

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

2.2 Planning and Regulation of buildings including allotment of land/houses for residential purpose by Bhubaneswar Development Authority and Cuttack Development Authority

Executive Summary

Bhubaneswar Development Authority (BDA) and Cuttack Development Authority (CDA) were created with the objective to ensure planned and systematic development of areas coming under their municipal jurisdictions. Both the Development Authorities (DAs) undertake planning, Regulation and allotment of plots/ building for residential as well as commercial use in their respective Plan Areas.

Performance Audit of 'Planning and Regulation of buildings including allotment of land/ houses for residential purpose by Bhubaneswar Development Authority and Cuttack Development Authority' was conducted for the period 2002-12 to ascertain effectiveness of city planning, Regulation and management of land/ building for residential use by the DAs.

Audit noticed that there was inordinate delay in preparation of Comprehensive Development Plans and non-preparation of Zonal Development Plans. This resulted in mixed land use patterns and disorderly development of the cities.

Allotment process was not transparent. Cases of multiple allotments of plots/houses made to individuals/ their spouses were noticed. Further, transfer of plots/ houses permitted without execution and registration of lease deeds were also noticed.

There were delays in approval of building plans. Norms and standards of Building Regulations were not complied with. A scheme providing one time concession to the owners to regularise unauthorised/ irregular constructions was not implemented effectively.

There was lack of monitoring mechanism:

- i. to detect deviations in constructions;*
- ii. to detect diversion of end use of building;*
- iii. on enforcement action to evict encroachers of land and*
- iv. to remove deviated construction or resume unutilised plots.*

2.2.1 Introduction

Land is a scarce resource. This valuable resource is managed in Odisha by the State Government through Revenue and Disaster Management (RDM) Department except in Bhubaneswar city where General Administration (GA) Department undertakes the management of land. Government land required for residential and other purposes within the city limits of Bhubaneswar and Cuttack are leased by GA and RDM Departments to Bhubaneswar Development Authority (BDA) and Cuttack Development Authority (CDA) on payment of

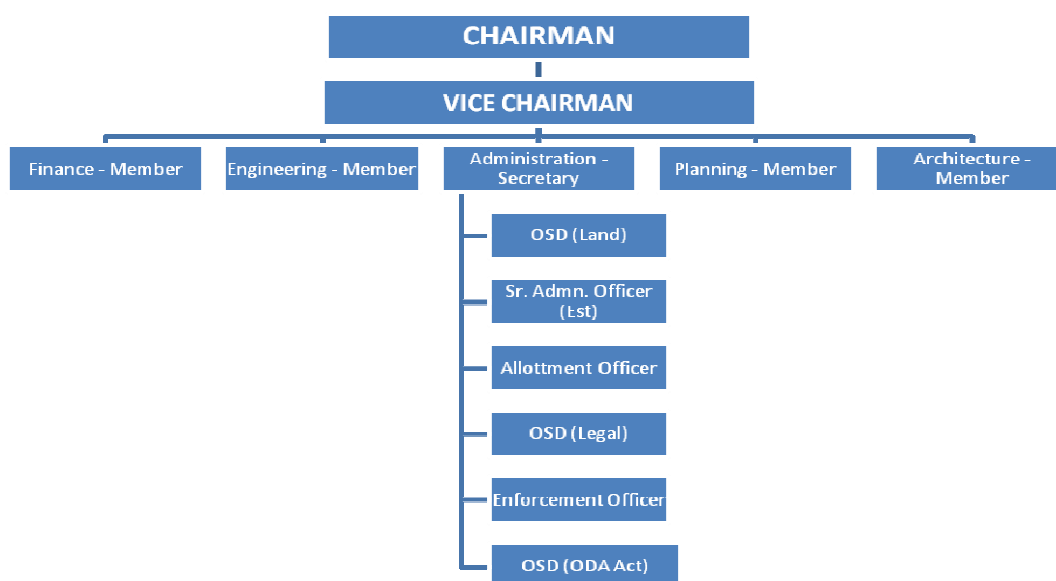
prescribed premium and the same after development are further leased to public by these authorities. The process of allotment of land to both the Development Authorities (DAs) has been explained in para 1.

Bhubaneswar Development Authority and Cuttack Development Authority were established by the Government in 1983 under the Orissa Development Authorities (ODA) Act, 1982 with the objective to ensure planned and systematic development of areas under their respective jurisdictions.

- Both the DAs function as planning agencies for the urban area under their jurisdiction and prepare Comprehensive Development Plans and Zonal Development Plan (ZDP) for each zone within their respective Development Planning areas. The main objective of Comprehensive Development Plan is to prepare up to date urban land use map as well as physical development plan to regulate and guide urban growth in the region.
- The DAs, as regulators of their respective development planning areas, formulate Planning and Building Standards Regulations (PBSR) in consonance with the ODA Act, which lay down norms and standards for construction of buildings and ensure enforcement thereof as per the ODA Act.
- The DAs, as developers, take possession of land allotted to them by Government, develop the same into various plots/houses and allot these plots and houses on lease basis to public for residential as well as commercial use.

2.2.2 Organisational set-up

The DAs function under the Housing & Urban Development (H&UD) Department headed by the Minister of H&UD, who also acts as the Chairperson of these Authorities. The Organogram of the Authority concerned is shown below:



2.2.3 Audit objectives

Performance Audit was carried out to assess whether:

- Both DAs formulated timely and adequate plans for orderly development of respective cities and ensured its effective implementation;
- Allotment of plots/ buildings by DAs was transparent, non-arbitrary, equitable and utilised as intended within the prescribed time period;
- Rules for fixation of price of plots/ buildings for various categories of allottees were in place and prices fixed were adequate and in adherence to such Rules.
- Building plan approvals were granted in compliance with PBSR;
- Enforcement mechanism was effective and efficient to prevent and evict unauthorised construction;

2.2.4 Audit criteria

Criteria for audit were drawn from following documents:

- The Orissa Development Authorities Act, 1982;
- The Orissa Development Authorities Rules, 1983;
- The Orissa Government Land Settlement Rules, 1983;
- BDA (Planning and Building Standards) Regulation, 2001 and 2008;
- CDA (Planning and Building Standards) Regulation, 2001;
- The Indian Stamp Act, 1899;
- Gazette Notifications, circulars and instructions issued by the State and Central Government;
- Terms and conditions of housing schemes developed by the Authorities.

2.2.5 Scope of audit and methodology

Performance Audit was conducted during March 2012 to February 2013 for the period 2002-12 with Entry Conferences held with the Vice-Chairman (VC) of the Bhubaneswar Development Authority on 28 February 2012 and with the VC of Cuttack Development Authority on 13 September 2012, in which the audit objectives, criteria, scope and methodology were discussed and agreed to.

For Bhubaneswar Development Authority, Audit examined building plan approvals of 61 high rise buildings, 136 Apartment Buildings, 433 general buildings during 2002-12⁴⁰. For Cuttack Development Authority, Audit examined plan approvals of 37 high rise apartments/ Apartment Buildings, 173 general buildings during 2002-12⁴⁰.

On allotment function, Audit examined all allotments made during 2002-12. Audit was conducted during March 2012 to February 2013. Audit also

⁴⁰ Period of coverage is 2002-12 since the PBSR came into force w.e.f. December 2001. However for general category buildings, the coverage is 2007-12 on the basis of risk analysis.

conducted Joint Inspection of 89 plots/ buildings/ apartments in order to substantiate the audit findings and photographs were also taken as audit evidence, wherever considered necessary.

Audit findings were also discussed with the Principal Secretary to Government; H&UD Department in an Exit Conference held on 21 January 2013 for Bhubaneswar Development Authority and on 7 May 2013 with the Project Director-cum-Joint Secretary of the Department for Cuttack Development Authority and the replies of the Government, wherever received, were incorporated at appropriate places in the report.

AUDIT FINDINGS

2.2.6 Planning

2.2.6.1 *Preparation and implementation of Comprehensive Development Plans*

Section 9 and Rule 11 of the Orissa Development Authorities Act (ODA Act), 1982 and Rules made thereunder required that a Comprehensive Development Plan indicating urban land use map as well as physical development plan should be prepared and published within four years of the constitution of the Authority. Bhubaneswar Development Authority prepared first Comprehensive Development Plan in 1994 after a delay of seven years and revised it in 2010. Similarly, Cuttack Development Authority prepared its first Comprehensive Development Plan in 2012 after a delay of 25 years. There was no record to indicate the reasons for such delay.

Audit noticed that due to absence of Comprehensive Development Plan, there is disorderly development with excessive pressure on infrastructure. Further, due to lack of such planning compounded by non-implementation of previous Comprehensive Development Plan 1994, activities and functions with high economic potential have also been poorly managed resulting in mixed land use instead of a systematic development in the Bhubaneswar Development Plan Area. Similarly, in Cuttack Development Authority there was no guiding master plan for decades together and the land use pattern in Cuttack city presents an urban clutter, with industries existing side by side with residences.

The current Comprehensive Development Plans for both the DAs set specific targets on share of land use for residential, commercial, industrial, public/institutional, water bodies, environmental sensitive zones and other utilities to be achieved by 2030. However, no Annual Action Plans in line with such targets were prepared by DAs for regulated implementation of the respective Comprehensive Development Plans.

