No	Subject	Brief	Current position and our recommendation
1.	**Standardisation of Agreement under RERA**	A PIL has been filed before the Hon'ble Supreme Court of India wherein they wanted all State Rules of RERA to be uniform from the perspective of draft agreements. In this matter, various state governments are parties, CREDAI-Haryana and CREDAI- Maharashtra have been allowed to intervene by the court. The Court has also appointed an Amicus-Curie who had been directed to come with a standard draft agreement along with the Central Govt (Housing Ministry). The Amicus has already submitted a draft standard agreement before the Court and the court has directed all parties to give their suggestion/objections in regard to the same. CREDAI-Maharashtra draft was formulated by suggesting having two separate standard agreements. One for single/stand-alone buildings and another for larger layouts/ multiple buildings as they both have separate provisions in RERA to deal with. We have received suggestions from CREDAI MCHI, CREDAI West Bengal and CREDAI Pune Metro. On the last effective date, a compendium was placed on record by the Additional Solicitor General and Amicus Curiae comprising of (a) Part A – clauses of builder-buyer agreements which are proposed to be uniform across the country; and (b) Part B-clauses of builder buyer agreements which may be inserted by the States, subject to	**We are now going ahead and finalising the consolidated suggestions and going ahead with filing affidavit.** **We shall be submitting the final reply in Court once date of the said matter is given.** **The matter is now tentatively listed on 10.04.2024.**

		the condition that they should not be contrary to or dilute the Clauses of Part A and must conform to the provisions of Real Estate (Regulation and Development) Act 2016. The abovementioned compendium has been circulated to all the States as well as the industry associations which are represented in the court. The States and Associations weer allowed to submit their responses and suggestions for the formulation of the compendium to the Union Ministry of Housing and Urban Affairs on or before 15.02.2024.	
2.	**<u>Applicability of Consent to Establish and Consent to Operate on Residential Projects.</u>**	The issue that has come from various State chapters that there has been a lot of harassment and heavy penalties being levied for non-taking or non-renewal of Consent to Operate and/or Consent to Establish under the Air Act and Water Act. This issue has bene decided by the Hon'ble High Court of Delhi in the matter of Splendor Landbase Ltd v/c Delhi Pollution Control Board order of Sept 2010. Single Bench- In a bunch of petitions ie. 38- On the issue of applicability of Air Act and Water Act ie. applicability of CTE and CTO is primarily for; was held to be not applicable for Residential projects as there is no processing units in such projects which is for industrial units but is applicable to shopping malls and commercial projects. (Primary issue amongst many issues including applicability of penalty). LPA was filed by Delhi Pollution Control Board before Division bench of Delhi High Court- The Division bench confirmed the view taken by the Single Bench in regard to applicability of Air Act and Water Act to residential projects. There is no stay of the Delhi High Court order in any form issued by the SC.	**We suggest taking this issue at State level and if required file necessary petition before High Court. If any member is still facing any issues on this, we further suggest taking it up with their respective State associations and keep us informed.** **The Matter is now listed on 30th Aril 2024**

		We have in the meanwhile requested all State chapters to file a representation to their respective State Pollution Control Boards for not insisting on both Consent in light of the High Court orders. CREDAI-National too has given a similar representation to the Ministry of Environment, Govt of India asking them to give necessary direction to each State Pollution Control Authorities.	
3.	**No CTE and CTO needed for Residential Projects up to 1,50,000 sq mtrs and no separate EC to be granted except by Local Planning Authority along with CC.**	The NGT passed an order dt/- 08.12.2017 in Original Application No 677 of 2016wherein some portion of the Notification dt/- 09.12.2016 issued by MoEF were struck down namely- a) The exemption of CTE and CTO under Air Act and Water Act for residential projects for upto 1,50,000 sq mtrs. b) The exemption of taking separate EC for projects from SEIAA for 3 different categories of projects starting from 5000 sq mtrs upto 1,50,000 sq mtrs wherein Local Bodies were empowered to grant the same along with Planning approvals based on standard criteria's. The Union of India has filed a Civil Appeal No. 2522 of 2018 before the Supreme Court of India.	**Matter is admitted on 10th February 2020. No interim orders given. No date showing so far.** **We recommend that CREDAI National shall seek opinion to intervene in the matter since Notification was issued and GOI are defending the same.**
4.	**RERA registration of Projects during the 3 months period granted in certain states under respective RERA Rules.**	In RERA, when the Act came in force on 1st May 2017, the state of Maharashtra also brought along the Rules in 2017 itself. Like some other states, 3 months period was given all developers from the date of act coming into force to register on-going projects. Thus, those that did not register the projects under RERA which were	**CREDAI National intervened in the matter and got the matter remanded back to the Appellate Tribunal.**

