



PART-II

Allotment of sites by the Bangalore Development Authority

Chapter-15

Allotment of stray sites

The BDA (Allotment of Sites) Rules, 1984 define a stray site as a site which was once allotted but subsequently the allotment was either cancelled by BDA or surrendered by the allottee, or a site which has been formed on account of readjustment in the plan, subsequent to the issue of notification inviting applications for allotment of sites.

Further, BDA is to dispose of the stray sites in accordance with the guidelines issued by the Government. As per the Government guidelines (August 1997), the stray sites should be reserved for allotment under various categories at the percentages shown in **Table-17**:

Table-17: Reservation of sites under various categories

Sl. No.	Category	Description	Percentage
1.	A	Disposal by auction	30
2.	B	Persons who have won special recognition in the field of sports at international /national levels – persons of Karnataka domicile.	15
3.	C	Persons who have won special recognition in the field of Arts, Science, Literature, Education, Medicine and Public Administration at the national/ international levels.	10
4.	D	Ex-Military personnel, military personnel, persons of Karnataka domicile.	5
5.	E	Freedom fighters who are residents of Bangalore for a period of not less than 10 years.	5
6.	F	Dependents of Karnataka Government servants when the latter die during the performance of their duties	5
7.	G	Persons in public life as may be directed by Government.	30
		TOTAL	100

The stray sites in respect of categories A to F are to be allotted by a Committee consisting of the Chairman, Commissioner, Commissioner/BBMP and two other members of BDA. The allotment is subject to the final approval of the Authority. The Government on its own issued orders of allotment of stray sites under 'G' Category and BDA implemented these orders.

During the period 2007-2011, the Authority had allotted 438 sites only under 'G' Category. Sites under other categories had not been allotted during this period. The allotment of 'G' Category sites was also stopped on the basis of a judgement (December 2010) in which the High Court had held that the State Government had no power or authority under the BDA Act, 1976 and the BDA (Allotment of Sites) Rules, 1984 to direct the BDA to allot sites to any person under 'G' Category as per circular No.UDD.129.MNJ dated 6 August 1997.

Irregularities noticed in the allotment of stray sites under “G” Category are discussed below:

15.1 List of stray sites not prepared

According to the Government guidelines of August 1997, the list of stray sites available should be compiled by the Secretary, layout-wise and dimension-wise, and got approved by the Authority, at least once a year.

However, BDA had not prepared the list of stray sites during 2007-12. Audit could not, therefore, determine whether 438 sites allotted under ‘G’ Category during 2007-11 satisfied the definition of stray sites.

15.2 Allotments not made in accordance with the rules

During the period 2007-11, BDA had allotted 438 sites under “G” Category on the directions of the Government. As the list of stray sites had not been prepared by BDA, the proportion of the sites allotted under ‘G’ Category to the total number of stray sites available was not ascertainable. By failing to prepare the list of stray sites every year, BDA evidently disregarded the Government guidelines which prescribed a cap of 30 *per cent* on allotments under ‘G’ Category. Audit could not verify whether the sites allotted under ‘G’ Category had exceeded this cap.

15.3 Allotment of ‘G’ Category sites to ineligible persons

The year-wise allotment of sites under ‘G’ Category to various groups of persons were as given in **Table-18**:

Table-18: Year-wise allotment of sites under ‘G’ Category

Year	Number of sites allotted to various groups						Total
	MLA/MLC (percentage)	MP (percentage)	Ministers (percentage)	Artists (percentage)	Sports persons (percentage)	Others (percentage)	
2007	39(18)	3(1)	NIL	2(1)	1(1)	172(79)	217
2008	NIL	NIL	NIL	2(17)	NIL	10(83)	12
2009	83(65)	8(6)	10(8)	2(2)	NIL	24(19)	127
2010	11(18)	NIL	1(2)	1(2)	NIL	47(78)	60
2011	11(50)	1(5)	NIL	NIL	NIL	10(45)	22
Total	144(33)	12(3)	11(3)	7(1)	1¹	263(60)	438

(Source: Information furnished by BDA)

¹ Negligible

Sixty *per cent* of the allottees under 'G' Category were other than MLAs/MLCs/MPs/Ministers/Artists or sports persons. As the allotment under "G" category was to be made only for persons in public life, the allottees should have proven record in public life. In respect of 263 allottees under the group 'Others', BDA was in possession of the background information of only 28 allottees. Of these, 12 were Government officials, two house wives, four agriculturists, three businessmen, two private employees, one seer, one social worker, one doctor, one waiter and one professor. In all the cases of allotments under 'G' Category, BDA allotted the sites on the basis of Government orders and did not, therefore, have any opportunity to determine the merits of allotments.

15.4 Sites allotted to those having own houses and/or sites

The BDA (Allotment of Sites) Rules, 1984 prescribe that no person who or any dependent member of whose family, owns a site or a house, or has been allotted a site or a house by the BDA, or a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 or any other such Authority within the Bangalore Metropolitan Area, or has been allotted a site or a house in any other part in the State by any other Urban Development Authority or the Karnataka Housing Board or such agency of the Government, shall be eligible to apply for allotment of a site. While applying for allotment of a site, the allottees are to submit a declaration to this effect duly signed and attested by a notary.

Scrutiny of the sampled allotments under "G" Category during the period 2007-2011 showed that 10 applicants had declared that they or their dependents had their own houses and/or sites. Nevertheless, sites under 'G' Category had been allotted to them. The details are shown in **Table-19**:

Table-19: 'G' Category sites allotted to those who owned houses/sites

Sl. No.	Site No	Layout	Dimension of site (in feet)	Year of allotment
1	315	HBR I Stage, V Block	40x60	2007
2	306	HBR I Stage, V Block	40x60	2007
3	991	BTM IV Stage, II Block	30x40	2007
4	1214	BTM IV Stage, II Block	30x40	2007
5	1081	BTM IV Stage, II Block	30x40	2007
6	1229/L	BTM IV Stage, II Block	30x40	2008
7	17/Q	HSR Sec-III	50x80	2009
8	945	BSK VI / X Block	50x80	2009
9	413/C	HSR Sec-VI	50x80	2009
10	831	J P Nagar VIII Phase, I Block	30x40	2010

(Source: Information furnished by BDA)

These allotments were, prima facie, irregular. If these sites had been disposed of through public auction, BDA would have earned an additional revenue of ₹ 9.84 crore².

15.5 Allotment of corner and commercial sites under “G” category

The BDA (Disposal of Corner Sites and Commercial Sites) Rules, 1984 prescribe that whenever the Authority has formed an extension of layout in pursuance of any scheme, the Authority may, subject to the general or special orders of the Government, dispose of any or all the corner sites³ or commercial sites⁴ in such extension or layout by auction.

Scrutiny showed that four corner sites and 22 commercial sites had been irregularly allotted under ‘G’ Category during 2007-11 in violation of the Rules. BDA stated (September 2012) that as the Correct Dimension Reports (CDRs) furnished by the Engineering Divisions had not identified these sites as corner or commercial sites, allotments had been made under ‘G’ Category. The reply was not acceptable as these sites, as per the approved layout plans, were either corner sites or commercial sites which should have been disposed of only through auction. The Engineering Divisions should have referred to the approved plans before preparing CDRs. Failure to do so resulted in a loss of ₹ 23.67 crore⁵ to BDA.

15.6 Allotment of sites under ‘G’ Category disregarding the High Court judgment

The High Court in its judgment dated 15 December 2010 had held that “the State Government has no power or authority under the provisions of the BDA Act, 1976 and the Rules made thereunder to direct the BDA to allot the sites to any person/ persons under “G” category as per the Circular No.UDD 129 MNJ dated 6-8-1997”.

Scrutiny showed that BDA allotted 22 sites of various dimensions under ‘G’ Category in 2011, long after the judgment had been delivered in December 2010. BDA stated (September 2012) that as the Government had allotted these sites prior to the date of judgement, allotment letters were issued by

² Based on the highest bids received for auction of sites in the same layouts.

³ A corner site is defined as a site at the junction of two roads having more than one side of the site facing the roads.

⁴ A commercial site is defined as any site formed for locating a commercial enterprise or undertaking. The Revised Master Plan 2015 prescribes that a site with an area of more than 240 sqm and abutting a road of more than 18 metre wide can be used for commercial purposes.

⁵ Based on the highest bids received for auction of sites in the same layouts.

BDA after the judgement. The reply was not acceptable as BDA failed to refer the cases back to the Government for cancellation of allotments.

15.7 Non-adherence to the terms of allotment

As per the BDA (Allotment of Sites) Rules, 1984, the allottee shall, within a period of 60 days from the date of receipt of notice of allotment, pay to the Authority, the balance sital value deducting the initial deposit. If the balance sital value is not paid within a period of sixty days, the Authority may, on application of the allottee, extend the time for payment for a further period not exceeding 60 days, and the allottee shall pay, in addition, interest at the rate of eighteen percent on the said amount for the first thirty days of the extended period and at the rate of twenty one percent for the next thirty days of the extended period. If the amount is not paid within such extended period also, the registration fee shall be liable to be forfeited and the allotment cancelled without prior intimation.

