

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 Additional Chief 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
2016-17	823	6.30	154	24.22	669	3.88
2017-18	653	6.96	125	1.54	529	5.02
2018-19	700	10.18	78	0.26	632	9.92
2019-20	270	1.24	31	0.06	239	1.18
2020-21	286	10.25	28	0.29	263	10.13
Total	2,732	34.93	416	26.37	2,332	30.13

Source: Information furnished by the Department.

As seen from the above, 2,332 observations involving ₹ 30.13 crore were pending settlement as on 31 March 2021. Early action may be taken to settle the pending observations.

3.3 Results of Audit

There are 288 auditable units in the Department of Stamps and Registration. Out of these, audit selected 48 units for test check wherein 14.77 lakh documents were registered. Out of these, Audit test checked 1.47 lakh documents (9.95 per cent) during the year 2020-21 and noticed 565 cases of short-levy of Stamp Duty and Registration Fee due to undervaluation, non-disclosure 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 ₹ 154.25 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	51	67.17
2.	Short-Levy SD and RF due to non-disclosure of consideration	09	6.93
3.	Short-levy of SD and RF on Development agreements	17	14.51
4.	Short-levy of SD and RF due to misclassification of documents	27	53.23
5.	Other irregularities	32	12.41
	Total	136	154.25

During the year an amount of ₹ 13.58 crore was recovered in 72 paragraphs pointed out in earlier years.

A few illustrative cases of non/short realisation of Stamp Duty and Registration Fee involving ₹ 41.46 crore are discussed in the following paragraphs.

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

As per Section 3 of the Karnataka Stamp Act 1957, Stamp Duty is charged on instruments as prescribed under various Articles in the Schedule of the Act, *ibid*. The Stamp Duty and Registration Fee payable on a document is determined based on the value of the properties and the classification of the documents under relevant Articles of the Karnataka Stamp Act, 1957 and the Registration Act, 1908. On presentation of a document for registration, the Sub-Registrar classifies the document under the relevant Article, estimates the value of the document and communicates the stamp duty payable, to the parties concerned. Thereafter, on payment of stamp duty and registration fee, the documents are registered.

During audit of four Sub-Registrar Offices (SROs) at BTM Layout, J.P.nagar, Hebbal and Rajarajeshwarinagar between June 2019 and September 2020, Audit test checked 428 documents (19.94 *per cent* out of 2,146 documents) and noticed eight cases of short-levy of Stamp duty and Registration Fee due to misclassification of documents pertaining to Power of Attorney, Sale-agreement, and Release-deed. The details are as below.

Power of Attorney:

Under clauses (a) to (d) of Article 41, Stamp duty is charged at a 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. Further, for documents relating to development of a property, Stamp Duty is levied at two

per cent as per clause (ea). Some illustrative cases where the above have been violated are given below:

Case-1: SRO, Hebbal: Audit noticed (June 2019) a document titled *joint development agreement* (pertaining to the period 2018-19) wherein the parties concerned had agreed to develop the property belonging to the owner. However, details of the developed area or the sharing ratio of the developed property were not mentioned in the document. As per the recitals, the consideration was partly paid (₹ 4.14 crore) as advance (June 2018) and the remaining was to be paid from the proceeds of the sale of developed property. This document was accompanied by a Power of Attorney through which the owner had authorised the parties concerned to sell the immovable property as a whole. The Sub-Registrar classified the document as a joint development agreement under Article 5 (f) being accompanied by a Power of Attorney under Article 41 (ea), and levied Stamp Duty as applicable to development agreements at two *per cent* on the consideration stated in the document, instead of classifying under Article 41 (eb). Thus, the Sub-Registrar overlooked the recitals in the Power of Attorney authorising the Attorney to sell the property as a whole and misclassified the document, leading to short-levy of Stamp Duty and Registration Fee of ₹ 12.42 lakh.

Case-2: SROs- BTM Layout and J.P.nagar: In another five documents, the Owners of immovable properties had authorised their respective Attorneys to sell the immovable properties depicted in the documents. Hence, these were to be classified under Article 41 (eb). However, the SROs concerned classified these documents under other sub-clauses and levied stamp duty at nominal rates (₹ 200 to ₹ 1000) instead of levying at five *per cent* which resulted in short-levy of Stamp Duty and Registration Fee of ₹ 13.06 crore.

