

Uttar Pradesh Real Estate Regulatory Authority (UP RERA)

organizes



REAL ESTATE AGENT TRAINING PROGRAMME



Key Note Speaker

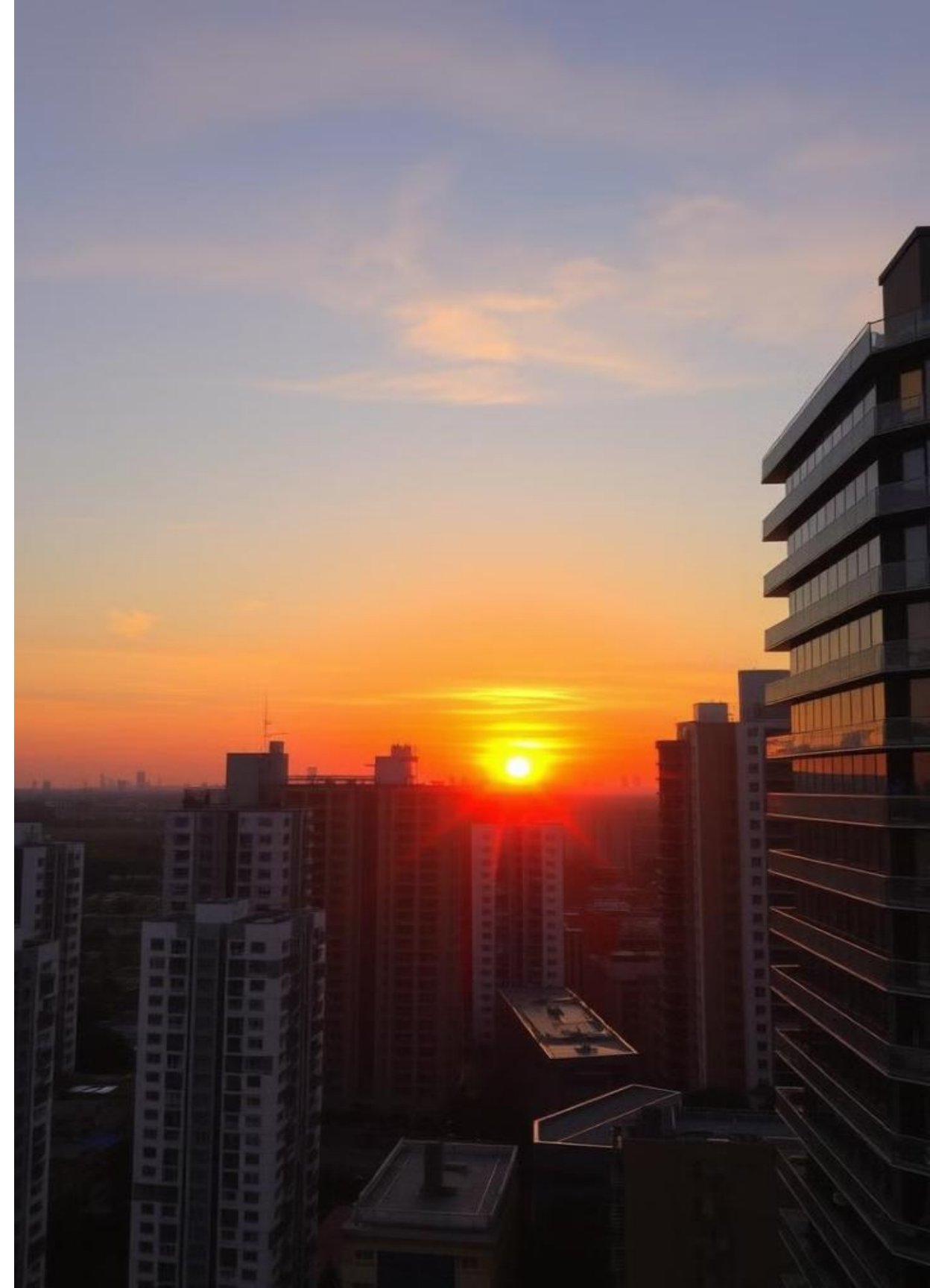
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Relevant Provisions of Insolvency and Bankruptcy Code, 2016 for Real Estate Agents

This presentation outlines key provisions of the Insolvency and Bankruptcy Code (IBC), providing a comprehensive framework for the resolution of insolvency and liquidation of both individuals and companies..