The Department, while admitting (February 2013) delays in preparation of Comprehensive Development Plans stated that a High Level Steering Committee (HLSC) to monitor the implementation of Comprehensive Development Plan 2010 for Bhubaneswar Development Plan Area headed by the Chief Minister was constituted and has held three meetings in 2010-11. For Cuttack Development Plan Area, the Department stated that the Comprehensive Development Plan has been prepared and approved in 2012.

Audit, however, noticed that though the HLSC was formed, it did not meet since July 2011. Further, no Monitoring Committee was formed for Cuttack Development Plan Area (June 2013).

2.2.6.2 Preparation of Zonal Development Plans

As per Section 10 of ODA Act, simultaneously with the preparation of Comprehensive Development Plan or thereafter, a Zonal Development Plan (ZDP) should be prepared further subdividing the plan area in various zones for the purpose of development as well as the stages by which any such developments would be carried out. This is required to ensure that the DAs monitor systematic development of city zones and prevent development in an unorganised manner. Review of the activities relating to preparation of ZDP revealed that the plan has not been prepared as discussed below:

- 11(2) of ODA Rules, 1983 requires fixation of a time schedule for preparation and publication of ZDP by the DAs and its approval by the Government. However, no such time was fixed by the DAs.
- In the Comprehensive Development Plan of Bhubaneswar Development Authority and Cuttack Development Authority, 14 and 11 planning zones respectively were earmarked. Bhubaneswar Development Authority entrusted (July 2010) preparation of ZDPs to IIT, Kharagpur stipulating its completion by July 2012. However, IIT Kharagpur submitted ZDPs for only four zones and completed survey work for another three, whereas in case of Cuttack Development Authority, no action was initiated (August 2013). Reasons for delay were neither furnished nor available on record.
- Section 10 of the ODA Act requires ZDPs to include site plan and use plan for the zone for various purposes such as housing, schools, hospitals, markets, roads, open spaces etc. based on end use of land as well as to provide for improvement of bad layouts and slum areas. In the absence of ZDPs, the envisaged detailed planning at the zone level could not be achieved.

In reply, Cuttack Development Authority stated (June 2013) that since Comprehensive Development Plan was prepared only in 2012, steps were being taken to prepare the ZDPs at the earliest. Bhubaneswar Development Authority while admitting the fact stated (February 2013) that ZDPs would be prepared soon.

2.2.6.3 Non-provision of houses for Economically Weaker Sections

Rule 3(3) of Orissa Government Land Settlement (OGLS) Rules 1983 required that land in urban areas were to be, *inter-alia*, reserved for poor class people as well as middle class people having no house site / inadequate accommodation. Section 22 (4) of ODA Act, 1982 also required reservation of 10 *per cent* of the total area covered for members of socially and economically backward classes. However, Audit noticed that during 2002-2012, though, 10 schemes were developed by DAs (BDA: 8 and CDA: 2) no plots/ houses were reserved for EWS category. It was also noticed that in one scheme, while entering into lease

agreement with Cuttack Development Authority, the RDM specifically stated that 10 *per cent* of the land should be allotted for EWS category. However, such reservation was not ensured by the Cuttack Development Authority while launching the scheme.

The Department while admitting the facts stated (February 2013) that reservation of plots/ houses for EWS category would be ensured in the forthcoming schemes.

2.2.7 Allotment of developed plots and buildings

2.2.7.1 Utilisation of land for housing schemes

Under Section 75 of the ODA Act 1982, the State Government may place at the disposal of the Authority any developed or undeveloped Government land situated within the jurisdiction of the Authority for the purpose of development.

Rule 52 (3) of ODA Rules provided that after any land at the disposal of the Authority has been developed, it shall, subject to the directions given by the State Government in this behalf, be dealt with by the Authority in such manner as it may consider expedient for securing the planned development of the locality.

Land was allotted to DAs by Government on lease basis for the purpose of development of social housing schemes. During 1983-2012, General Administration (GA) Department and Revenue and Disaster Management (RDM) Department allotted 1406.038 acre Government land to Bhubaneswar Development Authority. Similarly, during 1983-2012, RDM Department allotted 1215.186 acre Government land to Cuttack Development Authority. A scrutiny of utilisation of land by DAs during the period covered under audit revealed as follows:

- During the period covered in audit, Bhubaneswar Development Authority developed eight housing schemes for which 124.243 acre of land were allotted from 1985 to 2002, i.e., prior to period of audit. Of this, Bhubaneswar Development Authority utilised 101.414 acre land intended for the purpose. The remaining 22.829 acre land were left unutilised due to encroachment of the land (2.586 acre) by slum dwellers and local people, land under litigation (6.458 acre) and unsuitability of land (6.890 acre) for allotment (in Udaygiri Vihar Housing Scheme). Cuttack Development Authority utilised entire 298.83 acre land, which was allotted up to 2002, by launching two schemes during the period covered in audit.
- During 2002-12, 113.431 acre land was allotted to Bhubaneswar Development Authority while 68.465 acre were allotted to Cuttack Development Authority for development of housing schemes. Of the above, only 2.685 acre land was utilised by Bhubaneswar Development Authority and remaining 110.746 acre land remained unutilised (February 2013) due to prolonged planning process ranging between three and six years. Cuttack Development Authority, however, utilised the full extent of land allotted to it.

2.2.7.2 Allotment of houses and plots

Rule 52(2) of ODA Rules empowers the DAs to dispose of land allotted/ transferred to them, subject to the directions given by the State Government, as they think fit, so as to ensure the planned development of the area under their jurisdiction. However, these Rules do not contain criteria for allotment of land to different categories of allottees and procedure for transfer of plots/ houses from one allottee to another.

For the purpose of allotment of plots/ houses under each scheme the DAs issue brochures for the scheme containing terms and conditions attached to the process and mode of allotment of plots/ houses. The DAs invite applications from the public through newspaper advertisements for allotment of plots/ houses. The applications, thus received, are scrutinised for eligibility and compliance to brochure terms and conditions. In case applications are more than the available plots/ houses under the scheme, the allotment is carried out by a lottery process. The brochures also specify the number of plots/ houses for preferential allotment under Discretionary Quota of the Chairperson of the DA for which, applications are also invited from public.

During 2002-12, Bhubaneswar Development Authority allotted 1293 assets (224 plots and 1069 houses pertaining to eight schemes) to public while Cuttack Development Authority allotted 3170 plots (two schemes) to public during the same period. In all schemes excepting one, lottery system was followed. This indicates that the demand for the plots/ buildings developed by the DAs was high due to the significant difference between the allotment price *vis-à-vis* the prevailing market value of the land.

Audit reviewed the allotment cases by the DAs during 2002-12 and noticed following deficiencies in allotment of assets.

2.2.7.3 Multiple allotments of assets to same individuals/ their spouses

The assets were offered by DAs at significantly lower prices than the actual prevailing market price. Thus, in order to ensure allotment opportunity and affordable houses to as many persons as possible, the DAs should ensure that individuals/ spouses have not been allotted more than one asset in same/ different schemes.

An audit scrutiny of the records of DAs revealed the following:

- In five⁴¹ housing schemes in Bhubaneswar Development Authority, though the brochure contained provision prohibiting one person to apply for more than one unit within a scheme, condition prohibiting application by the spouses in that scheme was not available in the brochure. Audit noticed that 29 persons were allotted (2002 to 2012) additional assets valuing ₹ 6.79 crore by Bhubaneswar Development Authority though they themselves or their spouses were already allotted assets in earlier schemes/same schemes. Similarly, in Cuttack Development Authority, eight persons were allotted

⁴¹ (1) Anant Vihar HS, Ph-II, HIG Duplex (launched in 2009), (2) Lumbini Vihar HS (in 2001-02), (3) Netaji Subhas Enclave (in 2007), (4) Prachi Enclave, Ph-II (in 2002), (5) Udayagiri VHS (in 2002)

plots valued ₹ 24.34 lakh despite the fact that their spouses were also allotted assets under the same scheme.

- Seven persons were allotted more than one plot/ house by both Bhubaneswar Development Authority and Cuttack Development Authority in their favour.
- Scheme brochure conditions require furnishing an affidavit from applicant citing that he/ she or his/ her spouse did not possess a house/ plot in Bhubaneswar. Audit noticed that the Bhubaneswar Development Authority did not have data base of allottees of plots/houses allotted in its own schemes. As a result in three housing schemes⁴², Bhubaneswar Development Authority allotted more than one plot/ house valued at ₹ 61.08 lakh in the same/ different housing schemes to nine persons on the basis of affidavits submitted by them which were later proved to be false.

Bhubaneswar Development Authority admitted (February 2013) the absence of computerised data and stated that steps were being taken to computerise data relevant to allotments to prevent multiple allotments to the same individuals/ their spouses. Cuttack Development Authority stated (June 2013) that appropriate action would be taken in cases of more than one allotment. While admitting the facts, the Department also assured (June 2013) that action would be taken against those applicants who have misrepresented facts or filed false affidavits.

2.2.7.4 *Lack of transparency and equity in allotment process*

Individual brochures of housing schemes developed by the two DAs specified the mode of allotment of plots/ houses within that particular housing scheme. Audit noticed that in 10 housing schemes developed by Bhubaneswar Development Authority (eight) and Cuttack Development Authority (two), allotments were made by holding a lottery.

