

## EXECUTIVE SUMMARY

<b>What we have highlighted in this Chapter</b>	In this Chapter we present a separate paragraph on short levy of stamp duty and registration fees on execution of developers' agreement and a few other illustrative cases of ₹ 6.14 crore selected from observations noticed in 2012-13 during our test check of records relating to stamp duty and registration fees.
<b>Trend of receipts</b>	Total collection from stamps and registration during the year 2012-13 was ₹ 8,742.17 crore. It has increased by 13.62 <i>per cent</i> as compared to the previous year.
<b>Internal Audit / Internal control</b>	Internal Audit was discontinued from March 2009 and a new set up named as Technical Audit Cell was established in the Department vide Government notification of July 2008, which conducts internal audit. In addition to this Assistant Inspectors General posted at district level inspect the records of the subordinate offices.
<b>Status of compliance to Inspection Reports (2012-13)</b>	We conducted test check of the records of 352 units relating to the Registration Department during the year 2012-13 and found cases of short levy of stamp duty and registration fees due to misclassification of documents/undervaluation of properties and other irregularities amounting to ₹ 211.37 crore in 1,302 cases. The Department accepted underassessment of ₹ 5.90 lakh, involved in 15 cases.
<b>Our conclusion</b>	<p>The Department needs to improve the internal control system including strengthening of Technical Audit Cell so that weaknesses in the System are addressed and omissions of the nature detected by us are avoided in future.</p> <p>It also needs to initiate immediate action to recover the amount, pointed out by us, more so in those cases where it has accepted our observation.</p>

## CHAPTER-V STAMPS AND REGISTRATION FEES

### 5.1 Tax administration

Receipts from Stamps and Registration Fees in the State are regulated under the Indian Stamp Act (IS Act) 1899, Indian Registration Act (IR Act) 1908, the UP Stamp (Valuation of Property) (SVOP) Rules, 1997 and circulars and orders of the Government of Uttar Pradesh, issued from time to time. Stamp duty is leviable on the execution of instruments at the prescribed rates. Evasion of stamp duty is commonly effected through undervaluation of properties, non-presentation of documents in the office of the registering authority and non/short payment of stamp duty by the executants on the documents submitted before the registering authorities.

The determination of policy, monitoring and control at the Government level is done by the Principal Secretary, *Kar evam Nibandhan*. The Inspector General, Registration (IGR) is the head of the Stamps and Registration Department and exercises overall superintendence and control over the working of the Department. He is assisted by an Additional Inspector General (Addl. IG), 24 Deputy Inspectors General (DIGs) at the divisional level, 96 Assistant Inspectors General (AIGs) at the district level and 354 Sub-Registrars (SRs) at the district and *tehsil* level.

### 5.2 Trend of receipts

#### 5.2.1 Variations between budget estimates and actuals

Para 25 of Uttar Pradesh Budget Manual stipulated that in preparation of the Budget, the aim is to achieve as close on approximation to the actual as possible. It is, therefore, essential that not merely should all items of revenue that can be foreseen be provided but also only so much and no more, should be provided as is expected to be realised, including past arrears.

The budget estimates and actual receipts under the head (0030) Stamps and Registration Fees- Receipts from Non-Judicial Stamp are given in table no. 5.1:

Table No. 5.1

(₹ in crore)						
Year	Budget estimates	Actual receipts	Variation (+/-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2008-09	4,600	4,138.27	(-) 461.73	(-) 10.04	28,658.97	14.44
2009-10	4,800	4,562.23	(-) 237.77	(-) 4.95	33,877.60	13.47
2010-11	5,000	5,974.66	(+) 974.66	(+) 19.49	41,355.00	14.45
2011-12	6,612	7,694.40	(+)1,082.40	(+) 16.37	52,613.43	14.62
2012-13	9,308	8,742.17	(-) 565.83	(-) 6.08	58,098.36	15.05

**Source:** Information provided by the Department and Finance Accounts of respective years.

It may be seen that variation between Budget Estimates and actuals ranged between (-) 10.04 *per cent* and 19.49 *per cent*.

The Department stated that no system existed in the Department to monitor such shortfall or increase.

**We recommend that the budget estimates be framed as per provisions of the budget manual and the Department should examine reasons for variations.**

### 5.2.2 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2013 amounted to ₹ 586.67 crore. The details of arrears outstanding for more than five years were not available with the Department. The table no. 5.2 depicts the position of arrears of revenue during the period 2008-09 to 2012-13:

Table No. 5.2

(₹ in crore)				
Year	Opening balance of arrears	Arrears increased during the year	Amount collected during the year	Closing balance of arrears
2008-09	213.24	448.88	109.07	553.05
2009-10	553.05	171.65	129.87	594.83
2010-11	594.83	(-) 3.03	132.16	459.64
2011-12	459.64	(-) 2.33	125.87	331.44
2012-13	331.44	417.80	162.57	586.67

Source: Figures provided by the Department.

We noticed that out of the arrears of ₹ 586.67 crore, ₹ 382.75 crore were stayed and ₹ 63.21 crore were reduced by the Hon'ble Courts and remaining amount of ₹ 140.71 crore were required to be recovered by the Department. However, the Department could not furnish the data regarding the total number of cases involved in respect of these arrears.

**We recommend that the Department may consider taking appropriate steps for early recovery of the arrears in cases which are clear for recovery and not covered under stay orders.**

### 5.2.3 Cost of collection

The gross collection from Stamps and Registration Fees, expenditure incurred on collection and percentage of such expenditure to the gross collection during the years 2010-11, 2011-12 and 2012-13 along with the all India average percentage of expenditure on collection to gross collection for the relevant previous year are mentioned in the table no. 5.3:

Table No. 5.3

(₹ in crore)					
Head of revenue	Year	Gross collection	Expenditure on collection	Percentage of cost of collection to gross collection	All India average percentage of cost of collection for the previous year
Stamps and registration fees	2010-11	5,974.66	145.46	2.43	2.47
	2011-12	7,694.40	149.10	1.94	1.60
	2012-13	8,742.17	232.33	2.66	1.89

Source: Information provided by the Department and Finance Accounts of respective years

It can be seen from the foregoing table that the cost of collection of Stamps and Registration Fees was below the all India average during 2010-11 whereas it was higher during the years 2011-12 and 2012-13.

**The Government needs to take appropriate measures to bring down the cost of collection.**

## 5.3 Internal Audit Wing/Internal control

Internal Audit Wing (IAW) of an organisation is a vital arm of the internal control mechanism and is generally defined as the control of all controls. It enables the organisation to assure itself that the prescribed systems are functioning reasonably well.

We observed that Internal Audit was discontinued from March 2009 and a new set up named as Technical Audit Cell was established in the Department vide Government notification of July 2008, which conducts internal audit. In addition to this Assistant Inspectors General posted at district level inspect the records of the subordinate offices. The sanctioned strength of the wing, details of audit planning such as number of units planned for audit, number of units audited, number and amount of objection raised and settled during the year was not intimated by the Department.

