

CHAPTER – VI (Revenue Sector)

STAMP DUTY AND REGISTRATION FEE

PERFORMANCE AUDIT

- 6.4 Preparation of Annual Statement of Rates for determination of market value for levy of Stamp Duty and Registration Fee**

AUDIT OF TRANSACTIONS

- 6.5 Short levy of stamp duty due to undervaluation of property**
- 6.6 Short levy of stamp duty in conveyance deed due to incorrect application of provisions of Maharashtra Stamp Act and Annual Statement of Rates**
- 6.7 Short levy of stamp duty in cases of lease deed**
- 6.8 Short levy of stamp duty due to non-impounding of instrument**
- 6.9 Short levy of stamp duty due to non-consideration of distinct matters in one instrument and non-application of instructions to Annual Statement of Rates**
- 6.10 Short levy of stamp duty due to irregular grant of remission of stamp duty**

CHAPTER VI

STAMP DUTY AND REGISTRATION FEE

6.1 Tax Administration

Receipts from stamp duty (SD) and registration fee (RF) are regulated under the Indian Stamp Act 1899 (IS Act), Indian Registration Act, 1908 (IR Act) and the rules framed there-under as applicable in Maharashtra and are administered at the Government level by the Additional Chief Secretary, Revenue Department. The Inspector General of Registration (IGR), Pune is the head of the Stamp duty & Registration Department who is empowered with the task of superintendence and administration of registration work. The organization setup of the department is detailed in *Appendix-6.1*.

6.2 Internal Audit

The details of audit conducted by the internal audit wings of IGR are as detailed in **Table 6.2**.

Table 6.2

| Year | No. of units | | | Audit observations | | |
|--------------|--------------|------------|------------|--------------------|--------------------------|--------------------------|
| | Planned | Audited | Unaudited | Raised | Settled up to 31/03/2019 | Pending as on 31/03/2019 |
| 2014-15 | 72 | 14 | 58 | 55 | 12 | 43 |
| 2015-16 | 72 | 11 | 61 | 115 | 15 | 100 |
| 2016-17 | 72 | 57 | 15 | 415 | 30 | 385 |
| 2017-18 | 72 | 209 | 0 | 1,296 | 94 | 1,202 |
| 2018-19 | 72 | 182 | 0 | 1,427 | 102 | 1,325 |
| Total | 360 | 473 | 134 | 3,308 | 253 | 3,055 |

Source: Information furnished by the department

Thus, the facts indicate that:

- Only 7.65 per cent of the audit observations raised by the internal audit were settled.

6.3 Results of Audit

There are 556 auditable units in the Registration and Stamps Department, out of these, Audit selected 141 units for test check wherein 13,61,943 instruments were registered during 2018-19. Out of these, Audit selected 79,862 instruments (approx. 5.86 per cent) for test check. During scrutiny, Audit noticed short/non-realization of SD and RF of ₹ 113.04 crore in 429 instruments (approx. 0.54 per cent of sampled cases). These cases are illustrative only as these are based on test check of records. Audit has pointed out similar omissions in earlier years. Not only do these irregularities persist but have also remain undetected till next audit is conducted. There is a need for the Government to improve the internal control system including

strengthening of internal audit so that recurrence of such cases can be avoided. Irregularities noticed are broadly falling under the following categories.

Table 6.3

(₹ in lakh)

| Sl. No. | Category | Number of observations | Amount |
|--------------|----------------------------------|------------------------|------------------|
| 1 | Non/short levy of SD and RF | 08 | 172.11 |
| 2 | Incorrect exemption of SD and RF | 27 | 6,717.93 |
| 3 | Misclassification of documents | 13 | 46.47 |
| 4 | Undervaluation of property | 238 | 1,194.47 |
| 5 | Other irregularities | 143 | 3,173.33 |
| Total | | 429 | 11,304.31 |

During the year 2018-19, the department accepted underassessment and other deficiencies of ₹ 21.16 crore pertaining to 332 cases, of which 49 cases involving ₹ 39.14 lakh were pointed out during the year 2018-19 and the rest in the earlier years. The department recovered ₹ 21.16 crore in 340 cases during the 2018-19, of which 49 cases involving ₹ 39.14 lakh relate to the year 2018-19 and the rest to earlier years.

In eight¹ cases entire amount of ₹ 2.61 crore² on account of SD and RF was recovered after being pointed out to the Government between May 2019 and July 2019.

¹ Offices of the Sub Registrar, Aurangabad (Document No. 6991/2016); Joint Sub Registrar, Haveli-III, Pune (Document No. 5057/2015); Joint Sub Registrar, Haveli-VI, Pune (Document No. 841/2013); Joint Sub Registrar, Haveli-VI, Pune (Document No. 9809/2014); Joint Sub Registrar, Haveli-VI, Pune (Document No. 5500/2015); Joint Sub Registrar, Haveli-VIII, Pune (Document No. 7668/2016); Joint Sub Registrar, Haveli-VIII, Pune (Document No. 11000/2014) and Joint Sub Registrar-I, Khed, Pune (Document No. 5933/2015)

² ₹ 98.85 lakh + ₹ 32.83 lakh + ₹ 12.45 lakh + ₹ 26.34 lakh + ₹ 26.57 lakh + ₹ 37.69 lakh + ₹ 14.79 lakh + ₹ 11.65 lakh

PERFORMANCE AUDIT

REVENUE DEPARTMENT

6.4 Preparation of Annual Statement of Rates for determination of market value for levy of Stamp Duty and Registration Fee

Executive Summary

Stamp duty and registration fee is leviable on the market value of the property. The market values of properties are determined by the Government in accordance with the rules framed under the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995.

The Inspector General of Registration and Controller of Stamps, Pune is the Chief Controlling Revenue Authority who issues an Annual Statement of Rates (ASR) showing rates of land and buildings.

A performance audit conducted on preparation of Annual statement of Rates for Determination of Market Value for levy of Stamp Duty and Registration Fees in Maharashtra for the period 2014-15 to 2018-19 revealed that incorrect and incomplete data was being considered for preparation of ASR. Change in status of land like conversion to non-agricultural land were not ascertained from the revenue authorities and updated. The change in survey number due to fragmentation/amalgamation of areas was not updated. Value zone maps were not updated as per development plan and also separate value zones for high value transactions were not formed. ASR rates were increased despite decrease in average sales consideration. Valuation guidelines (VG) for determination of depreciation of building, impact of FSI/TDR, buildable reservation in valuation of land were not uniform throughout the State. The VG for increase in valuation of properties located in large housing projects situated in municipal corporation/ council limits was not applicable to properties having similar potential situated in influence zone. Guidelines were not framed for valuation of parking spaces allotted free of cost to owners.

There is no mechanism of internal audit to draw assurance on the quality of work being done for proper preparation of ASR. Periodical returns to monitor stages of preparation of ASR were not prescribed.

6.4.1 Introduction

Levy and collection of Stamp Duty (SD) is governed by the Maharashtra Stamp Act, 1958 (MS Act) and Registration Fees (RF) by the Indian Registration Act, 1908 as amended from time to time. The SD and RF is leviable on the market value of the property. Market value 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. The market values of the properties are determined by the Government in accordance with the rules framed under the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995 (herein after called 'Valuation Rules').

As per Valuation Rules³, the Inspector General of Registration and Controller of Stamps, Pune (IGR) who is the Chief Controlling Revenue Authority (CCRA) shall by an order issue Annual Statement of Rates (ASR) on the first day of April every year⁴ showing average rates of land and buildings situated in every *tahsil*, Municipal Corporation and local body area taking into account the average rates of lands and buildings prepared and submitted to him by the Joint Director of Town Planning and Valuation (JDTP). The rates of properties are arranged in the ASR, ward wise/zone wise for urban properties and *tahsil* wise, village wise for rural properties.

6.4.2 Organisational Set-up

Revenue Department at Mantralaya headed by the Additional Chief Secretary and responsible for overall administration of registration and stamp duty in the state. The responsibility for levy and collection of SD and RF in the state is entrusted to the office of the IGR. The office of the IGR is assisted by the office of the Additional Controller of Stamps, Mumbai, ten⁵ offices of the Deputy Inspectors General of Registration (DIGs), nine offices of the Assistant IGRs, 40⁶ offices of the Joint District Registrars (JDRs) and Collector of Stamps (COS) and 507 Sub-Registrars (SRs) at district and *tahsil* levels. The organization setup of the department is detailed in **Appendix-6.1**.

6.4.3 Audit Objectives

The Performance Audit (PA) was conducted with a view to ascertain whether

- input/data collected from various departments was complete and properly compiled, analysed and validated in the preparation of ASR;
- the rates and instructions in ASR were properly determined for computation of market value of properties by taking into account the established principles of valuation in every part of the State; and
- effective internal control mechanism existed in the Department for ensuring proper preparation of ASR.

6.4.4 Audit Criteria

The audit criteria were taken for the PA from the following sources:

- The Indian Registration Act, 1908;
- The Maharashtra Stamp Act, 1958;
- The Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995;
- Annual Statement of Rates of the selected districts for the period January 2014 to March 2019 along with Valuation Guidelines; and

³ Section 3 of the Valuation Rules

⁴ *w.e.f.* 31.12.2015 and prior to 2015 “every year on 01 January”

⁵ two at IGR Office and one in each of the eight regional Offices

⁶ three offices of the Collector of Stamps at Mumbai and three at Mumbai Suburban District, 34 offices of the Joint District Registrars and Collector of Stamps for rest of the State

- Development Control Regulation (DCR) of municipal corporations/councils of selected districts; and notification/ resolutions/ circulars issued by the concerned department/ Government.

6.4.5 Scope and methodology of Audit

The performance audit was conducted for the period from January 2014 to March 2019. The scrutiny of records was conducted at Mantralaya and at the offices of the IGR, JDTP, Deputy Director of Town Planning (DDTP) and selected two⁷ Assistant Directors of Town Planning (ADTP), four⁸ COS, four⁹ JDRs and 20¹⁰ SRs during May 2019 to November 2019. Apart from above, the offices of the Dy. Director of Land Records, District Collectors and Municipal Commissioners of selected districts were also visited for collection of related information.

Entry conference with the department was held on 02 May 2019. Audit findings were communicated to Government in March 2020 for their comments, however, response thereto was awaited (June 2020).

Sampling: The method of judgmental sampling was adopted based on maximum average annual revenue collection for selection of samples for detailed scrutiny. There are eight¹¹ regions in the state. Of which, three regions viz. Mumbai, Konkan and Pune were selected. For district level selection, both the districts in Mumbai region (Mumbai and Mumbai Sub-urban) and one district from each of the remaining two selected regions i.e. Thane district (Konkan region) and Pune district (Pune region) were selected. In selected district, 25 per cent of the SRs having maximum average annual revenue collection under Article 5 of MS Act were selected. In selected SRs, instruments under Article 5 (development agreement), Article 25 (agreement to sale and conveyance of movable/immovable properties), Article 36 (lease deed) and Article 60 (Deed of assignment of lease) were examined.

6.4.6 Financial position

The details of revenue receipt on account of SD and RF for the period 2014-15 to 2018-19 are shown in **Table 6.4.6**:

Table 6.4.6 : Revenue Receipt on account of Stamp Duty and Registration Fee

(₹ in crore)

| Year | Stamp Duty | Registration Fees |
|--------------|--------------------|-------------------|
| 2014-15 | 18,283.74 | 1,675.55 |
| 2015-16 | 19,962.98 | 1,804.01 |
| 2016-17 | 19,405.41 | 1,606.42 |
| 2017-18 | 24,498.84 | 1,942.98 |
| 2018-19 | 26,597.26 | 1,947.79 |
| Total | 1,08,748.23 | 8,976.75 |

Source: Finance Accounts

⁷ Pune and Thane

⁸ Andheri, Borivali, Kurla and Mumbai City

⁹ Pune (City), Pune (Rural), Thane (City) and Thane (Rural)

¹⁰ Andheri No.I,II,IV,VI; Bhiwandi No.I; Haveli No.I,III,XI,XVII,XVIII, XX,XXII,XXVI; Kalyan No.II,IV,V; Kurla No.I; Mulshi, No.II; Mumbai No-II and Thane No.V

¹¹ Amravati, Aurangabad, Konkan, Latur, Mumbai, Nagpur, Nashik and Pune

The receipts on account of SD and RF are accounted for under MH-0030–‘Stamps and Registration Fees’ in consolidated fund of the state.

Audit Findings

6.4.7 Audit Findings on preparation of ASR

6.4.7.1 Consideration of incomplete data for preparation of ASR

As per Valuation Rule 4 (1), the office of the JDTP shall prepare ASR showing average rates of land and building situated in every *tahsil*, municipal corporation and local body area with the help of regional heads *i.e.* ADTP/DDTP and submit the same for approval to the CCRA.

Rule 4 (2) *ibid* envisages that the data in respect of average rates of land and building in every *tahsil*, municipal corporation and local body area shall be arranged in the ASR as far as possible in ward-wise/zone-wise manner in respect of urban properties and *tahsil*-wise, village-wise as the case may be in respect of rural properties. For the purpose of average annual rates, properties may be divided in groups, sub-groups or classes after taking into account the type of the land, type of construction, location and situational advantages or disadvantages of property. While working out the average rates of land and buildings, the officers concerned shall take into account the established principles of valuation, valuation guidelines, if any, and any other details that they may deem necessary.

The office of the ADTP, Pune furnished (December 2019) following details of data pertaining to the years 2017 and 2018 which were used for computation of average rates for the preparation of ASR of Pune district for the years 2018-19 and 2019-20 respectively.

Table 6.4.7.1: Details of data (instruments under Article 25) available at the office of ADTP, Pune

| Year | Total number of instruments under Article 25 | Total number of instruments discarded due to incorrect data | Total number of instruments having consideration less or equal to ASR | Total number of instruments having consideration more than ASR by one to one hundred per cent | Total number of instruments having consideration more than ASR by 100 and above per cent | Number of instruments considered for computation of average rate |
|------|--|---|---|---|--|--|
| 2017 | 1,44,747 | 13,401 | 51,316 | 73,785 | 6,245 | 1,25,101 |
| 2018 | 2,10,516 | 8,022 | 72,392 | 1,20,913 | 9,189 | 1,93,305 |

Source: Data furnished by office of the ADTP, Pune from iSARITA

However, the data obtained through iSARITA in the office of the IGR revealed that there were 1,84,079 and 2,06,387 instruments registered under Article 25 of the MS Act during 2017 and 2018 respectively in Pune district.

