



Chapter III

Chapter-III

Stamp duty and Registration Fee

3.1 Tax Administration

Receipts from Stamp Duty and Registration Fee are regulated by the Indian Stamp Act (IS Act), 1899, the Karnataka Stamp Act (KS Act), 1957, the Registration Act, 1908 and the Rules made thereunder. In Karnataka, the levy and collection of Stamp Duty and Registration Fee is administered at the Government level by the Principal Secretary, Revenue Department. The Department of Stamps and Registration (DSR) under the administrative control of the Revenue Department regulates the levy and collection of Stamp Duty and Registration Fee.

3.2 Internal Audit

The Department stated that though an Internal Audit Cell was constituted in December 2012, it was still not functional due to lack of manpower. But, the Department has a mechanism in place where the District Registrars are in charge of circle-wise periodic audits. The results of such audit are reported to the Inspector General of Registration and Commissioner of Stamps (IGR&CS). The position of observations is as shown in **Table 3.1**.

Table 3.1
Year-wise details of observations

Year	Observations raised		Observations settled		Observations pending	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
2015-16	303	3.49	118	0.53	185	2.96
2016-17	791	6.34	124	2.50	667	3.84
2017-18	629	6.02	121	1.53	508	4.49
2018-19	727	10.26	84	0.26	643	10.00
2019-20	299	1.22	41	0.06	258	1.16
Total	2749	27.33	488	4.88	2261	22.45

As seen from the above, 2,261 observations involving ₹ 22.45 crore were pending settlement as on 31 March 2020. Early action may be taken to settle the pending observations.

3.3 Results of Audit

There are 285 auditable units in the Department of Stamps and Registration. Out of these, audit selected 59 units for test check wherein 9.35 lakh documents were registered. Out of these, Audit test checked 1.24 lakh documents (13.26 per cent) during the year 2019-20 and noticed 1264 cases (1.02 per cent of audited sample) of short-levy of Stamp Duty and Registration Fee due to undervaluation and suppression of consideration, misclassification of documents, incorrect assessment of value of development agreements and other non-observance of provisions of Acts/Rules, etc., involving an amount of ₹ 216.83 crore. These cases are illustrative only as

these are based on test check of records. The observations broadly fell under the following categories.

Table 3.2
Results of Audit

(₹ in crore)

Sl. No.	Category	No. of Paragraphs	Amount
1.	Short-levy of SD and RF due to undervaluation	50	63.02
2.	Short-Levy SD and RF due to suppression of consideration	36	9.35
3.	Short-levy of SD and RF on Development agreements	12	12.07
4.	Short-levy of SD and RF due to misclassification of documents	50	99.55
5.	Other irregularities	85	32.84
	Total	233	216.83

During the year an amount of ₹ 7.77 crore was recovered in 54 paragraphs pointed out in earlier years.

A few illustrative cases of non/short realisation of Stamp Duty and Registration Fee involving ₹ 45.50 crore are discussed in the following paragraphs.

3.4 Short-levy of Stamp Duty and Registration Fee due to misclassification of documents

According to Section 3 of the Karnataka Stamp Act 1957, Stamp Duty is levied on instruments chargeable with duty as prescribed under various Articles in the Schedule of the Act, *ibid*. On presentation of a document for registration, the Sub-Registrar classifies the document under the relevant Article, estimates the value of the document and prepares a document summary report containing the details of the property and the transaction. The Stamp Duty and Registration Fee payable is determined based on the value of the properties and the Articles of the Karnataka Stamp Act, 1957 and the Registration Act, 1908.

During audit of two²⁸ Sub-Registrar Offices (SROs) between September 2019 and October 2019, audit test checked 491 documents (23 *per cent* out of 2,132 documents) and noticed six cases (1.22 *per cent* of the audited sample) of short-levy of SD and RF due to misclassification of documents like Sale-agreements, Powers of Attorney and Lease-deeds. The details are as below.

