Union Budget 2012: Highlights
Tax Simplifications to Enhance FDI in Real Estate
Revised Guidelines for Affordable Housing in Partnership
CBDT Notification for Affordable Housing Scheme u/s 35AD of IT Act 1961
Futuristic

Integrated Development Concept

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The future mode of Transport

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Department of Consumer Affairs,
Ministry of Consumer Affairs, Food & Public Dist., Gol

Col. (Retd.) Prithivi Nath, Sr. Advisor
DLF Ltd. Gurgaon.

NATIONAL REAL ESTATE DEVELOPMENT COUNCIL
First Floor, 8 Community Centre, East of Kailash, New Delhi – 110065
Ph: 011-26225795, 41608570, 46594346 Fax: 011-26225796
E-mail: naredco@naredco.in

Jaipur Office: RAJ REDCO
301, Pink Tower, Opp. Nehru Garden, Tonk Road, Jaipur – 302015
Tel: 0141-5108651, 2591941, Fax: 0141-5108651

Lucknow Office: UP REDCO
1st Floor, Pragati Kendra, Kapoorthala, Aliganj, Lucknow 226020,
Tel: 0522 -2321921, 2326298, 2328396 Fax: 0522-2371029

Haryana Office: REDCO Haryana
Shopping Mall, 1st Floor, Arjun Marg, DLF City Ph-I, Gurgaon-122002
Tel : 0124-4035124, 4334417

Uttarakhand Office: REDCO Uttarakhand
Real Estate Development Council, Uttarakhand
P2/135, Deep Ganga Complex, Sector - 5A, SIDCUL
Haridwar – 249403 (UK), Tel: 01334-239338

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NATIONAL REALTY

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Affordable Housing for all sections of society is still major challenge before the country even after 65 years of independence. It is primarily because of the shortage of land and the housing finance. Govt. efforts in building housing stock through Housing Boards and Development Authorities have yielded little dividends. The private real estate industry has not grown, to the extent required, because of the lack of Govt. support, even when it provides employment to almost 10 million unskilled labour force and contributes 5 to 6 percent to the GDP.

Shortage of land for housing is driving unplanned growth and property prices as well as rentals. State Govts. are using land as source for revenue by auctioning them at high prices. Large parcels of land with Govt. departments and PSUs, in the heart of the cities, are lying unused and are in illegal occupation of slum dwellers. Proper utilization of vacant land or slum land and regular supply of serviced land on fringes of cities together with development of new townships are necessary to overcome shortage of housing in cities and urban agglomerations. In addition, a total overhaul of town planning norms and project approval procedures are also required to speed up the development process. Govt, on its own, has failed to tackle the problem. It is, therefore, imperative to engage private sector developers in Public Private Partnerships mode and create environment for speedy development.

NAREDCO had suggested to Ministries of Finance, Urban Development and Housing and Urban Poverty Alleviation, Govt. of India to declare housing as infrastructure, give special incentive to developers for constructing smaller houses, increase deduction limit of interest payed on home loans from Rs. 1.5 lakh to Rs. 3 lakh, increase exemption limit of rental income from 30% to 50%, exempt Capital Gain Tax where proceed from transfer of house property is utilized for the purchase of one or more houses or invested in Capital Gain Bond and remove Service Tax imposed on residential construction, to give boost to real estate industry.

The Budget for financial year 2012-2013, introduced in Parliament on 16th March 2012, has raised service tax on construction of complexes and excise duty on construction materials from existing 10 percent to 12 percent. These have the potential to raise the property prices, across the board, by about 3%. Some relief for low cost affordable housing projects included in the budget are allowing ECB and reducing withholding tax to 5% from 20%, raising deduction on capital expenditure from 100 percent to 150 percent, extending of 1 percent interest subvention scheme on loans upto Rs. 15 lakh for houses costing up to Rs. 25 lakh, setting up of Credit Guarantee Trust Fund for housing loans and exempting low cost mass housing upto 60 sqmtr under Affordable Housing in Partnership Scheme from Service Tax. We welcome these steps as these would encourage development of affordable mass housing for low income households. NAREDCO is striving to extend the definition of affordable housing to include low middle income groups as well.

The Real Estate (Regulation and Development) Bill is expected to be presented to Parliament in the current session or next session. Though we do not have assess to the final draft, we believe that majority of our concerns, highlighted during interactive sessions with the Govt., have been addressed in the bill; specially wrt penalties and punishments and bringing real estate brokerage services within its fold.

In my opinion, housing sector should be given the status of infrastructure and archaic rules and regulations concerning town planning and housing development revamped to suit present day requirements. Sate Govts. need to work on land supply at affordable prices and single window clearance of projects for speedy development. The general environment for private sector investment in the sector also need to be made conducive and attractive.
Real estate sector is one of the fastest growing sectors in India with close to 30 percent compounded annual growth rate. The sector is on firm foundation because of its strong fundamentals and robust economy. Domestic savings and investments are high because of favourable demographic and improved employment opportunities. Boost in disposable income has lead to better quality of life and demand for residential, organized retail and quality office spaces have gone up. Accelerated growth of Infrastructure, manufacturing and services sectors and MNCs interest in Indian market have also added to the demand.

The current scenario where Indian economy is in slow down mode for last 5-6 quarters consequent to squeeze in liquidity due to European economic crisis and rising inflation as also due to slowing of reform process, banks and other financial institutions have tightened tap on flow of funds to realty sector. Realty Stock markets are underperforming due to lack of investors’ confidence in the sector. In such a situation, Private Equity has become primary source of funding real estate projects. For them too, there are no better options in the secondary market and, despite across the board fall in stock valuations, investments in real estate remain better bet because of lesser risk as each project is treated as separate entity under the SPV banner. The business models of many realty companies have also under gone a change and joint ventures with land owners and/or financiers, based on revenue/profit/area sharing basis, have become common.

PE players, having experienced rough weather during the economic downturn in 2008-2009 and slow down in 2011-12 and seen the financial condition of debt burdened real estate companies, have settled for assured share in return. Their returns are fixed regardless of the performance of the developer, something similar to fixed rate loans of banks. Indian developers are chasing PE funds because of liquidity squeeze consequent to drop in sale and cut in NBFC funding. PE deals are getting transacted at 25-30 percent return.

Going forward, PE players like Red Fort Capital and IL&FS are in the process of raising additional fund for investment in real estate projects. While Grant Thornton India expect significant M&A opportunities in real estate sector in 2012, Fitch feels that margins would continue to get squeezed until overall demand improves and construction cost comes down. They suggest 3D cure; Demand improvement, Decrease in borrowing cost and deleveraging of balance sheets of realtors.

With economy likely to stabilize in 2012-13 and inflation likely to fall to 4-5 percent range, we expect fall in interest rates and growth of investment in the sector. This may lead to new opportunities for PE funds and better bargaining power for developers.
Union Budget 2012: Highlights

Direct Taxes

Tax rates – Personal

- Personal income-tax slabs proposed to be revised as under:

<table>
<thead>
<tr>
<th>Existing Slab (Rs)</th>
<th>Revised Slab (Rs)</th>
<th>Tax rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto 180,000</td>
<td>Upto 200,000</td>
<td>NIL</td>
</tr>
<tr>
<td>180,001 to 500,000</td>
<td>200,001 to 500,000</td>
<td>10</td>
</tr>
<tr>
<td>500,001 to 800,000</td>
<td>500,001 to 1,000,000</td>
<td>20</td>
</tr>
<tr>
<td>Above 800,000</td>
<td>Above 1,000,000</td>
<td>30</td>
</tr>
</tbody>
</table>

- Minimum exemption limit for women changed from Rs 190,000 to Rs 200,000 (the category of women below the age of 60 years has been removed)
- Limit for senior citizens (60 years and above but less than 80 years) remain unchanged at Rs 250,000.
- Limit for very senior citizen (80 years and above) also remain unchanged at Rs 500,000.
- Education Cess and Secondary and Higher Education Cess at 2% and 1% respectively to continue

Corporate Tax rates

- No change in corporate tax rate (30%)
- No change in Minimum Alternate Tax (MAT) rate (18.5%)
- No change in surcharge for domestic companies (5%)
- No change in surcharge on foreign companies (2%)
- No change in Education Cess and Secondary and Higher Education Cess at 2% and 1%, respectively.
- Concessional rate of 15% for dividend received from foreign subsidiary has been extended by 1 more year

General Anti-Avoidance Rule (GAAR) introduced

- 'Impermissible avoidance arrangement' whose main purpose is to obtain a tax benefit
- Onus lies with the tax payer to prove that the main purpose of the arrangement was not to obtain tax benefit
- This will take effect from AY 2013-14 (FY 2012-13)

Transfer pricing provisions on domestic transactions

- Transfer Pricing guidelines proposed on “specified domestic transaction”
- Concept of "specified domestic transaction" proposed vide section 92BA
- Transfer Pricing applicable only when aggregate of "specified domestic transactions" exceeds Rs 5 crores in the previous year
- Specified domestic transactions will be required to adhere to arms length price
- Following additional compliance will be required:
  1. Maintenance and keeping of information and document
  2. Certificate from CA in Form 3CEB

Fair Market Value to be considered as “full value of consideration”

- A new section 50D proposed to be inserted under capital gains provision
- Transactions where sales consideration is not ascertainable/indeterminate – Fair Market Value (FMV) of capital asset on the date of transfer considered as “full value of consideration”
- Transactions that may be effected
  - Exchange
  - Collaboration with land owners
Transfer of certain immovable properties under Tax Deducted at Source (TDS) net

• New section 194LAA is proposed – To deduct tax by way of TDS @ 1% on consideration from transfer of immovable property (other than agricultural land)
• Provision applicable from 1 Oct 12 to any person transacting with resident transferor
• Higher of actual consideration paid or stamp duty valuation would form the basis for TDS
• TDS would get triggered where the consideration exceeds-
  - Rs 50 lakhs if the property is situated in specified areas
  - Rs 20 lakhs in case of other areas

Amendment to Section 35AD – Investment based deduction

Affordable Housing Project
• Amendment to section 35AD where weighted deduction of 150% of capital expenditure is proposed in affordable housing
• Proposed to be effective from FY 2012-13

Hotel owners/ operators
• Currently deduction under section 35AD available to hotel owners only if such owner himself operates the same
• Now proposed that hotel owners of two star and above categories will get deduction of capital expenditure even if such hotel owner transfers the operations of hotel to franchisee/hotel operator
• Amendment inserted retrospectively with effect from 1 April 2011

Clarification in connection with 'cost to previous owner'

• Amendment in Section 49 to define the cost of assets (“COA”)
• COA to company will be the cost to previous owner in the following cases:
  - Conversion of sole proprietor into company
  - Conversion of Firm into company
• Amendment to take effect retrospectively from assessment year 1999-2000

Interplay of section 47 and 49

Firm merges with company

Beneficial tax rate for funding affordable housing projects

• Foreign currency loan to an Indian company
  - in the business of developing and building a notified affordable housing project
  - loan taken between 1 July of 2012 and 2015
• TDS on interest at the beneficial rate of 5% (plus applicable surcharge and cess)
• ECB to be allowed for funding notified affordable housing projects

Clarification in relation to amalgamation and demerger involving subsidiary

• Merger of subsidiary company into holding company - For tax neutrality, consideration shares have to be issued to shareholders of the amalgamating company
• Demerger of subsidiary company into holding company - Similarly for demerger to be tax neutral, resultant entity has to issue shares to the shareholders of the demerging entity
• The above conditions are impossible to achieve as the holding company could not issue shares to itself
• The condition to issue shares in the above circumstances
have been dispensed with amendments proposed in Finance Bill 2012

Removal of cascading effect of Dividend Distribution Tax (DDT) in multi-tier structure

- Amendment to Section 115-O to remove the cascading effect of DDT in multi-tier corporate structure
- The condition of being “ultimate holding” removed for computing DDT to be paid
- Amendment effective from 1 July 2012
- However for claiming the benefit the holding company is required to hold more than 50% equity share in subsidiary company

Removal of cascading effect of DDT in multi-tier structure

Indirect Taxes

Goods and Services Tax (GST)

- Time line for introduction - not announced
- Steps towards GST
  - Model legislation for the Centre and State GST being drafted.
  - Structure of the GST network (GSTN) has been approved by the Empowered Committee of State Finance Ministers – operational by August 2012.
  - The Finance Minister has sought to bring the service tax and central excise laws as close as possible this year, with the eventual goal of moving to GST

Service tax

- Comprehensive approach to tax services introduced
  - ‘Service’ defined as an activity undertaken for consideration
  - Negative list of services to include 17 specified categories
- Declared services defined; includes immovable property, intellectual property and others
- Service tax rate enhanced from 10 to 12 percent
- As a corollary, the composition rates also changed
- Certain changes proposed to various abatements
- Exemptions trimmed significantly – mega exemption notification introduced for simplicity
- Point of Taxation (POT) Rules, 2011 realigned
  - Time limit to raise invoice enhanced to 30 days
  - Continuous supply of services redefined
- Place of Provision of Services Rules, 2012 released for public debate
  - Export and Import Rules to be replaced
  - Ambiguity regarding service in J&K addressed
- Conditions for export of service redefined
  - Location of service provider and service recipient will be relevant
  - Place of provision of service should be outside of India
  - Payment should be received in convertible foreign exchange
- New reverse charge mechanism for three specified services – both service provider and receiver liable to pay tax in case of
- Hiring of motor vehicle
- Supply of manpower
- Works contract

• Other legislative changes
  - Limitation period enhanced to 18 months
  - New combined return EST 1 for excise duty and service tax introduced
  - Provisions relating to Settlement Commission introduced
  - Special audit powers to Commissioner
  - Penalty on service tax due on Renting Of Immovable Property Service:
    - waived for those taxpayers who pay the service tax due as on 6th March 2012, in full along with interest within 6 months from the date of enactment of the Finance Bill 2012

Meaning of Service

"Service" means any activity, for consideration, carried out by a person for another, and includes a declared service, subjected to certain exclusions

• “Declared service” has been defined to include;
  - construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority
  - service portion in the execution of a works contract;

• “Renting” has been defined as
  - “allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property’ Declared service” has been defined to include;

• “Renting” of certain kinds in negative list
  - renting of vacant land, with or without a structure incidental to its use, relating to agriculture
  - renting of residential dwelling* for use as residence
  - renting out of any property by Reserve Bank of India
  - renting out of any property by a Government or a local authority to all non-business entity

• “Renting” – exemptions
  - Threshold level exemption up to Rs. 10 lakh
  - Renting of precincts of a religious place meant for general public
  - Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below rupees one thousand per day or equivalent

• “Construction Services”
  - Same as the current
    - Residential complex service
    - Commercial or industrial construction

• “Construction Services” – exemptions
  - Specified services provided to the Govt or local authority
  - Construction of road, bridge, tunnel etc
  - Construction of original works pertaining to airport, port, railways
  - Single residential unit otherwise as a part of a residential complex etc...

• Works Contract – service portion in the execution of a works contract
  - Composition rate has been enhanced from 4% to 4.8%
  - Labour Contracts do not fall in the definition of works contract
    - It is necessary that there should be transfer of property in goods involved in the execution of such contract which is leviable to tax as sale of goods. Pure labour contracts are therefore not works contracts
MACRO ECONOMIC OVERVIEW

• As per the latest Reserve Bank of India (RBI) projections GDP growth rate was recorded at 6.9% for 4Q 2011. The estimates by various agencies project the growth rate within a range of 7% to 8% for 2011-2012, suggesting a moderation in the growth process.

• Provisional Wholesale Price Index as reported by Ministry of Finance was 7.47% for December 2011. This quarter there was a slight decline in primary inflation due to the decrease food inflation which stood at -3.36%.

• In 4Q 2011, RBI did not increase repo rates. It further stated that there will not likely be any further increase to the policy rates, provided headline inflation moderates as is expected. The repo rate is currently at 8.5%.

• The Department of Industrial Policy and Promotion (DIPP) recorded FDI inflow for the period April to October, 2011 in Housing & Real Estate at INR 2,130 crores; which is a 2/3rd reduction from the highs of the years 2008-09 and 2009-10. The Housing and Construction sector contribution to the total FDI has also reduced to 2.31% from to 7% in the previous year.

• In 4Q 2011, Indian Rupee (INR) fell further by approximately 10% against the US Dollar to close at INRs 54.40 to 1.00 USD on 29th December 2011. The Rupee also weakened against the Euro dropping by approximately 5% to close the quarter at INRs 70.99 to 1.00 Euro.

