

CHAPTER IV

STAMP DUTY AND REGISTRATION FEE

4.1 Tax administration and organisational setup

The levy and collection of stamp duty and registration fee in Maharashtra is governed by Maharashtra Stamp Act¹, 1958 (MS Act), Indian Stamp Act 1899 (IS Act), Indian Registration Act, 1908 (IR Act) and the rules framed thereunder.

The Inspector General of Registration (IGR) is the head of the Stamp Duty and Registration Department who works under the overall control of the Principal Secretary, Relief and Rehabilitation (RR) at the Government level. He is assisted by Additional Controller of Stamps (ACOS), Mumbai, ten² Deputy Inspectors General of Registration (DIGs), nine³ Assistant IGRs, six Collector of Stamps (COS) and Superintendent of Stamp (SOS) at Mumbai and Mumbai suburban district (MSD), 32 Joint District Registrars and Collector of Stamps (JDRs and COS) at district levels.

A separate cell (called valuation cell) headed by the Joint Director of Town Planning and valuation consisting of seven divisions of the State has been formed for preparation of Annual statement of Rates (ASR). These rates are used by the registering authorities for determination of the true market value of the properties. Mumbai Division is headed by the Deputy Director of Town Planning and valuation (DDTP) and other six⁴ divisions are headed by Assistant Director of Town Planning (ADTP). The members of the valuation cell belong to Urban Development Department; however, the cell works under the administrative control of IGR, Pune.

4.2 Results of audit

In 2013-14, test check of the records of 206 units of the Stamp Duty and Registration Fees Department showed non/short levy of stamp duty and registration fees etc. and other irregularities amounting to ₹ 162.93 crore in 652 cases, which fall under the categories given in **Table 4.2**.

¹ This title was substituted for the title "The Bombay Stamp Act, 1958" by Mah. 24 of 2012 (w.e.f. 1-5-1960)

² Including one Dy. IGR, Headquarter at Pune and one Dy. IGR (Computerisation)

³ Including one Assistant IGR in Stamp Office, Mumbai

⁴ Amravati, Aurangabad, Nagpur, Nashik, Pune and Konkan (Thane)

Table 4.2

(₹ in crore)			
Sr. No.	Categories	No. of cases	Amount
1.	Performance audit on “Levy and collection of Stamp duty in Adjudication Cases”	1	72.61
2.	Short levy due to under valuation of property	451	81.33
3.	Short levy due to misclassification of documents	19	6.18
4.	Incorrect grant of exemption of stamp duty and registration fees	81	1.91
5.	Non-levy of stamp duty and registration fees	71	0.71
6.	Other Irregularities	29	0.19
Total		652	162.93

The Department accepted short levy and other deficiencies and recovered in 191 cases involving ₹ 6.13 crore, of which 36 cases involving ₹ 0.80 crore were pointed out during 2013-14 and rest during earlier years.

A performance audit on “**Levy and Collection of Stamp Duty in adjudication cases**” and a few illustrative cases involving ₹ 79.27 crore are discussed in the succeeding paragraphs.

4.3 Performance audit on “Levy and collection of Stamp duty in Adjudication Cases”

Highlights

- Scrutiny of the information collected from the Inspector General of Registration, Pune revealed that 1.24 lakh cases involving revenue of ₹ 726.80 crore were outstanding as on 31 March 2014 at various stages.

(Paragraph 4.3.7)

- Payments made on account of components like rent, construction cost, brokerage charges etc. paid by the developer were incorrectly treated as obligation and stamped at 0.2 *per cent* instead of 5 *per cent* by treating it as a part of consideration for development agreement. This resulted in short levy of stamp duty and penalty of ₹ 13.04 crore in 36 instruments.

(Paragraphs 4.3.8.1 and 4.3.8.2)

- Consideration amount of ₹ 421.75 crore based on sharing of revenue between the developer and the owner, though mentioned in the instrument, was not considered for levy of stamp duty instead it was levied on the market value of the land of ₹ 66.86 crore. This resulted in short levy of stamp duty and penalty of ₹ 21.69 crore.

(Paragraph 4.3.8.3)

- Premium aggregating to ₹ 15.35 crore paid by a developer for additional FSI and water charges was not considered for levy of stamp duty. This resulted in short levy of stamp duty of ₹ 76.74 lakh in Collector of Stamps, Kurla.

(Paragraph 4.3.8.4)

- Construction cost of the area occupied by the tenants was omitted from determination of the market value in 83 cases. This resulted in short levy of stamp duty and penalty of ₹ 16.54 crore.

(Paragraphs 4.3.9.1 and 4.3.9.4)

- The adjudicating authorities treated “A- category cessed buildings” as non cessed buildings and applied incorrect FSI ratio of 1.33 instead 3 / 2.5. This resulted in short levy of stamp duty including penalty of ₹ 4.37 crore in six adjudicated cases.

(Paragraph 4.3.10)

- Transfer of Development Rights of 1.15 lakh sqft involving ₹ 11.25 crore was not taken into account for determination of the market value of the property. This resulted in short levy of stamp duty of ₹ 56.24 lakh and penalty of ₹ 11.25 lakh.

(Paragraph 4.3.11)

- Stamp duty of ₹ 23.89 lakh payable on a supplementary agreement executed in continuation of a joint development agreement (JDA) that had altered the contents of the JDA substantially was not levied. This resulted in short realisation of revenue to that extent.

(Paragraph 4.3.12)

- An amount of ₹ 200 crore received by the owner company was incorrectly treated as an unsecured loan/obligation, etc. instead of consideration for development agreement. The total consideration worked out to ₹ 235.67 crore. The Department levied stamp duty of ₹ 5.46 crore on the consideration amounting to ₹ 97.62 crore. This resulted in undervaluation of ₹ 138.05 crore involving stamp duty of ₹ 6.32 crore.

(Paragraph 4.3.13.1)

- Development agreement and lease agreements were misclassified as BOT agreements in three cases and stamp duty was levied at lesser rates. This misclassification of the instruments resulted in short levy of stamp duty of ₹ 4.81 crore in three cases.

(Paragraph 4.3.13.2)

- Instructions contained in ASR were not followed uniformly. In some cases FSI mentioned in the instruments was taken into consideration while in some cases it was not taken into consideration for determination of the market value of the properties. This resulted in undervaluation of the properties involving stamp duty ₹ 2.30 crore in eleven cases where FSI mentioned in the documents was not taken into consideration.

(Paragraph 4.3.14)

- There was shortfall in conducting audit by internal audit wing of IGR. No specific targets were set for auditing Collector of Stamps office by the IGR. Further, the Additional Controller of Stamps, Mumbai was not conducting audit of any of the Collector of Stamps under its control despite the huge revenue contributed by them.

(Paragraph 4.3.16)

4.3.1 Introduction

Stamp duty and Registration Fee is the second largest tax revenue of the State. The levy and collection of stamp duty is governed by the MS Act, 1958 and Indian Stamp Act 1899 as applicable to the State. The rates of stamp duty leviable on the instruments executed under the Act are mentioned in the Schedule I of the MS Act.

The instruments intended for registration are presented before the concerned Sub Registrar. Under Section 32A of the MS Act, if any Sub Registrar receiving such instruments has reasons to believe that the market value of immovable property has not been truly set forth in the instrument, he shall refer the same to the Collector of Stamps (COS) for determination of true market value of such property. Every registering authority is empowered under Section 33 to impound the document if he/she finds that the document has not been sufficiently or has been incorrectly stamped and forward the same to COS for determination of correct market value.

Section 39 empowers the COS to determine the duty, if any, with which the impounded instrument is chargeable. Section 53 empowers the Chief Controlling Revenue Authority (CCRA) to reassess the duty leviable assessed by COS in any case brought to his/her notice by any person. The market value of the property is determined as per the provisions of the Bombay Stamp (Determination of True market value of property) Rules 1995 and ASR. Further, Section 9 of MS Act empowers the Government of Maharashtra in reducing or remitting of stamp duty leviable on certain instruments. As per Section 31 of the MS Act, when an instrument whether executed or not is brought to the Collector by the parties to have his opinion as to the duty with which it is chargeable, and pay a fee of ₹ 100, the Collector shall determine, in his judgment, the duty with which it is chargeable. If stamp duty is paid within sixty days from the date of service of the notice of demand in respect of the instrument adjudicated then the COS, under section 32 certifies by endorsement on such instrument that full duty has been paid. The COS shall mention the relevant Article of the schedule and the amount with which it was chargeable.

This process of determination of the stamp duty is called “Adjudication as to Stamps” and is detailed in Chapter III of the MS Act.

4.3.2 Revenue collected from adjudicated cases

The revenue collection of the State through levy of stamp duty on adjudication cases during the period from 2009-14 are indicated in **Table 4.3.2**.

Table 4.3.2

(₹ in crore)				
Year	No. of cases adjudicated u/s 31, 32 and 33	Stamp Duty recovered in adjudicated instruments	Percentage increase/decrease	
			cases compared to previous year	Stamp duty compared to previous year
2009-2010	9,594	121.09		
2010-2011	85,218	1,560.32	788.24	1,188.56
2011-2012	58,953	1,247.55	(-) 30.82	(-) 20.05
2012-2013	33,376	945.71	(-) 43.39	(-) 24.19
2013-2014	27,213	672.20	(-) 18.47	(-) 28.92
Total	2,14,354	4,546.87		

Source: Information furnished by IGR office

It can be seen from the above that number of cases adjudicated and the stamp duty collected thereon increased in the year 2010-11 by 788.24 *per cent* and 1,188.56 *per cent* respectively compared to 2009-10. However, from the year 2011-12, there was gradual decline in number of cases adjudicated as well as the stamp duty.

The department in the exit conference (September 2014) stated that prior to 2012 many types of agreements were to be compulsorily adjudicated before registration which resulted in delay in realization of SD and caused inconvenience to public. From 2012 onwards these restrictions were withdrawn resulting in direct registration of these instruments. This resulted in reduction in number of adjudication cases. The Principal Secretary however stated that the figures will be re-verified and confirmation would be sent to audit.

4.3.3 Scope and methodology of audit

The performance audit was conducted between January 2014 and July 2014 in respect of adjudicated cases finalised by the Department between January 2009 and December 2013. The records of COS of Mumbai Division⁵, three COS in Konkan division⁶, two COS in Pune Division⁷ and two COS from Nagpur division⁸ were selected for this performance audit.

As per the information (calendar year wise) furnished by the Department, at the end of December 2013, total 1,87,141 cases involving ₹ 3,874.67 crore were adjudicated during the period from 2009 to 2013.

We conducted the performance audit in five divisions in which 1,04,220 adjudicating cases involving ₹ 3,633.27 crore were finalised during the period from 2009 to 2013. Statement showing the number of adjudication cases and

⁵ COS Mumbai, Enforcement-1, Enforcement-II, Superintendent of Stamps (SOS), Mumbai, COS Andheri, COS Borivali, COS Kurla

⁶ Thane City, Thane Rural and Raigad

⁷ Pune City and Pune Rural

⁸ Nagpur City and Nagpur Rural

the amount involved in the five divisions selected for PA is shown in **Table 4.3.3**.

Table 4.3.3

(₹ in crore)						
Division	Total Units	No. of Cases	Revenue involved	Total Units selected	Cases in selected units	Revenue in selected units
Mumbai	7	65,492	2,809.46	7	65,492	2,809.46
Konkan	5	23,861	685.82	3	20,964	673.86
Pune	6	19,888	113.35	2	11,859	91.09
Nagpur	6	7,862	67.67	2	5,905	58.86
Total	24	1,17,103	3,676.30	14	1,04,220	3,633.27

Thus the audit coverage was 56 *per cent* in respect of number of cases and 94 *per cent* in respect of amounts realised.

Reasons for taking up the performance audit: During transaction audit we had noticed that there was no uniformity in adjudicating the similar nature of instruments by same/different adjudication authorities i.e. by COS. Instances of misclassification of documents while adjudication was also noticed. These were reported through audit inspection reports periodically. Keeping the number of the instruments and the amount into consideration, it was decided to take up a Performance Audit (PA) on this topic.