Lease-deeds:

Stamp duty on lease deeds of immovable property is levied at different rates depending on the term of the lease. For a term between one and ten years, the SD is levied at one per cent and for a term between twenty and thirty years under clause (iii) of Article 30, at three *per cent* on the average annual rent

²⁸ SROs-Jala and Yelahanka.

including money advanced if any, under clause (v). Whereas, for a term exceeding thirty years, it is to be treated as conveyance and stamp duty is to be levied at five *per cent* on the average annual rent including money advanced if any *or* the market value of the property, whichever is higher, under clause (vi) of the Article.

It was noticed in SRO, Yelahanka that two lease deeds were registered between the same parties for the same property and on the same day. The first lease deed was for a term of 29 years and the second was for a term of four years after the day the term of the first lease ended. Hence the term of the leases were for a period of 33 years, continuous without break. The Sub-Registrar while registering the above deeds treated them as separate leases and levied stamp duty at three *per cent* and one *per cent* respectively under clauses (iii) and (v), instead of levying at five *per cent* as under clause (vi). This led to short-levy of SD and RF of ₹ 2.08 crore.

Sale-agreements:

Under Article 5(e)(i) of the Karnataka Stamp Act, sale-agreements of immovable properties through which possession of the property is delivered or is agreed to be delivered before executing a conveyance document is to be treated at par with conveyance and stamp duty is to be levied at five per cent on the market value of the property. If the sale-agreement is without possession, then stamp duty is to be levied at 0.1 *per cent* limited to ₹20,000.

During audit of SRO, Jala, audit noticed two sale-agreements where possession was either delivered or agreed to be delivered. In one case, the parties had agreed to execute a sale-deed within six months of the sale-agreement, but the vendor had also agreed to deliver physical possession of the property as and when requested by the purchaser. In the other case, it was brought out in the recitals of the agreement that the purchaser was already in possession of the property and was cultivating the land which was the subject matter of the agreement. In both these cases, the Sub-Registrar concerned levied SD at nominal rates instead of five *per cent*. This led to short-levy of SD and RF of ₹ 37.63 lakh.

Power of Attorney:

Under clauses (a) to (d) of Article 41, Stamp duty is charged at nominal rate for documents authorising Powers to Attorney to do specific acts on behalf of the Owner, without the powers to sell the property. However, for documents purporting to provide the Attorney with powers to sell the property, the document is to be treated at par with conveyance and stamp duty is to be charged at five *per cent*, as per clause (eb) of the Article.

Audit noticed one document each in the above mentioned two SROs, wherein the Owners of immovable properties had authorised their respective Attorneys to sell the immovable property through documents registered as General Power of Attorney. In both the cases the SROs concerned had levied stamp duty at nominal rates instead of levying at five *per cent*. This led to short-levy of SD and RF of ₹ 20.38 crore.

These cases were brought to the notice of the Department during November 2019 and January 2021. The IGR&CS has replied that the District Registrars concerned have initiated action in all the cases under Section 46(A) of the KS Act, 1957 and Section 80(A) of the Registration Act, 1908.

It is recommended that the IGR&CS may take up periodic review of such cases under Section 53(A) to mitigate the risk of misclassification and avoid evasion of Government revenue.

3.5 Short-levy of Stamp Duty and Registration Fee due to suppression of facts

Stamp Duty is levied on instruments chargeable with duty as prescribed under various Articles in the Schedule of the Karnataka Stamp Act, 1957 and Registration Fee is levied as per the rates prescribed in the table of Registration Fee under the Registration Act, 1908. The parties executing a document shall provide the details of the properties being conveyed and its market value. As per Section 28 of the Karnataka Stamp Act, 1957, the facts and circumstances affecting the chargeability of an instrument shall be fully and truly set forth by the parties. When documents are presented for registration, the Sub-Registrar shall make such enquiries, examine all relevant records and estimate the market value of the properties in the document.

During audit of 13 Sub-Registrar Offices (SROs) between April 2018 and October 2019, audit test checked 11,882 documents (11.73 *per cent* out of 1,01,255 documents) and noticed 25 cases (0.21 *per cent* of the audited sample) of short-levy of SD and RF due to suppression of value by the parties concerned, not reckoning the advance amounts received as part of consideration, not disclosing the existence of buildings, disregarding the existence of Power of Attorney etc. as detailed below.

a. Actual value determined through related documents:

As per Rule 3 under the Karnataka Stamp (Prevention of undervaluation of instruments) Rules, 1977, the parties to the document shall furnish information about the various items of properties involved in the document and the Sub-Registrar may elicit any information bearing on the subject and examine any records, for the purpose of ascertaining the correctness of the market value.