## 5.4 Impact of audit

### 5.4.1 Status of compliance to Audit Reports (2007-08 to 2011-12)

We had reported cases of non/short assessment/realisation of stamp duty and registration fees and other irregularities involving ₹ 517.61 crore in the Audit Reports for the years 2007-08 to 2011-12. Of these, the Department has accepted observations of ₹ 57.71 crore and recovered ₹ 2.31 crore. The details of cases accepted and recovered are mentioned in the table no. 5.4:

Table No. 5.4

(₹ in crore)				
Year of Audit Report	Total money value	Accepted money value	Recovery made	Percentage of recovery to amount accepted
2007-08	87.09	50.53	-	-
2008-09	4.05	-	-	-
2009-10	0.69	0.44	0.02	4.55
2010-11	10.36	6.70	2.25	33.58
2011-12	415.42	0.04	0.04	100.00
<b>Total</b>	<b>517.61</b>	<b>57.71</b>	<b>2.31</b>	<b>4.00</b>

The percentage of recovery as compared to the accepted cases has been Nil or extremely low over the last five years except in 2011-12.

**We recommend that the Government should take appropriate steps to improve the recovery position, at least in the accepted cases.**

### 5.4.2 Status of compliance of outstanding inspection reports (2007-08 to 2011-12)

We had reported cases of non/short assessment of stamp duty and registration fees due to misclassification of documents and undervaluation of properties and other irregularities involving ₹ 5.91 crore through Inspection Reports (IRs) during the period 2007-08 to 2011-12. Of these, as on December 2012, the Department has accepted observations of ₹ 53.72 lakh and recovered ₹ 46.12 lakh. The details are shown in the table no. 5.5:

Table No. 5.5

(₹ in lakh)			
Year of Inspection Report	Total money value	Accepted money value	Recovery made
2007-08	93.30	Nil	Nil
2008-09	10.74	7.73	0.13
2009-10	14.96	3.56	3.56
2010-11	11.73	37.79	37.79
2011-12	460.01	4.64	4.64
<b>Total</b>	<b>590.74</b>	<b>53.72</b>	<b>46.12</b>

It may be seen that the Government/Department had affected full recovery against the accepted cases of the IRs for the years 2009-10 to 2011-12 whereas it could recover only ₹ 13,000 against the accepted amount of ₹ 7.73 lakh for the IR for the year 2008-09.

### 5.4.3 Status of compliance to Inspection Report (2012-13)

Our test check of the records of 352 offices of Stamps and Registration Department, conducted during 2012-13 revealed cases of short levy of stamp duty and registration fees due to misclassification of documents/ undervaluation of properties and other irregularities amounting to ₹ 211.37 crore in 1,302 cases which fall under the following categories as mentioned in the table no. 5.6:

Table No. 5.6

Sl. No.	Categories	₹ in crore)	
		Number of cases	Amount
1.	Levy of Stamp Duty on Developer's Agreement	1	2.32
2.	Short levy of stamp duty and registration fees due to misclassification of documents	303	8.95
3.	Short levy of stamp duty and registration fees due to undervaluation of properties	275	6.05
4.	Other irregularities	723	194.05
<b>Total</b>		<b>1,302</b>	<b>211.37</b>

During the year 2012-13, the Department accepted ₹ 5.90 lakh, involved in 15 cases<sup>1</sup> of short levy of Stamp Duty and Registration Fees due to misclassification of documents/undervaluation of properties and other irregularities, pointed out by us in the earlier years.

Significant cases involving an amount of ₹ 6.14 crore pertaining to audit of offices of 176 Sub Registrars and office of IG Registration (including those cases found in audit during 2011-12 but not featured in earlier report) are mentioned in the succeeding paragraphs.

### 5.5 Non levy of additional stamp duty in development areas

Under the provisions of Section 128-A of UP Municipalities Act 1916 as amended from time to time, additional stamp duty at the rate of 2 per cent will be levied on the transfer of immovable property situated within the limit of such *Nagar Palika/Nagar Panchayat* as notified by the Government. The Government vide notifications of September 2008, December 2010 and April 2011 declared *Nagar Panchayat Rasulabad (Unnao)*, *Nagar Panchayat Sahjanawa (Gorakhpur)*, *Parichhit Garh (Meerut)* respectively, as town areas .

We scrutinised the records<sup>2</sup> of three Sub-Registrars (between August 2011 to March 2013) and observed that between December 2008 and January 2013 additional stamp duty at the rate of two per cent was not levied on deeds of transfer of the immovable property valued at ₹ 5.94 crore situated in the *Nagar Panchayat* areas viz.

*Nagar Panchayat Rasulabad (Unnao)*, *Nagar Panchayat Sahjanawa*

<sup>1</sup> Pertain to one case each of the year 1997-98, 2004-05, 2007-08 and 2008-09, two cases of 2009-10, 2010-11 and seven cases of 2011-12.

<sup>2</sup> Book 1, *Khand* and registered documents.

(Gorakhpur), Parichhit Garh (Meerut). This resulted in non-levy of additional stamp duty of ₹ 11.87 lakh.

We reported the matter to the Department and the Government between October 2012 and May 2013. The Department stated (September 2013) that it had started levying the additional stamp duty at the rate of 2 per cent after receiving information about the notification from respective Nagar Panchayats. We do not agree as the additional stamp duty was leviable from the date of the notification. Further reply has not been received (December 2013).

## 5.6 Short levy of stamp duty

Under Article 23 of Schedule 1-B of the Indian Stamp Act, 1899 (as amended in its application to Uttar Pradesh), stamp duty on a deed of conveyance is chargeable either on the market value of the property or on the value of the consideration set forth therein, whichever is higher. As per the Uttar Pradesh Stamp (valuation of property) Rules, 1997, market rates of various categories of land situated in a district are to be fixed biennially by the Collector concerned for the guidance of the Registering Authorities. Further, Inspector General of Registration (IGR) vide guidelines issued in June 2003 clarified that a property in the same plot (*gata*) should not be splitted up in more than one part for different purposes i.e. one for agriculture and the other for non-agriculture for the purpose of levy of Stamp duty. In the same guidelines it was also mentioned that if properties were surrounded by residential properties, the same properties should be valued as residential properties.

**5.6.1** On scrutiny of the records<sup>3</sup> of 39 Sub-Registrars<sup>4</sup> between May 2011 and February 2013, we noticed that 64 deeds of conveyance relating to non-agricultural land were registered between March 2010 and November 2012 for ₹ 9.95 crore at agricultural rates and stamp duty and registration fees of ₹ 65.20 lakh was levied.

We found that due to the following reasons the valuation should have been made at residential rates:

- part of the same plot was sold earlier at residential rates (54 deeds)
- part of the same plot was sold at residential rate on the same day (3 deeds)
- plots were surrounded by residential plots owners (7 deeds)

The plots were found valued at agricultural rates whereas as detailed above, their correct valuation at residential rate worked out to ₹ 50.82 crore. On this stamp duty and registration fees of ₹ 3.08 crore was leviable, whereas stamp duty and registration fees of ₹ 65.20 lakh only was levied. This incorrect valuation of property resulted in short levy of stamp duty of ₹ 2.43 crore.

<sup>3</sup> Book 1, *khand* and registered documents.

