

GST ON REAL ESTATE

FOR MEMBERS OF NAGPUR BRANCH OF WIRC

Deliberation by :-

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A STUDENT OF GST™

Delhi, Mumbai, Pune, Bangalore, Chennai, Nashik

-- Prayer --

Oh GST grant me the

- wisdom to understand the law
 - courage to explain it to the clients
 - diplomacy to make it through the department
 - strength to be updated real time
 - patience to be in queue on the portal
 - humbleness to accept that there could still be something I don't know/understand
- and above all
- The resilience to unlearn and redo the above untiringly

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GST Terminologies !

- Parliament – Goods & Services Tax
- NaMo – Good & Simple Tax
- RaGa – Gabbar Singh Tax
- Businessmen – Ghano Saroo Tax
- Me – Ghar Sansar Tyagi

IMPORTANT TERMINOLOGIES

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Important Terminologies

- Ongoing Project – Project started before 1st April 2019 subject to conditions
- New Project – Project started on or after 1st April 2019

- What is the a Project - Project means a project as defined under Real Estate (Regulation and Development) Act, 2016 (RERA). It means every separate registration under RERA (even phase wise registrations) will be treated as separate project for GST purposes.

- **Issue: Whether an old project gets registration of a phase after 01st April 2019 will be considered as a new project??**

Important Terminologies

- Ongoing Project - If all the below conditions are getting satisfied as on 31st March 2019:
 - a) Commencement certificate for the project has been issued &
 - b) Construction for the project has started (earthwork for site preparation is completed and excavation for foundation has started) and the same is certified by Architect or chartered engineer or licensed surveyor
 - c) Completion certificate has not been issued or first occupation for the project has not taken place
 - d) Apartments being constructed under the project have been booked (wherein at least one instalment is credited to the bank account) partly or wholly
- **A Project which does not qualify as ongoing project will qualify as “New Project” which commences on or after 1st April 2019.**

Important Terminologies

- Types of projects: -

- As per definitions a project with commercial units upto 15% area of the total area of the project will be treated a Residential Real Estate Project (RREP). In other words, these commercial units will be treated as residential units.
- A project wherein the commercial units area is more than 15% of the total area of the project will be known as Real Estate Project (REP).
- Issue:- In cases where the developer revises plan and the ratio of commercial to total project goes beyond 15%, it may face a few challenges in qualification as RREP and hence the applicability of GST rates.