• Qualified Foreign Investor can now directly invest in the Indian Equity Market. The investment limit is to 5% and 10% for individual and QFIs respectively of their paid up capital of the company that they establish in India.
MUMBAI

- In 4Q 2011, various projects/phases of the projects were completed in Mumbai, including “Kalpataru Aura” at Ghatkopar by Kalpataru developers and “Lodha Bellissimo” by Lodha Group at Mahalaxmi.
- This quarter, the Mumbai real estate market witnessed the launch of several residential projects, such as “Hill Crest” by Hubtown Ltd., “Aria” by Parinee Developers, “Island City Centre” by Bombay Realty, “Tripolis” by Ekta World and “Green Acres” by Nirman Relators. Lodha Group also launched its mix use development project called “New Cuffe Parade”, on its 23-acre land parcel in Wadala. This land was purchased in 2010 at approximately INR 4,500 crore.
- The residential market remained subdued, and fewer transactions were recorded during the quarter on account of an unstable global economy and rising interest. Capital values remained stable in almost all the micro markets except for a few locations such as Breach Candy, Napeansea Road, Peddar Road, Worli, Prabhadevi, Andheri and Powai where capital value values witnessed an increase in the range of 3 to 6% quarter on quarter.
- The premium residential lease market remained active at locations such as Malabar Hill, Altamount Road, Carmichael Road, Breach Candy, Napeansea Road, Peddar Road, Khar, Juhu and Powai. These locations observed an appreciation in rental values in the range of 1% to 3% quarter on quarter.
- The state government has decided to provide an additional 0.33 Floor Space Index (FSI) in suburbs of Mumbai. The FSI would be available to the developer on paying a premium. Currently, the state government allows an FSI of 1 in the suburbs and 1.33 in the island city.
DELHI

- During 4Q 2011, several redevelopment residential projects were ready for possession in locations such as Anand Niketan, Vasant Vihar, Westend, Defence Colony and Malcha Marg.
- No new project was launched during 4Q 2011.
- Capital values for premium residential properties observed a minor appreciation in the range of 2% to 5% quarter on quarter across all the micro markets. This could be attributed to the limited premium supply and scope of development.
- Due to continuous demand from expatriates and officials of MNC and Indian Corporate for prime residential properties, rental values recorded an increase in the range of 7 to 10% quarter on quarter across all the micro markets, except for a few location such as Prithviraj Road, Aurangzeb Road, where rates remained stable.
- The Delhi state cabinet has hiked the circle rates for the second time this year in Delhi. The circle rate hike was highest in category ‘A’ (Anand Niketan, Bhikaji Cama Place, Friends Colony, Maharani Bagh, Nehru Place etc.) at 250% while in B (Defence Colony, Greater Kailash, Green Park, Hauz Khas etc.), C (Civil Lines, East of Kailash, Kalkaji, Lajpat Nagar etc.) and D (Anand Vihar, Dwarka, Janakpuri, Karol Bagh etc.) category areas the circle rates increased by 100%. Earlier this year in February, the circle rates increased up to 100% in various categories.
GURGAON

- This quarter, several projects were launched in Gurgaon, including “Diplomatic Residency” by Puri Constructions, “Splendo” by Splendor Group, “International City” by Shobha Developers and “Kokoon” by ATS and Chintels. The Projects were priced in the range of INR 5,500 to 6,000 per sq ft and were launched in Dwarka Express Way and Golf Course Road Extension.
- Construction activities remained slow, and none of the major projects or phases of the project were offered for possession during the quarter.
- Capital Values for premium ready-to-move in residential properties located along Golf Course Road, Sohna Road, Sushant Lok and NH8 registered an increase in the range of 4 to 10% quarter on quarter.
- Similarly, rental values for premium residential properties also registered an increase in the range of 3 to 10% in almost all the micro markets.
- Kotak Realty Fund invested INR 170 crore in the “Astaire Gardens” project being developed by BPTP, located at sector-70A. The project is spread over 102.2 acres and is expected to be completed towards the end of 2015.
- In order to streamline the procedure of approval of building plans in licensed residential and industrial plotted colonies for which licensed is granted under the provision of Haryana Development and Regulation of Urban Area Act, 1975, the department introduced self certification system to reduce the complex procedure of approval of building plans.
NOIDA

- During 4Q 2011, no major under construction projects/phases of the project witnessed completion. The construction activities had slowed down during the quarter due to agitation from farmers on land issue in the new sectors allocated by NOIDA authority. The construction activities are expected to start picking up as the NOIDA authority has cleared most of the land issues by paying old dues.
- The number of new projects launched has reduced significantly in comparison to previous 3 quarters. A prime residential project launched in this quarter was “Supernova” by Supertech Ltd in Sector 94, INR 13,500 per sq ft well above the average market price range. The project is proposed supposed to be a high rise mixed use development with around 80 storeys.
- Capital values witnessed an increase in the range of 4 to 9% quarter-on-quarter in almost all the premium residential sectors such as Sector 28-30, 44, 50, 92, 93 and 61-62.
- In 4Q 2011, rental values in NOIDA increased in the range of 3 to 7% quarter-on-quarter, due to demand from MNCs and limited availability of premium properties.
- In an attempt to avoid any further agitation by NOIDA farmers on land acquisition issues, the NOIDA Authority released a list of 2,663 farmers in 35 villages who will get five per cent developed plots in the final phase. The list, according to the Authority, is the final one for all the villages where land was acquired after 1997.
CHENNAI

- A number of projects/phases of projects were completed this quarter, including “Tulip” by Doshi Housing at Kilpauk, “Orchid Springs” by Alliance Infrastructure at Padi, “Kings Court” by Golden Homes and “Praveens” by Praveen Constructions at Anna Nagar, “Crest Dusica” by Crest Homes at Alagaputhur and “Prapancha” by Catalyst Properties and “Boulevard” by Ceebros both located at Thoraipakkam.
- The residential market remained active during the quarter, and several projects were launched during the quarter. Most of the projects were located in suburbs and were priced in the range of INR 2,800 to 7,000 per sq ft.
- In 4Q 2011, rental values for premium residential properties remained stable across all the micro markets. However, rental values witnessed slight increase especially in the mid-range housing segment.
- Following the previous quarter trends, capital values for high-end residential properties remained stagnant during the review period due to cautious investor sentiment.
- The state government has approved a six-lane expressway on a 344 km stretch between Chennai and Bengaluru, which would be funded through a public-private partnership (PPP). Real estate activities are expected to increase along the highway. The state government has also planned to set up a 311 acre satellite township at Thirumazhisai along this highway.
BENGALURU

• This quarter several projects/phases of the projects were ready for possession in Bengaluru, including “Purva Highlands” located at Kanakpura and “Purva Venezia” at Yelahanka by Purvankara Developers and “Victory Harmony” at RT Nagar by Victory Builders & Developers.

• In terms of new projects launched, the Bengaluru market remained active during 4Q 2011. However, the number of residential projects launched by grade A developers has reduced significantly from the previous three quarters. Two of these new projects were launched in peripheral locations, Devanahalli, Yemalur ORR and Kanakapura Road, and were priced in the range of INR 2,650 to 7,450 per sq ft.

• The capital values for premium residential properties increased in the range of 7 to 10% quarter on quarter in location like Central Bengaluru, Indiranagar and Cooke Town due to limited supply in these areas. Capital values in suburban and peripheral locations remained stable during the quarter.

• Rental values for prime residential properties remained stable in almost all the micro markets, barring Whitefield, where rentals witnessed an increase by 5% quarter on quarter due to increasing leasing activities in this area.

• In 4Q 2011, development work for signal free corridor between Sirsi circle to Agara Lake has been commenced. This is expected to improve the connectivity between the ORR (Sarjapur-Marathahalli) and Koramangala.
KOLKATA

- Projects/phases of the projects that were ready for possession in Kolkata this quarter were “Purti Colours” by Purti Realty, “Diamond Residency” by Super Diamond Nirman Pvt. Ltd both located at Behala, “Sankalpa Phase I” by WBIDFC, “Greenfield Ambition” by Bengal Greenfield and “Rosedale” by Rosedale Developers, all three located at New Town and “Ekta Oleander” by Base Developer at Beliaghata, and ‘Purti Flower Phase II’ by Purti Realty at Mahestala.

- New projects launched this quarter were primarily located at peripheral locations such as Rajarhat, Rajpur and Nager Bazar and were priced between INR 2,200 to 4,100 per sq ft.

- Demand remained positive and capital values across all the micro markets witnessed minor appreciation in the range of 1 to 3% quarter on quarter. Capital values in Rajarhat recorded an average increase of approximately 8% quarter on quarter. This increase can be attributed to the rising demand in this area due to availability of quality apartment in the affordable price range.

- Rental values in almost all the micro markets witnessed an increase in the range of 3% to 9% over the quarter except in areas like Behela, EM Bypass and VIP Road due to large availability.

- The government has approved Infosys proposal to establish its second campus at Rajarhat, and there is also a financial hub being planned in the same region. Both of these are expected to generate demand for residential real estate in the market in the near future.
PUNE

• The premium residential market of Pune include Deccan, Camp, Boat Club Road, Kalyani Nagar and central Pune. Locations like Hinjewadi, Magarpatta, Hadapsar, Baner, Viman Nagar and NIBM have emerged as ideal destination for residence consist of high end and mid range apartments. Upcoming location in peripheral areas includes Kharadi, Kothrud, Khodhwa, Pimpri Chinchwad, Undri, Wanowari and Pashan.

• During 4Q 2011, various premium projects/phase of projects were completed, including “Rohan Ishita” by Rohan Builders At Mundhwa, “Kapil Tranquil Greens” at Baner and “Kapil Aasmat” at Pashan by Shree Bal Developers, and Mind Space in Wakad by Saffron Realty. These projects were priced in the range of INR 5,000 to INR 8,000 per sq ft.

• In 4Q 2011, several premium projects were launched in locations like Baner, Viman Nagar, Wakad, Fatima Nagar, Mhatre Bridge, Aundh, NIBM Road, Hinjewadi and Pimpri-Chinchwad, projects were priced in the range of INR 5,000 to 8,000 per sq. ft.

• Capital Values remained stable in almost all the micro markets except in Kalyani Nagar, Viman Nagar, Baner, Hinjewadi and Wakad locations, where values increased from 1 to 2%.

• During 4Q 2011, rental values remained stable in almost all the micro markets in Pune, except for locations such as Baner, Hinjewadi, Wakad, Pashan and Balewadi, where an average increase of 4% quarter on quarter was observed. This was primarily due to consistent demand for rented accommodation from the working population in nearby commercial hubs.
RESIDENTIAL SUBMARKETS

Mumbai
The high-end residential real estate markets in Mumbai include Malabar Hill, Altamount Road, Carmichael Road, Napean Sea Road, Breach Candy, Colaba, Cuffe Parade, Prabhadevi, Worli, Bandra, Khar, Santacruz, Juhu and Powai.

Delhi
The prime residential areas in Delhi are in the South region and comprise Vasant Vihar, Westend, Shanti Niketan, Anand Niketan and Central Delhi locations. These areas enjoy proximity to embassies, the airport and central commercial areas - Connaught Place.

Gurgaon
The prime residential locations of Gurgaon include Golf Course Road, DLF Phase I, Sushant Lok and Sohna Road. The Delhi- Jaipur Highway (NH-8) is also emerging as a preferred residential location owing to its proximity to the national capital.

NOIDA
NOIDA premium residential market is comprised of sectors 44, 50, 92, 61, 62, 63, 28, 29, 30 and Taj Express Highway.

Chennai
The prime residential areas in Chennai include Thiruvanmiyur, Valmiki Nagar and Besant Nagar, R.A Puram, Mylapore and Adyar in South Chennai, Nungambakkam, Chetpet, Poes Garden, Egmore, Alwarpet, T. Nagar in Central Chennai; and Anna Nagar, Kilpauk in North West Chennai.

Bengaluru
The residential market of Bengaluru comprises both apartments and independent residences. Currently, high-end residential developments are mainly concentrated along the CBD, and Eastern and South precincts of the city. Recently, Northern Bengaluru has also witnessed a spree of realty activity facilitated by the new International Airport at Devanahalli.

Kolkata
The prime residential areas in Kolkata include PA Shah Road, Tollygunge and Bhawanipur in South Kolkata, Alipore and Behala in South-west Kolkata, Loudon Street and Ballygunge in Central Kolkata; and Salt Lake, EM Bypass and VIP Road in North Kolkata.

Pune
The prime residential areas in Pune include Kalyani Nagar, Viman Nagar, Boat Club Road, NIBM Road, Magarpatta, Hadapsar, Koregaon Park. Recently, increased activities has been witnessed in Pimpri-Chinchwad, Baner-Pashan and Kondhwa.

CITY BAROMETERS
Increasing as compared to previous quarter
Decreasing as compared to previous quarter
Remained stable from previous quarter

COLLIERS RESIDEX
Colliers Residex represents the average secondary sale prices of high end properties. Residex has been derived by rebasing the capital values as 100 as on 1Q 2008.
Cumulative take-up across India’s seven largest cities increased by a modest 8% y-o-y in 2011. Demand was primarily driven by a number of significant deal closures in the first half of 2011, with demand slowing considerably during the second half of the year.

Bengaluru, Delhi, Chennai and Mumbai recorded higher than the average quarterly take-up during Q4 2011, while the other Indian markets reported weaker occupier sentiment.

Project completions fell in Q4, by 45% q-o-q, to reach one of the lowest levels in recent years. This reflects declining developer confidence in several markets.

Availability continued to decline in most markets in Q4, as demand for space exceeded new supply.

Interest rates in India appear to have peaked in the wake of a drop in inflationary pressure during the final quarter of the year. However, occupiers remain cautious regarding the business outlook and expansion plans against a backdrop of global uncertainties. The next few months are likely to be critical in deciding the direction of the economy and hence the office real estate sector in the country.

Economic Overview

India’s GDP is projected to have grown at 6.9% q-o-q in Q4 2011 (Q3 of the fiscal year 2011-12), the slowest pace of growth in the last eight quarters (Figure 2). There have been significant downward revisions to the 2011 GDP forecast in recent months, from 8.9% to 6.9%. Downgrades are a consequence of the slow pace of growth in the manufacturing sector which grew by just 2.7% in 2011 as compared to 7.8% last year.

During the last 120 days of 2011, the value of the Indian rupee eroded by 19% against the US dollar (Figure 3). Whilst the depreciating rupee spells good news for exporters and the IT industry in the form of enhanced profit margins, it is a cause of considerable concern to the common man due to the prospect of rising oil prices and to companies with substantial foreign debt on their balance sheets.

India’s annual food inflation dropped sharply to -3.36% for the week ending December 24 2011 as compared to a rise of 0.42% in the previous week, largely driven by a sharp dip in essential commodities prices.

The Reserve Bank of India (RBI) has indicated that interest rates have now reached their peak. Reduced inflation and the consequent advisory to the RBI from the Prime Minister’s Economic Advisory Council to reduce interest rates should provide some good news for the new year.

India real estate overview

Bombay Stock Exchange’s Realty Index has continued on its downward trajectory since October 2011. Its value has
eroded by a third in the last six months (Figure 4).

Y-o-y, FDI in real estate has been declining significantly over the last three years (Figure 5).

Several private equity players are planning exits in 2012 as more and more investments enter their final phase, putting pressure on builders.

The Cabinet-approved Draft Land Acquisition and Rehabilitation & Resettlement Bill 2011 was not discussed in the Winter Session of the Parliament in 2011, further delaying the enactment of this important bill for the real estate sector.

Seven cities’ snap shot
The total stock of commercial Grade A office space in India’s seven largest cities in 2011 stood at 370.24 million sq ft as compared to 335.40 million sq ft in the previous year, an increase of 9.4% y-o-y (Figure 6).

Kolkata witnessed the highest increase (of 16.5%) in stock y-o-y followed by Pune and Delhi NCR at 14.1% y-o-y and 13.7% y-o-y respectively.

Bengaluru witnessed the lowest increase of 5% in stock y-o-y followed by Hyderabad and Chennai at 7.4% y-o-y and 7.8% y-o-y respectively.

Hyderabad witnessed the sharpest fall of 41.2% in new supply y-o-y followed by Chennai and Mumbai at 17.7% y-o-y and 13% y-o-y respectively. Pune witnessed the highest increase of 53.8% in new supply y-o-y followed by Delhi NCR and Kolkata at 39.8% y-o-y and 21.5% y-o-y respectively.

Overall, availability increased marginally by 5.31% y-o-y. The total availability stood at 83.04 million sq ft in 2011 as compared to 78.86 million sq ft in 2010. Mumbai witnessed the highest increase of 30.25% y-o-y and Bengaluru witnessed the sharpest fall of 18.9% y-o-y (Figure 7).

Overall take-up stood at 36 million sq ft for 2011, representing an increase of 8.8% from last year. Except for Mumbai and Pune all the other five cities covered in this report saw an increase in y-o-y take-up. Mumbai witnessed the sharpest fall of almost 30% y-o-y followed by Pune at close to 25% y-o-y. Bengaluru saw the highest take-up of 11 million sq ft in 2011 followed by Delhi NCR and Mumbai at 6.03 million sq ft and 5.6 million sq ft respectively (Figure 8).
Delhi NCR

Occuper demand remained relatively subdued in Delhi NCR in the final quarter of the year, with take-up reaching 1.59 million sq ft, an increase of 28% q-o-q. This took total take-up for 2011 to 6.02 million sq ft, representing an increase of 14% from last year (Figure 9). Except in Q1, where the demand was driven by varied sectors, the traditional IT/ITES sector drove demand throughout 2011.