<sup>4</sup> SR Atrauli Aligarh, SR Khair Aligarh, SR III Aligarh, SR Karchana Allahabad, SR Soraon Allahabad, SR Azamgarh, SR Balrampur, SR Tulsipur Balrampur, SR Utraula Balrampur, SR Sadar Barabanki, SR Awala Bareilly, SR Etawah, SR Sohawal Faizabad, SR Dadri GB Nagar, SR Greater Noida GB Nagar, SR Jewar GB Nagar, SR Karnelganj Gonda, SR Sawayajpur Hardoi, SR Maudha Hamirpur, SR Sadar Hamirpur, SR Chhibramau Kannauj, SR Tirwa Kannauj, SR I Kanpur Nagar, SR III Kanpur Nagar, SR Chayal Kaushambi, SR Sirathu Kaushambi, SR I Lucknow, SR IV Lucknow, SR Manth Mathura, SR I Meerut, SR III Meerut, SR Kanth Moradabad, SR III Noida, SR Sadar Pilibhit, SR Sadar Rampur, SR Sadar Sitapur, SR Sidhaulti Sitapur, SR I Varanasi and SR Gangapur Varanasi.

We reported the matter to the Department and the Government between May 2011 and April 2013. In reply the department accepted (September 2013) our observation and referred the cases to Collector Stamps for correct valuation of property. The Collector Stamps confirmed the short levy of the stamp duty of ₹ 5.63 lakh in five cases<sup>5</sup>. Action is pending in remaining cases (December 2013).

As per the Rule 4 of Uttar Pradesh Stamp (Valuation of Property) Rules, 1997, the Collector of a district after following prescribed procedure, fixes the minimum market value (circle rates) of the land/properties category-wise (Agriculture, residential, commercial, etc.) and locality-wise for the purpose of levying Stamp duty.

**5.6.2** On scrutiny of the records<sup>6</sup> of four Sub-Registrars<sup>7</sup> between March 2012 and March 2013, we noticed that eight deeds of conveyance relating to non-agricultural land were registered between February 2011 and

January 2013 for ₹ 1.31 crore at agricultural/ residential rates and stamp duty and registration fees of ₹ 8.13 lakh was levied against the Stamp Duty and Registration fee of ₹ 40.50 lakh leviable on market value of these properties at ₹ 6.52 crore as per approved circle rates as:

- six plots were declared as residential in the circle rates in force at the time of registration and therefore were to be valued at residential rates (six deeds at Sl. No. 1, 2 and 3)
- two plots were situated at roads and were to valued at the specific given rate (commercial rate) as per general instructions of circle rate, in force at the time of registration (two deeds at Sl. No.4)

This incorrect valuation of property resulted in short levy of stamp duty of ₹ 32.37 lakh as shown in the table no. 5.7:

**Table No. 5.7**

(₹ in lakh)

Sl. No.	Name of unit	Deed No./ Date of registration	Khasra No./date of application of circle rate	Area (sq. mt.)/ Valuation (as per deed)	Market value applicable (as per list)	Stamp duty and Regn. fee leviable at residential/ commercial rate	Stamp duty and regn. fee levied	Short levy
1.	SR Sahaswan Badaun	745/16.03.2012	102/31.07.2010	1680/6.96	75.60	5.59	0.58	5.01
		4716/17.12.2011	13/31.07.2010	1540/1.85	46.20	2.31	0.10	2.21
		4717/17.12.2011	13/31.07.2010	1050/1.26	31.50	1.58	0.06	1.52
		3067/12.08.2011	70/31.07.2010	1612.5/2.98	65.50	3.33	0.21	3.12
2.	SR Haathras Mahamaya Nagar	2370/30.04.2012	236/24.10.2011	6160/64.68	147.84	7.49	3.23	4.26
3.	SR-I Mathura	2340/13.2.2012	125/01.09.2011	3790/37.93	170.55	12.04	2.76	9.28
4.	SR -Sadar Mau	564/04.02.2012	321/01.06.2011	700/10.50	70.00	5.00	0.83	4.17
		2948/05.0712	354/01.06.2011	753.3/4.52	45.20	3.16	0.36	2.80
<b>Total</b>				<b>17285.8/130.68</b>	<b>652.39</b>	<b>40.50</b>	<b>8.13</b>	<b>32.37</b>

We reported the matter to the Department and the Government between April 2012 and May 2013. The department intimated (September 2013) that in case

<sup>5</sup> SR Atrauli, Aligarh, SR IV Lucknow, SR Karnelganj, Gonda, SR Balrampur, SR Sadar, Azamgarh.

<sup>6</sup> Book 1, *khand* and registered documents.

<sup>7</sup> SR Sahaswan, Badaun, SR Haathras, Mahamaya Nagar, SR I Mathura and SR Sadar, Mau.

of SR Mau, recovery of ₹ 49,000 has been made and all remaining cases have been referred to Collector Stamps for correct valuation of property. Further reply has not been received (December 2013).

### 5.7 Undervaluation of property by concealing the facts

Under Section 27 of the Indian Stamp (IS) Act, all facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it is chargeable shall be fully and truly set forth in instrument. Under Section 47 A (3) of the Act, the instrument not found duly stamped can be referred to Collector stamp for examination of the Valuation of the same.

In our scrutiny of the records<sup>8</sup> of office of one SR in February 2013, we noticed that a sale deed was executed on 23 December 2012 for a purchase/sale of land<sup>9</sup> measuring 4090 sqm, on the basis of *chauhaddi* (surroundings) declared

as agricultural by the executant. In a subsequent lease deed on 27 December 2012 of property<sup>10</sup> which included the property (*Gata* No. 345) whose sale deed was earlier executed on 23 December 2012, it was mentioned that the property under consideration included six rooms at ground and first floor. Based on these facts, the property which was registered on 23 December 2012 was to be classified as residential and not agricultural.

Due to the concealment of facts, the stamp duty on the sale deed was charged at agricultural rates<sup>11</sup>, instead of the prescribed residential rates<sup>12</sup> of ₹ 1.55 crore. Accordingly stamp duty of ₹ 7.77 lakh was chargeable whereas stamp duty of ₹ 45,000 only was paid. This, undervaluation of land due to concealment of facts and non reference to the Collector Stamp has resulted in short levy of stamp duty of ₹ 7.32 lakh.

We reported the matter to the Department and the Government in June 2012 and May 2013. The Department referred (September 2013) the case to Collector Stamp. Further, reply has not been received (December 2013).

<sup>8</sup> Book 1. *Khand*, Sale Deed dated 23.12.2012 and lease deed dated 27.12.2012.

<sup>9</sup> *Gata* No. 345.

<sup>10</sup> *Gata* No. 345, 346 and 347.

<sup>11</sup> ₹ 2200/- per are ( 100 square meter = 1 are).

<sup>12</sup> ₹ 3800/- per sqm.

## 5.8 Short levy of stamp duty due to irregular change of land use

Section 143 of the Uttar Pradesh Zamindari Abolition and Land Refoms Act, 1950 (UPZA&LR Act) provides that where a *bhumidhar*\* used his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry, the Assistant Collector in charge of the sub-division may, *suomoto* or on an application, after making such enquiry, make a declaration to that effect.