Thus, in the above six cases, misclassification between the sub-clauses in Article 41 led to short-levy of Stamp Duty and Registration Fee amounting to ₹ 13.18 crore.

Sale-Agreement:

Under Article 5 (e) 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 delivery of possession, then Stamp Duty is to be levied at 0.1 *per cent* limited to ₹ 20,000. However, as per Explanation-I under the Article, when a reference of a Power of Attorney granted separately by the seller to the purchaser with respect to the same property is made in the Sale Agreement, then the possession of property is deemed to have been delivered and Stamp Duty has to be charged at five *per cent*.

During audit of SRO, BTM layout, Audit noticed one Sale Agreement wherein the parties had mentioned that they had executed a Power of Attorney in favour of the purchaser with respect to the property mentioned in the Sale Agreement. Since, a reference of the Power of Attorney was brought out in the Sale Agreement, the document had to be charged Stamp Duty at five *per cent*

considering the possession of property as deemed to have been delivered. However, the Sub-Registrar concerned charged Stamp Duty at nominal rates limited to ₹ 20,000. This led to short-levy of Stamp Duty of ₹ 81.02 lakh.

Release-deed:

Article 45 of the Schedule to the Karnataka Stamp Act, 1957 relates to Release Deeds, whereby a person renounces a claim upon another person or against a specified property. It has two sub-clauses (a) and (b) differentiating between family and non-family members. Family for the purpose of this Article is defined below the Article. For a Release-Deed between family members, Stamp Duty is charged at fixed rates ranging from ₹ 1000 to ₹ 5000 depending on the place where the property is situated. For a Release-Deed between non-family members, Stamp Duty is charged at five *per cent* and Registration Fee at one *per cent* on the market value of the property or portion of the property released.

During audit of SRO, Rajarajeshwarinagar, Audit noticed a Release Deed wherein parties within, as well as outside the definition of family, had released their portions in an immovable property worth ₹ 12.03 crore. The Releasers constituted four branches of a family/extended family, out of which two branches were represented by cousins to the Releasee. Hence, as per the definition provided in the Article, these two portions were outside the definition of family. However, the Sub-Registrar classified the document as between family members and levied Stamp Duty at fixed rates instead of levying the same at five *per cent* on the portions pertaining to the non-family members. This led to short-levy of Stamp Duty and Registration Fee of ₹ 71.23 lakh.

Thus misclassification in the above eight cases in four SROs led to short-levy of Stamp Duty and Registration Fee amounting to ₹ 14.71 crore.

These cases were brought to the notice of the Department/Government during October 2021 and January 2022. In reply, the Government stated 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 (September 2022).

It is stated that the cases may be finalised within time and final action taken may be intimated to Audit.

It is recommended that the IGR&CS may institute a mechanism for periodic review of documents alongwith enclosures to mitigate the risk of misclassification and avoid evasion of Government revenue.

3.5 Short-levy of Stamp Duty and Registration Fee due to non-disclosure 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 (between April 2019 and September 2020) of six Sub-Registrar Offices (SROs), at BTM Layout, Devanahalli, Doddaballapura, Hebbal, Kacharakanahalli and Laggere, Audit test checked 8,146 documents (18.23 *per cent* out of 44,671 documents) and noticed 10 cases (0.12 *per cent* of the audited sample) of short-levy of Stamp Duty and Registration Fee due to non-disclosure of actual value by the parties concerned, not disclosing the existence of buildings and 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 one document each in three SROs, ie., BTM Layout, Devanahalli and Laggere, which were registered by levying Stamp Duty and Registration Fee on the consideration stated in the document and 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 building was not disclosed in the Sale Deed, but documented in a subsequent Mortgage Deed executed on the same day. In the second case, a Power of Attorney with powers to sell was executed by depicting the property as agricultural land, whereas a subsequent Sale-Deed revealed that the property was developed into sites much before the Power of Attorney was executed. In the third case, the fact of conversion for commercial purpose and approval from the competent authority were noticed in the marginal notes of the tax-paid receipt.

