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**ANALYSIS - IMPLICATIONS OF  
STAMP DUTY REDUCTION &  
OTHER CHARGES  
IN MUMBAI AND REST OF  
MAHARASHTRA**

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## **ANALYSIS – IMPLICATIONS OF STAMP DUTY REDUCTION & OTHER CHARGES IN MUMBAI AND REST OF MAHARASHTRA**

The Government of Maharashtra has, in its endeavor to afford some respite to the already ailing Real Estate Sector (majorly due to COVID-19 Pandemic), passed several Government Resolutions and Orders thereby reducing the rates of Stamp Duty, Local Body Tax and Zilla Parishad Surcharge payable on certain transactions of immovable properties.

We welcome this initiative of the Government as one of the stimulus measures required to boost the ailing Real Estate sector and hope that the reduction in stamp duty rates shall *inter alia* increase volume of real estate transactions and thereby revive the Real Estate Sector.

As part of our continuous endeavor to keep our clients and readers updated about the latest news, notifications, government resolutions, amendments, etc. relating to the Real Estate Sector, we are providing the summary of various reductions granted by the Government of Maharashtra vide its several Government Resolutions and Orders viz. (i) Government Resolution dated 28<sup>th</sup> August, 2020 regarding discount in rates of Zilla Parishad surcharge, (ii) Government Resolution dated 29<sup>th</sup> August, 2020 regarding discount in rates of Stamp Duty, and (iii) Order dated 31<sup>st</sup> August, 2020 regarding discount in Local Body Tax, is as under:

### **FOR MUMBAI CITY AND MUMBAI SUBURBAN DISTRICT**

#### **1. AS PER NOTIFICATION DATED 28<sup>TH</sup> AUGUST, 2020**

The Government of Maharashtra hereby reduces the Stamp Duty by Three percent in Mumbai District and Mumbai Sub-Urban District and by Two percent in Rest of the State of Maharashtra for the period starting from 1<sup>st</sup> of September 2020 and ending on 31<sup>st</sup> of December 2020 and by Two percent in Mumbai and Mumbai Sub-Urban District and by One and half percent in Rest of the State of Maharashtra for the period starting from 1<sup>st</sup> of January 2021 and ending on 31<sup>st</sup> of March 2021, as otherwise chargeable under Clause (b) of Article 25 of Schedule-I appended to the said Act, on the instrument of Conveyance or Agreement to Sell of any immovable property.

#### **2. RELEVANT EXTRACTS FROM ARTICLE 25(B) OF SCHEDULE I OF MAHARASHTRA STAMP ACT :**

<b>Description of Instrument</b>	<b>Proper Stamp Duty</b>
<b>*25. CONVEYANCE (not being a transfer charged or exempted under Article 59)-</b>	
On the <sup>1</sup> [true market value] of the property which is the subject matter of the Conveyance,-	
<sup>2</sup> [(a) if relating to movable property	3 percent of the market value of the property;]
<sup>1</sup> [(b) if relating to immovable property situated ...	5 percent of the market value of the property

**3. REDUCED STAMP DUTY RATES ON AGREEMENT TO SALE AND SALE DEED OF IMMOVABLE PROPERTY UNDER ARTICLE 25(b) OF SCHEDULE-I OF MAHARASHTRA STAMP ACT, 1958:**

Article	Document Type	Existing Stamp Duty Rate	Reduced Stamp Duty Rate from 01.09.2020 to 31.12.2020	Reduced Stamp Duty Rate from 01.01.2021 to 31.03.2021
25 (b)	<b>On Agreement to Sale and Conveyance</b>	<b>5%</b>	<b>2%</b>	<b>3%</b>
	This should ideally cover the following documents:			
	(i) Agreement for Sale of Unit by Developer	<b>5%</b>	<b>2%</b>	<b>3%</b>
	(ii) Resale of flat / office / godown / shop, etc. in Society and Condominium, etc.	<b>5%</b>	<b>2%</b>	<b>3%</b>
	(iii) Sale of FSI with rights and interest in the land	<b>5%</b>	<b>2%</b>	<b>3%</b>
	(iv) Agreement for Sale of Real Estate Project / Assignment of Real Estate Business by Slump Sale	<b>5%</b>	<b>2%</b>	<b>3%</b>
	(v) Permanent Alternate Accommodation Agreement to tenant.	<b>5%</b>	<b>2%</b>	<b>3%</b>
25(a) & 25(b)	Business Transfer /Slump Sale (Real Estate Project) (Note: This may involve sale/transfer of immovable property sold under separate agreement/deed. Such sale being transaction falling under Article 25(b), reduced stamp duty as enunciated in the above table shall be available.)	<b>3%</b> <b>5%</b>	<b>3%</b> <b>2%</b>	<b>3%</b> <b>3%</b>