Important Terminologies

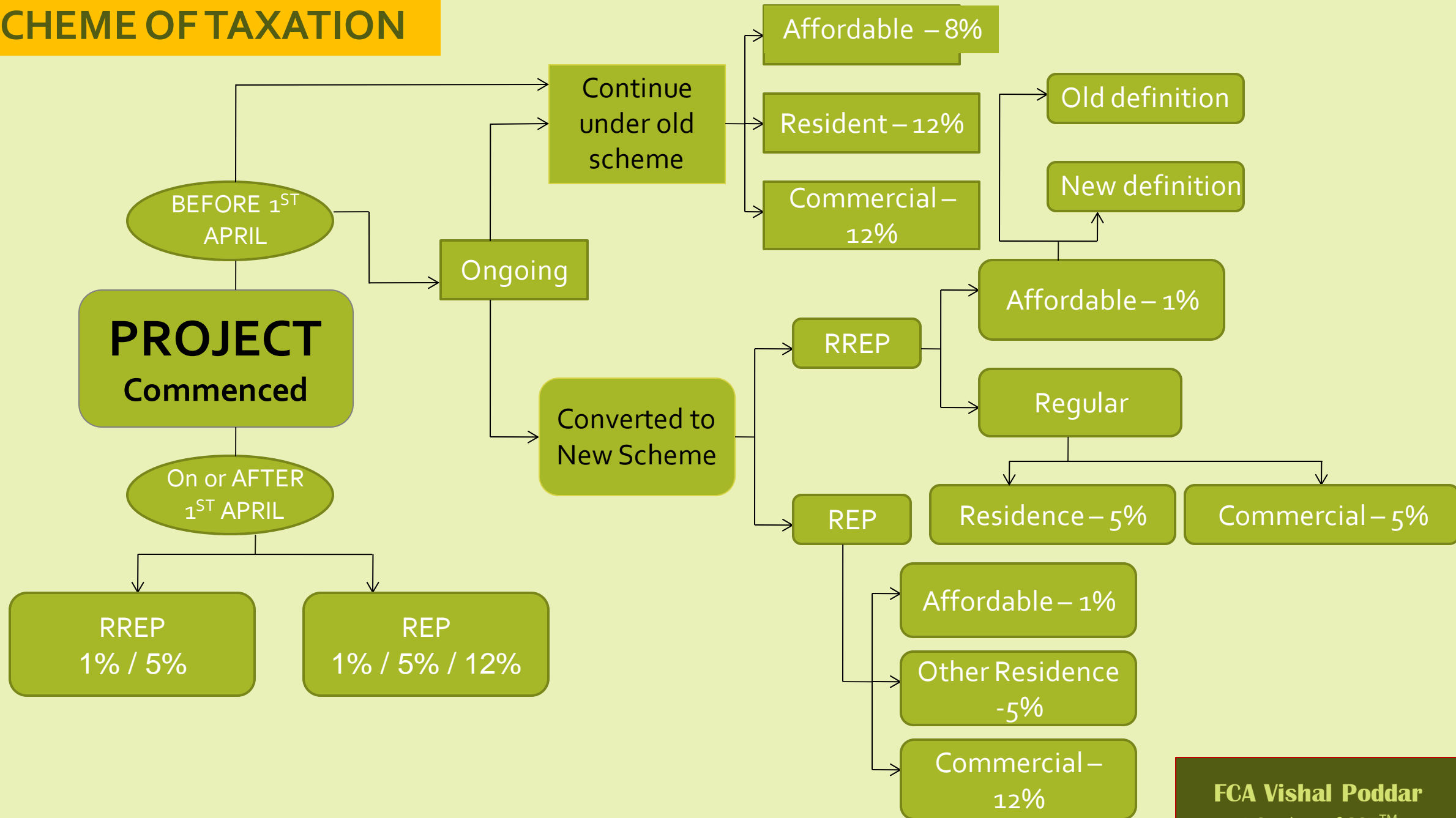
- Affordable Residential Apartment - Two types of apartments qualify as Affordable Residential Apartment
 - 1. Residential unit fulfilling both the conditions:
 - a) Having RERA Carpet area upto 60 sq meters in metro cities (Bengaluru, Chennai, Delhi NCR, Hyderabad, Kolkata and Mumbai) or upto 90 sq meters in non-metro cities AND
 - b) Gross amount charged for such unit is upto INR 45 Lakhs
 - 2. A unit which was qualifying as affordable housing unit under the earlier scheme (effective upto 31st March 2019). *This is only for an ongoing project*
- **Issue: what shall be included /excluded in Gross amount charged INR 45 Lakhs**

REAL ESTATE TAXATION SCHEME FROM APRIL 2019

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SCHEME OF TAXATION



SCHEME OF TAXATION

- **Issues: Whether the new scheme is optional?**
- For New Projects - The new scheme of charging 5%/ 1% with no ITC is mandatory for all new RREP. It is also mandatory to new REP to the extent of residential units.
- For ongoing projects - the developer-promoter can choose to continue with old scheme of charging GST @ 12%/ 8% with availment of ITC or new scheme of charging GST @ 5%/ 1% with no ITC.
- *It is to be noted that this option is only available to ongoing projects as defined earlier.*
- *Developer can choose option project wise by submitting declaration in Form prescribed in Annexure IV to Notification No. 3/2019 by 10th May 2019.*
- *If the developer does not upload the details of option selected, it would be deemed to have selected the new rates.*