4.3.4 Audit objectives

Audit was conducted with a view to ascertain that:

- Adequate rules and procedures were prescribed by the Government and these were applied uniformly in adjudicating the cases.
- Classification of instruments and determination of market value was in accordance with the provisions of the Acts and Rules made there under.
- Internal controls were efficient and effective for timely disposal of the adjudication cases.

4.3.5 Audit Criteria

The audit criteria for the Performance Audit are derived from the provisions of the following Central and State Laws:

Central Laws:

- The Indian Stamp Act 1899
- The Indian Registration Act 1908

State Laws:

- The Maharashtra Stamp Act 1958
- The Bombay Stamp (Determination of True Market Value of Property) Rules, 1995

- The Development Control Regulation for Greater Mumbai 1991 (DCR)
- The Transfer of Property Act, 1882
- The Maharashtra Rent Control Act, 1999
- Maharashtra Slum Areas (Improvement, clearance and redevelopment) Act, 1971
- Maharashtra Housing Area Development Authority Act, 1976 (MHADA Act)
- Annual Statement of Rates (ASR) for respective years
- Notification/Resolution/Circular issued by the GoM and IGR and Controller of Stamps, Pune from time to time.

4.3.6 Acknowledgement

The scope, methodology and objective of the audit were discussed with the IGR prior to commencement of performance audit. The draft performance Report was forwarded to the Government in August 2014. An exit conference was held in September 2014 with the Department and the Government. The Government side was represented by the Principal Secretary (RR). The responses of the Government in the exit conference and at other point of time have been incorporated in the relevant paragraphs of the Report.

We acknowledge the co-operation of the Stamp and Registration Department in providing the necessary information and records to audit.

Audit Observations

During the performance audit we found a number of system and compliance deficiencies. A few are mentioned in the succeeding paragraphs.

4.3.7 Delay in disposal of cases resulting in blocking of revenue

Scrutiny of the information collected from the IGR revealed that 1,24,325 cases involving revenue of ₹ 726.80 crore were outstanding as on 31 March 2014 at various stages as mentioned in **Tables 4.3.7.1 to 4.3.7.4.**

4.3.7.1 Adjudication cases forwarded by SR to COS

Section 32A of the MS Act stipulates that if any, registering authority receiving instruments for registration has reasons to believe that the true market value of property has not been truly set forth in the instrument, he/she shall refer such instrument to COS for determination of true market value of such property.

As per the information furnished by the Department, 1.14 lakh adjudication cases involving stamp duty of ₹ 129.76 crore forwarded by SR to COS were outstanding as on 31 March 2014 as mentioned in **Table 4.3.7.1**

Table 4.3.7.1

(₹ in crore)										
Year	Opening balance		Received		Disposal		Closing balance		Percentage	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	(8) to (2) + Col (4)	(9) to (3) + Col (5)
1	2	3	4	5	6	7	8	9	10	11
2009-10	51,056	34.13	42	0.07	3,531	0.09	47,567	34.11	93.09	99.74
2010-11	1,51,801	205.16	314	0.31	22,304	50.26	1,29,811	155.21	85.34	75.54
2011-12	1,24,401	155.07	2,071	1.23	8,656	12.98	1,17,816	143.32	93.16	91.70
2012-13	1,17,816	143.22	688	2.39	2,416	9.14	1,16,088	136.47	97.96	93.72
2013-14	1,45,015	202.38	1,001	3.59	31,757	76.21	1,14,259	129.76	78.25	63.00

Source: figures obtained from IGR office

The pendency in disposal of cases ranged between 78.25 *per cent* and 97.96 *per cent* and percentage of amount involved in these pending cases ranged between 63 and 99.74 *per cent*.

4.3.7.2 Cases impounded by the Department

Section 33 deals with impounding of insufficiently stamped instruments both unregistered as well as registered. The COS is empowered to determine the duty, if any, with which the impounded instrument is chargeable.

As per the information furnished by the Department, 7,125 impounded cases involving stamp duty of ₹ 77.24 crore brought for adjudication were shown outstanding as on 31 March 2014 as mentioned in **Table 4.3.7.2**

Table 4.3.7.2

(₹ in crore)										
Year	Opening balance		Received		Disposal		Closing balance		Percentage	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	(8) to (2) + Col (4)	(9) to (3) + Col (5)
1	2	3	4	5	6	7	8	9	10	11
2009-10	14,759	74.87	1,429	9.97	2,558	10.77	13,630	74.07	84.20	87.31
2010-11	13,615	73.66	21,475	483.26	23,664	490.21	11,426	66.71	32.56	11.98
2011-12	10,993	57.12	23,961	296.58	24,316	307.58	10,638	46.12	30.43	13.04
2012-13	9,528	46.02	14,094	121.53	15,296	144.49	8,326	23.06	35.25	13.76
2013-14	7,170	49.41	11,235	112.33	11,280	84.50	7,125	77.24	38.71	47.76

Source: figures obtained from IGR office

The pendency in disposal of cases ranged between 30.43 *per cent* and 84.20 *per cent* and percentage of amount involved in these cases ranged between 11.98 *per cent* and 87.31 *per cent*.

4.3.7.3 Cases brought for Adjudication before COS

Section 31 of the MS Act stipulates that when an executed or unexecuted instrument is brought to the Collector of Stamps (COS) by one of the parties to the instrument, on payment of fee of one hundred rupees, to have the opinion as to the duty with which it is chargeable, the COS shall determine the duty with which the instrument is chargeable and issue demand notice.

As per the information furnished by the Department, 1,990 adjudication cases involving stamp duty of ₹ 390.32 crore were pending (March 2014) for Adjudication before COS. The details of the cases received and disposed of is mentioned in table 4.3.7.3

Table 4.3.7.3

(₹ in crore)										
Year	Opening balance		Received		Disposal		Closing balance		Percentage	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	(8) to (2) + Col (4)	(9) to (3) + Col (5)
1	2	3	4	5	6	7	8	9	10	11
2009-10	3,500	99.78	3,734	99.02	3,505	110.23	3,729	88.56	51.55	44.55
2010-11	3,798	90.85	38,641	977.71	39,250	1,019.85	3,189	48.71	7.51	4.56
2011-12	2,555	46.04	25,567	1,007.07	25,981	926.99	2,141	126.12	7.61	11.98
2012-13	2,136	128.53	15,796	858.80	15,664	792.08	2,268	195.25	12.65	19.78
2013-14	2,189	191.99	13,920	782.41	14,119	584.08	1,990	390.32	12.35	40.06

Source: figures obtained from IGR office

The closing balance of the above table indicates that though the number of cases pending adjudication has been decreasing from year to year, the amount involve in the cases has been increasing. During 2013-14, there has been 100 per cent increase in amount of the pending cases. This indicates that cases with high money value are pending adjudication. The Department needs to ensure that high money valued cases are adjudicated at the earliest in the interest of the revenue.

4.3.7.4 Adjudication cases pending with IGR

Section 53A of the MS Act empowers the Chief Controlling Revenue Authority (CCRA) to reassess the duty leviable assessed by COS. When through mistake or otherwise any instrument is charged with less duty than leviable by the COS, the CCRA shall examine such instrument and order recovery of deficit stamp duty from the concerned parties.

As per the information furnished by the Department, 951 adjudication cases involving stamp duty of ₹ 129.49 crore were shown outstanding as on 31 March 2014 as pending adjudication with IGR as shown in Table 4.3.7.4.

Table 4.3.7.4

(₹ in crore)								
Year	Opening balance		Received		Disposals		Closing balance	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases ⁹	Amount
2009	331	100.13	51	17.99	21	3.32	361	114.80
2010	361	114.80	42	7.41	12	2.74	391	119.47
2011	397	119.47	27	81.57	22	76.25	402	124.79
2012	401	124.79	15	57.85	8	57.23	408	125.41
2013	408	125.41	551	23.61	8	19.53	951	129.49
Total			686	188.43	71	159.07		

Out of 686 cases received by the IGR during the period 2009-13, only 71 cases (only 10 *per cent*) were disposed even though both the number of pending cases and the amount involved under section 53A showed an increasing trend.

Thus, it would be seen from the above that a large number of adjudication cases have not been finalised by various authorities in the Registration Department. Since, considerable Government revenue is involved in these cases it is recommended that a time frame needs to be set and monitored at the apex level to ensure timely disposal of these cases.

In the exit conference, the Principal Secretary stated that the figures would be checked and confirmed after verification. As regards disposal of cases, as well as age-wise analysis, the Principal Secretary stated that comments will be offered after verification of the facts.

The fact however remains that the figures have been furnished by the Department and the correctness of the figures should have been ensured during their compilation. Furnishing of incorrect figures indicates deficiency in the maintenance of records which needs remedial action by the Department.

The Department may maintain a proper and correct database of adjudication cases for effective monitoring of cases and draw up a time bound framework for their finalisation so that the Government revenue is not unnecessary blocked.

4.3.8 Discrepancies noticed in determination of consideration value

As per Article 5 (g-a) of Schedule-1 of MS Act, 1958, instruments giving authority or power to a promoter or a developer (by whatever name called) for construction or development of, or, sale or transfer (in any manner whatsoever) of any immovable property, stamp duty as is leviable under Clause (a), (b), (c) or (d) (as the case may be) of Article 25 shall be charged on the consideration¹⁰ or market value¹¹ of the property, whichever is higher.

⁹ The opening balances were not tallying with the closing balances.

¹⁰ Consideration is the value of the property mentioned by the executor in the instrument. It can be different from the market value defined below.

We noticed lack of a uniform policy in determination of consideration mentioned in the instruments, resulting in short levy of stamp duty while executing development agreements during the course of audit. These are mentioned in the following paragraphs.

4.3.8.1 Lack of uniform policy in determination of consideration value mentioned in the agreements

Redevelopment agreements of existing buildings of Co-operative Housing Societies or otherwise which fall under the description of Article 5 (g-a) of Schedule-1 of MS Act, 1958 are executed between developer and Society for the redevelopment of the property.

We observed (May 2014) that while adjudicating the instruments of Redevelopment Agreements, the COS offices of Mumbai, Andheri, Kurla and Borivali were treating payments made on account of items like rent for temporary accommodation, hardship/corpus funds, brokerage charges, shifting charges by the developer to the society and its members for the development rights of the property as part of the consideration value. Further, the consideration value also included the construction cost of the built up area, society's office, watchman's office etc. including parking space given by the developer. However, we found that COS Enforcement-I and Enforcement-II, Mumbai while adjudicating 35 Redevelopment Agreements did not consider the items as part of consideration value.

A few illustrative cases are shown in **Table 4.3.8.1**.

Table 4.3.8.1

(₹ in lakh)					
Case No. / date	Items <u>not</u> considered by the Enforcement office as consideration		Case No. / date	Items considered by the Enforcement office as consideration	
1	2		3	4	
Different treatment given to different instruments by the same COS in levy of stamp duty					
COS,Enf-II, Mumbai: SDE/NEW/ 163 /12 Dt. 07/03/12 In this case COS Enf-II treated these items as obligation and stamped @ 0.2 per cent	Corpus Fund	66.60	COS, Enf-II, Mumbai SDE/NEW/401/12 dtd 21/05/12 In this case COS Enf-II treated these items as part of consideration and stamped @ 5 per cent	Corpus Fund	55.20
	Rent	129.60		Rent	53.13
	Shifting	5.40		Shifting	1.44
	Brokerage	5.40		Brokerage	2.53
	Total	207.00		Total	112.30
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 12.19 lakh.					

¹¹ Market value means the price which such property would have fetched if sold in open market on the date of execution of such instrument and is determined in accordance with the rules framed under Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 (DMVR).

