GST & Builders | Press release by CBEC

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The CBEC has issued a press release on 15.06.2017 involving the transition to GST of the Builder/Developer Community.

CA.Dr.Sanjay Burad said " Builders/Developers have to work out the benefit of net reduction in tax liability under GST regime. They have to compare the structure under existing tax laws and GST (especially savings in tax liability due to input tax credit availability) and this benefit has to be passed to the consumer in form of price reduction as the Anti-Profiteering provision."

The issued press release is quoted as follows

Press Release

The CBEC and States have received several complaints that in view of the works contract service tax rate under GST at 12% in respect of under construction flats, complex etc, the people who have booked flats and made part payment are being asked to make entire payment before 1st July 2017 or to face higher tax incidence for payment made after 1st July 2017. This is against the GST law. The issue is clarified as below:-

1. Construction of flats, complex, buildings will have a lower incidence of GST as compared to a plethora of central and state indirect taxes suffered by them under the existing regime.
2. Central Excise duty is payable on most construction material @12.5%. It is higher in case of cement. In addition, VAT is also payable on construction material @12.5% to 14.5% in most of the States. In addition, construction material also presently suffer Entry Tax levied by the States. Input Tax Credit of the above taxes is not currently allowed for payment of Service Tax. Credit of these taxes is also not available for payment of VAT on construction of flats etc. under composition scheme. Thus, there is cascading of input taxes on constructed flats, etc.
3. As a result, incidence of Central Excise duty, VAT, Entry Tax, etc. on construction material is also currently borne by the builders, which they pass on to the customers as part of the price charged from them. This is not visible to the customer as it forms a part of the cost of the flat.
4. The current headline rate of service tax on construction of flats, residences, offices etc. is 4.5%. Over and above this, VAT @1% under composition scheme is also charged. The

buyer only looks at the headline rate of 5.5%. In other cities/states, where VAT is levied under the composition scheme @2% or above, the headline rate visible to the customer is above 6.5%. What the customer does not see is the embedded taxes on account of cascading and sticking of input taxes in the cost of the flat, etc.

5. This will change under GST. Under GST, full input credit would be available for offsetting the headline rate of 12%. As a result, the input taxes embedded in the flat will not (& should not) form a part of the cost of the flat. The input credits should take care of the headline rate of 12% and it is for this reason that refund of overflow of input tax credits to the builder has been disallowed.
6. The builders are expected to pass on the benefits of lower tax burden under the GST regime to the buyers of property by way of reduced prices/ installments. It is, therefore, advised to all builders / construction companies that in the flats under construction, they should not ask customers to pay higher tax rate on instalments to be received after imposition of GST.
7. Despite this clarity on law position, if any builder resorts to such practice, the same can be deemed to be profiteering under section 171 of GST law.