Bhubaneswar Development Authority in its meeting (August 2004) also decided to dispose unsold/ vacant plots/ houses remained in any scheme through open tender process.

However, Audit noticed that in the following cases, transparency and equity in the allotment process could not be assured:

- In Baramunda HIG Duplex Core Housing Phase III scheme, nine houses were to be allotted (October 2001) by Bhubaneswar Development Authority. Since the number of houses to be allotted was only nine, newspaper advertisement was not made and instead a notice was published (10 October 2001) on Bhubaneswar Development Authority's notice board, inviting applications for the same, within five days, in response to which four applications were received. Audit, however, noticed that there were 17 applications for these nine houses which were already received by Bhubaneswar Development Authority prior to the above notice being published. Reasons as to how these 17 applicants were aware of the

⁴² (1) Anantha Vihar Housing Scheme Ph II (2) Aryavihar Housing Scheme (3) Prachi Enclave I.

availability of such houses before public notice were not on record. Despite the fact that the first public notice regarding availability of nine houses was published only in October 2001, Bhubaneswar Development Authority decided (January 2002) to allot houses to nine of the 17 persons who had applied prior to publication of the notice, on 'first-come-first serve' basis. Subsequently, allotment of one out of above nine houses was cancelled due to non-payment of dues, which was allotted by the Chairman under his discretion (July 2005) instead of allotment by auction. No reply was received (June 2013) from Bhubaneswar Development Authority on this issue.

- Cuttack Development Authority launched a plotted scheme 'Abhinaba Bidanasi Kattaka' scheme in sector 10 with total area of 121.070 acre. Although there was no provision of allotment of plots for Group Housing Co-operative Societies in the brochure of the scheme, Cuttack Development Authority allotted (2003-06) 4.91 acre land worth ₹ 2.37 crore in Sector 10 to two Group Housing Co-operative Societies directly, without following lottery procedure for which reasons were not available on records.

The Department stated (June 2013) that there were no specific criteria for allotment to Group Housing Cooperative Societies in the housing scheme and that allotment was made on the basis of applications received. The reply is not tenable since the above allotments were not made through lottery process, thereby providing an unfair advantage to these cases during allotment, compared to other allotments which were made through lottery.

On above issues, the Department stated (June 2013) that Bhubaneswar Development Authority had prescribed the Allotment Manual 2010 and that steps had been taken to increase transparency and fairness in the allotment process. It further added that Cuttack Development Authority had also been instructed to prescribe an Allotment Manual.

2.2.7.5 *Transfer of ownership of assets*

In case of Bhubaneswar Development Authority, individual brochures of housing schemes permitted transfer of plots/ houses by allottees after execution of lease deed and expiry of two years from the date of taking over possession (except in Anant Vihar, Phase-II HIG Duplex, where it was five years). Unlike Bhubaneswar Development Authority, there was no time limit prescribed for Cuttack Development Authority after which the transfers by allottees were permitted.

Audit examined the transfer of assets by allottees in both Bhubaneswar Development Authority and Cuttack Development Authority and noticed the following deficiencies:

- In case of Cuttack Development Authority, individual brochures of housing schemes permitted transfer of allotted plots by allottees by way of sale or otherwise (except by way of inheritance) with prior consent of Cuttack Development Authority and on payment of 50 *per cent* of the unearned increase (difference between the premium paid at the time of

allotment and premium applicable at the time of transfer) as consent fee to Cuttack Development Authority. However, Bhubaneswar Development Authority charged a nominal processing fee (15 *per cent* of cost as per brochure) at the time of the transfer of the plot/ house, regardless of the consideration value of the transfer from the initial allottee to the third party. The GA Department, which also allots land, was charging consent fees 25-35 *per cent* of premium at the time of transfer of residential land allotted by it. Therefore, charging nominal fees by Bhubaneswar Development Authority resulted in undue favour to the initial allottee, since the DAs in any case allotted plots/ buildings at lower prices to allottees compared to the market value of land.

- Bhubaneswar Development Authority decided (September 2002) to allow pre-possession transfers, i.e., transfers from allottee to others even before taking over possession of houses/ plots. Bhubaneswar Development Authority and Cuttack Development Authority permitted pre-possession transfer of 32 houses valued at ₹ 2.53 crore and 40 plots valued at ₹ 51.02 lakh respectively during the period 2002-12 even though no lease deed was executed by the initial allottee with the concerned DA.
- Bhubaneswar Development Authority and Cuttack Development Authority also permitted post-possession transfer of 53 houses valued at ₹ 3.39 crore (brochure value) and 407 plots valued at ₹ 13.60 crore⁴³ respectively even though no lease deed had been executed by the initial allottee with the DAs concerned.
- In 532 cases (BDA : 85 and CDA : 447) of transfer of houses and plots made in Cuttack Development Authority and Bhubaneswar Development Authority, no lease deed was executed between the transferee and DA concerned. As a result, there was loss of revenue of ₹ 86.73 lakh to the Government towards registration fee (₹ 44.93 lakh) and Stamp Duty (₹ 41.80 lakh), besides the whole transaction remaining irregular.
- Bhubaneswar Development Authority did not execute any lease deed with allottees in respect of 1293 houses/ plots allotted during 2002-12, as lease deed for the land in which the housing schemes developed, were not executed with RDM and GA Departments except Prachi Enclave and Lumbini Vihar, even after allotment and taking over of possession. Cuttack Development Authority executed lease deeds with 24 allottees out of 3170 plots allotted in Sector 10 and Sector 13 during 2002-12.
- Cuttack Development Authority collected ₹ 16.80 lakh from the original allottees (sellers) towards registration fees at the time of transfers, but did not remit the same to Government Account (February 2013).

While admitting the above facts, the Department stated (January 2013) that the decision of the DAs to permit pre-possession transfers as well as post-possession transfers without execution of lease deed did not have the approval of the

⁴³ Sector 10: 329 assets of sale value ₹ 9.22 crore and Sector 13: 78 cases with sale value of ₹ 4.38 crore

Government. It was also stated that transfers were discontinued since 2011 by Bhubaneswar Development Authority. The Department also assured that instructions would be issued to Cuttack Development Authority to ensure execution of the lease deed prior to allowing third party transfers.

2.2.7.6 Allotments under Discretionary Quota (DQ)

Individual brochures of housing schemes of DAs contained provisions for allotment of plots/ houses under DQ of the Chairperson of the concerned DA which ranged between five *per cent* to ten *per cent* of the total assets offered under the schemes. However, no eligibility criteria for identification of allottees eligible under DQ had been specified by the DAs in general or in the individual brochure. It was observed that neither the provision for DQ allotment of plots/ houses existed in the Act/ Rules nor any such instruction issued by the Government.

Audit noticed that during 2002-10, the DAs allotted 634 plots/ buildings (BDA : 185, CDA : 449) worth ₹ 31.63 crore under DQ to different individuals.

Audit further observed that:

- Bhubaneswar Development Authority formulated Allotment Manual in March 2010, which, *inter alia*, included categories of persons to whom allotment of assets under DQ could be made. Cuttack Development Authority did not formulate any Allotment Manual (June 2013)
- Allotment of plots/ houses by DAs under DQ was discontinued by Government from December 2011 due to lack of uniformity in criteria used for identification of allottees under DQ by Bhubaneswar Development Authority, Cuttack Development Authority and OSHB
- No allotments under DQ as per Allotment Manual 2010 were made by Bhubaneswar Development Authority after March 2010. Hence, none of the identified categories of persons were benefitted after formation of Manual.

Audit scrutiny in the 10 test checked housing schemes further revealed that:

- Identification of allottees under DQ was arbitrary as the criteria for the same were not specified and applications for allotment under DQ were made on plain paper without any supporting documents such as affidavit regarding non-ownership of land in the concerned DA, as required in the terms and conditions of the brochure for housing schemes.
- In case of Udaygiri Vihar Housing Scheme launched for MIG/ LIG houses in 2002, norms regarding income were relaxed (April 2003) for allotment of six assets valued at ₹ 35.94 lakh out of 20 assets allotted under the DQ.
- In eight housing schemes of Bhubaneswar Development Authority, out of 249 applications for allotment of assets under DQ, 129 applicants were allotted assets. It was observed that there was no clear pre-defined criterion for such allotment, thus making the allotment under DQ completely arbitrary and non-transparent.
- Joint Inspection (July 2013) of 23 test checked plots/ buildings allotted under DQ revealed that 14 plots (**Appendix 2.2.1**) allotted by Bhubaneswar

Development Authority (between 2002 and 2007) valuing ₹ 3.47 crore remained vacant. Similarly, in Cuttack Development Authority, 169 out of 254 test checked plots allotted under DQ valued at ₹ 11.08 crore remained vacant. This indicated that allotments under DQ were made to persons without verifying the immediate requirement of the applicant.

- In case of Prachi Enclave Phase-II (BDA), provisional allotment of eight assets worth ₹ 28.80 lakh was made under DQ to eight individuals in November 2001 before launching the scheme in September 2002, making the allotment process non transparent.
- In four cases in Bhubaneswar Development Authority, assets worth ₹ 17.42 lakh were allotted to persons who had earlier also been allotted assets under DQ and transferred one of the assets to third party indicating that the allotment made under DQ was for speculation, rather than for residential purpose.
- Nine persons already allotted assets under DQ, were allotted another asset each by Bhubaneswar Development Authority either under discretionary or general quota in their names or in the names of their spouses.