1	2		3	4	
COS,Enf-II, Mumbai: SDE/NEW/ 41 /12 Dt. 18/01/12 In this case COS Enf-II treated these items as obligation and stamped @ 0.2 per cent	Corpus Fund	140.00	COS, Enf-II, Mumbai SDE/NEW/402/12 dtd 25/05/12 In this case COS Enf-II treated these items as part of consideration and stamped @ 5 per cent	Corpus Fund	100.00
	Rent	90.00		Rent	84.76
	Brokerage	5.00		Shifting	4.32
	Stamp duty and Registration charges	3.00		Brokerage	3.36
				CC of area given to members	182.29
				CC of parking	12.84
	Total	238.00		Total	387.57
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 10.72 lakh.					
COS, Enf-I, Mumbai: ENF-I/EVN/J/82/12 Dt. 15/06/12 In this case COS Enf-I treated these items as obligation and stamped @ 0.2 per cent.	Rent	209.88	COS, Enf-I, Mumbai ENF -1/ EVN J/1 /10 Dt. 22/06/10 In this case COS Enf-I treated these items as part of consideration and stamped @ 5 per cent	Corpus Fund	38.75
	Brokerage	7.2		Rent	68.82
	Shifting	4.00		Shifting	1.60
				CC of area given to members	100.02
		Total		221.08	Total
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 28.47 lakh.					
COS, Enf-I, Mumbai: ENF-1/EVN/J/61/12 Dt. 10/04/12 In this case COS Enf-I treated these items as obligation and stamped @ 0.2 per cent	Rent	72.00	COS, Enf-I, Mumbai ENF-1/EVN/J/51/10 Dt. 30/01/10 In this case COS Enf-I treated these items as part of consideration and stamped @ 5 per cent	CC of area given to members	86.54
	Brokerage	2.40		Corpus fund	92.80
	Shifting	1.20		Rent	46.08
				Shifting and Brokerage	2.56
		Total		75.60	Total
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 7.98 lakh.					
Different treatment given to same nature of instrument in two offices COS, Enforcement II, Mumbai and COS Mumbai					
COS, Enf-II, Mumbai In SDE/NEW/325/ 12 dated 23/04/12, COS Enf-II treated these items as obligation and stamped @ 0.2 per cent	Hardship compensation	816.48	COS Mumbai In ADJ/M/4587/10 dated 03/11/10, COS treated these items as part of consideration and stamped @ 5 per cent	Hardship compensation	952.00
	Rent for Alternate accommodation	1,250.64		Rent for Alternate accommodation	509.60
	Total	2,067.12		Total	1,461.60
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 2.93 crore.					

1	2		3	4	
COS, Enf- II, Mumbai In SDE/NEW/450 /12 dated 4/05/2012, COS-II treated these items as obligation and stamped @ 0.2 per cent	Corpus fund	60.00	COS Mumbai In ADJ/M/5736/10 dated 28/12/10, COS treated these items as part of consideration and stamped @ 5 per cent	Corpus fund	100.00
	Rent	492.47		Rent	160.27
	Brokerage	41.04		Brokerage	nil
	Transport	9.14		Transport	nil
	Total	602.65		Total	260.27
Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 30.65 lakh.					
Different treatment given to same nature of instrument in two offices COS, Enf-I, Mumbai and COS Andheri					
COS, Enf-I, Mumbai In ENF-1/EVN/J/79 /12 dated 06/06/12, COS Enf-I treated these items as obligation and stamped @ 0.2 per cent	Rent	345.60	COS Andheri In ADJ/A/188/12 dated 13/03/12, COS treated these items as part of consideration and stamped @ 5 per cent	Rent	201.60
	Brokerage	14.40		Brokerage	16.00
	Shifting	14.40		Shifting	1.60
	Total	374.40		Total	219.20
	Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in foregoing of Government revenue of ₹ 57.97 lakh.				
Different treatment given to same nature of instrument in two offices COS, Enforcement I, Mumbai and COS Mumbai					
COS, Enf-I, Mumbai In ENF-1/EVN/J/ 68/12 dated 18/05/12, COS Enf-I treated these items as obligation and stamped @0.2 per cent	Rent	236.83	COS Mumbai In ADJ/M/3987/11 dated 16/11/11, COS treated these items as part of consideration and stamped @ 5 per cent	Rent	812.16
	Brokerage	9.87		Brokerage	nil
	Transport	5.85		Transport	13.50
	Total	252.55		Total	825.66
	Non-inclusion of the above items in the consideration for development agreement under article 5(g-a) resulted in short realisation of Government revenue of ₹ 37.99 lakh.				

Such types of variations i.e. non-inclusion of components of payments for consideration for development agreement under article 5 (g-a) was noticed in 35 cases. The short realisation of revenue involved in these 35 adjudicated cases in the shape of stamp duty and penalty amounted to ₹ 11.39 crore.

The Principal Secretary in the exit conference accepted (September 2014) the fact and stated that instructions would be issued to all offices in this regard and further stated that action would be taken to recover the deficit stamp duty along with penalty. A report on recovery has not been received (December 2014).

4.3.8.2 Short levy of stamp duty on Re-development Agreement

Audit observed that in respect of Re-Development Agreement deed executed between a Society and the Developer for redevelopment of 7,099.21 square meter of land together with the building standing thereon situated at Parel Sewree Division of Mumbai was adjudicated by COS Enforcement-I, Mumbai in January 2012. While adjudicating, the COS had not taken into account the

construction cost of the built up area and parking area valued at ₹ 18.88 crore to be given to the society members as consideration.

Further, rent of ₹ 16.81 crore paid by the developer on behalf of the society was treated as obligation and stamp duty was levied at the rate of 0.2 *per cent* under article 5(h)(A)(iv). These two items were a part of consideration, and stamp duty at the rate of five *per cent* under Article 25 of schedule-I to MS Act though leviable was not levied. This resulted in short levy of stamp duty of ₹ 1.65 crore.

After we pointed out (December 2013) the short levy, the Principal Secretary accepted (September 2014) the audit observation in the exit conference and stated that action for recovery of deficit stamp duty along with penalty will be initiated.

Report on realisation of deficit stamp duty and penalty has not been received (December 2014).

4.3.8.3 Non-consideration of revenue sharing aspect mentioned in the recitals of the document resulted in short levy of SD and penalty

We noticed (April 2014) in the office of the COS, Nagpur city, that in one evasion case pertaining to Development Agreement deed, document was executed on 30 September 2011 between the Land Owner (Goldbricks Infrastructure Pvt. Ltd) and the Developer (Godrej Properties Ltd) for development of 11,98,509 square feet (sqft) of FSI¹² and saleable area admeasuring 19,84,500 sqft termed as Residential Zone-II to be developed on a plot admeasuring 36,744 square meter (sqm) along with constructed area of 1,440.19 sqm. The COS, Nagpur (City) determined the market value of land along with constructed area at ₹ 66.86¹³ crore and levied stamp duty of ₹ 3.34 crore and penalty of ₹ 26.74 lakh levied for four months at the rate of two *per cent* per month.

We noticed from the recitals of the document that Godrej was to develop the said project with Goldbricks on a Revenue Sharing basis and in consideration thereof Godrej would share the Gross Sales Revenue in the manner enumerated in **Table 4.3.8.3 (1)**.

¹² FSI {Floor space Index} ratio of total floor area of a building to the size of the land on which the building is situated.

¹³ Zone /Division No: 1.2/259 Page 22; Rate ASR 2011: ₹ 18,000 per sqm.
Market Valuation of the land: (36744 x 18,000) = ₹ 66,13,92,000
Construction Area 1440.19 sqm @ ₹ 5,000 per sqm = ₹ 72,00,950
Total Market Value = ₹ 66,85,92,950 i.e. ₹ 66.86 crore

Table 4.3.8.3 (1)

Sale Price of flats (per sqft)	Revenue Sharing ratio for the first 10 lakh sqft of saleable area		Revenue Sharing ratio for the balance saleable area	
	Goldbricks entitlement	Godrej's entitlement	Goldbricks entitlement	Godrej's entitlement
Up to ₹ 5,250 per sqft	38 per cent of the Gross Sales Revenue (GSR)	62 per cent of the GSR	43 per cent of the GSR	57 per cent of the GSR
From ₹ 5,251 per sqft to ₹ 5,999 per sqft	60 per cent of the incremental GSR	40 per cent of the incremental GSR	60 per cent of the incremental GSR	40 per cent of the incremental GSR
Above ₹ 6,000 per sqft	70 per cent of the incremental GSR	30 per cent of the incremental GSR	70 per cent of the incremental GSR	30 per cent of the incremental GSR

The Department had not taken into account the above facts of revenue sharing mentioned in the document while calculating the market value. The adjudicating authority had levied stamp duty of ₹ 3.34 crore on the market value of land amounting ₹ 66.86 crore instead of on consideration ₹ 421.75 crore based on recitals mentioned in the deed. This resulted in short levy of stamp duty of ₹ 17.74 crore and penalty of ₹ 3.95 crore as shown in **Table 4.3.8.3 (2)**.

Table 4.3.8.3 (2)

Calculation of consideration	(₹ in crore)
For the first 10 lakh square feet of saleable area minimum rate considered ₹ 5,250 per sqft, 38 per cent of (10,00,000*5250)	199.50
For the remaining 9,84,500 square feet of saleable area minimum rate considered ₹ 5,250 per sqft, 43 per cent of (9,84,500*5,250)	222.25
Total consideration	421.75
Since consideration is higher than the market value of entire land amounting ₹ 66.86 crore as determined by the COS; stamp duty is leviable on consideration say on	421.75
Stamp duty leviable Article 25 (b) @ 5 per cent	21.08
Stamp duty levied	3.34
Short levy of stamp duty	17.74
Since the document was executed on 30.09.2011 hence penalty for 10 months i.e. up to July 2012 @ 2 per cent per month is leviable	4.22
Penalty levied	0.27
Short levy of penalty	3.95
Total short levy of stamp duty and penalty	21.69

The Principal Secretary in the exit conference (September 2014) accepted the audit observation. Report on realisation of deficit stamp duty and penalty has not been received (December 2014).

4.3.8.4 Short levy of stamp duty due to non-inclusion of premium relating to additional FSI and water charges

In COS, Kurla, Mumbai, a development agreement was executed in March 2013 between “The Association of Societies” and the “Developer” for

development of a plot admeasuring 15,903.46 sqm situated at village Chembur. The COS levied stamp duty of ₹ 5.93 crore on the consideration amount of ₹ 118.61 crore. The recital of the deed indicated that the developer shall pay on behalf of the Association of Societies premium for additional FSI and water charges of ₹ 15.35 crore. This part of payment was not included in the consideration while adjudicating the document by COS. This resulted in short levy of stamp duty of ₹ 76.74 lakh.

The Principal Secretary accepted (September 2014) the audit observation in the exit conference and stated that action will be taken to recover the deficit stamp duty. Report on realisation of deficit stamp duty has not been received (December 2014).

It is recommended that the Government may issue instructions to the Department for adopting uniform policy for determination of consideration amount in respect of development/redevelopment agreements to ensure uniformity.

4.3.9 Determination of market value of old buildings

The market value is required to be worked out as per instructions and at the rates mentioned in ASR. As per instruction No. 1 of ASR for valuation of the old property with tenant, market value should be calculated based on the area of property that can be built on that plot as per prevailing admissible FSI as mentioned in the Development Control Regulation (DCR) for Greater Mumbai 1991.

JDTP Pune, in a letter dated 14 January 2011 addressed to the ACOS, Mumbai had stated that in respect of cessed¹⁴ (old) properties, cost of constructed area provided to the tenants free of cost can be considered for deduction from the market value (MV) of the available FSI. This suggestion resulted in different treatment of similar nature of instruments by COS in Mumbai and MSD, as in some cases, the construction cost (CC) of tenant occupied area was deducted from the market value of the available FSI. In some cases the CC of tenant occupied area was not deducted from the market value of the available FSI and in some cases, the CC of tenant occupied area was added to the consideration amount to compare it with the market value of the available FSI as mentioned in the succeeding paragraphs:

4.3.9.1 Construction cost of the tenant occupied area excluded from determination of the market value in case of old buildings

Audit observed (February and May 2014) in 81 adjudicated cases in COS, Mumbai, Enforcement I and II, Mumbai, finalised between January 2010 and December 2013 that the market value of 'A' category cessed buildings¹⁵ were calculated by deducting the CC of the area to be given to the tenants from the

¹⁴ Mumbai Building Repairs and Reconstruction Board formed under MHADA Act 1976 surveys the old buildings of Mumbai Island city and levies a cess for repairs and reconstruction of the building as per its category based on its age, such properties are called cessed buildings.