Cautious occupier sentiment resulted in only a marginal decline in the availability ratio which fell by 1% q-o-q and 4.6% y-o-y. Overall availability stood at 31.1% of total stock in Q4 (Figure 9). Availability levels declined across all key micro markets except in Delhi SBD, where it increased by 22% q-o-q due to the addition of 0.55 million sq ft of new supply.

Q4 saw an overall increase in new supply by 21% q-o-q as some projects that were delayed in previous quarters got ready for fit-out. This took new supply in 2011 to 7.75 million sq ft and total stock to 64.53 million sq ft (Figure 10).

As expected, overall rents remained stable across all micro-markets of Delhi NCR in Q4 (Figure 11). Looking at 2011 as a whole, the CBD witnessed a rental increase of 17% y-o-y followed by SBD and PBD at 6% y-o-y and 5% y-o-y respectively. Given that most of the work-in-progress deals of 2011 closed in Q4, new demand is expected to be moderate in the next couple of quarters and this will restrict rental growth.

The Ministry of Housing and Urban Poverty Alleviation released the draft Real Estate (Regulation & Development) Bill on 9 November 2011 inviting comments from state governments, stakeholders and experts. The Bill is aimed at safeguarding the consumers’ interest and is expected to bring more transparency in the process of sale and purchase of property.

Both commercial and residential activity in Delhi NCR is expected to stay subdued over the next few quarters due to uncertain economic conditions both globally and at the national level.
**Mumbai**

In Q4 2011, office take-up in Mumbai was 1.20 million sq ft (Figure 12), resulting in an annual take-up of 5.56 million sq ft, a 31% decline compared to 2010. The y-o-y decline in take-up can be primarily attributed to low take-up from the IT/ITES sector. In addition to economic uncertainty, activity from the IT sector has also been influenced by the local real estate dynamic. Suburban and peripheral locations (which provide a rental range of USD 1-2 per sq ft per month) have been historically preferred by the IT/ITES companies for banking and non-banking operations. However, the lack of reasonably priced large IT and Special Economic Zone space in these markets coupled with higher rentals in the Off CBD market meant that demand was not translated into actual deals and take-up from IT/ITES companies reached its lowest level in three years in Q4.

With take-up and new supply largely offsetting each other, the availability ratio remained stable in Q4 at 24% (Figure 12). However, this presents an increase on the same period in 2010 when the availability ratio stood at 20%.

Constrained availability of finance coupled with subdued demand and already high availability has fed through to a reduced supply pipeline in Mumbai. Only circa 966,000 sqft of new space came on line in Q4 (Figure 13), taking total new supply in 2011 to 9.84 million sqft – a drop of 13% compared to 2010.

With leasing activity losing momentum over the previous two quarters, office rents remained virtually unchanged across all micro markets in Q4 (Figure 14). At current take-up levels, it will take about six to nine months for the market to absorb existing Grade A vacant space, not taking into account upcoming new supply. As a result, rental values across most micro markets are likely to remain stable in the short term.

**Bengaluru**

Bengaluru recorded the highest level of take-up among the main seven cities in Q4 2011, at 3 million sq ft and representing a 25% increase compared to the previous quarter. This took annual take-up to a substantial 10.7 million sq ft, an increase of 32% y-o-y. This was in line with earlier projections, as the market was particularly active for the most part of the year (Figure 15). However, we do not expect this level of demand to be sustained in 2012, as a number of firms have adopted a more cautious approach to space expansion due to the limited visibility on growth in 2012.

The availability of office space in the city declined progressively through 2011 on the back of robust deal closures and relatively limited new supply. At 16% of total stock, availability is now at the lowest level since Q4 2008; a consequence of demand outstripping new supply...
throughout both 2010 and 2011 (Figure 15). However, this trend of progressively falling availability is likely to reverse in 2012 and 2013 due to the large amount of new supply scheduled for completion during the period coupled with a moderation in demand.

A total of 0.8 million sq ft of new supply was made ready for fit-out during Q4. The total new supply during the year stood at 4.2 million sq ft, a y-o-y drop of 4%. The period 2008 to 2010 generally saw fairly subdued construction activity which fed through to this low figure. However, around 15 million sq ft of new supply is scheduled for completion in 2012 and demand is unlikely to match the amount of new space coming on stream (Figure 16).

As a result of strong demand in the CBD, supported by the opening of the new Metro rail, CBD rents increased by circa 6% q-o-q in Q4. By contrast, rents in the SBD and PBD submarkets remained unchanged. Rents in these districts are expected to remain weak during the first half of 2012 (Figure 17).

Limited floating demand for space and our interaction with various market participants indicate that the momentum in deal closures seen in 2011 is unlikely to be sustained through 2012. However, a quick reversal in monetary policy, in the wake of easing inflationary pressure and a solution for the European debt crisis, might induce confidence in the market place in the coming months.

Chennai

During Q4 2011, office take-up in Chennai reached 1.2 million sq ft, a sharp increase from the level seen in the preceding quarter. With this, total office take-up for 2011 exceeded 4.2 million sq ft, a 13% y-o-y increase (Figure 18). The monetary policy measures introduced in early 2010 to tame high inflation appear to be working as inflationary pressures showed signs of easing towards the end of 2011. Any signs of a reversal in policy in the coming months is likely to improve market sentiment which was relatively cautious for the most part of 2011.

The city-wide availability ratio decreased to 25% during the final quarter of the year, a q-o-q drop of two percentage-points (Figure 18). Indeed, the availability ratio in Chennai progressively declined throughout the course of the year, from 29% at the end of Q4 2010 to the current level on the back of limited new supply.

During Q4, no new supply was introduced to the market and the total stock of Grade A office space stood at
47.7 million sq ft at year-end. Development activity was slow throughout the year and this was reflected in a 35% drop in new supply compared to 2010, with new supply reaching 3.5 million sq ft at year-end (Figure 19).

Average rents across the various micro markets remained unchanged in Q4 due to the prevailing economic climate and limited floating demand. A number of key occupiers appeared to be taking a cautious approach in the wake of global and domestic economic uncertainties, waiting for more visibility on their business growth in 2012 before making any decisions regarding expansion plans. Though overall market sentiment is one of caution, recent earnings estimates of a number of firms do not point to any downgrading of earnings projections for 2012. Hence the demand for office space in the city is expected to remain stable, though any significant increase from current levels is unlikely. Due to the large development pipeline scheduled for completion in 2012, rental appreciation, if any, is expected to be modest (Figure 20).

The overall availability ratio moderated slightly in Q4 owing to a significant portion of new supply already being pre-committed and generally buoyant take-up. Nevertheless, it remains high at 26%, a y-o-y increase of two percentage-points as compared to end of 2010. With no new supply, leasing activity in the CBD and Off CBD submarkets was restricted to churn by existing tenants. As a result, these precincts have much lower availability ratios, at 7% and 9% respectively.

With sufficient supply of “ready to move” space to cater to existing demand in the short term, most developers slowed down projects under construction and consequently only

Pune

Pune recorded 0.51 million sq ft of office take-up in Q4 2011 (Figure 21). After witnessing renewed momentum in the first half of the year, leasing activity slowed during the last few quarters. This led to a 28% drop in take-up y-o-y to reach 2.42 million sq ft. Although the IT/ITES sector continues to dominate office demand in the city, the level of activity originating from this sector has slowed reflecting concerns over the global economic environment. However, the engineering and logistic sectors remained active, albeit with the majority of demand being driven by relocation and consolidation strategies.

V Pune recorded 0.51 million sq ft of office take-up in Q4 2011 (Figure 21). After witnessing renewed momentum in the first half of the year, leasing activity slowed during the last few quarters. This led to a 28% drop in take-up y-o-y to reach 2.42 million sq ft. Although the IT/ITES sector continues to dominate office demand in the city, the level of activity originating from this sector has slowed reflecting concerns over the global economic environment. However, the engineering and logistic sectors remained active, albeit with the majority of demand being driven by relocation and consolidation strategies.
619,000 sq ft of new supply entered the market in Q4, the lowest level recorded for some time. Due to the strong new supply in the first half of 2011, the new supply for Pune grew in 2011 (Figure 22). Suburban locations like Aundh, Hadapsar and Kharadi accounted for the majority of new supply (76%) in 2011, which largely comprised small developments.

Developers have refrained from any increase in rentals owing to the large upcoming supply coupled with already high availability levels and the cautious economic environment. As a result, rentals remained stable across most micro markets in 2011 (Figure 23).

The short term outlook for office real estate market in Pune is expected to remain cautious owing to subdued take-up from the IT/ITES sector amid the weak global economic outlook. Despite some projects being postponed, the large supply pipeline is expected to outstrip demand across most micro markets and this is likely to prevent any significant upward movement in rents in 2012.

Kolkata

Kolkata witnessed total take-up of 0.49 million sq ft during Q4 2011, representing a drop of 63% q-o-q (Figure 24). The slowdown in demand can be attributed to the cautious approach adopted by many IT companies regarding expansion plans against the backdrop of the European debt crisis and the cautious outlook for the US. Take-up for the year as a whole reached 2.65 million sq ft, considerably more than the 514,000 sq ft in 2010.

The overall decline in take-up in Kolkata in Q4 was driven by a 65% q-o-q drop in take-up in PBD. Elsewhere, the micro markets witnessed a rise in demand. In particular, Rajarhat and Salt Lake continued to witness strong activity, although slightly less than during the previous quarter. The IT/ITES sector remained the primary driver of demand in 2011.

With moderate levels of take-up and restrained new supply, the overall availability ratio declined to stand at 18.8% in Q4 compared to 22.8% one year earlier (Figure 24). The availability level in the CBD dropped by 18%, followed by SBD and PBD at 10% and 6% respectively.

Overall rentals remained stable across all micro markets except for the CBD, which witnessed a strong jump of 9% q-o-q to INR95 per sq ft per month. This increase in rental can be attributed to demand for Grade A space being met with no new supply and thus filtering through to limited availability. The SBD witnessed a rental increase of 10% from last year, whilst rents in PBD showed a more moderate increase of 4% in 2011 (Figure 26).
Demand in the commercial market is expected to remain subdued on account of weak global and domestic economic indicators. Except for CBD rents which are forecasted to increase, rents across SBD and PBD are expected to remain stable due to available vacant stock and the strong supply pipeline.

**Hyderabad**

Hyderabad saw a drop in demand for office space in the last quarter of the year as a number of companies slowed down or postponed their expansion plans on the back of global economic woes, local political instability and domestic uncertainties. Total take-up for the quarter reached 0.35 million sq ft representing a drop of 38% q-o-q (Figure 27). This took total take-up for 2011 to 4.1 million sq ft, a marginal increase of 2% y-o-y. As anticipated at the beginning of the year, the momentum in deal closures seen during the first half was not sustained in the second half of the year.

The availability rate stood at 10.6% at the end of Q4, a marginal increase from the previous quarter due to limited market activity with no large deal closures and some consolidation amongst occupiers (Figure 27). Availability levels are likely to increase further during 2012, as demand is unlikely to offset the large supply pipeline.

The total Grade A stock in the city remained unchanged during the last quarter of the year at 26.4 million sq ft as no new supply entered the market. A large amount of new supply (over 6 million sq ft) is scheduled for completion in 2012 (Figure 28). However, in the light of lack of demand in the current market conditions, developers could decide to phase some of this into 2013. Most have already begun to slow down the pace of development of projects.

Office rents remained stable across all micro markets in Q4 on the back of slowing demand. During 2011, rentals in the PBD micro market saw growth of 5% y-o-y, while rents in the other micro markets were stagnant (Figure 29).

Hyderabad has consolidated its position as one of the most suitable destinations for IT/ITES operations in India over the last few years, due to the availability of a good pool of talent, good infrastructure and government support. Hence, we expect to see an improvement in demand for office space in 2012, as long as political issues do not flare up thus causing business interruption. The rentals are expected to see marginal upward movement in 2012.
Micro markets rental cycle

**Legend:**

<table>
<thead>
<tr>
<th>Recession</th>
<th>Recovery</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Rents falling at accelerated pace.</td>
<td>- Rents remain stable or increasing at stable pace.</td>
</tr>
<tr>
<td>- Increase in availability levels.</td>
<td>- Moderation in availability levels.</td>
</tr>
<tr>
<td>- Supply outstrips demand.</td>
<td>- Buoyant demand.</td>
</tr>
<tr>
<td>- Slowdown in construction. No new project launches</td>
<td>- Renewed momentum in construction. New project launches.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expansion</th>
<th>Slowdown</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Rents increase at accelerated pace.</td>
<td>- Rents remain stable or drop marginally.</td>
</tr>
<tr>
<td>- Drop in availability levels.</td>
<td>- Stable availability levels.</td>
</tr>
<tr>
<td>- Strong demand.</td>
<td>- Stagnant demand.</td>
</tr>
<tr>
<td>- Renewed momentum in construction. New project launches.</td>
<td>- Supply ahead of demand but with no new construction.</td>
</tr>
</tbody>
</table>

**Q4 2011 Office market cycle analysis:**

Major Indian cities remained highly segmented from a rental and demand recovery perspective. While cities such as Delhi NCR, Bengaluru and Chennai witnessed buoyant occupier sentiment, the other markets remained relatively subdued.

CBD micro markets across all geographies, except for Mumbai and Chennai which remained fairly stable, witnessed a significant increase in rents in 2011 as a whole owing to limited new supply and buoyant demand. Leading the gains, Delhi-NCR and Bengaluru recorded annual rental increases of 17% and 13% respectively. This can be attributed to sustained demand coupled with diminishing availability.

The most active markets were the peripheral sub markets with take-up largely driven by the IT/ITES and BFSI sectors.

Over the next three to six months, we expect most office markets to remain ‘tenant favourable’. However, the global slowdown and uncertain regional economic environment will impact the financial and IT/ITES sectors. With reduced leasing activity from these key demand drivers, the gap between supply and demand will moderate the pace of rental growth.
The Land Acquisition Bill, 2011 attempts to remove some of the shortcomings and authoritarian approach of the colonial Land Acquisition Act of 1894. It obliges the private companies to give relief and rehabilitation packages to displaced people even if they directly buy land from land owners for all transactions over 50 acres in urban areas and 100 acres in rural areas. The highlights of the new Bill are given below:

**Land can be acquired by government:**

i). For its own use  
ii). To hand over land to private companies for public purpose  
iii). For use by private companies for certain declared activities  
iv). Public Purpose (when consent of 80% affected families not needed)  
v). Strategic purpose  
vi). Infrastructure and industry  
vii). Natural calamities  
viii). Rehabilitation and resettlement  
ix). Land for railways, highways, ports, power and irrigation purposes

Consent of 80% families is necessary who will be affected by land acquisition for private companies. The compensation is proposed to be:

- For rural areas: Not be less than four times of original market value
- For Urban areas: not less than twice that of market value

**Acquisition of multi-crop land**

- Allowed upto 5% in a district with riders.
- States are free to frame their own laws and if they so desire, are free to improve upon the provision stipulated under the proposed bill. It allows flexibility to the state government on whether or not to intervene on behalf of private players in land acquisition.

- The urgency clause can only be invoked for national defence and for security purposes, and also in the event of emergencies or natural calamities.

- Farmers will get four times the market price in the rural areas while in the urban areas, it will be double the market price.

- The R&R package will be applicable when the private parties acquire 100 acres or more land in the rural areas and 50 acres or more in urban areas.

- The R&R for those subsisting on the acquired land will be applicable to those who have been eking out a livelihood for at least three years on that piece of land.

  - The purpose of acquisition cannot be changed. The Bill, however, allows transfer of land with the approval of state government; if the transfer is made without any development of the land, the farmers will have to be paid 20% of the appreciated value. The bill specifies timelines for the payment of compensation. The price of land has to be paid within three months of the award, and the other monetary compensation within six months and the infrastructure entitlement under the R&R package within 18 months. Penalties will be levied on violation.

  - Apart from subsistence allowance, 20% of appreciated value within 20 years to be shared with original owner.

  - For those who have lost livelihood, apart from subsistence and one time resettlement allowance, mandatory job for one person per affected family or Rs 2,00,000/-.
  
  - Separate allowance for SCs and STs.

While the 2011 Bill has many positive features, it also raises certain issues, some of which are the following:

1. **Optimum Use of Land to Minimise Acquisition**: The acquisition of agricultural lands should be minimised. This needs working out the norms for areas required for industry, housing, infrastructure/roads/sub-stations, etc. These should be based on compact, smart development with higher FAR/FSI. Conversion of agricultural areas which cause sprawl such as ‘Farm Houses’ may be discouraged.

2. **Planned Development**: The Bill does not address the issues of fragmentation, sub-division and unplanned conversion of agricultural lands, which is happening in the States under their Revenue Acts, Municipal and other Acts. The Bill should relate acquisition with land use conversion and colonisation which conform to an approved District Plan/City Development Plan. This is necessary to control the urban sprawl, speculation and unsustainable, ad-hoc, unplanned urban growth. The concept of Development Right (DR) and Reservation for public purpose (common facilities/greens), etc. may
be institutionalised through the Act. The Central and State Governments need to revisit land acquisition and land use conversion policy so that the agricultural multi-crop land is not put to speculative, urban use.