APPLICABILITY OF IBC, 2016

- **Any Company incorporated under the Companies Act, 2013 or under any provisions of previous Acts**
- **Any other Company governed by any Special Act**
- **Any LLP incorporated under the LLP Act, 2008**
- **Any other body, as notified by the Central Government**
- **Partnership Firms**
- **Individuals**

Introduction to IBC, 2016

- **Purposes of IBC**

- Resolve insolvencies efficiently
- Protect creditor's rights
- Promote entrepreneurship and financial discipline

- **Key Players**

- National Company Law Tribunal (NCLT).
- Insolvency Professionals (IPs).
- Committee Creditors (CoC)

WHO CAN INVOKE?

Financial Creditor (Sec.7)

- Any person to whom a financial debt is owed &
- Includes a person to whom such debt legally assigned or transferred



Operational Creditor (Sec.9)

- A person to whom an operational debt is owed &
- Includes any person to whom such debt legally assigned or transferred



Corporate Debtor (Sec.10)

- A corporate person who owes a debt to any person

Protection to Homebuyers

- **Financial Debt**

Any amount paid by the allottee are considered as Financial debt (Amendment 2018)

- **Real Estate Allottee as Financial Creditors**

The IBC recognizes homebuyers as financial creditors, (100 or 10% of the allottees, whichever is lower can file insolvency application) - Section-7

- **Committee Participants in CoC**

Homebuyers, as financial creditor are part of the CoC, influencing decisions about the resolution plan.

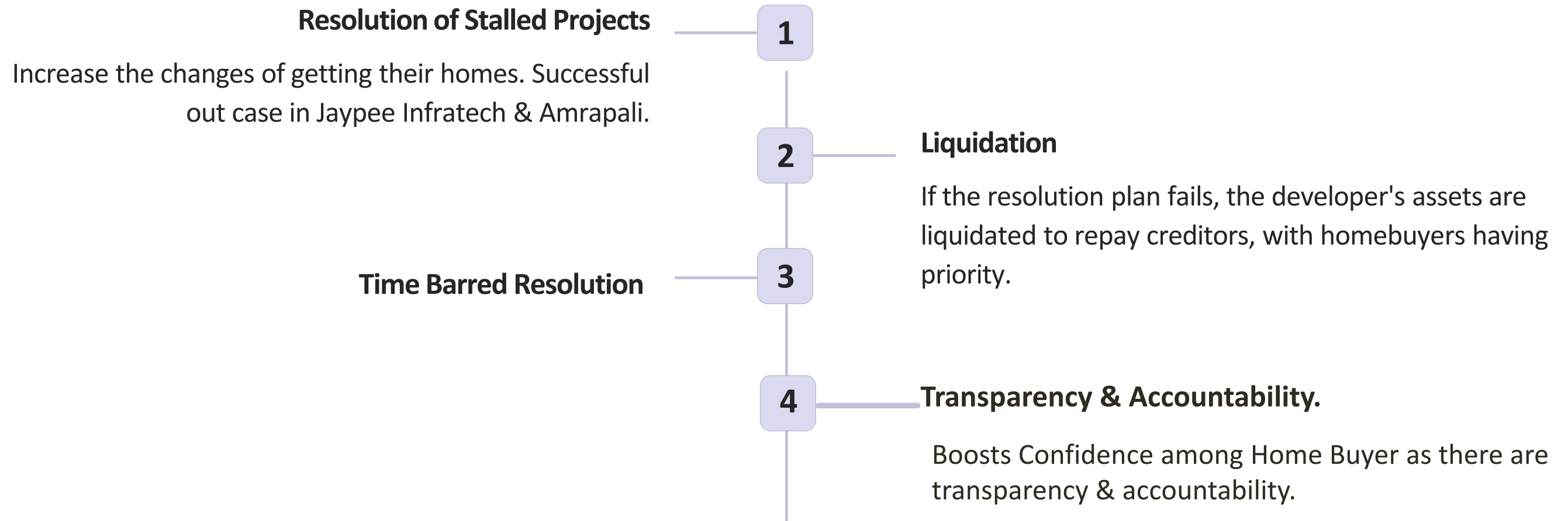
MORATORIUM EFFECT

[Sec.14 (1) (A) – (D)]