¹⁵ Buildings constructed prior to 1940

market value of FSI available¹⁶ for the Purchaser/Assignee/Developer. Thus, deduction of the CC of the area given to the tenants treating it as obligation in 81 adjudicated cases has resulted in short levy of stamp duty of ₹ 16.39 crore including penalty of ₹ 12.93 lakh.

A few illustrative cases out of 81 cases pointed out by audit where the COS deducted the CC of area to be given to the tenants, also made arithmetical mistakes and applied incorrect rates in working out the market value are highlighted in **Table 4.3.9.1**.

Table 4.3.9.1

ADJ case No and date	Nature of irregularity
Adj/M/ 841/13 dt. 06/05/13	In this instrument of Conveyance of property situated at Bhuleshwar admeasuring 5,047.70 sqm having permissible FSI of 20,828.33 sqm, FSI available to the developer was 7,390.70 after deducting 13,437.63 sqm, the area given to the tenants. The MV of the area available to the developer worked out to ₹ 3,589.03 lakh ¹⁷ . The COS Mumbai deducted ₹ 2,351.59 lakh on account of CC of area 13,437.63 sqm admeasuring at the rate of ₹ 17,500 per sqm given to tenants. The COS Mumbai levied SD of ₹ 58.67 lakh on MV of ₹ 1,173.49 ¹⁸ lakh against SD leviable on MV of ₹ 3,589.03 lakh, which resulted in short levy of SD of ₹ 120.78 lakh.
Adj/M/4449/11 dt. 20/12/2011	In this instrument of Indenture pertaining to property situated at Dadar Naigaon admeasuring 3,271 sqm having permissible FSI of 11,196.35 sqm, FSI available to the developer was 3,732.12 sqm after deducting 7,464.23 sqm, the area given to the tenants. The MV of the area available to the developer worked out to ₹ 1,894.09 lakh ¹⁹ . The COS Mumbai deducted ₹ 1,194.28 lakh on account of CC of area admeasuring 7,464.23 sqm at the rate of ₹ 16,000 per sqm given to tenants from ₹ 1,894.09 lakh and compared this with consideration of ₹ 725.00 lakh paid by the purchaser to the vendor and levied SD of ₹ 36.25 lakh treating consideration higher against SD leviable on MV of ₹ 1,894.09 lakh which resulted in short levy of SD of ₹ 58.45 lakh.
ADJ/M/ 758/12 dt. 23/04/2012	In this instrument of Conveyance pertaining to property situated at Mazgaon admeasuring 1,605 sqm having permissible FSI of 9,968.25 sqm, FSI available to the developer was 3,322.75 sqm after deducting 6,645.50 sqm, the area given to the tenants. The MV of the area available to the developer worked out to ₹ 1,286.60 lakh ²⁰ . The COS Mumbai deducted ₹ 1,045.86 lakh on account of CC of area admeasuring 5,976.35 sqm at the rate of ₹ 17,500 per sqm given to tenant from ₹ 1,286.60 lakh and compared this with consideration of ₹ 250.00 lakh paid by the purchaser to the vendor and levied SD of ₹ 12.50 lakh treating consideration higher against SD leviable on MV of ₹ 1,286.60 lakh which resulted in short levy of SD of ₹ 51.83 lakh.

¹⁶ As per Regulation 33(7) of the DCR for Greater Mumbai 1991 and Appendix III thereto, in case of redevelopment of 'A' category cessed buildings undertaken by the landlord or Cooperative Housing societies of landlord or occupiers, the total FSI shall be three of the gross plot area or the FSI required for rehabilitation of existing occupiers plus 50 per cent incentive FSI, whichever is higher. In these cases self-contained flats of minimum 300 sq ft and maximum 753 sq ft carpet area are to be given to the old residential tenants/occupants. The shopkeepers are to be given an area equivalent to their old area.

¹⁷ (7,390.70 sqm x ₹ 47,600) + ₹ 71.06 lakh (112 times of rent of ₹ 63,443/- per month)

¹⁸ The COS considered the MV of ₹ 1,173.49 lakh instead of ₹ 1,237.44 due to arithmetical error for calculating SD.

¹⁹ (3,732.12 sqm x ₹ 48,600/-) + ₹ 80.28 lakh (112 times of rent of ₹ 71,681/- per month)

²⁰ (3,322.75 sqm x ₹ 34,900 per sqm) + ₹ 34.58 lakh (112 times of rent of ₹ 30,873 per month) + ₹ 92.39 lakh (valuation of property in possession of owner)

Adj/M/4180/11 dt. 25/11/2011	In this instrument of Development agreement pertaining to property situated at Girgaon admeasuring 3,343.57 sqm having permissible FSI of 8,358.93 sqm, FSI available to the developer was 2,762.74 sqm after deducting 5,224.44 sqm and 371.75 sqm, the area given to the tenants and the owner respectively. The MV of the area available to the developer worked out to ₹ 1,939.44 lakh ²¹ . The COS Mumbai deducted ₹ 642.38 lakh on account of CC of area admeasuring 4,014.87 ²² sqm at the rate of ₹ 16,000 per sqm given to tenant and ₹ 260.97 lakh on account of CC of area admeasuring 371.75 sqm given to the owner. The COS levied stamp duty of ₹ 64.85 lakh on MV of ₹ 1297.06 lakh ²³ instead of on ₹ 1,939.44 lakh which resulted in short levy of SD of ₹ 32.12 lakh.
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4.3.9.2 Construction cost of the tenant occupied area not deducted from market value of property

While in the above cases, the true market value was determined by deducting the construction cost of area to be given to the tenant, it was observed that COS Mumbai, Enforcement I and II, Mumbai themselves in other similar cases of conveyance and development agreements for adjudication determined the market value without deducting the construction cost of the area to be given to the tenants. A few illustrative cases where the CC of the area to be given to the tenants was not deducted by COS are given in **Table 4.3.9.2**.

Table 4.3.9.2

Sr. No.	Name of the COS	ADJ CASE NO and date	Location of Property	FSI	Gross area of plot	Area to be given to the tenants
1	Mumbai	547/2011 dtd. 09/02/2011	Parel Sewree	2.5	1,168.07	1,355.01
2	Mumbai	277/2011 dtd. 05/02/2011	Lower Parel	3	2,321.93	4,951.49
3	Mumbai	3651/11 dtd. 30/04/2011	Byculla	1.5	716.56	697.02
4	Mumbai	2865/11 dtd. 06/09/11	Bhuleshwar	4	7,711.61	16,026.02
5	Enforcement-2	SDE/NEW/ 28/ 2012 dtd. 09/01/12	Matunga	3	542.56	210.22

4.3.9.3 Construction cost of the tenant occupied area added to market value of property

In five cases of similar nature, COS Kurla added the CC of the area to be given to the tenants to the consideration to arrive at the MV of the property while adjudicating as mentioned in **Table 4.3.9.3**.

²¹ 2,762.74 sqm x ₹ 70,200

²² Area to be given to the tenants was 5,224.44 sqm, however the COS deducted CC for 4,014.87 sqm only.

²³ 8,358.92 sqm – 5,224.44 sqm = 3,134.48 sqm x ₹ 70,200 = ₹ 2,200.41 lakh
₹ 2,200.41 lakh - ₹ 642.38 lakh - ₹ 260.97 lakh = ₹ 1,297.06 lakh

Table 4.3.9.3

Sr. No.	ADJ CASE NO and date	Location of Property	Gross area of plot	Total area to be given to the tenants	Amount of CC given to the tenant included in consideration
1	ADJ/497/13/K dtd 27/05/13	Borla	1,251.42	1,070.63	188.43
2	ADJ/364/13/K dtd. 23/4/13	Kurla 1	508.7	540	95.04
3	ADJ/1258/13/K dtd. 4/12/13	Ghatkopar	1,812.7	1,154.78	203.24
4	ADJ/182/12/K dtd. 19/04/12	Kurla 1	508	360	57.60
5	ADJ/1172/11/K dtd. 02/05/2011	Kurla 1	508	360	54.00

4.3.9.4 Different treatments in valuation of properties in Mumbai Sub urban District

Similarly, in COS Enforcement-II, Mumbai, we noticed (May 2014) during test check of the evasion cases that out of nine cases of adjudication of instrument of development agreement/conveyance pertaining to the properties situated in MSD, in seven cases the market value of the properties were calculated by the COS without deduction of the construction cost of the area to be given to the tenants from the market value of balance FSI available to the Purchaser/Developer. However, in remaining two cases, the market value of the properties were calculated by deducting the construction cost of the area to be given to the tenants from the market value of balance FSI available to the Purchaser/Developer. This resulted in short levy of stamp duty and penalty of ₹ 15.27 lakh as mentioned in **Table 4.3.9.4**.

Table 4.3.9.4

ADJ case no	Nature of irregularity
SDE/NEW/352/12	In this instrument of Development Agreement pertaining to property admeasuring 1,101.64 sqm situated at Andheri, the COS Enforcement II, Mumbai deducted ₹ 1.55 crore on account of CC of area admeasuring 965.91 sqm at the rate of ₹ 16,000 per sqm given to tenant. However, non-levy of stamp duty on the construction cost resulted in short realisation of Government revenue of ₹ 8.78 lakh including penalty of ₹ 0.34 lakh
SDE/NEW/387/12	In this instrument of Development Agreement pertaining to property admeasuring 1,338.60 sqm situated at Walmi, the COS Enforcement II, Mumbai deducted ₹ 149.92 lakh on account of CC of area admeasuring 937.02 sqm at the rate of ₹ 16,000 per sqm given to Owner ²⁴ . However non-levy of stamp duty on the construction cost resulted in short realisation of Government revenue ₹ 6.49 lakh including penalty of ₹ 0.13 lakh.

Thus, there was no uniform system in calculating the true market value in cases involving development of tenanted property which resulted in short levy of stamp duty.

The Principal Secretary in the exit conference (September 2014) accepted the fact that there was a need to bring uniformity in the system and stated that comprehensive circular/guidelines will be issued in this regard.

²⁴ In this case, though no tenant was involved COS deducted CC of area given to the Owner.

The Principal Secretary further stated that the COS offices of Mumbai, Enforcement I and II were following the instructions of JDTP, Pune issued vide above mentioned letter dated 14 January 2011. However, the reply of the Department was silent on the correctness of the instructions issued by the JDTP. The correctness of the instructions need to be investigated legally and applied uniformly.

It is recommended that the Department may legally investigate the correctness of the suggestion issued by JDTP Pune, in his letter dated 14 January 2011 and apply it uniformly. However in the interest of revenue, it may not deduct the cost of construction of area given to the tenants from the market value of the properties till such a clarification is received.

4.3.9.5 Lack of uniformity in the application of instructions in the ASR resulted in short levy of stamp duty in a conveyance deed

As per instruction 4 of ASR, while valuing old property, if the value arrived at after allowing depreciation is less than the value of developed land then valuation should be done as per land plus construction cost method i.e. (Land rate + depreciated construction cost rate) x 1.20 x area of unit.

In a conveyance deed adjudicated by COS, Mumbai, we noticed that the vendors sold to the purchaser land admeasuring 7,116.47 sqm along with all FSI including FSI for the set back land of 2,450 sqm and TDR²⁵ available on the land along with six industrial unit admeasuring 837.53 sqm. The market value was determined at ₹ 17.60 crore on which stamp duty of ₹ 88 lakh was levied. We noticed from the calculation sheet that while determining the market value of old industrial units, though the value (of ₹ 71,600 per sqm) arrived after allowing depreciation was less than the value (of ₹ 80,700 per sqm) of developed land, the land plus construction cost method was not applied. Further, the Department deducted the cost of construction of area to be handed over to tenants from the market value and also reduced the market value by 20 per cent on account of rent, compensation, etc. to be given to the tenants.

Stamp duty of ₹ 1.81 crore was leviable on market value of ₹ 36.18 crore. Non-adoption of correct method of calculation and irregular deduction resulted in short levy of stamp duty of ₹ 92.91 lakh as detailed in the **Appendix II**.

After we pointed out (January 2014), the Principal Secretary in exit conference stated (September 2014) that the Deputy Director of Town Planning (DDTP) valued the property by applying established principles of the market valuation.