Section 144 of the UPZA&LR Act provides that if owner of any land did not wish to use the said land for non agricultural purposes, on application or on *suomoto* the SDM concerned can change the nature of land from non agricultural to agriculture.

Section 47A (3) of IS Act, provides that the Collector may, *suomoto*, or on a reference from any court or from the Stamps and Registration Department or any officer authorised by the Government in that behalf, within four years from the date of execution of any instrument, call for and examine it to satisfy himself to the correctness of the market value of the property, and if after such examination he has reason to belief that the market value of such property has not been set forth truly in such instrument, he may determine the market value of the such property and duty payable thereon.

\* Person having free hold with full transferable right.

On scrutiny of the records<sup>13</sup> of one Sub-Registrar, Sadar Pilibhit in September 2012, we noticed that two deeds of conveyance relating to non-agricultural land were registered in April 2012 for ₹ 32.80 lakh at agricultural rates and stamp duty of ₹ 2.30 lakh was levied. We noticed that the same plot was earlier declared<sup>14</sup> (September 2011) non-agricultural by the SDM<sup>15</sup> and subsequently after six months redeclared<sup>16</sup> (March 2012) from non-agricultural land to agricultural land, both times on the request<sup>17</sup> of the land owner. We noticed that while

declaring the said land as non agriculture (15 September 2011) the report of the *Tehsildar* clearly mentioned that the land was *parti* (barren) and being used for *abadi* (residential) purposes and while declaring the land as agriculture (31 March 2012), the report of *Tehsildar* stated that the *parti* (barren) and residential land was now being used for agricultural purposes, within six months. Thus, the nature of the same land was changed twice within a span of just six months.

This reversal of land use<sup>18</sup> within six months from *parti* (barren) used for *abadi* and then shown used for agricultural purposes in the *tehsildar*'s successive reports<sup>19</sup> was not examined by the registration authorities who did not exercise the power vested under Section 47 (3) of IS Act and refer the case

<sup>13</sup> Book 1, *khand*, registered deeds, orders u/s 144 and 143 of UPZALR Act.

<sup>14</sup> On 15 September 2011 vide order no. 133/10-11, u/s 143 of UPZALR Act.

<sup>15</sup> The same officer was posted as SDM on dates 15 September 2011 and 31 March 2013.

<sup>16</sup> On 31 March 2012 vide order no.03/11-12 u/s 144 of UPZALR Act.

<sup>17</sup> Owner first requested in September 2011 change of land use as residential since plot was being used as residential and in March 2012 again requested change of land use of plot as agricultural.

<sup>18</sup> By the same SDM.

<sup>19</sup> *Tehsildar*'s reports dated 15 September 2011 and 31 March 2012 respectively.

to Collector Stamp. The consequential short levy of stamp duty worked out to ₹ 11.36 lakh as shown in the table no. 5.8:

Table No. 5.8

(₹ in lakh)

Sl. No.	Name of unit	Gata No./area (Square meter)	Deed No. Date of registration.	Date of order U/Sec. 143/144	Valuation (as per deed)	Market value leviable (as per list)	Stamp duty and regn. fee leviable	Stamp duty and regn. fee levied	Short levied
1.	SR Pilibhit	560/6110	3273/23.04.2012	15.9.2011/31.3.2011	20.54 <sup>20</sup>	122.20 <sup>21</sup>	8.56	1.44	7.12
		558/3645	3274/23.04.2012	15.9.2011/31.3.2011	12.26	72.90	5.10	0.86	4.24
<b>Total</b>					<b>32.80</b>	<b>195.10</b>	<b>13.66</b>	<b>2.30</b>	<b>11.36</b>

We reported the matter to the Department and the Government in October 2012. The Department (September 2013) has not agreed with our observation and stated that in a recent inspection no short levy was found. We do not agree with the reply as the department has not referred the case to Collector Stamp under Section 47(3) of IS Act, to examine the reasons which led to the SDM to change the land which was *parti* (barren) and used for *abadi* to being used for agriculture within six months. As the SDM on both occasions was the same officer, the reasons for the change in land use back to agriculture from *parti* and *abadi* could best be examined by Collector Stamp<sup>22</sup> (the District Magistrate), who is also controlling officer of the SDM.

### 5.9 Irregularities in valuation done under Section-31 of IS Act

Under the Indian Stamp (IS) Act, 1899 (as amended in its application to Uttar Pradesh), stamp duty on a deed of conveyance is chargeable either on the market value of the property or on the value of consideration set forth therein, whichever is higher. Government vide order clarifying adjudicating the case in the capacity of Collector under Section 31 of the IS Act, reports of concerned SRs must invariably be sought and decision must be taken in the light of such report.

Under the provisions of Section 56 of IS Act, any person including the Government, aggrieved by an order of the Collector, may within sixty days from the date of receipt of such order, prefer an appeal against such order to the Chief Controlling Revenue Authority, who shall, after giving the parties a reasonable opportunity of being heard consider the case and pass such order thereon as he thinks just and proper and the order so passed shall be final.

During the scrutiny of records<sup>23</sup> of office of SR-III and IV Agra conducted in March 2013 we noticed that three deeds of conveyance having 44351.46 square meter of land were registered between 12 March 2012 and 27 April 2012. The property was sold at the consideration value of ₹ 3.81 crore. Before registration, the

document was brought for adjudication under Section 31 and value of the

<sup>20</sup> ₹ 28,00,000/- per hectare + 20 per cent multiplied by sale area.

<sup>21</sup> ₹ 2,000/- per sq. metre multiplied by sale area.

<sup>22</sup> Defined as Collector (District Magistrate) under Section 2(9) of IS Act.

<sup>23</sup> Book 1. *Khand*, Sale Deed, and orders u/s 31 of IS Act.

property was assessed at ₹ 3.81 crore by Additional District Magistrate (F&R) who was also designated as Collector (Stamp) keeping in view the inspection note of *Tehsildar Sadar* Agra.

We noticed the following:

- Reports from SR-III and IV Agra were not sought for in accordance with the order of Government of December 1999 despite the fact that the properties fell under the purview of SR-III and IV Agra.
- The actual value of land was ₹ 8.66 crore as per circle rate was decided at ₹ 3.81 crore assessed by the Additional District Magistrate (ADM).
- In all three cases the same officer designated as ADM (F&R) had reduced the value of property on strength of the inspection note of *Tehsildar Agra*. We noticed however that the violation of the Government order of December 1999 was not challenged by the Department and the authorities concerned did not prefer an appeal before the CCRA/ Hon'ble High Court<sup>24</sup>. By not preferring the appeal before the CCRA/ Hon'ble High Court, no action was taken on short levy of stamp duty of ₹ 33.92 lakh as shown in the table No. 5.9:

**Table No. 5.9**

(₹ in lakh)

Sl. No.	Name of office	Khand/ Deed no	Registration date	Sale area (sq mt)	Levied rate (₹ per sq mt)	Levied Market value <sup>25</sup>	Levied Stamp	Leviable rate (₹ per sq mt)	Leviable Market value <sup>26</sup>	Due Stamp	Difference
1	SR-III Agra	4410/2365	12-3-2012	32570	525	170.99	11.97	1050	341.99	23.94	11.97
		4415/2433	14-3-2012	6474.25	1600	103.69	7.25	4000	258.97	18.13	10.88
2	SR-IV Agra	2305/2496	27-4-2012	5307.21	2000	106.15	7.51	5000	265.37	18.57	11.07
<b>Total</b>				<b>44351.46</b>		<b>380.83</b>	<b>26.73</b>		<b>866.33</b>	<b>60.64</b>	<b>33.92</b>

The matter was reported to Department/Government in May 2013. The Department stated (September 2013) that a writ petition will be filed in the Hon'ble High Court. Further reply has not been received (December 2013).