- **Adjudicating Authority shall by order prohibit the following:**
 - ✓ **Institution/continuation/proceedings of suits including execution of any judgment, decree or order in any Court**
 - ✓ **Transferring, encumbering, alienating or disposing of assets/legal right/beneficial interest**
 - ✓ **Any action to Foreclosure, Recover or enforce any security interest created including any action under SARFAESI Act, 2002.**



Impact of Insolvency on Real Estate Projects



WATERFALL MECHANISM UNDER IBC

The following debts will be paid in PRIORITY given below:

Insolvency Resolution Cost & Liquidation Cost;

Debts to Secured Creditor (who have relinquished their security interest) & Workmen's dues (for 24 months before commencement);

Wages & Unpaid Dues to employees (other than workmen) (for 12 months before commencement);

Financial Debts to Unsecured Creditors;

Workmen's Dues for earlier period;

Crown Debts and Debts to Secured Creditor following Enforcement of Security Interest;

Remaining Debts;

Preference Shareholders;

Equity Shareholders or partners.

Practical Implications for Agents

Financial Health Check

Agents must always check for insolvency proceedings against the developers to understand their financial health

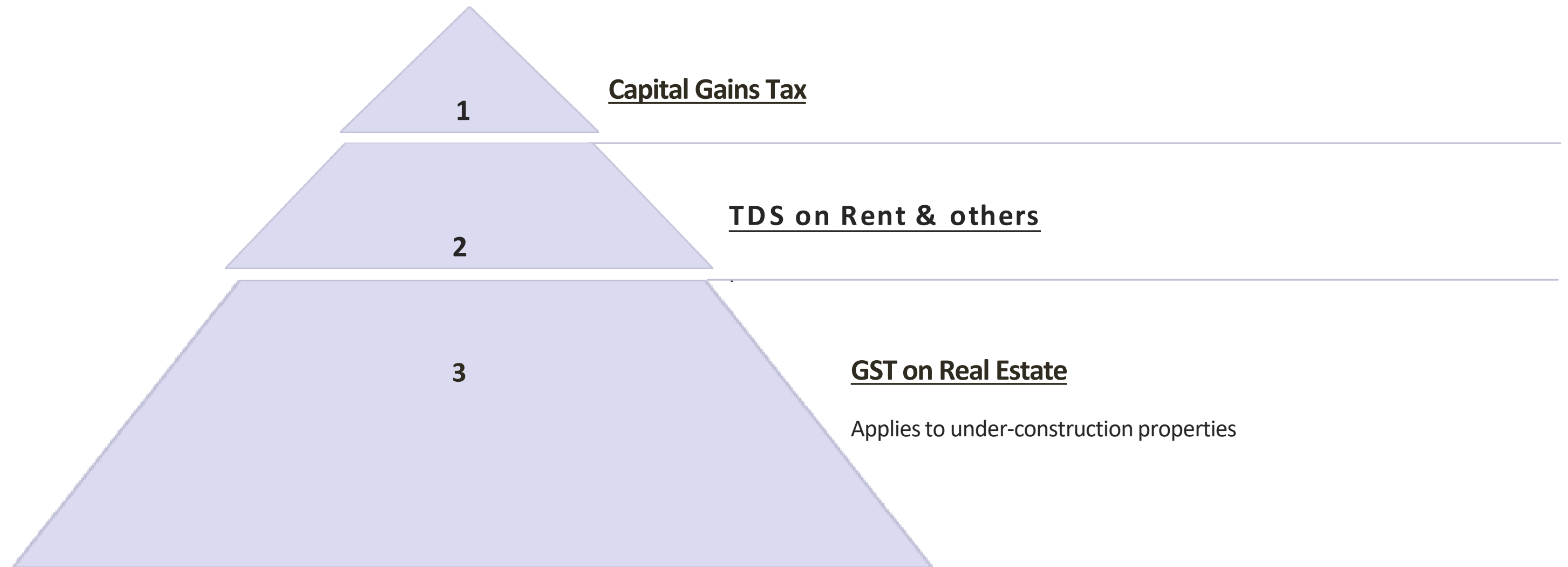
Communication during Resolution

Facilitate communication with the resolution professional to protect buyer's interest