The reply of the Department is however contrary to the instruction which prescribed land plus construction cost method in the ASR (Instruction 4) in valuation of the properties. This indicates that the Department is not following its own instructions.

²⁵ Transfer of Development Rights- In certain circumstances, the development potential of a plot of land may be separated from the land itself and may be made available to the owner of the land in the form of Transferable Development Rights (TDR) which can be loaded on development of a receiving plot.

4.3.9.6 Short levy of SD and penalty due to incorrect working of the market value of a development agreement

In COS Enforcement-II, Mumbai, we noticed (May 2014) in one case of a development agreement for 6,165 sqm situated in a larger plot in MSD, the COS deducted the construction cost of the area to be given to the MCGM on behalf of the owner amounting to ₹ 97.98 lakh from the market value of ₹ 17.14 crore. The COS worked out²⁶ the true market value as ₹ 13.96²⁷ crore and levied stamp duty of ₹ 69.79 lakh. The deduction of cost of construction from the market value resulted in short levy of stamp duty of ₹ 16.85 lakh including penalty of ₹ 0.95 lakh as mentioned in **Table 4.3.9.6**.

Table 4.3.9.6

(₹ in lakh)	
Adj No.	SDE/NEW/02/13
FSI in sqm given for development by the owner	6,165
Market Valuation of the saleable FSI available to the Developer @ ₹ 27,800 per sqm (6,165 x ₹ 27,800)	1,713.87
Consideration in cash	1,390.00
Cost of construction of 612.43 sqm Built up area to be handed over	97.99
Total Consideration	1,487.99
Since market value of FSI being developed is higher stamp duty is leviable on market value	1,713.87
Stamp duty leviable Article 25 (b) @ 5 per cent	85.69
Stamp duty levied	69.79
Short levy of stamp duty	15.90
Penalty for 3 months @ 2 per cent = 6 per cent	0.95
Total short levy of stamp duty and penalty	16.85

This was pointed out to the Department; their reply has not been received (December 2014).

It is recommended that in order to have uniformity in determination of the market value for levy of stamp duty suitable guidelines/instructions regarding the classification of the ingredients to be taken into consideration for working out the consideration/market value of instruments may be specified and applied uniformly. Further the Government may ensure that the instructions issued by the department in ASR are uniformly followed.

4.3.10 Incorrect treatment of 'A' category cessed buildings as non-cessed and incorrect calculation of market value

During scrutiny (February and May 2014) of adjudicated cases in COS Mumbai and COS Enforcement I and II, Mumbai we noticed that in the

²⁶ The COS considered the yield percentage (yP) at the rate of 0.86384 for determination of the market value. Yield percentage is the amount one earns on an interest-bearing investment in a year expressed as a percentage.

²⁷ MV = ₹ 17,13,87,000 (-) ₹ 97,98,880 = ₹ 16,15,88,120
₹ 16,15,88,120 x 0.86384 = ₹ 13,95,86,281

following two cases, though the properties were 'A' category cessed buildings, this fact was not taken into account by the COS while determining the true market value. This resulted in incorrect working of FSI and short determination of the market value as mentioned in the succeeding paragraphs;

4.3.10.1 As per DCR 1991, the FSI for A category cessed building was 3/2.5 or rehabilitation area plus 50 *per cent* incentive of this rehabilitation area whichever is higher, FSI for non-cessed property was 1.33.

Cross verification from Cess Building database of Mumbai Building Repairs and Reconstruction Board revealed that the property was 'A' category cess building but was incorrectly treated as non-cessed. The total FSI of properties²⁸ in each case as per the DCR 1991, worked out to 3,371.70²⁹ sq m instead of 1,883.73 sq m considered by the COS ENF1 Mumbai. This resulted in less depiction of FSI by 2,975.82 sqm³⁰ involving market value of ₹ 22.94 crore as detailed below :

- In one case, market value of the property was ₹ 9.83 crore involving stamp duty of ₹ 98.39 lakh against which stamp duty of ₹ 1.60 lakh was levied.
- In another case, the market value of the property was ₹ 13.11 crore involving stamp duty of ₹ 65.49 lakh against which stamp duty of ₹ 0.37 lakh was levied.

This resulted in short realisation of stamp duty of ₹ 1.62 crore. Besides, penalty of ₹ 1.98 crore was also leviable.

4.3.10.2 Further, in another four cases, we noticed that though the COS considered the properties as 'A' category cessed buildings, however, the incentive FSI available to the purchaser under regulation No. 33(7)³¹ of DCR 1991 was incorrectly left out. The FSI as per the instructions worked out to 4,655.9 sqm valued at ₹ 19.48 crore. Besides, the recitals also indicated the receipt of rent of ₹ 56.43 lakh by the developer. Thus, the total market value of incentive FSI available to the purchaser was to ₹ 20.04 crore involving stamp duty of ₹ 100.22 lakh. The Department had incorrectly worked out the area as 486.97 sqm as available to the developer and levied stamp duty ₹ 25.60 lakh. This resulted in non-realisation of stamp duty of ₹ 74.62 lakh and penalty thereon amounting to ₹ 2.61 lakh.

Thus, incorrect treatment in A category cessed building resulted in short levy of stamp duty of ₹ 2.36 crore and penalty of ₹ 2.01 crore.

The Principal Secretary accepted (September 2014) the audit observation in the exit conference and stated that action will be taken to recover the deficit stamp duty and penalty. However, a report on realisation of deficit stamp duty and penalty has not been received (December 2014).

²⁸ ENF-1/EVN 354/09, ENF-1/EVN 352/09

²⁹ Area of the plot=1,348.68 x 2.5=3371.70

³⁰ Area of the plot=3,371.70-1,883.73=1,487.91 x 2 = 2,975.82.

³¹ In case of redevelopment of 'A' category cessed building undertaken by landlord and/or Co-operative Housing Societies of landlord and/or occupiers, the total FSI shall be 2.5 of the gross plot area or the FSI required for rehabilitation of existing occupiers plus 50 *per cent* incentive FSI, whichever is more.

4.3.11 Short levy of stamp duty – TDR not loaded

As per instruction 3 of the guidelines of the ASR 2011, 40 *per cent* of the land rate is to be taken into account in respect of plots eligible for loading of TDR.

Cross verification (May 2014) of two instruments of Assignment of Development Rights executed (December 2007 and December 2010) by the different parties for same property i.e. piece and parcel of land admeasuring 5,342.50 sqm of Akurli village within MSD revealed that the potential of loading of TDR of 1.15 lakh sqft along with FSI of 2 lakh sqft was passed on to the assignee. But this TDR of 1.15 lakh sqft involving ₹ 11.25 crore was not taken into account for the levy of stamp duty in the second instrument by the COS while adjudicating which resulted in short levy of stamp duty of ₹ 56.24 lakh and penalty of ₹ 11.25 lakh.

After we pointed out, the Principal Secretary in the exit conference accepted (September 2014) the audit observation and stated that action will be taken to recover the deficit stamp duty and penalty.

Report on realisation of deficit stamp duty and penalty has not been received (December 2014).

4.3.12 Non-levy of stamp duty on supplementary agreements

As per section 14A of MS Act, 1958, where due to material alterations made in an instrument by a party, with or without the consent of other parties, the character of the instrument is materially or substantially altered, then such instrument requires a fresh stamp paper according to its altered character.

In COS, Mumbai, an agreement styled as “Supplementary Agreement deed” in continuation of a registered joint development agreement was executed between the Developer cum owner and the Joint Developer for redevelopment of three plots admeasuring 2,578.46 sqm together with old cessed buildings standing on the land situated at Lower Parel, Mumbai.

We noticed that that under this supplementary agreement, the recitals (character) of the original agreement was substantially altered. Under the original agreement, it was agreed that the said property will be developed jointly and after deducting the expenses made for the said project, the profit will be shared equally between both the parties. However, under the supplementary agreement, the parties hereto have mutually agreed that instead of sharing net profit after deducting expenses incurred for the execution of the project, it is agreed and decided between both the parties that the Joint developer alone will arrange funds from the Banks/financial Institutions and entire expense for execution and completion of the project will be borne and incurred by the Joint developer alone and from the date of execution of this Supplementary agreement, the developer cum owner will not invest any amount in execution of the project. It was also decided and agreed by between both the parties that the flats of the project shall be shared by and between the developer cum owner and the joint developer in the ratio of 27:73 respectively based on the aggregate area of all the flats in the proposed building.

As the character of the original joint development agreement was substantially altered in the supplementary agreement, fresh stamp paper according to its

altered character was required. However, while adjudicating and calculating the leviable stamp duty, this aspect was not considered by the COS resulting in short levy of stamp duty of ₹ 23.89 lakh as mentioned in **Table 4.3.12**.

Table 4.3.12

	(₹ in lakh)
Market value (MV) of 23 <i>per cent</i> additional area given to the Joint developer under the Supplementary agreement	532.86
Consideration being paid by the Joint developer to the developer owner under the Supplementary agreement:	409.25
Since is MV higher stamp duty is leviable on MV	532.86
Stamp duty leviable Article 25 (b) @ 5 <i>per cent</i>	26.64
Stamp duty levied	2.75
Short levy of stamp duty	23.89

The Principal Secretary in the exit conference accepted (September 2014) the audit observation and stated that action will be taken to recover the deficit stamp duty. Report on realisation of deficit stamp duty has not been received (December 2014).

4.3.13 Incorrect determination of consideration and classification of instruments

4.3.13.1 A Joint Venture Agreement deed executed (November 2012) between Pilot Constructions Pvt. Ltd (The party of the first part called as Company in the document), and Sheth Buildwell Pvt. Ltd (The party of the second part called as SBPL in the document) for assignment of 60 *per cent* of Development and sale of free sale component of 6,00,000 sqft i.e. 55,741.36 sqm of Built up area on land admeasuring 14,121 sqm and 13,388.90 sqm and forming a portion of Cadastral survey No.6 (part), situated at Sion Koliwada, Mumbai to SBPL was adjudicated by COS, Mumbai vide case No. ADJ/M/3861/11.

We noticed that the Department had incorrectly treated the consideration of ₹ 200 crore given by SBPL to Company as unsecured loan /obligation etc. though it was clear from the recital of the document that it was consideration for the value of the property. The recitals revealed that-

“the share of the company in the realisation shall be 40 *per cent* of the realisations of the joint venture plus ₹ 200 crore called as the fixed share. The share of SBPL in the realisations shall be 60 *per cent* of the realisations minus ₹ 200 crore”.

From the above recital it is clear that ₹ 200 crore was a part of consideration value of property. But the same was treated as unsecured loan and obligation. The total consideration worked out to ₹ 235.67 crore on which stamp duty leviable was ₹ 11.78 crore. The consideration mentioned by the executants in the deed and accepted by the COS was ₹ 97.62 crore levied stamp duty (including obligation) of ₹ 5.46 crore. This resulted in short levy of stamp duty of ₹ 6.32 crore.

The Principal Secretary accepted (September 2014) the audit observation in the exit conference and stated that action will be taken to recover the deficit stamp duty. Report on realisation of deficit stamp duty has not been received (December 2014).

4.3.13.2 As per article 5 (g-a) of MS Act, 1958, stamp duty on development agreement is leviable at the rate of five *per cent* on the market value as on conveyance under Article 25. Further, as per Article 36 (iv) of schedule-I of MS Act, 1958, in an instrument of Lease, where such lease purports to be for a period exceeding 29 years, the same duty is to be levied as leviable on conveyance under clause (a), (b), (c) or (d) as the case may be of article 25. As per article 5(h)(A)(vi), agreement relating to project under Built, Operate and Transfer (BOT) system with or without toll or free collection rights, stamp duty shall be levied at the rate of 0.1 *per cent* of agreed amount in cases where the amount agreed does not exceed rupees 10 lakh and in other cases stamp duty shall be 0.2 *per cent* of agreed amount. As per section 6 of MS Act, 1958, where an instrument comes under two or more descriptions in schedule-I and the duties chargeable are different, the instrument shall be charged with the highest of such duties.