<sup>24</sup> Cases of section 31 are generally referred directly to the Hon'ble High Court.

<sup>25</sup> Sale area multiplied by levied rate.

<sup>26</sup> Sale area multiplied by leviable rate.

### 5.10 Short levy of stamp duty due to undervaluation of land

Section 143 of the UPZA&LR Act provides that where a *bhumidhar* with transferable rights used his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry, the Assistant Collector in charge of the sub-division may, *suo moto* or on an application after making such enquiry as may be prescribed, make a declaration to that effect. Further, the Chief Secretary vide his letter dated 11 June 2010 addressed to all the Commissioners and District Magistrates emphasised that if the land is used fully or partially for residential purposes, the concerned SDM should *suo moto* declare the whole land as *abadi* under Section 143 of UPZA&LR Act. If the land was declared non-agriculture under Section 143 of the above Act, the same should be valued at residential rate for the purpose of levy of Stamp duty.

On scrutiny of records<sup>27</sup> of two SRs<sup>28</sup> between August 2012 and March 2013, we found that three deeds were registered between April 2012 and January 2013 for a consideration of ₹ 61.75 lakh at agricultural rates on which stamp duty of ₹ 4.65 lakh was paid. We noticed that the respective *Arazi* numbers were declared as non agricultural by order under Section 143 of UPZA&LR Act, prior to the date of

registration of three deeds. Hence the properties were required to be valued at ₹ 3.29 crore at residential rates and stamp duty of ₹ 23.34 lakh was leviable at residential rate. The concerned SRs did not consider these aspects while registering the documents. This resulted in short levy of stamp duty of ₹ 18.69 lakh as shown in the table no. 5.10:

Table No. 5.10

(₹ in lakh)

Sl. No.	Name of unit	Deed No. Date of registration	Arazi No./date of declaration u/s 143	Area (sq. mt.)/ Valuation (as per deed)	Market value applicable (as per list) <sup>29</sup>	Stamp duty and regn. fee Leviable	Stamp duty and regn. fee levied	Short levied
1.	SR II Firozabad	563/24.01.2013	335m/26.11.2012	5760/21.34	230.40	16.23	1.60	14.63
		3532/04.07.2012	1350/10.05.2012	4610/9.11	46.10	3.32	0.74	2.58
2.	SR I Meerut	4022/12.04.2012	134m and 137/20.03.2012	5180/31.30	52.76	3.79	2.31	1.48
<b>Total</b>				<b>15550/61.75</b>	<b>329.26</b>	<b>23.34</b>	<b>4.65</b>	<b>18.69</b>

The matter was reported to Department and Government in May 2013. The department stated (September 2013) that cases have been referred to Collector Stamps for correct valuation of property. Further reply has not been received (December 2013).

<sup>27</sup> Book 1. *Khand*, Sale Deed, and Circle rate.

<sup>28</sup> SR-II, Firozabad and SR-I Meerut.

<sup>29</sup> Sale area multiplied by residential rate applicable.

## 5.11 Lease executed for more than 30 years

Under the provisions of Article 35 of schedule 1 B of Indian Stamp Act, Stamp duty on lease where the lease purports to be for a term exceeding 30 years or in perpetuity or does not purports to be for any definite term, stamp duty is chargeable as for conveyance for a consideration equal to the market value of the property.

We observed (between September 2012 and January 2013) from the records of three Sub-Registrars that five lease deeds for a period over 30 years were registered between March 2011 and December 2012, on which stamp duty of ₹ 6,720 was levied for a

consideration equal to six times the amount or value of the average annual rent reserved. Since the lease deeds were for a period more than 30 years, stamp duty of ₹ 22.66 lakh, based on consideration equal to market value<sup>30</sup> of the property of ₹ 4.43 crore was leviable. Incorrect computation of lease period for less than 30 years resulted in short levy of stamp duty of ₹ 22.66 lakh and registration fees of ₹ 48,000 as shown in the table no. 5.11:

Table No. 5.11

(₹ in lakh)

Sl. No.	Name of unit	Khand/Deed No. and Area (in Sq. mt.)	Month of registration/ period of lease (years)	Value of property Applicable/ Applied	Stamp duty and registration fees Leviable/ Levied (in ₹)	Stamp duty short levied
1.	Sub-Registrar Sahasvan, Budaun	3459/2372 (743.49)	July 2012 01.07.2012 to 01.07.2042 (30 years 1 day)	37.18/0.14	2,70,260/900	<sup>31</sup> 2.69
		3398/1073 (353.16)	April 2012 01.07.2012 to 01.07.2042 (30 years 1 day)	15.90/0.14	79,500/700	<sup>31</sup> 0.79
		3398/1072 (297.4)	April 2012 01.07.2012 to 01.07.2042 (30 years 1 day)	13.39/0.14	66,950/700	<sup>31</sup> 0.66
2.	Sub-Registrar Puranpur, Pilibhit	2925/7490 (213.2)	October 2011 20.10.2011 to 19.10.2042 (31 years)	17.70/0.72	98,500/2,260	<sup>31</sup> 0.97
3.	Sub-Registrar Sidhauri, Sitapur	2225/2981 (7950)	August 2012 August 2012 to August 2042 ((30 years 1 month)	359.08/0.72	18,05,400/2,160	18.03
<b>Total</b>				<b>443.25/1.86</b>	<b>23,20,610/6,720</b>	<b>23.14</b>

The matter was reported to the Department and Government between October 2012 and March 2013. The Department stated (September 2013) that cases at Sl. No. 2 and 3 of the above table have been referred to Collector Stamp for correct valuation. Reply in one case (Sl. No. 1 of table) and further progress in cases at Sl. No. 2 and 3 has not been received (December 2013).

## 5.12 Levy of stamp duty on developer's agreement

### 5.12.1 Introduction

Article 5(b-1) of Schedule I-B of Indian Stamp Act 1899 (IS Act) provides that in a sale of an immovable property where possession is not admitted to have been delivered, nor is agreed to be delivered without executing the conveyance, the stamp duty as on conveyance will be payable at one half of the amount of consideration as set forth in the agreement. Further under Article 5(b-2)<sup>32</sup> of Schedule I B of the Act *ibid* if a building is constructed on a

<sup>30</sup> As defined in the circle rate.

<sup>31</sup> In these cases the rate of open areas at the rate of ₹ 5000, ₹ 4500 and ₹ 4500 per square meter respectively has been used for calculation on a conservative basis rather than the higher rate of ₹ 11500, ₹ 10500 and ₹ 10500 per square meter for built up areas despite there being built up area mentioned in deed.