Advising Homebuyers

Inform homebuyer of their rights to initiate proceedings and participate in the CoC

Taxation and TDS in Real Estate Transactions



Section 67 of Income Tax Act, 2025

Section 67 of the Income Tax Act is concerned with the taxation of capital gains arising from the transfer of a capital asset. There are two types of Capital Assets- Long Term Capital Asset & Short Term Capital Asset

Long Term Capital Asset refer to any Capital Asset that the Real Estate Agent holds for more than 2 Years before its Sale.

Short Term Capital Asset refer to any Capital Asset that is sold within 2 Years from the date of its acquisition.

Capital Gains in Real Estate

Any profit/gains arising from the transfer of capital assets such as property, shares, bonds, vehicles, etc., are subject to income tax under the head "Income from **Capital Gains**." Capital assets are categorized into short-term and long-term assets. Long-term capital gain/loss arises if a long-term capital asset is transferred.



Budget 2024 Update

Budget 2024 has proposed the following amendments effective from FY 2024-25 :

- The tax on other assets is reduced from 20% to 12.5% with effect from 23rd July 2024. On the other hand, the indexation benefit that previously was available on the sale of long-term assets has now been eliminated. However, the Government has given taxpayers an option to compute taxes on real estate transactions purchased before 23rd July 2024 either at 12.5% without indexation or at 20% with indexation.

What is Indexed Cost of Acquisition

- Indexed Cost of Acquisition is a benefit provided to the Assessee on gains on Long-Term Capital Assets. By Indexing the Cost, inflation adjustment is done by which cost is increased, which results in lower Capital Gain Tax.

What is Cost of Inflation Index

- The Cost Inflation Index (CII) is a government-set tool for calculating an asset's estimated annual price increase due to inflation. Updated yearly in the official gazette, it aids in accurately measuring inflation's impact on asset values.

What is Cost of Improvement

Cost of improvement is the capital expenditure incurred by an assessee for making any addition or improvement in the capital asset. It also includes any expenditure incurred in protecting or curing the title.

Section 78 of Income Tax Act, 2025

- It ensures that property transactions are taxed fairly by comparing the sale price of the property with its Stamp Duty Value.
- The Stamp Duty Value is the value determined by the government for calculating stamp duty, which is the tax paid when a property is registered.
- If the sale price of a property is lower than the Stamp Duty Value, the Stamp Duty Value is considered the actual sale price for tax purposes. This ensures the seller cannot undervalue the property to avoid paying tax.
- Therefore, It ensures that the sale is taxed based on the property's Stamp Duty Value or the actual sale price, whichever is higher. This is done to prevent the undervaluation of properties to avoid tax.

TAX EXEMPTION

- **For Long Term Capital Gain Only.**
- **For Individual & HUF Only.**
- **In case Purchase of house property from sale of house property** - capital gains from the sale of house property are reinvested into buying or constructing another house property **(Section- 82)**
- **Investments in Bonds-** Capital Gain upto Rs. 50 Lacs which can be redeemed after 5 years. **(Section- 85)**
- **On investment in New House Property up to entire consideration-** You must invest the entire sale consideration and not only capital gain to buy a new residential house property to claim this exemption or proportionate - **(Section- 86)**
- **Capital Gain Account**



Section 82 of Income Tax Act, 2025

Under Section 82 of the Income Tax Act, an individual or HUF selling a residential property can avail tax exemptions from Capital Gains if the capital gains are invested in purchase or construction of residential property.

Asset must be classified as a long-term capital asset.