		completed / not on-going as on the date of the commencement of The Real Estate (Regulation and Development) Act, 2016 ("RERA Act") i.e. 01.05.2017 and that where the Occupancy Certificate ("OC") / Completion Certificate ("CC") was obtained for the project within 3 months from the commencement of the Act i.e. on or before 31.07.2017. This matter was decided by the Hon'ble Bombay High Court vide order dt/- 01.03.2021 passed by the Hon'ble High Court of Judicature at Bombay in Writ Petition (ST) No. 1118 of 2021, the High Court allowed such projects for such exemption. This order has now been challenged before the Hon'ble Supreme Court of India.	
5.	**GST applicability based on ITC and not as per flat 5%**	A Writ petition through M/s Provence Developers Pvt Ltd v/s Union of India in WP No. 6393 of 2022 has been filed challenging the notification of the GOI on the flat rate fixed at 5% without ITC. Additionally, issue is also on being aggrieved as tax is sought to be levied on land to the extent of 1/3rd of its value, irrespective of the location of the said land. It is a prayer that the tax has only been levied on the construction, from the date of the agreement arrived at, between the concerned parties. As per the interim order dated 15.03.2023, the Court has directed the Petitioner not to undertake any fresh construction at the suit property and maintain status quo. Further, Delhi Development Authority (DDA) has been restrained from either dispossessing the Petitioner or from taking any coercive action against the Petitioners, whose authorisation slip/conveyance deed has been cancelled by the DDA. At	**Since 2023, adjournments have been sought by the parties. The next date of hearing is tentatively on 30.04.2024.**

		the same time, the Petitioner has been directed not to create any third-party rights in their respective suit properties.	
6.	**Deduction under GST against land being limited to only 1/3rd**	The case of *Union of India & Others v Munjaal Manishbhai Bhatt & Others, SLP (C) No. 21703 of 2022* filed before the Supreme Court of India against the impugned judgement of the Gujarat High Court dated 06.05.2022 in the case of *Munjaal Manishbhai Bhatt v Union of India, (2022) 104 GSTR 419* wherein the Court held that the GST is payable only on the cost of construction and not on the cost of land. Upon examining the provisions of GST Act and relevant notifications to determine the taxability of land in real estate transaction, it observed that Section 7(2) of the GST Act excludes the transactions listed in Schedule III from the purview of supply. Entry No. 5 of the Schedule III specifically includes the sale of land, indicating that it does not qualify as either supply of goods or services. Consequently, the Court concluded that the imposition of tax on consideration received for the sale of land, as per the delegated legislation, was ultra vires Section 7 and 9 of the GST Act. The application of such deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India, and subsequently, the GST Authorities were to refund the excess amount of GST directly to the Petitioner along with interest @6%. Vide order dated 14.12.2024, this matter was tagged with *CREDAI Chennai v Union of India, W.P. (C) No. 1382 of 2023.*	**Since CREDAI Chennai are already party in the matter, CREDAI National are keeping a close watch in this matter and shall give whatever support is needed to CREDAI Chennai.** **The next date of hearing is 22.03.2024.**

		A Senior Counsel (Adv Gulati) requested by CREDAI National has clearly advised that till the final decision in the pending Special Leave Petitions is passed by the Hon'ble Supreme Court, the service provider may keep collecting the GST from the service recipient as computed on the basis of the Impugned Notifications, so that in the event if the Order passed by the Hon'ble High Court is not accepted/set-aside/overruled by the Hon'ble Supreme Court then the entire burden of tax does not fall entirely upon the service provider. Also, the service providers would be well advised to inform the service recipients about the passing of the Impugned Order by the Hon'ble High Court and the pendency of the matter in the Hon'ble Supreme Court.	
7.	**GST Applicable on J/V agreements with Landowners in regard to area sharing development agreement.**	The Telangana High Court passed an order dt/-9th Feb 2024 in the matter Prahitha Construction Private Limited vs Union of India and 3 others in Case No.: WP/5493/2020 dismissed the petition challenging applicability of GST on TDR introduced by Landowner in a Joint-Venture (JDA) in a residential project and held that such introduction of TDR amounts to 'Supply' in the absence of any exemption issued under any Notification. The Writ Petition was seeking declaration that transfer of development rights of land by landowners to the petitioner by way of Joint Development Agreement (JDA) should be treated as sale of land by the land-owners and hence the execution of the said agreement should not be subjected to levy of GST, it should be covered under Entry 5 of Schedule III of the GST Act.	**To the best of our knowledge, the decision has not yet been challenged in the Supreme Court.**