- (i) All the above documents are chargeable to stamp duty only under Article 25(b)
- (ii) Hence all Agreements to Sale/Conveyance documents are chargeable under Article 25(b). Conversely, all instruments chargeable under Article 25(b) are either Agreement for Sale / Conveyance or deemed to be Conveyance.
- (iii) However Stamp Duty department is resorting to arbitrary interpretation of this Govt. Notification. According to them, there are two Rates of Stamp Duty under Article 25(b) viz. 2% and 5% with discretionary power vested with them to levy one of the two rates.**
- (iv) Their view is that only Sale and Conveyance documents resulting into transfer of Property Card or transfer in Society/Condominium records are only to be treated as sale/conveyance and entitled to reduced stamp duty @ 2% and all other documents continue to attract stamp duty @ 5%.

(v) In our considered view the Notification does not support such discrimination at whims and fancies of Adjudication officer and Sub-Registrar.

(vi) As such a clarification from Revenue Department of Government of Maharashtra is required clarifying stating unequivocally that all sale/conveyance documents chargeable to stamp duty under Article 25(b) will be levied Stamp Duty @ 2% till 31<sup>st</sup> December 2020 and Stamp Duty @ 3% from 1<sup>st</sup> January 2021 to 31<sup>st</sup> March 2021 to so as to bring uniformity in the method of computing stamp duty amongst various Sub-Registrars/Adjudicating Officers and avoid undue hardships on general public.

(vii) It appears that in the absence of clear guidelines, the Department is giving literal meaning to the Circular and not carrying out intention of the State Government to provide booster to Real Estate.

**4. AS PER LAW WHERE INSTRUMENTS ARE CHARGEABLE UNDER ARTICLES 16 OR 60 OR 40(A) OR 34 OR 5(g-a)(i) STAMP DUTY LEVIABLE THEREUNDER IS SAME AS IS LEVIABLE ON CONVEYANCE UNDER CLAUSE (B) OF ARTICLE 25.**

(i) Here, it is observed that Superintendent of Stamps and IGR Office has been refusing to give benefit of the Circular to following instruments and attempting to restrict concession only to sale and conveyance documents.

Sr. No.	Article	Document Type	Existing Stamp Duty Rates	Revised Stamp Duty Rates 2% & 3% or 5%
1.	16	Certificate of Sale	5%	2% & 3% or 5%?
2.	60	Assignment of Leasehold Rights in Land	5%	-do-
4.	40 (a)	Mortgage with possession	5%**	-do-
5.	34	Gift to a non-relative	5%**	-do-
6.	5(g-a) (i)	Development Agreement / Joint Development Agreement/ Assignment of Development Rights	5%	-do-
7.	36	Lease	5%	-do-

(ii) It is pertinent to note that Article 25(b) of Schedule-I of the Maharashtra Stamp Act, 1958 although is considered as basis for chargeability of stamp duty under other Articles, however, the same is not followed by the Department and the Department is giving literal meaning to the Circular and not carrying out its effect.

(\*\*) For two years w.e.f. 1<sup>st</sup> April 2020 till 31<sup>st</sup> March, 2022 on account of discount of 1% (i.e. from 6% to 5%) granted by the Government for the areas falling under the Mumbai Metropolitan Region Development Authority (MMRDA) and Municipal Corporations of Pune, Pimpri Chinchwad and Nagpur.

(iii) It is difficult to appreciate the contradiction in Stamp Department's stand that when the rate of stamp duty under Article 25(b) increases, stamp duty in respect of all documents under Article 5(g), 16, 34, 36, 40(a) also automatically levied at increased rate by authorities, but when stamp duty under Article 25(b) is reduced, then the unchanged rate is continued to be levied without passing on the benefit of reduction in the Notification to the public.

(iv) Strictly speaking, in case of change in stamp duty rates chargeable under Article 25(b), such change ought to automatically apply and extend to all the abovementioned documents without any iota of doubt. However, the exclusion of abovementioned instruments from concessional treatment does not seem to be unintentional.

