

CHAPTER-III: Stamp Duty and Registration Fee

3.1 Results of audit

Test check of records of various registration offices conducted in audit during the year 2005-06 revealed non/short levy of stamp duty and registration fee amounting to Rs.22.10 crore in 8,349 cases which broadly fall under the following categories:

Sl. No.	Nature of irregularity	Number of cases	Amount (Rupees in crore)
1.	Short levy of stamp duty due to under valuation of property	701	7.72
2.	Short levy of stamp duty due to misclassification of deeds	1,788	4.13
3.	Irregular exemption of stamp duty and registration fee on mortgage deeds	3,266	0.40
4.	Miscellaneous irregularities	2,594	9.85
	Total	8,349	22.10

During the year 2005-06, the department accepted under assessments of Rs.13.19 crore involved in 5,878 cases. An amount of Rs.0.07 crore in 108 cases had been recovered of which Rs.0.06 crore in 91 cases pertains to earlier years.

A few illustrative cases highlighting irregularities involving financial effect of Rs.7.25 crore are mentioned in this chapter.

3.2 Evasion of stamp duty due to non execution of conveyance deeds

3.2.1 Under the Indian Registration Act, 1908, all instruments relating to sale or lease of immovable property for any term of one year or more are required to be registered compulsorily. As per the Indian Stamp Act, 1899 (IS Act), “conveyance” includes conveyance on sale and every instrument by which property, whether movable or immovable, is transferred. Thus instruments of transfer of immovable property are required to be registered compulsorily and are leviable to stamp duty on the consideration enumerated in the instrument. Besides, registration fee is also chargeable. Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 and condition 13 of allotment letter by HUDA to allottees provide that on payment of 100 *per cent* of the tentative price of the land/building, the transferee shall execute a conveyance deed in the prescribed form. In case conveyance deed is not executed, HUDA can resume the allotted plots/commercial sites and forfeit the whole or any part of the money, if any paid, in respect thereof but not exceeding 10 *per cent* of the total consideration money. Stamp duty at the rate of six *per cent* is leviable from 2004-05.

Test check of records of six* estate offices of HUDA revealed between October 2005 and January 2006 that HUDA allotted 4,592 plots/commercial sites and handed over possession during the period between May 1972 and May 2002. Of these, 2,155 allottees had paid full consideration of Rs.50.18 crore to HUDA but conveyance deeds were not got registered with the registering authorities (RAs). Government has not evolved any mechanism to ensure that conveyance deeds in such cases where full payment on account of sale of plots have been received by HUDA are got registered by the transferees with the registration department to check the evasion of stamp duty. Non execution of conveyance deeds deprived State Government of revenue of Rs.4.01 crore in the shape of stamp duty. Besides, registration fee of Rs.9.79 lakh is also chargeable.

After this was pointed out between October 2005 and January 2006, three** estate officers stated in June 2006 that conveyance deeds had been got executed by 44 (out of 1,489) allottees by making payment of stamp duty of Rs.7.24 lakh (including registration fee) and notices issued to remaining 1,445 allottees. Remaining three*** estate officers stated in February and June 2006 that efforts were being made for execution of conveyance deeds in 666 cases.

The matter was referred to Government in January 2006; their reply had not been received (August 2006).

* Ambala, Faridabad, Gurgaon, Karnal, Kurukshetra and Panchkula.

** Ambala, Karnal and Kurukshetra.

*** Faridabad, Gurgaon and Panchkula.

3.2.2 As per hire purchase tenancy agreement of the Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulations, 1972 (HPTA), the owner of property after the expiry of the hire purchase period shall execute a conveyance deed to transfer the said property to the hirer in the prescribed form provided that the hirer has paid all the dues to the owner/the public bodies, if any, prior to such execution. In case the conveyance deed is not executed, the Housing Board Haryana (HB) can resume the property.

During test check of records of the offices of nine* estate managers, HB, it was noticed between October 2005 and January 2006 that 5,036 built up houses/commercial buildings were allotted under hire purchase arrangements and the possession was handed to the allottees between December 1973 and April 2005. Of these, 2,961 allottees had paid full consideration of Rs.35.26 crore to HB but conveyance deeds were not got registered with the RAs under the Act though registration of these documents was compulsory. Non execution of conveyance deeds deprived the State Government of revenue of Rs.2.82 crore in the shape of stamp duty. Besides, registration fee of Rs.12.75 lakh is also leviable.