3. Displacement: The bill provides for long term obligations and liabilities against land acquisition by the developer. This will generate huge administrative work and also create bottlenecks in transfer/sale of properties.

4. Compensation issue: The Bill increases the compensation significantly and it is not clear how the problems of delays and corruption in payment process will be taken care of. These needs to be addressed with accountability of the official agencies.

5. Acquisition for private companies: Present Bill provides for ‘partial’ state acquisition for companies, which raises some doubts. This needs to be more clear.

6. Private purchase: Bill needs to address more clearly to the issues of surrogate purchase of land under the power of attorney, MOU, partnerships and joint ventures, which need to be regulated by the Act.

7. Food Security and land use: Change of land use from agricultural to non-agricultural should also address the issue of food security.

8. Public purpose needs to be defined more clearly, obviating scope of interpretations and misuse.

9. Rehabilitation: ‘Land for Land’ principle figures only in case of irrigation projects, which also needs to be adopted for infrastructure, industrial and urban development.

Although the involvement of the private sector and PPP mode of urban development have helped in harnessing larger resources and investments, it has also promoted speculation of land and raised the issues of livelihoods, equity and justice. In view of the recent agitations and court cases, the state governments also need to revisit their land acquisition policy, which should balance between development objectives and a fair deal to the farmers/land owners.

**Alternatives to Public Sector Acquisition**

As the acquisition of land under Land Acquisition Act is becoming difficult, there is a need to explore new options to prevailing practice of large scale land acquisition. This needs new ways of planning and development together with interlinked delivery of social housing, community facilities, infrastructure services and public roads, greens, etc. We have to shift from subsidy regime to an era of equity and inclusive development.

Private sector participation (PSP) and Public-Private Partnership (PPP) in land assembly and development are being increasingly adopted all over in view of a) difficulty in land acquisition under Land Acquisition Act, 1894, b) to generate private sector resources by a market led approach, c) land monetization so as to improve the finances for investments in social projects, infrastructure services, public transport, etc., and d) to meet the growing demands of urbanization.

The scope of PPP/PSP covers urban renewal of built up areas, green field development, infrastructure services and public transport, slum rehabilitation, redevelopment, housing, commercial, industrial and recreational areas, etc. Its objects include the following:

i. Promoting Planned development
ii. Optimum use of land, sustainable development and conservation of transport.
iii. Development of Infrastructure Services, Social Amenities and Public Greens.
iv. Social Housing delivery
v. Sustainable, efficient use of land and natural resources
vi. Equity for small land holders
vii. Land Monetisation

- Mobilising financial resources by recovery of FAR charges, Development charges, Conversion charges, Betterment Levy, etc.
- Devolution of recoveries for Infrastructure Development/Public Agencies for public services, urban transport, Greens and Social Housing
- Property development for financing of public transport and Innovative Services
- Land Infrastructure Bundling
- Optimum development and densification
- Using TDR and Accommodation Reservation tools for land acquisition for circulation, public amenities and greens.

**Public Private Partnerships**

Public-private partnerships in urban development are being promoted by the government by an enabling policy framework. The Centrally sponsored JNNURM and various other schemes are based on a partnership approach in which the Central and state governments share the project cost. To mobilise private sector and institutional resources and get multiplier effect from budgetary allocations, strategy aims to optimise the potential of development together by innovative management options. To make PPP in urban sector more relevant for inclusive economic growth, there is a need to work out a package of following policy reforms:

- Ensuring integrated and inclusive development
- A transparent, corruption free regime, adoption of computerised property titling, planning and building plan approval and e-governance.
- Adoption of technology and systems approach to enhance productivity and quality.
- Regulatory system to control land prices, to protect consumer rights
and streamline the real estate management and maintenance practices, and bringing all the organizations on a common platform by a unified regulatory authority, for issue of approvals/NOC, etc. for planning/redevelopment, housing and building projects. Promoting sustainable development by strategies and plans of urban mobility, green buildings and infrastructure.

- Revisiting legal framework, rationalising taxes and redefining the public purpose under the Land Acquisition Act, 1894.
- Systematic devolution of EDC, Conversion charges and Betterment levy to service agencies together with Central/Plan and State funds for timely and quality infrastructure and transport development.

The new thinking is based on the recognition that urban land is the most valuable asset, which has often been squandered, misused or undervalued, which can be used as a resource for financing of urban development. As such planning should focus upon the policies and procedures which offer flexibility of use, development controls and preparation of plans by the users and owners. To ensure quality of life, mandatory provision of public greens @10 sq.m. per person, social infrastructure @ 10 sq.m. per person and public roads/parking @ 10 sq.m. per person should be ensured on a sliding scale; distributed at 5 levels of urban hierarchy. FAR/FSI and land use should be linked with the mandatory reservation of public uses and greens.

Land management involves coordination among the local, state and central governments and the disciplined of urban planning, engineering, finance, legal, housing and management. Vertical and horizontal linkages for coordinated spatial, financial and infrastructure development can be achieved by Capital Investment Folio (CIF), similar to what was developed for the Metro Manila Commission in the early 1980s. The CIF approach can help in coordinating the phasing of spatial plans with infrastructure investment strategies and allocating responsibilities for action. CIF also envisages the consideration of sustainability factors, e.g. forms of urban expansion which minimize energy use, minimize development on high value agricultural land, avoid vulnerable groundwater resources, optimize use of land (e.g. mixed use areas, redevelopment and densification, multiple uses of buildings, etc.). As such the preparation of urban plans should be based on financial planning and decentralised decision making structure within a strategic framework. There is a need to develop effective mechanisms for linking spatial planning to financial, economic and sectoral planning, in addition to regional coordination.

Cross Cutting Issues

Related to PPP in urban development, there are important cross-cutting issues concerning land policy:

- Land and Transportation Planning Integration – Transport planning is one of the most effective ways of guiding city expansion, restructuring, development controls and land use.
- Provision of major transport corridors/external/peripheral infrastructure services prior to real estate development.
- Sustainability Issues – land development involves the critical issues of environmental, financial and institutional sustainability.
- Informal Sector – The informal sector requires attention, equal rights and space in land development and management.
- Regional Context – various aspects of land development should be viewed in a regional context covering the services, networks and linkages such as water, power and drainage, transportation and environmental-development interactions.
- Institutional Coordination – land management involves the coordination among many public and private institutions. There is a need to clearly define the roles and functions of the organisations involved in land management.
- Redevelopment of old, unplanned areas, unauthorised colonies, in-situ slum rehabilitation with incentivised development rights through PPP
- Legal frame and its compliance together with process reforms, one window/online approval, licensing regime and enforcement framework.

Process Reforms

The land policy needs simultaneous process reforms for better control over time, bridging gap between demand and supply, overcoming delays and cost overruns, time-bound action planning and effective monitoring. Technological standards and specifications of infrastructure, construction, maintenance have to be reoriented for energy and environment concerns. New contracting procedures have to be evolved for efficiency, quality of service, delivery and transparency.

Reforms in Land Acquisition Act, 1894 have to be viewed in context of promoting planned development by way of partnerships and privatisation while ensuring sustainable and inclusive urban development. This needs adopting a hybrid land policy and an urban planning system that integrates the physical, economic, and social development. There is a need to revisit the existing development control norms and space standards keeping in view the growing economy, land crunch, and changing needs of the people. To fit in the new land policy and PPP framework, it is necessary to streamline and simplify the regulatory framework in order to respond effectively and efficiently to the demands of urban development, infrastructure and housing.
The Real Estate sector will see a quite transformation in 2012. The market itself has matured in a way that was expected in terms of evolution of the Real Estate demand-supply equation. There were multi-pronged economic factors that had been thrust upon us;

A) The effect of the global slowdown. The world economy is interconnected and has repercussions that affect our lives and businesses. As global demand for Indian IT/BPO services and other goods declined last year, the high growth in IT/SEZ did slow down. But I feel this is a fairly resilient sector and will again spur further growth in this area.

B) The price of oil/petroleum has been fluctuating. This has caused increase in the price of the essential construction items. Steel and Cement prices have risen manifold.

C) Rising inflation has led to the RBI getting strict about lending, especially to the Real Estate developers, and raising interest rates on home loans.

D) Strapped for cash, developers had to slow down construction activities.

All the above has led to a certain "sluggishness" in the overall real estate scenario. However, in spite of all this, the luxury segment has hardly been effected in the top metros.

Looking at the current macro-economic scenario, one may expect inflation to come down, and interest rate to stabilise. This will lead to an overall re-surgence of the real estate demand, in the next quarter of 2012.

Prices, however need to be more realistic and in line with the customer’s propensity to invest. The demand (latent) for housing has never gone down. There are MILLIONS of houses to be built. But the question is what price and for which segment.

There is a political will for "inclusive growth". If we are to build modern mega-metropolises, then one must plan for good quality "Affordable Housing". This is as everyone knows, is a much touted word. It is a relative word. If we slide past the official government version of "affordable" then, from a realistic point of view any flat in Delhi/NCR would be priced at around Rs 25-40 lakhs would be in the 'affordable sector'. For this genre to succeed, must construct an acceptable quality standard. Most definitely new technologies will need to be applied, using pre-fabricated materials and components.

All this provides the real estate industry with new opportunities to create different business modules. Schemes which combine multi-use, mini-towns. Developing "hub-spoke" pattern of habitats.

Innovation is required not only in the way we build, but also in the way we fund the development. In the past, developers were over leveraged and dependent only on banks to bail them out. The future will see the entry of many asset managers and overseas companies like TEMASEK(Singapore), KHAZANA (Malaysia), Blackstone etc. They are showing renewed interest but on different terms. The spirit of SPVs and JVs are back in fashion where the large investors not only have equity but some measure of control on the construction and employment of funding.

The local and central government must play an important role. The ways of PPPs and SEZs, and growth-oriented zones are very much the order of the day.

It is imperative for the government to play its role in this. One is encouraged to see that this seems to be happening at the Bureaucratic as well as Ministerial levels.

The game is changing and we must change with it! New players and old players with new skills and professionals are coming to the fore. Our time has come!
The Capital City Delhi is a “Air Pollution Capital too” or Difficult to Breathe Easy in the “Breathless National capital”

Kamal Meattle

C.E.O of Paharpur Business Centre and Software Technology Incubator Park

Delhi’s air during winter has again become almost synonymous to smog, smoke and pollutants in the air.

With the arrival of winter, it has become more difficult to breathe due to the presence of toxic gases like Sox and Nox, Volatile Chemicals (VOC’s) like Formaldehyde besides high Respirable Suspended Particles in the air (RSP’s – PM 10 and PM 2.5).

Delhi’s population lives with high levels of air pollution mostly from vehicles. Therefore, they are prone to physical disorders.

Almost all the parts of the Capital region are enveloped by the dense smog caused by pollution.

Smog has reduced the visibility because of high moisture in the pollution. The air pollution enters human lungs, increasing the number of people with respiratory symptoms, among the residents of Delhi.

Even the level of Nitrogen Oxide, is once again on the rise.

The smog is created by burning coal and heavy oil that contains sulfur impurities in power plants, industrial plants etc. It consists mostly of a mixture of sulfur dioxide and fog. Smoggy weather is due to a weather phenomenon called inversion due to cold air.

The ever-increasing vehicular pollution has led to increase in the rate of asthma and cancer.

Delhi’s poisonous air makes its citizens more vulnerable to heart diseases, chronic bronchitis, Asthma and lung cancer. Increase in the number of cars in NCR has aggravated the level of pollution. Particulate air pollution is responsible for occurrence and severity of respiratory diseases. One of the major causes of both indoor and outdoor air pollution is Volatile Organic Compounds (VOCs). VOCs are found within a wide range of consumer products, including solvent-based paints, printing inks and Diesel / Petrol and CNG.

Effects on health due to Air Pollution

While measuring the effects of air pollution, more attention has to given to particulates, especially those particles measuring less than 2.5 microns (PM 2.5) and 10 microns in diameter (PM 10) which are retained in human lungs and find their way into blood streams.

Air pollution affects our health in many ways - short-term and in long-term. Different groups of individuals are affected by air pollution in different ways.

Symptoms like eye irritation, headaches, uneasy breathing are among short term effects. It can also cause nausea and various allergic reactions in different parts of the body.

Long term effects are lethal. It can cause chronic respiratory diseases, heart disease and cancer. It can even damage the brain, liver and kidneys.

Young children are affected most as their respiration rate is nearly twice that of adults.

Effect on Agriculture

Agricultural crops get affected when exposed to air pollutants. Ozone is the main pollutant in the oxidant smog complex which has deteriorated yield and quality of crops. With the destruction and burning of the rain forests more and more, CO2 is being released into the atmosphere. Pollutants such as sulfur dioxide, nitrogen oxides, ozone and peroxayil nitrate (PANs) cause direct damage to leaves of crop plants and trees when they enter leaf pores (stomata’s).

Delhi is amongst the worst major cities in the country, when it comes to air pollution, despite the use of CNG vehicles, Metro and increasing forest cover in the Capital.

Ozone is a gas created by nitrogen dioxide or nitric oxide when exposed to sunlight. Ozone causes damage to trees and crops. It leads to chlorosis which is stunted growth in plants and withered leaves.

Sulphur dioxide destroys the edges of leaves; it appears whitish, bronze and reddish in color.

Compounds containing fluorine in the air affects the growth of the young plants; it also causes motting of leaves and scorching the edges of leaves of the plants.

Measures on reducing pollution

It has become essential to reduce air pollution in the Capital.

We can follow the concept of Reduce-Reuse-Recycle.

Catalytic Oxidizers can be placed in the exhaust system of cars to reduce emissions from the exhaust pipe, which oxidize many unburnt hydrocarbons from an engine which in turn leads to cleaner emissions from cars.

Biofiltration is another method to control the pollution, in which pollutants are biologically despoiled using microorganisms.

Activated Carbon is also a popular air pollution control method. It is the most common forms of carbon treatment in air pollution control by carbon adsorption.

Walking, carpooling, bicycling etc can be followed when possible.

We can recycle the newspapers, aluminum, and other materials.

Indoor premises can be kept fresh and clean with the concept of Indoor Air Quality, which is quality of air surrounding the building, where the air is cleaned by treating it with plants. Indoor air quality can have a profound effect on a person’s well being because we spend so much time indoors.

Planting trees and spreading among others to adopt it should be promoted.

Pollution continues to be one of biggest challenge for the capital.

Our effort can help us in reducing the level of air pollution, to make it a clean and green place.
Investment into residential property projects is currently the preferred route for investors, since the demand for homes in the metros and Tier II cities is virtually limitless. Commercial and retail spaces also present potentially lucrative investment propositions, especially in the larger cities.

The returns in the residential property sector are significantly lower (4-6%) than those in commercial spaces (10-12%). Residential property investment is comparatively low risk/return options, while retail is a moderate risk/returns option. However, capital values are higher in commercial and retail spaces, so they represent larger investments. Moreover, it is more difficult to exit in the case of commercial spaces.

In commercial spaces, it is best to invest in existing, fully-leased assets by reputed developers. The best cities for commercial space investment are Mumbai, Bangalore, Pune, central Delhi and Gurgaon and Noida in the NCR region. Projects in the CBD areas of the prime cities are obviously the most lucrative in terms of ROI, but office properties in these areas are extremely cost-intensive.

For investors with more moderate budgets, the secondary business districts are more realistic options. Nevertheless, it is inadvisable to invest into any commercial property without first getting at least two expert opinions. This is especially true with under-construction projects, because many developers are cash-strapped on account of the current liquidity crunch. Projected completion dates may not materialize.

In residential property investment, the focus should be on properties that have potential for assured rental yields and capital appreciation. This includes residential projects close to workplace catchments, industrial hubs and locations with high aspirational value. The Tier I cities of Mumbai and Delhi and Tier II cities such as Bangalore, Pune and Chennai are seeing the highest demand by investors. In broad terms, the configurations in greatest demand are 1 and 2BHK flats in the central areas as well as the suburbs, while 3BHK flats in good township projects on the outskirts are also a good option.

As with commercial real estate, investors need to take informed decisions on under-construction residential projects, regardless of location and developer. The same negative financial dynamics that are compromising completion dates of many office buildings hold true for residential projects, as well. If an investor decides to avail of the lower rates of an under-construction residential project, he should ensure that at least 50% of the available units in the project are already sold and that construction has progressed according to schedule is at least at the 50% mark.