#### 5. RESALE AGREEMENT WITHIN ONE YEAR AND PAYMENT OF DIFFERENTIAL STAMP DUTY :

Existing	Instances of reduction in Stamp Duty	Differential Stamp Duty Amount
5(g-a) (ii)	<p>1) Resale of flat within a period of 1(one) year from the date of first purchase agreement (only from a developer)</p> <p><b>Illustration:</b> A purchased a flat from Developer and paid a stamp duty of Rs.10,00,000/- on Agreement for Sale.</p> <p>Say after 6 months, A sells the said flat to B on which stamp duty payable is Rs.15,00,000/- by B. The second transfer being done within 1 year of its purchase by A, B shall get rebate of Rs.10,00,000/- in the payment of stamp duty payable on flat transfer agreement from A to B on account of the same having been paid by A on first agreement with Developer and accordingly, B shall be liable to pay differential stamp duty of Rs.500,000/- on such transfer.</p> <p>In case, stamp duty payable by B is Rs.10,00,000/-, then entire amount of stamp duty shall get adjusted on account of same having been paid by A on first agreement with Developer and B shall be liable to pay minimum stamp duty of Rs.100/- on such transfer.</p>	<p><b>Minimum Rs.100/- subject to adjustment against the duty chargeable under Article 25 (conveyance) differential stamp duty</b></p> <p>500,000/-</p> <p>100/-</p>
	<b>2) First sale (on and before 1<sup>st</sup>September,2020 and Resale in October-December 2020-within one year of date of Agreement)</b>	<b>Rs.100/-</b>
	<b>3) First sale between September-December 2020 and Resale in January-March 2021</b>	<b>1%</b>
	<b>4) First sale between January-March 2021 and Resale in April-December 2021.</b>	<b>2%</b>
	<b>5) First sale between September-December 2020 and Resale after March 2021</b>	<b>3%</b>
	<b>[Note: It is assumed that the stamp duty value may remain same at the time of first sale as well as resale in points 2 to 5. The stamp duty incidence will increase at the applicable rate in case of increase in value]</b>	

**6. THE FOLLOWING POINTS MAY BE KEPT IN MIND TO TAKE BENEFIT OF CONCESSIONAL STAMP DUTY :**

**(i) In respect of pending documents viz. (i) flats held under Allotment Letter, (ii) Unregistered Agreement for Sale and (iii) documents in escrow pending formalities, it is possible to avail of opportunity by payment of concessional stamp duty on execution and registration of fresh Agreement for Sale.**

**(ii) In the event of sale by investors, execution of Tripartite Agreement by the Developer, Investor and new purchaser is not recommended. In order to avoid any likely problem of Income Tax under Section 43CA, in the hands of the Developer, firstly RERA Agreement for Sale between Builder and Investor should be stamped and registered and thereafter Resale Agreement between the Investor and Purchaser should be executed and registered by paying stamp duty of Rs.100/- or differential stamp duty. This is because the value which the purchaser would pay to the investor would be higher than the value at which the investor would have acquired from the Developer.**

**(iii) It is advisable wherever possible to execute Agreement for Sale or Conveyance (with necessary safeguard to the owner) instead of Development/Joint Development Agreement. This may substantially reduce the burden of GST as well as Stamp Duty.**

**(iv) Documents (viz. Agreement for Sale/ Agreement for Assignment/Assignment) to facilitate Amalgamation of lease hold premises of BMC Estate Dept. may be executed before March 2021.**

**(v) In case of Collector of Stamps (Adjudication officer) or Registering Authority (Joint Sub-Registrars) refusing to give the benefit of reduction of stamp duty to above referred documents as mentioned in Para-3 or Para-4 (i), then it is advisable to execute documents on Rs.100/- Stamp Paper and make Application to the Collector of Stamps for Adjudication under Section 31 of Maharashtra Stamp Act,1958 (the "Act") within 1 (one) month from the date of execution of documents. On adjudication of document, if Collector of Stamps (Adjudication officer) refuses to consider the concession by speaking order, the available remedy then is to file Appeal under Section 32B of the Act, before Deputy Inspector General of Registration (DIGR) and Deputy Controller of Stamps (in Mumbai – Superintendent of Stamps) by paying court fees of Rs.300/- or under Section 53 of the Act before Chief Controlling Revenue Authority (CCRA) [viz. Inspector General of Registration (IGR-Pune)] so as to get the benefit of 2% or 3% as the case may be on subsequent clarifications.**