After this was pointed out, Estate Manager, HB, Jind stated in February 2006 that the allottees, who had made full payments, were being asked for executing conveyance deeds of the houses/flats allotted to them. The Chief Administrator, HB, Panchkula stated in June 2006 that the estate managers had been directed to pursue the matter with the allottees to get conveyance deeds executed where hire purchase period had already expired and all the dues had been paid. Three** estate managers, HB stated in June 2006 that conveyance deeds had been executed by 34 (out of 934) allottees by making payment of stamp duty of Rs 4.01 lakh and registration fee of Rs.16,505 and efforts were being made for the execution of conveyance deed in the remaining cases. Further progress from remaining four estate managers has not been received (August 2006).

The matter was referred to Government in January 2006; reply had not been received (August 2006).

3.3 Misclassification of documents

Under the provisions of the IS Act, separate rates have been prescribed for different type of instruments. The classification of an instrument depends upon the nature of the transaction recorded therein. In case, possession of the property is handed over after receipt of full amount of consideration, the instrument becomes a conveyance deed and stamp duty becomes leviable under the IS Act.

* Ambala, Faridabad, Gurgaon, Jind, Karnal, Kurukshetra, Panchkula, Panipat and Sonipat.

** Ambala, Kurukshetra and Panchkula.

During test check of records of the joint sub registrars (JSR), Rajound and Pundri, it was noticed in January 2005 that two instruments conveying possession and transfer of a property valued at Rs.56.06 lakh to the vendee were executed in November 2003. In both the cases, the vendors received full amount in lieu of the property sold. The deeds were liable to be treated as conveyance deed and stamp duty of Rs.8.09 lakh was leviable. However, the RA misclassified these documents and registered the deeds as agreement to sell charging a stamp duty of Rs.9, which was incorrect. This resulted in short realisation of stamp duty of Rs.8.09 lakh.

After this was pointed out in January 2005, JSR Pundri admitted the facts and stated in January 2006 that efforts were being made to effect the recovery. JSR Rajound stated in January 2006 that the case had been referred to the collector for determination of value of the property. Further progress had not been received (August 2006).

The matter was referred to Government in April 2005; reply had not been received (August 2006).

3.4 Short levy of stamp duty due to undervaluation of properties

With a view to check malpractice of under valuation of properties in registration of sale deeds and consequent deprivation of revenue to the State, Government decided (September 1986, February 1988, November 1990, May 1998 and August 2005) that the collector may issue suitable instructions/guidelines to the RAs regarding the valuation of different categories of land in rural as well as urban areas. For this purpose they were required to constitute a committee. In case, RAs have reason to believe that the prevailing rate of land is higher than the rate recommended by the committee for the said area, they shall take into account such higher valuation. However, if the rates in the deeds are lower than recommended by the committee, RAs should refer the matter to the collector under section 47 A of the IS Act.

3.4.1 During test check of records of sub registrar (SR), Sirsa for the year 2004-05, it was noticed in June 2005 that a vendee purchased commercial land measuring 165 kanal 11 marla (99,330 square yards) in Khairpur (Sirsa) for a consideration of Rs.3 crore. While executing the deed in July 2004, the RA levied stamp duty of Rs.24 lakh. However, it was noticed that the collector had fixed the rate of Rs.400 per square yard for the land of village Khairpur for the year 2004-05. Thus, the value of the said land worked out to Rs.3.97 crore. The RA did not work out the value of land at the rates fixed by collector. This resulted in under valuation of immovable property amounting to Rs.97.32 lakh on which stamp duty of Rs.7.79 lakh was short realised.

After this was pointed out in June 2005, SR, Sirsa intimated in November 2005 that the case was referred to the collector, Sirsa in August 2005 for decision. Further report on action taken had not been received (August 2006).

The matter was referred to Government in August 2005. The Financial Commissioner and Principal Secretary, Revenue Department stated in April 2006 that the matter was pending in the Court of Collector, Sirsa for decision.

3.4.2 During test check of records of SR, Narnaul for the year 2003-04, it was noticed in March 2005 that three sale deeds of plots were registered between April and July 2003. These deeds were liable to be assessed for consideration of Rs.26.71 lakh based on the rates fixed by collector for residential plots within municipal limits during 2003-04 and stamp duty of Rs.4.14 lakh was chargeable. However, the RA incorrectly assessed the deeds for consideration of Rs.6.19 lakh on the rate fixed for agricultural land and levied stamp duty of Rs.1.17 lakh. This resulted in short levy of stamp duty of Rs.2.97 lakh.

After this was pointed out in March 2005, the department stated in December 2005 that the cases had been referred to the collector for assessment of correct value of property mentioned in sale deeds. Final reply had not been received (August 2006).

The matter was referred to Government between May and November 2005; reply had not been received (August 2006).