In all these cases, the value of the documents were enhanced due to the disclosures as above, but since they were levied Stamp Duty and Registration Fee based on the value stated in the document, the resultant short-levy of Stamp Duty and Registration Fee amounted to ₹ 1.00 crore.

b. Non-reckoning of Power of Attorney:

For a Sale Agreement without delivery of possession of the property under clause (e)(ii) of Article 5, Stamp Duty is levied at 0.1 *per cent*, limited to ₹ 20,000, on the consideration. But as per Explanation under this clause, 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, Stamp Duty is levied at five

per cent on the market value of the property, as envisaged under the preceding clause (e)(i) of Article 5.

Audit noticed (between April 2019 and September 2020) seven cases in four SROs, ie. Devanahalli, Doddaballapura, Hebbal and Kacharakannahalli, where Sale Agreements were accompanied by documents of Power of Attorney. In six cases, the Sale Agreements and the Power of Attorney 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 Explanation under clause (e)(ii) of Article 5, as per which the possession of the properties were deemed to have been delivered and were to be levied Stamp Duty at five *per cent* of the market value.

In one case, a Power of Attorney with powers to sell the property was executed eight months after the execution of a Sale Agreement. However, the Power of Attorney was valued based on the guideline value, whereas the value of the property as depicted in the Sale Agreement was higher. Since the Power of Attorney related to the same property, the document should have been valued based on the value depicted by the parties concerned. The resultant short-levy of Stamp Duty and Registration Fee amounted to ₹ 70.00 lakh.

Thus, non-disclosure of actual value/existence of building and Power of Attorney in the above ten cases at (a) and (b), in six SROs led to short levy of Stamp Duty and Registration Fee amounting to ₹ 1.70 crore.

These cases were brought to the notice of the Department/Government during September 2021 and January 2022. The replies and action taken in the cases, as given by the Government are brought out below.

Table:3.3
Action taken by the Department

Sl. No.	No. of cases	Action taken
1	(2 documents) 1 Sale Deed and 1 Power of Attorney	The amount (₹ 34.12 lakh) as brought out in the paragraph was recovered (June 2020 and March 2021).
2	(1 document) Power of Attorney	Subsequent to the Sale Agreement, a Sale Deed was registered (December 2020) wherein proper Stamp Duty was paid.
3	(4 documents) 2 Sale Deeds and 2 Sale Agreements	The District Registrars concerned have initiated action under Section 46(A) of the KS Act, 1957 and Section 80(A) of the Registration Act, 1908 (March 2022).
4	(3 documents) Sale Agreements	The District Registrar did not accept the audit observation and closed the cases without recovery, stating that, for possession deemed to have been delivered; (i) the explanation under clause (e)(ii) required the mention of Power of Attorney to be made in the Sale Agreement; and (ii) the Power of attorney itself should be with powers to sell the property.

The reply in respect of Sl.No.4 in the above Table is not accepted since the observation is regarding non-disclosure of facts, wherein the parties concerned had not disclosed the Power of attorney in the Sale Agreement even though it

existed, as evident by its registration. Secondly, the Explanation under clause (e)(ii) does not make any distinction between Powers of Attorney, whether they are with or without powers to sell the property. Hence, it envisages levy of Stamp Duty at five *per cent* for existence of a Power of Attorney along with a Sale Agreement.

It is recommended to incorporate a system in KAVERI to flag the different instruments between the same parties in respect of the same property and to disclose the correct value of the property, so as to assist the Sub-Registrar during registration.

3.6 Short-levy of Stamp Duty and Registration Fee due to undervaluation

As per Section 3 of the Karnataka Stamp Act 1957, Stamp Duty is charged on instruments as prescribed under various Articles in the Schedule of the Act, *ibid*. On presentation of a document for registration, the Sub-Registrar estimates the value of the document based on the market value guidelines published by the Central Valuation Committee (CVC) and communicates the Stamp Duty payable, to the parties concerned. The documents are registered on payment of Stamp Duty and Registration Fee. On communication of the value, if the parties to the document disagree with the value so estimated, the Sub-Registrar shall keep the process of registration pending as per Section 45 (A) and refer the matter along with a copy of the document to the jurisdictional District Registrar, for determination of market value and proper duty payable. Further, as per special instructions appended to the market value guidelines, if specific values are not prescribed in case of new projects relating to layouts, apartment, etc., it has to be referred to the CVC for fixation of specific guidance values.