**7. EFFECTIVE RATES OF STAMP DUTY, L.B.T. AND Z.P. SURCHARGE CHARGEABLE ON AGREEMENT FOR SALE AND SALE DEED OF IMMOVABLE PROPERTY UNDER ARTICLE 25(b) OF SCHEDULE-I OF MAHARASHTRA STAMP ACT, 1958:**

Sr. No.	Document Type	Existing Aggregate Rate of Stamp Duty, L.B.T./Z.P. Surcharge	Reduced Aggregate Rate of Stamp Duty, L.B.T./Z.P. Surcharge from 01.09.2020 to 31.12.2020	Reduced Aggregate Rate of Stamp Duty, L.B.T. / Z.P. Surcharge from 01.01.2021 to 31.03.2021
1.	Areas under Municipal Corporation and Zilla Parishad Surcharge (Z.P.) for Rural Areas under Mumbai Metropolitan Region (excluding Mumbai City and Mumbai Suburban District)	<b>6%</b>	<b>3%</b>	<b>4%</b>
2.	Villages falling under Influential Area (Rural Area)	<b>6%</b>	<b>3%</b>	<b>4%</b>
3.	Rural Area (excluding Influential Area)	<b>5%</b>	<b>2%</b>	<b>3%</b>

**8. EFFECTIVE RATES OF STAMP DUTY, L.B.T. AND Z.P. SURCHARGE CHARGEABLE ON INSTRUMENTS OF GIFT UNDER ARTICLE 34 OF MAHARASHTRA STAMP ACT, 1958:**

Sr. No.	Document Type	Existing Aggregate Rate of Stamp Duty, L.B.T./Z.P. Surcharge	Reduced Aggregate Rate of Stamp Duty, L.B.T./Z.P. Surcharge from 01.09.2020 to 31.12.2020	Reduced Aggregate Rate of Stamp Duty, L.B.T. / Z.P. Surcharge from 01.01.2021 to 31.03.2021
1.	Municipal Corporation and Zilla Parishad Surcharge (Z.P.) for Rural Areas under Mumbai Metropolitan Region (excluding Mumbai City and Mumbai Suburban District)	Gift to a non relative	<b>6%</b>	<b>5%</b>
		<b>First Proviso:</b> Gift to a family member being the husband, wife, brother or sister of the donor or lineal ascendant or descendent of the donor excluding cases covered under Second Proviso.	<b>5%</b>	<b>4%</b>

Sr. No.	Document Type	Existing Aggregate Rate of Stamp Duty, L.B.T./Z.P. Surcharge	Reduced Aggregate Rate of Stamp Duty, L.B.T./Z.P. Surcharge from 01.09.2020 to 31.12.2020	Reduced Aggregate Rate of Stamp Duty, L.B.T. / Z.P. Surcharge from 01.01.2021 to 31.03.2021	
		<b>Second Proviso:</b> Gift of residential & agricultural property to husband, wife, son, daughter, grandson, granddaughter, wife of deceased son	<b>Rs.200/- + 1% LBT or ZP Surcharge as the case may be, on ASR</b>	<b>Rs.200/- + 0.5% of LBT or ZP Surcharge as the case may be, on ASR</b>	
2.	Villages falling under Influential Area (Rural Area)	Gift to a non relative	<b>6%</b>	<b>5%</b>	<b>5.5%</b>
		<b>First Proviso:</b> Gift to a family member being the husband, wife, brother or sister of the donor or lineal ascendant or descendent of the donor excluding cases covered under Second Proviso.	<b>5%</b>	<b>4%</b>	<b>4.5%</b>
		<b>Second Proviso:</b> Gift of residential & agricultural property to husband, wife, son, daughter, grandson, granddaughter, wife of deceased son	<b>Rs.200/- + 1% ZP Surcharge on ASR</b>	<b>Rs.200/-</b>	<b>Rs.200/- + 0.5% ZP Surcharge on ASR</b>
3.	Rural Areas (excluding Influential Area)	Gift to a non relative	<b>5%</b>	<b>4%</b>	<b>4.5%</b>
		<b>First Proviso:</b> Gift to a family member being the husband, wife, brother or sister of the donor or lineal ascendant or descendent of the donor excluding cases covered under Second Proviso.	<b>5%</b>	<b>4%</b>	<b>4.5%</b>