Luxury and super luxury housing should be treated with caution as an investment route for at least a year, since demand for such units in many cities is at low ebb at the moment. Investors can take an informed call on certain projects in high-value locations, since there is always a core group of HNI buyers who would purchase units in such projects. However, such a call must be taken only on the basis of extensive local market research.
Implication of Central Board of Excise and Customs Circular dt. February 10, 2012 on service Tax Liability of Real Estate Sector

S Sivakumar
CA and Director, S3 Solutions Pvt Ltd

Introduction

The Central Board of Excise and Customs ('the Board') has come out with a highly controversial Circular dated February 10, 2012 clarifying certain issues related to the levy of service tax on the Realty Sector. The Board has, interalia, expressed the view that, even Developers who do not undertake any construction activity by themselves are liable for service tax effective from July 1, 2010. The Board has also taken the view that Developers/Builders are liable to service tax in respect of 'services' rendered to the Land Owners, in pursuance of joint development agreements. Here is an attempt to critically examine these two most important issues covered in this circular. I've used the term 'pure Developer/Builder' from the factual position that, such Developers/Builders do not carry out the construction activity, which is actually carried out by the contractors. While trying to understand the implications arising out of this circular for the Realty sector, we must bear in mind the fact that, this circular has been issued in respect of construction services and hence, will not affect service providers who have classified their services under 'works contract' services.

Board’s view is that ‘pure Developers’/‘pure Builders’ are liable to pay service tax from 1-7-2010

The most important portion of this circular, dealing with service tax on Developers and on joint development agreements, is reproduced below:

Quote :

2. From the issues referred by the field formations, important ones have been identified, model wise examined and clarified as follows:

2.1. Tripartite Business Model (Parties in the model: (i) landowner; (ii) builder or developer; and (iii) contractor who undertakes construction): Issue involved is regarding the liability to pay service tax on flats/houses agreed to be given by builder/developer to the land owner towards the land /development rights and to other buyers.

Clarification:

Here two important transactions are identifiable: (a) sale of land by the landowner which is not a taxable service; and (b) construction service provided by the builder / developer. The builder / developer receives consideration for the construction service provided by him, from two categories of service receivers: (a) from landowner: in the form of land/development rights; and (b) from other buyers: normally in cash.

(A) Taxability of the construction service:

(i) For the period prior to 01/07/2010: construction service provided by the builder/developer will not be taxable, in terms of Board’s Circular No.108/02/2009-ST dated 29.01.2009.

(ii) For the period after 01/07/2010, construction service provided by the builder/developer is taxable in case any part of the payment/development rights of the land was received by the builder/developer before the issuance of completion certificate and the service tax would be required to be paid by builders developers even for the flats given to the land owner.

Unquote:

The Circular seems to make a strong distinction between pure Developers and Developers who carry out the construction activity by themselves. As per this circular, pure Developers have come into the service tax net with effect from July 1, 2010, in terms of the Explanations added by the Finance Act, 2010 bringing into effect, the concept of ‘deemed services’ under the construction services. When the BOARD says that pure Developers are liable to service tax from July 1, 2010, what it does not specifically state is that, Developers/Builders who carry out the construction activity have been liable to service even for the period prior to July 1, 2010. This is not surprising given the fact that the BOARD has been holding on to this view even before the issuance of this Circular and one would not see anything amiss in this.

However, the Board’s view that, pure Developers/Builders (i.e who do not undertake the construction activity) are also liable from July 1,
2010 might seem unsustainable. In terms of the decision of the Apex Court in State of Andhra Pradesh v. L & T Ltd (2008) 17 VST 001(SC) which has been relied upon by several High Courts including the Karnataka High Court in the Skyline Constructions case (2011) 37 VST 290, a pure Developer who does not undertake the construction activity is not a ‘works contractor’ within the meaning of the VAT law. In these cases, it is the contractor who is treated as the works contractor, liable for payment of tax under the VAT law. Viewed in this context, a pure Developer/Builder, referred to in the BOARD Circular in the tripartite agreement model, cannot be treated as a ‘works contractor’ under most State VAT Laws. In terms of the definition contained in the Finance Act, 1994, for a person to be treated as a ‘works contractor’ under the service tax law, it is a pre-requisite that, he should also be, in effect, a works contractor under the VAT law, in as much as, there should be transfer of property in goods involved in the execution of such contract which is liable to tax as sale of goods. If this view is accepted, a pure Developer who does not undertake the construction activity cannot be treated as a ‘works contractor’ under the service tax law (as he is not a works contractor under the VAT law). Can the pure Developer/Builder who is not a works contractor under the service tax and is consequently not liable to service tax under ‘Works Contract’ services which is a specific head (even by the Board’s own admission vide Circular No. 128/10/2010 dated August 24, 2010), still can be covered under Construction services, which is a generic head, by virtue of this Circular? The BOARD’S view might be unsustainable, in the light of the well-established judicial principle that once a service is exempted under a specific category/head, the same cannot be brought under a generic head. Notwithstanding this, in terms of Section 68(1) of the Finance Act, 1994, service tax can be levied only to the person providing the taxable service. It is highly debatable if the pure Developer, despite not rendering the taxable service, can be brought under the tax net, by a deeming fiction.

Be that as it may, vis-à-vis pure Developers/Builders...... this Circular would seem to have given a quite burial to the famous Circular No. 108/2/2009 dated January 29, 2009, in as much as, by clarifying that even pure Developers/Builders would be taxable from 1-7-2010 despite not undertaking the construction work, the Board is seen to be reiterating the view that, so long the construction activity is undertaken by the Developer/Builder, even partly, service tax is leviable for the period prior to 1-7-2010. It’s the Board’s view that even if the Developer/Builder enters into an agreement of sale of the flat as an immovable property, as contrasted to entering into two Agreements, viz. one agreement for the sale of the undivided portion of the land and the other, for the construction of the flat, service tax would still be leviable so long as the Developer/Builder undertakes the construction activity.

In terms of the current law on levy of VAT/sales tax on sale agreements, in the light of the binding effect of the decision of the Supreme Court in K Raheja Development Corporation v. State of Karnataka 2006 (3) S.T.R. 337 (S.C.), even sale agreements which are also referred to as ‘single agreements’ are liable to the levy of VAT in many States including Karnataka. If a transaction is treated as a works contract within the meaning of the VAT law, it would be very difficult to take the view that, such an agreement is not a works contract for service tax purposes. Hence, it would no longer be wise to go by the view that sale agreements cannot be subjected to service tax. This has been my strong view, even before the issuance of this Circular. However, to levy service tax on pure Developers who do not undertake the construction activity and who are not treated as works contractors under the VAT law, might not stand judicial scrutiny.

**Board says service tax is payable on joint development agreements**

The more obnoxious part of the Circular deals with the levy of service tax on joint development agreements. The Circular makes a highly controversial statement that, Developers and Builders are liable to service tax even in respect of the flats/apartments constructed and exchanged with the Land Owners, under what are typically referred to Joint Development Agreements. In my strong opinion, this view is legally unsustainable.

Let’s first discuss what a ‘joint venture’ is. A ‘joint venture’ is an association of two or more persons to carry out a single business enterprise for profit [Words and Phrases, permanent edition, Vol. 23, p.117] (Cited in (1997) 89 Com Cases 849, pp.867-868). In terms of Black’s Dictionary 9th Edition, 2009 (page 915), “Joint Venture” is a business undertaking by two or more persons engaged in a single defined project. The necessary elements in a joint venture are: (1) an express or implied agreement ; (2) a common purpose that the group intends to carry out; (3) shared profits and losses; and (4) each member’s equal voice in controlling the project. The Accounting Standard No. 27 issued by the Institute of Chartered Accountants of India defines a Joint Venture as a contractual arrangement whereby two or more parties undertaking an economic activity, which is subject to joint control. In terms of the Apex Court’s decision in New Horizons Ltd v. Union of India (1997) 89 Com Cases 849, p.867 (SC), the expression “Joint Venture”
connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks.

It is clear that the joint development agreements entered into between Land Owners and Developers/Builders assume the character of a joint venture, in as much as, the Land Owner brings in the land and the Developer brings in his expertise to build and market the property, for mutual sharing of profits and losses. In most cases, the joint development agreement provides for the exchange of a certain portion of the total built up area by the Developer, in exchange for the portion of the land, in what is essentially a transaction involving a barter. Service tax gets attracted only when there are two parties, viz. the service provider and the service receiver. In a joint venture, the concept of mutuality prevails and there is no service-provider service-receiver concept.

In Initiating Explosives Systems v. CCE, Kolkata-V 2008 (9) S.T.R. 509 (Tri. – Kolkata), the Kolkata CESTAT had taken the view that joint ventures may not be covered by the service tax levy and had remanded the case back, for a fresh look at the facts. In Sunshield Chemicals Ltd v. CCE, Raigad, 2008 (9) S.T.R. 174 (Tri. – Mumbai), the CESTAT had taken the prima facie view that activities between joint venture partners would not result in levy of service tax. In CCE, Chennai v. Sundaram Finance Ltd 2007 (7) S.T.R. 55 (Tri. – Chennai), which has been referred to in many subsequent cases, the Chennai Tribunal had taken the view that the in-house services rendered to the JV partner cannot be treated as taxable services under ‘Management Consultant’s services. In Glaxo Smithkline Pharmaceuticals Ltd v. CCE, Mumbai - 2006 (3) S.T.R. 711 (Tri.) it was held that the reimbursements received towards “staff costs & other expenses & share services” by the appellant-company from their Joint Venture partner were not taxable under “Management Consultancy” defined under Section 65 of the Finance Act, 1994. More importantly, in Puravankara Projects Ltd v. Commissioner of Service Tax 2010 (18) S.T.R. 7 (Tri.-Bang), the Bangalore Tribunal has taken the view that, no services are rendered by the Developer to the Land Owner, in pursuance of a joint development agreement. Hence, the current judicial view is clearly against joint development agreements being subjected to service tax levy.

The well accepted judicial principle of ‘dominant intention’ has been reiterated by the Supreme Court in several cases and notably in the celebrated BSNL case 2006 (2) S.T.R. 161 (S.C.). Is not the ‘dominant intention’ in the case of a joint development agreement, one of partnership between the Developer/Builder and the Land Owner and not one of provision of service? How can service tax be then levied in a transaction where there is no intention to provide a service?

Even the Board has recognized that transactions between two contracting parties, on a principal to principal basis, are not to be treated as ‘services’ in terms of Circular No. 109/03/2009 covered by F. No. 137/186/2007 - CX. 4 dated 23-02-2009. In this Circular which was issued with regard to the applicability of service tax on screening of films by theatre owners, the Board has clarified that under the particular type of arrangement which typically is undertaken between the theatre owners and the distributors of films, a revenue sharing model operates whereby a fixed and predetermined portion/percentage of revenues earned from the sale of cinema tickets goes to the theatre owners and the residual portion/percentage is paid over to the distributors. The Board had clarified that in such a situation, the two contracting parties act on a principal to principal basis and do not provide any services to each other and consequently no service tax would apply. In this rather benevolent Circular, a clarification has been articulated that, in any revenue sharing arrangement, the contracting parties do not provide services inter se to each other but merely come together to jointly undertake an economic activity and to share the economic gains resulting from such activity and hence, service tax cannot be levied. Though this view has been expressed in the context of the levy of service tax on movie theaters, the concept is nevertheless, applicable to the case of joint development agreements, in my opinion. One fails to understand as to how the exchange of flats by the Developer/Builder for part of the land owned by the Land Owner is any different and how can the Board could now take a view that such agreements are taxable, especially, in the light of the views expressed in Circular No. 109/03/2009.

Let’s view this issue from another angle. Assuming, for the sake of argument, that the Developer indeed renders taxable service to the land owner, how does one go about computing the value of such services, considering the fact that the transaction involves non-monetary consideration. As per Rule 3 of the Service Tax (Determination of Value) Rules, 2006, which have come into effect from April 18, 2006, there are two methods that are provided for converting the value of the non-monetary consideration into a monetary value. As per the first method, the ‘gross amount charged’ by a service provider, for rendering a service in the ordinary course of business, would be the amount charged, assuming that no additional
consideration has flown to the service provider. As per the second method, where it is not possible to arrive at the 'gross amount charged', the service provider will have to determine the equivalent money value of such non-monetary consideration, which cannot be less than the cost of provision of the taxable service. Obviously, it is the second method which could get pressed into service, if a view is taken by the Department that the developer indeed renders a taxable service, vis-à-vis the land owner. And, how does one value the services, in a case involving the developer and the land owner, given the stipulation that such value cannot be less than the costs involved? And, how does one go about computing these costs, in the highly complex environment involving real estate transactions? The Board’s view, as articulated in the circular, that the valuation is to be done in terms of rule 3(a) of Service Tax (Determination of Value) Rules, 2006 by comparing the value of other similar flats, seems highly impractical and unsustainable.

Taking this reasoning forward, what would happen if the joint development agreement talks of a token amount to be paid by the developer to the land owner, in addition to the exchange of the built up area with the portion of the land? In this case, can a view be taken that since the part consideration consists of cash, it is the cash element which will form the 'gross amount charged' for purposes of levy of service tax?

Let's look at this from yet another angle. Let's assume that, the Land Owner enters into works contracts with his prospective customers, for selling the flats that he is going to get, as part of the joint development. Surely, these agreements would be treated as works contracts, for purposes of levy of service tax. In the light of this Circular, the Developer/Builder is to be treated as the works contractor in respect of the flats to be exchanged with the Land Owner. Is it logical that the same activity be subjected to the levy of service tax twice... once, in the hands of the Developer and again, in the hands of the Land Owner?

And, finally, the transaction between the Developer/Builder and the Land Owner can be treated as one in the nature of transaction of 'self-service' by the Land Owner. In other words, the Land Owner is employing the Developer/Builder for building flats for the Land Owner himself. The fact that the Land Owner might sell these flats subsequently, would not change the concept of the 'self-service' involved here, in terms of the Board Circular No. 108/2/2009 dated January 19, 2009, referred to in this Circular. Hence, even from this angle, there can be no service tax liability on joint development agreements.

I would wonder if the Board has taken this view on joint development agreements, based on the decision of the Hon'ble Supreme Court in the case of Faqir Chand Gulati vs. Uppal Agencies Pvt Ltd. 2008 (12) S.T.R. 401 (S.C.). In my view, this decision cannot be transported to the service tax law. In this decision, the Apex Court had held that the builder, entering into a joint development agreement with the Land Owner, is to be treated as a service provider, under Section 3 of the Consumer Protection Act, 1986 and the Land Owner is entitled to civil remedies, in the case of default by the Builder. But, we must bear in mind the fact, that the decision of the Apex Court given under the Consumer Protection Act, 1986 cannot be transported into the service tax law, as the CPA, 1986 does not even define the term 'real estate' and hence, this case cannot be made applicable to the joint development agreements entered into between Land Owners and the Developers and Builders.

**Before parting.....**

This Circular would seem to have come out of the blue.... The circular has been without a deep understanding of the issues involved in the case of joint development. The Board would do well to refrain from issuing circulars on interpretation of the finer points of law, which are best left to the judicial forums to decide.

Since this circular is applicable only for construction services, Developers/Builders who classify their services under 'works contract' services would not be required to pay service tax on joint development agreements, as contrasted to their unfortunate counterparts who are classifying their services under 'construction services'. It seems rather strange that, the classification of services under a particular head rather than the actual activity undertaken can determine the taxability of services.

As aforesaid, with the introduction of service tax on works contracts with effect from June 1, 2007, one does not understand the need for the Government to continuously tinker with the existing provisions applicable for construction services.

In many cases, the Adjudicating Officers have passed orders, treating the 'services' rendered by Developers to Land Owners as 'exempted services' and asking these Developers to pay service tax/reverse proportional cenvat credit, under Rule 6(3) of the Cenvat Credit Rules, 2004. Many Tribunals have issued stay petitions on these orders. With the Board singing a different tune now, it is all around confusion.

Realty Players have had no issues paying service tax. All that they are requesting for, is clarity. It is indeed sad that, even after 7 or 8 years of introduction of service tax on Realty sector, the service tax provisions have remained very complex and the latest Board Circular is likely to add to the confusion, rather than to clarify and simplify matters.
In spite of the fact that year after year the Government is trying to simplify and rationalize the Income-tax Law but still there are innumerable provisions in the Income-tax Act which make them appear silly by a large number of tax paying public of India. In this small article an attempt is being made to list down some of these common tax provisions which may be amended in the forthcoming Finance Bill so that a large number of tax paying public of India can get some relief. It is expected that the Hon'ble Finance Minister will surely take care to address these provisions with an open mind specially when the Direct Taxes Code is not expected to be implemented from 1-4-2012. Here are these silly tax provisions as commonly complained by the tax payers.

1. A husband cannot give a gift to his wife otherwise as per the provisions contained in section 64 of the Income-tax Act clubbing provisions would apply and the income of the wife will be clubbed or added with the income of the husband. Is it not unrealistic tax provision? The law should be amended at least now through the Finance Bill to permit some reasonable amount which can be given to the spouse without attracting provisions of section 64.

2. Presently as per rule-3 of the Income-tax Rules, 1962 there exists a complete different set of tax treatment specially with reference to rent free accommodation provided by the employer. While the Government employees pay licence fee and are out from the tax net but the non-Government sector employees they receive rent free accommodation on which they are taxed exorbitantly namely 7.5% or 15% of the salary depending on the population of the town. It is high time that just like race discrimination the concept of employee discrimination should cease to exist in the Income-tax Law. Uniform system of taxing Salary & Perquisites should be introduced and the provisions to this effect should find place right now in the Finance Bill.

