



Gujarat State Law Commission

JUSTICE M. B. SHAH

Former : Judge, Supreme Court of India,
Chief Justice, High Court of Bombay
President, N.C.D.R.C., New Delhi.

Chairman, Gujarat State Law Commission

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No.GSLC/2021/ACS_LPAD/06

Date: 27th January, 2021

Dear Shri *Agarwalji,*

Government of Gujarat, Legislative and Parliamentary Affairs Department; vide its Resolution No.LAC/2006/44/110/Law Cell, dated 31st December, 2013; had appointed the undersigned as Chairman of the State Law Commission.

Till date, the Commission under the chairmanship of the undersigned has submitted in all **twenty (20) reports** on various points for consideration and for taking further needful actions.

Today, the Commission submits its **Twenty-first (21st) Report**, namely, "*Need to reduce the rate of stamp duty and that of registration fee*".

Two sets of the aforesaid report and one C.D. containing soft copy thereof are sent herewith for consideration and for taking needful actions.

With warm regards,

Yours sincerely,

M. B. Shah
Justice M. B. Shah (Retd.)
Chairman

Encl.: As above

To,
Shri Manoj Agarwal (IAS)
Additional Chief Secretary (Addl. Charge)
Legislative and Parliamentary Affairs Department
Block No.4, Fourth Floor, Sardar Bhavan,
Nava Sachivalaya, Gandhinagar.



सत्यमेव जयते

21ST REPORT

**Need to reduce the rate of stamp duty
and that of registration fee**

th
27 JANUARY, 2021

^{msk}
JUSTICE M. B. SHAH

**FORMER JUDGE
SUPREME COURT OF INDIA**

AND

**CHAIRMAN
GUJARAT STATE LAW COMMISSION**

Need to reduce the rate of stamp duty and that of registration fee

1. It is a known fact that 'real estate' is one of the areas where transactions are taking place partly from unaccounted money.
2. After fixing 'sale consideration' of the immovable property, there is the further agreement between the parties to pay 40% or 50% or 60% amount in cash and to pay remaining amount by account–payee cheque or other mode/s. This results for getting large benefit of paying lesser stamp duty and registration fee.

It appears that higher rates of stamp duty and registration fee prescribed by the State Government may compel the purchaser to do such a mal–practice.

3. Rates of stamp duty and registration fee, prevailing in the State of Gujarat for the sale transaction of immovable property:--

Under Section 3 of The Gujarat Stamp Act, 1958, every instrument mentioned in Schedule-I shall be chargeable with duty at the prescribed rates, unless specifically exempted.

As per Clauses (a) and (b) of Article 20 at Schedule-I, stamp duty @ **3.50%** of sale consideration or market value of immovable property (whichever is greater) is payable for the conveyance.

As per Section 3A of the said Act, an instrument of conveyance of immovable property, chargeable with duty prescribed in Article 20 of Schedule-I, is additionally chargeable with a duty at the rate of **forty per cent (40%)**.

On the aforesaid aspect, the office of Superintendent of Stamps, Gandhinagar issued a circular dated 30th March, 2007, notifying that the

Government of Gujarat amended rate of stamp duty on certain instruments prescribed in Schedule-I of the Act, vide Bombay Stamp (Gujarat Amendment) Act, 2007 which came into force from 01st April, 2007. Few part of the said circular is reproduced as under:—

“માલિકી ફેરખત (વેચાણ) ના આર્ટીકલ-૨૦(ક), ૨૦(ખ) તેમજ આર્ટીકલ-૨૭ ના ખંડ (ખ) ની નોંધ (૧) માં સ્ટેમ્પ ડ્યુટીનો દર ૪.૨૫% ઠરાવેલ હતો. આ ૪.૨૫% નો દર તા.૧/૪/૨૦૦૭ થી ઘટાડીને ૩.૫૦% નો ઠરાવવામાં આવેલ છે.

અધિનિયમની અનુસુચિ-૧ માં જણાવેલ જે લેખોમાં માલિકી ફેરખતના આર્ટીકલ-૨૦ મુજબનો સ્ટેમ્પ ડ્યુટીનો દર લાગુ પડે છે તેવા નીચે જણાવેલ લેખો સંબંધમાં પણ હવે તા.૧/૪/૨૦૦૭ થી ૩.૫૦% નો દર લાગુ પડશે.