Further, after payment is made, the BDA is to call upon the allottee to execute a lease-cum-sale agreement. If the allottee fails to execute the lease-cum-sale agreement within 60 days after BDA has called upon him to execute such agreement, the registration fee paid by the allottee may be forfeited and the allotment of the site cancelled, and the amount paid by the allottee may be refunded, after deducting such expenditure as might have been incurred by BDA.

Scrutiny showed the following:

- In three out of 127 cases of allotments made during 2009, the allottees of sites under 'G' Category failed to pay the sital value after the expiry of the extended period of 60 days. However, BDA had not taken action to cancel the allotment of these three sites, with a sale potential of ₹ 2.88 crore.
- In eight out of 127 cases of allotments made during 2009, the allottees had not executed the lease-cum-agreements even after the expiry of the prescribed time frame. BDA had not cancelled the allotments of these eight sites with a sale potential of ₹ 11.02 crore.

15.8 Suspected fraudulent practices in the allotment of sites

(i) Smt. Sunila Bhookanakere Sangappa had represented (April 2010) to the CM requesting for allotment of a 30'x50' site in Suryanagar, II Phase of the KHB and the CM approved (April 2010) the allotment. However, BDA processed this application for allotment of a site under 'G' Category. While processing this request, the name of the applicant was changed to Smt.

Surekha Sangappa Bhookanakere while the dimension of the site to be allotted was altered as 60'x40'. Scrutiny showed that while the applicant was a resident of Belgaum, the person in whose favour BDA allotted the site was an employee of Life Insurance Corporation working in Mumbai. Thus, the actual allottee of the site was different from the one recommended to receive the site. Fraudulent practices in the allotment of the site with a sale potential of ₹ 72 lakh cannot be ruled out.

(ii) The Commissioner approved (May 2011) the allotment of a site measuring 60'x40' in HSR I Sector valued at ₹ 1.60 crore on the basis of a request from the applicant that BDA had failed to allot the site, despite a resolution having been passed by the Authority in June 1984 approving the allotment. It was further reported that he had filed a writ petition (WP13201/2002) before the High Court and obtained favourable orders. The applicant had also enclosed a copy of the judgement delivered by the Court in this case.

Scrutiny of the case by Audit showed the following:

- The writ petition had not been filed by the applicant but by another person who was allotted (October 2004) a 60'x40' site in HSR Layout as per the judgment;
- The allotment of site made to the applicant in June 1984 had been subsequently cancelled by BDA vide resolution No.68/2002; and
- No other documents like the original allotment letter, certified copy of GPA given by the land owner, etc., had been submitted by the applicant in support of the claim.

Thus, the possibility of fraudulent allotment cannot be ruled out.

15.9 Allotment on false affidavit

The Government had allotted (February 2005) a 60'x40' site under 'G' Category in HRBR Layout I Block to a journalist. BDA had issued the possession certificate for the site in January 2006. Acting on a complaint received against the allotment, BDA found (November 2006) that the journalist had earlier been allotted site No.94 in Gangenahalli, Hebbal measuring 40'x60' during 1972-73. However, the journalist defended (January 2007) the allotment on the ground that the site allotted earlier before the framing of the BDA (Allotment of Sites) Rules, 1984 had already been sold for a low price to settle his loans. BDA accepted the explanation of the journalist and sent a report to the Government in October 2008. It was seen that the erstwhile City Improvement Trust Board (CITB) had allotted a site to the journalist during 1972-73. As per the BDA (Allotment of sites) Rules, 1984, no person who had been allotted a site by any agency of the Government was eligible for a 'G' Category site. The rules did not make any distinction whether a site had been allotted before or after these Rules came

into effect. Thus, as a site had already been allotted by the CITB to the journalist in 1972-73, he was not eligible for a 'G' Category site again and he was irregularly allotted one with a sale potential of ₹ 1.58 crore.

15.10 Bulk allotment of sites under 'G' Category

On the basis of representation of the Convener, Dalit Kriya Samithi submitted to the CM in June 2004, the Government approved (October 2007) allotment of sites measuring 20'x30' to 46 members of the Dalit Kriya Samithi under 'G' Category. Accordingly, BDA allotted (April 2008) sites to these 46 members at the current allotment rate in well developed layouts which included Gnanabharati, BTM IV Stage, BTM VI Stage, HSR Sector III and Nagarbhavi Layouts.

Though Section 65 of the BDA Act empowers the Government to give directions to the Authority, this power is restricted to giving directions necessary for carrying out the purposes of the BDA Act. As there is no provision in the BDA Act for the Government to direct BDA to allot sites, the decision of the Government to approve the allotment of sites to members belonging to a particular community was irregular.

Further, the sites allotted to these 46 members were residuary intermediate sites available in the layouts after allotment to the general public. These intermediate sites could be allotted as alternative sites in cases where the possession of the sites originally allotted could not be given to the allottees by BDA. Otherwise, the intermediate sites were being auctioned by BDA. During 2007-12, BDA had disposed of 162 such intermediate sites through auction. As a result of the irregular bulk allotment of 46 intermediate sites to the members of the Dalit Kriya Samithi, the BDA, besides setting a precedent, lost the opportunity of disposing of these sites through auction and earning more revenue. The loss to BDA in these cases aggregated ₹ 11.08 crore.

Chapter-16

Allotment of alternative sites

The BDA (Allotment of Sites) (Amendment) Rules, 2003 provide the following framework for allotment of alternative sites:

- Where the Authority is unable to hand over possession of a site allotted to any allottee, due to stay orders of the Courts or for any other reason, the Authority may allot an alternative site to such allottee, subject to the following conditions;
- An alternative site may be allotted only where the mistake was on the part of the Authority while making the allotment of sites where possession of the sites originally allotted could not be given to the allottees;
- Alternative sites may be allotted by the Authority in the same layout in which the sites were originally allotted or in the layouts formed by the Authority subsequent to the formation of the layout in which the sites were originally allotted;
- Alternative sites shall not be allotted in layouts formed prior to the layout in which the sites were originally allotted, even if sites are physically available in the layout/s formed prior to the layout in which original allotment was made;
- While allotting alternative sites, sites bigger in dimension than the sites originally allotted shall not be considered for allotment. However, an alternative site upto ten percent over and above the area of the originally allotted site may be allotted. In such cases, for the extra sital area involved, additional sital value applicable in that layout for that site shall be collected by the Authority;

BDA had constituted an Allotment Committee as required under Rule 11 of BDA (Allotment of Sites) Rules, 1984 which verified the eligibility of the applicant before allotting the alternative site. The Committee was headed by the Commissioner and consisted of Town Planning Member, Engineering Member, Finance Member and Deputy Secretary. Subject to approval by the Authority, the decision of the Allotment Committee shall be final.

Scrutiny of the allotment of alternative sites showed the following:

16.1 Allotment of alternative sites in older layouts

In 34 cases detailed in the **Appendix-2**, alternative sites had been allotted in older layouts in violation of the rules. It was seen in all these cases that the alternative sites identified by the allottees themselves had been allotted by the Allotment Committee. In addition, the Commissioner had irregularly allotted 11 alternative sites in older layouts (**Appendix-3**) without the approval of Allotment Committee. As the older layouts had been fully developed in

comparison to the new ones, alternative sites allotted in the older layouts carried a higher market value and the allottees in these 45 cases profited substantially by getting the alternative sites allotted in the older layouts. The loss to BDA on account of these irregular allotments aggregated ₹ 36.83 crore.

16.2 Irregular allotment of alternative sites of higher dimensions

In two cases listed in **Table-20**, the Allotment Committee had irregularly allotted alternative sites of higher dimensions, the additional area being 20 to 40 *per cent* more than the area of the sites originally allotted against the maximum permissible limit of 10 *per cent*.

Table-20: Alternative sites of higher dimensions allotted

(Area in sqm)

Sl. No.	Name of the layout and alternate site No. allotted	Area of the alternative site in sqm against original allotment	Additional area allotted in sqm in excess of 10 <i>per cent</i>	Month/ year of allotment	Allotment rate of BDA (₹ per sqm)	Average auction bid received by BDA during the period of allotment (₹ per sqm)	Loss (₹ per sqm)	Total loss (₹ in lakh)
1.	MRC R-679	223.05(167.29)	39.03	9/07	2100	55100	53000	20.69
2.	RPC layout-3131	78.07(55.76)	16.73	12/07	2100	55100	53000	8.87
	Total							29.56

(Source: Information furnished by BDA)

If these alternative sites had been auctioned, it would have fetched BDA additional revenue of ₹ 29.56 lakh.

In three other cases listed in **Table-21**, the Commissioner had irregularly allotted alternative sites of higher dimensions without the approval of the Allotment Committee.