SCHEME OF TAXATION

- Issues:
- Units already booked in an ongoing project wherein it is decided to charge at new rates
 - New rates are to be charged to instalment which become due on or after 1st April 2019.
- In cases where invoice is issued (for instalment due) in March 2019 and payment is received in April 2019
 - GST is payable at old rates.
- What treatment is to be given to full commercial project?
 - A full commercial project will be subject to old rates with availability of ITC. This applies to both ongoing as well as new commercial projects.
- Since new rates are without ITC whether the payment for 5%/ 1% is to be made in cash only?
 - It is clearly mentioned that payment is to be made through electronic cash ledger only.

ITC REVERSAL

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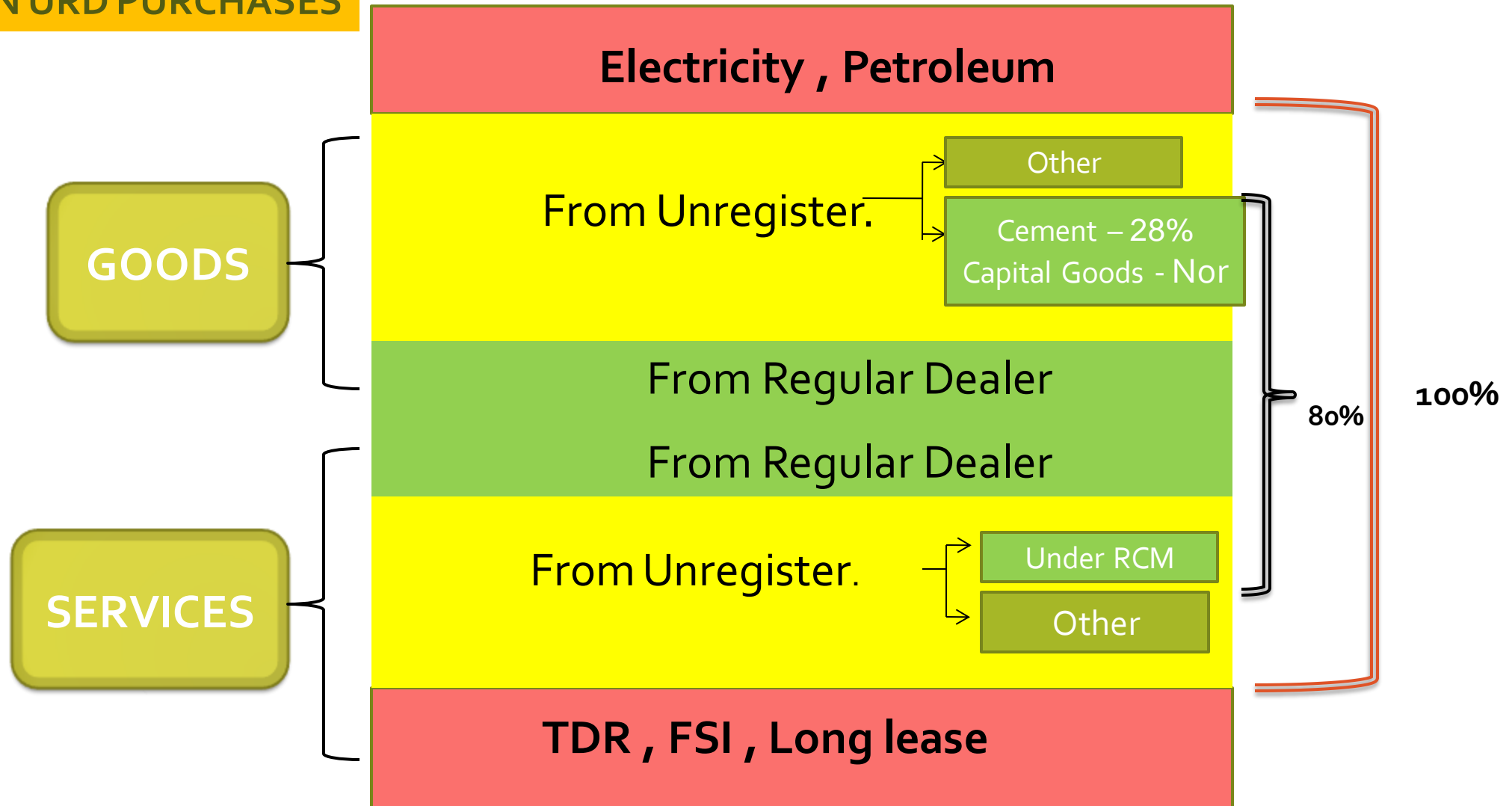
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URD PURCHASES

