

CHAPTER VI

MUMBAI METROPOLITAN REGION DEVELOPMENT AUTHORITY

Mumbai Metropolitan Region Development Authority (MMRDA) was established in January 1975 by the Government of Maharashtra under the MMRDA Act, 1974, as an apex body for planning and co-ordination of development activities in the Mumbai Metropolitan Region. The MMRDA functions under the administrative control of the Urban Development Department (UDD), Government of Maharashtra.

There are 152 cases of Government land admeasuring 20,15,906.98 sq m given on lease by MMRDA in Mumbai and Thane Districts. Of these, 53 cases in Mumbai (recreation-7, commercial-33, social-8, residential-5) admeasuring 6,56,725.55 sq m were selected for detailed scrutiny.

6.1 Acts and Rules

MMRDA (Disposal of Land) Regulations, 1977, subsequently amended in 1984 and 1997 stipulates that land can be leased out in consideration of a premium or rent or both for a term not exceeding 80 years. The land can be disposed of by public auction, public advertisements, inviting/ accepting offers from the Government, Local Authority or Public Sector Undertakings, public charitable trusts for educational or medical purposes, inviting applications through public advertisements on the basis of pre-determined premium and/or other considerations and accepting these applications by drawing lots and in case of inadequate applications on 'first come first serve' basis. For development of land in Bandra-Kurla, 'The Bandra Kurla Notified Area Development Control, Regulations, 1979' and for development of land in Wadala Truck Terminal 'Development Control Regulations, 2010' were framed.

6.2 Organisational set up

MMRDA is constituted of 17 members headed by the Minister, UDD, Government of Maharashtra. All decisions on the land allocation made by the Committee are implemented by the Metropolitan Commissioner aided by the Dy. Metropolitan Commissioner (Land/Estates).

6.3 System of allotment

Land admeasuring 21,63,613 sq m in 'E', 'G' and 'H' Block of Bandra Kurla Complex (BKC) was allotted to MMRDA by the Government between January 1979 and February 1985. The occupancy price payable by MMRDA to the Government for the gross area of land in undeveloped and unreclaimed condition was fixed at ₹ 200 per sq m for 'E' Block and ₹ 500 per sq m for 'G' Block. Government (October 2005) handed over an additional 6,55,100 sq m of land at Wadala Truck Terminal to MMRDA for which ground rent at a nominal rate of ₹ one was to be paid by MMRDA to the Government.

MMRDA gives land on lease by way of inviting tenders through public advertisements. The tender is finalised in favour of the highest bidder.

MMRDA executes the Lease Deed and the possession of land is delivered to the lessee after the receipt of premium in full. Clause 2(d) of the lease deed executed between MMRDA and the lessees, states that the lessee shall commence construction on the plot within three months from the receipt of approval for plans and specifications and complete it for occupation within four years from the date of lease. Further Clause 2(e) (i) of the lease deed and Regulation 11¹ of MMRDA (Disposal of Land) Regulations, 1977 state that if the lessee does not adhere to the time limit as mentioned in clause 2(d) for reasons beyond control, the Metropolitan Commissioner (MC) may, on payment of additional premium, at the following rates, by the lessee, permit extension of such time:

Up to 1 year	25 per cent of the premium
Between 1 and 2 years	35 per cent of the premium
Between 2 and 3 years	40 per cent of the premium

Clause 2(e)(ii) of the lease deed provides that if the MC refuses to permit such extension of time or shall find the lessee of having committed breach of any condition or covenant during the time limit mentioned in clause 2(d), he may forfeit and determine the lease; provided that in the event of such determination of lease, 25 per cent of the premium paid by the lessee to the Authority shall stand forfeited and the remaining 75 per cent of such premium shall be refunded; provided further that the MC shall have given to the lessee a notice in writing of intention to do so and of the specific breach of the covenant or condition in respect of which forfeiture is intended and default shall have been made by the lessee in remedying such breach within three months from the serving of notice.

The floor space index (FSI) applicable in MMRDA is 4 as compared to 1, 1.33 and 2.5 applicable to Government, Municipal and MHADA lands respectively in Greater Mumbai.