		The High Court held that under no circumstances can the execution of the JDA or the mere transfer of development rights nor any of the clauses of the JDA indicate an automatic transfer of ownership or title rights over any portion of land belonging to the landowner in favour of the petitioner/developer. In absence of any cogent and substantial material to establish right, title and ownership being created in favour of the petitioner/developer, the transfer of development right as it stands is amenable to GST and cannot be brought within the purview of Entry 5 of the Schedule-III of the GST Act. The Court also dismissed the challenge to the Notification No.23/2019-Central Tax (Rate), dated 30.09.2019, and held that the notification on its plain reading would reveal that it is not with which there is a charge created on the transfer of development rights, but in fact only provide for the time when the tax needs to be paid. The very purpose of issuance of the said notification appears to be ensuring ease for the landowners and developers as transfer of development rights happen at the time of execution of JDA. However, handing over of the constructed area to the landowner happens at a later stage only on issuance of the completion certificate of the project. In other words, the aforesaid notification deals with the time of supply of services of transfer of development rights which was otherwise always taxable, since introduction of GST, has now been postponed to a time when the petitioner transfers the possession of the constructed/developed area to the landowner.	

8.	**GST information sharing be dept to ED authorities under PMLA.**	The Ministry of Finance, Govt of India has recently issued a notification dt/- 7th July 2023 wherein they have now inserted Goods and Service Tax Network under Section 66 of the PMLA which is mainly on allowing the two departments to share information. This is now part of schedule of offences under PMLA but at the same time, this can be a route to figure out tax evasion) including indirect taxes that could eventually lead to PMLA being attracted.	**An advisory is being sent to all State Associations to keep this in mind and be careful while maintaining GST accounting and reporting. Additionally, since Chartered Accountants are now 'reporting entities' under PMLA, most of your financial information can be taken from Chartered Accountants.**
9.	**Environmental Clerance-OM for regularization of violation cases that has been stayed by Supreme Court.**	There was a 2021 OM issued by MoEF which was challenged before the Madras High Court, Tamil Nadu and the OM was stayed. The same was subsequently held by Supreme Court only to be applicable in Tamil Nadu and not in the entire country. In pursuant to which MoEF issued a circular in 2022 which directed all State SEIAA to accept such applications of violations for regularization under OM of 2021. This was given a blanket stay by the Supreme Court in Jan 2024. CREDAI National intervened in this matter and we are awaiting the order today. However as per what is understood from the dictation of the order – CREDAI National Intervention is allowed, and projects that already had an existing EC prior to the 2021 OM and have some violation based on modifications, changes or expansions, they shall be treated by the SEIAA as per the 2021 OM without considering the stay of the OM as per the Supreme Court order.	**If any member is still facing any issue, we along with the Environment Committee shall help guide him on this. The MoEF has filed a very strong reply to the PIL and defended the OM of the Govt on various essential grounds that will help the matter in the way forward. The next date is 10th May 2024.**

		The MoEF (Govt of India) has submitted a detailed and extensive affidavit in reply in this matter. There is a new intervention application filed by another NGO name One Earth One Life who other than objecting to the issuance of this OM is also seeking prohibition over the govt to not issue any such OM's or Notifications in the future. Vide order dated 02.02.2024, the Supreme Court allowed the intervention filed by CREDAI and held that the said order will not come in the way of competent authorities considering proposals for modifications/alterations in the ECs if the area of the projects had a prior valid EC prior to 07.07.2021 and such applications would be strictly considered in accordance with law as it existed prior to 07.07.2021.	
10.	**Environmental Clearance-Clarification of built-up area for projects between 2006-2011 to be understood as prospective from 2011**	The EIA notification of 2006 had the term 'built-up area' against the threshold area mentioned for projects that fall under category 8a. and 8b. The understanding by all, including the Environment dept and local bodies was that the term 'built-up' area was to relate to Local Development Control Regulations (DCR). However, after a Supreme Court judgment in 2010, the MoEF clarified this issue vide Notification of substitution in 2011. The MoEF subsequently on CREDAI National insistence issued a clarification in 2017 stating that the same is to be read prospectively. However, in 2018, the Supreme Court struck down this clarification of 2017 and state that the Notification of 2006 was absolutely clear and thus this 'built-up' area is to mean total area and not as per DCR. CREDAI Pune Metro along with BAI file SLP's in	**Matter is now being heard for final disposal before Supreme Court in March. We will keep a watch on the same. The next date is showing as 19th March 2024.**

		Supreme court and got some interim reliefs of not taking any coercive actions for their members.	