This shows that there was difference of 39,332 and 4,129 instruments pertaining to the years 2017 and 2018 respectively in IGR office when compared with the data submitted by the office of the ADTP. Further, the instruments having consideration more than 100 per cent of ASR were not considered by the ADTP office for preparation of ASR. Audit requisitioned

similar information from remaining selected DDTP/ ADTP offices¹², but the same were not furnished.

The office of the ADTP, Pune did not furnish any reason for the use of incomplete data for calculating average rate.

This shows the consideration of incomplete inputs for preparation of ASR due to absence of system of cross verification of input data.

Audit further observed that every ATDP office is provided with iSARITA terminal for downloading data to arrive at average rate of properties for the preparation of ASR. However, option to generate report showing SR office wise summary of instruments registered for a particular period was not available at ADTP office level. Similarly, important fields such as type of property (land /flat/ office /shop/ industrial) were not available in iSARITA at ADTP office level.

The office of the ADTP, Pune confirmed (December 2019) that data generated from iSARITA contains month of registration only. Other required details such as type of property were not available in data generated from iSARITA. Hence, such data was being sorted out manually.

The matter was pointed out (March 2020) to the office of the IGR; reply was awaited.

Recommendation: A system to assess completeness and correctness of input data intended to be used for preparation of ASR may be put in place.

6.4.7.2 Non-submission of monthly data of instruments to ADTP by SRs for computing average increase in ASR

As per Valuation Rule 4(7), “all the Registering Officers shall send to the Town Planning and Valuation Officers appointed to assist the offices of Joint Directors of Town Planning and Valuation for preparation of annual statement of rates, the extract of the register in respect of the instruments presented for registration in which consideration for the subject property is stated to be more than the annual statement of rates by 30th day of the following month.”

Audit observed (June to November 2019) that none of the test checked SR offices were sending nor the offices of the DDTP/ADTP were insisting for submission of the said data and further submitted (June to November 2019) that the required data was available in iSARITA at DDTP/ATDP office level.

The office of the IGR stated (June 2019) that the system of collection of sales transaction data from SRs had been dispensed with.

The reply is not acceptable, as Audit did not find issue of any such instruction by IGR office. Further, neither there exist a system of submitting required data manually nor complete information was available in iSARITA. Thus, the completeness and validation of data used for preparation of ASR could not be ensured.

Recommendation: Department may ensure reliable system for making available complete data at ADTP level which is required for preparation of

¹² ADTP, Konkan and DDTP, Mumbai

ASR and also evolve adequate mechanism of cross verification for validation of data.

6.4.7.3 Non-updation status of land in ASR

As per ordinance (January 2017) issued by the Revenue & Forest Department, if the final development plan of any area has been published and the non-agriculture (NA) assessment, conversion tax, *nazarana* or premium and other Government dues thereon have been paid, then the use of the said land would be deemed to be converted for the use as shown in the final development plan and there would be no need for a separate permission for converting to NA use.

The office of the JDTP is issuing instructions to ADTP offices every year for updating the status of NA land while preparing the ASR by obtaining details of NA permissions issued by the Revenue department *i.e.* *Tahsil*/ Collector offices.

During scrutiny (September 2019) audit observed that office of the ADTP, Konkan did not receive any details of NA permissions issued by the Collectorate, Thane in spite of specific requisition every year. The office of the ADTP, Pune neither asked for the required information nor the Collector office Pune submitted such information during 2014-15 to 2018-19.

In spite of audit requisition (July 2019 and October 2019), the offices of the District Collectors, Pune and Thane did not submit any information of NA permissions to Audit.

Audit scrutiny of following test checked cases revealed that (July and November 2019) in the offices of the Jt.SR Haveli – XI Pune and JDR Pune (Rural), the Collectorate, Pune changed the use of land by issue of NA permissions (September 2014 and March 2017), but the related updation was not considered in subsequent ASRs prepared by ADTP office, Pune as illustrated below:

Case study – I:

The Collectorate, Pune issued (September 2014) NA permission for conversion of agriculture land to non-agriculture purpose admeasuring 1.8 ha situated in survey No.220 (part) under village Fursungi, *tahsil* Haveli, district Pune.

However, in ASR for the year 2017-18, said survey was classified as land having probable NA potential instead of correct classification under NA Zone.

In reply, the office of the ADTP, Pune stated (July 2019) that even if the survey number having NA permission was not included in the NA zone then as per VG 23, the rates of NA zone could be applied.

The reply is not acceptable, as the said land was situated outside the *gaothan* of village Fursungi, it was required to be classified under value zone No. 9.4 under heading ‘remaining NA land outside *gaothan* area’ having rate of ₹ 8,850 per sqm in ASR. However, the same was classified under value zone No. 11.4 under heading ‘remaining probable NA land outside *gaothan* area’ having rate of ₹ 7,780 per sqm. Thus, failure of ADTP office resulted in non-updation of ASR due to non-consideration of important input.

Case study – II:

The Collectorate, Pune issued (March 2017) NAA orders for conversion of agriculture land to non-agriculture purpose admeasuring 13.35 ha situated in survey Nos. 98/1, 98/2, 99/1, 99/2, 99/3, 99/4, 101/2 and 101/3 under village Mann, (influence zone) *tahsil* Mulshi, district Pune. This fact was mentioned in a conveyance deed adjudicated by the JDR, Pune (Rural) in December 2017.

However, the said survey numbers were not intimated by the office of the JDR, Pune (Rural) to ADTP office, Pune for updation in subsequent ASR. As a result, audit observed (November 2019) that in ASR for the year 2018-19, the said survey numbers were still classified as agriculture land under value zone No. 6/0 (at the rate of ₹ 2.87 crore per ha *i.e.* ₹ 2,873 per sqm) instead of proper classification under value zone No. 9.4 (at the rate of ₹ 9,750 per sqm).

On being pointed out (November 2019), the office of the JDR, Pune (Rural) did not submit any specific reply.

This shows absence of system of exchange of information of NA permission issued by Revenue department resulting in non-updation of ASR.

Recommendation : System for exchange of information related to changes in status of land permitted by the revenue authorities and its updation in ASR may be formulated.

6.4.7.4 Non-updating changes in survey number in ASR

The change in survey number is a continuous process mostly due to sub-division, fragmentation of large area and amalgamation of small areas. In order to ensure incorporation of all changes in survey numbers, it is necessary to obtain up to date information from offices of the Dy. Director of Land Records (DDLRL)/ City Survey Officers (CSO) concerned. The JDTP office is issuing instructions to DDTP/ADTP offices every year for updating the status of city survey numbers.

Audit observed (July to December 2019) that the required information of changes made by the offices of the DDLRL/CSO needed for updation of ASR was not available with any of the test checked DDTP/ADTP offices.

On being pointed out, office of the DDTP, Mumbai replied (August 2019) that in spite of requisition with land records offices, the required information was not received. The office of the ADTP, Pune stated (December 2019) that land records offices had intimated (December 2019) to deposit requisite fee for required information. However, no further action by the office of the ADTP, Pune was found on records. The office of the ATDP, Konkan stated (September 2019) that required information was not received.

In eight test checked cases (July 2019) of offices of the DDTP, Mumbai, it was observed in ASR for the Mumbai and MSD that sub-divisions of one city survey number was not separately identified by giving part number such as ‘part-1, part-2, *etc*’ but mentioned as ‘city survey number (part)’ and was appearing in two value zones having different rates for valuation. This may result in short valuation of a piece of land or *vice-versa*.

Recommendations: The Department may consider developing a mechanism in coordination with DDLR/CSO offices so that required information is received in a timely manner for preparing and updating of ASR.

6.4.7.5 Non-framing of separate value zones due to non-analysis of sales data

As per directions given by JDTP Office in the Annual Work Plan¹³, survey numbers under a value zone, where consideration was substantially more than market value or where a substantially large number of transactions take place, should be provided with an independent value zone.

Audit scrutiny (July to September 2019) of average sales data prepared for ASR of the years 2014 to 2018-19 by selected DDTP/ADTP offices revealed that though the consideration was substantially more than market value in sizeable number of transactions, separate value zones were not created as illustrated in **Table 6.4.7.5**:

Table 6.4.7.5: Statement showing range in which consideration was more than market value

| Sl. No. | Name of Office | Name of division/office of JDTP | Number of affected value zones | Range of frequency of transactions | Range by which consideration is more than market value (in per cent) | Appendix |
|---------|----------------|---------------------------------|--------------------------------|------------------------------------|--|----------|
| 1 | DDTP, Mumbai | DDTP, Mumbai | 2 | 180-495 | 50-134 | 6.2(A) |
| 2 | ADTP, Konkan | ADTP, Konkan | 3 | 41-226 | 51-221 | 6.2(B) |
| 3 | ADTP, Pune | ADTP, Pune | 7 | 25-48 | 30-126 | 6.2(C) |
| 4 | Jt.SR Kalyan-V | ADTP, Konkan | 1 | 595-2749 | 102-239 | 6.3 |

Source: Information furnished by the offices of the DDTP, Mumbai; ADTP, Konkan; ADTP, Pune and Jt. SR, Kalyan-V

Case study –I :

Urban Development Department (UDD), Government of Maharashtra approved (March 2014) special township in the village Khoni and Antarli of *tahsil* Kalyan, district Thane to be developed by a developer. The project has a total area of 111.47 ha. In ASR, the land was classified in rural area Division No. 7 of Kalyan *tahsil*.

Audit observed (September 2019) that in all instruments executed in the office of the Joint SR, Kalyan-V, district Thane during last three years, the consideration value was more than 100 per cent of ASR value consistently (Sl. No. 4 of Table 6.4.7.5). However, separate value zone for this property was not created in the ASR. As a result, the ASR was not giving true market value of the land.

On being pointed out (July to September 2019), the offices of the DDTP Mumbai and ADTP Konkan stated that separate value zones were not created

¹³ It is a yearly plan containing scheduled due dates of various stages of work such as collection, consolidation and analysis of inputs, preparation and submission of draft ASR, etc.

due to shortage of staff but agreed to create the same in ASR for the year 2020-21. However, the office of the ADTP, Pune stated that no such instructions were issued by the office of the JDTP, Pune.

Reply was not tenable as aforesaid instructions were contained in the Annual work plan issued by JDTP.

Recommendation : Periodic analysis of sales data as prescribed by the office of the JDTP in the Annual Work Plan may be ensured for creation of separate value zones in ASR.

6.4.7.6 Non-updating value zone maps as per development plan

The office of the JDTP has been issuing instructions to DDTP/ADTP offices ever year for updating value zone maps. In order to determine correct market value of properties located in a value zone, it was necessary that the value zone maps were prepared based on the updated maps of City Survey Office/Development Plan/ Regional Plan so that changes in the residential zone, road zone could be incorporated in the ASR.

Audit scrutiny (July-December 2019) revealed that offices of the DDTP, Mumbai and ADTP, Konkan prepared up-to-date value zone maps but the office of the ADTP, Pune updated the value zone maps partially. Value zone maps of zone Nos.1-13, 36-38, 40-41, 45, 48, 52, 56-57, 59-60, 62-63 of Pune Municipal Corporation (PMC) were not updated in the ASR. Further, a test check of updated records revealed that in many value zones, CTS numbers were mentioned in the ASR but in corresponding value zone maps, only survey numbers were given. Due to this inconsistency, identification of property in ASR as per value zone map was not possible. (*Appendix - 6.4*)

In reply, the office of the ADTP, Pune stated (December 2019) that city survey sheets were not available, hence based on sanctioned development plan of PMC/PCMC¹⁴, the value zone maps were prepared.

Reply is not tenable as in order to identify a property in ASR under a particular value zone, it is necessary that its survey number or CTS number should be the same in the ASR and in the value zone maps.

Recommendation: We recommend that all value zone maps may be updated as per development plan with either CTS or survey number by obtaining city survey maps from land records office to ensure proper identification and correct valuation of the property.

6.4.7.7 Non-updation of value zones of *mouza* Ambernath

As per VG 38 of ASR 2015-16, ADTP office is empowered to prescribe rate of properties for which no rate had been given in the ready reckoner or may propose creation of a separate value zone.

In the ASR for the year 2015-16, survey numbers 9368, 9371, 9374, 9467 and 9469 of *mouza* Ambernath under Ambernath municipal council, district Thane were classified under zone number 7/24 (for undeveloped properties) with land rate of ₹ 2,400 per sqm only. The rates of residential flat, office and shop

¹⁴ Pimpri Chinchwad Municipal Corporation

were not mentioned. The office of the ADTP, Konkan clarified (January 2016) that the said survey numbers be classified under zone number 7/22 of the ASR 2015-16 wherein rates of all types of properties were specified.

However, Audit observed (September 2019) from the records of the office of the ADTP, Konkan that the said survey numbers were still classified under zone number 7/24 in the ASRs for the year 2016-17 and 2017-18.

On being pointed out (September 2019) the office of the ADTP, Konkan accepted that the change was not incorporated in the ASR for the year 2016-17 and 2017-18 inadvertently due to heavy work load and shortage of manpower and agreed to update the same in the ASR for the year 2020-21.

The fact remains that in spite of clear directives from the ATDP office, the property remained misclassified in ASR.

6.4.7.8 Misclassification of survey numbers fronting highways in zones of lower rates in the ASR

Every year while circulating Annual Work Plan, the office of the JDTP is directing DDTP/ADTP offices to update value zone maps so that all the survey numbers were properly classified under appropriate value zones. In 2016, the IGR Office also provided data of maps and survey numbers fronting highways prepared by Maharashtra Remote Sensing Application Centre (MRSAC) to all the ADTP Offices.

In cross verification (July 2019 and September 2019) of MRSAC data and maps with survey numbers of ASR in the offices of the ADTP, Pune, and Konkan, it was observed that some properties were misclassified or classified under more than one value zones as detailed in (*Appendix- 6.5*).