During audit of three²⁷ District Registrar Offices (DROs) between August 2020 and July 2021, Audit test checked 663 documents (75 *per cent* out of 883 documents) which were referred to the District Registrars by the Sub-Registrars under their jurisdiction and noticed eight documents (1.2 *per cent* of the audited sample) which were undervalued, overlooking the nature of the property and non-reckoning of existence of buildings as detailed below.

a) Acquisition of share by the developer in the developed property:

In a joint development of land, a developer develops the land belonging to the owner and in return gets the right to sell a portion of the developed property (developer's share). In this arrangement, usually a Joint Development Agreement is executed along with a Power of Attorney at the beginning of the project, assigning the share of the developed property between the owner and developer. It also empowers the developer to develop the property and subsequently sell the developer's share. After completion of the project, the respective shares in the developed property are sold either as a whole or individually to prospective customers by execution of Sale-Deeds. In such an arrangement, Stamp Duty is levied at two instances. The first time, on either

²⁷ DROs-Basavanagudi, Gandhinagar and Jayanagar.

the Joint Development Agreement or the Power of Attorney at lesser rates (at a ceiling of 1.50 lakh during 2010-11 to two *per cent* currently) at the beginning of the project, and then the second time on the sale-deed at five *per cent*, during subsequent sale when the title of the property is transferred.

During audit of DRO, Gandhinagar, it was noticed that a Sale-Deed executed in 2018 was referred by the SRO, Gandhinagar (September 2018) to the District Registrar under Section 45(A), stating that the property (commercial complex) being transferred in the Sale-Deed was a new project and the CVC had not yet prescribed specific guidance values to estimate the value. The District Registrar did not refer the case to the CVC for fixation of specific guidance values even though it was a new project, but passed orders under Section 45(A).

Audit verified the Sale-Deed and found that the Sale-Deed was between an Owner and a Developer. This Sale-Deed was preceded by a Joint Development Agreement and a general Power of Attorney executed during 2010 and Stamp Duty of ₹ 1.50 lakh and ₹ 200 respectively had been paid. As per the Joint Development Agreement (hereafter referred to as “the Agreement”), the Owner and the Developer had agreed to construct a 23 storeyed commercial complex and identified their respective shares. After completion of the project, the ownership of the entire built-up area stood in the name of the Owner as evident from the Khata extract. Now, through this Sale-Deed the portion of the property identified as the Developer’s share was being conveyed to the Developer itself. However, in the recitals of the document, it was stated as conveyance of only the un-divided share of the land measuring 36,283 square feet, since the cost of the built-up area was borne by the developer. In addition, the built-up area existing on the land was shown as already owned by the Developer by depicting it as an annexure to the schedule of the document. The Stamp Duty and Registration Fee were also paid on the market value of the land alone. The District Registrar, while estimating the value of the property conveyed in the document, accepted the position stated by the parties concerned and passed orders, stating that the Stamp Duty paid was correct. This had the effect of transfer of immovable property (built-up area measuring 1,67,977 square feet) without executing a Conveyance-Deed and levy of proper stamp duty.

In this case, firstly, the Agreement along with the general Power of Attorney authorised the developer only to sell his share and collect the proceeds of such sale. The Agreement does not transfer the ownership of either the undivided share of the land or the built-up area to the developer. Title to a property is transferred only through a proper conveyance. Hence, the contention of the parties that the developer already owned the built-up area and only undivided share was being transferred is incorrect and should not have been accepted. Secondly, the cost of construction stated to have been borne by the Developer was effectively the value of the built-up area, which was to be borne by any prospective customer to acquire title of the property, irrespective of whether it was the Developer or any other buyer. Hence, whenever a sale takes place after construction of any apartment complex, Stamp Duty invariably would have to be levied on the built-up area, irrespective of the buyer.

In the above case, the District Registrar accepted the statements of the parties concerned and omitted to estimate the value of the built-up area, thereby allowing the parties to pay Stamp Duty only on the market value of land and acquire ownership of the fully constructed units of the commercial complex. The value stated by the parties for the land, based on the guidance value was ₹ 94.00 crore and Stamp Duty and Registration Fee of ₹ 6.20 crore were paid. However, the value of the fully constructed commercial complex earmarked as developer's share, based on general rates amounted to ₹ 285.39 crore on which Stamp Duty and Registration Fee of ₹ 18.83 crore had to be levied. The resultant short-levy of Stamp Duty and Registration Fee amounted to ₹ 12.63 crore.

b) Sale of developed property to individual buyers:

In continuation of the above case, Audit noticed four more Sale-Deeds related to the same commercial complex which were referred to the District Registrar under Section 45(A) since specific guidance values were not prescribed. Through these Sale-Deeds, ownership of portions of the commercial complex were conveyed to individual buyers. However, the parties to the document had estimated the value of only the undivided share of land and paid stamp duty accordingly. In the recitals, the parties had stated that they had entered into a Sale Agreement for sale of undivided share of land with the land Owner and a Construction Agreement with the Developer and that through this Sale-Deed, they were obtaining the constructed area by virtue of getting ownership of undivided share of land.