Table-21: Alternative sites irregularly allotted by the Commissioner

(Area in sqm)

Sl. No.	Name of the layout and alternate site No. allotted	Area of the alternative site in sqm as against original allotment	Additional area allotted in sqm in excess of 10 <i>per cent</i>	Month/ year of allotment	Allotment rate of BDA (₹ per sqm)	Average auction bid received by BDA during the period of allotment (₹ per sqm)	Loss (₹ per sqm)	Total Loss (₹ in lakh)
1	HSR III -1063	111.52(92.94)	9.29	4/2011	2100	70370	68270	6.34
2	HSR I- 1100	223.05(148.70)	59.48	3/2011	2100	68757	66657	39.65
3	HSR II -1695	194.52 (124.07)	58.04	1/2010	2100	69623	67523	39.19
							Total	85.18

(Source: Information furnished by BDA)

The irregular action of the Commissioner in allotting these sites of higher dimension as alternative sites instead of disposing of these through auction resulted in BDA incurring a loss of ₹ 85.18 lakh.

16.3 Irregular allotment of corner sites

As per the BDA (Disposal of Corner Sites) Rules, 1984, all the corner and commercial sites are to be disposed of only through auction. In the cases listed in **Table-22**, corner sites had been irregularly allotted as alternative sites:

Table-22 : Corner sites allotted as alternative sites

Sl. No.	Name of the layout and alternative site No. allotted	Area of the site allotted in sqm	Month/ year of allotment	Allotment rate of BDA (₹ per sqm)	Highest auction bid received by BDA during the period of allotment (₹ per sqm)	Loss (₹ per sqm)	Total Loss (in ₹ in lakh)
1	KMSL -4057/D	55.76	12/2009	2100	48000	45900	25.59
2	JPN IX- 75	111.52	4/2011	2100	27200	25100	27.99
	Total						53.58

(Source: Information furnished by BDA)

Though BDA noticed the irregularity subsequently, the sites were allowed to be retained by the allottees. BDA incurred a loss of ₹ 53.58 lakh as a result of allotting the corner sites as alternative sites instead of disposing of these through auction.

16.4 Alternative sites were allotted on request

In seven cases, alternative sites had been irregularly allotted (July 2007 to September 2010) by the Allotment Committee on the basis of requests made by the allottees, citing reasons of non-development of the layout. Further, the Commissioner had approved allotment of one alternative site in an older layout on the same ground without the approval of the Allotment Committee. All the requests had been considered favourably by the Allotment Committee/ Commissioner though the Rules did not permit allotment of alternative sites on grounds of non-development of the layout.

16.5 Allotment without the Allotment Committee's approval

Though only the Allotment Committee was empowered to decide on allotment of alternative sites, the Commissioner had irregularly allotted alternative sites in 45 cases while the Secretary had irregularly approved the allotment in one case. Had these sites been auctioned, BDA could have realized an additional revenue of ₹ 54.17 crore.

16.6 Allotment of alternative site after cancellation of the original allotment

A site allotted in HSR Sector VII during November 1988 had been cancelled in 1990 due to non-payment of the sital value. The allottee's request for allotment of an alternative site was favourably considered by the CM who

directed (August 2005) BDA to allot a site in the same layout. Though the Government did not have powers under the BDA Act/Rules to direct BDA to allot site, it nevertheless directed (May 2007) BDA to allot a site measuring 223.26 sqm in HSR Layout, Sector VI. However, the allottee sold the site within three months of allotment.

The allotment of the site in a well developed layout on the directive of the Government disregarding the prescribed Rules helped the allottee earn a fortune by selling it immediately after the allotment. While the allottee had paid ₹ 12.01 lakh to BDA for the site, the registered value of the site was ₹ 67.20 lakh. It would be pertinent to mention here that the sale potential of this site on the basis of highest bid received in June 2007 for auction of sites in this layout was ₹ 99.35 lakh. BDA stated (August 2012) that the allotment had been made on the basis of orders of the Government after the allottee had repeatedly represented through the Government, elected representatives and Ministers. It was further stated that only the prevailing allotment rate had been recovered from the allottee as there was no provision in the rules to levy the auction rate. The reply was not acceptable as the Government had not been vested with powers under the BDA Act/Rules to direct BDA to allot site to a person.

16.7 Allotment of commercial sites as alternative sites

The Commissioner, during his inspection (October 2009) of the BSK VI Stage (Further Extension), had ordered auctioning of the odd dimension sites on 80 feet wide road as commercial sites. After the proposal was cleared by the Town Planning Member, 10 commercial sites carved out of land in Sy.No.14/1 of Raghuvanahalli village had been approved for auction. EE, South Division notified (February 2010) these sites for auction.

The details of the sites offered for auction along with dimensions were as given in **Table-23**:

Table-23: Details of corner sites notified for auction

Sl. No.	Site No.	Area in sqm
1	3503	361.50
2	3504	354.75
3	3506	338.25
4	3507	333.00
5	3508	339.00
6	3509	366.75
7	3510	524.40
8	3515	333.00
9	3516	340.50
10	3517	348.75

(Source: Information furnished by BDA)

BDA had fixed the minimum bid amount at ₹ 50000 per sqm for the auction. During the auction, the bidders requested BDA to reduce the minimum bid price to ₹ 20000-25000 per sqm. However, BDA did not consider the request of the bidders who, therefore, abstained from the auction. The Auction Committee comprising the Chairman, Commissioner, Engineering Member and the Finance Member decided (February 2010) to wait for some more time and auction these sites later.

However, the Allotment Committee/Commissioner subsequently allotted (June 2010 to November 2010) four of these sites as alternative sites. Scrutiny of these four allotments showed the following:

16.7.1 Site No.3506

A person who had been allotted a 50'x80' site in Banashankari VI Stage IV-B Block requested (June 2010) for an alternative site on the ground that the site allotted to him was in a low lying area and that the site might also be taken over by the Forest Department. He requested for allotment of site No. 3506 available in BSK VI Stage, IV-H Block facing the 80 feet road. The Secretary suggested (March 2010) obtaining a report from the Engineering Division before placing the proposal before the Allotment Committee. However, the Commissioner ordered (March 2010) to place the request before the Allotment Committee straightaway and the Allotment Committee approved allotment of an alternative site in the same layout or in a layout formed subsequent to it. The Commissioner approved (June 2010) the Secretary's proposal to allot site No.3506 in Banashankari VI Stage, IV-H block. The allotment of the commercial site as alternative site was irregular for the following reasons:

- The claim of the allottee that the site might be taken over by the Forest Department had not been verified by BDA for its correctness as an alternative site should be allotted only where the mistake was on the part of BDA. As per the information furnished (November 2012) by the Engineering Division (South), the site did not come under forest limits and also remained vacant;
- Allotment of the commercial site as an alternative site was irregular as commercial sites should be disposed of only through auction; and
- While the value of the site was ₹ 90 lakh, the allottee paid only ₹ 7.56 lakh as the site value, resulting in a loss of ₹ 82.44 lakh to BDA.

16.7.2 Site No. 3507

A person had been allotted a site measuring 60'x40' in Banashankari VI Stage, V Block as an incentive site for land losers. As the site had been taken over by the Forest Department, an alternative site in Anjanapura II Block was allotted by the Allotment Committee in November 2010. Thereafter, the allottee transferred the title of the site in favour of his wife through a gift deed. The wife of the allottee requested (August 2011) BDA for allotment of site

No.3507 in Banashankari VI/IV-H Block on the ground that this site was closer to her land and family. Though the proposed alternative site measured 333 sqm, i.e., 110 sqm more than the original site, the proposal of the Secretary, BDA was approved (November 2011) by the Commissioner. However, the Engineering Member requested (January 2012) for staying the allotment process as the alternative site was higher in dimension than the originally allotted site. Meanwhile, the allottee approached the CM and the CM's office referred (March 2012) the matter to BDA for further action. Thereafter, BDA registered the sale deed in April 2012 in favour of the wife, overlooking the objections raised by the Engineering Member. The allotment of the alternative site was irregular for the following reasons:

- The alternative site identified by the allottee was a commercial site which had earlier been auctioned. This had not been considered before the allotment was approved;
- The reason advanced for seeking the alternative site was that the allotted site was far away from the original site. This was not a valid reason as alternative site was to be allotted only in cases where BDA was unable to hand over possession of the originally allotted site;
- The Commissioner had approved the alternative site without taking the approval of the Allotment Committee; and
- The area of the alternative site was 49 *per cent* more than that of the originally allotted site. This was in violation of the rules for allotment of alternative site which prescribed a cap of 10 *per cent* for the additional area.

As a result of allotting a commercial site as the alternative site, BDA lost a revenue of ₹ 72.93 lakh.