Audit scrutiny of adjudicated cases in JDR/COS Pune city and Thane city revealed that in three instruments, the COSs classified the instruments under article 5 (h) (A) (vi) instead of classifying under article 5(g-a). This resulted in short levy of stamp duty of ₹ 4.81 crore as shown in **Table 4.3.13.2**.

Table 4.3.13.2

(₹ in crore)				
Sr. No.	Name of COS/ Adj case No.	Stamp duty leviable	Stamp Duty levied	Short levy of Stamp Duty
1	2	3	4	5
1	COS Pune City/336/2010	1.82	0.10	1.72
2	COS Pune City/161/2011	2.74	0.21	2.53
<p>Nature of irregularity: Two agreements were executed between Pune Municipal Corporation (PMC) and M/s Patil Constructions (Developers) for re-development of five/six plots admeasuring 96,324.6 sqm situated in Pune. The COS treated the instrument as BOT agreement and levied stamp duty of ₹ 0.31 crore at the rate of 0.2 <i>per cent</i> as per article 5(h) (A) (vi). This should have been treated as instrument of lease or development agreement as the recitals revealed that the developer shall get lease hold right of 41,446.59 sqm of built up area for 99 years in lieu of re-developing the existing dilapidated quarter by constructing new tenements for PMC employees.</p> <p>The value of PMC component falling under article 5(g-a) and developers component falling under Article 36 worked out to ₹ 91.27 crore and ₹ 47.85 crore respectively. Since instrument comes under two or more descriptions in schedule-I and stamp duty is leviable on higher value, stamp duty of ₹ 4.56 crore should have been levied at the rate of five <i>per cent</i> on ₹ 91.27 crore. Thus, misclassification of instrument resulted in short levy of stamp duty.</p>				
<p>Remarks: The Principal Secretary accepted (September 2014) the audit observation and stated that action will be taken to recover the deficit stamp duty.</p>				

1	2	3	4	5
3	COS Thane city	0.58	0.02	0.56
<p>Nature of irregularity: An agreement was executed between Ganeshanand Developers (JV) and S. P. Motels (second party) for sub-lease of property accrued to the first party by way of lease from Thane Municipal Corporation. The period of sub lease, as per working notes of COS was for a period of 20 years. In consideration of grant of sub-lease, the second party agreed to pay-off and clear all the outstanding loans, liabilities, debts etc of JV (first party) amounting to ₹ 23.25 crore. Stamp duty of ₹ 58.11 lakh should have been levied at the rate of five <i>per cent</i> on 50 <i>per cent</i> of ₹ 23.25 crore as per article 36 (iii). However, the COS treated the instrument as BOT agreement and levied stamp duty of ₹ 2.38 lakh at the rate of 0.2 <i>per cent</i> on total rent to be received in 20 years of sub lease amounting ₹ 23.78 crore as per article 5(h) (A) (vi). Thus, misclassification of instrument resulted in short levy of stamp duty.</p>				
<p>Remarks: The Principal Secretary accepted (September 2014) the audit observation and stated that action will be taken to recover the deficit stamp duty.</p>				

A report on realisation of deficit stamp duty in both cases has not been received (December 2014).

4.3.13.3 As per Article 36 (iii) of the MS Act, 1958, where the lease purports to be for a period exceeding ten years but not exceeding twenty nine years with a renewal clause contingent or otherwise then stamp duty is levied as is leviable on a conveyance under article 25 on 50 *per cent* of the market value of the property. Article 5(h)(A)(iv)(b) includes instruments not covered under any other article and are liable for stamp duty at the rate of 0.2 *per cent*.

We observed in respect of two instruments titled “Revenue Sharing Agreement” adjudicated by COS Mumbai that the lessor had leased the premises for 15 years to the lessee. In both the instruments, it was mentioned that the lessor shall give and allow the lessee to carry on their business in the premises for a minimum period of nine years as an initial period followed by renewal period of six years. The lessee agreed to pay to the lessor lease rent one *per cent* of the net turnover per month or ₹ six lakh per month in respect of first instrument and one *per cent* of the net turnover per month or ₹ five lakh per month in respect of second instrument. The recitals further revealed that the said revenue shall be increased by 15 *per cent* every three years from the date of execution of this agreement. The above recital clearly indicates that these instruments come under the description of lease deed for a period of 15 years. However, the COS while adjudicating the documents incorrectly classified and levied stamp duty under article 5(h)(A)(iv)(b) which includes instruments not covered under any other article. This resulted in short levy of stamp duty of ₹ 18.98 lakh.

The Principal Secretary accepted (September 2014) the audit observation in the exit conference and stated that action will be taken to recover the deficit stamp duty. A report on realisation of deficit stamp duty has not been received (December 2014).

4.3.14 Non-uniformity in follow of instructions in ASR and instructions issued by IGR

Floor Space Index (FSI) also called floor area ratio is the ratio of total floor area of building on a certain location to the size of the land of that location. Total covered area on all floors of all buildings on a certain plot = FSI X area of the plot. As per instruction 3 of ASR 2013, wherever the admissible FSI is mentioned in the document, the loading of TDR i.e. increase in land rate of ASR by 40 per cent is not to be done.

4.3.14.1 Short levy of stamp duty in Kurla

During the test checked of 23 instruments of development/re-development agreements adjudicated by COS Kurla, in 18 cases the COS considered FSI mentioned in instruments was correctly taken for working out the market value of the properties. In the remaining five instruments, stamp duty was incorrectly levied on the consideration mentioned in the instrument instead of the market value based on FSI mentioned in the document. This resulted in short levy of stamp duty of ₹ 51.57 lakh as shown in **Table 4.3.14.1**.

Table 4.3.14.1

Adj. Case No.	Nature of irregularity
73/K/13	Total FSI available on plot including TDR as per the document was 3,082.32 sqm. After excluding area of 1,522.36 sqm given to society members the balance FSI available to the developer was 1,559.96 sqm valued at ₹ 5.33 ³² crore involving stamp duty of ₹ 26.67 lakh. The COS levied stamp duty of ₹ 13.79 lakh on the consideration of ₹ 2.76 crore mentioned in the document of instead of the market value which was higher. This resulted in short levy of stamp duty of ₹ 12.88 lakh.
725/13/K	Total FSI available on plot including TDR as per the document was 1,511.19 sqm. After excluding area given to society members of 816.35 sqm the balance FSI available to the developer was 694.84 sqm valued at ₹ 4.02 crore involving stamp duty of ₹ 20.08 lakh. The COS levied stamp duty of ₹ 10.81 lakh on consideration of ₹ 2.16 crore instead of market value which was higher. This was short levy of stamp duty of ₹ 9.27 lakh.
404/12/K	Total FSI available on plot including TDR as per the document was 10,156.7061 sqm. After excluding area of 5,947.02 sqm given to society members the balance FSI available to the developer was 4,209.69 sqm valued at ₹ 22.10 ³³ crore. The COS levied stamp duty of ₹ 1.01 crore on consideration of ₹ 20.27 crore mentioned in the document. Since the market value of ₹ 22.10 crore was greater, stamp duty of ₹ 1.10 crore was required to be levied on the market value of ₹ 22.10 crore. This resulted in short levy of stamp duty of ₹ 9.11 lakh.
927/12/K	Total FSI as per the document was 1,973.16 sqm. However, the COS has considered 1,023.12 sqm by multiplying the plot area admeasuring 730.8 sqm situated at village Chembur by 1.4. After deducting the area of 939.03 sqm to be given to the owner, the market value of balance FSI was worked out as ₹ 1.79 crore. This was compared with the consideration amount worked out at ₹ 5.07 crore and COS levied stamp duty of ₹ 25.37 lakh on ₹ 5.07 crore. However, if the 2.7 FSI mentioned in the document would have been considered, the balance FSI would have been 1,034.13 sqm valuing ₹ 6.41 crore on which stamp duty of ₹ 32.06 lakh was leviable. Hence, there was short levy of stamp duty of ₹ 6.69 lakh.

³² ASR rate ₹ 34,200 x 1,559.96 sqm = ₹ 5.33 crore

³³ ASR rate ₹ 52,500 x 4,209.69 sqm = ₹ 22.10 crore

1631/10/K	Total FSI as per the document was 2,214.62 sqm. However, the COS has considered 1,550.23 sqm by multiplying the plot area admeasuring 1,107.31 sqm situated at village Chembur by 1.4. After deducting the area of 200.74 sqm to be given to the owner, the market value of balance FSI was worked out as ₹ 5.53 crore. This was compared with the consideration amount worked out at ₹ 22.08 lakh and COS levied stamp duty of ₹ 27.66 lakh on ₹ 5.53 crore. However, if the 2 FSI mentioned in the document would have been considered, the balance FSI would have been 2,013.88 sqm valuing ₹ 8.26 crore on which stamp duty of ₹ 41.28 lakh was leviable. Hence, there was short levy of stamp duty of ₹ 13.62 lakh.
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4.3.14.2 Short levy of stamp duty in Andheri

Similarly, we observed that in nine test checked instruments of development/re-development agreements adjudicated by COS Andheri, even though the admissible FSI was clearly mentioned in all the documents, the COS considered the FSI mentioned in the documents in three instruments only. In remaining six instruments, the COS had incorrectly taken into account 1.4 FSI while calculating the market value resulting in short levy of stamp duty of ₹ 1.79 crore as shown in **Table 4.3.14.2**

Table 4.3.14.2

Adj. Case No.	Nature of irregularity
1778/13/Andheri	Total FSI as per the document was 3,061.26 sqm involving ₹ 25.70 crore involving stamp duty of ₹ 1.29 crore. However, in the recitals the executants had considered FSI of 1,587.32 sqm by multiplying the plot area admeasuring 1,133.80 sqm situated at Bandra by 1.4 instead of at 2.7. The consideration amount mentioned in the document was ₹ 10.20 crore and COS levied stamp duty of ₹ 50.98 lakh on ₹ 10.20 crore. Thus, there was short levy of stamp duty of ₹ 77.52 lakh.
738/13/Andheri	Total FSI as per the document was 914.22 sqm. However, the COS has considered 474.04 sqm by multiplying the plot area admeasuring 338.60 sqm situated at village Bandra by 1.4 instead of 2.7. After deducting the area of 214.13 given to the owner, the market value of remaining FSI of 700.09 sqm given to the developer worked out to ₹ 9.32 crore involving stamp duty of ₹ 46 lakh. The COS levied stamp duty of ₹ 20.99 lakh on ₹ 4.20 crore. This resulted in short levy of stamp duty of ₹ 25.60 lakh. The basis on which market value was worked out was not found on record.
A/905/12	Total FSI as per the document was 3,941.649 sqm. However, the COS has considered 2,588.65 sqm by multiplying the plot area admeasuring 1,459.87 sqm situated at village Bandra by 1.4 plus fungible FSI of 544.83 sqm. After deducting the area of 2,179.40 sqm to be given to the owner, the market value of balance FSI was worked out as ₹ 7.54 crore. This was compared with the consideration amount worked out at ₹ 14.57 crore and COS levied stamp duty of ₹ 72.84 lakh on ₹ 14.57 crore. However, if the FSI of 2.7 mentioned in the document would have been considered, the balance FSI would have been 1,562.399 sqm valuing ₹ 19.64 crore on which stamp duty of ₹ 98.20 lakh was leviable. Hence, there was short levy of stamp duty of ₹ 25.36 lakh.
A/803/12	Total FSI as per the document was 5,418.09 sqm. However, the COS has considered 3,608.78 sqm by multiplying the plot area admeasuring 2,006.7 sqm situated at village Bandra by 1.4 plus fungible FSI of 799.40 sqm. After deducting the area of 3,434.24 sqm to be given to the owner, the market value of balance FSI was worked out as ₹ 5.40 crore. This was compared with the consideration amount worked out at ₹ 22.35 crore and COS levied stamp duty of ₹ 111.77 lakh on ₹ 22.35 crore. However, if the FSI of 2.7 mentioned in the document would have been considered, the balance FSI would have been 1,993.85 sqm valuing ₹ 25.22 crore on which stamp duty of ₹ 126.11 lakh was leviable. Hence, there was short levy of stamp duty of ₹ 14.34 lakh.