6.4 Non-recovery of lease premium, lease rent, etc.

6.4.1 MMRDA (Disposal of Land) Regulations 1977 does not provide any specific provision for monitoring the progress of work on the allotted plots. Clause 3(g) of the lease deed provides that the lessee has to build according to Development Control Regulations and Building Regulations or Municipal Regulations in force from time to time and to observe and confirm that the building or erection thereof or addition thereto is completed as per rules and regulations. If the lessee² does not adhere to the prescribed time limit, extension of time can be granted subject to the payment of additional premium at the rate of 10 per cent of the lease premium upto three years, thereafter the rate of additional premium is 15 per cent of lease premium.

We found in six cases that the construction was not completed within the prescribed period of four years. No system was put in place by way of returns and inspections to ascertain the status of construction. There was nothing on

¹ Amended in March 1997.

² Semi Government and public and private sector organizations.

record to indicate that the lessees had sought extension for construction. The lessees were liable to pay additional premium aggregating to ₹ 272.36 crore @ 10 per cent as mentioned in the following table:

(₹ in crore)

Sr. No.	Name of the lessee	Purpose	Date of lease deed	Probable date of completion	Lease premium charged	10 per cent addl. lease premium to be recovered
1	Naman BKC Co-op. Hsg. Socy. Ltd.	Residential	4-12-2007	3-12-2011	20.39	2.04
2	Starlight Systems Pvt. Ltd.	Residential	27-7-2006	26-7-2010	136.90	13.69
3	Reliance Inds. Ltd.	Commercial	1-9-2006	31-8-2010	1,104.00	110.40
4	Shree Naman Developers	Commercial	9-6-2006	8-6-2010	204.60	20.46
5	Jet Airways (India) Ltd.	Commercial	17-8-2006	16-8-2010	339.73	33.97
6	Reliance Inds. Ltd.	Commercial	15-7-2008	14-7-2012	918.06	91.80
				Total	2,723.68	272.36

The above facts were communicated to the Government in November 2012. In the exit conference the department stated that the amount would be recovered at the time of issue of occupancy certificate. However, the reasons for not demanding it at the time when the time period for completion as provided in the Act was over in such cases were not provided.

It is recommended that the Government advise MMRDA to put in place a system of periodical returns and regular inspections to ascertain status of construction and levy premium when grant of time extension was due to be sought.

6.4.2 MMRDA allotted a plot admeasuring 3,637.04 sq m in G Block of BKC to M/s. Enam Financial Consultants Pvt. Ltd. with maximum permissible built-up area (BUA) of 7,700 sq m and executed (August 2006) lease deed for development of Commercial office building for a period of 80 years on payment of lease premium of ₹ 87.98 crore.

Government increased (May 2008) the FSI for commercial use from 2 to 4. The lessee requested on 5 November 2009, 26 August 2010 and 11 March 2011 for additional BUA of 2000, 515 and 150 sq m to be allotted to lessee. MMRDA allotted additional BUA of 2,665 sq m for a premium of ₹ 19.65 crore, ₹ 5.55 crore and ₹ 2.10 crore to the lessee.

The premium was payable in five equal installments of 20 per cent with simple interest @ 10 per cent per annum and delay in payment of instalment attracted penal interest at the Prime Lending Rate (PLR) decided by Reserve

Bank of India. The lessee paid the first installment on 31 March 2010 but did not pay the subsequent instalments due on 31 March 2011 and 31 March 2012. For delayed payment of the instalments, the lessee was required to pay interest at the PLR. However, MMRDA neither levied the interest of ₹ 1.13 crore (payable upto October 2012) nor demanded the premium amount of ₹ 8.26 crore. This resulted in non-realisation of revenue of ₹ 9.39 crore.

The matter was brought to the notice of MMRDA (July 2012). Reply is awaited (March 2013).

6.4.3 As per the Bandra Kurla Notified Area Development Control Regulations, 1979, FSI³ for commercial plots is two.

MMRDA accepted (May 1995) the offer of Citibank for lease of commercial plot admeasuring 3,637.04 sq m @ ₹ 86,086 per sq m at G Block of BKC with a BUA of 7,274.08 sq m. The possession was given in October 1995. As the allotted land came under the purview of Coastal Regulation Zone as per Supreme Court orders of April 1996, a new plot admeasuring 3,818.19 sq m was allotted (August 1996) with the same BUA of 7,274.08 sq m. However, as the FSI of two for commercial plots was applicable, the BUA to be provided was 7,636.38 sq m and not 7,274.08 sq m as allotted by MMRDA.