3. For all types of tax payers who do not have a house of their own or for the employees if they do not get a accommodation from the employer and they also do not get house rent allowance then they can all enjoy a special tax deduction in respect of the rent paid by them for the house. The deduction is permissible in terms of section 80GG of the Income-tax Act whereby one can enjoy deduction for rent paid upto 25% of the income. This really sounds very good and interesting and brings cheers to the tax payers but the limit is restricted to deduction of maximum Rs.2,000/- per month. The limit remains so for the last so many years hence requires to be changed at least now.

4. Standard deduction as in the past should be permissible to all salaried employees.

5. To save capital gain as per the provisions existing in the Income-tax Law a person can invest in capital gain bonds. As per the provisions of the law contained in section 54EC of the Income-tax law, there is a upper cap of investment under the Income-tax Law which presently is Rs. 50 lakhs. In the past there never was any cap in investment which resulted into property transactions taking place mainly with white money. But couple of years ago the Government by amending the provisions of the law has put cap of just Rs. 50 lakhs for investment in these capital gain bonds. Putting this cap legally is not valid in the eyes of the law. Hence, the cap should be deleted.

6. The exemption limit for senior citizens is Rs.2,50,000 per annum. This is pretty very good in comparison with a normal individual tax payer. However, the poor senior citizen as soon as the income exceeds Rs.2,50,000 per annum is required to make payment of income-tax @ 10% on income upto Rs.5 lakhs. Hence, the slabs of income-tax should be realigned in all fairness for providing benefit to the senior citizens in comparison with other tax payers.

7. The Finance Minister generally increases the exemption limit once in a while. The question that remains to be answered in a
realistic manner is why should not the Income-tax initial exemption limit be realigned in tune with the day to day minimum expenditure of a person earning the income. If this aspect is taken into account then surely the minimum exemption limit in all fairness for individual tax payers should be Rs.2 lakhs per annum. It is these unrealistic exemption limits which are responsible for tax evasion in the country. If the Finance Minister were to consider the realistic situation and also realign the tax rates then obviously the tax evasion in the country could be a thing of the past. The fact remains on record that whenever the tax rates in the past have been reduced the tax collection has always been higher. The maximum Tax rate should be 25% only so that tax evasion will reduce.

8. Leave Travel Assistance granted to employees by the employer enjoy tax exemption twice in a block of 4 years. However, the present rules provide for travel in any part of India to the employee so also the members of the family. This deduction is granted as per section 10(5) of the Income-tax Act, 1961. Unfortunately, the exemption is not available for travel concession granted to employees for travel outside India. The Income-tax Law should be amended so as to provide the exemption of travel concession even outside India. Moreover, as per the present law what is exempted is only the value of travel concession and not boarding and lodging. To make the travel as a real recreational activity for the employee, the deduction of section 10(5) should not only cover the value of travel concession but also should cover the expenses on boarding and lodging. Likewise, this deduction should be tax exempted for the employees each year, specially keeping in view the great stress under which the employees work these days, hence let the Finance Bill make necessary amendment to this effect.

9. Presently the salaried employees enjoy tax exemption in respect of medical expenses upto Rs.15,000 per annum. This limit should be enhanced to at least 30,000 rupees per annum in view of increase in the medical expenditure in last 3 years. Besides, the income-tax exemption is also granted in respect of medical expenses incurred on the employee for treatment abroad but this deduction is available only when the gross income of the employee is maximum upto Rs.2 lakhs per annum. Well, this restriction on income for availing tax concession on medical expenses abroad should be done away with. It is a fact that in majority of the cases the expenses on travel for medical purposes of the employees are sanctioned only in respect of senior employees. Hardly one could find any company in India where the expenditure on foreign treatment is incurred for employees having salary below Rs.2 lakhs per annum. Hence, this provision must go.

10. In terms of section 80C of the Income-tax Law presently within the overall limit of Rs.1 lakh deduction is granted to the tax payers in respect of tuition fee paid by them. However, this deduction is only for the tuition fee. It does not cover expenses which are directly related to the education of the child like the expenses for purchase of books, payment of school bus, payment of hostel facility and other connected expenses for the education of the children. The Hon’ble Finance Minister should permit all legitimate expenses to be deducted u/s 80C towards education of the children which will produce a bright India in years to come.

11. The loss of business is not allowed as a deduction to be set off from salary income in the case of a salaried employee. There seems to be no logic in it. Hence, the provisions should be amended so that even the employees as well as the Directors of the companies can enjoy the tax adjustment of business loss with salary income.

12. To make the life more simple and to ensure that the tax provisions are easy to remember and finally even on the principles of equity, uniformity and justice, it is recommended that the period of holding a capital asset to make it long-term capital gain should be 365 days for all categories of assets whether shares or real estate or mutual funds and also for the non-listed company shares.

13. Presently an individual tax payer to save his capital gain can invest in a residential property by taking advantage of section 54 or section 54F of the Income-tax Act, 1961. However, this benefit is available only for investment in one residential house why should not the law be amended to grant permission to the tax payer to invest the capital gain amount in any number of residential houses. This amendment alone can help in a big way for removing the housing shortage in the country.

The Finance Bill, 2012 is to be presented in the Parliament and as this time the FM can surely incorporate the above mentioned points in the Finance Bill.
The world is looking at India as an attractive investment destination with strategic advantages and lucrative commercial incentives. Among the new sector entrants in the list of recipient sectors of foreign investment the real estate is one among them. Though the real estate sector in India is asserted to be the most promising sector today but it is still hugely plagued by market uncertainties and traditional inhibitions.

The real estate market in India mostly continues to remain unorganized, fairly fragmented, mostly characterized by small players with local presence. There is a need for liberal and transparent policy for investment from overseas Indians in an unorganized sector.

Tax Simplification plays a crucial role in attracting Foreign Investment. Investors may phase different implications based on type of entity they form. As one of the driving force which affects the investment making decision is the return on their investment and the time period from which it's start.

Government initiatives in Indian Real Estate Market

The government has brought in many advanced reforms to unlock the potential of the Indian real estate sector. The sector has a lot of untapped potential, which can be bridged. There is a stimulus package that has been announced by government, along with it the Central bank’s move to allow banks for giving special treatment to the real estate sector, is surely going to impact the Indian real estate market in a positive manner.

Relaxed norms of Indian real estate market

1. 100% FDI is allowed in realty projects by the automatic route.
2. In case of integrated townships, the minimum area mat would be developed has come down from 100 acres to 25 acres.
3. The minimum capital investment for wholly-owned subsidiaries and joint ventures is US$10 million and US$ 5 million, individually.
4. The original investment is entirely liable to be repatriated after three years.
5. 51% of FDI is allowed in single-brand retail outlets and 100% FDI in cash-and-carry outlets by the automatic route.
6. The norms for developing special economic zones (SEZs) have been simplified for getting tax free benefits.

Taxation of Entities

Company

The corporate income tax rate is 30% for domestic Indian companies and 40% for a foreign company and if income exceeds 1 crores surcharge of 2.5% will also be charged, on along with education and secondary higher education cess 3%. And there is Minimum Alternative Tax of 18.5% on Book Profits of the company. A dividend distribution tax (DDT”) of 15% is payable upon distribution or dividends to the shareholders. However, such dividend income is then tax exempt in the hands of the shareholders irrespective of their residential status. DDT is payable irrespective of whether the company making the distributions is otherwise chargeable to tax.

Partnership and LLP

A partnership and an LLP are taxed similarly. The rate of income tax for a partnership and an LLP are the same as for corporate entities, i.e. 30%.Moreover AMT (Alternate Minimum Tax) at the rate of 18.5% is applicable to LLP. However, the share of profit in a partnership firm (including LLP) is exempt from tax in the hands of the partners. Pertinently, any interest, salary, bonus, commission or remuneration by whatever name called which is received by or is due to a partner from such partnership (including LLP) is chargeable to tax as business income. However Foreign Investment through LLP is allowed only through approval route no investment is allowed through LLP in real estate sector.

Branch office

An offshore company may operate in India in the form of a branch. A branch of a foreign company will be taxed in India at the rate or 40%. Currently India does not levy a branch profits tax.

Here again it is pertinent to note that for transfer pricing purposes, the branch and the head office will be considered to be associated enterprises and any transaction between the two entities will be enquired to be at arm’s length.

Joint Venture

In the context of a joint venture with foreign enterprises, it is pertinent to note that as per the Indian transfer pricing regulations, the Indian joint venture and the foreign shareholders would be considered associated enterprises and any transactions between them would be required to be conducted on an arm’s length basis.

Tax implications of various investment options

Investment by way of Equity and Preference shares

Gains earned on sale of shares of an Indian entity, being an unlisted company, are taxed at the rate of 20% (with indexation) or 10% (without indexation) for long term capital gains and 15% for short term capital gains.

Long term capital gains on sale at shares held for a period exceeding twelve months.

Short term capital gains on sale of
shares held for a period not exceeding twelve months.

Profits may be distributed by an Indian company either by way of dividends or by buy-back of shares.

- As mentioned above, dividend is taxed in the hands of the company declaring such dividend at the rate of 15% and is exempt in the hands of the recipient of such dividends.
- The second method of distribution that is by the way of buy-back/ redemption of shares would result in capital gains income in the hands of the shareholders. However, such a buy-back of the equity shares is permitted only once in a period of 365 days and a fresh issue of the same security is not permitted before a period of six months from the date of the buy-back. Further, the Indian company is permitted to buy-back a maximum of 25% of the outstanding paid up equity share capital in one year. However, the shares which are bought back are exempted from the provisions of deemed dividend.

When it comes to FDI promotion in a competitive world, governments often turn to special fiscal incentives in order to attract the ever more mobile multinational companies. There is a growing acknowledgment that tax incentives do affect the decisions of investors. Following simplifications are required to enhance the FDI in realty sector:

- There are two main instruments that the governments can use to influence the effective tax rates and the location decision or multinational companies: (i) a low statutory corporate income tax rate; (ii) tax holidays
- The biggest hurdle is that the housing/township sector does not qualify for the infrastructure sector (Section 80IA) benefits under the Income Tax (IT) Act and unlike other infrastructure projects; it does not get a tax holiday.
- LLPs with FDI shall not be allowed to operate in real estate business; provisions may be relaxed in this regard.
- There should be reduction in marginal rates on distribution of income to foreign investors.
- An easy exit clause with minimal taxation implications in exceptional cases which will enforce people to make investment in long lock in period projects.
- Sector specific deductions should be made; the provisions should be made which provide higher return on investment which minimal withholding of tax to attract foreign investment.
- Higher rate of depreciation in initial stages.
- Favorable tax treaties with countries of potential investors to attract them to invest.
- SMEs should be promoted in this sector. In India assessing of SMEs to Capital source (which has inherent potential to take risk) should be promoted and one way for the same is to attract private foreign funds. When foreign funds are invested the DTAA between two countries plays an important role as it is the major deciding factor where the income will be taxed and the rate of tax. If we talk about treaty with Mauritius, Cyprus and Singapore Capital Gain in the hands of FIIs is exempt from tax whereas the same as taxable in the hands of NRIs. Such discrimination should be removed.
- Penalization provision should be incorporated in situation where land or plot is purchased and left vacant. Land is scarce resource. Asset acquired should be used otherwise it should be sold to someone who can utilize the same who has funds to invest. This will made available more land at disposal also helps in controlling rising prices.
- Lower tax implications will result in higher profits and accordingly lower pricing in the sector which will provide affordable housing.
- The road map for GST should be finalized and incorporated in the system as will help in overcoming the controversies of VAT & Service Tax.
- In the present service tax system Construction is under the ambit of Taxable service wherein it is stated that when under construction houses are sold it is liable to tax whereas if constructed houses are sold not service tax liability. The person who is investing money, taking risk is not benefited as to if wants exemption from service tax he needs to wait till completion of construction and sale the same, in fact reversed should be the case.

Yet, it has to be recognized that this approach may reduce tax revenues at least during a transition period even though the simplicity or the tax system should attract further investment and increase the tax base in the long run.

Regardless of the approaches, all tax incentives are costly. The first and most direct costs are those associated with the potential loss of revenues for the host government. The argument here is to determine if the new foreign investment would have come to the country if no or lower incentives were offered. In some Asian countries, for example, the redundancy rate is found to be over 80 percent. In such cases, “free rider” investors benefit, the Treasury loses, and there is no net benefit to the economy.

In addition, tax incentives have many less evident costs: inefficient allocation of resources through distorted investment decisions by private companies: attracting the “wrong kind” of foreign investors when the fundamentals are not yet in place: exacerbation of the “race to the bottom” by creating a bidding war between countries or regions: and increased administrative burden and opportunities for suspicious behaviors from public officials where granting of incentives are discretionary.

In summary, one has to keep in mind that successful examples of using targeted tax incentives to attract FDI like Singapore or Ireland are rare. In fact, more and more evidence is emerging to suggest that multinationals give more importance to the simplicity and stability of the tax system in a country than generous tax rebates, especially in an environment with great political and institutional risks. This is why the recent trend has been to eliminate and streamline tax incentive programs.

The potential of the Indian real estate market is huge. The norms and strategies by the Government are getting all the more relaxed only to give a fillip to this sector.
ABSTRACT
With the rise in economic growth, there has been a considerable growth in the Construction sector resulting in a wide and extensive usage of the natural resources, which is limited. Also with the growth in the infrastructure facilities for the development of cities there has been continuous harm being created to the environment. Hence, the need to implement Green Building techniques come into picture which would result in the development without harming the environment while also giving certain benefits for the Developers and Customer.

The major challenge in Implementation of Green Building Techniques for the Real Estate Sector is the increase in Construction Costs resulting the Developers to not taking a step in adopting it because of the Cost Constraint, difficulty in sourcing green building materials, technology implementation and facilitators in India. The Benefits one could get is tangible and intangible benefits. The tangible benefits accrue from the operational cost savings and reduced carbon emission credits and high rentals or capital value. The intangible benefits are generated from the better working conditions within the building. The prime sources of revenue generation for green buildings are from the non-sustainability discount which gives the green buildings a higher rental value than conventional buildings in the vicinity and the carbon credits earned due to the reduced GHG emissions. Thus, the Benefits are for both the Developer as well as the Customer.

WHAT IS GREEN BUILDING?
Green building is the practice of increasing the efficiency with which buildings use resources — energy, water, and materials — while reducing building impacts on human health and the environment, through better site, design, construction, operation, maintenance, and removal (i.e) the complete Building life cycle, which revolves round a concern for extending the life span of natural resources.

A typical Green building is explained in Fig. 1 Although new technologies are constantly being developed to complement current practices in creating greener structures, the common objectives is that green buildings are designed to reduce the overall impact of the built environment on human health and the natural environment by:

- Efficiently using energy, water and other resources.
- Protecting occupant health and improving employee productivity.
- Reducing waste, pollution and environmental degradation.

KEY FEATURES OF GREEN BUILDING
Following are some of the common key features of a typical green building.

- Minimal disturbance to landscape and site conditions.
- Use of recycled and environmental friendly building materials.
- Use of non toxic and recyclable materials.
- Efficient use of water and water recycling.
- Use of energy efficient and eco-friendly equipment.
- Use of renewable energy.
- Indoor air quality for wellbeing of a person.
- Effective controls and building management systems.

LEED RATINGS FOR BUILDINGS
The leadership in energy and environmental design (LEED) Green Building Rating System encourages and accelerates global adoption of sustainable green building and development practices through the creation and implementation of universally understood and accepted tools and performance criteria.

The leadership in energy and Environmental Design (LEED- INDIA) is a Green Building Rating System is a nationally accepted benchmark for the design, construction and operation of high performance green buildings. There are 150 LEED registered green buildings and 23 LEED certified green buildings in India.
GREEN BUILDINGS IN INDIA

The green building movement in India started with the establishment of the IGBC in 2001, which was an initiative of the Confederation of Indian Industries (CII) along with the World Green Building Council and the USGBC. The first green building in India, CII Sohrabji Godrej Green Business Centre in Hyderabad, was inaugurated on 14th July, 2004.

This was a great symbolic achievement. Since then, the number and volume of green buildings in India has been phenomenal. The Table 1 below shows Green Building movement in India happening over the years.

Table 1 The Green Building Movement – Over the Years

<table>
<thead>
<tr>
<th>No</th>
<th>Criteria</th>
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<th>Till Date</th>
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<tbody>
<tr>
<td>1</td>
<td>CEOs &amp; senior people involved</td>
<td>50</td>
<td>≈ 2000</td>
</tr>
<tr>
<td>2</td>
<td>No. Of professionals trained on LEED rating</td>
<td>10</td>
<td>≈ 2000</td>
</tr>
<tr>
<td>3</td>
<td>No. Of registered LEED Green Buildings</td>
<td>1</td>
<td>140</td>
</tr>
<tr>
<td>4</td>
<td>Built – in Area (sq. ft)</td>
<td>0</td>
<td>67 Million</td>
</tr>
<tr>
<td>5</td>
<td>Green Building products &amp; equipments</td>
<td>5</td>
<td>50</td>
</tr>
<tr>
<td>6</td>
<td>IGBC Membership</td>
<td>0</td>
<td>141</td>
</tr>
</tbody>
</table>

The Fig. 2 shows the Graph showing number of green buildings registered with LEED India during 2002-2007.