A/122/11	Total FSI as per the document was 4,124.2 sqm. However, the COS has considered 2,886.94 sqm by multiplying the plot area admeasuring 2,062.10 sqm situated at village Oshiwara by 1.4. After deducting the area of 623.57 sqm to be given to the owner, the market value of balance FSI was worked out as ₹ 14.49 crore. This was compared with the consideration amount worked out at ₹ 13.34 crore and COS levied stamp duty of ₹ 72.43 lakh on ₹ 14.49 crore. However, if the FSI of 2 mentioned in the document would have been considered, the balance FSI would have been 3,233.38 sqm valuing ₹ 20.69 crore on which stamp duty of ₹ 103.47 lakh was leviable. Hence, there was short levy of stamp duty of ₹ 31.04 lakh.
A/579/11	Total FSI as per the document was 1,238 sqm. However, the COS has considered 866.60 sqm by multiplying the plot area admeasuring 619 sqm situated at village Vile Parle West by 1.4. After deducting the area of 753.9 sqm to be given to the owner, the market value of balance FSI was worked out as ₹ 72.80 lakh. This was compared with the consideration amount worked out at ₹ 2.07 crore and COS levied stamp duty of ₹ 10.33 lakh on ₹ 2.07 crore. However, if the FSI of 2 mentioned in the document would have been considered, the balance FSI would have been 484.10 sqm valuing ₹ 3.13 crore on which stamp duty of ₹ 15.64 lakh was leviable. Hence, there was short levy of stamp duty of ₹ 5.31 lakh.

In COS Borivali, audit observed that in all the cases of similar nature, the COS while adjudicating the instrument had considered the FSI mentioned in the document.

The Principal Secretary in the exit conference (September 2014) stated that for the potential of loading TDR on the land, the land rate was increased by 40 *per cent* and aspect of Fungible FSI was also taken into account. Hence, the valuation done was correct.

Thus, the above facts revealed a uniform system/procedure has not been framed by the Government for working of the consideration/market value of the properties. Some of the COS are following ASR instructions like COS Borivali who has worked out the consideration by taking the FSI mentioned in the document in full, while in some COS like Kurla and Andheri not maintained any uniformity as in some cases, they have adopted FSI other than that mentioned in the instrument or loaded TDR. There was nothing on record to indicate why different methods had been adopted for determination of the market value

It is recommended that the Government may advise the department for framing a uniform policy for determination of FSI, loading of TDR in respect of development/redevelopment agreements as to have a uniform tax base and ensuring that it is uniformly applied and regulated in accordance with instructions contained in the Annual Statement of Rates for levy of stamp duty.

4.3.15 Absence of mechanism to ensure adherence to terms and conditions for remission of stamp duty

Government of Maharashtra under Notification of June 2007 granted full remission on some instruments³⁴ on the condition that any unit failing to start

³⁴ Instruments relating to Hypothecation, Pawn, Pledge, Deposit of title deeds, Conveyance, further charge on mortgaged property, Lease and Mortgage deed in the Schedule-I to the BS Act executed by any person for starting a new industrial unit or extension, expansion or diversification of any existing industrial unit in Group C, D and D + areas and in such areas classified as 'No Industry Districts' under the package scheme of Incentives, 2007.

the activities for which remission was granted or breach of any of the conditions of package scheme of Incentives, 2007 shall be liable to pay the stamp duty and penalty, as if there was no remission from the beginning.

During scrutiny (March 2014) of adjudicated documents in the office of the COS Nagpur Rural, we found that the remission of stamp duty amounting to ₹ 3.18 crore in respect of 35 lease and sale deeds was granted under Notification *ibid* between the years 2009 and 2012. However, there was neither any mechanism in place nor any mechanism was stipulated in the notification or the Package Incentive Scheme, 2007 for ensuring that the beneficiary units have started their activities and the conditions of the package scheme of Incentives, 2007 were not breached.

After this was pointed out, the Department stated that information in respect of 35 cases was called from District Industries Centre, Nagpur (DIC). Of these there were violations of terms and conditions subject to which exemption was granted in four cases involving stamp duty of ₹ 54.90 lakh. However, action taken in these cases was not intimated to audit.

The fact remains that there was absence of mechanism for ensuring that the beneficiary units have started their activities within the stipulated period.

4.3.16 Internal Control Mechanism

An effective internal audit wing always acts as a deterrent to the occurrence of any major irregularity. IGR issued guidelines for internal audit through a circular in June 2001. According to these guidelines, the internal audit wing of IGR consisting of two wings (Desk-10 and Desk-11) was given monthly target to conduct audit of three offices and every DIG of the division has to conduct audit of two offices each in every month. However no specific target of auditing COS office by IGR was set. The details of audit conducted by the internal audit wings of IGR are shown in **Table 4.3.16**.

Table 4.3.16

Year	Target total	Offices Audited			
		Dy. IGR	COS + SOS	Joint SR/ SR	Total
2009	72	Nil	Nil	Nil	Nil
2010	72	Nil	Nil	7	7
2011	72	Nil	1	28	29
2012	72	1	11	32	44
2013	72	Nil	4	32	36
Total	360	1	16	99	116

Source: Information collected from IGR

It was evident from the above table that the internal audit wings of IGR office did not conduct audit of any of the 39 COS/SOS during the year 2009 and 2010. In the year 2011, 2012 and 2013 audit was carried out in one, 11 and four COS/SOS offices only. Out of 16 COS offices audited by internal audit wing of IGR, the details of number of observations and the amount of short levy of stamp duty pointed out in respect of 15 COS offices was as shown in **Table 4.3.16.1**.

Table 4.3.16.1

(₹ in lakh)				
Year	Name of COS	Period Covered	No. of cases pointed out	Amount of short levy of stamp duty pointed out
2011-12	Kurla	January 2011 to March 2011	14	69.28
	Sindhudurg	April 2010 to March 2011	5	10.83
	Nagpur City	April 2010 to March 2011	15	172.43
2012-13	Mumbai	April 2010 to March 2011	13	352.07
	Andheri	April 2010 to March 2011	7	2,565.58
	Borivali	April 2011 to December 2011	11	1,138.66
	Enforcement-1	April 2010 to March 2011	24	1,554.24
	Thane Rural	April 2010 to September 2010	7	138.10
	Pune City	January 2011 to December 2011	7	249.54
	Pune Rural	April 2010 to March 2011	24	170.40
	Satara	April 2010 to March 2011	6	5.00
	Sangli	April 2010 to March 2011	2	21.14
	Nasik	April 2010 to March 2011	4	241.46
	Nagpur Rural	April 2010 to March 2011	5	2.40
2013-14	Enforcement-2	April 2010 to March 2011	15	465.47
Total			159	7,156.60

It can be seen from the above that in 15 COS offices audited during 2011-13, internal audit wing of IGR pointed out 159 cases of short levy of stamp duty amounting to ₹ 71.57 crore, hence if specific target of auditing COS office by internal audit wing of IGR was set and had more COS office were audited, there would have been chances of detection of more cases of short levy of stamp duty.

After we pointed out (June 2014), the IGR assured that every year minimum 10 to 12 COS offices will be audited by internal audit wings of his office.

It was also noticed that in divisions other than Mumbai, there is two tier audit of COS i.e. one by IGR and one by DIG. However, it was noticed that the ACOS, Mumbai is not conducting audit of any of the COSs under his control, even though huge revenue is being collected by COSs of Mumbai Division.

After we pointed out (July 2014), the IGR accepted the point and issued a circular in August 2014 wherein ACOS, Mumbai was directed to conduct audit of the COSs under his control. It is recommended that the Department may strengthen the internal controls including the internal audit wing of the Department to ensure that the cases are promptly reported to the concerned authorities and rectificatory action is taken to avoid loss of revenue.

4.3.17 Conclusion

The documents marked for adjudication normally involve huge money value. However, during the last five years there has been increasing pendency of documents resulting in blocking of revenue. Discrepancies were noticed in the data of adjudication cases furnished by IGR office which indicated lack of monitoring at various levels. There are no clear instructions for determining the true market value of property given to the developer for development and in respect of the consideration given by the developer to the society and society members which resulted in lack of uniformity in adjudication of similar documents. Further, due to absence of adequate guidelines, there was lack of uniformity in determining of market value of 'A' category cessed properties and tenanted properties in Mumbai and MSD. Instances of misclassification, misinterpretation of instrument were noticed due to non-consideration of all facts and circumstances which resulted in short levy of stamp duty. We noticed that there were instances of non-cognizance of instructions in ASR and instructions of IGR by the adjudicating authorities. There was shortfall in conducting audit by internal audit wing of IGR, no specific target for auditing COS office by IGR was set and ACOS, Mumbai was not conducting audit of any of the COS under his control who contribute huge revenue.

4.3.18 Summary of recommendations

The Government/Department may consider:

- **maintaining a proper and correct database of adjudication cases for effective monitoring and drawing up a time bound framework for their finalisation so that the Government revenue is not unnecessary blocked;**
- **framing a uniform policy for determination of FSI, loading of TDR in respect of development/redevelopment agreements so as to have a uniform tax base and ensuring that it is uniformly applied and regulated in accordance with instructions contained in the Annual Statement of Rates for levy of stamp duty.**
- **strengthening the internal controls including the internal audit wing of the Department to ensure that the cases are promptly reported to the authorities and rectificatory action is taken to avoid any loss of revenue.**

4.4 Other audit observations

During scrutiny of records of the various registration offices, we noticed several cases of non-compliance of the provisions of the MS Act, 1958 and Government notifications and instructions and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on our test check of records. The Government/Department need to improve internal control mechanisms so that such cases can be avoided, detected and corrected.

4.4.1 Short levy of stamp duty due to undervaluation of property

As per Article-25 (a) (b) (c) (d) of schedule-I of MS Act 1958, stamp duty on conveyance deeds shall be leviable on the true market value of property or the consideration mentioned in the instrument, whichever is higher. True market value is determined by considering the rates prescribed in the ASR.

4.4.1.1 During test check of documents / instruments we noticed that the market value of the properties were determined incorrectly by the Department.

Scrutiny of documents/instruments in the office of Joint Sub Registrar XII, Haveli, Pune revealed (November 2012) that the property was situated in village Warje, the survey numbers were 100 and 101. The area of land was 42,000 sqm and 31,463 sqm respectively. The rates as per ASR were ₹ 10,400 per sqm and ₹ 700 per sqm respectively and the correct market value worked out to ₹ 28.63 crore as against ₹ 4.83 crore mentioned in the document. This resulted in short levy of stamp duty of ₹ 1.19 crore. The basis on which the consideration of ₹ 4.83 crore mentioned in the document was not produced to audit.

After we pointed out (November 2012), the Joint District Registrar and Collector of Stamps, Pune accepted the audit observation (May 2013) and directed the Joint Sub-Registrar to recover the entire amount pointed out by audit. Progress made in the recovery of the demand raised has not been received (December 2014).

4.4.1.2 In SR Khamgaon, two deeds were executed in November 2010 and in December 2011. The market value of the property determined by the Department was ₹ 75.85 lakh. The basis on which it was calculated was not made available to audit. However, as per ASR 2010 and 2011 the correct market value of the property worked to ₹ 3.82 crore. Thus, there was a short levy of stamp duty of ₹ 13.27 lakh.

After we pointed out (March 2013), Joint District Registrar and Collector of Stamps, Buldhana, accepted the observation (September 2013 and June 2013 respectively). Further progress of recovery has not been received (December 2014).

4.4.1.3 Section 23 of Indian Registration Act 1908 stipulates that no document other than 'Will' shall be accepted for registration unless presented within four months from the date of execution.

Audit noticed that two documents titled as 'Agreement to Sale' were executed in SR Rajgurunagar at Khed, Pune, in January 1992 but were registered in December 2011. Since the prescribed period of four months had expired, these

were liable to be rejected for registration and fresh document based on ASR of 2011 were required to be executed. However the Department in contravention to the provisions of the Act incorrectly accepted the old deed of 1992 for registration. As per ASR of 2011, the market value of the properties aggregated ₹ 5.68 crore on which a stamp duty of ₹ 22.74 lakh and registration fees of ₹ 0.60 lakh was leviable. However the Department levied stamp duty of ₹ 1.88 lakh and registration fees of ₹ 0.54 lakh. This irregularity resulted in short realisation of stamp duty and registration fees of ₹ 20.92 lakh.

