

CHAPTER–V (5.1)
Allotment of Group Housing Plots

CHAPTER-V

Allotment of Properties

5.1 Allotment of Group Housing Plots

Introduction

5.1.1 As per NOIDA Building Regulations, 2010 ‘Group Housing’ means a premise of size not less than 2,000 sqm comprising of either residential flats or a cluster of flats and independent houses/villas with basic amenities like parking, park, convenience shop, public utilities, etc.

Process of Allotment

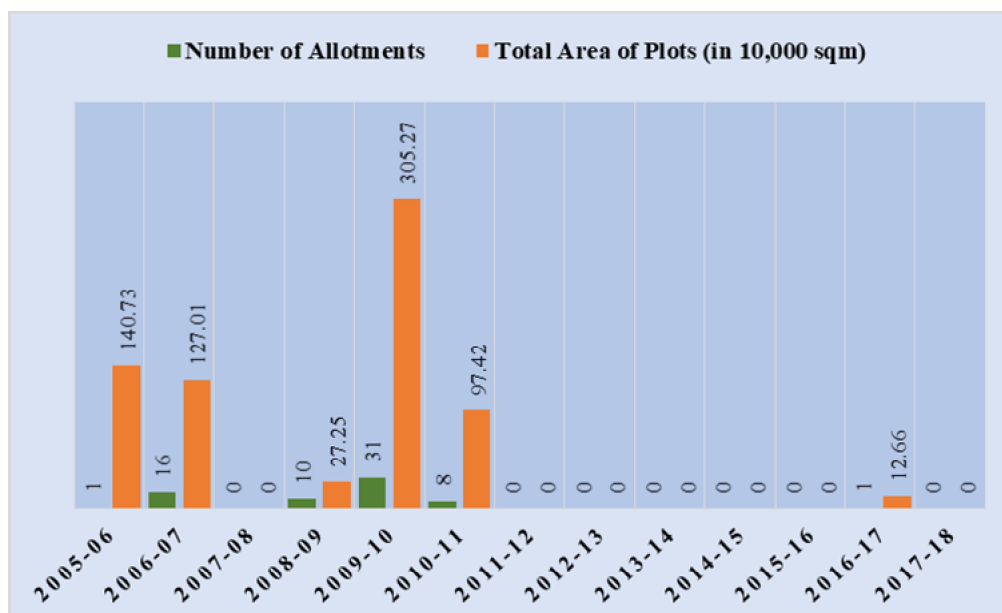
5.1.2 The allotment of Group Housing plots was made by NOIDA through close-ended schemes, wherein the number and size of plots available for allotment were specified in the scheme and these schemes were open for a specified period during which bids were accepted. The allotment of plots was made by the procedure elaborated in **Chart 5.1 of Chapter 5**.

Group Housing wing of NOIDA deals with allotment of plots and follow-up of the post allotment compliances. The Planning wing of NOIDA is responsible for monitoring the compliance of the building completion and the Finance wing is responsible for financial matters related to allotments.

Status of allotments of Group Housing plots in NOIDA

5.1.3 The year-wise allotment of plots by NOIDA under the Group Housing category during the period 2005-06 to 2017-18 is shown in **Chart 5.1.1**.

Chart 5.1.1: Year-wise details of allotments against Group Housing Schemes



Source: Information compiled by Audit.

As evident from the above chart, 42.98 per cent allotment by area and 46.27 per cent allotment by number were made during 2009-10. During the audit period (2005-2018), NOIDA brought out 28 schemes, out of which allotments were made in 24 schemes.

The overall position of the scheme-wise allotments under this category and the status of completion, in terms of issue of occupancy certificate (OC) for the plots/sub-divided plots is depicted in **Table 5.1.1**.

Table 5.1.1: Year wise schemes for Group Housing Plots

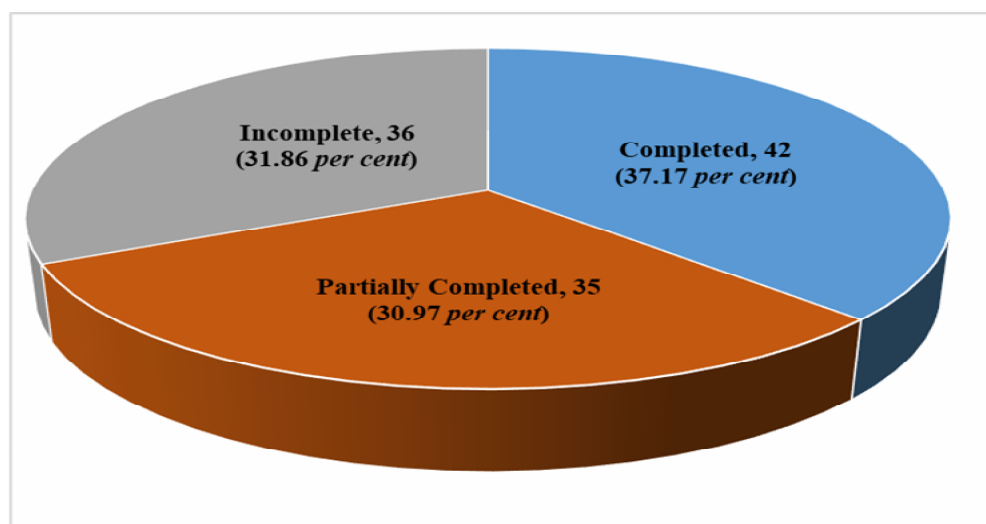
Sl. No.	Year	Scheme details	No. of plots		Allotted area (in sqm)	Premium (₹ in crore)	Status as on 31 March 2020	No. of flats sanctioned/ approved	No. of flats for which OC issued
			allotted	sub-divided					
1	2005-06	GH-2006 (Express City 96, 97 &98)	1	1	14,07,328	1,622.84	OC not issued	897	0
2	2006-07	GH-2006 (2)	1	1	37,700	75.81	Completed	737	737
3		GH-2006 (3)	2	2	1,30,924.65	185.33	Completed-1, OC not issued-1	2,424	1,257
4		GH-2006 (4)	2	2	2,19,020.12	411.21	Partially completed-2	4,330	3,514
5		GH-2006 (6)	6	6	75,839.56	196.91	Completed-3, Partially completed-1, OC not issued-2	1,167	659
6		GH-2006 (7)	1	1	54,169	98.05	OC not issued	892	0
7		GH-2007 (1)	2	2	2,47,279.27	427.28	OC not issued-2	4,065	0
8		GH-2007 (2)	2	2	5,05,144	881.47	OC not issued-2	3,784	0
9		2008-09	GH-2008 (I)	7	7	72,420.84	213.39	Completed-6, OC not issued-1	1,775
10	GH-2008 (II)		2	2	80,087	168.18	Partially completed-1, OC not issued-1	1,655	366
11	GH-2008 (III)		1	1	1,20,009	252.02	Partially completed	3,146	2,618
12	2009-10	GH-2009 (II)	3	3	2,45,669.75	509.55	Completed-1, Partially completed-1, OC not issued-1	7,750	6,005
13		GH-2009 (III)	3	3	1,54,915	366.58	Completed-1, Partially completed-2	5,063	3,040
14		GH-2009(V)	1	12	5,99,999.54	1,013.15	Completed-3, Partially completed-6, OC not issued-3	9,077	5,469
15		GH-2009 (VI)	4	4	3,36,306	726.14	Completed-1, Partially completed-3	9,673	4,184
16		GH-2009 (VII)	3	3	2,00,779.67	412.56	Partially completed-3	5,933	4,410
17		GH-2009 (VIII)	7	14	6,04,747.48	1,253.21	Completed-11, OC not issued-3	16,440	8,861
18		GH-2010 (I)	7	17	7,05,866.84	1,481.89	Completed-6, Partially completed-6, OC not issued-5	15,528	11,847

Sl. No.	Year	Scheme details	No. of plots		Allotted area (in sqm)	Premium (₹ in crore)	Status as on 31 March 2020	No. of flats sanctioned/ approved	No. of flats for which OC issued
			allotted	sub-divided					
19		GH-2010 (II)	3	7	2,04,395.50	424.14	Completed-4, Partially completed-1, OC not issued-2	6,047	4,137
20	2010-11	GH-2010 (III)	3	8	5,59,011.16	1,319.00	Completed-2, Partially completed-6	18,754	10,880
21		GH-2010 (IV)	2	5	1,18,225.53	321.55	Completed-1, Partially completed-1, OC not issued-3	3,030	737
22		GH-2010 (V)	1	4	96,742	228.69	OC not issued-4	968	0
23		GH-2011 (I)	2	3	2,00,247.28	471.78	Completed-1, Partially completed-1, OC not issued-1	6,870	2,522
24	2016-17	GH-2016-17	1	3	1,26,600	990.00	OC not issued-3	Map not approved	0
		Grand Total	67	113	71,03,427.19	14,050.73	Completed-42, Partially completed-35, OC not issued-36	1,30,005	72,697

Source: Information compiled by Audit.

Thus, in these 24 schemes, 67 plots (area 71.03 lakh sqm) were allotted for premium of ₹ 14,050.73 crore. The allottees, in turn, sub-divided these plots into 113 properties with the approval of NOIDA against which the dues of NOIDA pending for receipt as on 31 March 2020 were ₹ 18,633.21 crore for 96 plots. The status (as on 31 March 2020) of projects completed (OC issued for all the towers), partially completed (OC issued for some towers) and lying incomplete (OC not issued for any tower) is shown in **Chart 5.1.2**.

Chart 5.1.2: Status of completion of Group Housing projects



Source: Information compiled by Audit.

From the above table, it is evident that of the total projects, only 37.17 per cent have been completed, 30.97 per cent were partially completed and 31.86 per cent remained incomplete as of 31 March 2020. Completion of a project denotes an approval of completion of construction from Planning wing after checking compliances with all stipulated requirements. Status of completion of the flats sanctioned by NOIDA on these 113 plots is detailed in **Table 5.1.2**.

Table 5.1.2: Status of completion of flats of Group Housing Scheme as on 31 March 2020

Sl. No.	Description	No. of flats
1	No of flats sanctioned	1,30,005
2	No of flats where Occupancy Certificates issued	72,697
3	No of flats where permission granted for sub-lease deed	43,438
4	No of flats where sub-lease deed done	42,221

Source: Information furnished by NOIDA.

From the above table, it is evident that out of total flats sanctioned (1,30,005), OC for only 55.92 per cent flats (72,697) were issued by NOIDA upto 31 March 2020 which indicates that the builders had completed these flats. Out of these completed flats, permission for sub-lease was granted for only 59.75 per cent (43,438) of the flats on account of default in dues by the builders. It is also evident from the above table that in spite of majority of allotments being done upto 2010-11, 44.08 per cent of the flats (57,308) were still pending completion even after passage of more than eight years.

In view of the large pendency in delivery of flats, the issues related to plight of home buyers due to delayed delivery/non-delivery of flats were discussed at various forums. In this regard, the Hon’ble Supreme Court delivered a judgement in July 2019 in the case of Bikram Chatterjee and others vs. Union of India and others¹ on the issues related to Amrapali Builders. The facts of the case and observations of the Hon’ble Supreme Court are as under:

In 2011, in Noida and Greater Noida various real estate projects for housing were started. In the various projects, the Amrapali Group of Companies proposed to construct approximately 42,000 flats. Under these schemes, it was assured that the delivery of possession shall be made in 36 months. Several revised dates of possession were fixed unilaterally, but they failed to deliver the flats. Further, the Builder did not pay the amount to the Authorities and also to banks. The dues of Noida alone stood at ₹ 2,191.38 crore as on 30 April 2019.

The Hon’ble Supreme Court observed that in Noida alone, more than 70 per cent of the projects have not been completed which were initiated way back in the year 2008-09 and were supposed to be completed within three years. In the instant case the Hon’ble Supreme Court held that the matter projects the issue of larger public interest and adjudged that:

“Once the Noida and Greater Noida Authorities knew very well that there were defaults, they could not have allotted further land to the Amrapali group without insisting for payment of its dues. Secondly, it was not open to the Authorities to permit the sub-leases of plot of land executed by builders, thereby allowing the leaseholder to earn a huge amount without making payment of the amount due to them. The officials of the Authorities have acted

¹ Writ petition (C) 940/2017.

in clear breach of public trust. They have permitted the defaulting leaseholders to earn the amount by sub-leasing its land of which dues had not been cleared. Thus, apparently, the officials of the Authorities acted clearly in collusion with the builders and overlooked the interest of the Authorities and home buyers while permitting the sub-leases of plot of land to be granted. It passes comprehension how the officials of the Authorities could have permitted such sub-leases in the factual scenario of the case when even the basic obligation to raise the construction was not being fulfilled by the builders and they were not paying the dues of premium, lease money etc. The action of the officials of the Authorities has the effect of causing unjust enrichment of builder from the land held by the concerned Authorities. It was wholly an illegal exercise permitted”.

“They have violated every condition, but still, Authorities were bent upon to condone everything. This reflects absolute dereliction of duty cast upon the Authorities.”

“The Noida and Greater Noida Authorities and the Bankers have permitted diversion of funds of home-buyers and the possession of other assets by Amrapali Group.”

“The Authorities have to be vigilant in such cases and not to tolerate the default. They have to blame themselves for their inaction and have to wait for the realization of dues by sale of other properties and as against guarantors etc.”

“It is apparent from the report of the forensic audit submitted by Forensic Auditors that there is a serious kind of fraud played upon the buyers in active connivance with the officials of the Noida and Greater Noida Authorities and that of the banks.”

“The NOIDA and Greater Noida Authorities were grossly negligent in reviewing and monitoring the progress of the project and in collusion with leaseholders failed to take action concerning non-payment of dues and illegally permitted the group to Sub-lease the land without payment of dues.”

After considering the facts of the case, the Hon’ble Court decided, in context of dues of NOIDA, that the premium and other dues payable under the lease deeds to Authorities, cannot be recovered from the home buyers or the projects in question and may be recovered from the assets created from the money diverted.

The landmark judgement in the above case has brought into sharp focus the issues plaguing the real estate sector and has also established a course to deal with these issues. Audit observed that similar issues of non-completion and huge pending dues of NOIDA existed in a number of allotments made by NOIDA. The reasons behind the same are discussed in the succeeding sections.

Scope of audit

5.1.4 Of the 113 allotments, Audit analysed 46 cases on a sample basis. Audit also sourced information from the Registrar of Companies (RoC) with a view to analyse the ownership and shareholding of allottee companies and the transfer of plots through transfer of shares.

Audit Findings

5.1.5 The audit findings, as a result of examination of sample cases, are discussed in the ensuing paragraphs. These audit findings have been grouped as under:

- Systemic deficiencies (as discussed in Paragraphs 5.1.6 to 5.1.6.9).
- Irregularities in screening of applications and allotments (as discussed in Paragraphs 5.1.7 to 5.1.7.5).
- Adverse impact of sub-divisions and transfers (as discussed in Paragraphs 5.1.8 to 5.1.8.5).
- Post allotment discrepancies relating to land allocations (as discussed in Paragraphs 5.1.9 to 5.1.9.2).
- Failure of Finance wing in Group Housing allotments (as discussed in Paragraphs 5.1.10 to 5.1.10.4).

Systemic deficiencies

5.1.6 Prior to launching a scheme NOIDA prepares the scheme brochure, which *inter alia* prescribes the criteria for technical and financial eligibility for submission of bids and all the terms and conditions for allotment, payment and project implementation. Audit noticed the following deficiencies in the brochure conditions:

Non-approval of the terms and conditions by the Board before launch of the scheme

In 82 per cent of the schemes the Board was not kept apprised of the changes in terms and conditions of allotment before launching the scheme.

