

## CHAPTER-III: STAMPS AND REGISTRATION FEES

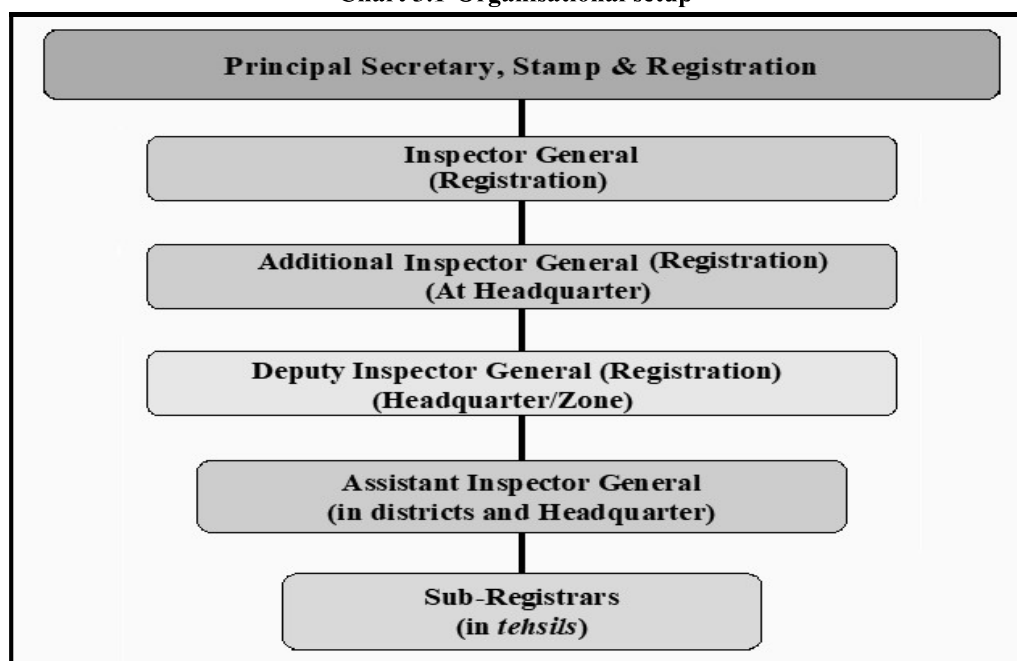
### 3.1 Tax administration

The levy and collection of stamp duty and registration fees in the State is governed by the Indian Stamp Act, 1899 (IS Act), the Registration Act, 1908 and the rules framed thereunder as applicable in Uttar Pradesh. Stamp duty and registration fees are levied on the execution of instruments at the prescribed rates fixed under the above Acts. Such duties are paid by executors of instruments by using impressed stamp paper or e-stamp. The Registration Act, 1908 and rules made thereunder by the State Government, broadly outline the system of assessment and collection of registration fees. Valuation of properties is decided as per the circle rates fixed by the Collector of the district as per the provisions of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997. The Sub-Registrar or the Registering Authority examines the documents presented before them to see that they have been presented within the time allowed and that the instruments have been properly stamped as required under the IS Act, 1899.

### 3.2 Organizational Set-up

The determination of policy, monitoring and control at the Government level is carried out by the Principal Secretary, Stamps and Registration. The Inspector General, Registration (IGR) is the head of the Stamps and Registration Department. He/she is empowered with the task of superintendence and administration of the registration work. The IG is assisted by four Additional Inspectors General at headquarter level, 23 Deputy Inspectors General (DIsG) at headquarter/Zonal level, 92 Assistant Inspectors General (AIsG) at the district/headquarters level and 372 Sub-Registrars (SRs) at the *tehsil* level. The organisational setup is described below in **Chart-3.1**.

Chart 3.1-Organisational setup



### 3.3 Result of Audit

During the year 2021-22, audit test-checked records at the office of the Principal Secretary, Stamps and Registration Department and 60 Sub-

Registrar Offices (SROs) out of 438 auditable units (14 *per cent*) of the Stamps and Registration Department. Compliance Audit on “Levy and collection of stamp and additional stamp duty on mortgage deeds” was also conducted in 36 out of 60 SROs. Audit noticed deficiencies and irregularities amounting to ₹ 351.30 crore in 708 cases, as detailed in the **Table-3.1**.

**Table-3.1**

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
1.	Compliance Audit on “Levy and collection of stamp and additional stamp duty on mortgage deeds”	208	300.58
2.	Short levy of stamp duty and registration fees due to misclassification of documents	115	30.02
3.	Short levy of stamp duty and registration fees due to violation of Section 27 of IS Act, 1899	209	15.00
4.	Short levy of stamp duty and registration fees due to undervaluation of properties	58	2.66
5.	Other irregularities	118	3.04
<b>Total</b>		<b>708</b>	<b>351.30</b>

### **3.4 Compliance Audit on “Levy and collection of stamp and additional stamp duty on mortgage deeds”**

#### **3.4.1 Introduction of Mortgage Deed**

‘Mortgage deed’ includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of another, a right over or in respect of specified property as defined in Section 2 (17) of IS Act, 1899. Stamp duty on mortgage deeds (without possession) is leviable under Article 40 of schedule 1B of the said Act.