16.7.3 Site No. 3508

A person had been allotted (January 2004) a site measuring 60'x 40' in Banashankari VI Stage, V Block under the incentive scheme for land losers. Subsequently, she sold (January 2006) the site to another person. However, the allotment of the site was cancelled (November 2010) by BDA as it was falling under the Forest area and an alternative site in Anjanapura II Block was allotted (November 2010) by the Allotment Committee. The new owner of the site represented (May 2011) for allotment of an alternative site citing non-development of the layout. Though the request was refused initially, the Commissioner approved (November 2011) the allotment of site No.3508 subject to the condition that the allottee would pay the sital value for the additional sital area of 116 sqm. The site was registered in favour of the new owner on 13 December 2011. The allotment of the site was irregular for the following reasons:

- The proposal for allotment had not been placed before the Allotment Committee;
- The allotted site was a commercial site which should have been disposed of only through auction; and
- The area of alternative site allotted was 52 *per cent* in excess of that of the original site which was not permitted by the Rules.

Considering that the allotted site was a commercial site, the Authority by allotting it as an alternative site instead of disposing it of through auction incurred a loss of ₹ 73.96 lakh.

16.7.4 Site No. 3510

A person had been allotted (October 2003) a site measuring 223 sqm in Banashankari VI Stage, V Block. The allottee sold the site in 2004 to another person. As the site was later handed over (February 2007) to the Forest Department, the Allotment Committee allotted (November 2010) an alternative site No.457 measuring 216 sqm in Anjanapura I Block. However, the new owner requested for allotment of Site No.3510 as the alternative site. The Commissioner approved (December 2011) the allotment of Site No.3510 after obtaining the CDR from BDA, South Division in November 2011. The CDR mentioned the area of the site as 216 sqm and accordingly, BDA recovered the sital value for only 216 sqm. Though the Engineering Member subsequently requested (January 2012) for cancelling the allotment as the site allotted was of higher dimension (279 sqm), no action had been taken. The allotment of the alternative site was irregular for the following reasons:

- The proposal for allotment had not been placed before the Allotment Committee for approval ; and
- The allotment had been made on the basis of the CDR of the Bangalore, South Division which mentioned the area of the site as 216 sqm. Subsequently, the Engineering Member had reported that the area of the site No. 3510 was 279 sqm. Thus, the incorrect CDR facilitated allotment of alternative site of higher dimension.

As per the auction notification of February 2010, the area of the site No.3510 notified for auction was 524.40 sqm while the area of site No.3510 allotted as an alternative site was only 216 sqm. The reasons for the reduced area were not on record.

By allotting a commercial site as the alternative site, BDA lost ₹ 68.89 lakh.

Chapter-17

Allotment of Civic Amenity sites

17.1 Provisions for Civic Amenity Sites

Civic amenity as defined in the BDA Act means and includes:

- (i) A market, a post office, a telephone exchange, a bank, a fair price shop, a milk booth, a school, a dispensary, a hospital, a pathological laboratory, a maternity home, a child care centre, a library, a gymnasium, a bus stand or a bus depot ;
- (ii) A recreation centre run by the Government or the Corporation;
- (iii) A centre for educational, social or cultural activities established by the Central Government or the State Government or by a body established by the Central Government or the State Government;
- (iv) A centre for educational, religious, social or cultural activities or for philanthropic service run by a cooperative society registered under the Karnataka Co-operative Societies Act, 1959 or a society registered under the Karnataka Societies Registration Act, 1960 or by a trust created wholly for charitable, educational or religious purposes;
- (v) A police station, an area office or a service station of the Corporation or the Bangalore Water Supply and Sewerage Board or the Karnataka Electricity Board; and
- (vi) Such other amenity as the Government may, by notification, specify.

The extent of reservation of land for parks and open spaces which include space for civic amenities (CA) is regulated by the approved Comprehensive Development Plans (CDPs). BDA had so far formulated two such plans viz., CDP 1995 and RMP 2015. As per CDP 1995, reservation of 45 *per cent* of the total area for roads, parks, playgrounds and civic amenities is necessary in residential layout plans and in the case of Group Housing plans, 25 *per cent* of the total area is to be reserved for civic amenities, parks and open spaces subject to a minimum of 15 *per cent* for parks and open spaces.

In the case of private layouts, no person can form or attempt to form any extension or layout for the purpose of constructing buildings thereon without the express sanction in writing of the BDA. Further, the ownership of the roads, drains, water supply mains and open spaces laid out in the private layouts should be transferred to BDA permanently without claiming any compensation therefor.

The developers of the private layouts and Group Housing schemes are further required to execute registered relinquishment deeds for transfer of ownership

of parks and CA sites besides roads, drains etc. as per the sanctioned plan before the issue of work order by BDA. The parks and open spaces in the private and BDA Layouts are to be transferred to BBMP on completion of the layouts for maintenance.

In the Revised Master Plan 2015 effective from June 2007, the areas to be earmarked for CA, park and open spaces were reduced in respect of Group Housing plans as shown below:

Park and open space: 10 *per cent* of the total area; and

Civic amenities: 5 *per cent* of the total area

Further, in respect of Group Housing Development Plans, the developer/owner is required to develop the area earmarked for CA and hand it over to the resident associations. However, BDA has the power to decide the mode of handing over the developed CA space to the resident associations.

17.1.1 Non-relinquishment of CA sites

It was seen that 18 CA sites measuring 32,584.61 sqm had not been relinquished by private house building co-operative societies in favour of BDA as of March 2012. The details of work orders issued to these private layouts were not on record. As the work order for developing a private layout was to be issued to the developer only after the relinquishment deed was registered in BDA's favour, the violation of the prescribed procedure in these cases had resulted in retention of these sites by the societies which would otherwise fetch a revenue of ₹ 16.29 crore to BDA if allotted on lease basis for 30 years. BDA did not have information on the status of these CA sites and the possibility of these CA sites being used for other than the intended purposes cannot be ruled out.

17.2 Legal framework for allotment of CA sites

The BDA Act empowers the BDA to lease, sell or otherwise transfer any area reserved for CA for the purpose for which such area is reserved.

The allotment of CA sites is governed by the BDA (Allotment of Civic Amenity Sites) Rules 1989. The rules have been framed in response to the High Court judgment that no CA site reserved for a particular purpose in any of the layouts formed by it should be disposed of for any other purpose except for the purpose for which it was reserved and in conformity with the provisions of the Act, and disposal of such sites should not be made unless necessary rules were framed.

The BDA (Allotment of Civic Amenity Sites) Rules, 1989 prescribe the following :

- Due publicity shall be given in respect of CA sites offered for leasing to the institutions, specifying their location, number, dimension, purpose and the last date of submission of applications by affixing the notice on the notice board of the office of BDA and by publishing the notification in not less than two daily news papers in English and Kannada, having wide circulation in the city of Bangalore. Further, for the purpose of selection of the institution for leasing out CA sites, the Authority is to constitute a “Civic Amenity Site Allotment Committee” (CASAC) headed by the Chairman, BDA and consisting of three official members and three non-official members. Subject to the approval of BDA, the decision of the CASAC shall be final.
- BDA, having regard to the particular type of amenity required to be provided in any locality, may offer such CA sites for the purpose of allotment on lease basis to any institution;
- The lease amount of the site to be allotted on lease basis in any area shall be fixed by BDA;
- Allotment of CA sites shall be on lease basis for a period of thirty years;
- The lessee shall complete the construction of the building within a period of three years from the date of registration of the lease agreement or such extended period, not exceeding three years, as BDA may permit subject to payment of penalty at such rates notified by the State Government. If the building is not constructed even within the extended period, BDA may, after giving reasonable notice to the institution, cancel the allotment, revoke the agreement and evict the lessee from the site and refund the lease amount paid by the lessee after forfeiting 12½ per cent.

As of March 2012, BDA had allotted 1234 sites of various dimensions for different purposes to different institutions. The irregularities noticed in the allotment, utilisation and renewal of lease of CA sites are discussed in the succeeding paragraphs.

17.3 Irregular allotment of CA sites

17.3.1 Procedure for Allotment of CA sites not transparent

A review of the minutes of the CASAC relating to allotments made during 2007-12 showed that recommendations made for the allotments of CA sites lacked duly recorded justifications. Where many applications had been received for allotment of a CA site and one of the applicants had been preferred over others, there were no recorded reasons as to why that particular applicant had been preferred. As the CA sites had been allotted on the basis of such recommendations without recorded justification, there was no transparency in allotment of CA sites.