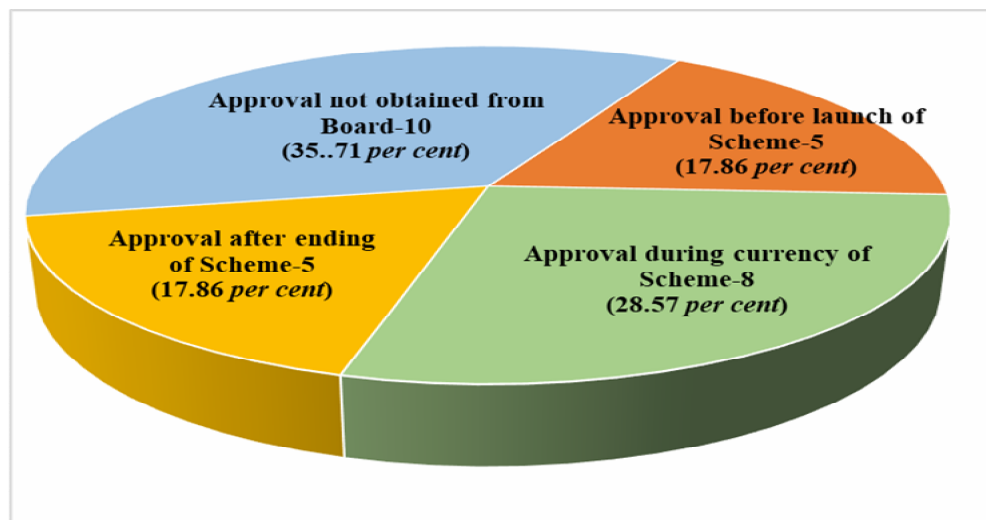
5.1.6.1 The Board of NOIDA is its highest decision making body. Matters of significant importance need to be put up before the Board for consideration and approval. Section 6(2)(f) of the Uttar Pradesh Industrial Area Development (UPIAD) Act, 1976 provides that allocation and transfer, either by way of sale or lease or otherwise of plots of land for industrial, commercial or residential purposes is one of the functions of NOIDA. In the context of allotment, the scheme brochure is a significant document which governs the process of bidding, allotment and execution of the project. The brochure specifies the terms and conditions of allotment, as decided by NOIDA. The allottee builders are expected to bid as per the brochure terms and conditions. Therefore, this document can be equated to invitation to offer which becomes the basis of agreement between the allottee builder and NOIDA for execution of the project in future. Further the terms and conditions of the brochure also form the basis of subsequent agreement between the allottee and the home buyers². In view of the underlying importance, the brochure of the schemes should have been approved by the Board before the launch of the scheme. Therefore, the changes to terms and conditions of allotment should have been approved by the Board.

The actual position of approval of these schemes by the Board and the period of launch are given in **Appendix-5.1.1**. Scrutiny of records revealed that

² The State Consumer Disputes Redressal Commission, UT Chandigarh in the case of Neha Ahluwalia vs. M/s Omaxe Chandigarh Extension held (25.11.2019) that it is a settled law that brochure is a part of contract. The National Consumer Disputes Redressal Commission in the case of Brig. (Retd.) Kamal Sood vs. M/s DLF Universal Limited also observed (20.04.2007) that it is a settled law that brochure is part of the promise on which the contract is based.

although the brochures of all the schemes were approved by the Chief Executive Officer (CEO), only in five of the 28 schemes during the period 2005-06 to 2017-18, approval of the Board was obtained by the Group Housing wing before launch of the scheme. The overall status of approval is depicted in **Chart 5.1.3**.

Chart 5.1.3: Approval of Group Housing Schemes by the Board



Source: Information compiled by Audit.

From the above pie-chart it is evident that 82 per cent of the schemes were not submitted to the Board for approval before launch. Out of the above, in case of five brochures where *post facto* approval of the Board was obtained, the period of delay ranged from two days to three months from the scheme launch date. In 10 schemes, the brochures were not submitted to the Board even for *post facto* approval.

The fact that 82 per cent of the schemes were not approved by the Board before their launch indicated that the Board was not kept apprised of the changes in terms and conditions of allotment before launching the scheme. Clauses like opening of escrow account and provision of bank guarantee equal to one instalment etc. were removed with the CEO's approval in supersession of the Board's earlier approval (discussed in **Paragraphs 5.1.6.6** and **5.1.6.7**). The Board did not exercise powers with regard to deciding the terms and conditions of allotment included in scheme brochures. Audit observed that laying down the terms and conditions of the scheme and allotment thereagainst constitutes the most essential aspect of the functions performed by the Board of NOIDA. Non-consideration of the above entails a control failure on part of the Board.

In its reply, NOIDA stated (August 2020) that UPIAD Act, 1976 has empowered NOIDA to sell, lease and transfer land. In the 85th Board meeting held in February 1996, the Board authorised the CEO to determine, to change and to relax the terms and conditions of schemes and to give approval for schemes and allotments. It was stated that from time to time, NOIDA Board authorises the CEO for above work. Thus, obtaining approval of the Board before launching of the schemes was not required.

NOIDA has not disputed the facts of non-approval of schemes by the Board as pointed out by Audit. While the Board has authorised the CEO for approval of

schemes, it is notable that changes in the terms and conditions of the schemes including those which were against the interest of NOIDA and were a departure from past ‘good practices’ were also authorised by the CEO in the cases pointed out by Audit (**Paragraphs 5.1.6.6 and 5.1.6.7**). A case in point is the removal of the clause for escrow account and bank guarantee without approval of the Board. Delegation of the power of the Board to the CEO, as the instant cases bring out, has clearly not been in public interest. Further, in reply to this issue in **Paragraph 5.2.6.1** of Commercial Chapter, NOIDA has further stated that the CEO forwards those matters to the Board for approval/post facto approval in which change in terms and conditions of the scheme or policy matter is involved. Hence, it is apparent that all terms and conditions and changes thereto should have been approved by the Board. However, in the cases pointed out in the paragraph, prior approval of the Board was not taken.

Allotment by relaxing financial qualification criteria

5.1.6.2 The terms and conditions laid down in the brochure *inter alia* provide the financial eligibility criteria to be satisfied by the applicants. These criteria were in terms of monetary limits for minimum net worth, minimum solvency and minimum turnover from real estate activities during the last three accounting years. Analysis of records revealed that NOIDA varied the criteria during different time periods as given in **Table 5.1.3**.

Table 5.1.3: Financial qualification criteria fixed

(₹ in crore)						
Year	Scheme no.	Plot size (in sqm)	Net worth (range)	Solvency (range)	Total turnover	Approval status/by
2006-07	GH-2006(2)	Below 40,000	20	12.50	150	C.E.O
	GH-2006(3)	40,000-80,000	30	20	225	C.E.O
	GH-2006(4)	Above 80,000	50	40	300	C.E.O
	GH-2006(6)	Below 40,000	20	20	150	C.E.O
	GH-2006(7)	40,000-80,000	50	50	225	C.E.O
	GH-2007(1)	Above 80,000 and upto 2,00,000	100	100	600	C.E.O
	GH-2007(2)	Above 2,00,000	150	150	900	C.E.O
2008-09	GH-2008(I)	Below 40,000	2.5	1	30	Board
	GH-2008(II)	40,000-80,000	7.5	2	90	Board
	GH-2008(III)	Above 80,000	50	10	300	Board
2009-11	GH-2009(II) to GH-2011(I)	For all sizes of plots (50,000 and above) ³	75	10	200	Board
2016-17	2016-17 (Group Housing I)	Single plot of 1,26,600	100	20	100	Board

Source: Information compiled by Audit.

NOIDA put at stake its own interests and also those of the ultimate buyers by reducing the financial eligibility criteria sharply citing recession/slowdown and offered plots of larger sizes on the other hand.

From the above table it is evident that from 2006-07 to 2008-09, the financial eligibility criteria were sharply reduced and varied depending on the size of plots under consideration. However, during the period 2009-11, when maximum allotments were made, NOIDA fixed the stipulated requirements as ₹ 75 crore, ₹ 10 crore and ₹ 200 crore for minimum net worth, minimum solvency and minimum total turnover respectively for plots of all available sizes ranging from 50,008 sqm to 2,43,287.40 sqm.

³ Does not include Eco-city plot as it included mixed land uses.

Audit observed that keeping a fixed norm for financial eligibility enabled the builders to garner larger size plots. Since the criterion had been delinked from plot size, a plot valuing ₹ 496.31 crore⁴ was available for allotment to a builder with net worth of ₹ 75 crore, which was highly imprudent. During the period 2009-10 and 2010-11, through 12 schemes, 39 plots of total area of 40.27 lakh sqm for a total premium of ₹ 8,528.24 crore were allotted, which represented 58.21 *per cent* of total allotments during 2005-06 to 2017-18. Out of these 39 allotments, 11 allotments were of plot sizes larger than one lakh sqm wherein the value (land premium) of plot was more than ₹ 200 crore and none of the 39 plots was allotted at a premium of less than ₹ 102 crore, yet NOIDA fixed qualification criteria of only ₹ 75 crore for net worth, which was itself insufficient and not commensurate with the value of the plot sought for.

Thus, NOIDA fixed the financial eligibility criteria upto 2008-09 on the basis of the size of the plot allotted. Thereafter, during 2009-11, by making it static, irrespective of the size of the plot, NOIDA watered down the criteria for larger plots. In doing so, NOIDA has put at stake its own interests and also of the ultimate buyers as builders could now garner larger plots involving bigger projects without having commensurate net worth. The allotments made and the status of projects is depicted in **Table 5.1.1**.

In its reply, NOIDA stated (August 2020) that in the 125th Board meeting (April 2005), the Board authorised the CEO to determine terms and conditions for allotment of properties. In view of prevailing economic conditions, a consultant (UPICO) was engaged to decide terms and conditions and technical/financial parameters of the schemes. On the recommendation of the consultant, the CEO approved the terms and conditions of the brochure which was *post facto* approved by the Board (December 2008). The main reason for providing relaxations in the financial eligibility was global economic slowdown and to revive the real estate sector. Further relaxations from 2009 onwards were given in view of UP Government's orders (G.Os.) of 2009, which have been subsequently adopted by the Board.

The reply is not acceptable in view of the fact that on the one hand NOIDA fixed the eligibility criteria on the lower side citing recession/slowdown and on the other hand offered plots of larger sizes. Further, the G.Os of 2009 did not provide any covenant regarding reducing the financial eligibility and as such, the relaxations were granted beyond the relief mentioned in G.Os. By authorising the CEO to approve the terms and conditions of schemes the Board has abdicated its responsibility of ensuring the interest both of NOIDA and the prospective buyers. As a result of dilution of the financial eligibility criteria for larger plots, builders with less financial capability were able to garner larger plots which was one of the reasons for non-completion of a large number of housing projects resulting in distress to home-buyers of such incomplete projects.

Deficiency in eligibility conditions resulting in misuse

5.1.6.3 The eligibility conditions in the brochure provided that the tenderer can bid for a maximum of two plots out of all plots offered in a scheme or all concurrent schemes taken together. However, in that case net worth of the applicant should exceed aggregate of net worth required for each plot applied

⁴ Plot no. 01/76 of area 2,43,287.40 sqm at reserve price of ₹ 20,400 per sqm.

for by the applicant taken together. During 2006-07, 2008-09, 2009-10 and 2010-11, NOIDA launched nine, three, nine and four schemes, respectively.

Audit noticed that the stipulation laid down by NOIDA was in respect of a single scheme at a time or schemes launched simultaneously⁵ taken together, whereas NOIDA launched multiple schemes during these years. The scheme-based criteria coupled with launch of multiple schemes enabled the builders to bid for more than two plots in a year as detailed in **Table 5.1.4**.

Table 5.1.4: Multiple bids by builders in a single year in different schemes

(₹ in crore)

Sl. No.	Name of Builder	Participated as	Allotment Year	Scheme Number	Total no. of bids submitted in Schemes	Total number of plots allotted	Net worth required for the plots allotted	Net worth of allottee	Aggregate of net worth utilised in multiple allotments	Value of plots allotted
1	Supertech Ltd.	Company/ Consortium	2009-10	GH-2009(II), GH-2009(VII), GH-2009(VIII), GH-2010(I), GH-2010(II)	7	4	300.00	183.46	270.49	497.58
2	Ultra Home Construction Pvt. Ltd.	Consortium	2009-10	GH-2009(II), GH-2009(III), GH-2009(VI), GH-2009(VIII), GH-2010(I), GH-2010(II)	7	4	300.00	68.89	157.72	857.51
3	Gaursons India Limited	Company/ Consortium	2009-10	GH-2009(III), GH-2009(VI), GH-2009(VII), GH-2009(VIII), GH-2010(II)	6	5	375.00	73.01	146.48	564.59
4	Gulshan Homz Pvt Ltd	Consortium	2009-10	GH-2009(III), GH-2009(VIII), GH-2010(II)	3	3	225.00	15.47	32.60	357.40

Source: Information compiled by Audit.

The rationale behind the condition laid down in the brochure was that the capability of the promoter in terms of net worth should be commensurate with the aggregate value of projects assumed.

However, by limiting the scope of evaluation only to schemes launched simultaneously, when NOIDA had launched multiple schemes during the respective years, NOIDA surreptitiously enabled the builders to apply and obtain multiple plots on the back of insufficient net worth. Of the 24 subdivided plots in the above cases, in eight cases completion was pending causing distress to homebuyers. This position of non-completion of projects is evidence that NOIDA has created conditions for bypassing its own stipulations by allowing financially ineligible bidders to garner more plots on the back of insufficient net worth thereby extending undue favours to them.

In its reply, NOIDA stated (August 2020) that the schemes pointed out by Audit were separate and there were no restrictions on bidders to bid in more than one scheme according to their financial capabilities.

The reply is not acceptable as the spirit behind the stipulated eligibility conditions has been breached by creating the possibility of non-eligible parties

⁵ Schemes 2, 3, 4 of 2006, schemes 6 and 7 of 2006 and schemes 01 and 02 of 2007.

getting allotments. NOIDA failed to implement its own financial eligibility condition on aggregate basis for all schemes launched in the same financial year. Thus, launch of multiple schemes in a year and keeping conditions specific to one scheme/simultaneously launched schemes only created a deficiency in evaluation.

In the exit conference (September 2020), the Additional Chief Secretary, Infrastructure and Industrial Development Department (IIDD) stated that guidelines would be strengthened for evaluation of applicants of future schemes.

Contradictory eligibility criteria

5.1.6.4 The eligibility conditions in the schemes' brochures {2009(VIII) and thereafter) provided that if a company wants to apply through a subsidiary company, then it should have minimum of 51 *per cent* shareholding in the subsidiary company. It was further provided that in this case the applicant would be the subsidiary company who has to qualify the minimum requirements of net worth, solvency and turnover. However, in case the tenderer/consortium member is a company, then the qualifications of its holding company or subsidiary companies shall also be considered as the qualifications of the applying company/consortium member.

This condition was employed by the builders in the following cases to garner allotments as detailed in **Table 5.1.5**.

Table 5.1.5: Allotment to subsidiary companies using credentials of holding company

Sl. No.	Name of Subsidiary company	Plot Number	Applied as	Name of Holding Company	Holding Company considered for	Value of Plot (₹ in crore)
1	Mahagun Real Estate Pvt Ltd	GH-02 Sector 78	Company	Mahagun India Pvt. Ltd.	Net worth, Turnover, Experience	205.09
2	Red Fort India Real Estate Jahangir II (Horizon Crest India Real Estate)	GH-03 Sector 100	Consortium member	Red Fort India Real Estate Fund I, LP	Net worth	252.02
3	Horizon Crest India Real Estate	GH-05 Sector 110	Consortium member	Red Fort India Real Estate Fund I, LP	Net worth	372.55
4	Horizon Crest India Real Estate	GH-01 Sector 107	Consortium member	Red Fort India Real Estate Fund I, LP	Net worth	403.20
	Pebbles Infosoftech Pvt. Ltd.	GH-01 Sector 107	Consortium member	Three C Universal Developers Pvt. Ltd	Turnover	
Total						1,232.86

Source: Information compiled by Audit.