#### **3.4.2 Trends of Revenue**

The details of Stamp duty and Registration fees collected on registration of various documents under the Major Head 0030-Stamps and Registration Fees during the period 2018-19 to 2020-21 is as under:

**Table-3.2 Trends of revenue**

Financial year	No. of documents registered	Total duty collected (Stamp and addl. stamp duty)	Amount (₹ in crore)	
			Registration fees	Total revenue
(1)	(2)	(3)	(4)	(5)
2018-19	35,81,002	13,319.54	2,413.49	15,733.03
2019-20	34,87,816	13,514.83	2,554.97	16,069.80
2020-21	35,07,635	13,849.64	2,625.60	16,475.24

(Source: Figures taken from the Finance Account and figures of column 2 provided by the Deptt.)

Table-3.3 -Collection, Deduction and Allocation of Additional Stamp Duty

Financial year	Total additional stamp duty collected	Incidental charges deducted @ 4 per cent	Collection charges deducted @ 4 per cent	Amount (₹ in crore)		
				Deduction under the dedicated urban transport fund @ 25 per cent	Total deduction	Total amount sent for allocation
(1)	(2)	(3)	(4)	(5) [2-(3+4)] X 25%	(6)	(7)
2018-19	2,009.55	80.38	80.38	462.20	622.96	1,386.59
2019-20	2,135.48	85.42	85.42	491.16	662.00	1,473.48
2020-21	2,214.09	88.56	88.56	509.24	686.36	1,527.73

(Source: figures provided by the Department)

All the deductions shown in column 3, 4 and 5 of **Table-3.3** were made vide the Government order<sup>1</sup> (GO) dated 13 September 2013. Deductions shown in Column 3 and 4 were retained by the Department itself, whereas deduction shown in column 5 was transferred to “Dedicated Urban Transport Fund” vide the provisions of above G.O. The amount shown in column 7 was sent to the Finance Department for allocation to the Development Authority, the *Uttar Pradesh Avas Evam Vikash Parishad* and the *Nagar Mahapalika* or the *Municipal Board*, as the case may be, in such proportion as may from time to time be determined, in such a manner and in accordance with such principles as the State Government may by notification in the Gazette specify.

### 3.4.3 Audit Objectives

The Audit was conducted with a view to ascertain whether:

- (i) Stamp duty and additional stamp duty with respect to mortgage deeds are being charged and realised in accordance with the provisions of Act, Rules and Notifications/orders issued by the Government and Department.
- (ii) The system prevalent in the Department with respect to collection, accountal and allocation of additional stamp duty is adequate.

### 3.4.4 Audit Scope and Methodology

On the basis of district-wise revenue and revenue collection with respect to Mortgage deeds (without possession) for the year 2020-21, units have been selected for the audit adopting the following two stages:

**Stage-1:** District-wise revenue (stamp duty and registration fee) position for the year 2020-21 were arranged in descending order and top 11 districts<sup>2</sup> out of 75 districts have been selected.

**Stage-2:** 43 SROs in 11 districts were arranged in descending order as per their revenue collection with respect to mortgage deeds (without possession) and top 36 SROs<sup>3</sup> were selected for audit.

<sup>1</sup> No. Ka. Ni.-5-1149/11-2013-312(268)/2001 dated 13 September 2013.

<sup>2</sup> Agra, Bareilly, Gorakhpur, GB Nagar, Ghaziabad, Kanpur Nagar, Lucknow, Mathura, Meerut, Prayagraj & Varanasi.

<sup>3</sup> SR-II and III-Agra, SR-II-Bareilly, SR-I and II-Gorakhpur, SR-I, II, Greater Noida and Dadri-GB Nagar, SR-I, II, III, IV, V and Modinagar-Ghaziabad, SR-II and III-Kanpur Nagar, SR-II, III, IV, V, Mohanlalganj and Sarojininagar-Lucknow, SR-I and II-Mathura, SR-I, III and Sardhana-Meerut, SR-I, II, Phoolpur and Karchhana-Prayagraj and SR-I, II, IV and Gangapur-Varanasi.

An Entry conference was held with the IG Registration on 20 July 2021 wherein audit objectives, scope and methodology were discussed. During the course of audit, the records<sup>4</sup> relating to mortgage deeds (without possession), deposit of title deeds and security bonds for the period 2018-19 to 2020-21 of 36 selected SROs situated in eleven districts were scrutinised between August 2021 and March 2022. An exit conference was held with the Government on 12 July 2022 in which the audit findings were discussed. The views of the Government/Department have been suitably incorporated in the report.