In reply the office of the ADTP, Konkan accepted (September 2019) the discrepancy and agreed to rectify the same in ASR 2020-21. The office of the ADTP, Pune in case of Chakan nagar parishad stated (July 2019) that it could not be ascertained from survey numbers as to which portion was fronting the highway, thus, all four survey numbers were incorporated in two value zones to avoid discrepancy.

The reply is not acceptable, as these four survey numbers were incorporated in only one zone *i.e.* zone No.4 in ASR @ ₹ 6,100 per sqm. But the same were classifiable in zone No.3 @ ₹ 7,000 per sqm fronting National Highway 50.

Recommendation : For correct classification of properties in ASR, MRSAC maps may be used for finalization of value zones.

6.4.7.9 Irregular increase in ASR rates in spite of decrease in average sale price

As per Valuation Rules 4(1), ASR shall be prepared showing average rate of land and building situated in every *tahsil*, municipal corporation and local body area. JDTP office is issuing instructions to the offices of the DDTP/ADTP for preparation of average sales plan of transactions registered under Article 25.

The scrutiny (August and September 2019) of ASR for the period 2014 to 2016-17 of Mumbai and Thane districts revealed that there was persistent decrease in average sales consideration for three years (2013 to 2015) in six value zones and for two years (2013 and 2014) in three value zones. Similarly, in Thane district, there was decrease in average sales consideration in nine value zones during 2016-17 as shown in **Table 6.4.7.9**:

Table 6.4.7.9: Statement showing decrease in sales values and increase in ASR Rates

| Sl. No. | Name of Office | Current year of ASR | Number of zones where there was average decrease in sales value in previous year | Range of average per cent decrease in rates in previous year | Range of average per cent increase given in ASR for the current year | Reference Appendix |
|---------|----------------|---------------------|--|--|--|--------------------|
| 1 | DDTP, Mumbai | 2014 | 9 | 1.5 to 17.4 | 5.0 to 15.07 | 6.6 |
| | | 2015-16 | 9 | 3.4 to 14.1 | 5.02 to 20.0 | 6.7 |
| | | 2016-17 | 9 | 5.4 to 16.5 | 3.02 to 10.03 | 6.8 |
| 2 | ADTP, Konkan | 2016-17 | 9 | 4 to 65 | 2 to 10 | 6.9 |

Source: Information submitted by the offices of the DDTP, Mumbai and ADTP, Konkan

Audit observed (August and September 2019) that in spite of decrease in average rate of land and building, ASR rate were increased in subsequent years in Mumbai and Thane districts.

The offices of the DDTP, Mumbai and ADTP, Konkan in reply stated (September 2019) that the average sale value is calculated considering both decrease as well as increase in sales value. It also depends on the local enquiry, potential of that area *etc.*

Reply is not acceptable, as the valuation rules stipulate for preparation of ASR on the basis of average rate of land and building which may be either increasing or decreasing in trend.

Thus, increase in ASR rates inspite of decrease in average annual rates had resulted in unnecessary burden of taxation on common people.

Recommendation: The Department may streamline the process for preparation ASR on the basis average rate of land and building, by doing trend analysis of increase or decrease in rates.

6.4.8 Audit findings on uniformity, completeness, clarity in preparation of valuation guidelines of ASR

6.4.8.1 Lack of uniformity in calculating depreciation on old buildings between Mumbai, MSD and rest of Maharashtra

As per Valuation Guideline (VG) 4 applicable to Mumbai and MSD, for valuation of old buildings after depreciation, the value of land should be deducted from the value of building and depreciation should be allowed on difference between value of land and value of building *i.e.* value of construction only. This means depreciation should be allowed only on construction cost and not on land cost. Whereas, as per VG 3 which is applicable to rest of Maharashtra, the valuation of old building is being done

on specified percentage as given in the table under VG 3 depending on the age of building on prevailing value of building. This includes land cost as well as construction cost. Thus, in VG 3, the depreciation is allowed on land cost also. Further, VG 6 applicable to rest of Maharashtra provides for the valuation of properties, where ASR does not prescribe separate rates or where the valuation according to VG 3 is less than the value of land. In such cases, as per VG 6, valuation of building should be (i) value of land + (ii) value of construction after depreciation. Thus, in VG 6, the depreciation is allowed only on rate of construction.

As land is assumed to have an unlimited useful life, it never gets depreciated. Thus, provision of depreciation on value of land as provided in VG 3 was incorrect. This shows that there is no uniformity in cases of valuation of old buildings between Mumbai, MSD and rest of Maharashtra (**Appendix-6.10**).

Scrutiny in test check of nine instruments of rest of Maharashtra, adjudicated by the office of the JDR, Thane and Pune City and six instruments registered in SR offices of Pune and Thane districts revealed that SD of ₹ 2.19 crore (**Appendix – 6.11**) was foregone. In these cases, the value of old building was arrived at with the application of the provisions of VG 3 *i.e.* depreciation was allowed on the value of land also.

On being pointed out, the office of the IGR stated (June 2019) that the land rates in ASR for rest of Maharashtra were considered based on 1.5 Floor Space Index (FSI¹⁵) in some *gaathan* and congested areas. Therefore, in such areas, there was no difference between land rate (valuation of land) and flat rate (valuation of building). Thus, if depreciation is charged excluding valuation of land, the value of building available for depreciation would be nil and benefit of depreciation on such building would be denied. IGR office further stated that in such cases, in order to ensure that land value does not get depreciated, VG 6 is made applicable.

The reply is not tenable, as the provision made in VG 6 (rest of Maharashtra) is same as VG 4 (Mumbai and MSD) *i.e.* depreciation is allowed on construction cost of building excluding land cost. However, in test checked cases, where land cost and construction cost were not same, audit observed that the application of VG 3 for arriving at the valuation of old building after deduction of depreciation has resulted in undervaluation of the buildings, as depreciation was allowed on land cost also.

This proves lack of uniformity, as application of VG 3 is resulting in undervaluation of old building after deduction of depreciation. However, VG 4 is adequate for correct valuation of such buildings in every case for entire Maharashtra.

6.4.8.2 Lack of uniformity in valuation for considering Transferrable Development Right potential

As per provisions of the notification issued by UDD in May 2016 and Development Control Rules 2017 of PMC, the purchaser is entitled to

¹⁵ Floor Space Index (FSI) means the quotient of the ratio of the combined gross floor area of all floors, excepting area specifically exempted under Development Control Regulations, to the gross area of the plot

additional FSI and Transferrable Development Right (TDR¹⁶) based on the width of road facing the land. This results in increase in permissible built up area.

Further, as per VG 3 of ASR for Mumbai region, for the purpose of valuation, the land rate is to be increased by 40 *per cent* in Mumbai sub-urban district for all types of instruments *i.e.* conveyance, development agreement, *etc.* wherein TDR potential is considered. Whereas, as per VG 31 for rest of Maharashtra,¹⁷ in respect of only development agreements relating to sharing of built-up area or sale proceeds, the land rate is to be increased by 25 *per cent* in case of TDR potential.

This shows that at present, there exist different provisions for Mumbai region and rest of Maharashtra for instruments of land having TDR potential¹⁸.

Thus, there is absence of uniformity not only with regard to provision for types of instruments but also with regard to rate of increase on account of its TDR potential.

Test check of 16 instruments of agreement to sale/conveyance of land in five¹⁹ SR offices (14 instruments) of Pune and one²⁰ SR office (two instruments) of Thane district revealed (July to December 2019) that even though, the purchaser was entitled to 0.50 additional FSI and TDR based on width of the road facing the land, the said pieces of land were valued as per ASR rate without considering its FSI and TDR potential. This resulted in SD foregone of ₹ 4.14 crore (*Appendix-6.12*) in those 16 instruments.

In reply, SR offices stated (July to December 2019) that the valuation was done as per the existing VG and there was no instruction to consider TDR potential of land on instruments other than development agreement in rest of Maharashtra. IGR office stated that most of the developments were horizontally spread and there was less demand for TDR in rest of Maharashtra. IGR office further stated that VG 31 was introduced for the first time in 2014 and there were no land transactions showing increase in land rates, hence the increase in land rate was kept as 25 *per cent*.

Reply is not acceptable, as in all major municipal corporations²¹ having sanctioned development plan, TDR was allowed on all pieces of land fronting a main road, starting from a minimum 0.40 times of net plot area for nine meter wide road to 1.40 times of net plot area for 30 meter or more wide road.

¹⁶ Transferrable Development Right (TDR) is compensation in the form of FSI or Development Right which shall entitle the owner for construction of built-up area subject to provision of Development Control Regulation

¹⁷ in Aurangabad, Bhiwandi-Nizampur, Kalyan-Dombivali, Mira-Bhainder, Nashik, Nagpur, Pimpri-Chinchwad, Pune, Thane and Vasai-Virar municipal corporations

¹⁸ Provision in the Development Control Regulation to load transferrable development right on the land based on width of the road facing the property. As a result the maximum building potential increases to that extent. TDR is either generated due to surrender of some portion of land on account of its reservation in sanctioned development plan of the area or may be procured from market on payment of premium/price

¹⁹ Jt. SRs – Haveli, Pune-III, XI, XVIII, XX, and XXII

²⁰ Jt. SR, Kalyan -IV

²¹ in Aurangabad, Bhiwandi-Nizampur, Kalyan-Dombivali, Mira-Bhainder, Nashik, Nagpur, Pimpri-Chinchwad, Pune, Thane and Vasai-Virar municipal corporations

Apart from this, an additional FSI of 0.50 is also admissible on payment of premium. This increases the permissible built up area. In addition, such land also gets enhancement in commercial potential, being road facing.

Test check of records (55 instruments of 2014 to 2019) of conveyance in five SRs revealed that there was increase in the value of consideration by more than 24 to 1,280 per cent than market value as shown in **Table 6.4.8.2**:

Table 6.4.8.2: Statement showing range of consideration more than market value

| Sl. No. | Name of SRO | No. of instruments | Range of consideration more than market value (in per cent) |
|--------------|----------------------|--------------------|---|
| 1 | Jt. SR, Haveli XXVI | 8 | 38 - 406 |
| 2 | Jt. SR, Haveli XVIII | 10 | 255 - 404 |
| 3 | Jt. SR, Thane V | 6 | 70 - 250 |
| 4 | Jt. SR, Mulshi II | 20 | 24 - 676 |
| 5 | Jt. SR, Bhiwandi I | 11 | 29 - 1,280 |
| Total | | 55 | |

Source: Information submitted by the offices of the Jt.SR concerned

This shows that the absence of provisions for rest of Maharashtra to increase land rate in cases of land having TDR potential resulted in undervaluation of those lands.

Recommendation: Valuation guideline for calculation of depreciation and impact of additional FSI/TDR may be applied uniformly throughout the state.

6.4.8.3 Absence of impact of TDR potential in calculation of owner's consideration in development agreement

(i) Sharing of constructed area

As per VG 23 of ASR for Mumbai region and 32 for rest of Maharashtra, valuation of development agreement relating to sharing of constructed area should be done as under:

(a) **Consideration value of owner's share** -Value of owner's share of area at construction cost given in ASR + consideration in cash or kind *i.e.* interest on security deposit, development charges *etc.*

(b) **Market value of developer's share**—Value of developer's share of area at land rate²² given in the ASR

Value at (a) or (b) whichever is more.

In the above formula, the land rate was considered for determining market value of developer's share, hence if valuation was done by applying VG 3 or 31²³, it would have impact only on the value of developer's share. TDR potential of a land increases the total buildable area. Thus, there would be increase in the value of owner's share too, where sharing is on percentage basis. But this aspect is not covered in VG 3 or 31.

²² as the construction cost of area to be built is incurred by the developer

²³ as stated in para No.6.4.8.2 on pre-page

Test check of records in the 14²⁴ offices in 49²⁵ instruments of development agreements involving sharing of built up area between developer and owner having provisions of loading of TDR potential revealed (January to November 2019) that increased benefit due to TDR was not reflected in valuation of owner's consideration with application of VG 31 in rest of Maharashtra. This resulted in foregone SD of ₹ 18.60 crore (**Appendix – 6.13**).

In reply, IGR office stated (September 2019) that suitable provisions are available and total built up area including TDR has to be considered for sharing between land owner and developer.

The reply is not acceptable, as VG 3 or 31 envisage for increasing the rate of land only and does not say anything in respect of the sharing of construction area between them.

(ii) Sharing of sale proceeds

Similarly, as per VG 24 of ASR 2017-18, for Mumbai region and VG 33 for rest of Maharashtra, valuation of development agreement relating to revenue sharing (sale proceeds) should be done as under:

- (a) Consideration value of owner's share –Current value of owner's share in terms of the rate of sale having regard to the permissible use thereof x 0.85 + consideration in cash or kind *i.e.* interest on security deposit, *etc.*
- (b) Market value of entire land area at land rate of ASR

Value at (a) or (b) whichever is more

In the above formula, as land rate was considered at (b) for determining market value of entire land, hence if valuation is done by applying VG 3 or 31²⁶, it would have impact only on the land value. TDR potential of a land increases the total buildable area. As a result, there would be increase in the value of owner's share too, where sharing is based on percentage basis. But this aspect is not covered in VG 3 or 31.

Test check of 12²⁷ instruments of development agreements involving sharing of sale proceeds between developer and owner having provisions of loading of TDR potential revealed that increased benefit on account of TDR was not reflected in the valuation of owner's share with application of VG 31 in rest of Maharashtra. This resulted in foregone SD of ₹ 7.47 crore (**Appendix – 6.14**).

In reply, IGR office stated (September 2019) that suitable provisions are available and total built up area including TDR has to be considered for sharing between land owner and developer.

The reply is not acceptable, as VG 3 or 31 envisage for increasing the rate of land only and do not say anything in respect of the valuation of construction area for sharing of proceeds between them.