This resulted in short determination of BUA to the extent of 362.30 sq m and resulted in foregoing a revenue of ₹ 3.12 crore⁴ by MMRDA.

The matter was brought to the notice of MMRDA (July 2012). Reply is awaited (March 2013).

6.4.4 MMRDA disposes land by way of inviting tenders through public advertisements.

MMRDA decided (December 2007) to lease out land admeasuring 5,900 sq m situated in GN block at Bandra-Kurla Complex for educational or medical purposes by calling for bids and fixed the reserve price @ ₹ 1.53 lakh per sq m. It was also decided that four conditions be met by the applicants/bidders.

- work area be based in Mumbai.
- five years experience in the field of education,
- financial capacity to construct the building, and
- institution should be registered under Public Trust Act.

Audit scrutiny of the records revealed that:

- condition pertaining to work area was deleted under the instructions of the Metropolitan Commissioner. No reason for relaxation of the condition and his express approval for the same was found on record.

Thereafter, MMRDA invited (July 2008) bids and received only one bid for the plot *i.e.*, Taleem Research Foundation (TRF) whose offer price was ₹ 1.55 lakh per sq m. MMRDA while evaluating the bid observed that:

³ FSI is prescribed by Bandra Kurla Notified Area Development Control Regulations, 1979 and is used for working of BUA.

⁴ 362.30 sq m x ₹ 86,086.

- TRF had submitted insufficient documents relating to its experience in the field of education and financial capacity to construct the building. However, TRF was given (August 2008) a chance to rectify the deficiencies noticed in the bid and on receipt (September 2008) of the same the bid was accepted. The land was allotted (October 2008) for 80 years at premium of ₹ 92 crore to TRF which paid (10 December 2008) being 50 *per cent* of the lease premium and paid the balance lease premium in November 2009 after obtaining extensions from time to time.

The above facts revealed that the allottee was given undue favour.

It was further observed that the reserve price fixed in the 120th Meeting held on 21 December 2007 was incorrect as discussed below:

The last bid that took place was of J. H. Ambani Foundation in 2007. The reserve price in this case (*i.e.* J. H. Ambani Foundation) was fixed at the market rates applicable at that time. However, in the present case reserve price was fixed (in the 120th Meeting) at the highest price fetched in the last bid, which was one year old. Thus, reserve price was fixed at ₹ 1.53 lakh per sq m instead of ₹ 5.04 lakh per sq m at current market rate (2008). Adoption of lower rates resulted in short fixation of reserve price by ₹ 3.49 lakh⁵ per sq m and loss of lease premium of ₹ 205.91 crore⁶.

MMRDA stated (June 2012) that the reserve price fixed was based on the current market and global economic conditions. As regards submission of insufficient documents by the bidder, MMRDA stated that TRF had only submitted additional information, supporting documents and original documents for verification.

The reply is not acceptable as the reserve price of ₹ 1.53 lakh per sq m was fixed (December 2007) by MMRDA only by considering the rate offered to M/s J. H. Ambani Foundation without any reference to the market and global economic conditions. Besides, it was recorded in the Minutes of MMRDA's Meeting (15 October 2008) that TRF had submitted incomplete information along with the bid.

6.4.5 Outstanding recovery of ground lease rent

As per the information of the Land Cell, an amount of ₹ 67.85 lakh, on account of ground lease rent, was outstanding as on 31 March 2012. Of these, two cases pertain to private associations as mentioned below:

(₹ in lakh)

Sr. No.	Area	Name of the defaulters	Pending since	Outstanding amount of rent
1	Wadala Truck Terminal	Mahasang	March 2006	42.62
2	Wadala Truck Terminal	Bombay Goods Transport Association (BGTA)	March 2006	21.68
Total				64.30

⁵ Prevailing market rate (₹ 5.04 lakh per sq m) – TRF's offer price (₹ 1.55 lakh per sq m).