Audit noticed five documents²⁹ which were registered by levying SD and RF on the consideration stated in the document based on the information provided in the documents. Further examination of related documents available in the files concerned revealed that the actual value was more than the consideration stated in the document. In one case, the existence of plant and machinery was suppressed, but documented in a subsequent mortgage deed executed on the same day. In two cases, the actual value transacted and the existence of buildings in the land were brought out in certified copies of their respective Board Resolutions. In the remaining two cases, the actual consideration passed-on from the purchaser was disclosed in a subsequent sale-agreement

²⁹ SROs–Hagaribommanahalli, J.P.Nagar, Kanakapura, Kolar and Sakleshpura.

and the fact that the property was abutting National Highway was documented in the previous Sale-deed preceding the current deed. In all these cases, the value of the documents enhanced due to the disclosures as above but were levied SD and RF based on the value stated in the document. The resultant short-levy of SD and RF amounted to ₹ 8.86 crore.

b. Non-reckoning of Power of Attorney:

For a sale-agreement without delivery of possession of the property under Article 5(e)(ii), SD is levied at 0.1 *per cent* limited to ₹ 20,000, on the consideration. But as per explanation under the Article, when a reference of a power of attorney granted by the seller to the purchaser in respect of the property which is the subject matter of the agreement, is made in the agreement, then the possession of the property is deemed to have been delivered. In such cases, SD is levied at five *per cent* on the market value of the property as envisaged under Article 5(e)(i).

Audit noticed eight³⁰ cases where sale-agreements were accompanied by Power of Attorney which were executed on the same day and registered on the same day at the same SRO. However, neither had the parties mentioned about the execution of the Power of Attorney, in the respective Sale-agreements, nor did the Sub-Registrar reckon the existence of Power of Attorney together with Sale-agreements. This resulted in overlooking the explanatory clause under the Article 5(e)(ii), as per which the possession of the properties were deemed to have been delivered and were to be levied SD at five *per cent* of the market value. But, the Sale-agreements were registered treating them as without-possession, resulting in short-levy of Stamp duty amounting to ₹ 99.93 lakh.

c. Non-reckoning the advance amounts received by the vendors as part of consideration:

During the course of a transaction, the parties concerned may first enter into a sale-agreement documenting the willingness and the value agreed to the transaction. The recitals of the sale-agreements would in addition to the value, also contain the advance amounts passed on from the purchaser, as on that date. Later on the parties would execute the actual sale-deed.

Audit noticed twelve³¹ cases where parties had executed sale-agreements prior to execution of sale-deeds and were registered at the jurisdictional SROs. In all these cases, the purchasers concerned had passed-on certain amounts as advance to the vendors ranging from ₹ 5.00 lakh to ₹ 1.78 crore. All these sale-agreements were succeeded by sale-deeds which were registered at later dates. While executing the sale-deeds the parties concerned had not included the advance amounts already passed-on to the vendors, as part of the consideration, which resulted in suppression of actual value of the transaction. The subsequent short-levy of SD and RF amounted to ₹ 28.88 lakh.

³⁰ SROs-Byatarayanapura, Dasanapura, Hosakote, Jala and Peenya.

³¹ SROs- Hosakote, Hospete, Malleswaram, Mysuru (South) and Ramanagaram.

These cases were brought to the notice of the Department in December 2020. The IGR&CS has replied that the District Registrars concerned have passed final orders for recovery in five cases amounting to ₹ 14.02 lakh and initiated action in the remaining cases under Section 46(A) of the KS Act, 1957 and Section 80(A) of the Registration Act, 1908 (April 2021).

It is recommended to incorporate a system in KAVERI³² to flag the different instruments between the same parties in respect of the same property.

