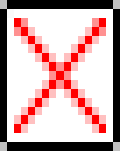


**Residential Realty Sector - Can basic prices be increased to offset loss?**

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IN terms of Notification No. [3/2019-CT\(Rate\)](#)

dated 29-3-2019, for all new projects commencing on or after 1-4-2019, Realty Developers would be compulsorily required to shift to the new system of charging GST @7.5% on the total value of construction services provided after claiming a standard deduction of one-third of the total price charged towards transfer of the undivided portion of the land, thereby leading to an effective GST rate of 5% of the total value including land value. Realty Developers have been given an option to either follow the earlier scheme of charging 18% and claim one-third as the land deduction or to shift to the new system, in respect of ongoing projects.

In respect of new projects or ongoing residential projects in respect of which they have exercised their option to shift to the new system, the Developers would not be allowed to claim input tax credit nor will they be allowed to utilize ITC already availed, to pay the output GST under the new system.

Be that as it may, the question that would arise is, if the Developers increase their basic prices to offset the loss of ITC, will such increase attract the provisions of Section 171 of the [CGST Act, 2017](#) which deals with anti-profiteering?

Section 171 of the [CGST Act, 2017](#) reads as under:

***"171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.***

***(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.***

***(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed."***

When the Developer is left with no option but to charge GST at the lower effective rate of 5%, he cannot be accused of not passing the reduction in the GST rate. But, what about ITC, which could work out to anywhere between 6% to 9% depending on the business model followed by the Developer? With the new regime not allowing ITC to be availed, there are only two options that the Developer has, viz. either to absorb the loss of ITC or to increase his basic prices to offset the loss of ITC. If the Developer goes ahead and follows the second option of increasing his basic prices, will this be treated as profiteering?

By no means, Sir. Where is the question of profiteering when all that the Developer is seeking is to cover his loss arising out of the loss of ITC, through a corresponding increase in his basic prices?

In the context of reduction of the GST rate from 18% to 5%, with effect from 15-11-2017, wherein ITC was denied to restaurants, the increase in the base prices to offset the loss of ITC by the restaurant was held not to violate Section 171, by the National Anti Profiteering Authority in the case of Jijrushu N Bhattacharya Vs NP Foods [2018-TIOL-08-NAA-GST](#)

. The reasoning behind this ruling is equally relevant in the context of the increase of base prices by Developers to offset the ITC loss under the new scheme.

The only caveat is that Developers would need to have the relevant project wise workings involving ITC, etc. so that, they are in a position to defend themselves against any likely proceeding involving Section 171.

When the Developer opts to shift to the new scheme, even for some of his ongoing projects, there is no bar in terms of the Developer increasing his base prices even in respect of the contracts already entered into by him and such a move, would not be against the provisions of the Indian Contract Act, 1872, is my strong view.

### **Before partingâ€¦**

It would seem that, the flat buyer is not going to benefit vis-Ã -vis the new scheme, as the overall cost of buying a residential apartment is unlikely to go down. One would then have to wonder as to the very purpose of implementing this new scheme for the Realty Sector, which, by denying ITC, goes against the fundamental principle of seamless credit, which is at the very heart of the GST law.

**(The views expressed are strictly personal.)**

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