²⁴ Jt.SR, Bhivandi-I; IGR, Pune; JDR Pune (City); JDR, Thane (City); Jt.SRs Haveli-I,III,XI, XVII, XXII, XXVI; Jt.SR, Mulsi-II and Jt.SRs, Kalyan-II, III, V

²⁵ Pune district (30) and Thane district (19)

²⁶ as stated in paragraph No.6.4.8.2 on pre-page

²⁷ Pune district (9) and Thane district (3)

6.4.8.4 Under-consideration of TDR potential in calculation of developer's consideration in development agreement

(i) Sharing of constructed area

As per VG 23 of ASR for Mumbai region and 32 for rest of Maharashtra, valuation of development agreement relating to sharing of constructed area should be done as under:

(a) **Consideration value of owner's share** -Value of owner's share of area at construction cost given in ASR + consideration in cash or kind *i.e.* interest on security deposit, development charges, *etc.*

(b) **Market value of developer's share** – Value of developer's share of area at land rate²⁸ given in the ASR

Value at (a) or (b) whichever is more

It may be noted that in the above formula, land rate was applied for determining market value of developer's share in terms of area, hence if valuation is done by applying VG 3/31²⁹, it would have impact only on market value of the developer's share. TDR potential of a land increases the total buildable area (including basic FSI, additional FSI, loading of TDR, *etc.*). As a result, there would be increase in the value of developer's as well as owner's share where sharing is based on percentage basis.

Government sanctioned following maximum permissible TDR loading for plots fronting various road widths shown in **Table 6.4.8.4 (A) and Table 6.4.8.4 (B)**:

Table 6.4.8.4 (A): Maximum permissible TDR loading in addition to original plot area in Mumbai city and MSD

| Plot fronting on road width | Maximum permissible TDR loading in addition to original plot area | |
|---|---|---------------------------------------|
| | TDR in island city (Mumbai city) | TDR in sub-urban / extended sub-urban |
| Nine meter and above but less than 12.20 meter | 0.17 | 0.50 |
| 12.20 meter and above but less than 18.30 meter | 0.37 | 0.70 |
| 18.30 meter and above but less than 30 meter | 0.57 | 0.90 |
| 30 meter and above | 0.67 | 1.00 |

Source : UDD notification (November 2016)

²⁸ as the construction cost of area to be built is incurred by the Developer
²⁹ as stated in paragraph number 6.4.8.2 on pre-page

Table 6.4.8.4 (B) : Maximum permissible TDR loading in addition to original plot area in rest of Maharashtra

| Plot fronting on road width | Maximum permissible TDR loading in addition to original plot area |
|---|---|
| 9 meter and above but less than 12 meter | 0.40 |
| 12 meter and above but less than 18 meter | 0.65 |
| 18 meter and above but less than 24 meter | 0.90 |
| 24 meter and above but less than 30 meter | 1.15 |
| 30 meter and above | 1.40 |
| <i>Source : UDD notification (May 2016)</i> | |

In case of provision of loading of TDR, VG 3 provide for increase in rate of land by 25 per cent for Mumbai city and by 40 per cent for MSD. Similarly, for rest of Maharashtra, VG 31 stipulates increase in rate of land by 25 per cent. However, actual increase as permitted by Government as stated above is not calculated while valuing the share of developer.

Audit observed that actual increase in value of land was to the extent of 50 to 75 per cent in MSD and 32 to 86 per cent in rest of Maharashtra (**Appendix- 6.15 (A) and 6.15 (B)**).

Audit observed that in Mumbai, the above increase in value of land due to additional permissible loading (including basic FSI, additional FSI, loading of TDR, etc.) as per the provisions of DCR was being considered while calculating market value of the land in various instruments registered.

Test check of eight³⁰ instruments of development agreement relating to sharing of built-up area revealed (July to November 2019) that developer's share was not calculated based on actual permissible limits as per the provision of DCR and only land rate was increased as per VG 3 and 31 resulting in SD foregone of ₹ 4.47 crore (**Appendix – 6.16**).

On being pointed out in audit, the offices of the JDRs and SRs stated that valuation was done as per existing VG and comments of the higher authority would be obtained.

Recommendation: Valuation guidelines may be suitably modified to consider impact of TDR/FSI potential as per the provisions of DCR in owner's as well as developer's share and applied uniformly throughout the state.

(ii) Sharing of sale proceeds

As per VG 24, for Mumbai region and VG 33 for rest of Maharashtra of ASR, valuation of development agreement relating to revenue (sale proceeds) sharing should be done as under:

(a) Consideration value of owner's share - Current value of the land owner's share in terms of the rate of sale having regard to the permissible user thereof x 0.85 + consideration in cash or interest on deposit etc.

(b) Valuation of the whole land at the rate of land mentioned in the ASR

Value at (a) or (b) whichever is more.

³⁰ Two – JDR office of Thane and six – SR offices of Pune

Audit observed that VG 24 and 33 do not consider the valuation of developer's share and the owner's share is compared with valuation of whole land for the purpose of levy of SD. Instead, the valuation of owner's share as well as developer's share of a project after considering all other permissible additions on account of loading of TDR, FSI and fungible FSI etc. should be compared for the purpose of levy of SD.

Audit observed (February 2019 and June 2019) that value of developer's share in the sale proceeds of total built up area was five times of the value of whole land in one of two³¹ test checked instruments and in another one, it was 1.07 times of the value of whole land. This resulted in SD foregone of ₹ 39.38 crore (**Appendix – 6.17**) due to non-consideration of value of developer's share for comparison with the owner's share for levy of SD. Thus, provision of VG 24 and 33 stipulating comparison of value of owner's share with valuation of whole land was not correct.

On being pointed out in audit (February 2019 and June 2019), both the COS replied that they had done valuation as per existing VG and comments of the higher authority would be obtained.

The issue was pointed out (July 2019) to the office of the IGR who stated that in case of revenue sharing, the developer agrees to pay consideration as a percentage of gross sale proceeds (entire revenue generated out of the project) in lieu of handing over entire land, hence the market value of entire land area was valued at land rate as per VG 33.

Reply is not tenable as the sale proceeds of the entire project are shared between owner and developer, the SD was leviable on the greater share.

Recommendation: VG 24 of ASR of Mumbai region and VG 33 of rest of Maharashtra may be suitably modified to compute the market value of developer's share in the total buildable area (at land rate of ASR) as per terms of the agreement.

6.4.8.5 Non-consideration of TDR potential in valuation of owner's share in Integrated Township Project

In special township project, a development company is formed by all landowners having equity according to their landholdings for a development project. Equity and share in income corresponds to their area of land in the project. For the valuation of such joint development agreement, the office of the IGR issued (June 2018) instructions for properties located in rest of Maharashtra as under:

(a) Owner's share in gross sale proceeds

Total area of special township x residential building rate as per ASR x share in the gross sale proceeds of the owner / 100 x owner's land area / Total area of special township x 0.85 + cash consideration and interest on deposit

(Or)

(b) Valuation of land area of owner as per ASR

Value at (a) or (b) whichever is more.

³¹ Offices of the COS, Borivali and COS, Mumbai

Thus, the above instructions envisage that the valuation of owner’s share would be calculated as per above formula and provisions of VG 31 would be applied in cases where FSI/TDR potential is available.

However, as per para 7.2.2 of Regulation for Development of Special/Integrated Township³² Project, in case of integrated /special township, the basic permissible FSI shall be 1.0. Further, following built up area as mentioned in table below shall be permissible on payment of premium at the rate of 10 *per cent*³³ of the weighted average rate of the said land as prescribed in ASR as shown in **Table 6.4.8.5**:

Table 6.4.8.5: Additional built-up permissible on payment of premium for area under township

| Area under township | Additional built-up area on payment of premium |
|---|--|
| 40 ha and up to 200 ha | Up to 70 <i>per cent</i> of basic permissible FSI |
| More than 200 ha and up to 500 ha | Up to 80 <i>per cent</i> of basic permissible FSI |
| More than 500 ha. | Up to 100 <i>per cent</i> of basic permissible FSI |
| <i>Source: UDD Notification (November 2018)</i> | |

Thus, above additional FSI needs to be considered in the valuation of share of land owner. However, IGR office did not consider this aspect which may result in undervaluation of the share of land owner.

The above shortcoming was pointed out (February 2020) to IGR. Reply was awaited.

Case study-I

Scrutiny of records of the office of the SR, Haveli-III, Pune revealed (December 2019) that a developer executed (July 2018 to September 2018) eight instruments of development agreements with 63 land owners for construction of an integrated township over a land admeasuring 210.3951 ha at Kadamwakwasti, *tahsil* Haveli, district Pune. Gross sale proceeds of built up area constructed in the integrated township was agreed to be shared between land owners and developer in the ratio of 30 *per cent* and 70 *per cent* respectively. The developer was given the right to amalgamate the properties and obtain and utilize TDR, paid FSI/additional FSI that may be permitted by the sanctioning authorities. The cost of additional FSI was deductible from the share of the land owners.

Audit observed that for the purpose of levy of SD, the valuation of owner’s share was done in accordance with IGR’s instructions (June 2018) considering the owner’s land area. However, the benefit of additional built-up area of 80 *per cent* over and above the basic permissible FSI on payment of premium as per provisions of development regulations was not considered in valuation of owner’s share. This resulted in SD foregone of ₹ 9.47 crore (**Appendix-6.18**).

On being pointed out, the SR office stated that reply would be furnished after obtaining guidance from the office of the JDR, Pune city. The observation

³² made effective by notification (December 2016) and further amended vide notification (November 2018) issued by the UDD

³³ 20 *per cent* as per notification (December 2016) which was reduced to 10 *per cent* by notification (November 2018)

was also communicated to the office of the IGR (March 2020); reply was awaited.

Recommendation : Circular issued (June 2018) by the office of the IGR may be modified in view of additional benefits provided in development regulations of integrated township for valuation of owner's share in gross sale proceeds.

6.4.8.6 Lack of uniformity and incorrect provision for valuation of buildable public reservation of land in the development plan

As per VG 22 (a) of ASR for Mumbai region and VG 30 of the ASR for rest of Maharashtra, out of the total land mentioned in the instrument, land reserved under sanctioned development plan, should be valued at 80 *per cent* of land rate only. Further, as per VG 22 (b) of ASR for Mumbai region, valuation of buildable reservation of land for specified purposes *viz.* school, hospital, shopping centre *etc.* as shown in the development plan should be done as per VG 22(a) *i.e.* at 80 *per cent* of land rate and bulk land benefit as per VG 17³⁴ (rebate of 15 *per cent*) should be given thereon and net (effective) land rate should be increased by 40 *per cent* for TDR potential. However, no such VG has been provided for rest of Maharashtra.

Audit observed that land with buildable reservations in the sanctioned development plan has a TDR potential both in Mumbai region and rest of Maharashtra as well. As there is no VG for rest of Maharashtra similar to VG 22(b) of ASR for Mumbai region for buildable reservations of land in the development plan, there is lack of uniformity between the two ASRs on this aspect (**Appendix-6.19**).

The above observation was communicated to the office of the IGR (March 2020); reply was awaited.

Recommendation : Applicability of VG 22(b) of ASR for Mumbai region may be uniformly adopted for rest of Maharashtra.

6.4.8.7 Absence of provision in VG 5 for valuation of large housing project in areas outside municipal corporation/council

As per VG 5 (b) of the ASR for rest of Maharashtra, if a large housing project having area of two ha to 10 ha is located in Thane/ Kalyan-Dombivali/ Bhiwandi-Nizampur/ Ulhasnagar/ Mira-Bhayandar/ Navi-Mumbai/ Vasai – Virar/ Pune/ Pimpri-Chinchwad/ Nashik/ Aurangabad and Nagpur municipal corporation and no separate value zone in the ASR was available, then market value of the residential/shop/office located therein would be increased by 105 *per cent* and if the area of large housing project is more than 10 ha, then the increase would be by 110 *per cent*. Similarly, for remaining municipal corporations/councils, if a large housing project having area of 1.00 ha to 2.00 ha and no separate value zone was available in ASR, then market value of the residential/shop/office located therein would be increased by 105 *per cent* and if the area of large housing project is more than two ha, then the increase would be by 110 *per cent*.

³⁴ Allowing a rebate of 15 *per cent* in land rate, for land area above 2,500 sqm

Audit observed that there were many large housing projects outside the municipal corporation/council limits but within influence zone with land area of more than one ha and two ha. However, those projects were outside the purview of VG 5 (b) for the purpose of valuation.

Audit scrutiny (October and November 2019) of two³⁵ offices revealed that in six³⁶ instruments, large housing projects having area above one ha were proposed outside municipal corporation/council area but due to non-applicability of VG 5(b), extra five to ten *per cent* charges could not be levied on properties located in said projects resulting in SD foregone of ₹ 93.44 lakh (**Appendix-6.20**).

On being pointed out in audit, the offices of the JDR, Pune (Rural) and JDR, Thane (Rural) replied (October and November 2019) that they have done valuation as per existing VG and comments of the higher authority would be obtained.

Audit pointed out (March 2020) the lacunae in VG 5(b) to IGR; reply was awaited.

Recommendation: VG 5 (b) of the ASR for rest of Maharashtra may be modified to include the large housing projects having area of minimum one ha of land located outside municipal corporation/council area also.

6.4.8.8 Absence of provision in VG for computing consideration value of parking given free of cost in development agreement

As per the norms of the DCR of municipal corporations of selected districts, there shall be a provision for parking of vehicles as per the scale laid down therein in cases of development or redevelopment of a property. Accordingly, the valuation of these parking spaces were required to be considered separately while arriving at the valuation of owner's share mentioned in the development agreement. However, there is no provision/guideline in the ASRs for valuation of parking space which is allotted to owner free of cost in addition to the built up area.

Scrutiny of 36 development agreements in ten³⁷ offices revealed that in 27 instruments, the valuation on account of parking space was considered while arriving at the share of the owner, but the method of calculation was not uniform. In remaining nine cases, the valuation of parking space given to owner was not considered in owners share. Thus, due to absence of specific provision for consideration of parking space, the valuation of owner's share was deficient.

On being pointed out (May 2019) the office of the IGR stated (June 2019) that the present system of calculating parking area based on standard given in the DCR is adequate. He further stated that revision of parking norms are under consideration of UDD. Thereafter, the issue would again be examined for issue of necessary guidelines in ASR for 2020-21.