17.3.2 Allotment of park as a CA site

CA site No.7 in RPC layout measuring 37625 sq ft had been allotted (October 1979) to a Trust for construction of a school building. The request made by the Trust for allotment of another CA site No.9 had been rejected (December 2006) by BDA. However, the Assistant Executive Engineer (West) reported (March 2008) to BDA that the Trust had encroached upon the entire area of 1692.79 sqm in CA site No.9. BDA resolved (September 2010) to allot the land encroached upon to the Trust on lease basis for 30 years by levying penalty suitably and recovering the lease amount at the prevailing rate, as agreed to by the Trust in July 2006. BDA approved (September 2010) the lease amount and penalty aggregating ₹ 4.80 crore as shown in **Table-24**:

Table-24: Lease amount and penalty as approved by BDA

Sl. No.	Particulars	Amount (In ₹)
1	Lump sum lease amount for 1692.79 sqm at the prevailing rate of ₹ 2500 per sq mtr	42, 31,975
2.	Additional lease amount - 1/10 of 1692.79 sqm = ₹ 169.28 x 30 years	5078
3.	Penalty for unauthorised occupation of 1692.79 sqm or 18221.19 sq ft at ₹ 2400 per sq ft being the guidance value fixed by the Government.	4,37,30,856
	Total	4,79,67,909

(Source: Information furnished by BDA)

On the basis of a request from the Trust for allotment of the CA site being used as a playground, without levy of penalty, the site was again inspected during March 2011 and it was found that the Trust had utilised 258.08 sqm for construction of a school building. On the basis of this report, BDA revised the amount to ₹ 88.57 lakh as shown in **Table-25**:

Table-25: Revised amount as approved by BDA

Sl. No.	Particulars	Amount (In ₹)
1	Lump sum lease amount for 258.08 sqm at the prevailing rate of ₹ 2500 per sqm	6,45,200
2.	Additional lease amount- 1/10 of 258.08 sqm = ₹ 26 x 30 years	780
3.	Penalty for unauthorised occupation of 258.08 sqm or 2777.97 sq ft at ₹ 2400 per sq ft being the guidance value fixed by the Government.	66,67,135
	Penalty for utilising 1434.71 sqm or 15443.21 sq ft unauthorisedly at ₹ 100 per sq ft	15,44,322
	Total	88,57,437

(Source: Information furnished by BDA)

BDA entered into a lease agreement in August 2011 and issued the possession certificate to the Trust for the entire area of 1692.79 sqm in September 2011.

The reduction of the dues from ₹ 4.80 crore to ₹ 88.57 lakh was not justified due to the following reasons:

- (i) Site No.9 had been earmarked for park in the approved plan. The area earmarked for park had been allotted to the Trust to regularize the unauthorised occupation and encroachment. Allotment of the park to a private trust was irregular;
- (ii) Though the entire area of 1692.79 sqm in site No.9 had been allotted to the Trust as per the possession certificate issued in September 2011, the lease amount had been recovered only for the area of 258.08 sqm over which a building had been unauthorisedly constructed by the Trust. The Trust had admitted that the site had been used as a playground. Recovery of the lease amount only for 258.08 sqm instead for the entire area of 1692.79 sqm allotted to the Trust resulted in unauthorised benefit of ₹ 35.87 lakh to the Trust;
- (iii) The penalty for unauthorised use of site No.9 had been reduced from ₹ 2400 per sq ft to ₹ 100 per sq ft without any recorded justification. The reduction was adhoc and lacked justification; and
- (iv) Commissioner approved the token penalty without placing the proposal before the Board.

BDA stated (September 2012) that the lease amount had been calculated on the basis of the area encroached upon. The reply was not acceptable as the entire area of 1692.79 sqm had been leased to the Trust as per the possession certificate and the lease amount should have been collected for the entire area.

17.3.3 Direct allotment of CA site to an institution

On the basis of the instructions of the CM on a representation made by an institution during December 2009, a CA site measuring 9062.50 sqm in Sadashivanagar was directly allotted (April 2010) to the institution by BDA for construction of yoga, gym and health related centre without notifying the CA site to the general public. The lease agreement was executed in June 2010 after the allottee had paid the lumpsum lease amount of ₹ 42.10 lakh. The allotment of this CA site violated the prescribed procedure. BDA stated (September 2012) that a suit had been pending in the Court against the allotment.

17.3.4 Direct allotment of CA site to a Homeopathy Foundation

A Homeopathy Foundation had submitted (November 2008) a representation to the CM requesting for allotment of a site in a developed layout for carrying out its activities. The Principal Secretary to the CM instructed (December

2008) BDA to identify the site. In his representation submitted to the Chairman, BDA, the Chairman of the Foundation had requested (March 2009) for allotment of site No.117 measuring 352.90 sqm in Dollars Colony, BTM Layout II Stage. The Government directed (September 2009) BDA to allot the site requisitioned by the Foundation on lease basis after recovering the allotment rate applicable for CA sites. The Commissioner allotted (September 2009) the site under the BDA (Allotment of Civic Amenity Sites) Rules, 1989. The allotment was irregular for the following reasons:

- The allotment had been made directly without following the procedure prescribed in BDA (Allotment of CA sites) Rules, 1989; and
- On verification of the sanctioned plan of BTM II Stage, it was seen that site No.117 was a residential site. The site, being an intermediate residential site, was to be auctioned as was being done by BDA in the case of other intermediate sites. This residential site measuring 352 sqm was allotted at a subsidized price of ₹ 5000 per sqm applicable for CA sites, while the average bid amount received during auction of a similarly placed site in BTM I Stage was ₹ 69,500 per sqm during 2007. The value of the site allotted to the Foundation, therefore, worked out to ₹ 2.45 crore while the Foundation had paid only ₹ 17.65 lakh to BDA.

BDA stated (September 2012) that the residential site had been allotted as a CA site as per the approval of the Government under Rule 6 of the BDA (Allotment of sites) Rules, 1984 which empowered the Authority to allot, on lease basis, sites other than those reserved for CA, public parks and play grounds to educational, religious or charitable institutions which were either societies registered under the Societies Registration Act or Trusts for public purposes. The reply was not acceptable for the following reasons:

- The Foundation had been allotted the site under the BDA (Allotment of CA sites) Rules, 1989 and not under Rule 6 of BDA (Allotment of sites) Rules, 1984; and
- The Foundation had not submitted any document evidencing that it was either a charitable institution registered under the Societies Registration Act or a Trust for public purposes.

17.3.5 Allotment of CA sites under inappropriate regulations

BDA had issued (February 2007) the work order to a developer for construction of high-end apartments/houses in Nagasandra Village, Yeshwantapur Hobli, Bangalore. As required under the Zoning of Land Use and Regulations, BDA-1995, the developer had relinquished 11,623.527 sqm for parks and 7749.01 sqm for civic amenities through a relinquishment deed registered in December 2006.

Acting on the request (November 2007) of the developer for allotment of two CA sites in the residential complex for construction of a club house for the

residents, BDA authorized the Commissioner to take Government permission for allotment of the CA sites under Regulation No.7-1-2 of RMP 2015. The Government conveyed (November 2011) its concurrence to the Commissioner's proposal (September 2011) for allotment of the CA sites to the developer. BDA issued (January 2012) the allotment letters fixing the lumpsum lease amount at ₹ 2.51 crore for CA site No.1 and ₹ 2.36 crore for CA site No.2. The developer was yet to pay these amounts to BDA (July 2012).

Allotment of these two CA sites to the developer under Regulation 7-1-2 of RMP 2015 was irregular as it had come into force only in June 2007 and the regulations contained therein were prospective. Further, allotment of these CA sites under RMP-2015 would not arise at all as the area earmarked for CA in projects covered by RMP-2015 would vest with the local residential associations and not with BDA. As the work order for the project had been issued in February 2007, when the Zoning of Land Use and Regulations, BDA-1995 was in force, the two CA sites should have been allotted after approval by the CASAC after following the prescribed procedure. As the allotment had been irregularly made under Regulation No.7-1-2, BDA's demand for the lease amount would not be enforceable.

Thus, irregular allotment of CA sites to the developer under inappropriate regulations had exposed BDA to the risk of non-recovery of the lease amount of ₹ 4.87 crore from the developer. BDA stated (September 2012) that the developer had filed a writ petition during February 2012 and action would be taken as per the decision of the Court. The reply was not acceptable as the litigation could be attributable to the irregular allotment under RMP-2015.

17.3.6 Unjustified concession given in the irregular allotment of a CA site

BDA issued (January 2009) notification for allotment of CA site No.3 measuring 8125 sqm in 5th Block, Banashankari VI Stage. BDA approved (March 2010) the allotment of the site to a trust for starting educational institutions. The allotment letter was issued on 7 April 2010. BDA had fixed the lease amount as follows:

1. Lease amount, if paid in lumpsum : ₹ 2,03,12,500;
2. Lease amount, if paid in thirty annual installments : ₹ 36,82,657; and
3. Additional lease amount to be paid annually: ₹ 24,390.

The lease amount was payable within ninety days of issue of the allotment letter. However, the Trust requested (June 2010) for reduction of the lease amount on the lines of the concessions extended (April 2010) by the Government for the welfare of the scheduled caste (SC)/scheduled tribes (ST). Considering the request, the lease amount was reduced under the orders (July

2010) of the Commissioner by 50 *per cent*. The details of the revised amounts fixed were as under:

1. Lease amount, if paid in lumpsum : Rs1,01,56,250;
2. Lease amount, if paid in thirty annual installments : ₹ 18,41,329; and
3. Additional lease amount to be paid annually: ₹ 24,390.