⁶ ₹ 3.49 lakh per sq m x area of 5,900 sq m = ₹ 20,591 lakh.

MMRDA stated that notices and reminders were issued to the defaulters for recovery of the outstanding amount (June 2012).

Further, ₹ 3.55 lakh were outstanding against the Income Tax department and Reserve Bank of India on account of ground lease rent.

Non-existence of an effective mechanism for recovery resulted in ground lease rent remaining outstanding for periods ranging from one to seven years.

Government may devise effective mechanism for timely recovery of dues.

6.5 Monitoring and control

6.5.1 Failure to invoke Bank Guarantee

As per the lease deed executed in January 2007, MMRDA allotted a plot (recreational ground) admeasuring 37,252 sq m in 'G' Block of BKC, to M/s Reliance Industries Ltd (RIL), with a permissible BUA of 67,092 sq m, on lease for 80 years, for construction of a two level underground car parking space with a garden above. The lease deed was executed (July 2007) after payment of a premium of ₹ 11 lakh. As per Clause no. 4.13 (s) of the bid document, the allottee was to complete construction of the two level underground car park and develop a garden on the plot within a period of four years from the date of execution of the lease agreement. For the faithful compliance of this condition, the allottee was to give a bank guarantee of ₹ 50 crore which would be kept valid for four years from the date of agreement. If the construction of the two level underground car park was not completed within four years, the bank guarantee of ₹ 50 crore was required to be invoked by MMRDA. It was noticed that RIL did not construct the two level underground car parking. The bank guarantee valid upto July 2011 ought to have been encashed by MMRDA. Instead, it was found to have been extended upto July 2013.

The matter was brought to the notice of MMRDA (July 2012). Reply is awaited (March 2013).

6.5.2 Irregular amalgamation of area leading to increase in size of flats

Urban Development Department (UDD) notified (May 1983) that MMRDA would be implementing the Powai Area Development Scheme (PADS) in selected Mumbai suburban districts. A tripartite agreement was executed (November 1986) between State Government, MMRDA and the developer on behalf of initial land holders of Powai. The agreement to lease was executed (November 1986) for a lease period of 80 years at a premium of ₹ one per hectare and the total area of construction for residential tenements was 4,54,817.62 sq m.

Clause 7(iii) of the tripartite agreement provided that each of the 50 per cent of such units shall not exceed 40 sq m as measured in terms of FSI and each of the remaining 50 per cent units shall not exceed 80 sq m in terms of FSI.

The developer requested (June 1989) MMRDA to permit amalgamation of 'adjacent two flats or one flat above the other' for joint usage which will not

exceed 15 *per cent* of the overall development. MMRDA conveyed (August 1989) “no objection” permitting the amalgamation subject to certain conditions.

A complaint (January 2007) was made against the developer stating that the developer had amalgamated all the premises constructed by them and laid them out as bigger sized tenements.

UDD directed (March 2008) MMRDA to calculate the area of the tenements which were more than 40 sq m and 80 sq m respectively and recover a penalty of ₹ 300 lakh (part payment) as deposit from the developer for violation of the tripartite agreement and obtain an undertaking that he would abide by the final decision of the Government and observe the conditions of the Tripartite Agreement for ongoing construction works.

A six member Committee appointed by the Government submitted (December 2008) a report to the Government stating that the developer amalgamated/combined 2,026 flats of 40 sq m area and 443 flats of 80 sq m area violating the conditions for amalgamation.

MMRDA reported (January 2009) the gross violation of the Tripartite Agreement to the Government and requested for levy of a penalty of ₹ 1,993.22 crore on the developer. The developer went in arbitration and it was decided (August 2011) to set aside the joint claims made by MMRDA and the Government for recovering the penalty.

The Government and MMRDA jointly filed a petition (November 2011) in the High Court against the orders passed by arbitrator. However, in 2008 Motilal Kamlakar Satve, Rajendra Thacker and Medha Patkar also filed public interest litigation (PIL) in this matter. The Court in its order dated February 2012 directed the developer to construct 1,511 flats of 40 sq m and 1,593 flats of 80 sq m without any amalgamation on the vacant land available.

The above facts indicated that the amalgamation of flats could have been avoided had the project been monitored by MMRDA at regular intervals.