NOIDA provided contradictory conditions in the schemes’ brochures, which permitted the subsidiary companies, who were ineligible, to bid on the back of credentials of their holding companies.

As seen from the table above, the applicants whose net worth was deficient utilised the credentials of their respective holding company to get allotment of four plots worth ₹ 1,232.86 crore.

It is apparent that the conditions stated in the brochure were contradictory in the sense that though the applicant (subsidiary) was required to qualify by itself on the other hand, it could utilise the credentials of its holding/subsidiary company. The permission to bid on the back of credentials of the holding or subsidiary company, without their actual participation, enabled bidders, who were as such ineligible, to garner plots beyond their net worth. This was also imprudent on the part of NOIDA as the actual allottee lacked the capability to execute the project.

In its reply, NOIDA accepted (September 2020) the observation and proposed necessary correction in terms and conditions in future schemes.

The compliance of the audit observation will be reviewed in the next audit.

Injudicious modifications in terms and conditions in scheme brochures

5.1.6.5 Audit observed that in addition to the shortcomings in the brochure conditions discussed above, NOIDA additionally diluted the existing stipulations in the brochures to further facilitate the builders. The major deviations and relaxations in the schemes launched by NOIDA are discussed in the subsequent paragraphs.

Non-compliance and removal of clause for opening escrow account

NOIDA incorporated escrow account condition in Express City scheme in March 2006 but excluded the condition from the brochure of subsequent schemes. NOIDA therefore imperilled its own interests as well as those of home buyers by failing to impose the requirement of escrow account.

5.1.6.6 Clause 8.5 of the brochure for Express City scheme (March 2006) provided that the developer was to open an escrow account in a nationalised bank wherein all inflows and realisations from sale/sub-lease of the plot, buildings and facilities would be deposited. The funds accumulated in this account would be used for the purpose of development of this project. The account was to be operational till the developer had met his entire obligation of payments to NOIDA. In order to safeguard the interest of NOIDA as regards to the payment of dues by the developer and also ensuring the application of funds collected by the developer from the ultimate buyers/dwellers on the concerned projects, the provision of escrow account was a reliable mechanism. In this regard, Audit observed non-compliance with the provision of escrow account in the instant case as also removal of the clause in subsequent schemes launched from May 2006 onwards.

- **Removal of clause:** Audit observed that NOIDA expressly excluded the escrow account condition in all the brochures from May 2006 onwards. Scrutiny of records revealed that the fact of removal of escrow account clause from the brochure conditions was approved by the CEO but not submitted for approval of the Board. In fact, the subsequent nine brochures were not even put up to the Board for approval and from then onwards the clause has not been included. It is notable that even after the enactment of the Real Estate (Regulation and Development) Act, 2016 which similarly requires the provision for a separate account under Section 4 (2) (I) (D), the provision for escrow account was not being re-introduced in the schemes.

As of March 2020, 85 of the 113 allottee builders were in default in payment of instalments of the premium of the allotted plots. By excluding the clause of escrow account, it could not be ensured that the builders applied the funds

collected by them on the concerned projects. This has also, therefore, resulted in non-completion of the projects. By failing to impose the requirement of escrow account, NOIDA has imperilled its own interests as well as those of home buyers.

- **Non-compliance of condition:** In the allotment of Express City plot admeasuring 14,07,328 sqm to Unitech Limited made on 26 June 2006, when the condition for opening of escrow account was applicable as per brochure, such an account was never opened by the builder and the clause was not implemented by NOIDA resulting in mounting dues of ₹ 4,646.98 crore against this allotment as on 31 March 2020.

The Government may like to examine the circumstances in which a good practice of opening an escrow account which would have gone a long way in protecting the interests of the home buyers, was omitted from the brochure and fix responsibility in the matter.

In its reply, NOIDA accepted (August 2020) the audit observation and informed that in the 198th Board meeting (January 2020) it was decided to open escrow accounts for different projects to ensure recovery of dues. However, no response has been received on how this condition was omitted in 2006 and whether responsibility has been fixed in the matter.

Removal of clause for obtaining bank guarantee

5.1.6.7 Clause 8.4 of the brochure for Express City Scheme (March 2006) provided that the allottee shall furnish a bank guarantee of a nationalised bank equivalent to one instalment along with interest on or before the execution of lease deed and renewable till the total outstanding dues are cleared.

Audit noticed that NOIDA, with the approval of the CEO, excluded the bank guarantee condition in the brochures from May 2006 onwards. Scrutiny of records revealed that the fact of removal of bank guarantee clause from the brochure conditions was not submitted for consideration of the Board of NOIDA as the subsequent brochure was not put up to the Board for approval and from thereafter the clause has not been included. This bank guarantee clause was meant to safeguard the interests of NOIDA against defaults by builders/allottees but NOIDA had subsequently failed to impose this condition resulting in spiralling dues of NOIDA.

In its reply, NOIDA stated (August 2020) that it was necessary to provide relaxation in financial criteria to revive the real estate sector from global economic recession.

The reply is not acceptable in view of the fact that there was no evidence of global economic recession during 2006 when the said clause was removed from the brochure. The reply also does not address the issue of removal of the clause without obtaining approval of the Board.

Moreover, in the exit conference (September 2020) the Government accepted the audit observation and agreed to re-introduce and enforce the provision for bank guarantee.

Reduction of allotment money

5.1.6.8 In the schemes launched during 2006-07 by NOIDA, the provisions in the brochure required that lease deed of the plot can be done only after a

NOIDA reduced the allotment money during 2008 and 2009 to 10 per cent citing the ground of global economic recession. The benefit given was beyond the GoUP order (2009). This unwarranted act of NOIDA resulted in undue favour to the builders on the one hand and increased NOIDA’s outstanding dues on the other hand due to deferment of ₹ 2,664.96 crore.

minimum payment of 40 per cent of the land premium, which was reduced to 20 per cent from 2008-09. In the 161st Board Meeting (28 May 2009), a decision was taken to further reduce the amount to be deposited by the allottee upto lease deed to 10 per cent of the land premium applicable from schemes launched thereafter.

Audit noticed that the reduction of allotment money was made in 2008 and 2009 citing the ground of global economic recession. Though GoUP had already specified in its order (06 January 2009) the necessary economic measures taken to counter recession on the recommendation of the high-level committee, NOIDA unilaterally undertook to provide further relief in 2009. This reduction diminished the financial commitment of the allottee and resulted in builders garnering more allotments as the builders enjoyed greater leverage to obtain bigger plots and to take loans from banks on the back of deposit of smaller amount of down-payment. Scrutiny of NOIDA’s scheme files revealed that schemes were formulated with remarks that inspite of economic slowdown, builders are demanding larger plots. This unwarranted act of NOIDA resulted in undue favour to the builders on the one hand and increased NOIDA’s outstanding dues on the other hand due to deferment (20 per cent in respect of plots allotted in 2008 and 30 per cent in respect of plots allotted during 2009 to 2011) of premium amounting to ₹ 2,664.96 crore upto a ten year period⁶ in 49 cases. This has adversely impacted the liquidity of NOIDA as builders have defaulted in the payments, adding to the position of non-recovery. As on date (31 March 2020) the overdue amount against the builders who were extended this facility was ₹ 9,864.87 crore.

It is pertinent to mention here that with respect to the sharp reduction in allotment money resulting in deferment of receipts involving huge financial sums, the Hon’ble Supreme Court observed⁷ that *“the land was allotted at throw away prices of 10 per cent, the allotment premium has not been paid and in an illegal manner plots have been allotted on huge amount by builders is another fraud in collusion with Authorities.”*

In its reply, NOIDA stated (August 2020) that GoUP in January 2009 and October 2009 had taken several steps viz. reshedulement of instalments with two-year moratorium, sub-division of big plots (above 40,000 sqm) etc. Further, money to be deposited till lease deed was relaxed to 10 per cent as decided in the 161st Board Meeting (28 May 2009) in view of the economic conditions. It was stated that during 2009-10 to 2010-11, 81 plots were allotted, out of which, 29 projects were issued occupancy certificate while 24 got partial occupancy certificate. Further, the relief provided was examined by Hon’ble Lokayukt and after the inquiry, the Hon’ble Lokayukt has observed that the decisions were taken in view of economic slowdown.

The reply is not acceptable as the GoUP had already addressed the problem faced by the existing allottees. Further, relaxations were given beyond Government orders. NOIDA instead of allotting smaller plots, allotted bigger plots from 50,008 sqm to 6,00,000 sqm. during the period on demand from the builders and allowed the builders to garner more plots at an initial deposit of 10 per cent. Moreover, citing default by the allottees and huge increase in

⁶ Eight-year repayment term and two-year moratorium.

⁷ Writ petition (C) 940/2017 Bikram Chatterjee and others vs. Union of India.

outstanding dues due to allotment of plots after taking only 10 *per cent* allotment money, the Board in its 192nd meeting dated 2 June 2017 again increased the allotment money to 40 *per cent* of the land premium which confirms that the reduction in allotment money benefitted the allottee builders at the cost of NOIDA.

Relaxation of conditions for consortiums

NOIDA diluted the eligibility criteria for allotment which reduced the onus on the allottees to complete the project and also compromised the position of home buyers.

5.1.6.9 The Uttar Pradesh Procurement Manual (Procurement of Goods) defines consortium as an association of several persons, or firms or companies. NOIDA allowed two or more entities to come together and bid as a consortium for allotment of plots. Under this system, the members could submit a Memorandum of Agreement (MOA) conveying their intent to jointly apply for the scheme and in case the plot is allotted to them, to form a Special Purpose Company (SPC). Members of the consortium were to specify one Lead Member who alone shall be authorised to correspond with NOIDA.

Audit noticed that NOIDA kept relaxing the eligibility conditions for consortium bidding as shown in **Table 5.1.6**.

Table 5.1.6: Amendment to clause regarding Lead Member's shareholding and tenure

Condition	Schemes of 2006 and 2007	Schemes of 2008, 2009 and schemes 2010(I), 2010 (II)	Scheme 2010 (III) and thereafter	
Lead Member's shareholding	Lead Member should be single largest shareholder having at least 51 <i>per cent</i> share in the consortium	Lead Member should be single largest shareholder having at least 26 <i>per cent</i> share in the consortium.	Lead Member should be single largest shareholder having at least 30 <i>per cent</i> share in the consortium.	
Condition	Schemes of 2006, 2007 and 2008	Schemes 2009 (II, III, IV, V, VI, VII)	Scheme 2009 (VIII) and 2010 (I and II)	Scheme 2010 (III) and thereafter
Tenure of Lead Member's shareholding	The shareholding of the Lead Member in the consortium shall remain unchanged till the completion of the project on obtaining the functional certificate from NOIDA.	The shareholding of the Lead Member in the consortium shall remain unchanged till the completion of at least one phase of the project is obtained from NOIDA.	The shareholding of the Lead Member in the consortium shall remain at least 26 <i>per cent</i> till the temporary occupancy/completion certificate of at least one phase of the project is obtained from NOIDA.	The shareholding of the Lead Member in the consortium shall remain at least 30 <i>per cent</i> till the temporary occupancy/completion certificate of at least one phase of the project is obtained from NOIDA.

Source: Information compiled by Audit.

It is evident from the above Table that reduction in Lead Member's holding from 51 *per cent* in schemes launched during 2006 and 2007 to 26/30 *per cent* in schemes launched during 2009 and 2010 reduced the stake and commitment of the Lead Member in executing the project. The tenure of shareholding was also revised from completion of project to completion of only first phase,

which made possible the exit of the Lead Member after part execution of the project as given in **Table 5.1.6**.

Table 5.1.7: Relaxing stipulation regarding Relevant Member’s shareholding

Condition	Schemes 2009 (II, III, IV, V, VI, VII, VIII) and 2010 (I, II)	Scheme 2010 (III) and thereafter
Relevant Member’s Shareholding	Each member of the consortium with equity stake of at least 10 <i>per cent</i> will be considered as the "Relevant Member".	Each member of the consortium with equity stake of at least 5 <i>per cent</i> will be considered as the "Relevant Member".

Source: Information compiled by Audit.

Thus, the easing of the above requirement has allowed entities with lower stakes to join the consortium. With these reductions, NOIDA has eased norms for entry to the consortium and lowered the commitment of the members as given in **Table 5.1.7**.

Table 5.1.8: Dilution of condition for determining onus of qualification

Condition	Schemes of 2006 and 2007	Schemes of 2008 and 2009 (II to VII)	Scheme 2009 (VIII) and thereafter
Onus for qualification	The Lead Member should singly qualify the minimum requirement of net worth, solvency, turnover and experience.	The Lead Member and the Relevant Members should jointly qualify the minimum requirement of net worth, solvency, turnover and experience.	The Lead Member and the Relevant Members should jointly qualify the minimum requirement of net worth, solvency, turnover and experience. In case the tenderer is a consortium, then the qualifications of the holding company(ies) of the Lead Member and the Relevant Members or their subsidiary companies shall also be considered as the qualifications of the tenderer.

Source: Information compiled by Audit.

As is evident from the above Table, the distribution of responsibility to qualify the criteria has allowed otherwise ineligible members to come together and qualify instead of attracting stronger players for executing the projects.

Table 5.1.9: Relaxing the responsibility for implementation of the project

Condition	Schemes of 2006, 2007, 2008 and 2009 (I to VII)	Scheme 2009 (VIII) and thereafter
Responsibility for implementation of the project	In case of a consortium, the members shall submit a MOA conveying their intent to jointly apply for the scheme(s), and in case the plot is allotted to them, the MOA shall clearly define the role and responsibility of each member of the consortium, particularly with regard to arranging debt and equity for the project and its implementation. The MOA should state that all members shall be jointly and <i>severally</i> responsible for the successful implementation of the project. MOA should be submitted in original duly notarised and registered with appropriate authority.	In case of a consortium, the members shall submit a MOA conveying their intent to jointly apply for the scheme(s), and in case the plot is allotted to them, the MOA shall clearly define the role and responsibility of each member in the consortium, particularly with regard to arranging debt and equity for the project and its implementation. MOA should be submitted in original duly notarised and registered with appropriate authority.

Source: Information compiled by Audit.

The clause for fixing responsibility of members for successful implementation of the project was removed from the terms and conditions, which has caused non-completion of a large number of projects as given in **Table 5.1.9**

From a perusal of the above, it can be observed that NOIDA, with the passage of time and significantly in 2009-10, kept on diluting the conditions with successive brochures. Audit observed that for successful execution of a project, the consortium consisting of different companies was required to work in unison but NOIDA's relaxations of conditions had served to weaken the consortiums. The onus on the allottee to complete the project stood reduced with the above-stated changes. The weakening of these conditions affected the commitment of the allottee builders to the projects which has contributed to non-completion of projects. With the reduction in builders' responsibility to complete the project, NOIDA has also compromised the position of the home buyers. The specific instances of benefits accruing to builders are discussed in **Paragraphs 5.1.8.2 to 5.1.8.4**.

In its reply, NOIDA stated (August 2020) that relaxations in conditions for consortium were made in view of economic slowdown and to revive the real estate sector. Demand for land was low in 2008. The decision regarding capabilities and shareholding of the Lead Member and the Relevant Members was taken in view of prevailing economic conditions and was appropriate in terms of purpose and principle. It is a normal procedure to add eligibility of holding company and subsidiary company. NOIDA further stated that assigning responsibility of each member was a better option than giving joint responsibility.