Audit reiterates that ownership of either the land or the built-up area cannot be transferred merely by an Agreement and title to a property can be transferred only through a proper conveyance. In these cases, after completion of the project, the entire property with floor-wise demarcation stood in the name of the land Owner and not the Developer, as evidenced by the Khata-extract issued by the Bruhat Bengaluru Mahanagara Palike (BBMP).

In the above cases, the District Registrar did not accept the statements made by the parties to the document and estimated value of the entire built-up area which was being conveyed through the document. However, the District Registrar while estimating the market value of the portions of the commercial complex being conveyed, stated in his orders that the general rates available in the market value guidelines cannot be adopted for this project. He stated that traffic was allowed only one-way on Palace Road and hence, the complex was not easily accessible and also that the area was polluted due to vehicular movement. Due to these reasons, the District Registrar adopted the rate at ₹ 10,000 per sq.ft which was lesser than the general rates prescribed in the market value guidelines.

The reasons stated above by the District Registrar for reduction in value were not justified since this property was situated right in the midst of the city and surrounded by renowned landmarks²⁸. The commercial complex had ease of

²⁸ Vidhana Soudha, Raj Bhavan, Golf Course, Taj West End-a five star hotel, etc, which were within 1 km radius.

connectivity and had all amenities including two basements for car-parking, a food court and a helipad.

Audit compared the rates prescribed in the market value guidelines for the area and found that the general rates (₹ 12,505/sq.ft) prescribed for that area were rates as applicable to residential units. The specific rates (₹ 14,000/sq.ft) prescribed for other residential apartments in the area were more than the general rates. On a conservative estimate adopting the general rates, the resultant short-levy of Stamp Duty and Registration Fee in the above four cases amounted to ₹ 2.13 crore. It was also noticed that specific rates for the commercial complex were not prescribed even after the subsequent revision of market value guidelines in the jurisdiction of Gandhinagar, Bengaluru.

It is recommended that prominent projects in the jurisdiction of Gandhinagar may be identified and specific rates may be prescribed on priority.

c. Non-reckoning of existence of Building:

On receipt of a document under Section 45(A) for determination of proper market value, the District Registrar shall make such enquiries, call for and examine all relevant records and then estimate the market value of the property being conveyed in the document.

During audit of two²⁹ DROs, Audit noticed three documents which were referred to the District Registrar by the jurisdictional Sub-Registrars wherein the properties were undervalued. In one case referred by SRO, Banashankari, the District Registrar estimated the value of the property considering the property as residential site, whereas the tax-paid receipt of the property revealed that it was a non-residential property with a building of 3800 sq.ft existing in the site.

The remaining two cases pertained to two different Sale-Deeds relating to a single property presented for registration at two different junctures. The first Sale-Deed (November 2017) related to purchase of a property by a party from a Housing Society. The party concerned stated that the property had odd measurements and did not have symmetrical dimensions. On receipt of the document (2018-19) for estimation of value, the District Registrar fixed the base rate for the land at ₹ 5,000 which was lower than the guidance values, considering the statements made by the party. This rate was enhanced by 10 *per cent* for being a corner site and finalised the value of the property at ₹ 2.66 crore. However, the tax-paid receipt issued by the BBMP as well as the subsequent Sale-Deed revealed that the property had an existing building and that the land was commercial in nature. This required an enhancement by 40 *per cent* for commercial use and addition of value of the building. However, this was not reckoned by the District Registrar. Based on the rate fixed by the District Registrar, the total value of the property, after enhancement for commercial use and value of the building, amounted to ₹ 4.09 crore.