3.6 Short-levy of Stamp Duty and Registration Fee on Joint Development Agreements

Joint Development is an arrangement between a Developer and a Land Owner, where the Developer forms a layout or builds apartments on the land belonging to the Owner. As per the arrangement, the developed layout or the apartments are shared between the Owner and the Developer in agreed ratios and the Developer is entitled to sell his share in the developed property.

As per Article 5(f) and 41(ea) of the Karnataka Stamp Act, 1957, documents pertaining to Joint Development of property are to be levied Stamp Duty at two *per cent* on the market value of the developer's share in the land *or* the market value of the owner's share in the developed property, whichever is higher, including money advanced, if any. Registration Fee³³ is also leviable at one *per cent* ad-valorem on the market value of the property which is the subject matter of development as per Article III(a) of the Registration Act, 1908.

During audit of Nine³⁴ Sub-Registrar Offices (SRO) between February 2019 and December 2019, Audit test-checked 299 JDAs (34 *per cent* out of 879 JDAs) pertaining to the period 2016-17 and 2018-19 and noticed 62 JDAs (20.73 *per cent* of the audited sample) wherein Stamp Duty and Registration Fee were short-levied. The details are as below.

Development of layouts/sites:

In the case of formation of layouts, the land belonging to the owner would either be agricultural or land converted for non-agricultural purposes. The Developer obtains all the necessary approvals from competent authorities³⁵, including conversion in the former case and develops a layout by forming individual sites. As per the Zoning Regulations Act, an area comprising 45 *per cent* of the initial land will have to be utilised/reserved for roads, parks and other civic amenities and sites would be formed in the remaining 55 *per cent* of the land. The market value guidelines prescribe higher values for sites

³² Application used in a Sub-Registrar Office for registration of documents.

³³ Registration Fee limited to ₹ 1.50 lakh upto 14.2.2018.

³⁴ Bommanahalli, Byatarayanapura, Chikkaballapura, Doddaballapura, Ganganagar, Hosakote, Jigani, Srirampura, Yelahanka.

³⁵ Bangalore Development Authority (BDA), Bangalore Metropolitan Region Development Authority (BMRDA), Bangalore International Airport Area Planning Authority (BIAAPA) etc.

approved by competent authorities compared to general sites under the jurisdiction of village panchayats.

Out of the 62 cases stated above, 33 cases pertained to development of layouts. Stamp Duty was to be levied on the owner's share of the developed sites, which was higher in value. In all the cases, the Sub-Registrar while computing the value of sites had not adopted the higher values assigned for sites approved by the competent authority. This resulted in short-levy of SD and RF of ₹ 1.75 crore.

Development of apartments:

In the case of construction of apartments, the developer obtains all the necessary approvals and constructs apartments to the extent approved by the competent authorities.

Out of the 62 cases, the remaining 29 cases pertained to development of apartments. The ratio of sharing between the owner and the developer were mentioned in all the documents. However, it was noticed that the floor area ratio³⁶ (FAR) to determine the total built-up area was mentioned only in 10 cases and in the remaining 19 cases, neither the floor area ratio nor the approximate built-up area were mentioned. The Sub-Registrars concerned had not insisted for the floor area ratio and adopted nominal values to determine the SD and RF payable. The Sub-Registrars had also not considered enhancement of value for commercial complexes as envisaged in the market value guidelines. This was despite circular instructions by the IGR&CS, instructing all the Sub-Registrars to refer such documents to the jurisdictional District Registrars for further proceedings, where the FAR was not mentioned. Audit calculated the built-up area by applying FAR prescribed under the Zoning Regulation Act, 2015 and estimated the value by applying rates as envisaged in the market value guidelines. The consequent short-levy of SD and RF worked out to ₹ 4.84 crore.

These cases were brought to the notice of the Department between March 2019 and January 2020. The IGR&CS has replied that the District Registrars concerned have initiated action in all the cases under Section 46(A) of the KS Act, 1957 and Section 80(A) of the Registration Act, 1908.

It is recommended that the Sub-Registrars may strictly follow the guidelines issued by the IGR&CS and correctly compute the shares in JDA as a significant percentage of JDAs are undervalued.