Thus, due to non formulation of clear guidelines and criteria for identification of allottees under DQ and lack of subsequent monitoring regarding actual usage of such plots/ buildings, the process of allotment under DQ lacked transparency.

The Department admitted the above facts and stated (January 2013 and June 2013) that individual allotments under DQ were made at the level of the Development Authorities and that Government approval was not obtained for such allotments. The Department also stated that there should have been a well-calibrated framework to exercise the DQ instead of operating it on case to case basis. It also admitted that action of relaxing brochure conditions and allotting cancelled assets under DQ and multiple allotments to the same applicant/ his/ her family member was not appropriate and that this was one of the reasons why DQ allotments was discontinued in 2011. The Department provided assurance (June 2013) that suitable action would be taken for arbitrariness in allotment in DQ.

2.2.7.7 Non-utilisation of allotted plots/houses

As stipulated in the allotment orders/ brochures for plots in housing schemes, the allottees were required to construct houses over the allotted plots within a stipulated period of time⁴⁴. During 2002-12, Bhubaneswar Development Authority and Cuttack Development Authority allotted 1293 assets (224 plots and 1069 houses) and 3170 plots respectively. In compliance to Hon'ble High Court's order (February 2011) that action was to be taken against the allottees who had not constructed houses, Cuttack Development Authority issued (November 2011) show cause notices for cancellation of allotted land to 861 allottees. Bhubaneswar Development Authority had not taken any action for review of housing schemes to check for non utilisation of allotted plots till date (May 2013).

⁴⁴ Three years for CDA and five years for BDA as in Kalinga Nagar plotted schemes

In the absence of regular inspections by DA officials to ensure that construction on the allotted plots commenced within stipulated periods, the DAs failed to monitor enforcement of the above allotment condition. Moreover, DAs were empowered under their Regulations to cancel the allotments and resume the land in case of non utilisation within the stipulated time but failed to take any action.

No reply was received from the Government on this issue (May 2013).

2.2.8 Pricing mechanism

Bhubaneswar Development Authority, while allotting plots/ buildings, determines the allotment price as equal to the sum of land premium paid, cost of development of plots, cost of construction of houses and other overhead and supervision charges. Cuttack Development Authority in addition to following the pricing procedure as above, also enhances the prices by 15 per cent per annum for those plots which were not allotted within the year of launch of housing scheme. Bhubaneswar Development Authority and Cuttack Development Authority allotted land to Low Income Group (LIG), Middle Income Group (MIG) and High Income Group (HIG) categories of people.

2.2.8.1 Consideration of lower land premium while determining allotment price by BDA

Audit noticed that Bhubaneswar Development Authority was paying premium only on buildable areas to the GA and RDM Departments at the time of allotment of land instead of on whole area (includes land used for amenities such as roads, open spaces etc) allotted by these Departments and accordingly used only premium paid on buildable area in pricing of plots/ houses. However, the said Departments insisted (2009 and 2012) on payment of premium on the whole area, including interest on non-payment of such premium on time. As a result, Bhubaneswar Development Authority was liable to pay the remaining premium with interest subsequently. However, pricing of land in five housing schemes was carried out on the basis of premium paid only on buildable area. Thus, against premium of ₹ 10.46 crore paid/ due to be paid to Government on five housing schemes, Bhubaneswar Development Authority, considered only ₹ 4.44 crore towards land cost during pricing of schemes, which resulted in a loss of ₹ 6.02 crore as detailed in the table below:

Table 2.2.1 Costing land price less than the premium amount paid

					<i>(₹ in lakh)</i>
Sl. No.	Name of the scheme with area of land	Land area (in acre)	Land premium paid / to be paid to Government	Land cost considered for pricing	Difference (less cost taken)
1	Lumbini Vihar housing scheme, Chandrasekharpur	19.000	228.00	144.63	83.37
2	Arya Vihar housing scheme, Chandrasekharpur	2.902	34.82	12.96	21.86
3	Udayagiri Vihar housing scheme, Patrapada	23.534	544.42	100.82	443.60
4 & 5	Prachi Enclave-I & Prachi Enclave-II/ Chandrasekharpur	19.900	238.80	185.37	53.43
Total			1046.04	443.78	602.26

(Source: Data collected by Audit from BDA records)

No such deficiency was noticed in Cuttack Development Authority.

The Department admitted the above facts and stated (February 2013) that steps would be taken to price the plots/ houses on the basis of premium paid on total area in the forthcoming schemes. The reply is not tenable, since lease deeds have not been executed in any of these cases, Bhubaneswar Development Authority can still recover this extra amount from the allottees of these parcels of land.

2.2.9 Building Regulation System

Section 15 of ODA Act, 1982 prohibits development activity in any building or over any land unless written permission is granted by the DAs. These permissions are granted in order to ensure compliance with prevailing Planning and Building Standard Regulations (PBSR) of respective DA. The person intending to undertake development activity applies to DAs in a prescribed form along with requisite documents such as building plan, site plan, scrutiny fees and No Objection Certificates (NOCs) from different agencies⁴⁵ wherever required. After verification of documents, site inspection, technical scrutiny at various levels the building plans are approved by competent authorities of the DAs.

Building plans were approved mainly under three categories i.e., apartment buildings (buildings with six or more dwelling units), high rise buildings (buildings whose height is 15 meters or more) and non-apartment buildings (all buildings except apartments and high rise buildings). Audit examined the process of approval of building plans by both the DAs and noticed the following deficiencies:

2.2.9.1 Approval of building plans

PBSR of DAs require communication of approval or refusal of building plans to the applicant within 60 days from the date of receipt of application by the DA. Besides, Bhubaneswar Development Authority prescribed (December 2008) a stage wise time schedule for disposal of different category of building plans within 30 to 60 days of receipt of such applications.

- A test check of 433 general building plan approval cases in Bhubaneswar Development Authority revealed that 90 cases were pending for approval (September 2012). Out of remaining 343 approved cases, in 98 (29 *per cent*) cases plans were approved on time, 63 (18 *per cent*) were approved with a delay of up to 30 days while in remaining 182 (53 *per cent*) cases, delay in approval ranged between 30 and 828 days (September 2012). Audit also noticed that in 101 out of 182 cases where approval was delayed for more than 30 days, the applications submitted were in complete shape and delay was only due to processing at Bhubaneswar Development Authority. In Cuttack Development Authority, no delay was noticed in 173 test checked building plan approval cases.

⁴⁵ (1) PH Engineering Department and Local Authority (water supply, sewerage and drainage system), (2) Fire Service Department (fire safety), (3) Ministry of Environment and Forest (environment clearance). (4) Airport Authority of India (building height more than 30 meter) and (5) National Highway Authority of India (site abutting to NH)

- Audit further noticed that applications received for building plan approval were not processed in serial order or on the basis of any recorded criteria, resulting in applications received at a later date given priority over earlier applications. It was also seen that in 11 cases, though building plans for two/ three storey buildings were approved in 27-60 days i.e., within the prescribed period yet in another 13 such similar cases, 81 to 443 days were taken by Bhubaneswar Development Authority for approval of building plans.

Thus, transparency in selection of application for approval of plan was lacking.

The Department while admitting the facts stated (February 2013) that the building plan approval was now included as a service under Odisha Right to Public Service Delivery Act, 2012 attracting penalty for any delay beyond 60 days. The reply is not convincing as no justification was given on arbitrariness and lack of transparency in approval of building plans.

2.2.9.2 Approval of building plans in violation of zoning Regulation

Regulation 112 (2) of PBSR 2001 of Cuttack Development Authority states that 30 *per cent* of the land in administrative zone can be utilised for those residential activity that are incidental to the zone category. Audit, however, noticed that during 2002-12, Cuttack Development Authority permitted residential constructions in 71 plots/ sites located in the Administrative zones though they were not incidental to zone category. Thus, plans with 160821 sft built up area were approved in violation of PBSR.

The Department stated (June 2013) that the audit observation would be used for future guidance.

2.2.9.3 Approval of plans of apartments under non-apartment category

Regulation 47(1) of PBSR, 2008 of Bhubaneswar Development Authority prescribed that no apartment building (having six or more dwelling units) should be permitted on plots with less than 500 Square meters (sqm) in size.

Audit noticed that in 13 cases though the plot size was less than 500 sqm and drawings/ plans of the buildings accompanying the application also showed six independent units, plans were approved with five units based on number of kitchens shown in the plans in contravention to the provisions of PBSR. Information collected from the Central Electrical Supply Utility (CESU) revealed that in nine such cases, power supply was approved for six to eight units. Thus, extra dwelling units were allowed to be constructed in these plans, though, the site was not eligible for the same. No such irregularity was noticed in Cuttack Development Authority.

The Department in reply stated (February 2013) that steps would be taken to check the number of residential units constructed and take action accordingly. Action in this regard is awaited (June 2013).

2.2.9.4 Provision of parking space in high rise buildings

Regulation 35 of PBSR 2008 of Bhubaneswar Development Authority required

that high-rise buildings should have parking area at the rate of 40 *per cent* and the residential apartment buildings at 30 *per cent* of the total built up area.