## **Audit findings**

### **3.4.5 Irregularities related to levy of stamp and additional stamp duty on mortgage deeds (without possession)**

Vide notification<sup>5</sup> dated 25 May 2001, the State Government remitted the stamp duty chargeable<sup>6</sup> on instruments of mortgage to the extent of amount of stamp duty that exceeds ₹ five lakh. Vide a subsequent notification<sup>7</sup> dated 10 July 2008, in partial modification of the earlier notification, the Government remitted the stamp duty chargeable (on any instrument of mortgage without possession), to the extent of the amount that exceeds the amount of duty calculated at the rate of ₹ five for every one thousand (0.5 *per cent*) rupees or part thereof on the amount secured by such deeds without any mention of the limit of ₹ five lakh.

Uttar Pradesh Urban Planning and Development Act, 1973<sup>8</sup> (UPUPD Act, 1973) stipulates that the duty imposed by the IS Act, 1899 on any deed of transfer of immovable property shall, in case of an immovable property situated within a development area, be increased by two *per cent* on the amount or value of the consideration with reference to which the duty is calculated under the said Act.

Failure of the Department to comply with the above mentioned provisions/notifications are discussed below in Para Nos. 3.4.5.1, 3.4.5.2 and 3.4.5.3:

#### **3.4.5.1 Short levy of additional stamp duty on mortgage deeds (without possession) having secured amount ranging between ₹ two and ten crore**

**Additional stamp duty of ₹ 4.01 crore was not levied on mortgage deeds (without possession) having secured amount ranging between ₹ two and ten crore as per the Uttar Pradesh Urban Planning and Development Act, 1973.**

Audit noticed in 15 out of the 36 test-checked SROs that 51 deeds (out of total 1,332 deeds) of mortgage (without possession) having secured amount ranging between ₹ two and ten crore, were executed and registered as documents for securing the repayment of loan/timely completion of the projects. In view of the Acts and notification issued thereunder regarding the mortgage deeds

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<sup>4</sup> Registered Deeds and *SYAHA*

<sup>5</sup> Notification No. Ka. Ni. -5-3139/II-2001-500 (121)/2000 TC dated May 25, 2001.

<sup>6</sup> Clauses (b) and (c) of Article 40 of Schedule 1B.

<sup>7</sup> Notification No. Ka. Ni. -5-2758/XI-2008-500-(159)-2006 Lucknow dated July 10, 2008.

<sup>8</sup> Clause (1) of Section 39.



(without possession), stamp duty and additional stamp duty were to be calculated at the rate of 0.5 *per cent* and two *per cent* respectively on the amount secured by such deeds. However, in these deeds the levy of stamp duty and additional stamp duty had been limited to ₹ five lakh referring the old notification dated 25 May 2001. As additional stamp duty is leviable under the authority of UPUPD Act, 1973, it was not to be remitted/reduced under provisions of IS Act, 1899. The SROs failed to comply with the provisions of the UPUPD Act, 1973 and this resulted in short levy of additional stamp duty amounting to ₹ 4.01 crore on 51 deeds, as shown in **Appendix-XXIX**.

Audit further noticed that in six out of 36 selected SROs the registering authorities in ten mortgage deeds (without possession) had levied and recovered stamp duty and additional stamp duty amounting to ₹ 78.19 lakh applying the correct rate of duties i.e. 0.5 and two *per cent* respectively on whole secured amount., as shown in **Appendix- XXIX-A**.

The audit observation in aforesaid cases may be seen in the light that certain registering authorities are interpreting the provisions of the UPUPD Act and the latest notification correctly while the most of them treating it incorrectly.

#### **3.4.5.2 Stamp and additional stamp duty short/not levied on mortgage deeds (without possession) having secured amount above ₹ 10 crore**

**Stamp and additional stamp duty of ₹ 225.31 crore was short/not levied on mortgage deeds having secured amount above ₹ 10 crore by not complying with the provisions of IS Act, 1899 and Uttar Pradesh Urban Planning and Development Act, 1973.**

In 13 out of the 36 test-checked SROs, audit noticed that 50 deeds (out of total 1378 deeds test-checked) of mortgage (without possession) having secured amount more than ₹ 10 crore, were executed and registered as documents of securing the repayment of loan. In view of the Acts and notification issued thereunder regarding the mortgage deeds (without possession), stamp duty and additional stamp duty were to be calculated at the rate of 0.5 *per cent* and two *per cent* respectively on the amount secured by such deeds.

However, in these deeds, stamp duty and additional stamp duty had been limited to ₹ five lakh only by applying the old notification dated 25 May 2001. This was not correct in view of the modified notification dated 10 July 2008 which provides for levy of stamp duty at the rate of 0.5 *per cent* without any mention of the limit of ₹ five lakh. Further, additional stamp duty leviable under the authority of UPUPD Act, 1973 was not to be remitted/reduced under provisions of IS Act, 1899. Thus, the SROs failed to comply with the provisions of Acts and notification dated 10 July 2008. This resulted in short levy of stamp and additional stamp duty amounting to ₹ 225.31 crore as shown in **Appendix- XXX**.