After we pointed out (October 2013) the case, the Joint District Registrar, Class-I, and Collector of Stamp, Pune, (Rural) has accepted the observation. (March 2014). Further progress of recovery has not been received (December 2014).

4.4.2 Irregular exemption from payment of stamp duty

As per Article-25(b)(vi) of Schedule –I of MS Act 1958, stamp duty at the rate of five *per cent* is leviable on the true market value of property which is the subject matter of conveyance or the consideration stated in the instrument whichever is higher. These rates are prescribed in the ASR. Further, as per instruction 2.3 (a) of ASR, if the property is occupied by the tenants, then concessions can be allowed only on furnishing any two proofs of tenancy as stated *ibid* are attached with the registering document and the same shall be the part of the document.

During test check of instruments registered in the Office of the Sub Registrar, Andheri II, Mumbai (May 2013), we noticed that a conveyance deed was executed on 23 December 2011 for sale of 2,098.90 sqm of land situated within limits of Municipal Corporation of Mumbai Sub Urban District. The said document was executed but was not registered. The Collector of Stamps (Enforcement-2), Mumbai, based on a complaint (January 2012) impounded the document (March 2012) and worked out the market value of the property as ₹ 75.66 lakh. However, stamp duty of ₹ 5.00 lakh was levied on the sale consideration of ₹ 1.00 crore mentioned in the document.

We further found that FSI of 2,938.46³⁵ sqm was available on the land, which valued at ₹ 16.40 crore on which stamp duty of ₹ 81.98 lakh was leviable. But Department exempted an area of 2,806.69 sqm from the levy of stamp duty on the ground that it was occupied by tenant. However, there was neither any document in support of the tenancy attached with the document nor was the fact of tenancy mentioned in the document. Thus, exemption without proof of tenancy and incorporating in document was irregular.

The facts were brought to the notice of Collector of Stamps (May 2013) who accepted (December 2013) the audit observation and directed SR, Andheri-II, to recover the deficit stamp duty of ₹ 76.98 lakh. Further report on progress made in recovery has not been received (December 2014).

³⁵ Area 2,098.9 sqm x 1.4 (FSI) = 2,938.46 sqm
2,938.46 x (ASR rate) ₹ 55,800 = ₹ 16,39,66,068 say ₹ 16.40 crore

4.4.3 Levy of stamp duty on market value instead of consideration

As per Section 2 (na) of MS Act 1958 “market value” for the purpose of levy of stamp duty in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument, whichever is higher.

During test check of documents / instruments registered in the SR, Haveli VII, Pune, in February 2010, we noticed that an agreement to sale was executed between owner and a purchaser on 14 November 2008 for development and sale of a land admeasuring 15,700 sqm situated in Haveli Taluka. The Department had levied stamp duty of ₹ 11.28 lakh on the market value of ₹ 2.82 crore. However, the details of working out the market value were not available on record. The property was assessed by the Assistant Town Planner (ATP) and he had worked out the consideration amount as ₹ 14.90 crore. Since the consideration mentioned in the document was more than the market value, the stamp duty of ₹ 59.60 lakh was leviable. This aspect was not considered by the Department resulting in short levy of stamp duty of ₹ 48.32 lakh.

After we pointed out (February 2010), Joint District Registrar and Collector of Stamps, Pune has accepted (January 2013) the audit observation relating to short levy of stamp duty. Further report on progress made in recovery has not been received (December 2014).

4.4.4 Short levy of stamp duty due to non-application of IGR’s instructions

As per Article 25 (b) (vi) of schedule-I of MS Act 1958, stamp duty at the rate of five *per cent* and one *per cent* cess thereon is leviable on the true market value of property which is the subject matter of conveyance or the consideration stated in the instrument, whichever is higher. True market value is determined by considering the rates prescribed in the ASR and under Instructions 17(B) for valuation of bulk land on percentage basis. The IGR issued a circular in March 2011 (effective from 1st April 2011) which stipulated uniform policy for determination of market value of bulk land. The market value was required to be calculated in accordance with the slabs mentioned in the circular.

During test check of documents / instruments registered in the SR-IV, Thane (Bhayandar), we noticed that a Sale Deed was executed (April 2011) between the vendor and purchaser for sale of an area admeasuring 14,210 sqm from village Ghodbunder, within Mira Bhayandar Municipal Corporation limits, for a consideration of ₹ 4.10 crore. The basis on which market value was fixed was not found on record. However, the true market value of the property by application of IGR’s circular (slab-wise) worked out to ₹ 14.25 crore involving stamp duty of ₹ 85.48 lakh. Thus, there was a short levy of stamp duty of ₹ 29.46 lakh.

After we pointed out (March 2013), Joint District Registrar and Collector of Stamps, Thane, accepted the observation (August 2013) and instructed Sub-registrar-IV, Thane to recover the deficit stamp duty. However the

progress made in recovering the amount has not been received (December 2014).

4.4.5 Short levy of stamp duty due to non-following of instructions contained in annual statement of rates

As per Article 5 (g-a) of Schedule-I to MS Act, 1958, an agreement relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of any immovable property in such case the same duty as is leviable on conveyance under clause (b) (c) or (d) as the case may be of Article 25, on the market value of property is leviable at the rates applicable to the area in which the property is situated. These rates are prescribed in the ASR. However, in cases where the independent rates are not given in the ASR for any zone then the market value is to be determined as per instruction 6 of the ASR.

During test check of documents / instruments registered in the SR, Haveli XX, Pune in October 2013, we noticed that an agreement was executed between owner and developer on 21 June 2012 for development and sale of a land admeasuring 24,400 sqm situated within limits of Pimpri-Chinchwad Municipal Corporation. The share of consideration to be received from sale of tenements was to be distributed in the proportion of 41 *per cent* (Owner) and 59 *per cent* (Developer). The Department had worked out the market value of property at ₹ 2.75 crore, while the consideration mentioned in the instrument was ₹ 4.52 crore. The Department levied stamp duty of ₹ 22.62 lakh on consideration being higher. The working of market value and consideration was not available with the Department.

However, we noticed that the flat rate for the zone was not fixed by the IGR, Pune and the market value was required to be worked out in accordance with instruction 6 of ASR 2012, which stipulated that if the flat rate are not given then market value of the flat = (Land rate + Construction rate) X 1.15 X Area of land. The market value of the property works out to ₹ 14.60 crore³⁶ on which stamp duty at ₹ 72.99 lakh was leviable. Thus, there was a short levy of stamp duty of ₹ 50.37 lakh.

After we pointed out (October 2013), Joint District Registrar and Collector of Stamps, Pune has accepted (January 2014) and Sub Registrar, Haveli XX, Pune recovered (April 2014) the deficit stamp duty of ₹ 50.37 lakh. Though the entire amount in the instant case has been recovered, the Department should review similar cases and initiate action to recover the deficit stamp duty.

4.4.6 Short levy of stamp duty due to arithmetical mistakes

As per Article 5 (g-a) of Schedule I of MS Act, 1958, an agreement if relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of any immovable property, in such case the same duty as is

³⁶ Rate of flat = (₹ 1690 + ₹ 11,000) x 1.15 x 10,004 sqm = ₹ 14,59,93,374 i.e. ₹ 14,59,93,500

leviable on conveyance under clause (b) (c) or (d) as the case may be of Article 25, on the market value of property is leviable.

During test check of documents / instruments registered in SR, Haveli VII, Pune in February 2010, we noticed that three Development Agreements were executed between owners and developers on 9 May 2008 for development of a land admeasuring 5,500 sqm situated at Mohammad Wadi of Haveli Taluka, within limits of Pune Municipal Corporation. The Department had worked out the market value of property at ₹ 2.70 crore and consideration at ₹ 5.24 crore and levied stamp duty of ₹ 5.26 lakh on consideration being higher. The detailed working of market value was not available on record.

We noticed that the Department had committed arithmetical mistakes (in adding different values of the consideration) in the deed executed. The total consideration received by the three vendors was ₹ 12.74 crore³⁷ but the assessing authorities totalled these transactions as ₹ 5.24 crore. This resulted in short determination of market value by ₹ 7.50 crore involving the stamp duty of ₹ 7.50 lakh.

After we pointed out (February 2010), Joint District Registrar and Collector of Stamps, Pune has accepted (January 2013) the observation. However the progress made in recovering the amount has not been received (December 2014).

4.4.7 Short levy of stamp duty due to incorrect grant of bulk land benefit

As per Article 5 (g-a) of Schedule I to MS Act, 1958, an agreement if relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of any immovable property, in such case the same duty as is leviable on conveyance under clause (b) (c) or (d) as the case may be of Article 25, on the market value of property (or the consideration stated in the instrument, whichever is higher) is leviable at the rates applicable to the area in which the property is situated. These rates are prescribed in the ASR. Further, as per Article-25(b)(vi)(b)(ii) of schedule-I of MS Act, stamp duty at the rate of five *per cent* is leviable on the true market value of property which is the subject matter of conveyance or the consideration stated in the instrument whichever is higher.

During test check of documents/instruments registered in Joint Sub Registrar, Class-I, Thane (Rural) in October 2013, we noticed that a Development Agreement was executed between owner, developer and sub-developer on 10 June 2011 for development and sale of a land admeasuring 8,200 sqm (FSI 10,906.67 sqm) situated within Vasai Taluka, Thane for a consideration of ₹ 2.38 crore. The Department while adjudicating document, had worked out the market value of property at ₹ 2.36 crore by giving bulk land benefit³⁸ of ₹ 1.08 crore and levied stamp duty of ₹ 11.92 lakh on consideration being higher. We noticed that the developer had already carried out the construction of buildings up to plinth level.

³⁷ ₹ 5.42 crore + ₹ 4.89 crore + ₹ 2.43 crore = ₹ 12.74 crore

³⁸ The value of the land is less when sold in bulk than that sold in plots.

Thereafter, for further construction an agreement was executed with the sub-developer for utilising the total FSI of 10,906.67 sqm. However, the benefit of bulk land though not admissible to the sub-developer was allowed incorrectly. The correct market value of the property worked out to ₹ 3.44 crore on which stamp duty of ₹ 17.18 lakh was leviable. Thus, incorrect determination of market value of property resulted in short levy of stamp duty of ₹ 5.26 lakh.

After we pointed out (October 2013), Joint Sub Registrar, Class-I, Thane (Rural) accepted the observation (March 2014). Further progress of recovery has not been received (December 2014).

4.4.8 Short levy of stamp duty by Collector of Stamps

As per Section 2 (na) of the MS Act, “market value” in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument, or the consideration stated in the instrument whichever is higher. Further, as per Article-25 (b) (vi) of schedule – I of MS Act, stamp duty at the rate of five *per cent* is leviable on the true market value of property which is the subject matter of conveyance or the consideration stated in the instrument whichever is higher. These rates are prescribed in the Annual Statement of Rates.

During test check of documents/instruments registered in Collector of Stamp, Mumbai, in May 2011, we noticed that a deed of conveyance was executed between owner and a purchaser on 12 April 2008 for a land admeasuring 10,312.10 sqm. The purchaser approached for adjudication of the document for determination of the market value for the purpose of stamp duty payable on deed. The COS, Mumbai determined the market value of the property as ₹ 63.77 crore. However, while passing the order, the COS, Mumbai incorrectly levied stamp duty of ₹ 23.85 lakh along with penalty of ₹ 2.39 lakh on the consideration of ₹ 4.77 crore mentioned in the document instead of the market value of ₹ 63.77 crore involving stamp duty of ₹ 3.18 crore. This has resulted in short levy of stamp duty of ₹ 2.95 crore.

After we pointed out (May 2011), the Chief Controlling Revenue Authority (CCRA), Pune accepted (February 2014) the audit observation and passed an order for recovery of ₹ 2.95 crore besides penalty of ₹ 27.12 lakh.

Further report on recovery has not been received (December 2014).

The above observations of audit were reported to Government (between May 2014 to June 2014); the reply has not been received (December 2014).