Out of 48 test checked high rise buildings, which were approved after PBSR 2008, in 10 cases it was noticed that parking space requirement was calculated at 30 *per cent* of the total built up area instead of at 40 *per cent* of the built up area stating it to be approved under apartment category which should have been approved under high-rise category. As a result against the requirement of 228579 sqm parking area in these building 180483 sqm. parking area was provided. Thus, the violation of the Regulation resulted in shortfall in parking space of 48096 sqm area with equivalent extra built up area in these buildings.

Joint Inspection of the above sites revealed that all 10 buildings were under construction as per plans. No such irregularity was, however, noticed in Cuttack Development Authority.

The Department replied (February 2013) that the parking requirement should be calculated based on activity/ use of building rather than the height of the building. It was also stated that provision of 40 *per cent* parking space for high rise building in the PBSR creates confusion and is proposed to be deleted via amendment.

The reply is not tenable as the plans were approved, with lesser parking space and more built up area, in violation of existing PBSR Rules.

2.2.9.5 Approval of building plans without provision of approach road

PBSR of DAs stipulated that in no case, development of a plot should be permitted unless it is accessible by a public/ private street of width not less than six meters.



Building of HRG Finance and Investment Consultant (P) limited

Audit, however, noticed that in six cases, Bhubaneswar Development Authority and Cuttack Development Authority approved (2002-2012) building plans even though:

- In two cases (HRG Finance and Investment Consultant Private Limited in Bhubaneswar Development Authority, Tulsi Spices Food Private Limited in Cuttack Development Authority) there were no approach road to the site. In case of HRG, the land was bisected by a 40 feet wide canal and the land behind the canal had no approach road at all. However, Bhubaneswar Development Authority approved the plan for construction of five high rise buildings on the said land stating clearance from Water Resources Department was to be obtained before construction of building for getting connectivity across the canal. The same was, however, not obtained. Similarly, in case of Tulsi Spices Food Private Limited, Cuttack Development Authority irregularly approved the plan even though a 20 feet water “nalla” abutted the plot and a 13 feet pani

mahara (water channel) belonging to Government ran through the plot itself for which requisite approval was not obtained from the Water Resource Department.

- In one case (Sivananda Builders Private Limited in Bhubaneswar Development Authority) the width of approach road was only 4.8 meters i.e. below the prescribed minimum of six meters.
- In three other cases (Dr. P.K Mohanty, Metro Builders Private Limited and Smt Puspanjali Nayak) in Cuttack Development Authority, the plan was approved without NOC from Government to construct approach roads over Government land which was later constructed by the builder/owner through encroachment.

Besides, the PBSRs prescribed that the Floor Area Ratio⁴⁶ (FAR) of residential and commercial buildings would be decided on the basis of the size of the plot and width of road to which such buildings abut. Approval of building plans in violation of maximum prescribed FAR values adversely impacts city and zonal development. Higher the FAR value permitted to be built, higher is the pressure on land for various infrastructures like water supply, sewerage system, solid waste disposal, road capacity, etc.

- Audit observed that in four cases⁴⁷ (BDA: 2 and CDA: 2), higher FAR ranging from 1.75 to 2.75 were approved (2002-12) against permissible FAR of 1.5 to 2.5. This allowed buildable area of 52113 sqm as against 47087 sqm permissible under PBSR, leading to excess buildable area of 5026 sqm in these four cases thereby extending undue benefit to the builder.

Thus, building plans in these 10 cases (BDA: four and CDA: six) were approved violating the provisions of PBSR resulting in undue benefit to the builders. This also resulted in higher pressure on land for various infrastructures like water supply, sewerage system, solid waste disposal, road capacity, etc.

The Government stated (February 2013) that unauthorised proceeding (UAP) case has been initiated in one case by Bhubaneswar Development Authority. Further the Government stated (July 2013) that action under Section 91 of the ODA Act unauthorised proceeding has been initiated in five cases by Cuttack Development Authority.

2.2.9.6 Approval of building plan over land belonging to Bhubaneswar Development Authority

As per Orissa Mutation Manual 1962, after a property is transferred by way of sale or gift through a registered deed, the transferee concerned can apply to Tahasildar for change of the Record of Rights (RoRs) so as to establish the ownership of property in his favour in the Government records.

⁴⁶ As per Regulation 2(57) of PBSR 2008 of BDA, 'Floor Area Ratio' means the quotient obtained by dividing the total covered area on all floors with the area of the plot

⁴⁷ DN Homes Private Limited, Shibani Estates & Promoters Limited, Ms.Naina Samal and Ms. Sarita Bharalwala.

Audit noticed that for approval of the lay out plan by Bhubaneswar Development Authority, one individual⁴⁸ executed (November 1984) a registered gift deed for 0.930 acre land in favour of Bhubaneswar Development Authority in Patrapada Mouza. However, Bhubaneswar Development Authority did not take any steps for change of the RoR based on the said gifted land. Subsequently, the individual executed (May 2003) a gift deed for 0.231 acre out of the above land in favour of another party, whose building plan over this patch of land was also approved (December 2008) by Bhubaneswar Development Authority.



Approval of plan to builder on BDA's own plot

After approval of the building plan, construction of the building commenced. However, an unauthorised proceeding (UAP) case was instituted against the builder for deviation from the approved plan. During trial of the case, the Officer on Special Duty observed the above lapses and proposed (October 2010) that the building plan which was irregularly approved on Bhubaneswar Development Authority's own land be reviewed and necessary legal steps against the individual who illegally transferred land belonging to Bhubaneswar Development Authority to another party by suppressing facts may be taken. However, no further action was taken by Bhubaneswar Development Authority.

A Joint Inspection (August 2012) of the site revealed that the builder had already constructed a G+4 storeyed building though, only G+1 was constructed by the builder when unauthorised construction came to the notice (October 2010) of Bhubaneswar Development Authority. Due to lack of timely action by Bhubaneswar Development Authority, the builder was able to undertake unauthorised construction of 26635 sft (built up area).

Thus, due to the inaction by Bhubaneswar Development Authority to transfer the RoR in its favour and lack of information on land records at the time of approval of building plans, Bhubaneswar Development Authority granted approval for such buildings proposed to be built on its own land.

The Department stated (February 2013) that since the applicant had suppressed the fact that the plot was earlier gifted to Bhubaneswar Development Authority, action would be taken to revoke the permission under Section 17 of the ODA Act. Action in this regard was awaited (November 2013).

2.2.9.7 Irregular approval of building plans by BDA

Bhubaneswar Development Authority approved (July 2010) the plan of a B+G+5 building of Odisha State Housing Board (OSHB) in joint venture with a developer (B Engineers Private Limited) for residential-cum-commercial use over a Plot measuring 48.290 acre in Aiginia mouza. The said land was allotted (January 1998) on lease basis by the GA Department to OSHB for

⁴⁸ Sri Surendra Chandra Mohanty.

implementation of a housing scheme of which 0.380 acre (16553 sft) was earmarked for commercial use while the remaining area was to be used for residential purpose.

Audit, however, noticed that Bhubaneswar Development Authority while approving the plan permitted construction of 36404 sft for commercial use against permissible area of 16553 sft. This was despite the fact that the OSHB submitted a copy of the land allotment letter to the Bhubaneswar Development Authority for scrutiny clearly indicating the limit prescribed on the commercial area. Thus, Bhubaneswar Development Authority irregularly permitted use of land other than for which it was permitted resulting in extension of undue benefit to the builder.

While admitting the facts the Department stated (February 2013) that OSHB was informed to get the lease conditions revised accordingly. The reply is not tenable, as Bhubaneswar Development Authority should have accorded permission for land use in compliance with the condition of allotment of land.

2.2.9.8 *Lack of follow up action after issue of conditional approval for high rise building plans*

As per PBSR of Bhubaneswar Development Authority in respect of Stilt + three floors (S+3) and above buildings, conditional approval should be accorded directing the builder to develop the onsite and offsite infrastructures like connectivity of sewerage, drainage, water supply, road etc. as per specification of the local authority. Only after receipt of 'No Objection Certificate (NOC)' from all the State/ local authorities and verification by Bhubaneswar Development Authority regarding creation of required infrastructure, construction of the main building was to be started with due permission from Bhubaneswar Development Authority.



Cosmopolis building at Dumduma built without go ahead permission

Scrutiny of records revealed that out of 197 high-rise/ S+3 buildings, the permission required from Bhubaneswar Development Authority for construction of buildings was given in 15 (eight *per cent*) cases only. Joint Inspection of 20 cases where permission was not granted revealed that in all cases, civil constructions were taken up on the basis of conditional approval alone.

- As per Notification (September 2006) of Union Ministry of Environment and Forest (MoEF), for construction of mega high-rise/ apartment projects (built up area 20000 sqm or more), builders are to obtain environmental clearance from the Government of India before commencing construction. Audit, however, noticed that out of 26 cases under Bhubaneswar Development Authority where clearance from MoEF was required, the builders did not submit such clearance in 13 cases (September 2013).

During inspection of two such cases⁴⁹ it was noticed that civil constructions had commenced in both the cases.



Construction of Vipul Greens at Raisingpur without clearance from MoEF

The Government stated (February 2013) that unauthorised proceeding (UAP) cases were initiated against those builders who had commenced constructions without submitting environmental clearances. No such project was, however, taken up in Cuttack Development Authority.

- As per PBSR of DAs, builders were to display a copy of the building permission, approved drawings and specifications in a conspicuous place at the site of the construction for the information of the public concerned. On Joint Inspection of 19 sites which were under construction, Audit noticed no such display at any of these project sites.