### 3.4.5.3 Short levy of stamp duty due to limiting stamp duty to ₹ five lakh

**Stamp duty at the rate of ₹ five for every one thousand rupees or part thereof on the amount secured by mortgage deed is chargeable. However, the sub-registrars limited the amount of stamp duty to ₹ five lakh, which resulted in short levy of stamp duty of ₹ 32.95 crore.**

Audit test-checked the records of four SROs, and in three SROs, Audit noticed that in 47 deeds (areas referred in these deeds were not declared 'development area' under the Section 3 of UPUPD Act, 1973 for the levy of two *per cent* additional stamp duty) of mortgage (without possession) (out of 733 deeds test-checked) duty chargeable on these documents was higher than ₹ five lakh as worked out at the rate of 0.5 *per cent*. The SROs had limited the stamp duty to ₹ five lakh which was not in line with provisions of the modified notification dated 10 July 2008 which stipulated that stamp duty at the rate of 0.5 *per cent* was chargeable without any mention of the limit of ₹ five lakh. Failure of the SROs to comply with the provisions of modified notification resulted in short levy of stamp duty amounting to ₹ 32.95 crore, as shown in **Appendix- XXXI**.

Audit observation similar to those discussed in Para No. 3.4.5.1 to 3.4.5.3 were also noticed during audit (between August 2021 and March 2022) of ten SROs (other than the 36 test-checked for the purpose of this Compliance Audit). In 12 deeds (out of 12,171 test-checked) of mortgage (without possession) registered during the period of October 2017 to February 2022, there was short levy of stamp and additional stamp duty amounting to ₹ 2.73 crore due to not complying the modified notification dated 10 July 2008 and provisions of UPUPD Act, 1973, as detailed in **Appendix- XXXII**.

Audit reported the matter to the Government and Department (March 2022 and April 2022). The Department replied (July 2022) in respect of Paras 3.4.5.1 to 3.4.5.3 that the notification No. Ka. Ni.-5-2758/II-2008-500 (159)/2006 dated 10 July 2008 pertaining to mortgage deed (without possession) is in partial modification of notifications issued earlier in this behalf and the stamp duty was reduced from ₹ 20 per thousand to ₹ five per thousand vide this notification. So far as, the notification dated 25 May 2001 is concerned, stamp duty chargeable on instrument of mortgage to the extent of the amount that exceeds ₹ five lakh stands remitted and this could not be treated as modification by the notification dated 10 July 2008, as the rate of stamp duty is not mentioned in the notification dated 25 May 2001. Further, in respect of two *per cent* additional stamp duty, the Department stated that Section 39 of UPUPD Act, 1973 stipulates that any deed of transfer of immovable property shall be increased by two *per cent* on the amount or value of the consideration, which shall be in the nature of stamp duty and notification dated 25 May 2001 provides that stamp duty chargeable on the instrument of mortgage to the extent of the amount that exceeds ₹ five lakh is remitted. Therefore, in the instant cases, stamp duty could not be charged beyond ₹ five lakh. However, in view of audit observation in the instant cases, the process to file the stamp-cases was under progress.

The reply of the Department is not acceptable, as in the notification dated 25 May 2001 it was provided that stamp duty chargeable under clauses (b) and (c)

of Article 40 of Schedule 1B on instrument of mortgage shall be limited to ₹ five lakh. Subsequently this notification was partially modified vide notification dated 10 July 2008 which provided that the stamp duty on mortgage deeds under clauses (b) and (c) of the Article 40 would be leviable at ₹ five for every one thousand rupees or part thereof on the amount secured by such deeds. While modifying the earlier notification of 2001 vide notification 10 July 2008, the provision of remission of stamp duty exceeding ₹ five lakh was not mentioned. In view of the forgoing, the contention of the Department is not correct. Further, additional stamp duty leviable under the authority of UPUPD Act, 1973 cannot be remitted/reduced under provisions of Section 9<sup>9</sup> of IS Act, 1899.

### **Recommendation:**

**The Department should issue suitable clarifications to the registering authorities for realisation of stamp and additional stamp duty on mortgage deeds (without possession) as per provisions of the Acts/notifications.**

### **3.4.6 Short levy of stamp duty and additional stamp duty due to execution of deposit of title deeds in place of mortgage deeds**

**Documents were registered as deposit of title deeds in place of mortgage deeds, which resulted in short levy of stamp duty and additional stamp duty of ₹ 36.87 crore.**

Transfer of Property Act (TP) stipulates<sup>10</sup> that where a person in any of the towns viz. Calcutta, Madras and Bombay and in any other town which [the State Government concerned] may, by notification in official gazette, specify in this behalf, delivers to a creditor, or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds. TP Act provides<sup>11</sup> that all mortgages, except mortgage created by deposit of title deeds, can be validly created by properly registered instrument.