The reply of NOIDA is not acceptable as these changes have helped the members to exit from the project and reduce their commitment rather than helping them tide over economic slowdown. Reduction in shareholding of Lead Member from 51 *per cent* to 26 *per cent*, allowance of Relevant Member with less shareholding and removal of joint responsibility for the entire project resulted in non-implementation of the projects.

Irregularities in screening of applications and allotment

5.1.7 The process of tender for Group Housing plots in NOIDA entailed two-stage bidding with technical bid and financial bid being called for. The technical bid consisted of technical eligibility criteria requiring experience of work done in terms of number and size of projects executed and financial eligibility criteria specified requirement in terms of minimum net worth, solvency and turnover. The details submitted by applicants were then required to be evaluated by the Plot Allotment Committee (PAC)⁸. The brochure provided that the financial bids of only technically qualified bidders shall be opened. Thus, the bids of those applicants who did not qualify the technical eligibility criteria were not to be opened.

Audit noticed violations committed at the stage of screening of the applications and allotments. These are discussed in the following paragraphs:

⁸ Consisting of Officer on Special Duty (OSD), AGM (GHP), Finance Controller, Chief Project Engineer, Chief Architect Planner, Chief Legal Advisor and Administrative Officer.

Allotment to entities that did not meet even technical eligibility criteria

5.1.7.1 The financial eligibility condition laid down in various brochures (2009 to 2011) for allotment of plots required minimum total turnover of ₹ 200 crore from real estate activities for the last three accounting years. Real estate activities were stated as real estate development and construction activities and excluded merely trading in real estate. Non-fulfilment of any of the parameters either in the technical eligibility criteria or in the financial eligibility criteria implies that the bidder is not technically qualified and therefore ineligible. In all such cases, the next stage *viz.* opening of the financial bid is not warranted, let alone the bidder being considered for allotment.

Audit noticed that in the following two cases allotments were made to entities which did not possess turnover in relevant fields of business (real estate activities), which was an essential qualification for the bidder. The details are in **Table 5.1.10**.

Table 5.1.10: Allowance of turnover from other than real estate activities

Sl. No.	Plot No, Name of Allottee, Area of Plot	Premium of Plots (₹ in crore) and date of allotment (in bracket)	Name of Consortium constituents	Turnover in the last three years as mentioned in the tender document (₹ in crore)	Details of turnover not to be allowed (₹ in crore)	Actual turnover in the last three years (₹ in crore)	Remarks
1	GH-02 Sector 143 Logix City Developers Private Limited (100080.98 sqm)	235.69 (08.04.2011)	Logix Soft-tel Pvt. Ltd. (Lead Member)	32.00	25.10	6.90	Income from rent
			Logix Realty Developers Pvt. Ltd.	NIL	NIL	NIL	--
			V C Solutions Pvt. Ltd.	103.89	5.97	97.92	Fees and services
			IT Enfraservices Pvt. Ltd.	94.92	94.92	0.00	Rental income and other business receipts
			Noida Cyber Park Pvt. Ltd.	40.66	40.66	0.00	Income from rentals, service and maintenance charges and other income
			Lakshmi Constructions	15.53	0.24	15.29	Sale of scrap
			Total	287.00	166.89	120.11	
2	GH-01 Sector 143 Logix Infratech Pvt Limited	235.88 (17.08.2011)	Logix Soft Tel Pvt. Ltd. (Lead Member)	32.00	25.10	6.90	Income from rent
			V C Solutions Pvt. Ltd.	103.89	5.97	97.92	Fees and services

Sl. No.	Plot No, Name of Allottee, Area of Plot	Premium of Plots (₹ in crore) and date of allotment (in bracket)	Name of Consortium constituents	Turnover in the last three years as mentioned in the tender document (₹ in crore)	Details of turnover not to be allowed (₹ in crore)	Actual turnover in the last three years (₹ in crore)	Remarks
	(100112.19 sqm)		IT Enfraservices Pvt. Ltd.	94.92	94.92	0.00	Rental income and other business receipt
			Noida Cyber Park Pvt. Ltd.	40.66	40.66	0.00	Income from rentals, service and maintenance charges and other income
			Total	271.47	166.65	104.82	

Source: Information compiled by Audit.

In two cases allotments were made to entities which did not possess required turnover in relevant fields of business. These entities should have been disqualified at the technical bid stage.

During examination of the above cases, Audit noticed that allotments worth ₹ 471.57 crore for 2,00,193.17 sqm land were made during the period from April 2011 to August 2011 to consortiums which did not meet the essential qualification required for prospective bidders. In the above cases, the relevant turnover ranged between 52.41 *per cent* to 60 *per cent* of the specified required turnover. These entities should have been disqualified at the technical bid stage itself but they were allotted plots granting undue favour to them.

In its reply, NOIDA stated (September 2020) that the technical evaluation of the bids was done by UPICO. NOIDA's staff did not have technical skill required to examine net worth and relevant turnover of the applicant companies. NOIDA had to rely on the report of UPICO who was the expert consultant in this field and NOIDA accepted the list of technically qualified bidders as given by UPICO. It was stated that on the lines of the audit observation, assessment of total turnover in future schemes would be based on real estate activities as provided in the scheme brochure. NOIDA further stated that Government may consider fixing responsibility of members of PAC.

In the Exit Conference (September 2020) the Government also agreed to take action against those found responsible for omission, if any, after due process of enquiry.

The Government should consider fixing responsibility as agreed to in the Exit Conference and take action against all the officers in PAC, who failed to disqualify entities which did not even meet the technical evaluation criteria and yet were made allotments.

Leveraging of net worth for multiple allotments

5.1.7.2 The financial eligibility criterion of net worth is used to evaluate the applicant's ability to execute the project and for assessing their payment capability, Audit analysed the multiple allotments made to an entity to assess the robustness of the evaluation procedure (**Appendix-5.1.2**). The discrepancies observed are detailed in **Table 5.1.11**.

Table 5.1.11: Leveraging of net worth for multiple allotments

Sl. No.	Name of Company	No. of plots allotted	Year of allotment	Premium (₹ in crore)	Year of which net worth taken	Net worth of the Company (₹ in crore)	Aggregate of net worth utilised in multiple allotments (₹ in crore)	Status as on 31 March 2020
1.	Gaursons India Limited	4	2009-10	462.21	2008-09	73.01	146.48	Sub-divided plots-5, Completed-5
2.	Ultra Home Construction Pvt. Ltd.	3	2009-10	747.89	2008-09	68.89	157.72	Sub-divided plots-6, Completed-3, Partially completed-1, OC not issued-2
3.	Supertech Ltd.	4	2009-10	497.75	2008-09	183.46	270.49	Sub-divided plots-7, Completed-3, Partially completed-1, OC not issued-3
4.	Gulshan Homz Pvt. Ltd.	3	2009-10	357.40	2008-09	15.47	32.60	Sub-divided plots-6, Completed-5, Partially completed-1
5.	Agarwal Associates (Promoters) Pvt. Ltd.	2	2009-10	300.49	2008-09	47.83	84.43	Sub-divided plots-6, Completed-3, Partially completed-3
6.	Ajnara India Limited	2	2009-10	228.39	2008-09	55.90	111.80	Sub-divided plots-3, Completed-3
7.	Prateek Buildtech (India) Pvt. Ltd.	2	2009-10	233.69	2008-09	5.39	10.78	Completed-2
8.	Bihari JI Ispat Udyog Limited	2	2009-10	274.45	2008-09	31.31	31.86	Sub-divided plots-3, Completed-1, OC not issued-2
9.	Amrapali Homes Projects Pvt. Ltd.	2	2009-10	309.61	2008-09	16.26	32.52	Sub-divided plots-3, Completed-1, Partially completed-1, OC not issued-1
10.	Unitech Limited	2	2007-08	881.47	2005-06	224.53	300.00	OC not issued
Total				4,293.35		722.05	1,178.68	

Source: Information compiled by Audit.

Analysis of the table reveals that the applicants, individually as well as with consortiums, used their net worth upto a maximum of 2.29 times (Sl. No. 2) to garner more allotments from NOIDA. From the table, it is apparent that NOIDA evaluated net worth of the applicants case-wise but failed to evaluate the utilisation of net worth in aggregate as the allottees obtained more than one

NOIDA allowed applicants to use their net worth upto a maximum of 2.29 times to garner more allotments from NOIDA, which has resulted in distress to home buyers as 22,653 flats could not be completed.

allotment by leveraging their net worth multiple times. Though the previous allotments were known to NOIDA, PAC did not take cognisance of it and permitted prospective applicant companies to leverage their net worth for multiple allotments. Ultimately, this resulted in distress to home buyers as 22,653 flats out of 54,987 flats sanctioned in the above projects have not been completed till date (31 March 2020) as detailed in **Appendix-5.1.2.**

In its reply, NOIDA stated (September 2020) that the audit objection is factually correct. It stated that it would be appropriate to link net worth, solvency, and turnover of applicants with the previous allotments made to them.

In the Exit Conference (September 2020), the Government also directed strengthening the guidelines for evaluation of applicants of future schemes.

Absence of fair competition in allotment of plots

5.1.7.3 The Competition Act, 2002 defines⁹ “bid rigging” as “any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.”

Bid rigging takes place when bidders collude and keep the bid amount at a pre-determined level. Such pre-determination is by way of intentional manipulation by the members of the bidding group. One form of bid rigging is bid rotation in which all conspirators submit bids but take turns to be the highest/lowest bidder. A strict bid rotation pattern defies the law of chance and suggests that collusion is taking place.

NOIDA allots the Group Housing plots by inviting bids. While making the allotments, it should ensure that there exists fair competition between the participating bidders. A total of 67 allotments were made to builders during the period 2005-06 to 2016-17 and thereafter no allotments were made so far (March 2020). Of these, 49 allotments (73 per cent) were made during the period 2008-09 to 2010-11. In 42 out of 49 allotments, only two bids were received of which in 15 pairs of applicants (15 plots) the participating bidders were the same or of the same group.

Out of the above mentioned 15 cases where a pair of bidders competed amongst themselves, in nine cases of mutual accommodation, one allotment was made to each bidder as given in **Appendix-5.1.3** while in the remaining six cases the allotments were made to one bidder.

Audit noticed that the bid prices in the above 15 cases were very close to the reserve price fixed by NOIDA as these bids ranged between nil to 5.19 per cent higher than the reserve price.

In view of only two bids submitted by a pair of bidders for the plots and their bid prices being only marginally higher than the reserve price, collusion between the participating bidders cannot be ruled out, more so in those cases where alternate allotments were made to each of the participating bidders. Thus, in 15 allotments of plots valuing ₹ 2,611.36 crore, bid rigging and collusion between the bidders cannot be ruled out.

⁹ Advocacy series 3, Competition Act, 2002 ‘Provisions relating to Bid Rigging’ published by Competition Commission of India.

In its reply, NOIDA stated (August 2020) that it was a coincidence that in spite of wide publicity and economic slowdown, only those builders submitted their bids who found the scheme practically implementable and kept trying for allotment of different plots. The financial bids were evaluated by UPICO according to terms and conditions of the scheme and the allotments were also approved by the Board.

The reply is not acceptable in view of the fact that in the 15 cases mentioned above, a pair of bidders competed amongst themselves, where in nine cases one allotment was made to each of the bidders while in the remaining six cases, the allotments were made to one bidder. The above situation, viewed at a macro level, presents a very possible case of bid rigging by builders and the same being permitted by NOIDA. The reply of NOIDA is not acceptable in view of the fact that bid rotation was found in the above cases followed with minimal variations from the reserve price. Further, the bid rotation observed in these allotments was also questionable as per Competition Act, 2002.

The Government may consider having the matter investigated by the authority so competent.

Rigging of competition through use of group companies as competitors

NOIDA allowed two related group companies to participate in bid. Thus, the tender process was compromised through the use of group companies.

5.1.7.4 Audit noticed that two bidders i.e. Assotech Limited and Supertech Limited, participated as lead members of consortium/company for the plots (i) GH-3, Sector 137 measuring 51,000 sqm under Scheme GH-2009 (VII), (ii) plot GH-4, Sector 78 measuring 61,430 sqm under Scheme GH-2010 (I) and (iii) GH-01, Sector 74 measuring 2,49,410 sqm under Scheme GH-2010 (III).

Members of the consortium with Assotech Limited included Surya Merchants Limited, who had shareholding in the consortium. Audit noticed that Surya Merchants Limited was a group company of Supertech group. Thus, the tender process was compromised through use of group companies and was not fair. The technical report submitted by UPICO and the approval given by PAC failed to point out this fact in spite of it being clearly evident from the documents submitted by the bidder. The technical bidding of both the bidders should have been cancelled and retendering should have been undertaken by NOIDA.

Audit is of the view that the sanctity of the bidding and evaluation process was questionable. The fact of inaction on part of NOIDA in spite of repeated contraventions in the above three cases and low mark up on reserve price in the bids received as detailed in **Appendix 5.1.3** (Sl. No. 11, 12 and 13) also suggests that the integrity of the bidding process had been compromised.

In its reply, NOIDA stated (August 2020) that there were no restrictions in the brochure to prevent one company from being part of two separate consortiums. The competent authority on the recommendations of PAC accepted the bids after being technically evaluated by UPICO. NOIDA further stated that the point raised by Audit is worth considering and emulating and will be considered during future allotments.

The compliances of assurance given by NOIDA will be reviewed in next audit.

Despite being provisioned in the brochure; NOIDA did not cancel the plots in spite of delay in deposit of allotment money.

Non-cancellation of plots in spite of delay in deposit of allotment money

5.1.7.5 As per condition (G.2) of the scheme brochure¹⁰, the successful bidder was required to pay 10 *per cent* of the total premium of the plot as reservation money and thereafter the formal allotment letter was to be issued. The allottee was required to pay 30 *per cent* of the total premium of the plot as allotment money within 60 days from the date of issuance of such allotment letter. The brochure further provided that extension of time for depositing the reservation money and the allotment money shall not be allowed under any circumstances.

Audit observed that in contravention of the above condition, in two Group Housing allotments¹¹ under the above scheme, the allottees deposited the allotment money after five months and 49 months of the extended date¹² (02 March 2008) but NOIDA failed to take any action on the allottees, thereby condoning the delay. Further, NOIDA also failed to recover interest for the period of delay for which demand of ₹ 6.44 crore was raised in the first case¹³.

Audit observed that the relaxation given by NOIDA in case of both the plots mentioned above in deposit of allotment money was irregular as per the brochure conditions and allotment of plot should have been cancelled and the amount equivalent to registration money of ₹ 40 crore (₹ 20 crore in each plot) should have been forfeited as provided in clause 7 of Section G of brochure which states that in case of default, the allotment offer will be considered as cancelled without any further notice and the amount equivalent to registration money shall be forfeited. No interest will be paid on such amounts. This indicates that NOIDA failed to take action on transgressions even at initial stages and has granted undue favour to allottees at the expense of NOIDA.

In its reply, NOIDA stated (September 2020) that in view of elections, orders were issued for not taking any further action on the allotments made during 22 February 2007 to 13 May 2007. A committee constituted in the matter decided that the allottee should deposit the money within 30 days after the issue of the consent letter of NOIDA.

The reply is not acceptable as the period of abeyance due to elections lasted till January 2008 and an office order was issued on 31 January 2008 in which 30 days' time (up to 02 March 2008) was given to the allottees to deposit the allotment money during which the allottees did not deposit the same. Thus, NOIDA failed to adhere to the brochure condition which did not allow any extension for depositing the allotment money under any circumstances. Even after expiry of the said period on 02 March 2008, NOIDA neither cancelled the allotment nor forfeited the registration money of ₹ 40 crore, thereby showing special favour to the allottees.