(૧) આર્ટીકલ-૧૭ વેચાણનું પ્રમાણપત્ર

(૨) આર્ટીકલ-૨૦ માલિકી ફેરખત

(૩)

થી

(૧૧)

કલમ-૩-ક ની જોગવાઈ લાગુ પડતા સંબંધીત ઉક્ત લેખોમાં કલમ-૩-ક અન્વયે ૪૦% લેખે વધારાની ડ્યુટી ગણતાં આ લેખોમાં સ્ટેમ્પ ડ્યુટીનો એકત્રીત કુલ દર ૪.૯૦% નો અમલી બને છે જે મુજબ જરૂરી કાર્યવાહી તજવીજ કરવા વિનંતી છે.”

Therefore, the home-buyer has to pay 'stamp duty' @ 4.90% of the sale consideration or the market value of immovable property (whichever is greater). This includes the basic rate of stamp duty @ 3.50% and additional duty @ 1.40% [i.e. 40% of 3.50%].

In addition, the home-buyer has to pay registration fee at the prescribed rate of 1.00%. Female home-buyer gets exemption from paying registration fee.

The home-buyer (other than female), therefore, has to pay 5.90% of sale consideration or market value of immovable property (whichever is greater) to the Government so that 'sale or conveyance deed' could be a registered document *whereas* the female home-buyer has to pay 4.90%.

The honest home-buyers normally buy such immovable property from the accounted money but the higher rates of stamp duty and registration fee are a big burden on them, as some home-buyers take long term loans and repay the same with interest. In certain cases, some home-buyers have to borrow money so as to incur additional amount for payment of stamp duty and registration fee.

4. Reduction of rate of stamp duty in the State of Maharashtra:—

Vide a notification issued in August, 2020, the Government of Maharashtra took a step by reducing the rate of stamp duty with effect from September, 2020 and soon afterwards, the number of property registration increased substantially.

Newspaper report “Mumbai Housing Deals scale a historic high in December (2020)” published on 01st January, 2021 in The Economic Times *inter-alia* states that the Government of Maharashtra had, in August–2020, **announced reduction in stamp duty on property registration from 5% to 2%** for the transactions between 01st September, 2020 and 31st December, 2020; **which is 3%** for the sale/conveyance deed registered or to be registered between 01st January, 2021 and 31st March, 2021.

In the aforesaid newspaper report, it is *inter-alia* reported that “*The combination of all-time low housing loan rates, price discounts and most importantly, **reduction in stamp duty charges has bolstered property registrations in Mumbai,***”

the country's commercial capital, to set a historic record conclusion in December. The unprecedented rush among homebuyers to register their transactions continued even on the last day of the year pushing the total number of deals up 204% from a year ago to 19,552 in December until 7 pm on Thursday, showed the data from the office of the Inspector General of Registration Maharashtra."

- 5. Such a step of reducing the rate of stamp duty may be taken by the Government of Gujarat.**

Reason is, (as stated above), since 01st April, 2007; rate of stamp duty for the sale transaction of immovable property has been prevailing at the rate of **4.9%**.

Value of the immovable property prevailing at the relevant point of time has increased (in some cases) up to ten (10) times. [For example, 2 BHK flat in certain area of the city was valued at the relevant point of time at about Rs.5 lacs which has increased up to Rs.40 lacs and more]

Apart from the above, the purchasing power / capacity of the citizen is reducing day-by-day, mainly, after the pandemic of Corona Virus (COVID-19) spread across the world, including India. This pandemic had largely impacted upon the housing sales in various States of India.

For the aforesaid purpose, it would be worthwhile to refer to few newspaper reports which are as under:--

- (i) **Newspaper report, "COVID-19 Impact: Housing sales down 37%, office leasing dips 35% across 8 cities" published on 07th January, 2021 in The Economic Times, *inter-alia* states that, as per the annual data, housing sales fell in all eight major cities during the year 2020, with demand falling most in Ahmedabad and least in Pune and in the office market, Hyderabad witnessed maximum decline in leasing activities and Ahmedabad the least.**

As reported in the said news, Knight Frank India tracked eight property markets, Delhi–NCR, Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad, Pune and Ahmedabad. In the residential property market, housing sales fell 18% in Pune to 26,919 units during 2020 from 32,809 units in the previous year while Mumbai saw 20% decline at 48,688 units from 60,943 units. The news reported the statement of the consultant that, the decision of the State of Maharashtra to temporarily cut stamp duty on registration of properties led to higher sales in Mumbai and Pune region during the last four months of the 2020 calendar year.

The aforesaid news further states that Ahmedabad was worst hit, with sales down by 61% to 6,506 units in the year 2020 from 16,713 units in the previous year. The news reported the statement of the Chairman and Managing Director of Knight Frank India that, out of the total sales number in the second half of the year 2020, Mumbai and Pune contributed around 50% in home sales which can be largely attributed to the decision of reducing stamp duty in Maharashtra. The news also pointed out that the demand in Ahmedabad for office space dipped to 1.3 million sq. ft. from 1.5 million sq. ft.