The Fig. 3 & 4 shows the Distribution of LEED Rated and Registered Buildings respectively. The LEED registered Green buildings are more in Mumbai (44 buildings). But the interesting thing to be noted is that the number of LEED rated buildings is the least in Mumbai (1 building) of all cities. Whereas Chennai has the maximum number of LEED Rated Green Buildings (10 Nos.) with 23 LEED Registered Green Buildings.

The Fig. 5 shows the Status of Green Buildings in various Cities in India.

Fig. 2 Graph Showing Numbers of Green Buildings with LEED India

Fig. 3 Distribution of LEED Rated Buildings

Fig. 5 Map showing Status of Green Buildings in various cities in India

Hindrances
- Lack of technology locally available
- Lack of knowledge about the benefits of green building among the customers.
- Real estate agents are unable to articulate the benefits to the customers.

Conclusion
India is expected to develop about 110 million sq ft of green space in the next few years. This indicates that there is a great opportunity for developers and occupiers to promote green buildings. Also, it is necessary to promote the Benefits of Green Buildings to everyone as this would increase the awareness and increase the demand for Green Spaces in the market.
1. INTRODUCTION

1.1 The Scheme of Affordable Housing in Partnership aims at operationalising the strategy envisaged in the National Urban Housing & Habitat Policy (NUHHP) 2007, of promoting various types of public-private partnerships - of the government sector with the private sector, the cooperative sector, the financial services sector, the state parastatals, urban local bodies, etc. - for realizing the goal of affordable housing for all. It intends to provide a major stimulus to economic activities through affordable housing for the creation of employment, especially for the construction workers and other urban poor, incentivize land assembly and increase affordable housing stock and create a stock of affordable housing to reduce the alarming affordable housing deficit.

1.2 This Scheme is dovetailed with Rajiv Awas Yojna (RAY) and takes into account the experience of implanting Basic Services to the Urban Poor (BSUP) and Integrated Housing & Slum Development Programme (IHSDP) under JNNURM.

1.3 The scheme is applicable to all cities under RAY.

1.4 The scheme seeks to encourage State Governments to make provision for land to meet the acute shortage of affordable housing and to work in the partnership model envisaged in the NUHHP 2007.

1.5 These Guidelines will come into effect from 1st April, 2009 and the scheme will be a part of JNNURM.

2. OBJECTIVE

The basic aim of the Scheme is to incentivize land assembly and increase stock of affordable housing and provide the option of rental housing and dormitories for new migrants to reduce the alarming affordable housing deficit. It also targets the creation of demand for a large variety of industrial goods through the multiplier effect of housing on other economic activities provide stimulus to economic activities.

3. COVERAGE

3.1 The scheme will apply mainly to the cities covered under Rajiv Awas Yojana, where shortages of land for housing are driving unplanned growth and rising home prices and rentals to unsustainable levels.

3.2 The projects which should be eligible under this scheme for assistance would need to meet the following criteria:

a) Dwelling units should be a mix of EWS / LIG / MIG categories with the maximum size of a dwelling unit being at 1200 square feet super area, with at least 25% of them for EWS of about 300 square feet. In terms of carpet area, the minimum carpet area for EWS category shall be 25 square meters and maximum carpet area for MIG category shall be 80 square meters.

b) The sale price of dwelling units should have an upper ceiling in terms of Rupees per square meter of carpet area. The price ceiling would be settled in consultation with the State /UTs for different classes for approval.

c) Projects of rental housing & dormitories for new migrants

d) The upper ceiling of the rental (monthly/weekly/any other) in the first project (rental housing & dormitories) and the principles for fixing the same in the future projects would be proposed by the States/UTs as a part of the project submitted to the CSMC for approval.

4. DEFINITION OF AFFORDABLE HOUSES

4.1 Keeping in mind that the housing shortages affect mostly the EWS and LIG, and the younger group of urban-migrants changing cities in search of better prospects, affordable houses, for the purpose of this scheme, may be taken as houses ranging from about 300 square feet (super built up area) for EWS, 500 square feet for LIG and 600 square feet to 1200 square feet for MIG, at costs that permit repayment of home loans in monthly installments not exceeding 30% to 40% of the monthly income of the buyer. In terms of carpet area, an EWS category house would be taken as having a minimum 25 square metres of carpet area and the carpet area of an LIG category house would be limited to a maximum of 48 square metres. The carpet area of an MIG
house would be limited to a maximum of 80 square meters. The size of the Rental Housing units and dormitories are to be decided by the States based on the needs and requirements of the target segment.

5. STRATEGY OF THE SCHEME

5.1 The scheme for construction of affordable houses in partnership visualizes that the cost of land and construction would be held down to affordable levels:

- Land costs would be intermediated by States/UTs and Development Authorities/Urban Local Bodies, by providing land at nominal, predetermined or institutional rates (not including more than cost of acquisition and development costs of land) for specified housing or integrated housing projects. This would be the prerequisite for the scheme.
- Costs of land can also be intermediated by attracting private developers to build on their land, by granting zoning-related incentives such as land use conversion, extra FAR for the construction of affordable houses to be allotted by the State/UT government (where ever infrastructure permits densification), etc.
- Cost of construction can be held down by construction through no profit no loss organizations or at reasonable profit; and by beneficiaries directly accessing institutional funds for construction, namely the loans offered by public sector banks, available at reduced interest rates to individual buyers (as announced under the economic stimulus package).
- Cost of construction can also be driven down by planning layouts which mix EWS/LIG/MIG with HIG houses and commercial layouts, and cross subsidizing through the premium earned on the sale of HIG and commercial spaces.
- States/UTs could reduce costs of housing further by charging a reduced stamp duty to a maximum of 2% for affordable houses (LIG) and nil (0%) for EWS under this scheme and/or charging reduced tax rates on inputs for affordable housing.
- Cost of construction can also be driven down by adopting appropriate construction technologies.

6. MAIN FEATURES OF THE SCHEME

6.1 The scheme modifies the guidelines of JNNURM (BSUP) for providing Central Assistance to States to incentivise land assembly for affordable housing to promote development of projects for a total of 10 lakh affordable housing units by provision of central assistance of 25% for the cost of provision of civic services for projects for affordable housing at an approximate cost of Rs. 5,000 crores to Central budget.

6.2 The main features of affordable housing in partnership scheme are:

a) A project approach would be followed. Projects prepared by urban local bodies/urban development agencies/housing boards/improvement trusts/other agencies which may be designated as ‘implementing agencies’, accompanied by duly approved layout plans and maps to scale would be posed for sanction to the State Level Steering Committee and then the Central Sanctioning and Monitoring Committee set up for BSUP.

b) Land for an affordable housing project could be identified within municipal limits, or on the periphery or outskirts of towns and cities within jurisdictions of development or planning authorities.

c) Projects with a minimum of 200 affordable houses would be entertained. This condition shall not apply for project/projects related to rental housing and dormitories for new migrants.

d) Dwelling units built under this scheme would be a mix of EWS/LIG/MIG.

e) The layout and specifications including design of the affordable houses to be built would be approved by the State/UT Government or its designated implementing agency.

f) The sale price of dwelling units would have an upper ceiling in terms of Rupees per square meter of carpet area. This ceiling would be proposed by the States/UTs for different classes of cities for approval by the Central Sanctioning & Monitoring Committee. For projects of rental (monthly/weekly/any other) in the first project and the principles for fixing the same in the future projects would be proposed by the States/UTs as a part of the project proposal submitted to the CSMC for approval.

g) Beneficiaries would be selected and allotments made on a transparent procedure by the State / implementing agency, e.g. draw of lottery, based of detailed guidelines approved by the State/UT Government.

h) As far as possible, beneficiaries would be selected in advance to beginning construction, so that the loan for construction can be availed directly by beneficiaries. A tripartite agreement between loanee, bank and development agency should enable facilitation of loan procedures for the individual, and release to the development agency as per the progress in construction.

i) EWS/LIG beneficiaries can be enabled to access loans under the Interest Subsidy Scheme for Housing the Urban Poor (ISHUP), which provides 5% interest subsidy on loans up to Rs. 1 lakh.
j) Title to the EWS/LIG houses would be given as far as possible in the name of the woman. Where the land is at predetermined rates, title may be leasehold, subject to State/UT Government decision, with sufficient safeguards to ensure that the beneficiary is not dispossessed and the sale of the house to another name is not recognized or registered for a certain minimum period; within which transfer of the house should be permissible back to the designated (project) agency only, at cost of construction adjusted for inflation.

k) States/UTs/implementing agencies would make effort to ensure that at least 25% of the total built up/constructed area of the projects proposed is EWS/LIG units.

l) In order to promote EWS/LIG dwelling units / cross-subsidize the cost of land, the project, with approval of the State/UT Governments may also offer zoning incentives such as land use conversion, additional FAR/FSI for the patch, with or without TDR, based on the prevailing market price of land and the cost of construction, provided the civic infrastructure at the site or the TDR sites is not put under strain.

m) The State/UT Government may also permit a portion of the identified plot of land being used for construction of HIG dwellings or commercial purpose, on which the development partner can raise funds to cross-subsidize the construction of EWS/LIG dwellings.

n) In the case of partnership with a private developer on Government land, it would be required of the State/UT Government / implementing agency to select the private party by a transparent bidding process.

o) If considered appropriate, the States/UTs may consider private lands under this scheme. Concessions and FAR, etc. would need to be judiciously designed by them to make it attractive on private lands. However, the project prerequisites will not be relaxed, and the project would not be entertained for sanction except through the State/UT Government.

p) Supervision of quality and timeliness of construction would need to be done by quality control mechanisms put in place by States/UTs. A three-tier Quality Management System will be mandatory. The first level will be developing agency, second by the State level quality monitor and third level by a nationally empanelled third party inspection and monitoring (TPIM) agency. Involvement of beneficiaries in the project should be encouraged.

7. CENTRAL GOVERNMENT ASSISTANCE

7.1 Based on the experience that housing colonies do not get occupied for want of civic service connectivities, Central Government assistance under this scheme will flow for the provision of civic services such as water supply including ground level/overhead service reservoirs, storm water drainage, solid waste management, sewerage including common sewerage treatment facilities, rain water harvesting, approach roads, electricity lines including electricity transformers, parks and playgrounds and other amenities.

7.2 Central Assistance under the scheme will be limited to least of following:

- Rs. 50,000 per rental unit or Dwelling Unit for all dwelling units taking EWS, LIG and MIG units together which are proposed in the project; and
- 25% of the cost of all civic services (external and internal) proposed in the project.

7.3 Central funds would be released in three installments as additional Central Assistance. The first installment of one third will be released to State/UT Government or its designated State level agencies following the sanction of the DPRs by the CSMC. Subsequent installments would be released after utilization certificate for at least 70% of the earlier Central release is received. The last installment would be released after ascertaining the completion of construction and selection of beneficiaries.

8. AGENDA OF REFORM & MEMORANDUM OF AGREEMENT

Agenda of reform and the Memorandum of Agreement will be same as applicable to BSUP/IHSDP.

9. NATIONAL STEERING GROUP

The National Steering Group of JNNURM, with the following composition, will steer the scheme to its objectives:

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of the Post</th>
<th>Designation</th>
<th>Member/Chairman</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Minister for Urban Development</td>
<td>Chair</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Minister of Housing and Urban Poverty Alleviation</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Secretary (HUPA)</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Secretary, Planning Commission</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Secretary (Expenditure)</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>National Technical Adviser</td>
<td>Member</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Secretary (Urban Development)</td>
<td>Member / Convenor</td>
<td></td>
</tr>
</tbody>
</table>
10. APPRAISAL AND SANCTION OF PROJECTS

The procedures of BSUP would be applicable.

11. SANCTION OF PROJECTS

The Central Sanctioning and Monitoring Committee in the Ministry of Housing & Urban Poverty Alleviation for sanctioning the projects submitted by States/UTs under BSUP, with the following composition, would also sanction Projects of affordable housing in partnership

12. STATE LEVEL STEERING COMMITTEE

The State level Steering Committee for BSUP, with the following composition, would decide projects and their priorities for inclusion in the scheme, and for submission to the Central Sanctioning & Monitoring Committee

13. NODAL AGENCY

Nodal Agency for BSUP would be the Nodal Agency for this scheme, and perform the same functions, inter alia:

a. Appraisal of projects;

b. Obtaining sanction of State Level Steering Committee for seeking assistance

c. from Central Government under the scheme;

d. Management of grants received from Central Government;

e. Release of funds;

f. Monitoring physical and financial progress of sanctioned projects; and

g. Monitor implementation of reforms as committed in the MoA.

14. MISSION DIRECTORATE

The Mission Directorate for BSUP and IHSIP in the Ministry of Housing & Urban Poverty Alleviation, under the charge of Joint Secretary (JNNURM) & Mission Director, would ensure effective coordination with State Governments and other agencies for expeditious processing of the project proposals and implementation of the scheme.

15. MONITORING PROGRESS OF PROJECTS

15.1 A provision of 5% of the grant will be earmarked under the Ministry’s Budget for meeting Administration and IEC expenses, including support for project preparation, appraisal, monitoring, evaluation, and capacity building activities at various levels

15.2 The Ministry of Housing & Urban Poverty Alleviation will periodically monitor the scheme.

15.3 State Level Nodal Agency would send quarterly progress report to the Ministry of Housing & Urban Poverty Alleviation.

15.4 Upon completion of the project, nodal agency through the State Government, would submit completion report in this regard.

15.5 Central Sanctioning & Monitoring Committee may meet as often as required to sanction and review/monitor the progress of projects sanctioned under the Mission.

15.6 Monitoring of progress of implementation of reforms may be outsourced to specialized/technical agencies.
In exercise of the powers conferred by section 295 read with sub-clause (vii) of clause (c) of sub-section (8) of section 35AD of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:

1. (1) These rules may be called the Income-tax (First Amendment) Rules, 2012

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, in Part II, in sub-part F, after rule 11-O, the following rule shall be inserted, namely:

"11-OA Guidelines for notification of affordable housing project as specified business under section 35AD.—(1) The form and manner in respect of notification of an affordable housing project as a specified business under sub-clause (vii) of clause (c) of sub-section (8) of section 35AD of the Act shall be as follows:

(a) the applicant shall apply for notification of the project in Form No. 3CN to Member (IT), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi;

(b) if any defect is noticed in the application in Form No. 3CN or if any relevant document is not attached thereto, a deficiency letter may be served on the applicant;

(c) the applicant shall remove the deficiency within a period of fifteen days from the date of service of the deficiency letter or within such further period which, on an application made in this behalf may be extended;

(d) if the applicant fails to remove the deficiency within the period so allowed, the Board, if satisfied, may pass an order treating the application as invalid;

(e) the Board may, before granting approval, call for such documents or information from the applicant as it may consider necessary and may call for further details or information from the applicant as well as from the income-tax authorities and other Departments or agencies, as it may deem fit;

(f) the Board may issue the notification to be published in the Official Gazette granting approval to the project or for reasons to be recorded in writing, reject the application;

(g) the Board may withdraw the approval if it is satisfied that the assessee has ceased its activities relating to the specified business or its activities are not genuine or are not being carried out in accordance with all or any of the conditions under this rule;

(h) no order treating the application as invalid or rejecting the application or withdrawing the approval or cancellation of the notification, shall be passed without giving an opportunity of being heard to the assessee;

(i) a copy of the order invalidating or rejecting the application or withdrawing the approval shall be communicated to the applicant as well as the Assessing Officer and the Commissioner having jurisdiction over the assessee.

(2) A project shall be considered for notification if it fulfils all of the following conditions, namely:

(a) the project shall have prior sanction of the competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(b) the date of commencement of operations of the project shall be on or after the 1st day of April 2011;

(c) the project shall be on a plot of land which has a minimum area of one acre;

(d) at least thirty per cent, of the total allocable rentable area of the project shall comprise of affordable housing units of EWS category;

(e) at least sixty per cent of the total allocable rentable area of the project shall comprise of affordable housing units of EWS and LIG categories;

(f) at least ninety per cent of the total allocable rentable...
area of the project shall comprise of affordable housing units of EWS, LIG and MIG categories;

(g) the remaining ten per cent or less of the total allocable rentable area of the project may comprise of other residential or commercial units;

(h) the layout and specifications including design of the project to be developed and built shall be approved by the State or Union territory Government or its designated implementing agency;

(i) the project shall be completed within a period of five years from the end of the financial year in which the project is sanctioned by the competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India.

(3) The assessee shall maintain separate book of accounts for the project with complete details of all capital expenditure incurred during the previous year on which it intends to claim the said deduction under section 35AD and shall file the relevant income tax returns in the due date to the Income Tax Department to avail the tax benefit under section 35AD.