³⁵ JDR, Pune (Rural) and JDR, Thane (Rural)

³⁶ Three in Pune (Rural) and three in Thane (Rural) district

³⁷ COS- Andheri, Borivali, Kurla and Mumbai; JDR – Pune (City); Pune (Rural); Thane (City); Thane (Rural), ; SR- Borivali-III and Ulhasnagar-III

Reply was not acceptable as Audit observed no uniformity for valuation of parking spaces in test checked development agreements. Further, there is no VG specifying the method and rate for calculation of parking space as per the provisions of DCR presently.

Recommendation: Government may prescribe specific method and rate for valuation of parking spaces.

6.4.8.9 Ambiguous provision in VG 19 for IT users

VG 19 of ASR for Mumbai region as well as for rest of Maharashtra stipulates that ASR rates should be increased in percentage as specified therein over and above the ASR rates floor-wise in multistoried building. However, the shop and IT user units in such multistoried building are exempted from the above increase in rates.

Scrutiny of Maharashtra's Information Technology/Information Technology Enabled Services (IT/ITES) Policy - 2015³⁸ revealed that various incentives and provisions are made for IT parks/IT SEZs/Audio-Visuals-Gaming and Comics (AVGC) parks such as additional FSI up to 200 *per cent*, exemption in stamp duty, concession in electricity duty, property tax, *etc.* to promote IT/ITES sector in the State.

As seen from above, the exemption enumerated in IT/ITES Policy 2015 are available to such unit which is so certified by implementing agency or any other officer authorized by it in this behalf.

However, VG 19 stipulates exemption from lift charges to shops and IT user units. The word 'shop' and 'IT user unit' is not defined by the department and thus, there is ambiguity as to identify the 'type of shop' and 'IT user unit'. The shop may not be related to IT activity. Similarly, 'IT user unit' may be a manufacturer, service provider or IT service consumer.

The ambiguity was pointed out (March 2020) to the office of the IGR; reply was awaited.

Recommendation: Department may remove ambiguity regarding the term 'shop' and 'IT user unit' used in VG 19.

6.4.9 Inadequate Internal Control Mechanism

The office of the JDTP is required to prepare ASR and to submit the same to IGR office for approval by last day of February of each year for issue on the 1st day of April each year. A separate valuation cell headed by the JDTP has been formed for preparation of ASR. The ASR is prepared by taking inputs from i-SARITA data base and various authorities like municipal corporations, offices of the Dy. Director of land records, MIDC, district collectorates and notifications issued by UDD *etc.* The revision in rates of properties for a year is decided by computing average increase/decrease in the consideration of the properties as compared to market value in previous year and by holding discussions with the stake holders, local representatives.

The scrutiny of records at office of the IGR (December 2019) revealed that the planning for the work of preparation of ASR is done in the form of Annual

³⁸ Issued by Industries Department, Government of Maharashtra

Work Plan. The due dates of various stages of works of preparation of ASR for the year 2018-19 issued by the office of the JDTP are shown in **Table 6.4.9**:

Table 6.4.9: Details of various stages preparation of ASR and due date

| Stages of work | Due date |
|---|--------------------------------|
| Collection of information from various sources | By the end of June 2017 |
| Consolidation, sequencing, classification and analysis of information | By 10 October 2017 |
| Analysis of information and preparation and submission of draft ASR to JDTP office | 10 January 2018 |
| Finalization of proposals of ASR and conduct of meeting with local representatives under the chairmanship of district collector for discussion on revised proposal of ASR | Between 15 and 31 January 2018 |
| Preparation and submission of draft ASR as per modification suggested in meeting of local representatives as well as after consideration of instructions of offices of JDTP and IGR | By 10 March 2018 |
| Preparation of final ASR | By 15 March 2018 |
| Printing and C.D. cutting of ASR | By 20 March 2018 |
| Certification and publication of ASR | By 25 March 2018 |
| <i>Source : Information furnished by the office of the JDTP, Pune</i> | |

However, it was observed that the periodical return to monitor achievement of above stages was not prescribed. Further, there exists no internal audit mechanism/wing to monitor the process of preparation of ASR at JDTP office level.

The office of the IGR stated (January 2020) that there was no such internal audit wing in JTDP office, as the progress of achievement of the targets given in the Annual Work Plan for preparation of ASR were monitored through periodic review meetings and no periodic return prescribed.

Audit pointed out various deficiencies in collection of required information viz. non-updation of NA status, classification and updation of survey numbers, analysis of data and non-consideration of high value transactions for preparation of ASR in **paragraphs 6.4.7.1 to 6.4.7.10**. Similarly, Audit observed various omissions in framing VGs as pointed out in **paragraphs 6.4.8.1 to 6.4.8.9**.

This could have been avoided if periodical returns for watching the targets had been prescribed and inspections by internal audit team were done. This would have served as a feedback mechanism for knowing various problems and lacunae encountered in the implementation of instructions.

This shows the absence of mechanism for monitoring the work of preparation of ASR in the department.

6.4.10 Conclusion

There was absence of system of validation of input data used for preparation of ASR. Completeness check was absent. Neither SRs were submitting required data manually nor was complete information available in iSARITA. Changes in use of land permitted by revenue authorities were not updated in ensuing ASRs. The system to ensure timely receipt of information regarding changes in survey numbers due to fragmentation or amalgamation authorized

by land records department and its proper classification in the ASR was absent.

In spite of decrease in average rate of land and building, ASR rates were increased in subsequent years in Mumbai and Thane districts. There was lack of uniformity in method of calculating depreciation on old buildings between Mumbai, MSD and rest of Maharashtra. Valuation guidelines stipulating rate of increase in valuation on account of its TDR potential in Mumbai, MSD and rest of Maharashtra are not uniform. Further, valuation of increased built up area due to loading of additional FSI and TDR as per provisions of DCR was not considered to arrive at market value of the owner's and developer's shares in the development agreements. There was no VG in the ASR for rest of Maharashtra similar to VG 22(b) of ASR for Mumbai region for buildable public reservations of land in the development plan. Absence of provision for computing consideration value of parking given free of cost in development agreement was also observed. In VG 19, the terms 'shop' and 'IT user unit' were not clearly defined.

There was no internal control mechanism/wing to monitor the process of preparation of ASR at JDTP office level. Periodic reporting system was not in place to monitor the achievement of various stages of works of preparation of ASR as stipulated in Annual Work Plan.

COMPLIANCE AUDIT

During scrutiny of records of the various registration offices, we noticed several cases of non-compliance of the provisions of the Maharashtra Stamp Act, 1958 (MS Act) and Government notifications and instructions and other cases such as short levy of stamp duty due to (i) undervaluation of property, (ii) incorrect application of provisions of MS Act and ASR, (iii) non-impounding instrument and (iv) irregular grant of remission. A few cases of short levy of stamp duty to the tune of ₹ 17.48 crore are discussed in the succeeding paragraphs. These cases are illustrative only as these are based on a test check of records.

6.5 Short levy of stamp duty due to undervaluation of property

6.5.1 Development agreement - Revenue sharing

As per paragraph 684 of Maharashtra Registration Manual (MRM), Part-II, where the developer offers to allot residential/non-residential components to the owner in lieu of the development right, the value of the residential/non-residential components should be calculated according to the prevailing rates prescribed in the statistics on the day of execution of the agreement and the duty and fees should be levied on the greater of the two values *viz.* the value of the consideration component or the market value of the property. On such instruments, stamp duty (SD) is leviable under provision contained in Article 5 (g-a) (i) of MS Act. Further, as per Article 5 (g-a) (i) of MS Act, if immovable property is given to a developer for development, construction, sale or transfer then SD is leviable on conveyance³⁹ under Article 25 (b) of the said Act.

Further, as per instruction 33 of ASR for the year 2015 where the developer offers to share revenue from sale of residential/non-residential units to the owner in lieu of the development right, the value of the residential/non-residential components should be calculated according to the prevailing rates prescribed in the ASR and the consideration for the purpose of levy of SD would be 85 *per cent* of owner's share. This ratio was effective from 01 January 2015 onwards. Thus, up to 2015, the consideration for the purpose of levy of SD would be 100 *per cent* and from 2015 onwards it was 85 *per cent* of owner's share.

Audit observed short levy of SD amounting to ₹ 5.95 crore in 11 cases (in six units) due to not working out the correct market value of property as per the applicable provisions of ASR in the development agreements involving sharing of revenue as elaborated below:

6.5.1.1 Instruments executed prior to 01 January 2015

In two SR Offices⁴⁰, in three cases, the development agreements were executed (2013-15) between 'owners' and 'developers' for development of

³⁹ Conveyance means a conveyance on sale by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person, *inter vivos*, and which is not otherwise specifically provided for by Schedule-I

⁴⁰ Joint Sub Registrar, Haveli-VIII, Pune (Document Nos. 437/2014) and Joint Sub Registrar, Haveli-XVII, Pune (Document Nos. 1307/2014, 311/2014)

land. The department levied SD of ₹ 1.26 crore on market value/consideration of ₹ 19.44 crore. The basis on which consideration/market value was worked out by the department was not found on record.

Audit observed (February 2016 and March 2016) that as per recital of these three agreements, the owners and developers had agreed to develop the properties on the basis of revenue sharing⁴¹ on percentage⁴² basis. The owners share as per revenue sharing agreement worked out to ₹ 93.98 crore. Thus, the consideration of the property in terms of revenue sharing was ₹ 93.98 crore on which SD of ₹ 4.66 crore should have been levied against ₹ 1.26 crore levied by the department. This resulted in short levy of SD of ₹ 3.39 crore (*Appendix-6.21*).

The office of the IGR accepted (July 2019 to January 2020) the audit observations in three cases and in one case (document No. 437/2014) an amount of ₹ 10.19 lakh recovered out of ₹ 13.83 lakh.

6.5.1.2 Instruments executed after 01 January 2015

Scrutiny of instruments in offices of six⁴³ SRs revealed (January 2017 to January 2019) that in eight cases, the development agreements were executed⁴⁴ between 'owners' and 'developers' for development of land. The department levied SD of ₹ 6.77 crore on market value/consideration of ₹ 135.17 crore. The basis on which consideration/ market value was worked out by the department was not found on record.

It was observed that as per recital of the agreement, the owners and developers had agreed to develop the properties on the basis of revenue sharing on certain percentage⁴⁵. The consideration of the property in terms of revenue sharing worked out to ₹ 172.77 crore involving SD of ₹ 9.33 crore. Thus, there was short levy of SD of ₹ 2.56 crore (*Appendix-6.22*).

The office of the IGR accepted (June 2019 and October 2019) the audit observations in one case (document No. 5284/2015) an amount ₹ 16.85 lakh was recovered as against ₹ 33.69 lakh.

Audit could not analyse the root cause for occurrence of irregularity, as the basis adopted for consideration/market value by the department was not available on the records.

6.5.2 Development agreement - Sharing of constructed area

Article 5 (g-a) of Schedule-1 of MS Act provides, in case of instrument 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

⁴¹ Revenue realized from selling of constructed units in open market

⁴² Ranged between 39.89:60.11 and 50:50

⁴³ Joint Sub Registrar, Haveli-IV, Pune (Document No. 5284/2015); Joint Sub Registrar, Haveli-VIII, Pune (Document Nos. 5021/2017, 7317/2017,1842/2018); Joint Sub Registrar, Haveli-XVII, Pune (Document No. 7362/2015); Joint Sub Registrar, Haveli-XVIII, Pune (Document No. 6694/2017); Joint Sub Registrar, Karjat-II, Raigad (Document No. 516/2015) and Joint Sub Registrar, Lonavala (Document No. 3134/2015)

⁴⁴ March 2015, April 2015, September 2015, November 2015, April 2017, May 2017, July 2017 and March 2018

⁴⁵ Ranged from 31:69 to 50:50

manner whatsoever) of, any immovable property, SD as is leviable on a conveyance under clause (a), (b), (c) or (d) as the case may be, of Article 25 shall be charged on the market value of the property or consideration, whichever is higher, which is the subject matter of transfer. Further, as per instruction No. 32 of ASR, in case of development agreement the market value shall be derived by calculating owner's share (cost of constructed area plus interest at the rate of ten *per cent* on security deposit) and developer's share and higher of these should be considered as market value.

Audit observed short levy of SD amounting to ₹ 2.71 crore in eight development agreements (in eight units) due to incorrect consideration of owner's share as detailed below:-

6.5.2.1 Scrutiny of records at the office of the Joint SR, Haveli-III, Khed, district Pune revealed (July 2018) that, a development agreement (document No. 4053/2016) was executed (July 2016) between owner and developer for development of land admeasuring 11,050 sqm bearing *gat* No.482 situated at *mouza* Chakan within the limit of nagar parishad Chakan, district Pune for a consideration of ₹ 10 lakh. The department had worked out the market value of the property as ₹ 1.66 crore which was higher than the consideration, on which SD at the rate of four *per cent* amounting to ₹ 42.36 lakh was levied.

As per clause 1 of agreement and correction deed executed between owner and developer, 56,985 sqft (carpet) (*i.e.* 6,355.20 sqm) constructed area was agreed to be given as owner's share. In addition, developer had also given non-refundable security deposit of ₹ 10 lakh to owner. Accordingly, the value of owner's share was worked out to ₹ 12.68 crore on which SD at the rate of four *per cent* amounting to ₹ 50.73 lakh was leviable. Thus, non-working of owner's share as per instruction No. 32 of ASR has resulted in short levy of SD of ₹ 8.37 lakh⁴⁶.

6.5.2.2 Scrutiny of records at the office of the Joint SR-IV, Haveli, district Pune revealed (February 2016) that, a development agreement (document No.10875/2014) was executed (December 2014) between owner society and developer for development of land admeasuring 823.30 sqm bearing survey No.157 (city survey No. 433), Hissa No. A+B+C/1 situated at village Kothrud, *tahsil* Haveli, district Pune within the limits of Pune municipal corporation for a consideration of ₹ 2.53 crore. The department had worked out the market value of the property at ₹ 2.65 crore and levied SD of ₹ 13.25 lakh.