The asset sold is a Residential House. Income from such a house should be chargeable as Income from House Property

The seller should purchase a residential house either 1 year before the date of sale/transfer or 2 years after the date of sale/transfer. In case the seller is constructing a house, the seller has an extended time of 3 years from the date of sale/transfer.

Section 86 of Income Tax Act,2025

Section 86 of the Income Tax Act 2025 provides an exemption from long-term capital gains tax on selling any capital asset other than a residential property. This means that if you sell a long-term capital asset like shares, stocks, bonds, gold, land, etc., and reinvest the sale proceeds in a new residential property for purchase within 1 year before or 2 years after the date of transfer or constructed within 3 years from the date of transfer.

Section 85 of Income Tax Act,2025

- The investment should be made in notified bonds: National Highways Authority of India (NHAI), Rural Electrification Corporation (REC), Power Finance Corporation Limited (PFC) bonds, Indian Railway Finance Corporation (IRFC) Limited bonds or any other bond notified by the Central Government.
- The total investment amount cannot exceed INR 50 lakhs during the current financial year and the subsequent financial year.



Tax Deducted at Source (TDS) in Real Estate (Section 393)



TDS on Purchase of Immovable Property

Buyers must deduct TDS at 1% on transactions exceeding ₹50 lakh.



TDS on Brokerage

Payer deduct TDS at 2% from 1st October 2024 on brokerage exceeding ₹20,000 in a financial year. (w.e.f. 01.10.2024)

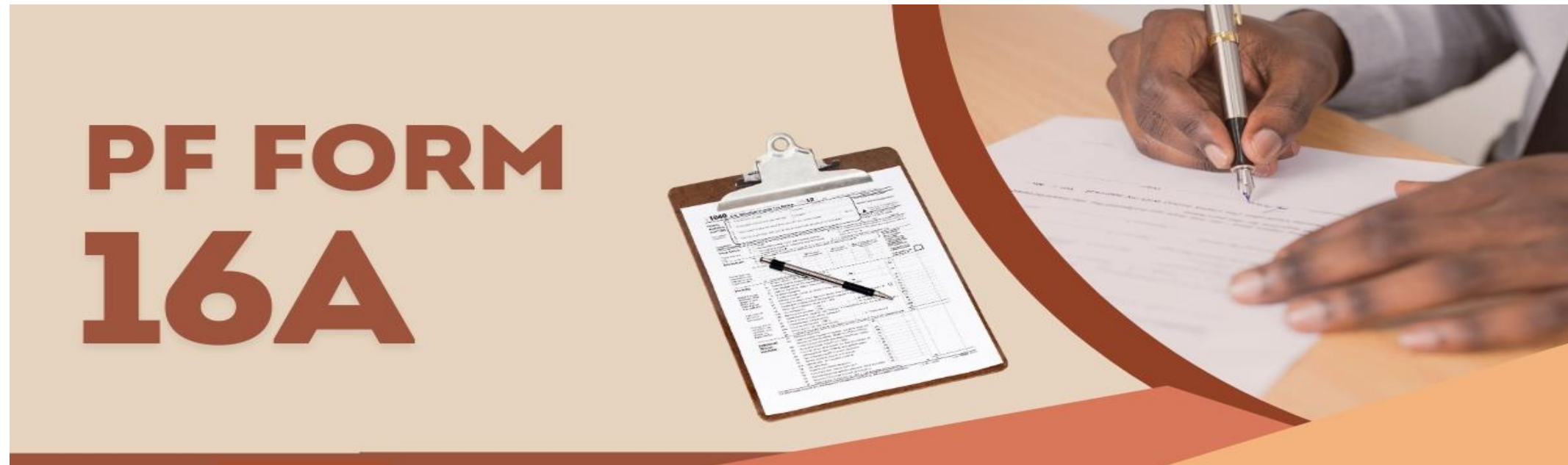


TDS on Rent

TDS on the rent paid on land, building, or both of it is to be charged at 10% . If rent paid exceeds Rs. 50,000/- per month (w.e.f. 01.04.2025)

Note : Budget Amendment 2024

If there are multiple buyers or sellers involved, separate Form 141 must be filed for each buyer-seller combination.