Though reduction of the lease amount by 50 *per cent* was applicable only from 20 April 2010 in respect of institutions established for the benefit of SC/ST, it was irregularly extended in this case where the allotment was approved by the Board on 26 March 2010. Further, the reason adduced by the allottee for claiming the reduction of the lease amount was that the Trust was managed exclusively by members of the SC/ST. However, Government order of April 2010 did not allow reduction of the lease amount in respect of Trusts managed exclusively by members of SC/ST. The decision to extend the concession available in the Government notification of April 2010 was, therefore, not justified, resulting in loss of revenue of ₹ 1.02 crore to BDA.

Further, the allottee had requested (September 2010) for an alternative site citing non-development of the layout as the reason. The request was considered favourably and BDA accorded (September 2010) approval for allotment of an alternative CA site available in II Block, BTM IV Stage measuring 8001 sqm. The allotment letter was issued to the allottee in October 2010 duly incorporating the 50 *per cent* concession available in the Government notification of April 2010. However, the BDA (Allotment of Civic Amenity Sites) Rules, 1989 does not have any provision for allotment of alternative CA sites. In this case, the alternative site was allotted irregularly at the request of the allottee which was aware of the location of the site and the status of the layout at the time of submitting application in response to the BDA's notification.

As per the land audit report of the Engineering Division (East), the alternative site remained vacant as of March 2012, evidencing that the proposed educational institution was yet to be established.

17.3.7 Irregular allotment of two alternate CA sites of higher dimensions

A society had been allotted a CA site in Banashankari III Stage, Srinivasangar II Phase, measuring 728.75 sqm for religious activities and the possession certificate was issued to the Society in November 2007. As the allotted site had already been in possession of the BBMP SC Workers Co-operative Society, the allottee requested (July 2009) for allotment of an alternative site in Bangalore South. Though BDA (July 2009) allotted an alternative CA site in Banashankari VI Stage, IV Block, the allottee refused to accept the allotment as the site was far away from the originally allotted site. Though the CASAC initially refused (October 2009) to consider the request, it subsequently allotted two CA sites identified by the allottee, one in Canara

Bank, HBCS, Kodigehalli Extension measuring 502 sqm and another in Raghuvanahalli village measuring 464.80 sqm. The possession certificates were issued to the allottee in January 2012. The allotment of these two alternative sites was irregular due to the following reasons:

- There is no provisions in the BDA (Allotment of Civic Amenity Sites) Rules for allotment of alternative CA sites; and
- The area of the two alternative CA sites together was 32 *per cent* higher than that of the original site allotted.

Further, BDA did not verify before allotment whether these two alternative sites had been earmarked for religious purpose in the approved plan. BDA had allotted these CA sites only on the basis of the request from the society. After the allotment, the Canara Bank Layout Welfare Association had requested BDA to cancel one of the two CA sites as it had been earmarked for a Government Hospital in the approved plan. BDA had not cancelled the allotment of this site so far (July 2012).

Thus, BDA failed to follow the prescribed procedure for allotment of CA sites.

17.3.8 Irregular allotment of a CA site for a corporate office

A Company had been allotted a CA site in Manyatha Promoters Layout, Rachenahalli village for construction of a corporate office. The site measured 5151.90 sqm and the allotment had been made by BDA on the basis of a Government order (December 2009). The lease agreement was executed in March 2010 and the possession certificate was issued by BDA in March 2010. The allotment was irregular due to the following reasons:

- A corporate office is not covered by the definition of civic amenity;
- The BDA Act or the BDA (Allotment of Civic Amenity Sites) Rules, 1989 does not permit allotment of CA sites directly to any institution. According to the rules, the details of the CA site along with its dimension and purpose are to be notified publicly. This had not been done in this case; and
- The allotment had been made on the basis of a Government order which had been issued on the directions of the CM. Though the Government is vested with powers to give directions to BDA as per Section 65 of the BDA Act, 1976, such power is restricted to giving directions only for carrying out the purposes of the Act.

17.4 Undue favours to allottees of CA sites

The BDA (Allotment of Civic Amenity Sites) Rules, 1989 prescribes that if the lease amount or the annual installment is not paid within a period of 90 days, further extension of time not exceeding 60 days may be given and the allottee shall pay in addition, interest at the rate of eighteen percent on the said

amount for the extended period. If the lease amount or the installment is not paid within such extended period also, then the registration fee and the initial deposit shall be liable to be forfeited and the allotment cancelled without any prior intimation. Further, there are no provisions in the Rules for waiver of any amount due including interest due.

A review of test checked files showed that BDA had waived the amount due or shown undue favour to the allottees in the following cases:

17.4.1 Waiver of interest

In the case of CA site measuring 2692.25 sqm allotted (April 2002) to a Parishad, BDA approved (February 2011) the waiver of interest of ₹ 14.13 lakh levied earlier for belated payment (March 2008 to December 2009) of the lease amount though there was no provision either in the BDA Act or the BDA (Allotment of CA Sites) Rules 1989 for waiving off the interest due.

17.4.2 Irregular contribution to a private trust

A CA site measuring 2412.60 sqm had been allotted (November 1979) to a Trust on lease basis for a period of 30 years. After the completion of the lease period of 30 years in December 2009, the site was inspected by the Engineering Division, South in January 2010. BDA renewed the lease period for a further period of 30 years from December 2009. BDA asked (August 2010) the Trust to pay the lease amount either in annual installments of ₹ 11.68 lakh or in lump sum of ₹ 64.42 lakh. However, the Trust requested (October 2010) for reduction of the annual installment to ₹ 50,000. BDA informed (October 2010) the Trust of its inability to reduce the annuity as there was no provision in law for reduction. However, based on the orders (October 2010) of the CM, BDA reduced (February 2011) the annual installment to ₹ 50,000. Thereafter, the allottee paid (July 2011) ₹ 15 lakh to BDA in lumpsum towards annual installments for the entire lease period of 30 years. BDA adjusted the unpaid amount of ₹ 49.42 lakh as donation to the Trust for construction of cine academy. The donation is to be viewed in the light of the fact that there is no provision in the BDA Act for making contributions to a private trust. Though BDA had acted on the orders of the CM, it would be pertinent to mention that any directive given either by the Government or by the CM should not be contrary to the provisions in the BDA Act. Thus, the favour extended to the Trust was unauthorised. BDA stated (September 2012) that the decision to treat the unpaid amount as donation had been taken on the basis of suggestions from the Finance Member. The reply was not acceptable as there was no provision in the BDA Act for making donations to a private Trust.

17.4.3 Unjustified renewal of the lease in advance

A CA site measuring 23092.02 sqm had been allotted on lease basis for 30 years to a Samithi in Sarakki Layout for construction of a college building and the lease agreement was registered on 17 May 1983. Though the lease was to be renewed only on 17 May 2013 on completion of the lease period of 30 years, the Commissioner approved (January 2011) the renewal of the lease for another 30 years after remittance of ₹ 13.23 crore at the prevailing allotment rate on the basis of the request made (October 2010) by the allottee.

Subsequently, BDA revised (December 2011) the lease amounts for CA sites on the basis of revised categorization of institutions. As per the revised rates, the allottee would have paid the lease amount of ₹ 21.12 crore, if the lease had been renewed on expiry of the initial lease period of 30 years in July 2013. As there was no provision in the rules for renewal of the lease before expiry of the previous lease period, the action of the Commissioner in renewing the lease in advance, besides being irregular, resulted in a loss of ₹ 7.89 crore to BDA. Whether the renewal of the lease in advance had been influenced by any impending proposal before the BDA for revision of lease amount, needs to be investigated as BDA had lost substantial revenue in this case.

17.5 CA sites used for unauthorised purposes

BDA entered into agreements with the allottees of CA sites in the standard lease agreement form forming part of the BDA (Allotment of CA sites) Rules, 1989. The provisions in the agreement prescribed that the lessee should use the CA site only for the authorized purpose. If the lessee were to violate these conditions, the lessor (BDA) was at liberty to resume the CA site with 30 days' notice to the lessee and the money, if any, paid by the lessee shall also be liable to be forfeited by the lessor.

