%</td> <td data-bbox="1062 1895 1214 2018">3%</td> <td data-bbox="1214 1895 1310 2018">-</td> <td data-bbox="1310 1895 1402 2018">-</td> </tr> </tbody> </table>	Sr. No.	Period	Service Tax	Education Cess on ST	SWC	KKC	1	01.07.2010 to 31.03.2012	10%	3%	-	-	2	01.04.2012 to 31.05.2015	12%	3%	-	-
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		3	01.06.2015 to 14.11.2015	14%	-	-	-
		4	15.11.2015 to 31.05.2016	14%	-	0.5%	-
		5	01.06.2016 to 30.06.2017	14%	-	0.5%	0.5%
		<p>B. Response to the Observations</p> <p>(i) When GST was introduced for the first time with effect from 01.07.2017, the GST on the residential and commercial properties was fixed @ 12% of the gross value whereas in case of affordable housing, it was 8%. There also existed a provision of Input Tax Credit (ITC) on the inward goods and services, which could be adjusted against the outward services while paying GST thereon. This position remained effective upto 31.03.2019.</p> <p>(ii) The above position was changed with effect from 01.04.2019 vide Notification No. 03/2019-CT(Rate) dated 29.03.2019, whereby the Developer/ Promoter was given one-time option to avail one of the following options in respect of the on-going Projects.</p> <p>(a) 5% GST flat rate (1% in case of affordable housing) without availability of Input Tax Credit (ITC); or</p> <p>(b) 12% GST (8% in case of affordable housing) with availability of Input Tax Credit (ITC).</p> <p>(iii) The term “on-going project” has been defined in the aforesaid Notification No. 03/2019-CT(Rate) dated 29.03.2019. A project which meets all of the following conditions would be considered as an on-going project:</p> <p>(a) <i>Commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019:</i></p>					

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		<ul style="list-style-type: none"> ▪ <i>an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or</i> ▪ <i>a chartered engineer registered with the Institution of Engineers (India); or</i> ▪ <i>a licensed surveyor of the respective local body of the city or town or village or development or planning authority.</i> <p><i>(b) Where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in subclause (a) above that construction of the project has started on or before the 31st March, 2019;</i></p> <p><i>(c) Completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;</i></p> <p><i>(d) Apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.</i></p> <p><i>Explanation:</i></p> <p><i>For the purpose of sub- clause (a) and (b) above, construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.</i></p> <p>(iv) Since the erstwhile Management did not exercise the option for paying 5% GST within the fixed timeline i.e. upto 20.05.2019 and, on the other hand, it specifically opted to pay GST @ 12%, vide Unitech's letter dated 20.05.2019 addressed to the Commissioner, CGST, Gurugram, the option to pay 5% GST at this stage is not available to the Company from 01.04.2019 onwards under the said notification dated 29.03.2019. Moreover, any switchover to the 5% regime, even at the directions of the Hon'ble Court, would have higher financial implications for the Unitech Group.</p>

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		<p>(v) Hon'ble Supreme Court, vide its order passed in Writ Petition (Civil) 940 of 2017 in <i>Bikram Chatterji & Ors. Vs. Union of India & Ors.</i>, is reported to have observed that no GST is applicable. However, Service Tax is applicable. For the computation of Service Tax, the rate prevailing in 2014 shall be applicable for all the buyers. The rate of Service Tax which prevailed at that time was 3.75% and for all purposes, 3.75% will be calculated for all outstanding dues.</p> <p>The above order of the Hon'ble Supreme Court has widely been reported in different sections of the media. The computation carried out by the Court Receiver, in terms of the said Order, has been uploaded on the Court Receiver's website, as a part of Guidelines on Calculation of Service Tax and outstanding dues, a copy of which is attached as Annexure - 4.</p> <p>(vi) It is pertinent to mention here that, in the case of Unitech, all allotments were made/ sales booked when Service Tax regime was in force and the Homebuyers were also charged accordingly as per the prevailing rate of Service Tax as applicable from time to time. The erstwhile management had also defaulted in depositing the entire amount of Service Tax collected by them from the homebuyers. Since the erstwhile Management did not opt for 5% GST module on or before 20.05.2019 in terms of Notification No. 03/2019-CT (Rate) dated 29.03.2019, the GST on the <u>Balance Receivables</u> from the Homebuyers would necessarily have to be charged @ 12% only. The Company is not in a position to bear the extra financial liability that would accrue if the Company charges the GST @ 5% as suggested by some of the Homebuyers since the Company is already absorbing 18% GST on inward supplies of composite services of work contracts and whereas it is charging the Homebuyers @ 12%, thereby adversely adding financial burden to the tune of 6%, owing to the inverted duty structure.</p> <p>The Hon'ble Court may kindly pass appropriate directions in this behalf.</p>