Adverse impact of subdivisions and transfers

5.1.8 NOIDA, from its schemes of 2009-10 onwards started allowing sub-division of the allotted plots to the members of the successful

¹⁰ Scheme GH-2007(I) launched during 22.01.2007 to 06.02.2007.

¹¹ GH-01, Sector 115 measuring 1,13,529.27 sqm allotted to Ambience Projects & Infrastructure Limited at a premium of ₹ 199.24 crore on 18.04.2007 and GH-01, sector 118 measuring 1,33,750 sqm allotted to IVRCL Infrastructure & Projects Limited at a premium of ₹ 228.04 crore on 18.04.2007.

¹² Extension was allowed as the allottee was issued show-cause notice for some irregularities found in the allotment.

¹³ In the second case, due interest was paid by the allottee.

consortiums. This facility of sub-division was extended from the nascent stage by allowing sub-division of the plot just after approval of allotment and before execution of lease deed. Thus, a group of companies could come together as a consortium, qualify the already insufficient financial criteria (as discussed in **Paragraph 5.1.6.2**) on joint credentials (even of subsidiary or holding companies) and form an SPC for executing the project. Once the formal allotment was made, these companies could then sub-divide the plot and have separate lease deeds for each part, which effectively was the end of the association as each sub-divided part had a separate payment schedule. Further, NOIDA allowed transfer of sub-divided plots to third parties which further weakened the commitment of the builders to complete the projects. As a result, the 67 allotments made by NOIDA from 2005-06 to 2016-17 have been sub-divided into 113 properties.

Audit observed the following major discrepancies in this regard:

Sub-division without basis

The facility of sub-dividing the plots was given by GoUP as a part of recession relief measures upto March 2011 for existing allottees. But NOIDA allowed the facility for prospective allottees without paying any heed to the capability of the builders to execute the project on the sub-divided portions.

5.1.8.1 GoUP issued an order (October 2009)¹⁴ as a one-time measure of allowing transfer of plots above 40,000 sqm by paying two *per cent* transfer charges.

The terms and conditions laid down in the brochures¹⁵ provided that without obtaining the completion certificate, the allottee/lessee shall have the option to divide the allotted plot and to sub-lease the same with the prior approval of NOIDA on payment of transfer charges at the prescribed rate.

Though this facility was given by GoUP as a part of recession relief measures upto March 2011 and only for existing allottees facing financial problems, NOIDA incorporated the same as a part of its brochure for prospective allottees from November 2009 onwards till the present (March 2020). The facility thus introduced did not have any restrictions and as such gave a *carte blanche* to the builders to sub-divide the plots in a manner they deemed fit and NOIDA accepted the sub-divisions without paying any heed to the capability of the builders to execute the projects on the sub-divided portions.

It was observed that in 12 cases the allotted plots had been sub-divided into 32 plots (**Appendix-5.1.4**). On lines of the financial criteria laid down by NOIDA for assessment of builders’ capability, Audit evaluated the sub-divisions carried out by taking the net worth of the builder as the basis for judging the capability of the builder with respect to the size of the plot sub-divided. The year-wise position of sub-divisions is shown in **Table 5.1.12**.

Table 5.1.12: Sub-division of the plots without basis

Year of Sub-lease	No. of plots	No. of sub-divisions	No. of cases where sub-lessee received plot valuing more than net worth	Percentage of plot value to net worth
2009-10	1	2	1	53-346
2010-11	9	25	19	29-1399
2011-12	2	5	4	42-794
Total	12	32	24	

Source: Information compiled by Audit.

Of these 32 plots, in only eight cases the value of plot was commensurate to the net worth of the sub-lessee and in 24 cases the value of the sub-divided

¹⁴ GO number 1470/77-4-09-142 N/08 dated 25 October 2009.

¹⁵ GH -2009 (VII) and thereafter.

plot exceeded the net worth of the sub-lessee. It was observed that in these 24 cases the sub-lessee obtained plots ranging from 1.16 to 14 times of their net worth. In eight of these cases, the net worth of the sub-lessee was less than ₹ one crore and yet they were permitted sub-lease of plots worth ₹ 501.62 crore in aggregate.

It is thus, evident that NOIDA's decision to allow sub-division without any regulatory mechanism in place served effectively as a backdoor entry for transfer of valuable property into the hands of ineligible builders. NOIDA has embedded a one-time concession, based on the decision of GoUP, as a permanent feature by incorporating it in its brochures commencing from November 2009 and according the benefit not only to the existing allottees encountering difficulties but to all prospective allottees.

In its reply, NOIDA accepted (August 2020) the audit contention that financial eligibility of the sub-lessee should be in proportion to the sub-divided plot. This, it was stated, will be ensured in future.

In the Exit Conference (September 2020) Government accepted the audit observation and stated that detailed guidelines had been issued by Government in respect of sub-division of plots which would be adopted by NOIDA.

The implementation of the guidelines by NOIDA will be reviewed by Audit in due course.

Allowing exit of key member after qualification

NOIDA allowed key members to exit leaving the land/project to companies/members who were incapable of qualifying the allotment.

5.1.8.2 The terms and conditions specified in the brochures by NOIDA permitted the allotment to be made in favour of a consortium. By using consortium-based bidding, an association of companies/firms is able to pool resources to bid as a single entity, which has greater capability.

Audit noticed that in practice, the members who contributed most in fulfilling the allotment qualifications, exited the project once the allotment was finalised leaving the land/project to companies who by themselves were incapable of qualifying for allotment. The instances noticed by Audit are detailed in **Table 5.1.13**.

Table 5.1.13: Exit of key member of the consortium after allotment

Sl. No.	Plot number	Name of SPC and date of allotment (in bracket)	Name of exiting member	Share in consortium (in per cent)	Total net worth of consortium (₹ in crore) ¹⁶	Net worth of exiting member (₹ in crore)	Percentage net worth of exiting member	Exit date
1	GH-01 Sector 120	Prateek Realtors India Private Limited (10 Dec 2009)	Gaursons India Limited	11	78.4	73.01	93.12	22-02-2011
2	GH-04 Sector 45	Megitech Infradevelopers Pvt Ltd (08 February 2010)	Jakson Limited	10	190.46	180.7	94.88	27-05-2010

¹⁶ Total net worth required was ₹ 75.00 crore in respect of allotments at Sl. No. 1 to 10 and ₹ 250.00 crore in case of Sl. No.11.

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Sl. No.	Plot number	Name of SPC and date of allotment (in bracket)	Name of exiting member	Share in consortium (in per cent)	Total net worth of consortium (₹ in crore) ¹⁶	Net worth of exiting member (₹ in crore)	Percentage net worth of exiting member	Exit date
3	GH-02 Sector 77	Express Builders and Promoters Pvt. Ltd. (31 March 2010)	Agarwal Associates (Promoters) Ltd.	10	88.81	47.83	53.86	19-09-2011
			Sunglow Builders Pvt. Ltd.	10		14.25	16.05	30-09-2011
			Gulshan Homz Pvt. Ltd.	10		15.47	17.42	28-07-2011
4	GH-5 Sector 78	Sunshine Infrawell Pvt. Ltd. (16 March 2010)	Param Dairy Ltd	10	75.95	52.14	68.65	29-09-2010
5	GH-3 Sector 143	Kindle Infraheights Pvt Ltd (29 April 2011)	Meriton Infotech Pvt. Ltd.	5	91.55	26.57	29.02	30-09-2014
			Sutlej Agro Products Ltd.	5		50.08	54.70	30-09-2014
6	GH-01 Sector 137	Imperial Housing Ventures Pvt Ltd (14 Jan 2010)	Ashok Lalwani	10	105	40	38.10	27-12-2010
			Dilip Kumar Lalwani	10		65	61.90	27-12-2010
7	GH-03 Sector 77	Perfect Propbuild Pvt Ltd (31 March 2010)	Supertech Ltd	10	183.46	183.46	100.00	30-03-2013
8	GH-05 Sector 137	Panchsheel Exotica Housing Pvt. Ltd. (12 March 2010)	Supertech Ltd	10	196.51	183.46	93.36	26-04-2014
9	GH-01 Sector 143	Logix Infratech Pvt Ltd (17 Aug 2010)	NOIDA Cyber Park Pvt Ltd	10	207.44	74.32	35.83	31-03-2011
			IT Enfraservices Pvt Ltd	10		67.59	32.58	31-03-2011
10	GH-02 Sector 143	Logix City Developers Pvt Ltd (08 April 2011)	NOIDA Cyber Park Pvt Ltd	5	207.44	74.32	35.83	13-06-2011
			IT Enfraservices Pvt Ltd	5		67.59	32.58	13-06-2011
11	Sec 75 Eco City	AIMS Max Gardenia Developers Pvt. Ltd.(09 June 2010)	AMR Constructions Ltd	10	337.55	278.05	82.37	31-03-2015

Source: Information compiled by Audit.

It may be seen from the above table that out of 11 cases, in five cases the member exited in less than a year of allotment and in two cases in less than two years. From analysis of the above table, it is evident that after facilitating allotment of plots, key members who contributed majority of net worth ranging from 68 per cent to 100 per cent exited from the consortium. It was observed that the share of none of these members in the respective consortium exceeded 11 per cent. It is evident that these members joined the consortium only for facilitating allotment by lending their credentials (profile) and thereafter exited the SPC.

Thus, builders came together for a transitory period and helped otherwise ineligible entities to qualify for allotment and after the formal allotment was in place exited the consortium. The exit of key members of the consortium in a matter of merely a few months after allotment in multiple cases, indicate a lack of regulatory control by NOIDA. This resulted in distress to home buyers as 10,769 flats out of 27,370 flats sanctioned in six of the above projects have not been completed till date (31 March 2020) as detailed in **Appendix 5.1.5**.

In its reply, NOIDA stated (September 2020) that the exit of consortium members was as per the provisions of the brochure. However, this point, it was stated, is noted for future schemes. A revision is being proposed in the brochure conditions allowing no exit to any consortium member till completion of the project.

The reply also confirms the practice of consortium members exiting as early as within a year, which by implication suggests that the original allottees were not committed to the construction of Group Housing units. As it can be seen that the projects have not been completed and prospective buyers have faced distress due to investment of their life savings in these incomplete projects. It shows complete lack of financial prudence on behalf of NOIDA and non taking into account interest of prospective buyers.

Transfers through Change in Shareholding

NOIDA abolished charges for change in shareholding which facilitated the allottee company to transfer the plot without any charges to parties who otherwise may not have been qualified for the allotment.

5.1.8.3. NOIDA imposed charges for Change in Shareholding (CIS) of allottees in proportion to changes in shareholding. The Board in its 152nd meeting (July 2008) allowed transfer of upto 49 *per cent* of share capital of the allottee on payment of applicable transfer charges. It also allowed introduction of new members in the consortium on payment of CIS charges. However, NOIDA issued an office order on 27 October 2010 abolishing the CIS charges and the requirement of deed for registering changes in shareholding. The order stated that the changes in shareholding could not be considered as transfer of property of a company. This order was ostensibly based on GoUP order (11 October 2010)¹⁷.

Audit noticed that though the GoUP order did not address the CIS charges levied by NOIDA but NOIDA still went ahead and abolished the provision of CIS charges quoting the GoUP order. NOIDA's order allowed the allottees to transfer ownership of companies holding allotted plots without payment of any charges to NOIDA. This order facilitated the allottee company to transfer the plot in favour of another set of shareholders, without any charges, who otherwise may not have been qualified for the allotment of plot. The said order of GoUP was rescinded on 04 February 2020 to stop tax evasion through this route. Audit observed that on the one hand, NOIDA provided allotment to SPC constituted specifically for the purpose of allotment of a particular plot and on the other hand allowed unrestricted transfer of title of plots through changes in shareholding.

A Group Housing plot GH-03, Sector 143 measuring 1,00,166.30 sqm was allotted to a consortium having Silverado Estates Private Limited as Lead Member and five Relevant Members under the scheme GH 2011-(I) launched by NOIDA during March 2011 at a bid price of ₹ 23,570 per sqm against

¹⁷ This G.O was regarding execution of sale deed and payment of stamp duty in pursuance of change of company's name/change in shareholding.

reserve price of ₹ 22,440 per sqm. An allotment letter was issued on 08 June 2011 for a premium of ₹ 236.09 crore. On 06 July 2011, NOIDA granted permission for sub-division of the plot as detailed in **Table 5.1.14**.

Table 5.1.14: Sub-division of plot GH-03 Sector 143

Plot no.	Area (In sqm)	Total Premium (₹ in crore)	Name of sub-allottee
GH 3 A, Sector 143	50,166.30	118.24	Three C Estates Private Limited (Incorporated on 30.12.2010 before launch of tender), an SPC of Silverado Estates Pvt. Ltd. (Lead Member of the consortium) and Flair Realcon Pvt. Ltd.
GH 3 B, Sector 143	50,000	117.85	Kindle Infra Heights Private Limited (SPC of Moon Light Sports Private Limited, Sara Buildcon Private Limited, Meriton Infotech Pvt. Ltd. and Sutlej Agro Products Limited)

Source: Information furnished by NOIDA.

Audit observed that four out of the six consortium member companies were incorporated during 2010-11. The financial credentials related to turnover and technical experience were fulfilled by the holding company of the Lead Member i.e. Three C Universal Developers Pvt. Ltd. as all the six consortium members did not have any turnover and technical experience from real estate activities. Out of six companies in the consortium, five companies, other than Sutlej Agro Products Limited, had common directors/shareholders.

Further, another company viz. Gulshan Homes and Infrastructure Pvt. Ltd. informed NOIDA (on 14 March 2012 and on 23 April 2012) regarding change in directorship and name of SPC from Three C Estates Pvt. Ltd. to Gulshan Homes and Infrastructure Pvt. Ltd. Audit noticed that all the directors of the existing companies resigned and a new set of directors were appointed. NOIDA noted (13 August 2012) the changed name of SPC and its directors in its records despite no provision for change of name of SPC. It was also informed that there was no change in the shareholding pattern of the SPC.

Audit further noticed that after change in the name of the SPC the name and share of the consortium members remained the same up to 31 March 2018. Due to this, *prima-facie* it appeared that the plot was not transferred to the other company, but on cross verification by Audit with the records held by the RoC, it emerged that shareholding of Silverado Estates Pvt. Ltd. and Flair Realcon Pvt. Ltd. was changed on 14 March 2012. This is detailed in **Table 5.1.15**.

Table 5.1.15: Transfer of plot through 100 per cent change in shareholding

Plot no. & Sector	Name of consortium constituents	Shareholders	30 September 2011	14 March 2012
GH-3A, Sector 143	Silverado Estates Pvt. Ltd.,	Three C Universal Developers Pvt. Ltd.	9999	NIL
		Surpreet Singh Suri	01	NIL
		Gulshan Nagpal	NIL	5000
		Ritu Nagpal	NIL	5000
	Flair Realcon Pvt. Ltd.	Three C Infratech Pvt. Ltd.	9999	NIL
		Deepak Khurana	01	NIL
		Deepak Kapur	NIL	7000
		Rajesh Nagpal	NIL	3000

Source: Information compiled by Audit.

Audit observed that the shareholding of the consortium members of the SPC was changed 100 *per cent* on 14 March 2012. The SPC while informing NOIDA stated that there is no change in the SPC's shareholding pattern. It thus, misrepresented to NOIDA the fact that the whole plot was transferred to Gulshan Homes and Infrastructure Pvt. Ltd. by Three C Estates Private Limited (a Three C group company), the erstwhile SPC, by change in shareholding of consortium members. The Group Housing Wing of NOIDA also failed to bring out this fact.