After two years from the first Sale-Deed the property was again transacted through a Sale-Deed (January 2019) wherein 95 *per cent* of share in the property was being conveyed to different purchasers. The document was again

²⁹ Basavanagudi and Jayanagar.

referred to the District Registrar by the SRO concerned. While referring the case to the District Registrar, the Sub-Registrar had initially valued the property considering both the land as well as the building at ₹ 4.08 crore. The parties concerned again stated that the property did not have symmetrical dimensions. The District Registrar considering the statement of the parties reduced the total value of the property by ₹ 5.00 lakh. However, it was noticed that the base rates considered by the SRO during initial valuation were residential rates. The value of the property after enhancement by 40 per cent for commercial use amounted to ₹ 5.47 crore.

These omissions by the District Registrar in the above three cases resulted in undervaluation of the properties being conveyed and resultant short-levy of Stamp Duty and Registration Fee amounting to ₹ 32.83 lakh.

Thus, undervaluation in the above eight cases in four DROs led to short-levy of Stamp Duty and Registration Fee amounting to ₹ 15.09 crore.

These cases were brought to the notice of the Department and the Government during December 2021 and March 2022. In reply, the Government stated that the District Registrars concerned have been instructed to forward the copies of the orders issued by them alongwith related documents for verification by the IGR&CS (March 2022).

It is recommended that the District Registrars may follow the procedures as laid out in Rule 4(3) and 5(3) of the Karnataka Stamp (Prevention of undervaluation etc.) Rules, 1977, to

- *collect all relevant information with regard to the property being conveyed;*
- *conduct inspection of the property; and*
- *determine the market value of the property based on its location, special features and advantages if any.*

3.7 Non-levy of additional Stamp Duty

As per Section 3 of the Karnataka Stamp Act 1957, Stamp Duty is charged on instruments as prescribed under various Articles in the Schedule of the Act, *ibid.* For instruments relating to amalgamation/reconstruction or demerger of companies wherein two or more companies are merged together or a subsidiary is merged with the parent company, stamp duty is levied as per Article 20(4) of the schedule, either on the aggregate value of shares issued/cancelled or the market value of the property of the transferor company³⁰, whichever is higher³¹. On instruments of conveyance³², the Act further prescribes that as per Section 3(B), an additional duty chargeable at ten

³⁰ Transferor company-The company which is dissolved and merges with another company.

Transferee company-The company into which other entities merge or the resultant company in case of reconstruction.

³¹ Stamp duty calculated at one per cent of the aggregate value of shares issued/cancelled or three per cent (two per cent upto March 2016) on the market value of the property of the transferor company, whichever is higher.

³² Conveyance includes, *inter alia*, instruments of amalgamation wherein immovable property gets transferred from the transferor company to the transferee company.

per cent of the original duty, for the purpose of various infrastructure projects across the State is to be levied.

During audit of the Office of the Inspector General of Registration and Commissioner of Stamps (IGR&CS) and the District Registrar, Bengaluru Rural during August 2020 and August 2021, Audit test checked 132 documents (100 *per cent* out of 132 documents) and noticed eight documents (6.06 *per cent* of the audited sample) wherein additional duty as per Section 3B of the Act was not levied.

The above eight documents related to amalgamation of companies under Section 394 of the Companies Act, 1956 and were referred by the Honourable High Court of Karnataka/ National Law Tribunal to the IGR&CS for valuation and determination of proper Stamp Duty payable. The IGR&CS in turn referred the cases to the jurisdictional District Registrars³³ concerned, under whose jurisdictions the immovable properties of the respective companies were situated. The District Registrars concerned assessed the value of the immovable property of the transferor company being transferred to the transferee company in all the cases and levied Stamp Duty at rates applicable under Article 20(4).

Audit verified these cases and noticed that in all the cases, the District Registrars while comparing the value of the shares with the value of the immovable property, had valued the shares at face value as stated in the documents of amalgamation. There was no mention of valuation of shares by any valuers, since these companies were not listed in the Stock exchanges. Hence, the District Registrars valued the document based on value of the immovable properties at ₹ 449.29 crore and levied stamp duty of ₹ 10.99 crore as per rates prescribed. However, the District Registrars concerned omitted to levy additional stamp duty in all the eight cases.

Out of the eight cases, Audit further noticed in one case that the District Registrar had also omitted to reckon the existence of buildings on the sites being transferred to the transferee company. In this case, the immovable properties of the transferor company comprised of ten individual sites with buildings existing in nine of them as ascertained through the e-swathu³⁴ portal. The District Registrar concerned valued the sites excluding the buildings in nine cases and in the remaining case, valued the land at agricultural rate even though the parties had mentioned it as a site in the schedule appended to the deed of amalgamation.