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RCM ON URD PURCHASES



RCM ON URD PURCHASES

When is the developer required to do this calculation and pay GST?

- URD RCM on Cement and CG is to be paid monthly
- URD RCM on Others is to be calculated for the full financial year or part thereof (upto the date of completion certificate) and paid along with liability for June of next financial year

TREATMENT OF TDR, FSI, LONG TERM LEASE

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TREATMENT OF JDA

- Under the new scheme, what is the tax treatment for constructed area given by the developer to the LO? Valuation:
 - Under the new scheme, value of units (residential and/or commercial) given to the LO be similar to value charged from independent buyer closest to the date of transfer of development rights.
 - Rate: GST on such value is payable by the developer at applicable rate (depending upon it being affordable/other residential/commercial).
 - Timing: The developer is required to pay this GST at the end of the project i.e. on receipt of completion certificate or its 1st occupancy whichever is earlier. Since the provision of reduced rates is also available to ongoing projects, the above valuation, rate and timing of payment of GST will be applicable to both ongoing and new projects.
- What happens if the LO re-sales any of the unit(s) before completion?
 - In case the LO re-sales the unit (residential and/or commercial) before completion, he is required to pay GST on the same at applicable rates. While paying GST, LO would be allowed to take offset of GST charged by the developer. However, the value on which GST is payable by the LO cannot be lower than the value on which GST is paid by the developer (for the relevant unit).

TREATMENT OF JDA

- From a developer perspective, is there any GST payable by the developer in case he gives monetary consideration for development rights to the LO?
 - No, since in such case, the developer is not providing any service but only making monetary payment for rights received.
- From a LO perspective, how will the service of transfer of development rights be treated under the new GST scheme effective from 1st April 2019?
 - The service of TDR (value of which will be value of units given to LO or monetary consideration given to LO) is exempted from GST to the extent it results into construction of residential apartments. However, the exemption would be proportionately withdrawn in case the residential units remain unsold as on the date of completion certificate. Further, the provisions also provide that the GST payable on the withdrawn portion would be capped at 5%/ 1% of the value of unsold units (wherein the value of unsold units would be based on value of similar units sold to independent buyer closest to the date of completion certificate).

TREATMENT OF JDA

- There is a lot of confusion that under a TDR model GST is payable on the unsold residential inventory also. From the above it seems that the GST is payable on the unsold residential inventory of the developer and not of the LO. Is this correct?
 - Yes, GST payable on account of service of TDR is capped to unsold residential inventory lying with the developer on the date of completion certificate.
- What happens if the TDR service provided by the LO is used for construction of commercial area by the developer?
 - The exemption for TDR service is only for using the same for construction of residential units. In case the TDR service is used for construction of commercial units, the same will be taxable.
- Under the above scheme, who is required to pay GST on the taxable portion of TDR?
 - The new scheme has put TDR service under RCM and hence the GST payable on TDR service provided by the LO is now payable by developer on RCM. This will include taxable portion of TDR service towards construction of both residential and commercial units.

Thank - You

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