The Hon'ble Supreme Court<sup>12</sup> in respect of the compulsory registration of a deed recording a transaction of title deeds has held that- *"It is essential to bear in mind that the essence of a mortgage by deposit of title deeds is the actual handing over by a borrower to the lender of documents of title to immovable property with the intention that those documents shall constitute a security which will enable the creditor ultimately to recover the money which he has lent. But if the parties choose to reduce the contract to writing, this implication of law is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. It follows that in such a case the document which constitutes the bargain regarding security requires registration under Section 17 of the Indian Registration Act, 1908, as a non-testamentary instrument*

<sup>9</sup> This Section of IS Act, 1899 prescribes power to reduce or remit stamp duty to the State Government.

<sup>10</sup> Section 58 (f) of Transfer of Property Act, 1882.

<sup>11</sup> Section 59 of Transfer of Property Act, 1882.

<sup>12</sup> United Bank of India vs *Lekharam Sonaram*, AIR 1965 SC 1591.

*creating an interest in immovable property, where the value of such property is one hundred rupees and upwards.”*

Audit test-checked (between August 2021 and March 2022) the records of 36 selected SROs during the course of audit. In 18 SROs, Audit noticed that in 48 deeds (out of total 78 deeds of deposit of title test-checked), various mortgagors have deposited the title deeds related to their immovable properties with mortgagee/bank and created charge over the property in favour of mortgagor for the purpose of securing repayment of loan together with interest and charges thereon and got them registered with the Department. Thus, as per the decision of the Hon'ble Supreme Court in above referred cases, these documents, being sole evidence of transaction and recital of deeds falling under the definition of Section 2 (17) of IS Act 1899, were required to be registered under the Registration Act and should be charged with stamp duty and additional stamp duty at the rate of 0.5 *per cent* and two *per cent* respectively. Registration of the documents as title deed instead of mortgage deed resulted in the short levy of stamp and additional stamp duty of ₹ 36.87 crore, as detailed in **Appendix- XXXIII**.

Similar audit observation was also noticed during the audit (between August 2021 and March 2022) of five SROs (other than the 36 test-checked for the purpose of this Compliance Audit). In five deeds (out of 11,009 test-checked) of deposit of title registered during the period of October 2018 to January 2022, there was short levy of stamp and additional stamp duty amounting to ₹ 1.01 crore due to registration of documents as deposit of title deed instead of mortgage deed, as detailed in **Appendix- XXXIV**.

The matter was reported to the Government and Department (March 2022 and April 2022). In its reply (July 2022), the Department accepted the audit observation. It further stated that deposit of title deed does not require mandatory registration. But, if it is registered, it should be treated as mortgage deed. In these cases, process to file the stamp-cases is under progress.

#### **3.4.7 Short levy of revenue due to execution of security bond in place of mortgage deed**

**Documents were registered as security bond instead of mortgage deed, which resulted in the short levy of stamp duty, additional stamp duty and registration fee amounting to ₹ 1.44 crore.**

Under the Article 57 of Schedule 1B of IS Act<sup>13</sup>, Security Bond executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof, or executed by surety to secure the due performance of a contract or the due discharge of liability, the stamp duty chargeable is ₹ 10 when the amount secured does not exceed ₹ 100 and in other case the stamp duty payable is ₹ 100. Under Section 2 (17) of IS Act, 1899 the mortgage deed includes every instrument whereby, for the purpose of securing money advance, by way of loan, or an existing, or future debt, or the performance of an engagement, one person transfers, or create to, or in favour of another, a right over, or in respect of specified property. The chargeability of stamp duty on mortgage deeds (without possession) should be calculated at the rate of 0.5 *per cent* and two *per cent* for the additional stamp duty on the

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<sup>13</sup> Article 57 of schedule I B of IS Act.

amount secured by such deeds, if the property is situated in the development areas.

To ascertain the correctness of the interpretation of the registering authorities in respect of the nature of deeds executed by the executant, Audit test-checked (between August 2021 and March 2022) the records of 36 selected SROs. In two SROs, audit noticed that in 12 deeds (out of total 49 registered deeds of security bonds test-checked) of security bond, the SRs levied and realised stamp duty and registration fees of ₹ 3,440 from the executants by misinterpreting the documents as security bond in place of mortgage deeds. In these cases, the executants had submitted building plans before the Development Authorities for the development and construction of the Group Housing projects, which were sanctioned by the authorities and demanded the development charges due *viz* internal, external and other development charges. Thereafter, security bonds were executed by the developers to secure the payment of above charges to the development authorities by creating the first charge over the part of the project land and flats equivalent to due charges. Thus, they fall under the definition of mortgage as defined in the Section 2 (17) of the IS Act. The registering authorities should have treated them as mortgage deeds (without possession) and not as security bond. Therefore, under the provisions of the IS Act<sup>14</sup>, 1899, UPUPD Act<sup>15</sup>, 1973 and Registration Act, 1908 and notification<sup>16</sup> issued thereunder these instruments are chargeable with Stamp, Additional Stamp duty and Registration fees as mortgage deed (without possession) instead of security bond, which resulted in short levy of revenue amounting to ₹ 1.44 crore, as shown in **Appendix- XXXV**.