<sup>32</sup> Article 5 (b-2) Added vide Indian Stamp (Uttar Pradesh Amendment) Act, 1997 w.e.f. 1 September 1998

land by a person other than the owners of the land having a stipulation that after construction, such a building or part thereof shall be held or sold jointly or severally by that other person and the owner of the land, stamp duty on such agreement shall be charged as a conveyance for a consideration equal to the amount or value of the land.

With a view to examine if the levy of stamp duty on developers' agreement were as per the provisions of Article 5 of Indian Stamp Act or whether there were any deficiencies in charging of stamp duty on valuation of property in the different nature of such documents, we conducted an audit for the same.

Our scrutiny of records in the 28 offices of the stamp and registration<sup>33</sup>, 12 Development Authorities<sup>34</sup> and two *Nagar Palikas*<sup>35</sup> revealed that there were cases of non-registration of documents of developers' agreements, non-levy and short levy of stamp duty as mentioned in succeeding paragraphs. These cases are illustrative and are based on a test check carried out by us.

### 5.12.2 Non-levy of Stamp duty due to non-registration of property transferred by land owners to developers

Under Section 33 of Indian Stamp Act every person having by law or consent of parties authority to receive evidence, and, every person-in-charge of a public office\*; before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same. Further, under the provisions of Section 17 of the Registration Act, 1908, transfer of immovable property with or without any consideration is compulsory for registration. Under Section 73-A (1) of the Indian Stamp Act where the Collector has reason to believe that any instrument chargeable to duty has not been charged at all or has been incorrectly charged with duty leviable under this Act, he or any other officer authorised by him in writing in this behalf may enter upon any premise where the Collector has reason to believe that any registers, books, records, papers, maps, documents or proceedings relating to or in connection with any such instrument are kept and inspect them and take such notes, copies and extracts as the Collector or such officer deems necessary.

\* A public office is defined in clause (17) of Section 2 of the code of civil procedure, 1908 and includes any statutory body or authority constituted under any Uttar Pradesh Act.

We scrutinised the records of offices of seven<sup>36</sup> SRs and cross checked with records of four<sup>37</sup>

Development Authorities and one<sup>38</sup> *Nagar Palika* and observed that eight agreements were executed between the builders and the owners of the land, between April 2009 and March 2013. We noticed that although their maps were approved in the offices of

Development Authority/*Nagar Palika*, the developers' agreements were not registered in the offices of the respective SRs. The land owners/

developers or the Development Authorities approving the layout maps, also did not initiate any action to register the documents of such agreements.

<sup>33</sup> Allahabad (SR I, II), Agra (SR I, III), Bareilly (SR I, II, III), Bulandshahar (SR Khurza), Ghaziabad (SR I, II), Gorakhpur (SR I, II), Kanpur Nagar (SR I, IV), Lucknow (SR I, III), Meerut (SR I, III), Muzaffarnagar (SR I, II), Saharanpur (SR I, II, III), Sambhal (SR Chandausi), Sultanpur (SR Sadar) and Varanasi (SR I, III, IV).

<sup>34</sup> Allahabad, Agra, Bareilly, Bulandshahr, Ghaziabad, Gorakhpur, Kanpur Nagar, Lucknow, Meerut, Muzaffarnagar, Saharanpur and Varanasi.

<sup>35</sup> Sambhal and Sultanpur.

<sup>36</sup> SR I and SR II Bareilly, SR Chandausi, SR I Gorakhpur, SR I Saharanpur, SR III and SR IV Varanasi

<sup>37</sup> Bareilly, Gorakhpur, Saharanpur and Varanasi.

<sup>38</sup> Chandausi

We noticed that there was no system in place in the departments wherein the registering authorities could cross verify the registration of developers' agreements whose layouts were approved by Development Authorities/*Nagar Palikas*. While registration of such documents was compulsory and the agreements should be executed on stamp papers of correct value, non-registration of the agreements between the owners of the land and builders and developers in SR offices resulted in forgoing of ₹ 1.41 crore in the shape of registration fee as detailed in table no. 5.12:

Table No. 5.12

(₹ in lakh)

Sl. No.	Name of unit/Layout plan approved by	Detail of Property	Owner's Name	Developers Name/ Date of Appointment as developer	Stamp affixed (in ₹)	Valuation* rate per Square meter (in ₹)	Valuation	Stamp duty/Reg. fee due	Difference Stamp duty/Reg. fee	Total Difference
1	SR I Saharanpur/ Saharanpur Development Authority	Vill.-Manakmau, Paragna & Distt.- Saharanpur, Area-25000 Sq. m,	Smt Megha-9730 Sq. m, Smt. Nitika-11590 Sq. m. and Smt. Pooja Anand-3680 Sq. m	Smt. Parveen Rani/ 01.04.2009	750	2500	625.00	43.65/0.10	43.64/0.10	43.74
2	SR I Bareilly/ Bareilly Development Authority	Sherpur, Sanjay Nagar Bypass Road Bareilly, Khasra No. 279, 280, 281, 282, 291, 293, 294, 295. Area-22000 Sq. m	Dr. Dharendra Agrawal and Dr. Jitendra Agrawal	Qwality Associate/ 01.10.2011	0	3000	660.00	46.20/0.10	46.20/0.10	46.30
3	SR I Bareilly/ Bareilly Development Authority	Haru nagla Bareilly Khasra No.-10/A, 12 Area-1891.72 Sq. m	Sri Rajesh Gupta, Dharmendra Gupta, Shivam Associates	M/s Sanjay Med Diagnostic Pvt Ltd., / 06.02.2013	100	4000	75.67	5.29/0.10	5.29/0.10	5.39
4	SR II Bareilly/ Bareilly Development Authority	Saidpur hawkins Tehsil sadar bareilly Khasra No. 241, 242, 311, 312, 315 Area-6960.61 Sq. m	Sri Puttan, Sri Yasin Miyan and Shiv kumar Sharma	M/s Himalayan Housing Pvt Ltd./ 03.10.2011	0	4000	278.42	19.49/0.10	19.49/0.10	19.59
5	SR Chandausi/ Nagar Palika Sambhal	Vill.- Devarkheda Tehsil Chandausi Sambhal KhasraNo. 796 to 800, 806 Area-2187 Sq. m	Balaji Associates	M/s Vinayak farmers / 03.05.2012	0	3500	76.55	5.36/ 0.10	5.36/ 0.10	5.46
6	SR IV Varanasi/ Varanasi Development Authority	Vill.-Jolha Ward Nagwqan Pargna-Dehat Amanat Tehsil Sadar Varansi Khasra No. 36/1, 36/2 Area-1510 Sq. m	Smt Kamla Tripathi W/o Sri Hare Ram, Sri Hare Ram Tripathi and Mritunjay Tripathi S/o Sri Hare Ram Tripathi	Vidya Devi W/o Vindhya vasini Misra/ 04.06.2009	0	4800	72.48	5.07/0. 10	5.07/0. 10	5.17
7	SR III Varanasi/ Varanasi Development Authority	Plot No. Bhuvneshwar nagar Colony nagar palika Mo. Ardi bazar Sikraul Varanasi Area-296.94 Sq. m	Dushyant Singh	Digvijay Singh Chetganj Varanasi/ 18.03.2013	0	14280	42.40	2.97/0. 10	2.97/0. 10	3.07
8	SR I Gorakhpur/ Gorakhpur Development Authority	Vill.- Mirzapur Pachparwa, Gorakhpur, Araji No. 252, Area-2704.46 Sq. m.	Sri Madhav Prasad jalan and Prem Prakash Jalan	M/s Kamadgiri Developers, Gorakhpur/ 25.10.2012	800	6500	175.79	12.30/0.10	12.30/0.10	12.40
<b>Total</b>					<b>1650</b>		<b>2006.31</b>	<b>140.34/0.80</b>	<b>140.32 /0.80</b>	<b>141.12</b>

