

No additional burden on Home buyers under GST.



Reduced liability of tax on homes under GST

- The CBEC and States have received many 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 before 1st July, 2017, are being asked to bear higher tax incidence for payments made after 1st July, 2017. This is against the GST law, as explained below.
- Construction of flats, complex, buildings have a lower incidence of GST as compared to a plethora of Central and State Indirect Taxes suffered by them under the earlier regime.
- Central Excise Duty was earlier payable on most construction material @12.5%. It was higher in case of cement. In addition, VAT was also payable on construction material @12.5% to 14.5% in most of the States. In addition, construction material also earlier suffered Entry Tax levied by the States. Input Tax Credit of the above taxes was not allowed for payment of Service Tax. Credit of these taxes was also not available for payment of VAT on construction of flats etc. under composition scheme. Thus, there was cascading of input taxes on constructed flats etc.
- As a result, incidence of Central Excise Duty, VAT, Entry Tax, etc. on construction material was earlier being borne by the builders, which they passed on to the customers as part of the price of flats charged from them. This was not visible to the customer as it formed a part of the cost of the flat.
- The earlier headline rate of Service Tax on construction of flats, residences, offices etc. was 4.5%. Over and above this, VAT @1% under composition scheme was also charged. The buyer only looked at the headline rate of 5.5%. In other Cities/States, where VAT was being levied under the composition scheme @2% or above, the headline rate visible to the customer was above 6.5%. What the customer did not see is the embedded taxes on account of cascading and sticking of input taxes in the cost of the flat etc.
- The situation has changed under GST. Under GST, full input credit is 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.
- 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 amount of installments inclusive of all taxes to be received after imposition of GST.
- 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.

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