Evidently, the plot was taken not for implementation of the project but for trading. When 100 *per cent* shareholding of the consortium members was changed, the ownership of the plot also changed. In cases where an SPC is created for the purpose of obtaining allotment of a single plot, the change of shareholding is attributable to the sole purpose of transfer of plot.

Similarly, in 12 other cases, the shareholding of allottee companies was changed as detailed in **Table 5.1.16**.

Table 5.1.16: Change in shareholding of SPC after allotment

SI. No.	Plot No.	Allottee name and date of allotment (in bracket)	Shareholding change percentage	Charges leviable @ 5 per cent (2 per cent upto 31 March 2011) (₹ in crore)	Date of change of shareholding
1.	GH-1/B Sector 168	Opulent Infra Developers (subsidiary of Three C Universal Pvt. Ltd.) (17 Aug 2010)	100	0.94	01.03.2011
			99.603	2.35	30.09.2015
			99.5	2.35	28.03.2016
2.	GH-1/E Sector 168	Capital Infra Projects Pvt. Ltd. (17 Aug 2010)	50	0.94	03.01.2011
			100	1.89	24.03.2011
3.	GH-1/C Sector 168	Sun World Residency Pvt. Ltd. (17 Aug 2010)	75	3.56	01.11.2011
4.	GH-01, Sector 118	IVR Prime Developers (Avadi) Private Limited (18 April 2007)	100	11.40	26.04.2012
5.	GH-02, Sector 119	IVRCL Aranya Projects Private Limited (04 Oct 2006)	99	5.17	26.02.2016
6.	GH-05, Sector 121	IV County Private Limited (03 Oct 2006)	95	6.76	14.06.2014
7.	GH-01/A, Sector 76	Amrapali Silicon City (03 March 2010)	10.22	1.88	17.09.2012
8.	GH-05/B, Sector 78	Sunshine Infrawell Private Limited (16 March 2010)	33.35	0.29	20.09.2010 & 29.01.2011
			20	0.44	22.03.2013
9.	GH-02/C, Sector 77	Civitech Developers Private Limited (31 March 2010)	31.25	0.66	28.07.2011
10.	GH-1, Sector 137	Imperial Housing Ventures Private Limited (14 Jan 2010)	42.50	2.10	31.03.2010
			25	1.24	24.03.2011
11.	Sec 75	Aims Max Gardenia Developers Private Limited (09 June 2010)	30	9.56	31-03-2015
			57	18.16	31-03-2017
12.	GH-01 Sector 46	Gardenia Aims Developers Private Limited (03 Sep 2009)	29.91	2.26	29-09-2012
Total				71.95	

Source: Information compiled by Audit.

Thus, it is evident from the table above that the control of the allottee companies had changed with the change in shareholding and concurrently the plots were also transferred to third parties. It was also observed that nine of these allotments were made during the period 2009-10 to 2010-11. The changes in shareholding commenced from periods as short as three months from date of allotment, with the transfer in shareholding ranging from 10 *per cent* to 100 *per cent*. CIS charges amounting to ₹ 71.95 crore were also not levied on the transfer resulting in loss of revenue to NOIDA.

In its reply, NOIDA stated (September 2020) that in view of Government orders of October 2010, an order was issued providing that charges for changes in shareholding will not be levied and prior approval of NOIDA would not be required for upto 100 *per cent* change in shareholding. It was further stated that the above Government order has been rescinded (February 2020) by the Government which has been adopted by the Board (August 2020). Hence, provision for charges on change in shareholding has been made.

The reply is not acceptable as the Government orders dated 11 October 2010 was regarding non-levy of stamp duty and nothing was mentioned in the order about CIS charges. The contention of Audit is further reconfirmed by the fact that GoUP had rescinded the order in February 2020 stating that this resulted in decrease of revenue of the Government. Further, the decision of NOIDA regarding allowance of transfer of plot through change in shareholding without intimation to NOIDA was beyond the GoUP order and also against the interests of NOIDA as it resulted in transfer of plots and non-implementation of several projects.

Irregular transfer of plots

In contravention to the brochure condition and Board decision, allottees misused the entire mechanism of implementation through subsidiary to effect transfer of plots to third parties.

5.1.8.4 The Board of NOIDA approved (July 2008) a proposal regarding change in prevailing rules with the purpose of ensuring completion of projects in a time-bound manner. It was decided that implementation of the whole project was to be done in the ownership of original allottees. Original allottees had to retain a minimum of 51 *per cent* share in the company till the completion of the project. Further, it was decided that if an allottee having plot area of 1,00,000 sqm or more wants to develop the project in phases, the allottee has to submit Detailed Project Report (DPR) for this purpose. After written approval from NOIDA, the allottee could develop the project through its subsidiary company in which the allottee has not less than 90 *per cent* share. The allottee company had the right to sub-lease the portion of land allotted to subsidiary companies for development in phases as per DPR approved by NOIDA.

Clause T (Transfer of plots) of the brochure provided that the transfer of allotted group-housing plot as a whole will not be allowed under any circumstances.

IVRCL Limited (erstwhile IVRCL Infrastructure & Projects Limited) was allotted three Group Housing plots under the schemes launched during 2006-07. The allottee requested implementation of the project through its subsidiaries. NOIDA granted permission to the allottee to transfer its development rights to the subsidiaries of the allottee. However, Audit observed that in reality, transfer of plots was effected through change of shareholding of subsidiaries as detailed in **Table 5.1.17**.

Table 5.1.17: Transfer of plots through subsidiaries

Sl. No.	Plot no. & Sector	Actual area of plot	Detail of subsidiary	Date of request to implement through subsidiary	Date of approval given by NOIDA	Status	Remarks
1	GH-01, Sector 118	1,33,750 sqm	IVR Prime Developers (Avadi) Private Limited	03.04.2012	16.04.2012	Transferred to Supertech Limited and Ajnara India Limited on 25.4.2012	Lease deed of the plot executed on 19.04.2012 and possession was taken on 25.04.2012
2	GH-02, Sector 119	72,594 sqm	IVRCL Aranya Projects Private Limited (incorporated on 21.02.2012)	24.08.2012	29.08.2012	Transferred to Unnati Fortune Holding Ltd on 26.02.2016.	Transferred inspite of dues of ₹ 18.19 crore at the time of transfer
3	GH-05, Sector 121	99,820 sqm	IV County Private Limited (incorporated on 17.02.2012)	07.03.2012 & 17.07.2012	29.08.2012	Sub-lease deed was executed with the subsidiary on 31.01.2014. Transferred to ABA Builders Limited on 14.6.2014. Allottee informed NOIDA on 5.11.2015.	-

Source: Information compiled by Audit.

From the table above it is evident that all these plots were transferred to third parties after getting permission for implementation through subsidiary.

Audit observed that there were several anomalies in the approval given.

- A proposal for the above plot GH-05, Sector 121 was submitted in the 177th Board meeting on 25 July 2012 for execution of the project through the allottee's subsidiary, in which the Board decided to postpone the proposal. Instead of waiting for the Board decision, OSD, Group Housing at his level without any authority to do so, granted (August 2011) permission in case of the above plot and another plot No. GH-02, Sector 119. Thereafter, *post facto* approval of the Board was obtained in its 178th Board meeting on 11 January 2013. No approval for plot number GH 01, Sector 118 was taken from the Board.
- Permission for implementation of the project through subsidiaries of the allottee was given without submission of DPR.
- As per the condition of the brochure there was no provision to transfer the entire land to the subsidiary companies and only a portion of land (phase) was to be allowed for sub-lease, but NOIDA granted permission for transfer of the entire plot which was against the provision of the brochure and Board decision of July 2008, which were later transferred to the other companies. There were outstanding dues of ₹ 380.87 crore (March 2020) of NOIDA against two (GH-01, Sector 118 and GH-02, Sector 119) of three properties.

Thus, it is evident that the entire mechanism of implementation through subsidiary was misused by the allottee to effect transfer of plots to third parties, while NOIDA permitted transgressions of laid down conditions and the Board even approved the transfer *post-facto* thereby regularising these transgressions.

In its reply, NOIDA stated (September 2020) that in case of plot no. GH-01, Sector 118, the CEO was competent for approval in respect of transfer of land to subsidiaries. Approval was given with the condition that the responsibility to pay liability/dues of IVRCL Limited pertaining to the project will be of their subsidiary. NOIDA had not granted any permission for transfer of plot to Supertech Limited and Ajnara India Limited as well as to Unnati Fortune Holding Limited. It was further stated that in case of plot no. GH-05, Sector 121, NOIDA had recorded the transfer of shareholding of IVRCL Limited to ABA Builders Limited as per policy.

The reply is not acceptable in terms of the brochure condition which did not allow the transfer of the whole land and in view of the fact that 51 *per cent* shareholding was to be with the original allottee till completion of the project. NOIDA could not exercise any control over the subsidiaries whose control was subsequently transferred. Also, transfer of plots to subsidiaries were approved without submission of DPR which was in supersession of the policy provisions laid down by the Board. Further, the reply of NOIDA addresses only the part of the audit observation regarding permission for transfer of shareholding to third parties which was given only for GH-05 Sector 121. In fact, the shareholding of all three subsidiaries was taken over by other parties and control of property was effectively transferred.

Irregular sub-lease of plots

5.1.8.5 The standard lease agreements approved by NOIDA provide that the lessee/sub-lessee shall have the right to sub-lease the developed plot(s) and built up space as per the layout and building plans approved by NOIDA at its own price. No transfer charges shall be applicable in case of first sub-lease of the developed plot(s) and/or built up space including the built up space on the sub-divided plot(s) as described above within two years after the date of completion. However, for subsequent sales, the transfer charges¹⁸ as prevalent at the time of transfer or as decided by NOIDA shall be payable.

NOIDA, by an office order (15 June 2009), accorded permission for implementation of the project in phases through the developers. In this regard, sub-lease permission was granted to the developers for the portion of land taken for the development in a phase after total payment of premium of that portion of land. As per provision of the above office order, the lessee was not entitled to complete transaction for sale, transfer, assign or otherwise part with possession of the whole or any part of the building constructed thereon before making payment of land premium as per the schedule specified in the lease deed of the plot.

Audit observed that the following transfers took place in Sector 75 in pursuance of the above order as detailed in **Table 5.1.18**.

¹⁸ At the rate of five *per cent*.

Table 5.1.18: Non-levy of transfer charges

Sl. No.	Plot No.	Area allotted (sqm)	Name of the Sub-Allottee	Date of Allotment	Date of Sub-lease Deed	Transfer charges (₹ In crore)
1	GH-04 (ECO CITY)	20,000	M/S J.M. Infratech Pvt. Ltd.	21.12.2011	02.01.2012	1.58
2	GH-02 (ECO CITY)	20,000	M/S Aims Promoters Pvt. Ltd.	02.01.2012	02.01.2012	1.58
3	GH-03 (ECO CITY)	20,000	M/S Aims Rg Angel Promoters Pvt. Ltd.	02.01.2012	02.01.2012	1.58
4	GH-09 (ECO CITY)	20,000	M/S Gardenia India Ltd.	02.01.2012	15.02.2012	1.58
5	GH-10 (ECO CITY)	20,000	M/S Futec Shelters Pvt Ltd.	02.01.2012	13.01.2012	1.58
6	GH-05 (ECO CITY)	15,771.23	M/S Indosam Infra Pvt. Ltd.	21.02.2012	23.02.2012	1.24
7	GH-12A (ECO CITY)	20,000	M/S Apex Dream Homes Pvt. Ltd.	18.03.2013	22.03.2013	1.58
8	GH-16 (ECO CITY)	20,000	M/S Valuent Infradevelopers Pvt. Ltd.	18.03.2013	18.03.2013	1.58
9	GH-17 (ECO CITY)	20,000	M/S Maxblis Construction Pvt. Ltd.	18.03.2013	20.03.2013	1.58
10	GH-14 (ECO CITY)	20,000	M/S E-Homes Infrastructure Pvt. Ltd.	22.03.2013	20.03.2013	1.58
Total						15.46

Source: Information compiled by Audit.

Audit observed that in above cases the allottee sub-leased the plot without depositing the up-to-date dues. The dues against the allottee/sub-allottees were ₹ 124.70 crore and ₹ 208.40 crore as of December 2011 and March 2013 respectively, but in spite of the pending dues, NOIDA permitted sub-leases of the plots. On this issue, the Hon'ble Supreme Court has also observed¹⁹ that *"The Noida and Greater Noida Authorities were grossly negligent in reviewing and monitoring the progress of the projects and in collusion with leaseholders failed to take action concerning non-payment of dues and illegally permitted the group to sub-lease the land without payment of dues"*.

In further violation of its own rules, NOIDA also failed to levy transfer charges amounting to ₹ 15.46 crore on the plots sub-leased, thereby causing a loss to NOIDA.

From the above, it can be concluded that the above system of transfer and sub-division, instead of helping in implementation of the projects, helped the allottees to transfer land to third parties. Since land is a valuable and finite resource and transfers were between business entities, there is a certainty of transfers being made at a substantial profit, which should have accrued to NOIDA in the first place. It has also made a mockery of the selection procedure put in place by NOIDA and has resulted in encouraging trading of land rather than its development with the consequence that home buyers are saddled with unfinished projects.

¹⁹ writ petition (C) 940/2017.

In its reply, NOIDA accepted (September 2020) that the sub-lease deeds were executed inspite of dues after taking undertakings from the sub-allottees. In respect of terms and conditions regarding provision of transfer charges, NOIDA stated that it is necessary to bring more clarity so that provisions of sub-lease of land and sub-lease of flats are clearly distinguishable.

Though NOIDA has accepted allowing of sub-lease deed of sub-divided plots without depositing the dues, the same was not in line with its order (June 2009). Transfer charges were to be levied by NOIDA in case of sub-lease of land, which were not recovered, resulting in loss of revenue.

Post-allotment discrepancies relating to land allocation

5.1.9 After allotment by the Group Housing Wing, the possession of land is handed over to the allottee by the respective works circle²⁰ in whose jurisdiction the plot falls. The Works Circle is also tasked with developmental work on the acquired land. The Planning wing prepares the site plan, on the basis of which the plots are demarcated. The Planning wing also approves the layout plan/map of each plot and ensures that construction is carried out as per prevailing Building Bye-laws. The discrepancies observed in the above procedure are discussed hereunder:

Allotment without land availability

5.1.9.1 As per the terms of the brochures of schemes, allotted land will be handed over to the lessee after execution and registration of lease deed. Possession of part of the land shall not be allowed. Further, it was provided that if due to any *force majeure* or such circumstances beyond NOIDA’s control, NOIDA is unable to make allotment or facilitate the lessee to undertake the activities in pursuance of the executed lease deed, the deposits depending on the stages of payments will be refunded along with simple interest at four *per cent* per annum, if the delay in refund is more than one year from such date. In case NOIDA is not able to give possession of the land in any circumstances, deposited money will be refunded to the allottee with simple interest.

A Group housing plot no. GH-01, Sector 115 measuring 1,52,240 sqm was allotted to Ambience Projects & Infrastructure Limited under the Scheme GH-2007(01). Allotment letter was issued on 18 April 2007 for a total premium of ₹ 267.18 crore. Lease deed was executed on 18 July 2018 for 1,13,529.27 sqm land.

Audit noticed that the land was partially available for allotment at the time of launching of the scheme on account of compensation dispute with the local farmers. The allottee demanded (June 2008 to June 2017) to execute the lease deed and reschedule the payment schedule from NOIDA.

Audit observed that NOIDA, though not in a position to give possession of the entire land, did not cancel the allotment of the plot. During January 2008 to June 2015, NOIDA failed to get exact information about availability of the land from its own wings *i.e.* from Works Circle, Land Wing and Legal Wing. NOIDA could not investigate the difference in land availability of 1,45,658 sqm as per revenue records and the land available of 1,13,529.27 sqm as per

NOIDA could not provide land to the allottees as the allotments were made without availability of land. Despite being provision for refund of money deposited in the brochure within a year, NOIDA did not take any action. As a result possession was given after four to ten years at an initial allotment rate. Due to inaction, NOIDA suffered losses to the tune of ₹ 869.76 crore in three cases.