Similar audit observation was also noticed during the compliance audit (between August 2021 and March 2022) of two SROs (other than the 36 test-checked SROs for the purpose of this Compliance Audit) wherein seven documents were registered as security bond instead of mortgage deed during the period of April 2021 to November 2021. This resulted in short levy of stamp duty, additional stamp duty and registration fees amounting to ₹ 1.02 crore, as detailed in **Appendix- XXXVI**.

It is notable that in two SROs (in three deeds) out of 36 selected SROs the registering authorities had levied and recovered stamp duty, additional stamp duty and registration fees on similar deeds treating them correctly as mortgage deeds (without possession) at the rate of 0.5, two and one *per cent* respectively on the whole secured amount, as shown in **Appendix- XXXVI-A**.

It is evident from the audit observation made here as well as at Point No. 3.4.5.1 that the registering authorities are interpreting the relevant provisions under the Acts and Rules with respect to the various nature of deeds executed in SROs on a discretionary basis and that led to short levy of stamp and additional stamp duty as pointed out in audit observations.

<sup>14</sup> Article 40 (b) & (c) of Schedule-1B.

<sup>15</sup> Section 39 (1) of UPUPD Act, 1973.

<sup>16</sup> (i) No. Ka. Ni.- 5-3139/II-2001-500 (121)/2000 TC dated May 25, 2001 (ii) No. Ka. Ni.- 5-2758/XI-2008-500-(159)-2006 Lucknow dated July 10, 2008 & (iii) No. 30/2015/1430/94-St. Ni.-2-2015-700 (74)/2015 dated December 08, 2015 amended by Notification No. 02/2020/127/94-St. Ni. -2-2000-700 (74)/2015 dated February 13, 2020.

Audit reported the matter to the Government and Department (March 2022). In its reply (July 2022), the Department agreed with the audit observation. It further stated that, if the executants had submitted building plans before the Development Authorities for the development and construction of the Group Housing projects, which were sanctioned by the authorities and demanded the development charges due *viz* internal, external and other development charges and the developers had mortgaged the property to secure the payment of above charges to the development authorities by creating the first charge over the part of the project land, these deeds should have treated them as mortgage deeds and not as security bond and shall be chargeable with duties as mortgage deed. In the instant cases, process to file the stamp-cases is under progress.

**Audit recommends that the Department should ensure that the determination of stamp and additional stamp duty should be decided on the basis of actual transaction/recital of deeds not on the basis nomenclature or language.**

#### **3.4.8 Systemic deficiencies in collection, allocation and accountal of additional stamp duty**

Under the UPUPD Act, 1973, the duty imposed by the IS Act, 1899 on any deed of transfer of property shall, in the case of an immovable property situated within a ‘development area’<sup>17</sup> be increased by two *per cent* on the amount or value of consideration with reference to which the duty is calculated under the said Act. All collection resulting from the said increase shall, after deduction of incidental expenses, if any, be allocated and paid by the State Government in its discretion, either to the Department alone or to the Development Authority, the *Uttar Pradesh Avas Evam Vikash Parishad* and the *Nagar Mahapalika* or the *Municipal Board*, as the case may be, in such proportion as may, from time to time, be determined, in such a manner and in accordance with such principles as the State Government may by notification in the Gazette specify.

In this context vide Government Order dated 13 September 2013, the new procedure has been introduced for the proper allocation of recovered additional stamp duty. As per the new procedure, after deduction of four per cent incidental charges, four per cent collection charges and 25 per cent for dedicated urban transport fund, the amount of additional stamp duty will be paid to Housing & Urban Planning Department and Urban Development Department per the rates prescribed in the order.

Examination of the current system of collection, accountal and allocation of additional stamp duty revealed several deficiencies both systemic and at the implementation level. These are presented in the succeeding paragraphs:

##### **3.4.8.1 Failure to create a sub-head**

As per the existing system of classification, Stamps and Registration Fees (including an additional stamp duty) is accounted for under the Major Head

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<sup>17</sup> “Development area” means any area declared development area under Section 3 of UPUPD Act, 1973. The area to be earmarked as ‘development area’ is notified by the State Government from time to time.

0030-Stamps and Registration Fees, 02-Stamps Non-Judicial, 102-Sale of Stamps.

Based on examination of records in offices of SRs, audit observed that the amounts being collected with respect to additional stamp duty were being depicted as stamp duty under Major Head *ibid*.