As per clause 1(d), 7(d), 8(k), 9(f) and 21 of development agreement, the developer had agreed to give total constructed area of 1,417.23 sqm (existing area of 823.30 sqm and additional area⁴⁷ of 434.93 sqm) along with non-refundable deposit of ₹ nine lakh and other amenities⁴⁸ to the 12 flat

⁴⁶ (SD leviable - ₹ 50.73 lakh) - (SD levied - ₹ 42.36 lakh)

⁴⁷ Additional area of retained flat – 41.83 sqm (1240.13 sqm – 823.30 sqm); terrace – 153.85 sqm; drying balcony -27.87 sqm ; society office – 13.38 sqm; two wheeler parking- 48 sqm and car parking - 150 sqm

⁴⁸ Society office - ₹ 12.52 lakh; two wheeler parking - ₹ 11.23 lakh; car parking - ₹ 35.10 lakh; rent for 24 months - ₹ 43.20 lakh; shifting charges - ₹ three lakh; corpus fund to society - ₹ 55.31 lakh; maintenance charges - ₹ 41.48 lakh; saleable block deposit - ₹ 24 lakh; travel expenses - ₹ 2.70 lakh and brokerage charges - ₹ 4.08 lakh

owners. Accordingly, consideration amount was worked out to ₹ eight crore on which SD at the rate of five *per cent* amounting to ₹ 40 lakh was leviable. This resulted in short levy of SD of ₹ 26.76 lakh.

The office of the Joint District Registrar and Collector of Stamp, Pune (City) accepted (October 2016) observation of Audit and directed SR offices to take action for recovery of short levy of SD ₹ 27.05 lakh.

The office of the IGR, Pune stated (February 2020) that action under section 32⁴⁹ was in progress.

6.5.2.3 Scrutiny of records at the office of the Joint SR-XXII, Haveli, district Pune revealed (January 2017) that a joint development agreement (document No.6319/2015) was executed (June 2015) between owner and developer for development of land admeasuring 1.12 ha (*i.e.* 11,200 sqm) bearing survey No. 21A, *hissa* No.2 situated at village Sus, *tahsil* Mulshi, district Pune for a consideration of ₹ 9.23 crore. The department had worked out the market value of the property at ₹ 3.93 crore and levied SD of ₹ 46.14 lakh.

As per clause 2 of document, 47,000 sqft (*i.e.* 4,368.03 sqm) constructed area was agreed to be given as owner's share. In addition to this, developer had also given refundable security deposit of ₹ 25 crore to owner. Accordingly, the value of owner's share was worked out to ₹ 31.73 crore on which SD at the rate of four *per cent* amounting to ₹ 1.27 crore was leviable. Thus, incorrect calculation has resulted in short levy of SD of ₹ 80.77 lakh⁵⁰.

The office of the IGR accepted (July 2019) the audit observation.

6.5.2.4 Scrutiny of records at the office of the Joint SR-VII, Borivali revealed (September 2015) that, a development agreement (document No. 9960/2013) was executed (December 2013) between owner and developer for development of land admeasuring 2,271.04 sqm out of CTS No. 374 B (part) situated at village Eksar, *tahsil* Borivali for consideration of ₹ 14 crore. The department worked out market value of land at ₹ 14.24 crore and levied SD of ₹ 71.25 lakh.

As per clause 2 (iii) of the document, the parties had agreed that all costs of procuring TDR/compensatory FSI (fungible FSI) and payment by way of premium/charges for approval of plan would be borne by the owner alone and as per clause 12 (b) of document, the owner had agreed to retain 26.58 *per cent* carpet area *i.e.* 1,824.33 sqm (consisting of 1,630.10 sqm residential and 194.23 sqm commercial) and developer would be entitled to 73.42 *per cent* carpet area (consisting of 5,037.46 sqm residential and balance saleable area). Further, it was agreed that in the event of reduction, if any, in the total area, the area retained by the owner shall be reduced to the extent and the area of the developer shall not be reduced. Therefore, the developer would be entitled to minimum 5,037.46 sqm.

⁴⁹ Section 32 of MS Act provides certification by collector regarding payment of SD on instrument brought to him under section 31 (adjudication case)

⁵⁰ (SD leviable - ₹ 1.27 crore) - (SD levied - ₹ 46.13 lakh)

Accordingly, the market value of developer's share was worked out to ₹ 27.08 crore on which SD at the rate of five *per cent* amounting to ₹ 1.35 crore was leviable on developer's share being higher than consideration. This resulted in short levy of SD of ₹ 64.16 lakh.

The office of the IGR accepted (August 2019) the audit observation.

6.5.2.5 Scrutiny of records at the office of the Joint SR-VIII, Haveli, district Pune revealed (January 2019) that a development agreement (document No.7219/2017) was executed (July 2017) between owner and developer for development of land admeasuring 0.89 ha (*i.e.* 8,900 sqm) bearing survey No.38, *hissa* No. 8 B situated at village Balewadi, *tahsil* Haveli, district Pune within the limit of Pune municipal corporation for a consideration ₹ 18 crore. The department worked out the market value of the property at ₹ 18.83 crore and levied SD of ₹ 94.16 lakh.

As per clause 5(b) and (f) of document, developer agreed to pay ₹ 15 crore in cash and salable construction area admeasuring 33,000 sqft (3,066.91 sqm) as owner's share. Further, as per clause 7(a) developer was entitled to load FSI/TDR as per Development Control Rules. Accordingly, the value of owner's share was worked out to ₹ 22.42 crore on which SD at the rate of five *per cent* amounting to ₹ 1.12 crore was leviable. However, department levied SD of ₹ 94.16 lakh which resulted in short levy of SD of ₹ 17.95 lakh.

The office of the IGR accepted (September 2019) the audit observation.

6.5.2.6 Scrutiny of records at office of the Joint SR-II, Karjat, district Raigad revealed (June 2018) that a joint development agreement (document No. 889/2016) was executed (April 2016) between owners and developer for development of land admeasuring 19,770 sqm⁵¹ situated at village Wadawli Tarfe Vardi, *tahsil* Karjat, district Raigad for a consideration of ₹ 10.44 crore. The department worked out the market value of the property at ₹ 10.44 crore and levied SD of ₹ 41.76 lakh.

As per clause 7.3 of the agreement, the developer would be liable to bear the development cost of the project. As per the clause 6.2, owner No.1 and developer were entitled to 3,888 sqm and 9,077 sqm built-up area respectively and as per clause 6.3, owner No.2 and developer were entitled 2,043 sqm and 4,767 sqm built-up area respectively. As per clause 6.2 (iii) and 6.3 (iii), the revenue generated from sale of construction lying in Master Escrow account was to be distributed every year between owners and developers.

Accordingly, the consideration amount was to be worked at ₹ 14.17 crore on which SD at the rate of four *per cent* amounting to ₹ 56.67 lakh was leviable. However, the department levied SD of ₹ 41.76 lakh which resulted in short levy of SD by ₹ 14.91 lakh.

⁵¹ 00.46.50 ha *i.e.* 4650 sqm of survey No. 58, *hissa* No. 2; 00.18.10 ha *i.e.* 1,810 sqm of survey No. 58, *hissa* No. 1/A; 00.24.80 ha *i.e.* 2,480 sqm of survey No. 79, *hissa* No. 1; 00.6.80 ha *i.e.* 680 sqm of survey No. 79, *hissa* No. 2; 00.28.00 ha *i.e.* 2,800 sqm of survey No. 81, *hissa* No. 1/C; 00.04.40 ha *i.e.* 440 sqm of survey No. 59, *hissa* No. 6; 00.01.00 ha *i.e.* 100 sqm of survey No. 59, *hissa* No. 5 of First Schedule and 00.30.90 ha *i.e.* 3,090 sqm at survey No. 1. *hissa* No. 1; 00.09.60 ha *i.e.* 960 sqm at survey No. 1. *hissa* No. 2; 00.27.60 ha *i.e.* 2,760 sqm at survey No. 56. *hissa* No. 2 of Second Schedule (total 19,770 sqm)

The office of the IGR accepted (July 2019) the audit observation.

6.5.2.7 As per Para 4 (f) and 4 (g) of the notification (July 2013) of the Revenue and Forest Department (R&FD), Mumbai, the holder of the simple receipt shall get it defaced from the registering officer with whom the instrument is to be registered or from the office of the collector of stamps if related with the payment of SD in accordance with relevant section of the said Act, within six months from the date of purchase of stamps and no receipt shall be treated, as valid unless it is defaced by the registering officer or any other officer authorized to do so within a period of six months from the date of purchase of stamps.

Scrutiny of records at the office of the Joint SR, Haveli-XVIII, district Pune revealed (December 2016) that a development agreement (document No. 3378/2015) was executed (April 2015) between owners and developer for development of land admeasuring 7,900 sqm⁵² situated at *mouza* Charoholi Budruk, *tahsil* Haveli, district Pune within the limit of Pimpri Chinchwad municipal corporation for a consideration of ₹ 5.29 crore. The department worked out the market value of the property at ₹ 4.63 crore and levied SD of ₹ 31.08 lakh. The department acknowledged the payment of SD of ₹ 31.08 lakh by defacing the *e*-payment challan⁵³ of July 2014. However, no other document in support of payment of SD of ₹ 31.08 lakh was produced by the department.

As per clause 29 (A) of document, owner was entitled for 42,250 sqft constructed area and cash consideration of ₹ 50 lakh. In addition, developer had also given refundable security deposit of ₹ 79 lakh to owner. Accordingly, the developer's and owner's share was to be worked out at ₹ 3.76 crore and ₹ 9.45⁵⁴ crore respectively and SD on owner's share at the rate of five *per cent* amounting to ₹ 47.27 lakh was leviable. However, the department levied SD of ₹ 31.08 lakh and defaced *e*-payment which was made prior to more than six months. This resulted in short levy of SD by ₹ 47.27 lakh.

The office of the Joint District Registrar, Pune city accepted (December 2017) that the validity of the *e*-challan is only for six months. Thus, payment of ₹ 31.08 lakh was not admissible and accepted short levy of SD of ₹ 47.27 lakh.

6.5.2.8 Scrutiny of records at the office of the Joint SR-XXIV, Haveli, district Pune revealed (July 2018) that a development agreement (document No. 9978/2017) was executed (November 2017) between owners, consenting party⁵⁵ and promoter (developer) for development of land admeasuring 6,900 sqm situated in survey No. 126, *Hissa* No. 2 at village Dehu, *tahsil* Haveli and within the limit of panchayat samiti, Haveli and zilla parishad, Pune. The department worked out the valuation of the land at ₹ 5.36 crore and

⁵² 900 sqm at survey No. 247/1 + 7,000 sqm of survey No. 247/3

⁵³ MH 001632746201415E dated 05 July 2014 for ₹ 31,08,200

⁵⁴ ₹ 9,45,44,760

⁵⁵ A development agreement was already executed in March 2014 between the owners and consenting party for development of the said land. Now, the consenting party and owners agreed to assign the development rights of the said land to the promoter in this instant development agreement

owner's consideration was worked out at ₹ 1.11 crore. The SD of ₹ 26.79 lakh was levied at the rate of five *per cent* on the valuation of land being higher than the owner's consideration.

As per conditions 2.1, 2.2 and 2.3, the promoter agreed to give ₹ 1.11 crore as consideration to the consenting party in addition to 1,142 sq.ft carpet area (*i.e.* 127.36 sqm built up area), 11,140 sqft (*i.e.* 1,035.32 sqm) amnesty space and interest free refundable deposit of ₹ 59 lakh. Similarly, the promoter also agreed to give constructed area of 29,150 sqft (*i.e.* 2,709.10 sqm built up area) to the owners. Thus, the share of owners and the consenting party calculated by Audit was ₹ 7.45 crore and developer's share was ₹ 1.59 crore. Therefore, SD at the rate of five *per cent* on the value of owners and the consenting party amounting to ₹ 37.26 lakh was required to be levied. However, department levied SD ₹ 26.79 lakh which resulted in short levy of SD of ₹ 10.47 lakh.

After being pointed out by Audit (July 2018), the office of the Joint SR stated that calculation was correct and there was no need for recovery. Further, it was stated that compliance would be submitted after obtaining comments from higher authority.

6.6 Short levy of stamp duty in conveyance deed due to incorrect application of provisions of MS Act and ASR

MS Act envisaged that the consideration for the purpose of levy of SD and RF on an instrument brought for registration shall be the amount mentioned in the instrument or the market value of the property determined in accordance with the instructions and rates contained in the ASR prescribed for that year whichever is higher.

Audit observed short levy of SD amounting to ₹ 2.36 crore in six cases (in four units) due to incorrect application of provisions of MS Act and instructions to ASR as elaborated below:

6.6.1 As per provision 26 (c) of ASR 2015, if the land purchased by company/society for agriculture/vegetable/floriculture/rubber plantation/teak plantation/ orchard farming *etc.* on commercial basis is situated in the non-agriculture/probable non-agricultural/residential/developable zone within the limits of urban and influence areas, it should be valued at the rate applicable to the concerned valuation zone.

Scrutiny of records at the office of the Joint SR-I, Jalgaon, district Jalgaon revealed (February 2018) that an indenture of conveyance (document No. 2356/2016) was executed (March 2016) between vendor and purchaser for sale of land admeasuring 3.78 ha (*i.e.* 37,800 sqm) together with the structure standing thereon *viz.* houses, outhouses, fencing, compound walls, edifices, buildings, court yards, sewers, drains, ditches, ways, path *etc.* situated at *gat* No. 162/2 at village Shirkoli Pro. BO (influence area), *tahsil* and district Jalgaon for a consideration of ₹ Nil. The department worked out the market value of the property of ₹ 1.62 crore and levied SD of ₹ 8.12 lakh.

Similarly, another indenture of conveyance (document No. 2358/2016) was executed (March 2016) between vendor and purchaser for sale of land admeasuring 3.78 ha (*i.e.* 37,800 sqm) together with the structure standing thereon *viz.* houses, outhouses, fencing, compound walls, office, building

court yard, sewer, drains, ditches, ways, path *etc.* situated at *gat* No. 162/1 at village Shirsole Pro. BO (influence area), *tahsil* Jalgaon, district Jalgaon for a consideration of ₹ Nil. The department worked out the market value of the property of ₹ 1.62 crore and levied SD of ₹ 8.12 lakh. The basis of calculation of market value of property by department in both the cases was not available on record.