The Department stated (February 2013) that steps would be taken to hoist information on disposal of building permission application on the Bhubaneswar Development Authority website. No reply was received from Cuttack Development Authority (June 2013).

- Bhubaneswar Development Authority did not verify whether builders obtained the requisite permission from the Ground Water Authority where ground water was proposed to be used by builders, even though the same was required to be obtained as per the NOC for water supply issued by the Executive Engineer of the concerned Public Health Division.

The Department stated (February 2013) that there was no provision in the Act, Rules and Regulation to seek NOC from the Ground Water Authority. The reply is not tenable as the NOC obtained from Public Health Division in compliance with the PBSR clearly indicates that it was subject to permission to be obtained from Ground Water Authority.

The Department attributed deficiency in follow up action after grant of conditional approval to shortage of manpower and assured (February 2013) that the Development Authorities would sincerely follow up on compliance to conditions specified at the time of grant of conditional approval in future.

The fact, however, remained that the grant of conditional approval without adequate and effective inspections and follow up action led to constructions without the requisite NOCs from State/ local authorities and without development of required infrastructure, as prescribed in the PBSR.

2.2.9.9 Scheme for regularisation of unauthorised/ deviated constructions – Amnesty Scheme

Bhubaneswar Development Authority with the approval of Government introduced (December 2007) a scheme called “Regularisation of unauthorised/

⁴⁹ (1) D N Homes, Dumduma (2) Vipul Greens, Raisingpur

deviated construction through compounding” (ROUDCTC) to extend one time concession to the owners to regularise their unauthorised/ irregular constructions on payment of prescribed compounding fee. The scheme was under implementation for a period of six months which was subsequently extended for another one year up to 30 June 2009. Similarly, the ROUDCTC scheme for Cuttack Development Authority was launched in January 2009 which was also extended up to July 2010. The salient features of the scheme were as under:

- All unauthorised/ deviated constructions undertaken within the jurisdiction of DA concerned prior to the date of notification of the scheme were eligible {Clause 3(i)};
- Applications received in complete shape were to be dealt with on ‘first-come-first serve’ basis and disposed off within a maximum period of six months from the date of submission of applications (Clause 9)
- Applications duly filled in were to be accompanied, *inter-alia*, by self assessed compounding fee, structural stability certificate by a Structural engineer, photograph of the building from two angles duly signed by the applicant and attested by the Architect;
- Multi-storeyed buildings, the construction of which were undertaken after publication of PBSR 2001 were not covered {Clause 4(ix)};
- A panel consisting of representatives of the concerned DA, Public Health Engineering Department/ Municipal Engineer was to be formed to take up random checking of the construction on the site (Clause 9).

Under the scheme, 8678 applications were received (BDA: 4598, CDA: 4080) of which 4397 were approved (BDA: 3771, CDA: 626) as of March 2012. The remaining cases were not disposed off (February 2013) even after expiry of more than two years of closure of the scheme.

Audit noticed that panel consisting of representatives of DA, Public Health Engineering Department/ Municipal Engineer was not formed to take up random checking of the construction on the site. DAs solely relied on the affidavits attached with the application given by the applicants, assuming such voluntary disclosure as correct.

The Department stated (February 2013) that a Committee would be constituted and 10 *per cent* of the cases where deviations in the building plans were regularised, would be checked. The reply is not tenable as the Committee should have checked the buildings before they were regularised under the scheme.

In the absence of this control, the possibility of submission of false affidavits in order to regularise deviations from approved building plans and suppression of other deviations in construction could not be ruled out. Audit examined 624 cases under the scheme in Bhubaneswar Development Authority (454) and Cuttack Development Authority (170) and noticed the following irregularities:

- Seven applications were accepted (2008-09) by Bhubaneswar Development Authority, in which the applicant and architect had signed the blank forms without details and subsequently allowed submission of filled in forms at the time of processing and in the process, regularised four such construction cases. Further, in seven cases, blank structural stability certificates signed by the structural engineers and filled up certificates without signature of structural engineers were approved (May 2008 to August 2010) by Bhubaneswar Development Authority.

The Department stated (February 2013) that due to the last minute rush during filing of applications, their completeness could not be scrutinised. The reply is not tenable as cases with blank forms cannot be regularised.

- Out of 454 test checked cases only 89 cases (20 per cent) were approved within the prescribed period of six months. The delay in 287 cases ranged from one to 24 months and remaining 78 cases were still pending for disposal (June 2012). The Department attributed (February 2013) the delay to shortage of additional technical manpower.
- In four cases, unauthorised/ deviated constructions were regularised (May to September 2010) by Bhubaneswar Development Authority even though the applications were received after closure of the scheme.
- In seven cases, applications not accompanied by self assessed compounding fees were entertained and approved (February 2008 to December 2011) by Bhubaneswar Development Authority.
- Nine cases were regularised by Bhubaneswar Development Authority with deviation more than declared in the initial application, thus giving scope for further alteration in the building after submission of application.
- In 26 cases in Bhubaneswar Development Authority, the deviations were regularised, even though applications were not accompanied by requisite documents/ additional compounding fee.
- In 207 out of 454 test checked cases in Bhubaneswar Development Authority, front set back deviations were also regularised though the scheme prohibited for the same.
- The scheme envisaged that buildings used for commercial/ mixed occupancy, the parking deficit should be regularised on payment of compounding fee at ₹ 1000 per sft. Audit, however, noticed that in three cases, Bhubaneswar Development Authority regularised the parking deficit without charging compounding fee of ₹ 1.04 crore.

The Department stated (February 2013) that in one case the building was regularised for residential use and therefore no parking was necessary, while in the other two cases, show cause notice for revocation of regularisation were issued. The reply is not acceptable as two out of four floors of the building in question were utilised for medi-care/ commercial purpose and hence it was a mixed occupancy building.

- While regularising 3122 sft deviated structure of a Stilt+5 multi-storeyed building⁵⁰ under the scheme, Bhubaneswar Development Authority considered the fifth floor as barsati⁵¹ and categorised the building as non-multi storeyed by non-inclusion of height of 5th floor for height of the building. Audit, however, noticed that the built up area of the fifth floor was 41 *per cent* (1681sft) of the fourth floor (4116 sft) i.e., more than the norm of 30 *per cent* prescribed for barsati and as such was not a barsati floor. Further, there was no provision in the Regulation/ scheme guidelines for such deduction. The regularisation was irregular, as the building was a multi-storeyed one and constructed after publication of PBSR 2001.
- Parking deficit (665 sft) as well as deviated construction (4761 sft) of a multi storeyed hotel-cum-commercial complex (Hotel Pal Regency) was regularised (March 2012) under the scheme on payment of compounding fee of ₹ 11.41 lakh. Since the building was multi-storeyed and constructed (2008-09) after publication of PBSR 2001, it was not within the scope of the scheme and hence should not have been regularised. The building plan of Basement + Ground floor + five floors (B+G+5) storeyed building was approved (January 2008) by Bhubaneswar Development Authority with the stipulation not to start construction of fourth and fifth floor without demolition of an existing G+1 building, required for parking. But, the owner constructed the fourth and fifth floors (18062 sft) unauthorisedly without demolishing the existing G+1 building and applied (June 2009) for its regularisation under the scheme, which was allowed by Bhubaneswar Development Authority.

The Department stated (February 2013) that there was no provision in the ODA Act/ Rules or the scheme to declare the building unauthorised for violation of conditions of approval. The reply is not convincing as Clause 2(ii) of the scheme defined 'unauthorised constructions' as constructions undertaken in contravention of the approved plan and without any approval/ sanction of the Bhubaneswar Development Authority.

2.2.9.10 Lack of periodic review of validity period of building permission

Section 20 of ODA Act and Regulation 11 of PBSR 2008 of Bhubaneswar Development Authority stipulates that building plan permissions granted would remain valid up to three years, if not completed is required to be revalidated before its expiry which will remain valid for another one year.

Audit noticed that in 208 out of 433 test checked building plan approvals, the validity period of the permissions expired (2009-10) and completion certificate for the building was not furnished by owners/ architects. In absence of completion certificate and valid building plan, the owners/ architects were required to seek revalidation of the building plans. Bhubaneswar Development Authority did not verify whether the construction of these buildings with expired building plans were as per the approved plans or not. Due to such inaction of

⁵⁰ Arcux Realcon Private Limited over plot No N-4/42, Jayadev Vihar.

⁵¹ Room, not exceeding 30 *per cent* of the covered area on the top floor of the building with toilet and kitchen unit built contiguously.

Bhubaneswar Development Authority, even the extent of deviated constructions/ constructions without valid permission were neither available with Bhubaneswar Development Authority nor could be ascertained in Audit.

The Department stated (February 2013) that the ODA Act 1982 did not have mandatory provision for revalidation of an approved plan and it was at the option of the applicant. The reply is not tenable as in the absence of a valid building permission; the DA was empowered under Regulation 12 of PBSR 2008 not to allow further construction till plan is revalidated by the DAs.

2.2.9.11 Security Deposits management

Regulation 7 of the Planning and Building Standard Regulations (PBSR) 2008 required that builders undertaking construction of Group housing/ apartment/ commercial buildings were to maintain a Security Deposit (SD) at the rate of ₹ 100 per square meter (sqm) of floor area with the Bhubaneswar Development Authority. This was liable to be forfeited if the construction/ development was not made as per the approved plan.