3.7 Short-levy of Stamp Duty and Registration Fee due to Undervaluation

According to Section 3 of the Karnataka Stamp Act 1957, Stamp Duty is levied on instruments chargeable with duty as prescribed under various Articles in the Schedule of the Act, *ibid*. Under Article 20, for instruments of

³⁶ Floor Area Ratio is the allowable built-up area for a specific parcel of land, prescribed per sq.mtr.

conveyance, Stamp Duty is charged as a percentage of the consideration or of the market value of the property, whichever is higher. Market Value Guidelines are prescribed for properties situated in the State by the Central Valuation Committee under Section 45-B of the Act. This forms the basis for estimation of market value by the Registering Officer while registering documents chargeable with Stamp Duty. A set of Special Instructions is also appended as Annexure-I to the statement of estimated values to deal with specific enhancements in the nature of the property. These instructions are to be correctly applied during valuation to arrive at the proper market value of the property.

During audit of six Sub-Registrar Offices (SROs) between May 2019 and December 2020, Audit noticed short-levy of Stamp Duty and Registration Fee amounting to ₹ 4.81 crore due to adoption of incorrect guidance values, incorrect classification of the nature of the document, non-adherence to Special Instructions, etc. In this connection, Audit had test checked 4,917 documents (6.56 per cent out of 74,898) and noticed the above discrepancies in 25 sale deeds (0.5 per cent of the audited sample). The details are as follows.

a. Non-application of sital rates

The rates of properties are prescribed in the market value guidelines generally under different categories namely, agricultural properties, converted properties, sites and apartments. The rates for agricultural land are prescribed per acre, for converted land which are still un-developed, it is prescribed by enhancing the agricultural rates by fixed percentages and for sites and apartments, in square metres, in increasing order of value respectively. The sital rates are applied wherever the properties are developed. Further, there are special instructions, which prescribe application of sital rates for converted properties conveyed in pieces.

Audit noticed 16 documents³⁷ wherein rates pertaining to converted land were applied even though the properties warranted valuation based on sital rates. In 10 cases, converted properties were conveyed in pieces, in four cases, the lands being conveyed were actually stated to be developed in the recitals of the document itself and in the remaining two cases, specific sital rates were prescribed in the market value guidelines. However, in all these cases, the Sub-Registrars concerned valued the properties by applying rates pertaining to converted un-developed land. This resulted in short-levy of Stamp Duty and Registration Fee of ₹ 4.24 crore.

b. Non-application of enhanced rates

The market value guidelines contain general rates for each area under the jurisdiction of the SRO concerned. In addition, there are a set of special instructions regarding valuation, to be applied depending on specific enhancements in the nature of the property as brought out below.

³⁷ SROs – Ballari, Doddaballapura and Nelamangala.

Prescribed rates of enhancement

Nature of property	Percentage enhancement of general rates
Property converted for residential purposes	65 per cent enhancement
Agricultural property abutting any village road	25 per cent enhancement
Property abutting National Highway	50 per cent enhancement
Property with roads on two sides	10 per cent enhancement
For Commercial sites	30 per cent enhancement
For Commercial buildings	40 per cent enhancement

Audit noticed seven documents³⁸ wherein properties (i) abutting NH, (ii) agricultural properties abutting village roads and properties with roads on two sides (iii) property converted for residential purpose and (iii) commercial properties; were conveyed. All these cases warranted enhancement of general rates by percentages prescribed, but were valued at general rates instead. This resulted in short-levy of Stamp Duty and Registration Fee of ₹ 52.49 lakh.

c. Adoption of incorrect values

The market value guidelines prescribe general rates for all the areas within its jurisdiction and specific rates for individual properties wherever possible. These values are to be correctly applied while estimating the value of a property being conveyed.

Audit noticed two cases³⁹ where incorrect rates were applied during valuation of the properties. In one case, incorrect rates were adopted which led to undervaluation. In the other case, two values were depicted in the document, one pertaining to consideration passed on from purchaser to vendor and the other was the value on which stamp duty and Registration Fee were being paid, which was higher. In this case, the SRO valued the document based on the consideration passed on, which was lesser in value. Thus, error in identifying the correct rates for valuation led to short-levy of Stamp Duty and Registration Fee of ₹ 3.54 lakh.