(4) A project notified under sub-clause (vii) of clause (c) of sub-section (8) of section 35AD shall continue to be governed by the provisions of this rule to the extent it is not in contravention with the provisions of the Act, as amended from time to time.

(5) In this rule,—

(a) "affordable housing units" shall be of the following categories:

<table>
<thead>
<tr>
<th>Category</th>
<th>Rentable Area (in square metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economically Weaker Section (EWS)</td>
<td>Specified cities: Up to 25</td>
</tr>
<tr>
<td>Lower Income Group (LIG)</td>
<td>Greater than 25 and up to 50</td>
</tr>
<tr>
<td>Middle Income Group (MIG)</td>
<td>Greater than 50 and up to 70</td>
</tr>
</tbody>
</table>

(b) "date of commencement of operations" means the date on which the project is sanctioned by the competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(c) "housing unit" means an independent residential unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building - (i) directly accessible from an outer door or through an interior door in a shared hallway and not by walking through another household's living space and (ii) excluding any shared dining areas;

(d) "project" means an affordable housing project;

(e) "rentable area" means the carpet area at any floor level, including the carpet area of kitchen, pantry, store, lavatory, bathroom, fifty per cent of unglazed verandah and hundred per cent of glazed verandah, in accordance with the provisions of the Indian Standard - Method of Measurement of Plinth, Carpet and rentable Areas of Buildings, IS 3861 : 2002, formulated and published by the Bureau of Indian Standards;

(f) "specified cities" shall mean the following—

(i) Greater Mumbai urban agglomeration;
(ii) Delhi urban agglomeration;
(iii) Kolkata urban agglomeration;
(iv) Chennai urban agglomeration;
(v) Hyderabad urban agglomeration;
(vi) Bangalore urban agglomeration;
(vii) Ahmedabad urban agglomeration;
(viii) District of Faridabad;
(ix) District of Gurgaon;
(x) District of Gautam Budh Nagar;
(xi) District of Ghaziabad;
(xii) District of Gandhinagar; and
(xiii) City of Secunderabad;

Explanation.—For the purposes of this clause,—

the area comprising an urban agglomeration shall be the area included in such urban agglomeration on the basis of the latest census;

(g) "total allocable rentable area" means the total rentable area of all the proposed housing units or non-housing units but excluding the areas earmarked for common facilities and services.
FORM No. 3CN
[See rule 11-OA(1)(a)]
Application for notification of affordable housing project as specified business under section 35AD

1.1 Name and address of the specified business (in full, block letters):


1.2 Details of the assessee:
(i) Name (in full, block letters)

(ii) Is there any change in the name? If yes, please furnish the old name

(iii) PAN

(iv) Complete address

(v) Office Phone Number (with STD code)

(vi) Mobile No. E-mail Address

(vii) Date of incorporation/formation/birth (DD/MM/YYYY)

(viii) Status?
[public company - 1, private company - 2, general partnership firm - 3, local authority - 4, cooperative society - 5, LLP - 6, any other AOP/BOI artificial juridical person - 7, individual - 8, HUF - 9, any other person - 10 (please specify: ________)]

(ix) If a domestic company (Tick) ?

(x) Income Tax Ward/Circle

Residential Status (Tick) ? Resident ? Non-Resident

2.1 Location of the proposed project:

(i) Name of the project (if any)

(ii) Complete address of location of the proposed project:
2.2 Details of the proposed project:-

(i) Rentable area of various units in the project (indicate in sq. metres):-

<table>
<thead>
<tr>
<th>Sl.No.</th>
<th>Description</th>
<th>Category of unit (EWS/LIG/MIG/Other Residential/Commercial)</th>
<th>Rentable area</th>
<th>Number of units</th>
<th>Total rentable area (4*5)</th>
<th>Percentage of total allocable rentable area</th>
</tr>
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<tbody>
<tr>
<td>1</td>
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</table>

Total allocable rentable area (col. 6) & total percentage (col. 7)

(ii) Details of other areas to be constructed (common facilities, etc.):—

__________________________________________________________________________

__________________________________________________________________________

2.4 Proposed investment (amount in Rs. Lakhs) ________________________________

2.5 Expected or actual date of commencement of the project ____________________

3.1 Whether the assessee has any land or project adjacent or in the vicinity of the proposed project? (If yes, details thereof.)

Yes/No

__________________________________________________________________________

__________________________________________________________________________

3.2 Whether the proposed project is located or developed as a separate identifiable area?

Yes/No

__________________________________________________________________________

3.3 Whether the project is independent of other projects or is an extension or part of any other project?

Yes/No

__________________________________________________________________________

3.4 The nature of title the assessee holds on the land on which the project is situated.

__________________________________________________________________________

3.5 Whether the project is developed under any agreement and if yes, the details of other parties (other than applicant) to such an agreement?

Yes/No

__________________________________________________________________________
3.6 Whether each of the following conditions mentioned in sub-rule (2) of rule 11-OA is fulfilled:—

(i) the project has the prior sanction of the competent authority empowered under the Yes/No Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
(ii) the date of commencement of operations of the project is on or after the 1st day of Yes/No April, 2011;
(iii) the project is on a plot of land which has a minimum area of one acre; Yes/No
(iv) at least thirty per cent of the total allocable rentable area of the project comprises of Yes/No affordable housing units of EWS category;
(v) at least sixty per cent of the total allocable rentable area of the project comprises of Yes/No affordable housing units of EWS and LIG categories;
(vi) at least ninety per cent of the total allocable rentable area of the project comprises Yes/No of affordable housing units of EWS, LIG and MIG categories;
(vii) the layout and specifications including design of the project to be developed and Yes/No built have been approved by the State or Union territory Government or its designated implementing agency.

DECLARATION

I/We hereby undertake to continue to operate the affordable housing project during the period in which the benefits under section 35AD of the Income-tax Act, 1961 are to be availed.

I/We hereby certify that the above statements are true and correct to the best of my/our Knowledge and belief:

________________________________________

(Signature of Applicant)

(Name in Block Letters)

________________________________________

(Designation of the Signatory)

Place: __________________________

Date: __________________________

List of Enclosures:-

1. __________________________

2. __________________________

3. __________________________

4. __________________________

5. __________________________

6. __________________________

7. __________________________

8. __________________________
Meeting with Shri R. R. Jowel, Financial Commissioner & Principal Secretary, Environment, Govt. of Haryana and Chairman, Haryana State Pollution Control Board, Panchkula on 13 January 2012

NAREDCO delegation comprising of S/Shri Col. Prithvi Nath and R.C Bakshi from DLF Ltd, P.K Tripathi from Unitech Ltd, Vipan Mehta and Vijay Sehgal from Raheja Developers Ltd, A.N Verma from Ansal API and Suneel Sehgal, DDG, NAREDCO met the FC & Principal Secretary Environment and Chairman, HSPCB in his office on 13 Jan.2012, at Panchkula. Shri J P Singh, Asst. Environmental Engineer and Dr. Rohila, Scientist from Haryana Govt. were also present.

Following decisions were taken in the meeting:

Issue of NOC/Consent to Establish: FC and Principal Secretary, Environment and Chairman, HSPCB assured delegation that the consent procedure will be put online within 3 months, consent to establish applications cleared in 3 days and NOC, hence forth, will be issued for 5 years.

Consent to operate: Shir Jowel informed that one page consent to operate application form will be prepared to simplify the procedure.

Bank Guarantee: For Consent to establish, he informed that no BG will be required. For consent to operate, delegation suggested that BG amount be reduced from 0.25% of project cost to a maximum of Rs. 10 lac.

Non applicability of Aravalli Notification: No NOC from forest deptt., after Master Plan of Gurgaon is approved and license for development is issued, will be required.

NAREDCO Pre-Budget Meeting with Govt. on 16th January 2012

NAREDCO has submitted a detailed Pre-Budget Memorandum to Finance Minister, Urban Development Minister and Housing and Urban Poverty Alleviation Minister for addressing the issues raised in the forthcoming budget. A meeting was called by Secretary, Housing and Urban Poverty Alleviation, Govt. of India on 16th January 2012 to discuss the issues raised by NAREDCO. Shri Navin M Raheja, President, NAREDCO, Shri Sanjaya Gupta, MD, PNB HFL, Shri Subhash Lakhota, Tax Consultant and Brig. (Retd.) R R Singh, DG, NAREDCO attended the meeting and explained the issues raised in the Memorandum. Ministry of Housing and Urban Poverty Alleviation, since then, has formulated its views and conveyed to Finance Ministry.

Discussion on Draft Real Estate (Regulation & Development) Bill 2011 on 23rd January and 01st February 2012

A meeting to deliberate up on the critical issues of the bill, consequent to decision taken during mass consultation on 11th January 2012, was held on 23 January 2012 and 01st February 2012 in NBO Conference Room, 120 - G Wing, Nirman Bhawan, New Delhi. Shri A.K Misra, Secretary, Housing and Urban Poverty Alleviation, Govt. of India chaired the meeting. Shri Navin M Raheja, President, NAREDCO, Shri Sunil Dahiya, Senior Vice President, NAREDCO, Shri Sunil Mantri, Vice President, NAREDO, Shri Rajiv Talwar, Group ED, DLF Ltd. and Brig. (Retd.) R R Singh, Director General, NAREDCO participated in the meeting and raised concerns of industry on various provisions of the bill. The bill, since then, has been finalized and sent to State Govts. for their final comments. It is likely to be introduced to Parliament in Budget/Monsoon session.
Housing Loans by Commercial Banks – Clarification on Loan to Value (LTV) Ratio issued by RBI.

The RBI has advised Commercial Banks, vide their Circular no. RBI/2011-12/383 dated February 03, 2012, for not including stamp duty, registration and other documentation charges in the sanction limits of housing loans. This is aimed to restore the effectiveness of Loan to Value (LTV) Ratio of housing loans. The text of notification can be accessed from RBI website.

NAREDCO Pre budget Press Conference on 17th February 2012

Shri Navin M Raheja, President, NAREDCO addressed a press conference on 17th February 2012 to highlight important issues raised in NAREDCO Pre budget memorandum, submitted to Finance Ministry for inclusion in Union Budget 2012. Shri Rajesh Aroa, Member Finance, NAREDCO and Brig. (Retd.) R R Singh, Director General, NAREDCO were also present during the Press Briefing. Following important issues were highlighted by President in the Press Conference-

Declare Housing as Infrastructure and bring it u/s 80IA of IT Act 1961: This will enable developers and Housing Finance Institutions to raise funds at low rate of interest from domestic and foreign markets. This, at the moment, is confined to Indian Banks and Public Equities who lend at very high rate of interest. This will also incentivize developers by bringing down their income tax liability. Most countries and World Bank treat housing as infrastructure.

Special Incentive to Developers to undertake construction of Smaller Houses u/s 80IB(10) of IT Act 1961: More than 90% shortage of housing is in smaller size houses (300 – 1200 sqft built up area). u/s 80IB(10) of IT Act 1961. There used to be an incentive for 100% deduction of profits derived from the construction of housing projects upto 1000 sqft built up area in Mumbai and Delhi and upto 1500 sqft built up area at other places. This was withdrawn vide Finance Act 2009. As this was a big incentive for developers to construct smaller size housing units to suit the requirements of low and medium income households, NAREDCO has suggested that it should be reintroduced and 100% deduction of profits derived from constructing housing units upto 1200 sqft built up area allowed. This will go a long way in addressing the housing requirement of LIG and MIG categories.

Increase in Deduction Limit on Account of Interest Payment on Home Loan from Rs. 1.5 lakh to Rs. 3 lakh u/s 24 of IT Act 1961: Deduction of Rs. 1.5 lakh, paid as interest on home loan, was introduced vide Finance Act 2001 and made effective from 1st April 2002. Before 2001, 100% of interest paid on home loan used to be deducted. Since 2001, ten long years have passed and merely on the basis of Cost Inflation Indexation, Rs. 1.5 lakh in 2001 would be close to Rs. 3 lakh in 2012. Also, the indexed cost of Rs. 20 lakh property in 2001 would be around Rs. 40 lakh in 2012. Thus, merely on the basis of cost indexation, there is a strong case to increase the deduction limit, on account of interest payment on home loan, from Rs. 1.5 lakh to Rs. 3 lakh, the NAREDCO has argued.

Increase in Exemption Limit of Rental Income u/s 24(a) of IT Act 1961: Supply of rental housing in the market is insignificant because of low rate of return on high investment in housing property. As all can’t own houses for various reasons, 40-50 percent of total housing stock is ought to be on rental in the market, to meet the housing need of low income group, who have no capital to buy, and floating population. NAREDCO has suggested to increase the deduction limit from 30%, presently available u/s 24(a), to 50% and levy tax only on 50% of the rental income. This is necessary to incentivize people to build / buy houses for renting purposes and, thereby, increase rental housing stock.

Exemption from Capital Gain if Proceed from Transfer of a House Property is utilized for Purchase of one or more Houses or Invested in Capital Gain Bond u/s 54 of IT Act 1961: As per the provisions of Section 54 of IT Act 1961, investment of Capital Gain from the sale of a house, if made to purchase one house, is exempt from Capital Gain Tax. If Capital Gain is more than the cost of the house, tax is payable on the balance. NAREDCO has suggested that where entire capital gain is invested on purchase of residential property (one or more) or invested in Capital Gain Bond, it should be exempted from Capital Gain Tax. It will be big incentive for investment in housing.

Service Tax on Residential Construction: Imposition of 10% Service Tax on residential construction, when Govt. is struggling to meet the demand supply gap of housing, specially in low income groups, is a deterrent, as it raises the cost by about 3%. NAREDCO has suggested that Service Tax on residential construction should be withdrawn.
**Fund for Housing:** NAREDCO has suggested creation of a dedicated affordable housing fund, in line with infrastructure fund, exclusively for developing housing of EWS & LIG. Also, it has suggested access to pension, insurance and provident funds to meet long term investment requirement of housing sector.

**Measures to Down Market Housing Finance to Poor Section of Society:** NAREDCO has suggested for developing suitable mechanism based on interest subsidy, funds pooling and relaxation of mortgage requirements as also instruments like micro financing, community pooling, agricultural land mortgaging and annual installments etc, to meet the housing loan need of urban poor and rural households. It has also suggested graded scale of grant, subsidy and loan for social housing to ensure that lowest strata of poor get maximum benefit.

**Bring HFCs at par to Banks in Derecognizing Interest on Bad Debts u/s 36(1)(viia):** NAREDCO has suggested that HFCs and Banks should be given same treatment in allowing 10% of the value of doubtful and loss assets as deduction. HFCs are deprived of it at the moment.

The National print & electronic media have widely covered the press conference. Special focus on granting infrastructure status to housing has received overwhelming support of the media.

**New Members of NAREDCO**

Ritman Group, headquartered at Kolkata, with diversified interest and experience of over 100 years, have joined NAREDCO as Patron Member.

Ritman have forayed into Structurally Insulated Panel System imported from Italy and used across the globe for over 3 decades. This technology has been shortlisted by BMTPC, through its global tender, for alternate building technology. The green technology develops buildings which are less expensive and are seismic, acoustic, thermal and fire resistant.

M/S Sintex Industries have joined NAREDCO as associate member.

The company’s main business is in Plastics with a share of Rs 2180.43 cr in 2010-11 accounting for 83.35 percent of the company’s total revenue. Monolithic construction business reported a substantial growth, emerging as the flagship business vertical in its plastic division. Foreseeing the opportunity in Low cost Housing, the company has forayed its presence in many States. The company is also engaged in Prefabs, water storage solutions and custom molded products. The company’s Managing Director is Mr. S B Dangayach.

**State Housing Policies and Building Byelaws**

NAREDCO has uploaded Housing Policies and Building Bye laws of States/towns where substantial development is taking place for the information of the developers / builders / planners / designers. This could be accessed at www.naredco.in

**Post Budget Session on 19 March 2012**

Over 40 participants were present at the NAREDCO Post Budget Session chaired by Shri Navin Raheja, President at India International Centre Annexe on 19th March 2012.

The following experts explained the salient features of the budget proposals relating to direct taxes, indirect taxation and policy changes impacting real estate sector:

- Mr. Mudassir Zaidi, Regional Director (North), Knight Frank India Ltd. on housing, urban development and infrastructure.
- Mr. Vishwas Panjiar, Associate Director, Walker Chandiok & Co. on Direct Tax proposals.
- Ms Anita Rastogi, Associate Director, Indirect Tax Practice, PwC on proposals in relation to indirect taxes.
- Mr. Neeraj Sharma, Client Service Director, Walker Chandiok & Co. also made a presentation on the implications of revised guidance note on Accounting of real estate transactions issued by the Institute of Chartered Accountants of India (ICAI) applicable for real estate new projects after April 1, 2012. Budget highlights are on pages 5 to 7.
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Site Office: Sector-103, Gurgaon.
Ph: +91-7428302614, +91-7827215567,
+91-7428273550,
E-mail: landmarksales@eragroup.in
Web: www.cosmocity.in, www.eragroup.co.in