Audit, however, noticed that after receiving SD in form of Bank Guarantees (BG), no register was maintained to watch their validity period. On this being pointed out in audit, Bank Guarantee register was maintained by recording the data in respect of 251 apartment/ high-rise plan files. Though the Planning Section asked the builders to submit fresh BGs or to revalidate the expired bank guarantees, only three builders revalidated their BG amounting to ₹ 7.46 lakh and other 30 builders neither revalidated their BG valued at ₹ 98.76 lakh nor furnished fresh BGs (June 2012).

Audit further noticed that there was shortfall of SD to the extent of ₹ 2.54 crore in 60 cases, as detailed in *Appendix-2.2.2* due to exclusion of basement/ stilt floor area from the total floor area of the buildings even though no such relaxation was allowed under the Regulation.

Thus, an important internal control mechanism to ensure compliance of construction with approved plans remained non operational. As a result, even in cases where deviations/ unauthorised constructions were detected by Bhubaneswar Development Authority, it was not in a position to forfeit the SD furnished by builders which could have otherwise acted as a deterrent against such deviated construction.

While admitting the facts, the Department stated (February 2013) that Bhubaneswar Development Authority was developing a computerised monitoring system to watch Bank Guarantees.

2.2.9.12 Inspections to detect deviations in construction

In order to comply with the Regulation in PBSR it is imperative for the DAs to inspect the constructions of the building for which plan have been approved. A test check of records of the inspection carried out by DAs revealed the following:

- As per Regulation 14 of PBSR of Bhubaneswar Development Authority and Regulation 22 of PBSR of Cuttack Development Authority, all

constructions were to be inspected by the DAs to ensure adherence to approved building plan. However, Audit noticed that no specific periodicity for carrying out such inspections was prescribed in the Regulations/ instruction of DAs. As a result, adequate number of timely inspections by the DAs could not be ensured. This situation was further exacerbated due to shortage of manpower in the DAs, as the number of inspections actually carried out to detect deviations in construction was not commensurate with the number of building plan approvals granted. Lack of adequate and timely inspections by the DAs resulted in instances of unauthorised and deviated constructions in the two cities going on unabated as detailed in **Paragraphs 2.2.10.1 and 2.2.10.2**. Further, unauthorised and deviated constructions could only be demolished upon receipt of complaints from public, rather than being detected at the construction stage itself, thus, rendering Regulation of the building plan approval mechanism inefficient and ineffective to this extent.

- Developers/ builders of buildings whose construction was completed were required to submit completion certificates to the DAs. As per Regulation 15 of PBSR of Bhubaneswar Development Authority and Regulation 22 of Cuttack Development Authority, a team of officials of the Authority were to visit the site and ensure that all public utilities were provided and building plan was adhered to, before issue of Occupancy Certificates by the Authority. Audit, however, noticed overwhelming instances of buildings being irregularly occupied without issue of Occupancy Certificates by the DAs, as discussed in **Paragraph 2.2.10.3**.
- Regulation 16 of PBSR of Bhubaneswar Development Authority required that periodic inspection of completed buildings may be undertaken within a time span of three to five years by a team of multi disciplinary professionals to report on compliance to bye-laws, natural lighting and ventilation and structural and electrical safety of the completed buildings. Violations noticed during inspection are to be addressed by the occupants within six months, failing which the buildings are to be declared unsafe by the DA. However, no such multi disciplinary team was constituted by Bhubaneswar Development Authority. In case of PBSR of Cuttack Development Authority, there was no such provision for periodic inspection of completed buildings by a multi disciplinary team. Audit noticed that no physical inspections were conducted by DAs to ensure safety of the high rise buildings.

2.2.10 Enforcement Mechanism

Section 91 and 92 of ODA Act, 1982 provide that where development in any area has commenced in contravention of the development plan or without the permission or in contravention of any condition, the empowered officer of Authority may, in addition to any prosecution make an order requiring the development to be discontinued/ removed. Accordingly, Bhubaneswar Development Authority designated one of its Officers as ‘Officer on Special Duty (OSD) under ODA Act’ and conferred the post with powers under Section

91 and 92 of ODA Act to make order directing removal of unauthorised development and to make orders requiring unauthorised development to be removed.

An Enforcement Wing was set up (1983) in both the Development Authorities, which was manned by Enforcement Officers conferred with powers under the provisions of ODA Act. The wing was to detect unauthorised development and construction in Master Plan Area of Bhubaneswar and Cuttack for initiation of ‘Unauthorised Proceeding (UAP)’ cases and to execute demolition order passed by the Court of OSD. Besides, Supervisors, Field Inspectors, Amins and Chainmen were working in the Wing as field staff. Amins were to look into unauthorised/ deviated construction in their respective areas under the supervision of the Supervisor and Field Inspectors. Audit, however, noticed the following deficiencies:

2.2.10.1 Lack of co-ordination between Planning and Enforcement Wing

Approved Building plans were not made available to the Enforcement Wing of the DA. As a result the Enforcement Wing was not able to identify the buildings to be inspected for possible deviation or detect unauthorised constructions.

Joint Inspection revealed that in 14 cases (BDA 8, CDA 6), constructions were completed deviating from the approved plan. Two multi-storeyed buildings were found to be constructed adjacent to National Highway, though the same was prohibited under Regulation 58(4C) of Bhubaneswar Development Authority. There were 15 buildings in Bhubaneswar Development Authority area including three⁵² of Government which were constructed without approved building plans. Thus, the existing enforcement mechanism provided no effective deterrence against unauthorised/ deviated constructions.



One S+6 building constructed at Ghatikia against the approved plan of S + 4 building



Police Commissionerate office at Bhubaneswar constructed without approval of building plan

The Department stated (February 2013) that the Planning Wing was sending copies of approval/ refusal of building permission to the Enforcement Wing since May 2012 and steps were being taken by the field staff to detect/ check unauthorised constructions.

⁵² (1) Annexe building of Nirman Soudh, (2) Fortune tower of IDCO and (3) Police Commissionerate building

2.2.10.2 Inadequate action on referred cases

Audit noticed that during 2007-12, out of 2944 cases referred to Enforcement Wing of Bhubaneswar Development Authority for investigation based on general complaints and petitions by public, investigation reports were not submitted by the officials concerned (field staff like Amin) in 527 (18 per cent) cases. Out of these 527 cases, in respect of 436 (83 per cent) cases more than one to four years had lapsed since the receipt of complaint, as indicated in Table below.

Table 2.2.2 Statement showing investigation of complaint cases

Year	Number of cases investigated	Number of cases for which report submitted	Number of cases of which investigation report not submitted
2007-08	308	231	77
2008-09	797	648	149
2009-10	652	573	79
2010-11	646	515	131
2011-12	541	450	91
Total	2944	2417	527

(Source: Data furnished by BDA)

Investigation Reports recommended either no action or further action such as demolition etc. Audit noticed that in 2417 cases, where reports were received, appropriate action was initiated. However, no effort was made to obtain reports in respect of 527 investigations where reports were not received even after a lapse of one to five years.

The Department admitted the above facts and stated (February 2013) that Enforcement Section of Bhubaneswar Development Authority was taking action against the erring officials and efforts were being made to obtain the reports of remaining complaints/ petitions. It further stated that there were various bottlenecks in curbing unauthorised construction including shortage of required manpower and adherence to lengthy legal procedure.

Reply is not tenable. As a regulator, it was incumbent on the DAs to take appropriate and timely action for violation of the PBSR.

2.2.10.3 Occupancy of the buildings without Occupancy Certificate

As per PBSR, upon completion of construction of the building, the owner/ empanelled architect/ structural engineer concerned is to serve a completion certificate in a prescribed form along with a prescribed fee to the DA indicating that the building has been completed in all respects as per the approved plan. The DA is to then inspect the said building within 30 days and issue 'Occupancy Certificate' (OC) within 30 days of such inspection certifying the worthiness of the building for human occupation. Only after issue of OC by the Authority, the building is to be occupied.

Audit further noticed that out of test checked 840 building plan approvals granted by Bhubaneswar Development Authority/ Cuttack Development Authority, OCs were issued only in two cases by Bhubaneswar Development Authority (June 2013).

Joint Inspection revealed that 28 buildings out of 63 test checked in Bhubaneswar Development Authority/ Cuttack Development Authority, were completed and occupied without the requisite OCs from the DAs concerned. No Objection Certificates from Fire Prevention Officers were also not insisted, even though 52 high rise buildings in Bhubaneswar were declared unsafe by the Fire Prevention Officer.

The Department stated (February 2013) that necessary modifications would be made in the Regulations to make the system more effective. It also stated that Government had already issued (January 2013) instructions for non-supply of electricity and water to those occupied buildings where Occupancy Certificates were not issued by Bhubaneswar Development Authority.

2.2.10.4 Non execution of demolition orders

Section 91 of ODA Act provided that in case of unauthorised and deviated constructions, the DAs would direct the owner of such constructions to remove the same by demolition within a period of 15 days from the date of issue of such direction. In case of failure, such demolition would be done by the Authority concerned at the cost of the owner.

