



KOCHHAR & Co.
ADVOCATES & LEGAL CONSULTANTS

BOMBAY HIGH COURT GRANTS REFUND OF EXCESS STAMP DUTY PAID ON THREE DEVELOPMENT AGREEMENTS EXECUTED BETWEEN SEPTEMBER 2020 AND MARCH 2021: ARCHETYPE FOR OTHERS?

Authors:

Mohit Kundu (Partner)
Namrata Vora (Senior Associate)

Background:

The COVID-19 pandemic brutally exposed and significantly worsened the vulnerabilities of the Indian economy, across all fields.

The Real Estate Industry was no exception to its devastating effects, suffering a steep business decline and crisis which continue to affect developers and individual homebuyers to this day.

In a bid to revive the stagnant property market, the Revenue and Forest Department of the Government of Maharashtra, *vide* its notification dated August 29, 2022 bearing no. Mudrank-2020/C.R.136/M-1(Policy), reduced the rate of stamp duty chargeable under Article 25 (b) of Schedule I of the Maharashtra Stamp Act, 1958 ("**Act**"), i.e. in respect of conveyances of immovable property as follows:

- (i) For the period commencing from September 1, 2020 till December 31, 2020:
 - By 3% in Mumbai and Mumbai Suburban Districts; and
 - By 2% in the rest of Maharashtra; and
- (ii) For the period commencing from January 1, 2021 till March 31, 2021:
 - By 2% in Mumbai and Mumbai Suburban Districts; and
 - By 1.5% in the rest of Maharashtra.

This essentially meant that the stamp duty payable on conveyances executed during September 1, 2020 to March 31, 2021 in Maharashtra, would be calculated as per the aforementioned rates ("**Reduction**").

Pursuant to the Reduction being notified, several real estate developers claimed that the same would also be applicable to development agreements executed by them with land-owners across Maharashtra.

However, this contention of the developers was not accepted by the concerned authorities at the time.

The Case:

One such developer, Sandeep Dwellers Private Limited ("**Developer**"), appears to have entered into three development agreements in respect of immoveable properties located in Nagpur, all executed in and around December 2020 ("**DAs**").

At the time of submitting the DAs for adjudication, the Developer had raised the aforesaid contention of availing the prescribed Reduction benefit.

The adjudicating authority did not recognize the DAs to be at par with a 'conveyance' and as such, rejected the Developer's aforesaid contention.

Thus, the Developer had no choice but to pay the stamp duty prescribed under the adjudicating authority's order dated December 12, 2020 ("**Impugned Order**") and register the DAs.

Thereafter, *vide* its Writ Petition No. 3622 of 2021 filed before the Nagpur Bench of the Hon'ble Bombay High Court, the Developer challenged the legality and correctness of the Impugned Order, *inter alia* claiming refund of the excess stamp duty that was wrongfully prescribed by the adjudicating authority without accounting for the Reduction benefit.

This was opposed by the Learned Assistant Government Pleader on the grounds that the Developer had already paid stamp duty, duly adjudicated as per the Impugned Order and as such, was not entitled to seek any refund in that regard, claiming to have paid excess stamp duty.

The Analysis:

The Hon'ble Court observed that the Developer had entered into the DAs with the land - owners, on an area-sharing basis.

Under the DAs, several rights and liabilities had been created in favour of the Developer with respect to the corresponding immovable properties which were akin to transfer of immovable property.

As such, the Hon'ble Court opined that the DAs were conveyances within the meaning of the definition of the term under Section 2 (g) of the Act which includes, "*instruments whereunder any interest in any immoveable property is transferred to any person and which is not otherwise specifically provided under Schedule I of the Act*".

The Verdict:

The Hon'ble Court held that the DAs would have to be treated at par with an instrument of conveyance and hence they were squarely covered by the aforesaid notification dated August 29, 2020.

Since all the DAs were executed on or before December 31, 2020, they would be eligible for a concession of stamp duty to the extent of 2% (two percent), as prescribed under the aforesaid notification dated August 29, 2020 in respect of immovable properties located in the 'rest of Maharashtra' i.e. outside Mumbai and Mumbai's Suburban Districts.

The fact that the Developer had complied with the Impugned Order and paid the prescribed stamp duty thereunder would not defeat the Developer's rights to claim the Reduction benefit.

The Hon'ble Court found the Impugned Order to be illegal which was, therefore, quashed and set aside.

Illation:

By way of the above judgment, the Hon'ble Bombay High Court has categorically clarified that the DAs would fall within the purview of the definition of conveyances as per Section 2(g) of the Act.

Thus, one could say that similar development agreements executed between September 1, 2020 and March 31, 2021 would also be eligible to the benefit of Reduction prescribed under the aforesaid notification dated August 29, 2020.

As such, to seek benefit of the Reduction, developers may apply to the competent authorities for claiming refund of any excess stamp duty paid in respect of their development agreements, provided that:

- (i) the rights and liabilities created in favour of and against the concerned developers under such development agreements are akin to transfer of immovable property in favour of the concerned developers; and
- (ii) the benefit of Reduction was not availed by the developer / concerned parties at the time of stamping such development agreement/s.

Disclaimer: This is for information purpose only and is not intended to be an advertisement or solicitation. It is not a substitute for professional advice. Kochhar & Co. disclaims all responsibility and accept no liability for consequences of any person acting or refraining from acting on the basis on the above information.