Scrutiny showed that though CA sites had been used by the allottees for unauthorised purposes and such violations were within the knowledge of BDA, no action had been taken against the violations in terms of the agreemental conditions. There was also no mechanism in BDA for periodical inspection of the CA sites to ensure that the CA sites were used by the allottees only for authorized purposes. Cases of CA sites being used for unauthorised purposes noticed in sampled cases were as shown in **Table-26**:

Table-26 : Details of CA sites used for unauthorised purposes

Sl. No.	CA Site allotted with location and dimension	When allotted	Purpose for which allotted	Deviation noticed
1	Site No. 46 of Vasanthnagar measuring 1163.953 sqm	July 1958	Construction of school hostel	In addition to the hostel building, the allottee had constructed a commercial complex capable of generating a revenue of ₹ 4.81 lakh per month against the lease rent of ₹ 12 per month paid by the allottee to BDA. These deviations had been noticed by BDA in March 2008 and May 2011.
2.	Site No. 1B on Magadi Road measuring 1870.35 sqm	March 1977	Construction of society building and staff quarters	BDA's inspection in January 2007 showed that several buildings including a granite stone yard, a central library and car parking had been constructed unauthorisedly.
3.	Two earmarked CA sites measuring 21400 sq ft and 11450 sq ft in Jayanagar II Block	January 1964 and December 1965	Construction of a temple and school/ hostel	A Kalyana Mantapa and a school had been constructed by the allottee as per the report of the Executive Engineer, South Division given in Nov. 1997.
4.	Site No. 2 in Defence Layout measuring 4104 sqm	March 2002	Opening a Kannada medium school with a play ground	The allottee had been running an English medium school.
5.	Site No. 85/1 measuring 1637.63 sqm in Jayanagar IV Block	July 1981	Constructing a community hall and other developmental activities	The allottee had constructed a community hall, library, office building and bridge game sections in two floors. The lease was renewed in October 2011 despite complaints about gambling activities in the premises.
6	Site No. 10 measuring 3064 Sqm in HRBR II Block	April 1998	Establishing a Kannada medium school	The allottee had sublet the premises to an Academy.
7.	Site No. 2 measuring 832.65 sqm in Vinayaka HBCS, Bhoopasandra	July 2002	Establishing a Kannada medium school	A gas godown had been constructed by the allottee.
8	Site No.1 measuring 52650 sq ft in West of Chord Road II Stage	August 1977	Construction of college building	The allottee had encroached upon 2561.31 sq ft of the adjacent CA allotted to another institution.

17.6 Lease of CA sites not renewed or lease agreements not executed

In terms of the BDA (Allotment of Civic Amenity Sites) Rules, 1989, the allotment of CA sites shall be on a lease basis for a period not exceeding 30 years. If the lease is not renewed, or has been determined or terminated before the expiry of lease, the site allotted along with the buildings therein shall vest in the BDA and BDA shall have right to enter the premises and take possession thereof.

It was seen that in 71 out of 1234 CA sites allotted by BDA, the lease had not been renewed as of July 2012. The list included 60 private institutions and 11 Government institutions. The delay in renewal of leases ranged from eight to nine years in respect of Government institutions while it was 11 months to 32 years in respect of private institutions. BDA had not initiated action against the allottees for not renewing the leases, thereby allowing them to occupy the BDA properties without legal validity. Non-renewal of the leases in time deprived BDA of the opportunity of mobilizing ₹ 43.45 crore by way of lease charges recoverable. Non-renewal of the leases in sampled cases is shown in

Table-27:

Table-27 : Cases where leases had not been renewed

(Amount: ₹ in lakh)

Sl. No.	CA Site No., location and dimension	Date of allotment	Date on which renewal of lease was due	Purpose for which allotted	Deviations noticed	Lease amount due calculated at the prevailing rate fixed by BDA
1	Site measuring 1739.77 sqm in Jayanagar IV T Block	18-12-1962	18-12-1992	Construction of post office	The lease had not been renewed for 20 years and BDA did not have records to evidence demand and collection of rent from the allottee	43.49
2	Site No.2 measuring 489.31 sqm in Jayanagar I and III East Block	29-12-1979	29-12-2009	Construction of Sanskrit school	The lease had not been renewed	12.23
3	Site No.1 measuring 7496.28 sqm in Jayanagar IV Block	14-12-1966	14-12-1996	Construction of Jain temple	BDA issued the renewal notice to the allottee only in January 2009 after a delay of 13 years. Though the lessee submitted the documents for renewal of licence in February 2009, BDA had not renewed the lease (July 2012).	187.40
4.	Site No. 1349 measuring 189.12 sqm in West of Chord Road Phase II	11-5-1977	11-5-2007	For association activities	The lease had not been renewed since May 2007. Though the allotment section had requested the Engineering Division in August 2008 to conduct the inspection of the site, it had not been done so far (July 2012)	4.73

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Sl. No.	CA Site No., location and dimension	Date of allotment	Date on which renewal of lease was due	Purpose for which allotted	Deviations noticed	Lease amount due calculated at the prevailing rate fixed by BDA
5	Site No. 666 measuring 1121.34 sqm in West of Chord Road Phase II	21.-6-1973	21-6-2003	Construction of school	No action had been taken for renewal of the lease (July 2012)	2.80
6	Site No. 4 in Jayanagar IV Block measuring 1104.09 sqm	10-9-1975	10-9-2005	Temple and Kalyana Mantapa	BDA had not raised any demand on the lessee.	27.60
7	15 sites in different locations of Bangalore	21-1-98	Not applicable	Implementation of IPP	BBMP had paid only ₹ 7.71 lakh against the lease amount of ₹ 79.01 lakh. Lease agreements had also not been executed.	71.30
8	Site No.3 of HMT HBCS, Vidyanarayapura measuring 4428 sqm	23-12-2008	Not applicable	Construction of higher primary school	The Education Department after paying the first installment of ₹ 16.86 lakh requested for allotment of site free of cost, which was turned down by BDA. The lessee was yet to pay the remaining amount and execute the lease agreement (July 2012)	76.13
9	Site 6 (c) of RMV II Stage, HIG Layout measuring 27.87 sqm (Hopcoms)	30-8-1986	Not applicable	For construction of milk booths and vegetable outlets	The allottees had failed to pay the amount due to BDA and had not executed the lease agreements (July 2012)	1.08
	3(p) of OMBR layout measuring 33.33 sqm (Hopcoms)	8-5-1995				
	6 (c) of RMV II Stage HIG Layout measuring 27.87 sqm (KMF)	24-9-2003				
	Matadahalli Further Extension measuring 81.93 sqm	19.5.1997				
10	Site in Gayathri Devi Park	11-1-1978	NA	For construction of temple	The allottee had failed to execute the lease agreement (July 2012).	26.66
11	Site 10 A of Hosahalli Layout measuring 891.03 sqm	20-6-1966	20-6-1996	For Vidyapeeta activities	Even though the Commissioner had approved the renewal of lease in 2006, the lease agreement was yet to be executed (July 2012) . Besides, as per the inspection report (November 2005), the allottee had utilised 6121.25 sq ft more than the area allotted. Action was yet to be taken against the lessee.	36.50
Total						489.92

17.7 CA Sites yet to be allotted

As of March 2012, 298 CA sites measuring 9.16 lakh sqm were available with BDA for allotment. These included 140 CA sites in 14 layouts developed by BDA and 158 CA sites in 61 private layouts. The oldest unallotted CA site was in HAL-III Stage Layout formed during 1975. The division-wise availability of CA sites was as shown in **Table-28**:

Table-28: Details of availability of CA sites

Sl. No.	Name of the Division	No. of sites	Area in sqm
Division-wise – BDA Layouts			
1	North	2	2805
2	South	26	78673
3	East	19	48846
4	West	93	304934
	Total	140	435258
Division-wise – Private Layouts			
1	North	64	117236
2	South	20	41474
3	East	35	63492
4	West	39	258277
	Total	158	480479

(Source: Information furnished by BDA)

Of these 298 CA sites, BDA had notified the purpose of the CA sites in only 24 cases and the notification for allotment of CA sites had been last issued by BDA during January 2009. Sub-optimal utilisation of the area earmarked for CA, besides resulting in lack of the intended civic amenities in the layouts, deprived BDA of the opportunity of generating substantial financial resources by leasing the CA sites with a revenue potential of ₹ 192.30 crore⁶.

In addition, BDA could not allot 29 CA sites measuring 1.45 lakh sqm in four divisions due to litigation. The details on periods of pendency of litigation for these CA sites were not on record.

17.8 Non-utilisation of CA sites after allotment

Scrutiny showed that 110 CA sites allotted by BDA between January 1986 and January 2011 including 80 CA sites allotted during 2007-12 had not been used for the authorized purposes as the requisite infrastructure had not been created by the allottees (July 2012). The period of six years prescribed for setting up the requisite infrastructure had expired in 30 cases.

⁶ At Rs.2100 per sqm

17.9 Encroachment/unauthorised construction on CA Sites

As of March 2012, 61 CA sites had been encroached upon. While temples had been constructed on 14 CA sites, another 30 sites including 15 in private layouts had been converted as parks or playgrounds.

Further, as per the conditions prescribed in the relinquishment deed for CA sites, the private developer/owner was to fence the CA sites before handing over these to BDA. It was seen that encroachment of 20 out of 61 CA sites had taken place in private layouts. The revenue potential of 61 CA sites encroached upon worked out to ₹ 60.73 crore on the basis of the lease amount for 30 years. BDA had not taken any effective action to evict the encroachers and restore its properties.

Chapter-18

Parks and Asset Management

18.1 Parks

18.1.1 Parks not relinquished by private developers

Three housing societies had failed to relinquish the 11 parks measuring 14634.20 sqm in four layouts (March 2012). The action taken against these societies along with the details of the work orders issued were not furnished to Audit.