No separate sub-head has been opened by the State Government for segregated accounting of the additional stamp duty. UPUPD Act, 1973 requires that amounts collected with respect to levy of additional stamp duty on transfer of immovable property in 'development area' is to be earmarked specifically to entities as notified by the State Government. In the absence of minor head/sub-head the recovered amount of additional stamp duty from the development areas is getting deposited as stamp duty in Major Head *ibid* and no segregated accounting entry is being made in respect of additional stamp duty.

Therefore, it is essential to distinctly account for it for fulfilling the requirement of the UPUPD Act, 1973. In the absence of a distinct Sub-Head, the Department is not in position to specifically ascertain how much money was received with respect to additional stamp duty.

This issue was highlighted in Para 3.8 of State Finance Audit Report for the year ended March 2019 for the State of Uttar Pradesh.

Audit reported the matter to the Government and Department (March 2022). In their reply (July 2022), the Department stated that two *per cent* Additional Stamp Duty is not received in cash. As such, there seems no propriety of depositing the amount in treasury and opening a distinct Sub-head. Department collects additional stamp duty together with the stamp duty in mode of impressed and e-Stamp or both, which is deposited into consolidated fund of state under the Departmental head of Account. Accordingly, after the deduction of incidental charges the amount is being allocated to other departments in ratio fixed by the Government.

The reply of the Department is not acceptable as the additional stamp duty is collected for fulfilling the specific intent of the UPUPD Act, 1973 viz. development of the notified areas duly financed from the amount so collected as additional stamp duty. Therefore, in the absence of the distinct Sub-Head, the Department is not in a position to ascertain specifically how much money is received in the Government Account with respect to two *per cent* additional stamp duty.

#### **3.4.8.2 Improper accountal of additional stamp duty**

Audit test-checked the records of 36 selected SROs and noticed that in 289 deeds of sale, builder Agreements, leases and mortgages (out of 6,665 deeds test-checked) registered in 26 SROs<sup>18</sup>, SRs levied and realised stamp duty amounting to ₹ 10.40 crore and additional stamp duty amounting to ₹ 6.68 crore at the prescribed rates. On scrutiny of *SYAHA*<sup>19</sup> (self-generated by

<sup>18</sup> Agra SR-II, SR-III; Bareilly SR-II, G B Nagar SR-I Noida, Ghaziabad SR-I, SR-II, SR-III, SR-IV, SR-V; Gorakhpur SR-I, SR-II; Lucknow SR-II, SR-III, SR-IV, SR-V, SR-Sarojiniagar, SR-Mohanlalgaanj; Mathura SR-I, SR-II; Meerut SR-I, SR-III, SR-Sardhana; Varanasi SR-I, SR-II, SR-IV, SR-Gangapur.

<sup>19</sup> *SYAHA* is maintained in Format No. 13 as per Rule 211 under the Stamp Manual. It contains the collected amount of stamp duty, additional stamp duty, registration fee etc.

*PRERNA*<sup>20</sup> software) in concerned SROs, Audit observed that only ₹ 0.03 crore was recorded as additional stamp duty against actually levied amount of ₹ 6.68 crore. The duties so collected under provisions of two different Acts<sup>21</sup> was booked in same column in *SYAHA* as stamp duty, while a separate column in *SYAHA* for proper booking of two *per cent* additional stamp duty was available.

It is, therefore, essential that additional stamp duty collected under UPUPD Act, 1973 should invariably and distinctly be accounted and recorded as additional stamp duty in *SYAHA* for correct accountal

The matter was reported to the Government (March 2022). Their reply is awaited (June 2022).

#### **Recommendations:**

- 1. With a view to effecting transparency in budgeting and accounting of additional stamp duty a distinct sub-head should be opened in the Government Account to account for its levy and collection.**
- 2. Additional stamp duty collected under UPUPD Act, 1973 should invariably and distinctly be accounted and recorded as additional stamp duty in *SYAHA* for correct accountal.**

#### **3.4.9 Conclusion**

Audit noticed that due to lack of clarity regarding the amount of duty leviable on mortgage deeds (without possessions), Sub-Registrars limited both the duties amount of stamp duty and additional stamp duty leviable to ₹ five lakh as per the old notification dated 25.05.2001. This is not correct in view of the modified notification dated 10 July 2008. Further, additional stamp duty is leviable under the authority of UPUPD Act, 1973, it cannot be remitted/reduced under provisions of Indian Stamp Act, 1899.

For the purpose of chargeability of stamp duty on documents, recital stipulated in documents are decisive and not the nomenclature assigned to them by the executants. Whereas, the Department had levied and charged the duty on nomenclature assigned to documents.

No separate sub-head has been opened by the State Government for segregated accounting of the additional stamp duty which is collected under Uttar Pradesh Urban Planning and Development Act, 1973. Hence, the Department was not in a position to ascertain specifically how much money was received with respect to additional stamp duty.