Hence non-levy of additional Stamp Duty and undervaluation of immovable property in the above cases led to short-collection of revenue amounting to ₹ 1.87 crore.

These cases were brought to the notice of the Department and the Government during December 2021 and March 2022. In reply, the Government stated that the District Registrars concerned had issued notices in all the cases and as a

³³ Districts Registrars – Basavanagudi, Bengaluru (Rural), Koppal and Jayanagar.

³⁴ Application used in the panchayath offices for registration of properties.

result recovered additional Stamp Duty amounting to ₹ 44.20 lakh in three cases (September 2022).

It is recommended that the IGR&CS may instruct all the DRs to strictly apply Section 3B and collect additional Stamp Duty in all types of conveyance envisaged in the Act.

3.8 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 Fee³⁵ 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 nine³⁶ Sub-Registrar Offices (SRO) between June 2019 and September 2020, Audit test-checked 196 Joint Development Agreements (JDAs) (46.33 *per cent* out of 423 JDAs) pertaining to the period between 2016-17 and 2019-20 and noticed the Stamp Duty and Registration Fee were short-levied in 70 JDAs (36 *per cent* of the audited sample). 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 authorities³⁷, 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 approved by competent authorities compared to general sites under the jurisdiction of village panchayats.

³⁵ Registration Fee limited to ₹ 1.50 lakh upto 14.2.2018.

³⁶ BTM layout, Devanahalli, Kolar, Jala, Rajajinagar, Rajarajeshwarinagar, Shanthinagar, Tavarekere, Yeshwanthpur.

³⁷ Bangalore Development Authority (BDA), Bangalore Metropolitan Region Development Authority (BMRDA), Bangalore International Airport Area Planning Authority (BIAAPA) etc.

Out of the 70 cases stated above, 32 cases pertained to development of layouts. In 13 out of these 32 cases, even though the lands were converted to non-agricultural status, the Sub-Registrar adopted general rates without enhancing the rates as envisaged in the market value guidelines. In the remaining cases, incorrect rates were adopted while computing the value of sites. This resulted in short-levy of Stamp Duty and Registration Fee of ₹ 1.47 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.

In the 38 cases pertaining to the 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 ratio³⁸ (FAR) to determine the total built-up area was mentioned only in 21 cases and in 16 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 Stamp Duty and Registration Fee payable. 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. The Sub-Registrars had also not enhanced the value for converted lands, commercial complexes, sites abutting main roads etc. as envisaged in the market value guidelines. In one case, subsequent to a JDA, a Supplementary Deed was registered after completion of project, whereby the Owner's share was enhanced compared to the share as per the original JDA. However, Stamp Duty was not levied on the value of the increased share, but levied at nominal rates instead.

It was also noticed, in 11 cases that the levy of Registration Fees was limited to ₹ 1.50 lakh even though the limitation had been removed with effect from 18 February 2018, as per notification³⁹ dated 15.2.2018.

Audit estimated the value by applying rates as envisaged in the market value guidelines. The consequent short-levy of Stamp Duty and Registration Fee worked out to ₹ 6.62 crore.

Thus, the above omissions by the Sub-Registrars concerned while registering the documents pertaining to development agreements led to short-levy of Stamp Duty and Registration Fee amounting to ₹ 8.09 crore.

These cases were brought to the notice of the Department and the Government during October 2021 and March 2022. The Government stated that in all the cases, the District Registrars concerned had initiated action under Section 46A of the KS Act and 80 A of the Registration Act and in one case, amounting to ₹ 24.84 lakh, the District Registrar concerned had passed final orders and

³⁸ Floor Area Ratio – is the allowable built-up area for a specific parcel of land, prescribed per sq.mtr.

³⁹ Notification no.RD 81 MUNOMU 2017 dated 15.2.2018.

referred to the Deputy Commissioner for recovery as arrears of land revenue (September 2022).

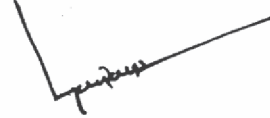
It is recommended that the Sub-Registrars may strictly follow the guidelines issued by the IGR&CS and judiciously apply the guidance market value during valuation of JDAs.



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