- Audit noticed that in Bhubaneswar Development Authority, out of 19846 UAP cases registered against unauthorised/ deviated constructions including 437 high-rise buildings, Demolition Orders (DOs) were passed in 5687 cases during 1988-2012, of which in 4025 cases, the DOs were not executed even after expiry of five years from the dates of passing of the DOs. On test check of records, Audit also noticed that in 84 such cases pertaining to 2001-11, unauthorised apartment buildings were not demolished, due to inaction of Enforcement Wing. In Cuttack Development Authority, out of 136 unauthorised proceeding (UAP) cases up to March 2012, though DOs for 73 cases were passed but were not executed.



Encroachment of Govt. land by Satabdi Hospital at Tarol

Thus, due to lack of effective enforcement of demolition orders, builders who violated the Regulation continued unauthorised/ deviated constructions and irregular sale transactions as a consequence thereof.

Bhubaneswar Development Authority stated (November 2012) that it had only one excavator which was not sufficient to carry out the demolition work involving concrete and concrete base and that demolition orders had not been executed due to non availability of adequate police personnel as well as stay orders passed by various Courts.

The Department, however, assured (February 2013) that steps had been taken to adopt implosion method by controlled blasting technique to demolish all kinds of unauthorised/ deviated constructions safely.

2.2.10.5 Non-eviction of encroachment from land allotted to BDA and CDA

Rule 50 and 51 of ODA Rules, 1983 prescribed that the Authority should keep proper and up-to-date record of all immovable property belonging to it. Such Officer of the Authority as may be put in charge of the registers should ensure that the particulars of properties of the Authority are entered in such registers. He should also, at the interval of every three months, examine and certify that no such property of the Authority is being misused or has been encroached upon or unauthorisedly occupied. Section 51 of the ODA Act, 1982 states that any person continuing to occupy any land which he is not entitled to occupy under the preliminary town planning scheme, shall be summarily evicted by the Authority.

Audit, however, noticed that property/ asset registers were not maintained in prescribed forms to record all immovable properties of the Authority. These registers were also not reviewed periodically to ensure that the listed properties of the Authority were not being misused or encroached upon or unauthorisedly occupied.

Check of records in Bhubaneswar Development Authority and Cuttack Development Authority revealed that 39.396 acre land valued ₹ 105.55 crore was under encroachment by slum dwellers and other persons etc. as detailed in the table below:

Table 2.2.3 Encroachment in BDA and CDA

Name of the scheme	Nature of Encroachment	Area encroached (in acre)	Value of land encroached (₹ in crore)
Ananta Vihar Housing II, Pokhirput (BDA)	Open air stage	0.864	4.28
Lumbini Vihar Housing Scheme	Slum dwellers	1.722	7.75
Sector- 6 (CDA)	Slum dwellers	1.120	1.08
Sector- 9 (CDA)	Slum dwellers	28.670	57.34
Sector-12 (CDA)	Slum dwellers	7.020	35.10
Total		39.396	105.55

(Source: Information collected by audit from BDA & CDA)

Bhubaneswar Development Authority initiated UAP cases against encroachers but the encroachers were yet to be evicted. Thus, despite enabling provisions in ODA Rules 1983, the Authorities did not take effective steps for eviction of the encroachers and safeguarding of Government land allotted to them for development purpose.

A Joint Inspection further revealed that out of 63 buildings plan approval site, four applicants/ builders⁵³ had encroached upon Government land lying between their plots and public road by constructing boundary wall, main gate, security room and parking spaces for commercial use which were not in the knowledge of the DAs.

⁵³ (1) Metro Builders Private Limited (2) Smt Puspanjali Nayak (3) Satabdi Hospital Private Limited (4) Tulsi Spices and Food Private Limited

The Principal Secretary, assured (February 2013) to take appropriate action against the encroachers. The Department stated (June 2013) that in Cuttack Development Authority, a portion of land belonging to Government was made encroachment free and removal of balance encroachment would be expedited through eviction programme.

2.2.10.6 Residential houses used for commercial purposes

As per terms and conditions of brochures of various housing schemes under the two DAs, applicants were to furnish a declaration that they would not use the allotted residential plots/ houses for non-residential purposes. But, as per inspection reports of Bhubaneswar Development Authority which were later inspected by Audit (July-August 2012), 29 out of 51 houses allotted under 2001-02 HIG Housing Scheme at Jayadev Vihar, were fully or partly used for commercial purposes.

Joint Inspection of 12 residential houses in Prachi Enclave further revealed that two houses were being used to run academic and professional institutions⁵⁴.



Academic institution in Prachi Enclave (Plot No 55)



HIG-1 in 01-02 HIG Housing scheme at Jayadev Vihar being used for commercial purpose

Audit also noticed that in eight cases⁵⁵, the basement/stilt floors approved for parking purpose were being used for residential as well as commercial uses such as showrooms. Due to lack of periodic inspections, such instances of misuse remained undetected. The PBSR of both the DAs provide for demolition/removal of area specified for parking of vehicles in case of misuse.

The Department stated (February 2013) that show-cause notices were served on such allottees and appropriate action would be taken soon.

2.2.10.7 Inadequate follow up action on detection of false affidavits

Bhubaneswar Development Authority approved (August 2010) plan for 11 blocks of S+G+14 (Stilt+Ground+14 floors) multi-storeyed residential building of All Orissa State Bank of India Housing Co-operative Society over a site in Kalarahanga Mouza. Audit, however, noticed that at the time of plan approval, the land was not in the name of the Society as it transferred (December 2009) the ownership of the land to Mani Tirumala Projects Private Limited (MTPPL).

⁵⁴ Bhubaneswar Institute of Management, Pragati Prafulla +2 Science College.

⁵⁵ BDA: 4 cases (Plot No 1218 of B N Panda, Gopabandhu Nagar; Plot No 1153(p) at Rajarani, Radhika tower; Plot No 113 of M/s Clarionet Tarcon Private Limited, BJB Nagar and Plot No 1123 (P), Rajarani, Bijaylaxmi Apartment) and CDA: 4 cases (Plot No 948 (P) of Trilochan Sing Deo at Tulasipur; Plot 2241, Dr P K Mohanty, Jagatpur; Plot 110(P) of Metro Belview, Ramgarh; Plot No 805 of P Nayak, Ramgarh).

The Secretary of the Society submitted two affidavits (July 2010 and August 2010) declaring that the Society was the owner of the land, which was incorrect. The plan which was approved on the basis of such false affidavits was liable to be cancelled as per Section 17 of the ODA Act 1982. But, Bhubaneswar Development Authority had not taken any such action and MTPPL was allowed to proceed with construction of the project with 72100 sqm (776103 sft) built up area worth ₹ 155.76 crore⁵⁶, despite the fact that no permission was issued in favour of MTPPL.

On this being pointed out in Audit, Bhubaneswar Development Authority issued (July 2013) a notice to All Orissa State Bank of India Housing Co-operative Society requiring it to show cause as to why permission granted should not be cancelled since there was misrepresentation in the affidavit filed by it.

2.2.10.8 Delay in amendment of the ODA Act to strengthen enforcement capability

Bhubaneswar Development Authority proposed (February 2008) the Government in H&UD Department for approval of amendment of ODA Act by insertion of two new sub-sections under Section 91 and 92 to strengthen its enforcement mechanism with regard to seizure and sealing of unauthorised constructions over Government property and natural hazard prone areas without initiating proceeding and to pass orders for imposition of daily fines for every day of violation of such orders. Bhubaneswar Development Authority also furnished (March 2008) justification for such amendment as requested by the Department. Though there was immediate need to strengthen the Enforcement Wing, Bhubaneswar Development Authority did not pursue the matter and there was no further communication received from the Government in this regard.

The Department confirmed (February 2013) the above facts and stated that the State Government has been approached for strengthening the Enforcement wing through amendment in ODA Act.

2.2.11 Conclusion

Audit noticed that there was inordinate delay in preparation of Comprehensive Development Plans and non-preparation of Zonal Development Plans. This resulted in mixed land use patterns and disorderly development of the cities.

Allotment process was not transparent. Cases of multiple allotments of plots/houses made to individuals/ their spouses. Transfer of plots/ houses permitted without execution and registration of lease deeds were noticed.

There were delays in approval of building plans. Norms and standards of Building Regulations were not complied with. A scheme providing one time concession to the owners to regularise unauthorised/ irregular constructions was not implemented effectively.

There was lack of monitoring mechanism:

- i. to detect deviations in constructions;

⁵⁶ Average sales statistics (2009-11) of Bhubaneswar City collected from Inspector General (Registration), Odisha at ₹ 2007 per sft X 776103 sft = ₹ 155.76 crore.

- ii. to detect diversion of end use of building;
- iii. on enforcement action to evict encroachers of land and
- iv. to remove deviated construction or resume unutilised plots.

2.2.12 Recommendations

The Government may

- Ensure timely preparation of Zonal Development Plans for Bhubaneswar and Cuttack Development Planning Areas.
- Review all building plan approvals and allotments for necessary corrective action in case of irregular and deviated cases,
- Devise an effective system to make the allotment process transparent.
- Take adequate steps to protect Government land from encroachment including eviction of encroached land.
- Strengthen monitoring mechanism to prevent deviation in construction plans to ensure planned development of the cities.

Bhubaneswar
The

(Amar Patnaik)
Accountant General (G&SSA)
Odisha

Countersigned

New Delhi
The

(Shashi Kant Sharma)
Comptroller and Auditor General of India