\*As per the circle rate fixed by the District Magistrate

The cases were reported to Department and the Government in May 2013. The Department stated (September 2013) that there is a lack of penal provision under Section 17 of the Registration Act and no time limit is provided for execution of such deed. Further, the instructions were being issued to competent officers of the departments concerned in regular monthly meetings held at the Government level. The reply is however silent about the action to be taken under Section 73(A) of Indian Stamp Act by issuing directions to the Development Authorities/*Nagar Palikas* concerned for taking under Section 33 of Indian Stamp Act.

### 5.12.3 Short-levy of Stamp duty

Under the provisions of Article 23 of Schedule I-B of Indian Stamp Act (as amended in its application to Uttar Pradesh), stamp duty on a deed of conveyance is chargeable either on the market value of the property or on the value of the consideration set forth therein, whichever is higher. As per the Uttar Pradesh Stamp (valuation of property) Rules, 1997, market rates of various categories of land situated in a district are to be fixed biennially by the Collector concerned for the guidance of the Registering authorities.

We scrutinised the records<sup>39</sup> of office of SR I Muzaffarnagar and cross checked with records<sup>40</sup> of Development Authority Muzaffarnagar and observed that an agreement without possession was executed in July 2010 between the builder and the owner of the land. The stamp duty of ₹ 4 lakh and registration fee ₹ 10,000

was levied on consideration amount<sup>41</sup> of ₹ 2 crore. The lay out plan of the said land was approved by the Muzaffarnagar Development Authority on 16 May 2011 for residential purposes. The sale deed of the said property was executed between December 2011 and June 2012 in favour of developer at agriculture rate after due adjustment of stamp duty already paid in deed of agreement without possession. We noticed that as the layout plan was approved/ earmarked as residential prior<sup>42</sup> to the sale deed; the land was required to be valued at residential rates<sup>43</sup> instead of agricultural rates. Incorrect classification of land resulted in short determination of consideration amount with ₹ 17.97 crore and consequently led to short levy of stamp duty of ₹ 1.26 crore as detailed in table no. 5.13:

Table No. 5.13

(₹ in lakh)

Sl. No.	Deed No./Date of execution	Name of seller	Name of purchaser	Detail of land	Valuation of land	Registration fee/Stamp duty	Valuation levied @ ₹5000/- per square meter	Stamp duty levied	Difference Stamp duty
1	7600/01.06.2012	Sri Mushtaq Ahmed	A.S.J. Promoters & Developers Pvt. Ltd	Khasra No. 2263 & 2269 Vill.-Sujdoo; Area-1.1405 Hectare	57.14	0.10/4.00	570.25	39.92	35.92
2	9199/29.06.2012	Sri Mushtaq Ahmed	A.S.J. Promoters & Developers Pvt. Ltd	Khasra No. 2263 & 2269 Vill.-Sujdoo; Area-1.1408 Hectare	57.14	0.10/4.00	570.40	39.93	35.93
3	15040/31.12.2011	Sri Mushtaq Ahmed	A.S.J. Promoters & Developers Pvt. Ltd	Khasra No. 2263 & 2269 Vill.-Sujdoo; Area-0.5702 Hectare	28.57	0.10/2.00	285.10	19.96	17.95
4	6114/07.06.2012	Sri Mushtaq Ahmed	A.S.J. Promoters & Developers Pvt. Ltd	Khasra No. 2263 & 2269 Vill.-Sujdoo; Area-1.1405 Hectare	57.14	0.10/4.00	570.25	39.92	35.91
<b>Total</b>					<b>199.99</b>	<b>0.40/14.00</b>	<b>1996</b>	<b>139.73</b>	<b>125.71</b>

\*As per the circle rate fixed by the District Magistrate

The case was reported to the Department and the Government in May 2013. The Department intimated (September 2013) that cases have been referred to the Collector for determination of market value of property and proper duty payable thereon. Further report has not been received (December 2013).

<sup>39</sup> Book 1 containing details of registered deeds

<sup>40</sup> File of layout plan

<sup>41</sup> Stamp duty is chargeable on the fifty per cent of the consideration value as per Article 5 (b-1) of Schedule I-B of IS Act.

<sup>42</sup> 16 May 2011

<sup>43</sup> As per the circle rate fixed by the District Magistrate of ₹ 5000 per square meter

### 5.12.4 Short levy of stamp duty in execution of Consortium Agreement

Under the provisions of Article 5 (b-2) of Indian Stamp Act, if relating to construction of a building on a land by a person other than the owner, or lessee of such land, and having a stipulation that after construction, such building shall be held jointly or severally by that other person and the owner or the lessee, as the case may be, of such land, or that it shall be sold jointly or severally by them or that a part of it shall be held jointly or severally by them and the remaining part thereof shall be sold jointly or severally by them, stamp duty on such agreement shall be charged as a conveyance (under Article 23 of Indian Stamp Act) for a consideration equal to the amount or value of the land.

We scrutinised the records<sup>44</sup> of offices of two SRs<sup>45</sup> and cross checked with records<sup>46</sup> of two<sup>47</sup> Development Authorities and observed that two instruments of consortium agreement were registered between April 2006 and May 2012 between one or more owners of the land. In two agreements<sup>48</sup> the owners of land formed a consortium and

appointed one of them as a lead member. In all consortium agreements the recital of the deeds show that the sole aim of agreements was the development of residential layout complex with the permission of owners of land. As per the deed the lead members were appointed for each consortium and the entire cost of development of the said project by the consortium was borne by lead member. Stamp duty of ₹ 2,000 and registration fee ₹ 10,100 only were levied on these two agreements showing the value of land as 'Nil'. We noticed that as in each case the owner of land was granting the right to develop the land, make residential complexes and get the layout map passed etc. to the respective lead member of consortium. Hence there was a transfer of land from land owners to the respective lead member of consortiums. As the value of the land transferred was known<sup>49</sup>, the stamp duty of ₹ 90.94 lakh and registration fee ₹ 20,000 was leviable on the value of the land ₹ 9.75 crore at the circle rate. There was short levy of stamp duty and registration fee of ₹ 91.02 lakh as shown in the table no. 5.14:

Table No. 5.14

(₹ in lakh)