Sr. No.	Document Type	Existing Aggregate Rate of Stamp Duty, L.B.T./Z.P. Surcharge		Reduced Aggregate Rate of Stamp Duty, L.B.T./Z.P. Surcharge from 01.09.2020 to 31.12.2020	Reduced Aggregate Rate of Stamp Duty, L.B.T. / Z.P. Surcharge from 01.01.2021 to 31.03.2021
		<b>Second Proviso:</b> Gift of residential & agricultural property to husband, wife, son, daughter, grandson, granddaughter, wife of deceased son	<b>Rs.200/- + 1% ZP Surcharge on ASR</b>	<b>Rs.200/-</b>	<b>Rs.200/- + 0.5% ZP Surcharge on ASR</b>

**9. EFFECTIVE RATES OF STAMP DUTY, L.B.T. AND Z.P. SURCHARGE CHARGEABLE ON INSTRUMENTS OF USUFRUCTUARY MORTGAGE (WITH POSSESSION) UNDER ARTICLE 40(a) OF MAHARASHTRA STAMP ACT, 1958:**

Sr. No.	Document Type	Existing Aggregate Rate of Stamp Duty, L.B.T./Z.P. Surcharge	Reduced Aggregate Rate of Stamp Duty, L.B.T./Z.P. Surcharge from 01.09.2020 to 31.12.2020	Reduced Aggregate Rate of Stamp Duty, L.B.T. / Z.P. Surcharge from 01.01.2021 to 31.03.2021
1.	Municipal Corporation and Zilla Parishad Surcharge (Z.P.) for Rural Areas under Mumbai Metropolitan Region (excluding Mumbai City and Mumbai Suburban District)	<b>6%</b>	<b>5%</b>	<b>5.5%</b>
2.	Influential Area (Rural Area)	<b>6%</b>	<b>5%</b>	<b>5.5%</b>
3.	Rural Area (excluding Influential Area)	<b>5%</b>	<b>4%</b>	<b>4.5%</b>

**10. STAMP DUTY CHARGEABLE ON AMALGAMATION, MERGER, DEMERGER, ARRANGEMENT OR RECONSTRUCTION OF COMPANIES (INCLUDING SUBSIDIARIES OF PARENT COMPANY) UNDER ARTICLE 25(DA) OF SCHEDULE-I OF MAHARASHTRA STAMP ACT, 1958:**

The stamp duty on amalgamation, merger, demerger, arrangement or reconstruction under Article 25(da) of Schedule-I of Maharashtra Stamp Act, 1958 to be calculated at 10% of the market value of the shares issued or allotted in exchange or otherwise and amount of consideration paid for such amalgamation not exceeding (i) 5% of true market value of immovable properties located in Maharashtra or (ii) 0.7% of market value of shares issued pursuant to the Scheme, whichever is higher. However, vide order dated 16<sup>th</sup> March, 2020 issued by the Government of Maharashtra, **the stamp duty has been capped at Fifty Crores** in cases where stamp duty chargeable on documents is more than Fifty Crores. Hence, the Government has provided a ceiling of Rs. 50 Crores to alleviate the burden of the stamp duty incidence.

**11. IN OUR VIEW THE PRESENT PERIOD PROBABLY IS THE BEST OPPORTUNITY OF THE DECADE FOR HOME BUYERS AND ACTUAL USERS DUE TO FOLLOWING TANGIBLE BENEFITS ON OFFER TO THEM:**

- (i) Reduced incidence of stamp duty @ 2% to 3%.
- (ii) Stable and reasonable prices with many Developers offering all inclusive consolidated/composite consideration without any ambiguities.
- (iii) All times low interest rate on home loan @ 7% p. a. with lowest EMI.
- (iv) Numerous Developers offering substantial payment of consideration to be made against possession of premises, with O.C., thereby obviating uncertainties and risk to buyers.
- (v) Buyers interest substantially secured with enactment of RERA.
- (vi) Developers mainly having focused in completing project in last 12 months, multiple choice of projects completed or near completion are available to buyers.

The foregoing factors have been instrumental in mitigating risk and boosting confidence of home buyers.

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