²⁰ Works Circle is a unit of Engineering wing which carries out development works in a designated area.

the dimension plan submitted. In the meanwhile, the allottee repeatedly requested to execute the lease deed and get possession of the available land and asked to provide dimension map of the available land. The Project Engineer submitted (16 June 2015) the dimension map of 1,13,529.27 sqm land. In February 2017, the allottee was informed about availability of 1,13,529.27 sqm land and the same was handed over to the allottee in July 2018 after more than 10 years of the allotment. As for the period from date of allotment (18 April 2007) to date of handing over of land, the allottee was neither given encumbrance free possession of land nor was money refunded (₹ 106.87 crore), NOIDA had to grant Zero period²¹ for this duration. It was further observed that the plot should have been cancelled in March 2008 and re-auctioned in 2018 at the prevailing rates. In 2018 the value of the available land had risen to ₹ 543.69 crore. Thus, due to inaction from the Group Housing Wing, NOIDA suffered losses to the tune of ₹ 344.45 crore²².

Similar losses were suffered by NOIDA in two other cases as shown in **Table 5.1.19**.

Table 5.1.19: Loss due to allotment of plots without availability of land

Sl. No.	Plot no. & sector	Name of allottee	Date of allotment	Area of plot in the brochure (in sqm)	Allotment rate (₹ per sqm)	Area of plot as per lease deed (₹ per sqm)	Date of lease deed	Rate at the time of lease deed (₹ per sqm)	Loss to NOIDA (₹ in crore)
1	GH-03, Sector 144	Unitech Limited	14.03.2011	1,00,400	23,640	96,741.50	16.07.2015	66,610	415.70
2	GH-01, Sector 118	IVRCL Infrastructure & Projects Limited	18.04.2007	1,33,750	17,050	1,33,750.00	19.04.2012	25,245	109.61
Total									525.31

Source: Information compiled by Audit.

Thus, NOIDA proposed allotment of land which they did not possess and resultantly had to provide zero period to the allottees. It also failed to cancel allotment of the plots which resulted in non-realisation of potential revenue to the tune of ₹ 869.76 crore (₹ 344.45 crore + ₹ 525.31 crore) which could have been realised had these three allotments been made from unencumbered land.

In its reply, NOIDA accepted (September 2020) that in all the three cases allotment of land without its availability had been against the interest of NOIDA for which responsibility will be fixed after investigation. It was stated that in future, land availability will be ensured at the time of allotment.

The compliance of reply of NOIDA will be reviewed in next audit.

Loss due to non-levy of stamp duty on Purchasable Floor Area Ratio (FAR)

5.1.9.2 As per GoUP order²³ (16 November 2015), stamp duty at the applicable rate was leviable on the amount realised for additional FAR granted to an allottee. The Government order asked Infrastructure and Industrial

²¹ Zero period is the period for which NOIDA does not charge interest on the outstanding premium.

²² {1,13,529.27 sqm*(₹ 47,890-₹ 17,550)}

²³ G.O. no-26/2015/1324/94 stamp registration-2-2015-700(349)/15.

Development Department to direct all authorities in the State to get supplementary deed for the amount of additional FAR registered after depositing the requisite stamp duty.

In this context, NOIDA allowed additional FAR to allottees on purchasable basis as per Noida Building Bye-laws 2010. Audit observed that in 18 cases purchasable FAR worth ₹ 540.68 crore (**Appendix 5.1.6**) was granted to allottees on which stamp duty was not levied. Non-imposition of stamp duty resulted in loss to the Government exchequer to the extent of ₹ 27.03 crore²⁴.

In reply, NOIDA stated (August 2020) that grant of additional FAR does not result in increase in immovable property hence no sale deed is registered and no stamp duty is got deposited.

The reply of NOIDA is not acceptable as the Government order clearly states that the consideration received for additional FAR amounts to increase in the value of the land, hence a supplementary lease deed should be registered after depositing stamp duty.

Failure of the Finance Wing in Group Housing Allotments

5.1.10 The Finance Wing of NOIDA deals with all financial and accounting matters and offers its comments and suggestions on all matters having financial implication. Finance Controller (FC) is the head of the Finance Wing who is assisted by Accounts Officers and other staff. Being the head of the Finance Wing, the FC is responsible for safe custody of the receipts of NOIDA.

The banks authorised by the Finance Wing for collection of instalments/other dues have a separate account for each scheme. The banks send the bank statement of each scheme account along with challans of all deposits received against the scheme to the Finance Wing.

Audit noticed that deposits made by the allottees were not being reconciled with the challans and bank statements by the Finance Wing. It was further observed that only a few challans in original were found in the files checked by audit. Therefore, accuracy and correctness of the deposit amounts shown in the MIS system against the allottees could not be ensured in audit due to non-reconciliation by NOIDA.

In its reply, NOIDA stated (August 2020) that necessary modification is being made in view of the audit observation.

Case study

Irregular appropriation of amount deposited against surrender of plot GH-02, Sector 143

Surrender clause in the brochure for Group Housing Scheme GH- 2010(IV) provided that:

- i. in case of surrender after the deposit of reservation money, but before the date of deposit of the allotment money, 100 *per cent* of the registration money shall be forfeited and any deposit over and above the registration money may be refunded without any interest.

²⁴ Five *per cent* of ₹ 540.68 crore.

ii. in case of surrender after the deposit of the allotment money but before the execution of the lease deed, full amount of the registration money and any deposit over and above the registration money shall be forfeited.

Under the scheme, plot no. GH-02, Sector 143 measuring 2,00,247.28 sqm was allotted to Unitech Ltd. on 13 October 2010 at a premium of ₹ 472.98 crore.

As per the conditions of the brochure, the successful bidder was to pay five *per cent* of the total premium of the plot as reservation money i.e. ₹ 23.65 crore after adjusting registration money of ₹ 10 crore deposited at the time of submission of tender within 30 days from the date of issuance of acceptance letter. The allottee, on issue of the formal allotment letter was required to pay a further five *per cent* i.e. ₹ 23.65 crore as allotment money within 60 days from the date of issuance of such allotment letter *i.e* by 11 December 2010.

The allottee deposited reservation money of ₹ 13.65 crore on 11 October 2010. The allottee applied on 25 February 2011 for surrender of the plot confirming that he has not paid allotment money. NOIDA on such confirmation accepted the surrender application of the allottee on 08 March 2011 and refunded ₹ 13.65 crore to the allottee after forfeiting ₹ 10 crore registration money as full and final payment.

Audit observed that in addition to the reservation money (₹ 23.65 crore deposited on 11 October 2010), the allottee deposited ₹ 23.65 crore on 11 December 2010 as allotment money in HDFC Bank. However, the allottee on 13 December 2010 requested the bank to credit the amount deposited in the name of Plot no. GH-01, Sector-117, which was previously allotted to them during April 2007. On such request from the allottee, HDFC Bank certified that payment may be considered for Plot no. GH-01, Sector-117 against instalment. Subsequently, in reference to HDFC Bank's letter dated 13 December 2010, NOIDA's FC sought a clarification from the bank on 01 April 2011 regarding the payment status. The bank informed that the amount was deposited on 11 December 2010 by showing the plot no. GH-02 Sector-143 which was credited against property GH-01, Sector-117 towards instalment on the request of the allottee on 13 December 2010 by correction made in the challans. The above facts show that ₹ 23.65 crore was deposited by the allottee for the surrendered plot.

Audit further noticed that a total amount deposited by the allottee *i.e.* ₹ 47.30 crore (reservation money ₹ 23.65 crore and allotment money ₹ 23.65 crore) should have been forfeited, but NOIDA forfeited only the registration money of ₹ 10 crore. NOIDA, on the request of the allottee and his statement that he has not deposited the allotment money and without confirming the facts from the bank refunded ₹ 13.65 crore to the allottee, which resulted in short forfeiture of ₹ 37.30 crore and undue favour to the allottee to the extent of ₹ 37.30 crore along with interest of ₹ 13.51 crore (calculated on the refunded amount of ₹ 13.65 crore at the rate of 11 *per cent* simple interest for the period 1 April 2011 to 31 March 2020). In addition to that the amount of ₹ 23.65 crore which was to be forfeited was adjusted from the dues against Plot no. GH-01, Sector 117 (₹ 22.11 crore towards the dues against the first instalment due on 30 November 2010 and ₹ 1.54 crore towards the dues against the IInd instalment due on 30 May 2011), which resulted in loss of ₹ 23.65 crore. Thus, NOIDA incurred a total loss of

₹ 120.42 (Principal ₹ 60.95 crore and interest ₹ 59.47 crore²⁵ thereon).

The FC sanctioned the refund without verifying the amount deposited by the allottee as allotment money and thereafter, in spite of getting verification from the bank and having full knowledge of the appropriation carried out by NOIDA through altering the challan at the behest of the allottee, failed to recover the payment from other properties allotted, thereby becoming complicit in the loss to NOIDA.

In its reply, NOIDA stated (August 2020) that ₹ 13.65 crore was refunded to the allottee after forfeiting ₹ 10 crore on the basis of application dated 25 February 2011 for surrender of the plot, in which the allottee mentioned that no allotment money was deposited against the surrendered plot. NOIDA further stated that although the money was deposited for the surrendered plot but after deposit, the money was transferred to the credit of another plot by the bank.

Thus, NOIDA accepted the fact that money was deposited against the surrendered plot by the allottee. As per the brochure condition, date of surrender was to be the date on which such application is actually received in NOIDA. The allottee applied for surrender on 25 February 2011, i.e. after the deposit of allotment money for the surrendered plot. Hence, allowing of appropriation of ₹ 23.65 crore and refund of ₹ 13.65 crore was both irregular. The undue benefit to the allottee was further compounded by adjusting the amount of ₹ 23.65 crore against the other plot. The above indicates lack of due diligence on the part of the officials²⁶ and disregard of rules to grant undue favours.

Dues pending after lapse of term

5.1.10.1 As per the terms and conditions of the brochure regarding payment, the premium for allotted plot is payable in equal instalments in eight years after a moratorium period of two years, that is, over a ten-year period from the date of allotment, the entire payment should be made by the allottee.

Audit observed that in 65 out of 76 cases (**Appendix-5.1.7**) where allotments had been made before 01 April 2010 (ten years prior to 31 March 2020), there were amounts outstanding against the allottees. Against the allotment value of ₹ 9,302.22 crore, the outstanding amount was ₹ 14,817.89 crore (as on 31 March 2020). Thus, NOIDA had failed to take action against the builders even after lapse of the tenure for payment and in the meanwhile, the outstanding amount has increased substantially.

In its reply, NOIDA stated (September 2020) that it is facing legal difficulty in recovery of dues and cancellation of lease deed due to creation of third party rights in favour of buyers. Recovery certificates for dues of ₹ 1,722.55 crore have been issued to the defaulters.

From the reply, it is evident that due to lack of pursuance, the recovery of dues has now become marred by legal hurdles which has consequently adversely affected the finances of NOIDA. In this regard the Hon'ble Supreme Court has

²⁵ Interest at the rate of 11 *per cent* per annum amounting to ₹13.51 crore on ₹13.65 crore for the period 01 April 2011 to 31 March 2020. Interest at the rate of 11 *per cent* per annum amounting to ₹45.96 crore on ₹47.30 crore for the period 01 June 2011 to 31 March 2020.

²⁶ FC and AGM (GH).

also taken a dim view of the defaults and the inaction thereon by NOIDA against the defaulting builders in the case of Bikram Chatterjee and others vs. Union of India and others, as detailed in **Paragraph 5.1.3**.

Allotments made in spite of pending dues

NOIDA continued to make allotments despite knowing that the allottees had been defaulting in making payments. As a result, the dues of NOIDA have spiralled to ₹ 9,828.49 crore in the allotment to two groups.

5.1.10.2 In the context of recovery of arrears, the UPIAD Act, 1976 provides that where any transferee makes any default in the payment of any consideration and money or instalment thereof or any other amount due, on account of the transfer of any site or building by NOIDA or any rent due to NOIDA in respect of any lease, or where any transferee or occupier makes any default in payment of any fee or tax levied under this Act, the CEO may direct that in addition to the amount of arrears, further sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty.

As discussed earlier in **Paragraph 5.1.3**, only 37.17 per cent of the total projects have been completed till date (31 March 2020) and the dues of NOIDA against all allottees stood at ₹ 18,633.21 crore. Audit analysed the position of allotments made *vis-à-vis* the position of dues pending and observed that NOIDA continued making allotments in spite of pending dues as brought out in three of the six test-checked cases as detailed in **Table 5.1.20**.

Table 5.1.20: Allotments to Ultra Home Construction Private Limited and Amrapali Homes Projects Private Limited (Amrapali Group Companies)

Sl. No	Date of allotment	Plot no. & Sector	Premium (₹ in crore)	Date of approval of technical bid	Total dues at the time of technical bid	Dues as on 31.03.2020 (₹ in crore)	Remarks
1	14.02.2007	GH-01, Sector 119	98.05	16.01.2007	NIL	164.31	There were no dues against earlier allotted plots at the time of technical bid.
2	19.06.2009	GH-01, Sector 45	84.00	18.12.2008	NIL	215.12	
3	29.06.2009	GH-03, Sector 45	107.46	26.06.2009	NIL	311.12	
4	10.12.2009	GH-03, Sector 120	143.61	01.12.2009	9.51	436.85	Dues at the time of technical bid were related to plot GH-01, Sector 119.
5	03.03.2010	GH-01, Sector 76	496.82	02.02.2010	19.63	893.90	
6	03.03.2010	GH-02, Sector 76	166.10	02.02.2010	19.63	296.75	
Total						2,318.05	

Source: Information compiled by Audit.

Similarly, it was observed that allotments were made in the following manner to Unitech Group as detailed in **Table 5.1.21**.

Table 5.1.21: Allotments to Unitech Limited and Unitech Group

Sl. No	Date of allotment	Plot no. & Sector	Premium (₹ in crore)	Date of approval of technical bid	Total dues at the time of technical bid (₹ in crore)	Dues as on 31.03.2020 (₹ in crore)	Remarks
1	26.06.2006	Sector 96, 97 & 98	1621.24	22.05.2006	NIL	4,646.98	-
2	8.04.2007	GH-01, Sector 113	378.04	09.02.2007	NIL	1,176.12	Allottee did not pay a single instalment since allotment.
3	18.04.2007	GH-01, Sector 117	503.43	09.02.2007	NIL	1,459.79	Allottee did not pay instalment after December 2010.
4	14.03.2011	GH-03, Sector 144	228.69	04.11.2010	1434.70	227.55	Dues against allotments at S. No. 2 and 3 above were ₹ 703.91 crore at the time of present allotment but the dues were rescheduled on 30.11.2010.

Sl. No	Date of allotment	Plot no. & Sector	Premium (₹ in crore)	Date of approval of technical bid	Total dues at the time of technical bid (₹ in crore)	Dues as on 31.03.2020 (₹ in crore)	Remarks
							Plot was sub-divided and GH-3C & 3D was transferred to sub-allottee. Allottee did not pay any amount for land retained by him.
Total						7,510.44	

Source: Information compiled by Audit.

From the above tables, it is evident that NOIDA continued to make allotments despite knowing that the allottees had been defaulting in making payments. As a result, the dues of NOIDA have spiralled to ₹ 9,828.49 crore in the above cases as of 31 March 2020.