As per ready reckoner 2015-16, the *gat* No. 162/1 & 162/2 of village panchayat Shirsole Pra. Bo., *tahsil* & district Jalgaon is categorized in zone 9.1 as non-agriculture land and the rate of ₹ 890 per sqm was prescribed for valuation. Accordingly, the market value was to be worked out to ₹ 3.36 crore on which SD at the rate of five *per cent* amounting to ₹ 16.82 lakh was leviable in each case. This resulted in short levy of SD by ₹ 17.41 lakh.

The office of the IGR stated (November 2019) that during spot verification by the office of the Collector of Stamps it was noticed that the property is situated in guava orchard and further stated that the entry in the 7/12 form also showed property as agriculture land.

The reply is not acceptable because as per recital of the document, the property was described as the piece or parcel of land or ground with messuages hereditaments and premises situated at *gat* No. 162/2, area admeasuring cultivable 3.68 ha + non-cultivable 0.10 ha, total admeasuring 3.78 ha and more particularly described in the schedule and together with all and singular structures, houses, outhouses, fencing, compound walls, edifices, buildings, court yards, areas, compounds, sewers, drains, ditches, fences, tress, plants, shrubs, ways, paths, pages, commons, gullies, wells, waters, water-course lights. Accordingly, Audit calculated the short levy of SD by ₹ 17.41 lakh.

Audit requested (February 2020) to the office of the IGR to submit the spot verification report of Collector of Stamps, Jalgaon alongwith 7/12 extract of the said piece of land. The same was not supplied.

6.6.2 Instruction No. 24 of ASR 2016-17 envisages that where any agricultural land in the rural areas and influence areas is purchased for farm house/forest house, the said user should be treated as the probable non-agricultural user and the said land should be valued on the basis of the probable non-agricultural rate worked out in accordance with the instruction No. 16 (a) of guidelines.

Scrutiny of records at the office of the Joint SR (North)-III, Solapur, district Solapur revealed (June 2018) that a sale deed (document No. 1423/2016) was executed (May 2016) between seller and purchaser for a land admeasuring 12 ha 39 R (*i.e.* 1,23,900 sqm) of *tahsil* Solapur at village Shivaji Nagar bearing *gat* No. 28 within the limits of Solapur municipal corporation for a consideration of ₹ 3.20 crore. The department worked out the market value of the property at ₹ 3.08 crore and levied SD of ₹ 19.20 lakh. The department valued land on 50 *per cent* rate of open land by applying instruction No. 24 of ASR 2016-17.

However, the instruction No. 24 is applicable for areas where any agricultural land in the rural areas and influence areas is purchased for the farm house/forest house. As the said land is situated within the limits of

municipal corporation, the valuation of land by applying instruction No. 24 was incorrect. Accordingly, the market value of the property was to be worked out to ₹ 6.40 crore on which SD at the rate of six *per cent* amounting to ₹ 38.40 lakh was leviable. However, department levied SD of ₹ 19.20 lakh which resulted in short levy of SD by ₹ 19.20 lakh.

The office of the IGR accepted (June 2019) the audit observation.

6.6.3 As per instruction 16 (a) of ASR 2015-16, in case of land whose rate is given in both per square meter and per hectare, valuation of property up to 2,000 sqm is to be carried out as per rate applicable for per square meter and remaining area to be valued at hectare rate.

Scrutiny of records at the office of the Joint SR, Haveli-XXVI, district Pune revealed (December 2017) that an agreement (document No. 2947/2016) for assignment was executed (March 2016) between assignor and assignee for a land admeasuring 15.13 ha⁵⁶ (1,51,300 sqm) situated at Charholi Budruk within the limits of Pimpri Chinchwad municipal corporation (PCMC) for a consideration of ₹ 8.36 crore. The department worked out the market value of the property at ₹ 9.12 crore and levied SD of ₹ 54.69 lakh. The basis for calculation of market value of property by the department was not found on record.

The above land is situated in two different zones (*i.e.* zone No. 23/4 and 23/4.1) of PCMC and both rates (*i.e.* per sqm and per ha) for same land are prescribed in the ASR 2015-16. Hence, the valuation of land should have been worked out as per instruction No.16 (a) of ASR 2015-16. The rate prescribed in the ASR 2015-16 for the above survey numbers was ₹ 2,480 per sqm and ₹ 1,03,95,000 per ha. By applying instruction No. 16 (a) of ASR 2015-16, the market value was to be worked out at ₹ 16.02 crore on which SD at the rate of six *per cent* amounting to ₹ 96.09 lakh was leviable. However, department levied SD of ₹ 54.69 lakh which resulted in short levy of SD ₹ 41.40 lakh.

The office of the IGR accepted (September 2019) the audit observation.

6.6.4 As per provision 16 (c) of ASR 2016-17, where only one or more plots under the sanctioned layout excluding the roads, open spaces, amenity area *etc.* are sold, the non-agricultural rate should directly be taken into consideration for the valuation of such areas/consolidated areas.

Scrutiny of records at the office of the Joint SR-XXIII, *tahsil* Haveli, district Pune revealed (March 2018) that a sale deed (document No. 9531/2016) was executed (November 2016) between vendors (owners) and purchaser for a land admeasuring 2,407 sqm along with the permissible FSI 10,824 sqm of sanctioned layout of land bearing survey No. 15/2A1 (15/2 +15/3/1 + 15/3/2 + 15/4 +15/5 + 15/6) situated at village Balewadi within the limits of Pune municipal corporation for a consideration of ₹ 16.86 lakh. The department worked out market value of the property at ₹ 5.73 crore and levied SD of ₹ 35.09 lakh. The basis of calculation of market value of property by the department was not available on record.

⁵⁶ Land admeasuring 7.75 ha (77,500 sqm) bearing survey No. 90 and 7.38 ha (73,800 sqm) bearing survey No. 91

As per schedule-III of document, the vendor had permitted to utilize 2,407 sqm along with the additional area of FSI on the land admeasuring 10,824 sqm to the purchaser which was not taken into consideration by the department while determining the market value of property. The market value of the property by applying non-agricultural rate was to be worked out at ₹ 31.49 crore on which SD at the rate of six *per cent* amounting to ₹ 1.89 crore was leviable. This resulted in short levy of SD by ₹ 1.54 crore.

The office of the IGR accepted (October 2019) the audit observation.

6.6.5 On a conveyance deed, SD is leviable under clauses (a), (b), (c) as the case may be, of Article 25 of schedule-1 of MS Act, on the market value of the property or consideration, whichever is higher, which is the subject matter of transfer. Further, guidelines 16 (a) to the ASR prescribe that the valuation of the land should be done as per the slabs mentioned therein.

Scrutiny of records at the office of the Joint SR North Solapur-III, district Solapur revealed (June 2018) that a sale deed (document No. 1781/2017) was executed (June 2017) between vendors (owners) and purchaser for a land admeasuring 1.62 ha *i.e.* 16,200 sqm situated at new survey No. 169/2/2 (old survey No. 178) at village Kasbe Solapur, *tahsil* North Solapur, district Solapur within the limits of Solapur municipal corporation for a consideration of ₹ 2.51 crore. The department calculated the market value of the property at ₹ 2.51 crore considering rate of ₹ 2,470 per sqm applicable to survey No. 178 and levied SD of ₹ 15.06 lakh.

The scrutiny of instrument revealed that the said property lies in zone No. 34/125 having survey No. 169/2/2 (new) and as per ready reckoner for the year 2017-18, the rate prescribed for open land was ₹ 3,430 per sqm. Accordingly, the market value of property was required to be worked out to ₹ 3.32 crore on which SD at the rate of six *per cent* amounting to ₹ 19.92 lakh was leviable. However, department levied SD of ₹ 15.06 lakh which resulted in short levy of SD by ₹ 4.86 lakh.

The office of the Joint SR stated that compliance would be submitted after discussion with JDR office, Solapur.

6.7 Short levy of stamp duty in cases of lease deed

As per Article 36 (A) (b), if leave and license agreement purports to be for a period exceeding sixty months with or without renewal clause, the duty is leviable on lease under clauses (ii) (iii) or (iv) as the case may be of Article 36. As per Article 36 (iii) and (iv) of the MS Act, in case of lease where period of lease is up to 10 years with a renewal clause contingent or otherwise, SD is leviable on 25 *per cent* of market value of the property, if lease is for period exceeding ten years and up to 29 years then SD is leviable on 50 *per cent* of market value of the property and in case where lease period exceeds 29 years, the SD is leviable on 90 *per cent* of market value of the property. Further, as per explanation-II, the renewal period, if specifically mentioned, shall be treated as part of the present lease. Instruction number 16 (b) of ASR prescribes the slabs for the valuation of open land.

Audit observed short levy of SD amounting to ₹ 44.43 lakh due to non-consideration of renewal clause in one case (in one unit) and of

₹ 1.03 crore due to undervaluation of market value in two cases (in two units) as detailed below:-

6.7.1 Instruction 7 (c) of ASR 2015-16 provides the basis for valuation of Information Technology (IT)/Information Technology Enabled Services (ITES) premises in IT park at industrial rate of that zone. In the absence of industrial rates, unit should be valued at 110 *per cent* of the rate applicable for residential units.

A leave and license agreement⁵⁷ (document No. 4563/2015) was executed (July 2015) between licensor and licensee of premises admeasuring 8,262.08 sqm⁵⁸ of the building No. 8 in commercial zone in IT park bearing survey No. 144/145 situated at Yerwada, *tahsil* Haveli, district Pune, within limits of Pune municipal corporation for license period of seven years without mentioning the amount of consideration. The department worked out market value of property at ₹ 45.62 crore on which SD amounting to ₹ 92 lakh was levied.

Scrutiny of documents/instruments at the office of Joint SR-XII, Haveli, Pune revealed (January 2017) that as per the clause 2.1 of document, the initial period of license was seven years and clause 2.3 provided an option for further renewal of license for additional period of four years. As such, the department should have considered 50 *per cent* of market value (₹ 27.29 crore⁵⁹) of property for levy of SD. Thus, incorrect calculation of market value of the property resulted in short levy of SD of ₹ 44.43 lakh⁶⁰.

The office of the IGR accepted the audit observations and stated (July 2019) that an amount of ₹ 43.98 lakh was recovered (June 2019).

6.7.2 As per instruction No. 7 (d) of ASR, a school and religious building should be valued at the rate assigned to residential flat in the valuation zone concerned.

Scrutiny of document at the office of Joint SR-IX, Thane revealed (January 2018) that, a lease deed (document No. 1391/2017) was executed (March 2017) between lessee and lessor for lease of premises consisting of ground plus four upper floors admeasuring 26,000 sqft (*i.e.* 2,416.35 sqm) bearing survey No. 47/1,6,8 & 9,48/1 B (Part), 1 C, 1 D & 1 E, situated near Highland Gardens, village Dhokali, Thane (West), *tahsil* and district Thane, within the limits of Thane municipal corporation for the period of 28 years for a consideration of ₹ 1.10 crore. The department worked out the market value of the property at ₹ 6.60 crore and levied SD of ₹ 33.01 lakh⁶¹.

⁵⁷ A leave and license agreement is an agreement wherein the licensor temporarily allows the licensee to use and occupy licensor's immovable property full or a portion of it, for the purpose of carrying business activity or residential use

⁵⁸ Units No. 301 admeasuring 4,526.02 sqm on third floor and unit No. 401 admeasuring 3,736.06 sqm on fourth floor

⁵⁹ Market value of property of unit No. 301 - ₹ 28.92 crore + Market value of property of unit No. 401 - ₹ 23.87 lakh + parking - ₹ 1.78 crore)

⁶⁰ (SD leviable = ₹ 1.36 crore) - (SD levied = ₹ 92 lakh)

⁶¹ five *per cent* of (50 *per cent* X ₹ 6.60 crore)

As per instruction 7 (d) of ASR, 2016-17, the valuation of property should be ₹ 25.13 crore on which SD of ₹ 62.23 lakh⁶² was leviable. Thus, under valuation of property resulted in short levy of SD by ₹ 29.81 lakh.

The office of the IGR accepted (May 2019) the audit observation and stated that the recovery was in progress.

6.7.3 As per instruction No. 7 (d) of ASR 2016-17, a school and religious building should be valued at the rate assigned to residential building in the valuation zone concerned of the ASR.

Scrutiny of records at the office of the Joint SR-IX, Thane revealed (January 2018) that a lease deed (document No. 1389/2017) was executed (March 2017) between lessee and lessor for lease of premises consisting of ground plus two upper floors admeasuring 30,000 sqft (*i.e.* 2,788.10 sqm) situated at survey No. 47/1,6,8 and 9, 48/1 B (Part), 1 C, 1 D & I E, near Highland Gardens, village Dhokali, Thane (West), *tahsil* and district Thane within the limits of Thane municipal corporation for the lease period from 01.04.2017 to 31.03.2047 (*i.e.* 30 years). The department worked out the market value of the property ₹ 11.40 crore and levied SD of ₹ 57.01 lakh. The details of calculation of market value of the property determined by the department were not found on record.

As per ASR 2016-17, the property was classified under zone 8/33/3, wherein the rate for open land was ₹ 43,800 per sqm and residential building was ₹ 1.04 lakh per sqm. Accordingly, the correct market value in accordance with instruction No. 7 (d) of ASR 2016-17 was to be worked out to ₹ 28.99 crore. Therefore, the SD required to be levied was ₹ 1.30 crore⁶³. This resulted in short levy of SD of ₹ 73.47 lakh⁶⁴.

The office of the IGR accepted (November 2019) the observation partly to the extent of short levy of SD by ₹ 57.01 lakh only and stated that the land is situated at *vibhag* number 8/34-3 ङ and rate of residential building is ₹ 87,900 per sqm.

The reply is not acceptable as the said land is located in survey number 47 and *vibhag* number 8/33/3 as per office of the Town Planner, Thane. The rate of residential building is ₹ 1.04 lakh sqm as per ASR. Thus, short levy of SD of ₹ 73.47 lakh was correctly pointed out by Audit.