18.1.2 Encroachment of parks

Three out of four BDA divisions had reported (March 2012) encroachment of parks. The total area encroached upon was 321180.60 sqm. Out of 56 parks encroached upon, 26 (46 *per cent*) were in layouts developed by BDA. Temples had encroached upon 26 parks, BBMP had encroached upon four parks, buildings had been unauthorisedly constructed in 15 parks, one park had been encroached upon by a private resort and the remaining parks had been encroached upon by schools, Bangalore Water Supply and Sewerage Board and Karnataka Power Transmission Company Limited.

Large scale encroachment of parks indicated that the system of safeguarding the assets was ineffective in BDA and this was fraught with the risk of BDA losing valuable land due to encroachment.

18.1.3 Irregular allotment of park to private institutions

A CA site measuring 300'x300' had been allotted to a club in HAL-II Stage. Acting on a representation received from the club in July 2004, the Chairman, BDA allotted (July 2005) additional area of 1525.10 sqm in a park adjacent to the club subject to the condition that the area would be maintained as a park.

The Assistant Executive Engineer had issued (May 2007) a show cause notice to the club on observing construction activity inside the park. BDA had also noticed that the club had informed its members about the opening of a lounge bar in the park area.



After issuing (January 2008) a show cause notice, BDA cancelled (May 2008) the allotment as the explanation of the club was not acceptable. Acting on the representation (May 2008) of the club, the Secretary, Estate Officer and the Deputy Secretary of BDA inspected the park and reported (July 2008) that no bar was functioning in the park. Thereafter, BDA revoked its order of cancellation in November 2008. The allotment of park to the club was irregular for the following reasons:

- There is no provision in the BDA Act or the BDA (Allotment of Civic Amenity Sites Rules), 1989 for allotment of parks to individuals or private institutions. As per the CDP 1995 and the RMP 2015, the parks are to be developed by BDA and later handed over to BBMP for maintenance. Parks being open spaces meant for use by the general public, the allotment of the park to a private club for the exclusive use of its members was, therefore, irregular.
- The club had informed its members through a letter dated 17 June 2007 about the opening of the lounge bar in the park. Thus, the revoking of the cancellation order was not justified.

Further scrutiny showed that the remaining area of the park measuring 713 sqm had also been irregularly allotted (July 2005) to a music sabha. The allotment had been made again on the orders of the Chairman, BDA. Thus, the entire park had been used for unauthorised purposes due to irregular allotments made by the Chairman.

18.2 Asset management

18.2.1 Differences in the land handed over

While the Land Acquisition Section claimed that 2874-18 acres had so far (March 2012) been handed over to the Engineering Division for the formation of four⁷ layouts, only 2491-15.46 acres had been handed over as per the land audit reports (March 2012) and information furnished by the Engineering Division. The difference in area worked out to 383-12 acres. The reasons for the huge shortfall in taking possession of land by the Engineering Division were not forthcoming and the same had not been reconciled.

18.2.2 Differences in land developed

As per the information furnished by the Land Acquisition Section, the land developed in three⁸ BDA layouts was 1711- ½ acres as of March 2012, while as per the land audit reports and information furnished by the Engineering Divisions, it was 1571-29½ acres. The difference of 139-11 acres had not been reconciled.

18.2.3 Unauthorised occupation and encroachments

BDA had not maintained Asset Register incorporating the details of the assets available. This omission had been commented upon persistently in the Separate Audit Reports on Certification of the Annual Accounts of BDA issued year after year. Out of the 149 layouts formed, details of land audit conducted in respect of only 13 layouts had been furnished to Audit (March 2012). Out of the four Engineering Divisions, South Division had not furnished any land audit report. Scrutiny of the available information showed that land to the extent of 1039 -33 acres had not been utilised for formation of sites as the same had been either built-up or encroached upon in 13 layouts formed between 1969 and 2002. The value of the land encroached upon aggregated ₹ 24075 crore⁹.

18.2.4 Differences in area available for civic amenity

The information on the area of CA sites furnished by the Town Planning Section on the basis of approved plans was at variance with that furnished by the four Engineering Divisions as shown in **Table-29**:

⁷ Koramangala, Sir M Vishweswaraiah Layout, East of NGEF Layout and JP Nagar VIII Phase

⁸ Sir M Vishweswaraiah Layout, East of NGEF Layout and JP Nagar IX Phase

⁹ Based on the highest bid obtained from auction held during the last five years

Table-29: Variations in the area of the CA sites

(Area in sqm)

Sl. No.	Name of the division	Area as per Town Planning Section	Area as per the Engineering Division	Difference
1	South	421232.57	219874.41	201358.16
2	West	180117.2	300603	120485.80
3	North	232183	487765	255582.00
4	East	99833.43	95532.75	4300.68

(Source: Information furnished by BDA)

The difference had not been reconciled. Huge difference in the availability of area for civic amenities was indicative of ineffective asset management by BDA.

18.2.5 Ineffective management of CA sites

The Authority had not devised any mechanism for periodical verification of the existence, maintenance and utilisation of the CA sites for authorized purposes. No efforts were also made to include the CA sites as assets in the Annual Accounts inspite of Audit pointing out this lapse year after year while certifying the Annual Accounts of BDA. Demand-Collection-Balance statements had not been prepared by BDA for CA sites. There was, therefore, no system to keep track of the demand and collection of dues from the allottees of CA sites. No system was also in place to monitor the renewal of the leases of the CA sites.

Chapter-19

Other topics of interest

19.1 Unjustified waiver of ground rent

The Army Welfare Housing Organisation (AWHO), registered as a society under the Societies Registration Act XXI of 1860, had submitted (November 2008) an application to BDA seeking approval of development plan for residential apartments to be built over 29 acres 26 guntas in Kanamangala Village, Bidarahalli Hobli, Bangalore East Taluk. BDA approved (April 2010) the development plan after the AWHO paid the development charges of ₹ 57.60 lakh. The AWHO had also relinquished (April 2010) 7628.13 sqm of land for road widening along with 12,102.49 sqm of land for parks and open spaces in favour of BDA. When AWHO submitted (May 2010) the building plans for 1524 dwelling units, BDA assessed the fees payable by AWHO at ₹ 8.09 crore as shown in the **Table-30**:

Table-30 : Fees payable by AWHO

Sl. No.	Particulars	Fees (₹ in crore)
1	Processing Fee	1.52
2.	Ground rent	1.52
3.	Development Charges	0.38
4.	Workers Welfare Cess	2.66
5.	Security Deposits	1.90
6.	Plan Copies	0.06
7.	Slum clearance cess	0.05
	Total	8.09

(Source: Information furnished by BDA)

The Commissioner sanctioned the plan in May 2010. The AWHO represented (November 2010) to BDA that the CM, during the foundation stone laying ceremony of the project on 12 August 2010, had assured of waiving off some of the mandatory charges to be deposited with BDA. The Principal Secretary to the CM had sought (June 2010) a report from BDA regarding the provisions available in this regard. When a similar request was made by AWHO earlier (June 2010), BDA expressed (July 2010) its inability to consider the waiver of fees as there was no provision in the BDA Act or regulations for such waiver. It was further reported that such a waiver might create a precedent for other cases in future. However, the Secretary to the CM, while conveying the decision of the CM, directed (August 2010) BDA to waive off ₹ one crore as committed. BDA resolved (November 2010) not to consider the proposal for waiver as such action would create a precedent for several other organizations to make similar demands. A report on these lines was sent to Government seeking specific orders for waiver of ₹ one crore from the plan processing fees and Government order was awaited (August 2012).

The AWHO had represented (December 2010) again to the Government requesting for waiver of the ground rent of ₹ 1.52 crore on the ground that the plant and stores for construction were being kept on the land belonging to them and no public land was being used.

The approved plans were released under the orders (December 2010) of the Commissioner after accepting the part payment of ₹ 1.48 crore made by AWHO subject to the condition that the organization would pay the remaining amount of ₹ 6.61 crore. AWHO subsequently paid ₹ 4.09 crore during 2012. BDA resolved (February 2011) to waive off the ground rent of ₹ 1.52 crore as a special case.

The waiver of ₹ 1.52 crore was not justified for the following reasons:

As per Para 3.8 of the Building Bye-Laws-2003 of BBMP, the ground rent is charged for stocking of building materials on public land as prescribed by BDA without causing obstruction to movement of vehicles and pedestrians subject to the permission of BDA. Para 3.9 stipulates that high rise buildings are not exempted from payment of ground rent irrespective of the setbacks and coverage. The ground rent is to be exempted only in the cases of individual residential bungalows, schools, colleges and other institutions, religious and cultural institutions, heavy industries and Government buildings. BDA stated (September 2012) that a detailed report had been sent to Government for taking a decision on waiving of ground rent and that occupancy certificate would not be issued to the organisation till receipt of approval from the Government.

The waiver of ₹ one crore from the plan processing fee was yet to be approved by the Government.