What is Form-131

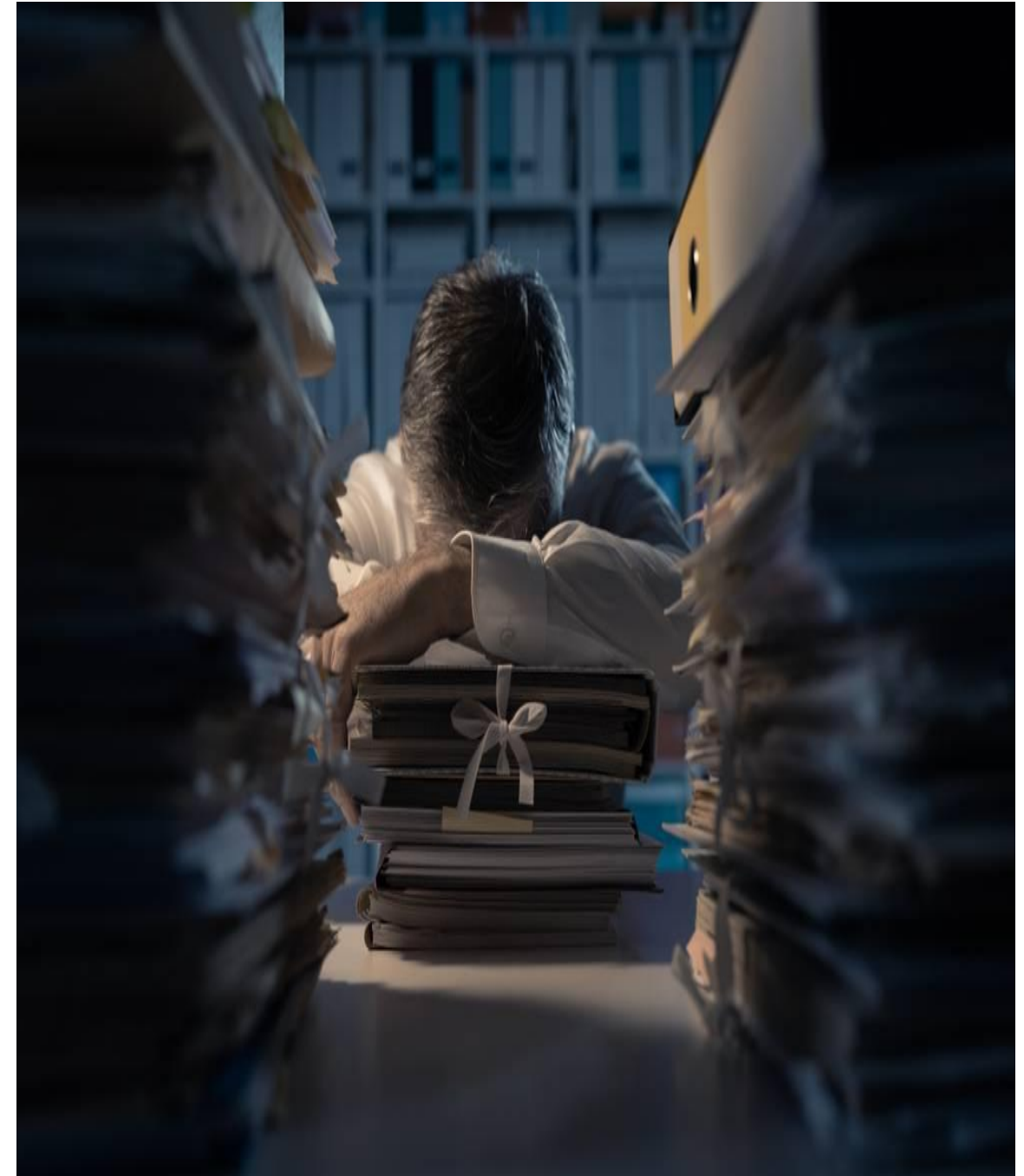
- The person who pays Commission/ Brokerage to Real Estate Agent issue Form 131 to Real Estate Agent. It is a TDS Certificate, issued for withholding taxes at source. Form 131 contains crucial information about TDS deductions from Commission/ Brokerage & acts as documentation of such deductions. For example, information about income received from Commission/ Brokerage is provided, every quarter, this certificate is given out. Note that quarterly TDS return deadline falls on same day as general due date, which is fifteenth of month. Information in this certificate can also be found in Form 168.
- **When Is Form 131 Required?**
- Form 131 is needed when you file your annual income tax returns with income tax department & you have income from Commission/ Brokerage in case of Real Estate Agent. This document is used by majority of banks & other financial organizations throughout verification process when you apply for loan of any kind, including personal, home, auto, or consumer loans.