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<sup>20</sup> *PRERNA* (Property Evaluation and Registration Application) Software was introduced by the Department on 01 August 2006 for computerisation of the registration process.

<sup>21</sup> Indian Stamp Act, 1899 & Uttar Pradesh Urban Planning and Development Act, 1973.



## Other Compliance Audit Observations

### 3.5 Short levy of stamp duty and registration fees due to violation of Section 27 of the Indian Stamp Act, 1899

**The executants did not disclose full/correct particulars of the lands in the documents presented for registration which resulted in short levy of stamp duty and registration fees amounting to ₹ 6.57 crore.**

Section 27 of the IS Act, 1899 specifically provides that “the consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein” which means that all the facts affecting the valuation of the property i.e. nature of land (agricultural/residential/ commercial), construction, distance from road, etc., are required to be mentioned truthfully in the instrument by the executants. Stamp duty on a deed of conveyance is chargeable either on the value of the consideration, as set forth therein or the market value of the immovable property, whichever is higher. As per the Circular issued by IG, Registration (27 November 2018) that the authority of fixing market value and imposing the short stamp duty vests in Collector Stamp as per valuation of property. Collector Stamp shall check the market value keeping in view the potentiality of transferred property with reference to date of execution of deed at the time of determining the market value.

Audit test-checked (between August 2021 and March 2022) the records for the period (October 2017 to February 2022) of 60 SROs. It was noticed in 29 SROs that 54 sale deeds (out of 78,707 test-checked) mentioned the land under sale as away from main road and *Abadi*, existence of agricultural activity in radius of 200 meters and purpose of purchase of land as farming. Further scrutiny of other sale deeds registered in respective SROs revealed that in same *Araji*<sup>22</sup> numbers shown in questioned deeds, residential plots were sold before and after the registration of questioned sale deeds. In some cases, there were houses and developed colonies in the same *Araji* number. These facts indicate that the executants had intentionally concealed the facts for evasion of tax, which is violation of Section 27 of IS Act, 1899.

Presently the documents are registered in on-line mode through the *PRERNA* software. However, the registering authorities failed to utilise the facility of software to determine the potentiality of land presented for registration vis-à-vis sale deeds executed in the same *Araji* number. This resulted in short levy of stamp duty and registration fees amounting to ₹ 6.57 crore as shown in **Appendix- XXXVII**.

The matter was reported to the Government (April 2022). Their reply is awaited (June 2022).

<sup>22</sup> *Araji/Khasra/Gata* indicate the particular number of a land holding in a locality.

### 3.6 Short levy of stamp duty and registration fees due to undervaluation of property

**Potentiality of land and its location of segment/main road was not taken into cognizance by the registering authorities which resulted in short levy of stamp duty and registration fees amounting to ₹ 1.26 crore.**

The IS Act, 1899 provides that stamp duty on a deed of conveyance is chargeable either on the value of the consideration, set forth therein, or the market value of the immovable property, whichever is higher. According to the Rule 4 of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997, the market value of different categories of land located in a district is determined by the concerned District Magistrate (DM) for the guidance of the registering authorities.

The situation of *Araji's* were classified in DM circle rate of the concerned SROs in five categories such as (i) at main road (ii) at link road or district road (iii) near to *Abadi* (iv) *Araji Nos.* declared non-agriculture under the Section 143 of Uttar Pradesh Zamindari Abolition & Land Reform Act, 1950/Section 80 of *UP Revenue Code, 2006* and (v) *Araji No.* of *Abadi* not declared non-agriculture. The main purpose of this type of classification of *Araji's* is proper valuation of the saleable property. In the rate list various instructions have been provided and its compliance is mandatory for the registering authorities.

Audit test-checked (between August 2021 and March 2022) the records for the period (October 2017 to February 2022) of 60 SROs and noticed in 11 sale deeds (out of 15,108 test-checked) pertaining to eight SROs that the valuation of land was made at general residential/agricultural rates by showing the status of land in questioned deeds as away from main/segment road. In six out of these 11 sale deeds, the *Araji* number in which the land was situated was already declared as non-agricultural, however, the land was shown as agricultural in the sale deed. In other five cases, it was noticed that the smaller piece of land of the same *Araji* was sold at segment rate while bigger piece of land was sold at general residential rate by the same seller to the purchasers.

It is evident from the above facts that potentiality of land and its location on segment/main road was not taken into cognizance by the registering authorities. Presently the registration of documents are being made in on-line mode through the *PRERNA* software, but the registering authorities failed to leverage the facility of software in respect of determining the potentiality of land and its valuation. This resulted in short levy of stamp duty and registration fees amounting to ₹ 1.26 crore as shown in **Appendix- XXXVIII**.

The matter was reported to the Government (April 2022). Their reply is awaited (June 2022).