The errors in valuation of the documents brought out in the above sub paragraphs occurred, since the SROs concerned had overlooked the special instructions prescribed for enhancement of general rates wherever applicable.

These cases were brought to the notice of the Department between June 2019 and February 2020. The IGR&CS has replied that the District Registrars concerned have initiated action in all the cases under Section 46(A) of the KS Act, 1957 and Section 80(A) of the Registration Act, 1908.

It is recommended that the Department may judiciously utilise the market value guidelines to enhance revenue realised through Stamp Duty and Registration Fee.

3.8 Short-levy of Stamp Duty and Registration Fee on Gift Deeds

As per Section 122 of the Transfer of Property Act, Gift is the transfer of certain existing moveable or immoveable property made voluntarily and

³⁸ SROs – Kolar, Maadanayakanahalli, Nelamangala and Srirampura.

³⁹ SRO, Kolar.

without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

The Stamp Duty and Registration Fee are charged on a Gift deed as per Article 28 of the schedule to the Karnataka Stamp Act, 1957 and Note 11 under Article I of the Registration Act, 1908, respectively, as detailed below:

- i) Where the Gift is *not* between family members, SD is charged at five *per cent* and RF at one *per cent* on the market value of the property.
- ii) Where the Gift is between family members, SD is charged at fixed rates⁴⁰ ranging from ₹ 1,000 to ₹ 5,000 depending on the place where the property is situated and RF at a fixed rate of ₹ 500;

Family is defined in Explanation⁴¹ below the Article.

During audit of two Sub-Registrar Offices⁴² (SROs) in February and October 2019, audit test checked 49 documents (2.32 *per cent* out of 2105) titled as Gift deeds and noticed seven cases (14.28 *per cent* of the audited sample) of short-levy of SD and RF as detailed below.

a. Gift between distinct entities:

Audit noticed four cases in the above two SROs, wherein SD and RF was charged at fixed rates treating the documents as between family members. Scrutiny of the documents revealed that in one case, a person had gifted property to a temple trust represented by the same person as Chairman and in the other three cases, property belonging to an industry was gifted by its proprietor to his three sons through three Gift deeds. In both the above instances the donors were merely representing the entities and the transaction was not in their personal capacities. Hence, the documents were to be treated as *not* between family members and SD and RF had to be charged as at (i) above on the market value of the properties. Consequent short-levy of SD and RF amounted to ₹ 1.12 crore. Audit further adds that documents relating to Gift may be reviewed to avoid short-levy of SD and RF due to deliberate misclassification between family and non-family members.

b. Application of incorrect rates:

Audit noticed three cases in SRO, Jigani where properties were transferred to non-family members through Gift deeds. In one instance, a person had gifted property to two of his neighbours through two Gift deeds, and in the other instance a person had gifted a property jointly to his Sister and Son-in-law. All the three documents were registered by collecting SD and RF on the market value of the properties. But the market values were estimated by applying incorrect rates. This resulted in undervaluation and subsequent short-levy of SD and RF of ₹ 1.30 lakh.

⁴⁰ Within BBMP, BMRDA or City Corporation limits-₹5000; within City, Town Municipal Council or Town Panchayath Area-₹3,000; and other than these two limits-₹1000.

⁴¹ Explanation under Article 28 defines Family in relation to the donor for the purpose of Gift deed as – Father, Mother, Husband, Wife, Son, Daughter, Daughter-in-law, Brothers, Sisters and Grand Children.

⁴² SROs – Jala and Jigani.

These cases were brought to the notice of the Department in July 2020 and referred to the Government in December 2020. The IGR&CS has replied that the District Registrars concerned have initiated action in all the cases under Section 46(A) of the KS Act, 1957 and Section 80(A) of the Registration Act, 1908 (April 2021).

It is recommended that the Sub-Registrars may adhere to the definition of 'family' while charging duty on Gift deeds comprising of family and non-family members.



Bengaluru
The 03 SEP 2021

(Shanthi Priya S)
Principal Accountant General (Audit-I)
Karnataka

Countersigned



New Delhi
The 08 SEP 2021

(Girish Chandra Murmu)
Comptroller and Auditor General of India