Sl. No.	Name of Unit/ Deed No./ Date of Registration	Detail of Property	Owner's Name	Lead members Name	Stamp / Reg. Fee paid (in ₹)	Valuation rate per hectare	Valuation*	Stamp / Reg. Fee due	Difference Stamp duty	Difference Reg. Fee (in ₹)	Total Difference
1.	SR I Ghaziabad/4/839/162 Page No. 259-276/14.05.2012	Khasra No.-588, Khandauli, Pargana, Tehsil and Distt.-Meerut Area-1.2211 Hect.	1. M/s Uphaar Construction Pvt. Ltd. 2. M/s A.B. Estate Pvt. Ltd.	Zenith Township Pvt Ltd.,	1000/10000	180.00	219.80	15.39/0.10	15.38	0	15.38
2.	SR Noida 278/06 dt. 12.04.2006 Bahi No. 4 Despite report of DIG Saharanpur dated 13 March 2013, no action taken on the same till January 2014.	Area-13.7529 Hect. and 11.3868 Hect Vill.-Mavi kala, Sawalpur nawada, Saharanpur	M/s Riskfree Traders Pvt Ltd and other 11 companies	M/s Paramount Prop Built Pvt. Ltd.	1000/100	45.00 12.00	755.52	75.55/0.10	75.54	9900	75.64
<b>Total</b>					<b>2000/10100</b>		<b>975.32</b>	<b>90.94/0.20</b>	<b>90.92</b>	<b>9900</b>	<b>91.02</b>

\*As per the circle rate fixed by the District Magistrate

<sup>44</sup> Book 1.

<sup>45</sup> SR I Ghaziabad and SR Noida.

<sup>46</sup> File of layout plan.

<sup>47</sup> Ghaziabad and Saharanpur.

<sup>48</sup> SR I Ghaziabad- Lead member Zenith Township Pvt. Ltd and SR Noida- Lead member M/s Paramount Prop Built Pvt. Ltd.

<sup>49</sup> ₹ 9.75 crore

Only after we pointed out the cases in May 2013, the Department replied (September 2013) that they have referred Sl. No. 1 for registering of a Stamp case<sup>50</sup>. Action is yet to be taken in case of Sl. No. 2 as the two AIGs concerned<sup>51</sup> have intimated that no reference has been received from the SRs concerned<sup>52</sup> so far for registering of any Stamp case.

### 5.12.5 Short-levy of Stamp duty due to missclassification of documents (Irrevocable Power of Attorney treated as Revocable Power of Attorney)

Under the provision of Section 5 of the Indian Stamp Act 1899, any instrument comprising or relating several distinct matters, shall be chargeable with the aggregate amount of duties with which separate instrument each comprising or relating to one of such matters would be chargeable under the Indian Stamp Act. Under Article 48 (ee) of Schedule I-B of the Indian Stamp Act, when irrevocable authority is given to the attorney to sale immoveable property the stamp duty on such agreement shall be charged as a conveyance [No. 23 clause (a)] on the market value of the property forming subject of such authority.

We scrutinised the records<sup>53</sup> of SR Khurja, district Bulandshahar and observed that one instrument of power of attorney registered in August 2012 was classified on the basis of its title and stamp duty ₹ 50 and registration fees ₹ 100 was levied accordingly. Recitals of this document, however, revealed that through power of attorney the attorney had got all rights

of land including financial management, development of land, sale of land and possession of land. As per the recital this document was clearly irrevocable power of attorney but misclassified as revocable Power of Attorney case. As per the applicable rate, the value of land work out to ₹ 2.16 crore on which stamp duty of ₹ 15.15 lakh and registration fees of ₹ 10,000 was leviable. Improper classification of document resulted in short levy of stamp duty and registration fee of ₹ 15.25 lakh.

The case was reported to Department and the Government (May 2013). The Department stated (September 2013) that the matter was referred to Collector Stamp and stamp case was executed in this case. Further progress has not been intimated.

### 5.12.6 Conclusion

Our audit revealed that the Department, the registering authorities made no attempts to cross check the details of development maps passed on the basis of developer agreements in the respective Development Authorities/*Nagar Palikas* and ascertain whether these were being registered in the respective SRs/ executed on stamp papers of correct value. They also did not examine the fact that the provisions of Section 33 of Indian Stamp Act have not been followed by Development Authorities/*Nagar Palikas*. Moreover even after the cases being brought to the notice of the department, action under Section 73-A (1) of the Indian Stamp Act was not initiated by the department through

<sup>50</sup> Sl. No. 1 referred on 16 August 2013 for registering of Stamp case.

<sup>51</sup> AIG-I Gautam Budh Nagar and AIG Saharanpur – action taken by both AIG-I Gautam Budh Nagar and AIG Saharanpur was checked as the registration was done in Gautam Budh Nagar but land was situated in Saharanpur.

<sup>52</sup> Either SR, NOIDA (District Gautam Budh Nagar) or SR-II Saharanpur.

<sup>53</sup> Book 4

District Collector who is also District Stamp Officer. The Department has not designed any control mechanism and monitoring to cross check the registration of developer agreements. There was a lack of coordination between Development Authorities/*Nagar Palikas* and registration department.

#### **5.12.7 Recommendation**

**We recommend that the Department develop a workable mechanism to coordinate with Development Authorities and *Nagar palikas* so that developer agreements are duly registered/executed on stamp papers of correct value.**

#### **5.13 Unfruitful expenditure**

We scrutinised (September 2012) the records of Inspector General (Stamp and Registration), Allahabad and observed that to provide an office building to Sub Registrar, Salempur, Deoria, administrative and financial sanction of ₹ 42.77 lakh was accorded by the Government<sup>54</sup> and work was allocated to the executing agency<sup>55</sup> by the Government. Against this sanction, ₹ 22.12 lakh was released on 20 February 2009 and balance ₹ 20.65 lakh was released on 16 May 2011 to executing agency.

The executing agency started the work of office building of SR, Salempur Deoria in November 2009, with a delay of eight months from the receipt of funds. Work was initially to be completed by 31 March 2009, however, time extension upto May 2012, was granted by the Secretary of the Department to the executing agency.

We noticed that there was no Committee for monitoring the progress/no system of sending of regular progress reports on the works. The first joint inspection was carried out by the Deputy Inspector General/Assistant Inspector General (DIG/AIG) Registration alongwith officials of the executing agency only in August 2012 i.e three months after the scheduled date of completion. In the inspection it was reported that the quality of construction work of building was very poor and not upto the standard as there were many defects<sup>56</sup>. Due to these defects, the building was lying unused despite expending the sum of ₹ 42.77 lakh. The inaction/lack of monitoring resulted in unfruitful expenditure of ₹ 42.77 lakh.

The matter was reported to the Department/Government in November 2012. The Department (September 2013) accepted that the building has not been taken over and that the report of the committee set up to examine the issue of defects is awaited.

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<sup>54</sup> Vide Letter No. Ka.Ni.-5-4902/11-2008 dated 17 October 2008 of Department *Kar Evam Nibandhan Anubhag-5, Uttar Pradesh Shasan*.

<sup>55</sup> Pacsfed i.e. *UP Sahakari Vidhayanevam Shitgrih Sangh Ltd.*, Lucknow

<sup>56</sup> There were several cracks in ceiling and walls, plaster was eroded, and no sewage and drainage system was built. Fittings and fixtures, flooring and toilets, railing on stairs were left unfinished and contact road from main road to office building was not built.