Section 427 of Income Tax Act-2025

Under Section 427 of the Income Tax Act,2025 taxpayers who fail to file their TDS Returns in time-Rs.200 per day

Section 461 of Income Tax Act-2025

As per Section 461, a penalty ranging from Rs.10,000 to Rs.1,00,000.00 may be imposed for the non-filing or incorrect filing of TDS returns.



GST on Real Estate

- Goods and Services Tax (GST) has significantly impacted the real estate sector in India by bringing uniformity and transparency to the taxation system.
- Introduced on July 1, 2017, GST replaced multiple indirect taxes like VAT, service tax, and excise duties, making the tax regime more streamlined.
- Under GST, real estate transactions are classified into various categories, each with its own tax treatment depending on whether it involves land, under-construction properties, or ready-to-move-in homes.
- GST applies to the sale of under-construction properties, with developers required to charge GST on the sale of residential and commercial units. However, the tax does not apply to the sale of completed properties or land transactions.
- The introduction of GST has impacted both property developers and buyers, influencing costs and pricing structures.
- Understanding GST on real estate is essential for both property buyers and developers and agents to ensure compliance with tax laws and to make informed financial decisions.
- A notification was issued by tax department regarding changes in GST rates dated 29th March 2019 which was applicable from 01st April 2019.

S.No	Type Of Property/Service	GST Rate before 01.04.2019	GST Rate on or after 01.04.2019	Remarks/Conditions
1	Affordable Housing Scheme	8%	1%	In case of : Project in Ghaziabad, Noida, Greater Noida carpet area less than 60 sq mtrs Other than above cities carpet area less than 90 sq mtrs & Total Value of the house does not exceed Rs. 45 lacs
2	Other Residential Projects	12%	5%	
3	Commercial Apartment- Shop, Godown, Office, etc. which is under Residential Real Estate Project (RREP)	18%	5%	Only if below condition is satisfied:- Carpet area of commercial apartment does not exceed 15% of the total carpet area of the project
4	Other than above commercial apartment	18%	*12%	
5	Transfer of Development Rights/ FSI / Long term Lease (Residential Apartment)	Exempt	Exempt	
6	Transfer of Development Rights/ FSI / Long term Lease (Commercial Apartment)	18%	18%	Tax is to be paid by promoter
7	Works Contract service to promoter for developing Affordable Residential Project	12%	12%	
8	Works Contract service to promoter for developing other than Affordable Residential Project	18%	18%	

Section 51 of CGST Act,2017

In terms of Section 51 of CGST Act, 2017 read with Notification No. 50/2018- Central Tax dated 13.09.2018, w.e.f. 01.10.2018 the following category of persons are liable to deduct GST @ 2% (CGST @1% & SGST @1%) on supplies made under a contract that exceeds Rs.2.5 lakh.

- a) A department or establishment of the Central Government or State Government; or
- b) Local authority; or
- c) Governmental agencies; or
- d) An authority or a board or any other body –
 - i. set up by an Act of Parliament or a State Legislature;
or
 - ii. established by any Government, with fifty-one per cent or more participation by way of equity or control, to carry out any function;
- e) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860); f) Public sector undertakings.



Conclusion: Empowering Real Estate Agents

1

Understanding

Knowledge is power. Understand key provisions of the IBC and real estate taxation.

2

Client Guidance

Inform and advise clients about their rights and rights and obligations.

3

Professionalism

Enhance your professionalism by providing providing compliant and informed service.