6.8 Short levy of stamp duty due to non-impounding of instrument

As per section 33 of MS Act, every person having by law or consent of parties authority to receive evidence and every person in charge of a public office before whom an instrument chargeable is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same and the executants have no right to seek for return of document unless the SD is paid. As per section 34 of the MS Act, no instrument chargeable with duty shall be admitted in evidence for any purpose by any person unless such instrument is duly stamped with penalty at

⁶² five per cent of (50 per cent X ₹ 25.13 crore)

⁶³ five per cent of (90 per cent X ₹ 28.99 lakh)

⁶⁴ (Stamp duty leviable - ₹ 1.30 crore) – (Stamp duty levied - ₹ 57 lakh)

the rate of two *per cent* of the deficient portion of the SD for every month or part thereof from the date of execution of such instrument provided that in no case the amount of the penalty shall exceed four times the deficient portion of the SD.

Audit scrutiny revealed short levy SD of ₹ 2.10 crore due to non-impounding of the instruments in test checked two cases as under:

6.8.1 Section 685 of Maharashtra Registration Manual Part-II stipulates that City and Industrial Development Corporation (CIDCO) is giving plots for development on long term lease and the possession of the property handed over to the builder as licensee and not lessee therefore the documents of transfer of property on long term lease to CIDCO is to be covered under Article 5 (g-a). Prior to June 2008, the SD leviable on development agreement was one *per cent* on the market value of the property or the consideration, whichever is higher.

Scrutiny of sale deed (document No. 3827/2014) at the office of Joint SR-VIII, Koparkhane, district Thane revealed (January 2016) that an unregistered document *i.e.* agreement to lease which was a part and parcel of above sale deed was executed (January 1992) between a licensee and CIDCO. An area admeasuring 1,00,021.60 sqm situated at plot No. 24, sector 27, Nerul in Navi Mumbai was given on lease to Air India for a term of 60 years with premium of ₹ 7.50 crore. The lease period was extended to 90 years (August 1992) on payment of additional premium of ₹ 5.09 crore. The said unregistered document (agreement to lease) was required to be impounded by the SR and recovery of unpaid amount of SD along with interest thereon on the total premium of ₹ 12.59 crore paid by Air India for lease was to be effected at the time of registration of sale deed. The non-impounding of unregistered document (agreement to lease) resulted in loss of ₹ 62.98 lakh⁶⁵ towards SD and penalty.

The office of the IGR accepted (June 2019) the audit observation.

6.8.2 As per Article 16 of Schedule-I of MS Act, in case of instrument relating to certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or Collector or other revenue officer or any other officer empowered by law to sell property by public auction, SD as is leviable on a conveyance under clause (a), (b), or (c) as the case may be, of Article 25 shall be charged on the market value of the property or consideration, whichever is higher, which is the subject matter of transfer. As per Article 25 (a) if conveyance is related to movable property then SD leviable is three *per cent* of the market value of the property.

Scrutiny of records (adjudication case No. 18/2014) at the office of the Joint District Registrar and Collector of Stamps, Jalna (JDR) revealed (April 2017) that an unregistered instrument of sale certificate was executed (February 2013) by the officer authorized under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security and Interest

⁶⁵ (SD leviable – ₹ 12.60 lakh) + (penalty – ₹ 50.38 lakh)

Act, 2002 for sale of movable properties⁶⁶ in favour of purchaser for a consideration of ₹ 19.72 crore. The movable properties were secured/mortgaged in favour of the bank⁶⁷ by mortgagee towards financial facility totaling to ₹ 253.68 crore given by the bank to the mortgagee. As per part III of the bid document, the authorised officer had taken possession of the movable and immovable properties of the mortgagee in 2010.

The aforesaid sale certificate of movable properties was enclosed with the case file of sale certificate for immovable properties which was adjudicated (April 2014) by the office of the JDR. However, the sale certificate was not registered and no duty was paid thereon. Hence, in view of sections 33 and 34 of the MS Act, the instrument (sale certificate) was required to be impounded for levy of SD along with penalty thereon. As per sale certificate, the consideration amount was ₹ 19.72 crore. Thus, SD of ₹ 1.47 crore⁶⁸ was leviable. This resulted in short levy of SD due to non-impounding of unregistered instrument.

The office of the JDR confirmed the fact that the instrument was not presented for adjudication but it was found attached with the other adjudicated instrument (adjudication No. 18/2014) and stated that further action would be taken for recovery.

The office of the IGR stated (February 2020) that action under section 33 A was in progress.

6.9 Short levy of stamp duty due to non-consideration of distinct matters in one instrument and non-application of instructions to ASR

As per section 5 of MS Act, any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under MS Act. Further, instruction No. 16 (b) of ASR prescribes a method of calculation of valuation of property.

Audit observed short levy of SD amounting to ₹ 1.90 crore in four cases (in two units) due to non-consideration of distinct matters in one instrument and also non-application of ASR instructions for the valuation of property as elaborated below:

6.9.1 During scrutiny at the office of the Joint SR-IV Vasai, Audit observed that three⁶⁹ development agreements were executed (August 2015 and September 2015) between three sub-developers, owner and developer for development of land admeasuring 2-07-4 ha (*i.e.* 20,740 sqm) bearing survey

⁶⁶ Cane milling plant; milling plant; clarification plant; evaporation and boiling plant; cooling, curing & grading plant; steam generating plant; power plant; piping, fitting and valves; molasses storage tanks; workshop equipments; weighing equipments; vehicles; lifting equipments; electrical items and scrap material

⁶⁷ Maharashtra State Co-operative Bank Ltd, Mumbai

⁶⁸ (Penalty from February 2013 to April 2019 (six years and two months = 72+2= 74 months) = ₹ 59.16 lakh x 74 months x 2/100 = ₹ 87.56 lakh) + (SD = three *per cent* of ₹ 19.72 crore = ₹ 59.16 lakh)

⁶⁹ Document No. 4346/2015, 4440/2015 and 4667/2015

No./hissa No. 254/13, 254/14 and 254/15 situated at *mouza* Aachole, *tahsil* Vasai within limit of Vasai-Virar municipal corporation.

Scrutiny of development agreement (document No. 4346/2015) revealed (March 2017) that the above land was purchased (August 2015) by developer from land owner for a consideration of ₹ 14.52 crore. Audit worked out the market value of land as ₹ 28.29 crore on which SD at the rate of five *per cent* amounting to ₹ 1.42 crore was leviable. Apart from this, in this document, a development agreement with sub-developer for development of land admeasuring area of 831.26 sqm for a consideration of ₹ 1.03 crore was executed. The market value worked out by the department was ₹ 85.62 lakh. By applying instruction No. 16 (b) of ASR, the market value of the property should have been worked out to ₹ 1.46 crore on which SD of ₹ 7.30 lakh was leviable. However, department levied SD of ₹ 5.13 lakh which resulted in short levy of SD by ₹ 1.44 crore⁷⁰.

Audit further observed that two more development agreements (document Nos. 4440/2015 and 4667/2015) were executed by the developer with the sub-developers for development of land which was purchased vide document No. 4346/2015 as below:

Second development agreement (document No. 4440/2015) was executed (August 2015) for development of land admeasuring area of 1,175.34 sqm for a consideration of ₹ 1.31 crore. The department worked out the market value of land as ₹ 1.21 crore. By applying instruction No. 16 (b) of ASR, market value of land should have been worked out to ₹ 2.03 crore on which SD at the rate of five *per cent* amounting to ₹ 10.14 lakh was leviable. However, department levied SD of ₹ 6.55 lakh which resulted in short levy of SD by ₹ 3.58 lakh.

Similarly, third development agreement (document No. 4667/2015) was executed (September 2015) for development of land admeasuring area of 2,250 sqm for a consideration of ₹ 2.55 crore. The department worked out the market value of land as ₹ 2.32 crore. By applying instruction No. 16 (b) of ASR, the market value of land should have been worked out to ₹ 3.75 crore on which SD at the rate of five *per cent* amounting to ₹ 18.76 lakh was leviable. However, department levied SD of ₹ 12.75 lakh which resulted in short levy of SD by ₹ 6.01 lakh. Hence, there was a total short levy of SD of ₹ 1.53 crore⁷¹ on the above three transactions.

The office of the IGR accepted (June 2019) the short levy of SD of ₹ 72.59 lakh by applying land rate as ₹ 10,300 per sqm as against ₹ 1.53 crore as pointed out by Audit.

The reply is not acceptable, as the rate of open land prescribed in ASR for the year 2015-16 for the said survey number is ₹ 18,300 per sqm. Accordingly, Audit correctly worked out the short levy of SD of ₹ 1.53 crore.

⁷⁰ SD on market value of land - ₹ 1.42 crore + SD on development - ₹ 7.30 lakh crore) – (SD levied - ₹ 5.13 lakh)

⁷¹ ₹ 1.44 crore + ₹ 3.58 lakh + ₹ 6.01 lakh

6.9.2 Scrutiny of records at the office of the Joint SR-VI, Haveli, district Pune revealed (February 2015) that, a sale deed (document No. 7410/2012) was executed (July 2012) between vendors, purchaser and consenting party for land admeasuring 11,600 sqm bearing survey Nos. 13/4 C, 13/4 B, 14 A/1 B, 14 A/1 C situated at village Manjri (Budruk) (influence area), *tahsil* Haveli, district Pune for a consideration of ₹ 1.23 crore. The department had worked out the market value of the land at ₹ 2.37 crore and levied SD at the rate of five *per cent* amounting to ₹ 11.85 lakh.

As per the clause 1 of document, land owners sold the land for consideration of ₹ 1.23 crore to purchaser and as per the clause 3 of document, the development rights of the said property were vested with the consenter. The profit arising from development/sale of construction in future was to be shared between purchaser and consenter in the ratio of 20:80 (*i.e.* purchaser shall retain 20 *per cent* and consenter shall retain 80 *per cent*). Thus, two transactions were effected (i) sale of land and (ii) agreement for development of land. As per section 5 of MS Act, SD amounting to ₹ 48.50 lakh⁷² on these two transactions was leviable. This resulted in short levy of SD by ₹ 36.65 lakh⁷³.

The office of the IGR stated (November 2019) that Audit had incorrectly considered the gross sale proceed of the consenter instead of the purchaser for levy of SD and accepted the short levy of SD to the tune of ₹ 7.60 lakh only as against ₹ 36.65 lakh.

The reply is not acceptable, as Audit has correctly worked out the short levy of SD amounting to ₹ 36.65 lakh considering the purchaser's consideration of ₹ 9.16 crore as mentioned in clause 4 (3) of the instrument.

6.10 Short levy of stamp duty due to irregular grant of remission

As per Article 16 of schedule-I of MS Act, in case of instrument relating to Certificate of Sale granted to the purchaser of any property sold by public auction by a civil or revenue court, or collector or other revenue officer or any other officer empowered by law to sell property by public auction, SD as is leviable on a conveyance under clause (a), (b), or (c) as the case may be, of Article 25 of MS Act, on the market value of the property or consideration, whichever is higher, which is the subject matter of transfer.

As per Government Notification (May 2013) of Package Scheme of Incentives (PSI) 2013, full remission of SD for instruments classified under various Articles⁷⁴ of schedule I of the MS Act is provided to new unit(s)/ undertaking expansion/diversification (including mega and ultra-mega projects during the

⁷² ₹ 11.84 lakh leviable on sale deed + ₹ 36.66 lakh leviable on development agreement

⁷³ SD leviable ₹ 48.50 lakh - SD levied – ₹ 11.85 lakh

⁷⁴ Article 6 for instruments of hypothecation, pawn, pledge, deposit of title deeds, Article 25 for conveyance, Article 33 for further charge on mortgaged property, Article 36 for lease and Article 40 for mortgage deed

investment period) in Group C, D, D+ *tahsils*⁷⁵, no industry districts⁷⁶ and naxal affected areas. As per explanation (i) of the said notification, unit means a unit which is so certified by the implementing agency specified under PSI 2013 or any other officer in this behalf.

Audit observed short levy of SD amounting to ₹ 97.52 lakh in one case due to irregular grant of remission of SD as elaborated below:

In addition to short levy of SD amounting to ₹ 1.47 crore due to non-impounding of unregistered instrument⁷⁷ which was executed in February 2013 in adjudication case No. 18/2014 as discussed in **paragraph 6.8.2**, it was further observed that JDR allowed remission of SD of ₹ 75.37 lakh on Certificate of Sale of immovable property to a new purchaser on the basis of eligibility certificate issued in March 2014 by Directorate of Industries, Government of Maharashtra, Mumbai. However, there was no provision for remission of SD for Certificate of Sale (covered under Article 16) in the Government Notification of May 2013⁷⁸. Further, Government Notification (May 2013) was effective from April 2013 and the said Certificate of Sale for immovable property was executed in February 2013. Therefore, grant of remission of SD of ₹ 75.37 lakh was irregular.

As per this Certificate of Sale of immovable property, the receipt of ₹ 24.38 crore was acknowledged as consideration. Thus, SD at the rate of four *per cent* amounting to ₹ 97.52 lakh was leviable. However, department levied SD of ₹ 100 which resulted in short levy of SD of ₹ 97.52 lakh.

The office of the IGR stated (February 2020) that action under section 53 A was in progress.

The above observations were referred to the Government between May 2019 and April 2020; replies were awaited (June 2020).

⁷⁵ (i) Group A comprising the developed areas, *viz.* Mumbai Metropolitan Region (MMR) and Pune Metropolitan Region (PMR); (ii) Group B comprising the areas where some development has taken place; (iii) Group C comprising the areas, which are less developed than those covered under Group B; (iv) Group D comprising the lesser-developed areas of the state not covered under Group A/Group B/Group C; (v) Group D+ comprising those least developed areas not covered under Group A/Group B/Group C/Group D

⁷⁶ Not covered under Group A/B/C/D & D+

⁷⁷ Certificate of Sale for movable property

⁷⁸ also in earlier remission notification (June 2007) under PSI 2007, no provision for remission of stamp duty for sale certificate (covered under Article 16) was available