(ii) From the newspaper report, "Several beneficiaries surrender RUDA flats, many houses unsold" published on 16th January, 2021 in The Indian Express, it is revealed that, after the pandemic of the COVID-19 virus spread across the world, including India; the private companies started functioning with limited staff due to which, large number of persons have lost their jobs. The businessmen have also been feeling financial constrains. Rate of unemployment has also been increasing day-by-day. Because of all these reasons, various beneficiaries who have been allotted flats by the Urban Development Authority of the State Government (say, AUDA/RUDA and such other) have no other alternative but to surrender the same due to which, number of houses remain unsold.

The aforesaid newspaper report states that as many as 304 beneficiaries surrendered their homes allotted by the Government on 31st August, 2020; while 390 others remain unsold.

Among 304 who surrendered their flats allotted under the affordable housing scheme of the Government, a huge majority cited financial constrains as the reason.

The newspaper report points out various instances where several beneficiaries surrender flats allotted by the Rajkot Urban Development Authority (RUDA). It *inter-alia* mentions that, one civil engineer who was allotted a home by RUDA in August, 2020 had surrendered it days later, as he lost his job and could do little private practice due to the COVID-19 pandemic. It also *inter-alia* mentions that, one stationary wholesaler, dreamt of having his own flat, surrendered his 3 BHK flat, after his business took a hit, due to COVID-19 pandemic.

As reported in the said news, RUDA has 694 unsold flats and it has invited applications for the third time for these houses with the deposit down to a fourth of the earlier.

6. SUGGESTIONS:--

(i) Suggestion with regard to reduce the rate of stamp duty and that of registration fee:--

It is suggested to fix and levy stamp duty and registration fee at a reasonable rate.

This would encourage the home-buyers to be *at least* honest in executing the sale deed, mentioning the actual amount of sale consideration which is factually fixed and agreed between both the buyer and seller.

The value of the property, say before ten years, was something low, as compared to what is prevailing in the present days. Hence, reducing the rate of stamp duty and that of registration fee may, at the initial stage, reduce the revenue income of the Government but with the passage of time, the volumes of property registration may substantially go up and, effectively, the revenue income from the stamp duty and registration fee will not be impacted.

On the contrary, the properties which remain unsold would be sold expeditiously, after the rate of stamp duty and that of registration fee are reduced appropriately.

(ii) Suggestion with regard to reduce the transfer fee:—

It is suggested to reduce the transfer fee for having the transaction of immovable property on the basis of its real value.

(iii) Suggestion with regard to slash premiums:—

It is learnt that the Government of Maharashtra has taken the decision to reduce the premiums charged by the civic authorities on real estate development by 50% until 31st December, 2021.

For the aforesaid purpose, it would be worthwhile to refer to newspaper report, namely, "Maha realty stocks could rise further" published on 11th January, 2021 in The Economic Times, which

points out the views of analysts that the investors could take a shine to Maharashtra-based real estate companies, after the State Government cleared a proposal to reduce levies on properties by 50% till December, 2021 which is expected to bring down the prices of houses and revive sales.

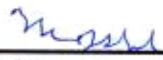
The aforesaid news also points out the view of the analyst, Mr. Parvez Qazi of Edelweiss Securities that the decision to slash premiums will help sustain recent momentum in housing demand by bringing down prices for consumers.

In the aforesaid news, it is *inter-alia* reported that *"After slashing stamp duty from 5% to 3% until March 31, 2021, **Maharashtra Government cuts all real estate premiums by 50%**. As per the real estate developers, the cost of real estate premiums is around 15–30% of overall cost and the cut in premium has come at a time, when the real estate sector is recovering from the multi-year slowdown. Though most of the realty stocks have rallied ahead in recent months, analysts think the Maharashtra Government's move could provide*

further filling to companies here. While Godrej Properties stock has rallied 53% in the last one year, Oberoi Realty and Kolte-Patil gained 15% each. The premium waiver is expected to benefit planned and under-construction projects that are in the initial stages of development. **In December, 2020; Mumbai real estate saw the highest sales registration."**

It is, therefore, suggested that decision should be taken to slash premiums. Slashing of premiums would encourage the people to buy the immovable property at lower rate and, thus, registration of properties would increase and resultantly, revenue income of the Government would also increase.

Date : 27th January, 2021
Place: Ahmedabad



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