While the Act has prescribed penal measures for defaulters, the officials of NOIDA failed to take appropriate action. These cases serve to affirm the observation of the Hon’ble Supreme Court²⁷ regarding the dereliction of duty by the officials of NOIDA and of their connivance with the defaulters.

In its reply, NOIDA stated (September 2020) that action is being taken at the level of Government against the allotment of properties to Amrapali Group. Responsibility shall be fixed after investigation in respect to allotment made to UNITECH inspite of pending dues. Government also reiterated (September 2020) its resolve to take action against those found responsible for omissions, if any, after due process of inquiry.

The reply confirms the lack of mechanism for subsequent allotment to allottees who were, as in the instant cases, in huge default in payment of dues of earlier allotment as well as omission by officials of NOIDA in reporting the pendency of dues. In view of the facts of the case, the huge amounts involved and the pronouncement of the Hon’ble Supreme Court it is imperative that responsibility should be fixed against the delinquent officials.

Grant of mortgage permission with outstanding dues

5.1.10.3 The Policies and Procedures for Residential Property Management 2002 of NOIDA provided that mortgage permission would be granted only on the basis of clearance of up-to-date dues. In the following cases audit observed that mortgage permission was granted to the allottee in spite of outstanding dues as detailed in **Table 5.1.22**.

Table 5.1.22: Irregular permission for mortgage of plots

Sl. No.	Plot number	Name of allottee and date of allotment in bracket	Date of permission	Plot area (in sqm)	Premium (₹ in crore)	Dues as on 31 March 2020 (₹ in crore)	Remark
1.	GH-05 Sector 110	Three C Universal Developers Pvt. Ltd. (10 December 2009)	14.08.2012	1,64,120	372.55	632.04	Mortgage permission was granted despite pending dues of lease rent ₹ 1.43 crore
2.	GH-05B Sector 137	Panchsheel Exotica Developers Pvt Ltd (12 March 2010)	13.12.2011	22,565.77	46.15	112.91	Mortgage permission was granted despite pending dues of ₹ 2.60 crore

²⁷ Writ petition (C) 940/2017 Bikram Chatterjee and others vs. Union of India.

Sl. No.	Plot number	Name of allottee and date of allotment in bracket	Date of permission	Plot area (in sqm)	Premium (₹ in crore)	Dues as on 31 March 2020 (₹ in crore)	Remark
3.	GH-03, Sector 100	Three C Universal Developers Pvt. Ltd.	13.12.2010	1,20,009	252.02	305.86	Mortgage permission of this plot was granted for project of another plot GH-05, Sector 110 with the allottee. Dues of GH-03 Sector 100 and of GH-05 Sector 110 as on 13.12.2010 were ₹ 1.33 crore and ₹ 0.98 crore respectively.
4.	GH-01, Sector 119	Amrapali Patel Platinum	24.12.2009	54,169	98.05	164.31	Mortgage permission was granted despite pending dues of ₹ 9.50 crore
				3,60,863.77	768.77	1,215.12	

Source: Information compiled by Audit.

From the table above it is evident that the permission given by NOIDA was without considering the outstanding dues. This has imperilled the recovery of NOIDA's dues as well as those of lending institutions. Against the allotted value of ₹ 768.77 crore, the dues have swelled to ₹ 1,215.12 crore as of 31 March 2020. Similar lapses have been viewed gravely by the Hon'ble Supreme Court in its judgement²⁸, dated 23 July 2019 wherein it was stated that:

“In the instant case dues of the Noida/Greater Noida authorities have been collected from the allottees by the promoters but the authorities have permitted diversion of said amount by not taking any action in view of the chronic default right from the beginning. Though they knew that the promoter had booked the flats, even the permission to grant sub-lease of the plot had been granted in totally illegal manner without payment of dues of premium and lease rent etc. Conditional permission to the mortgage was issued without payment of the premium lease money etc. so as to perpetuate the fraud being done by the promoters.”

In the above cases, NOIDA itself permitted violation of the laid down conditions to facilitate the allottees against the interest of NOIDA and granted the mortgage permission.

In its reply, NOIDA stated (September 2020) that in the case of GH-05, Sector 110, up-to-date payment was taken before giving permission. However, no reply was furnished by NOIDA in respect of pending dues of Panchsheel Exotica Developers Pvt. Ltd. (Sl. No. 2). In respect of observation on Amrapali Patel Platinum (Sl. No. 4), it was stated that permission was accorded in anticipation of grant of zero period to the allottee. Further, NOIDA accepted the contention of the Audit and stated that NOIDA will make appropriate changes in its mortgage policy in view of the

²⁸ Writ petition (C) 940/2017 Bikram Chatterjee and others vs. Union of India.

analysis/comments made by the Hon’ble Supreme Court and Audit to avoid any misuse.

The reply of NOIDA that there were no pending dues against GH-05, Sector 110 is in variance with its own dues sheet showing dues of ₹ 1.43 crore. In the last case it has been accepted that permission was accorded in anticipation of approval of zero period which was also irregular.

Undue favour by making an exception to the prevalent costing method

5.1.10.4 A scheme GH-2009 (V) ECO City in Sector 75 for area measuring 6,00,000 sqm was launched during 24 December 2009 to 18 January 2010 at a reserve price of ₹ 15,700 per sqm.

NOIDA allotted the sector without availability of entire land and allotted balance land at the initial allotment rate and suffered loss of ₹ 483.55 crore.

Clause N of the brochure regarding possession provided that NOIDA had earmarked 6,00,000 sqm of land for the Eco City out of which approximately 3,96,763 sqm of the land had already been acquired and was in possession of NOIDA that should be made available to the lessee. The allotment of balance land would be done as soon as the same is acquired and physical possession taken, for which reservation letter would be issued along with the allotment letter for the already acquired land. Allotment letter(s) of the area(s) contiguous to the already acquired and allotted land shall be issued as and when the balance land (in full or part) is acquired and available for handing over possession to the successful bidder.

Further, in case of allotment of any additional land, the payment of the premium of the additional land shall be made in lump sum within 30 days from the date of communication of the said additional land.

The Group Housing plot was allotted to AIMS Max Gardenia under the scheme at quoted price of ₹ 15,762 per sqm. Allotment letter was issued on 09 June 2009 for the area available of 3,30,474.67 sqm, lease deed of which was executed on 16 June 2010.

As per the condition of the brochure, 6,00,000 sqm land was earmarked to the allottee and was to be provided as and when acquired by NOIDA. The details of the land provided by NOIDA to the allottee are detailed in **Table 5.1.23**.

Table 5.1.23: Allotment of land in Eco City, Sector 75

Sl. No.	Area of the land allotted (in sqm)	Date of allotment	Date of lease deed
1.	3,30,474.67	09.06.2010	16.06.2010
2.	23,916.00	25.01.2011	31.01.2011
3.	2,09,668.87	23.11.2011	01.12.2011
4.	35,940.46	08.12.2016	08.12.2016

Source: Information compiled by Audit.

Audit observed that at the time of initiation of the scheme (July 2009), Sector 75 was classified under residential category and out of 6,23,860 sqm land in the said Sector, only 2,51,160 sqm was under NOIDA’s possession and the rest of the land was yet to be acquired. The scheme for allotment was proposed as NOIDA anticipated encroachment on the land. On this basis, the CEO appointed a committee²⁹ on 10 July 2009 for preparation of scheme terms and conditions. The Committee recommended³⁰ that as the land is not

²⁹ The Committee was headed by OSD and Chief Legal Advisor, Financial Controller, Sr. Project Engineer (I), Sr. Town Planner and Member Secretary, AGM (GHP) were its members.

³⁰ Approval of the CEO was taken on 13 July 2009.

fully acquired, the allotment of land could be made on the basis of possession acquired from time to time. The land was to be used in the manner depicted in **Table 5.1.24**.

Table 5.1.24: Permissible usage of land in Eco City, Sector 75

Permissible usage (in per cent)	
Institutional & Facilities	Minimum 05
Parks, Open spaces	Minimum 15
Roads & Public Parking	Minimum 20
Commercial	Maximum 10
Residential (Group Housing)	Maximum 50

Source: Information furnished by NOIDA.

It was observed that as per Sector 75 layout submitted by the Senior Town Planner (STP), available land was 5,40,000 sqm residential land and 60,000 sqm commercial land. The reserve price was fixed at ₹ 15,700 per sqm as per calculation done by the Finance wing and approved by the CEO on 11 September 2009. At the time of approval of the brochure, it was reiterated that since the land was not fully acquired, the allotment/possession would be made on the basis of possession acquired.

In the above process, Audit observed the following irregularities:

- In spite of above decision to allot land based on possession, NOIDA allotted the entire Sector without even obtaining possession. As per the brochure conditions 6,00,000 sqm land in the sector was reserved for allotment to the allottee, to be handed over as and when land was available with NOIDA. With the above condition for reservation of land, NOIDA fixed the price of the unacquired land also at the initial allotment rate of ₹ 15,762 per sqm though it allotted the balance land in the years 2010-11, 2011-12 and 2016-17, which constituted an undue benefit to the allottee.
- Further, the STP of NOIDA reported that the land use of the Sector was 90 per cent residential and 10 per cent commercial. Accordingly, the pricing of the Sector should have been done on the basis of land use. But NOIDA, on the recommendation of the Committee, decided to fix the reserve price of the plot in a unique manner. There was no such provision prevalent in NOIDA and in NOIDA Building Bye laws for development of the plot as ECO City at an individually calculated rate instead of reserve price fixed for the Group Housing category as a whole. There was no justification on record for giving deduction for internal development charges, which further reduced the rates. NOIDA prepared the Sector costing afresh in the following manner as detailed in **Table 5.1.25**.

Table 5.1.25: Calculation of reserve price for Eco City, Sector 75

Category of Land (Weightage based on prevailing category rate)	Effective rate of NOIDA during 2009-10 (per sqm)
Institutional (Five per cent)	390
Commercial (10 per cent)	5,500
Group Housing (50 per cent)	10,200
Park, Open Spaces (35 per cent)	962.5
Less: Cost of Internal Development	(1,355.67)
Final costing	15,696.83
Rate fixed	15,700

Source: Information furnished by NOIDA.

Audit observed that the method of costing was against prevailing norms and also contrary to the expert advice of the Senior Town Planner. This was designed to benefit the allottee at the cost of NOIDA since in no other case has the above method has been adopted. Taking prevailing rates for Group Housing as on the date of allotment, the premium of the plot is as detailed in **Table 5.1.26**.

Table 5.1.26: Premium to be charged for land in Eco City, Sector 75

Year	Area (in sqm)	Rate per sqm	Premium (₹ in crore)
2009-10	3,30,474.67	20400	674.17
2010-11	23,916.00	22440	53.67
2011-12	2,09,668.87	25245	529.31
2016-17	35,940.46	47890	172.12
Total			1,429.27

Source: Information compiled by Audit.

Thus, by carrying out a unique costing, NOIDA allotted land worth ₹ 1,429.27 crore at ₹ 945.72 crore and suffered loss of ₹ 483.55 crore, thereby also extending undue favour to the allottee.

Audit further observed that the allottee subsequently subdivided the plot into 11 parts in favour of 10 parties besides itself, as discussed in **Paragraph 5.1.8.5**. It clearly brings out the fact that the experiment of NOIDA to allot the entire Sector, without even actual possession, was faulty. Since land is a valuable and finite resource and transfers were between business entities, there is a certainty of transfers being made at a substantial profit, which should have accrued to NOIDA in the first place.

In its reply, NOIDA stated (August 2020) that the Board is competent to determine the methodology for development of any Sector. Sector 75 was allotted with the aim of developing it as a mini township and it is not mandatory to develop it on lines of existing schemes. Development Authorities can experiment with their schemes from time to time. It was not appropriate to take reserve price of the developed land for group housing in respect of undeveloped land. Further, it was stated that reservation of land to the allottee was necessary for development as only 60 *per cent* land was available at the time of allotment. Land rates were frozen to avoid uncertainty in receipt and outstanding at the time of allotment. Land use of Sector 75 was institutional, commercial, park and open areas along with group housing. In this process, NOIDA received instalment, lease rent and interest thereon on the balance land also. The losses pointed out by Audit did not actually accrue and there were no procedural lapses in allotment.

The reply of NOIDA is not acceptable as the loss pointed out by Audit was in terms of prospective revenue which NOIDA failed to collect due to its flawed pricing experiment. Though the CEO had decided to allot land on the basis of possession acquired from time to time, the scheme was brought for the entire area which effectively fixed the rates for unacquired land also. The stated purpose of the scheme was to avoid encroachment of land, hence only acquired land should have been kept within the purview of the scheme to avoid encroachment. The fact that after grant of possession of land, the allottee itself sub-leased it to 10 other entities clearly brings out that the experiment of NOIDA to allot the entire sector, without even actual possession, was ill-considered. Thus, the experiment of NOIDA was designed to benefit the

allottee at the expense of NOIDA's revenue and was clearly not in public interest.

Conclusion

The allotments made by NOIDA to the Group Housing allottees during the period covered by audit is one marked by utter disregard for the conditions for allotment, allocation of plots to a number of ineligible allottees, along with subsequent permission to transfer, mortgage or exit from the project; in many cases where large outstandings were due to NOIDA. More than 40 per cent of total allotments during the audit period were made between 2009 to 2011.

The brochure forms the foundation of NOIDA's agreement with the allottee. Dilution of the conditions in brochure by the CEO without prior approval of the Board shows a complete lack of financial prudence and abdication of duty by the Board of NOIDA as public trustee towards the prospective buyers of housing units who have consequently faced financial distress over the years. The extra mileage given to allottees of plots and subsequent relaxation of conditions without any proper justification is questionable and cannot be overlooked.

Allotments in a number of cases essentially were of temporary and transitory nature. Entities without financial capacity were left to execute the projects. In addition to this, huge outstanding dues of over ₹ 18,000 crore of NOIDA were pending against Group Housing allottees as on 31 March 2020. Only 37.17 per cent of the Group Housing projects sanctioned during the audit period had been completed. In 24 schemes in which allotments were made during 2005 to 2018, 1,30,005 flats were sanctioned for construction against which only 72,697 flats were completed as on 31 March 2020. As a result, the home buyers are saddled with incomplete projects wherein they have invested their life savings. Instead of monitoring and regulating the allottees, the conditions were watered down in successive brochures to the detriment of NOIDA and to the benefit of the allottee builders.

NOIDA, in spite of being aware of the deteriorating position, failed to act against the builders and also failed to take action against its own officials for their dereliction of duty and their role in permitting/abetting the continuing infractions. In this regard, the observations of Hon'ble Supreme Court in the case of Bikram Chatterjee and others vs. Union of India and others on the issues related to Amrapali Builders, sums up the state of affairs:

“The NOIDA and Greater Noida Authorities were grossly negligent in reviewing and monitoring the progress of the projects and in collusion with leaseholders failed to take action concerning non-payment of dues and illegally permitted the group to sub-lease the land without payment of dues. Bogus allotments of flats were made. There were other irregularities galore.

The Authorities and Bankers have violated the doctrine of public trust and their officials, unfortunately, acted in collusion with builders.”

Recommendations		
Recommendation Number	Recommendation	Response of the Government
8	Government may consider investigating the nexus between officials of NOIDA and builders and also take action against officials responsible for/involved in abetting irregularities in allotment and post allotment transfer that was detrimental to the interest of the Authority, Government and the home buyers.	Accepted. GoUP directed NOIDA to investigate the cases pointed out by Audit and send suitable recommendation for action, if any fault was found in this regard.
9	NOIDA should ensure effective monitoring of huge pendency of dues together with its recovery from wilful defaulters.	Accepted
10	The regulations/orders with respect to mortgage, mutation and exit from projects should be reviewed/revised to minimise discretion at the hands of the officials.	Accepted