

CHAPTER–V (2)
**Allotment of Builders/
Group Housing Plots**

CHAPTER-V

Allotment of Properties

V (2) Allotment of Builders/Group Housing Plots

Introduction

5.2.1 As per GNIDA Building Regulation, 2010 ‘Group Housing’ means a premise of size not less than 2,000 square meter (sqm) comprising either residential flats or a cluster of flats and independent houses/villas with basic amenities like parking, park, convenience shop, public utilities, *etc.*

GNIDA allotted plots measuring 2,000 sqm to 4.5 lakh sqm on lease basis for 90 years to Builders/Group Housing societies¹ for construction of the plotted/flatted residential dwellings and their consequent sub-leases to the ultimate dwellers by the respective builders/societies. The allotments were made by inviting bids after fixing the reserve price. GNIDA also allowed subsequent sub-division and sub-lease of these plots by the original allottees subject to minimum area of 20,000 sqm/10,000 sqm of each sub-divided plot as decided from time to time.

Builders Division of GNIDA deals with allotment of Builders/Group Housing plots and follows-up the post allotment compliances. Planning Division of GNIDA is responsible for monitoring the compliance of the building completion. The process involved in stages from launching the scheme till follow-up of the post allotment compliances is depicted in *Paragraph 5.1* in the Chapter-V on Allotment of Properties - General.

Status of allotments

5.2.2 GNIDA allotted 189 Builders/Group Housing plots² with total area of 1,19,55,301 sqm³ (2,954.22 acre) since its inception (January 1991) to 2014-15. Thereafter, no allotment was made under this category till date (March 2021). Of the above 189 plots, 42 builder plots with area of 53,16,598 sqm were sub-divided in 134 plots during March 2010 to March 2021. Thus, a total of 281 Builder/Group Housing plots⁴ (including sub-divided plots) existed at the end of March 2021.

During the period 2005-06 to 2014-15⁵, GNIDA allotted 94 Builder/Group Housing plots⁶ with total area of 81,65,041 sqm⁷ (2,017.63 acre). After taking into account sub-divided plots, a total of 186 (Builder: 183; Group Housing: 3) Builder/Group Housing plots (carved out of these 94 plots) existed at the end of March 2021.

The year-wise and scheme-wise details of total number of plots allotted during the period 2005-06 to 2020-21 with their aggregate area and value of land

¹ The housing schemes were categorised as ‘Allotment of Group Housing Plots’ and ‘Builders Residential Plots’ in the respective scheme brochures of GNIDA.

² Builders plots: 111 and Group Housing plots: 78.

³ Builders plots: 92,13,343 sqm and Group Housing plots: 27,41,958 sqm.

⁴ Builders plots: 203 and Group Housing plots: 78.

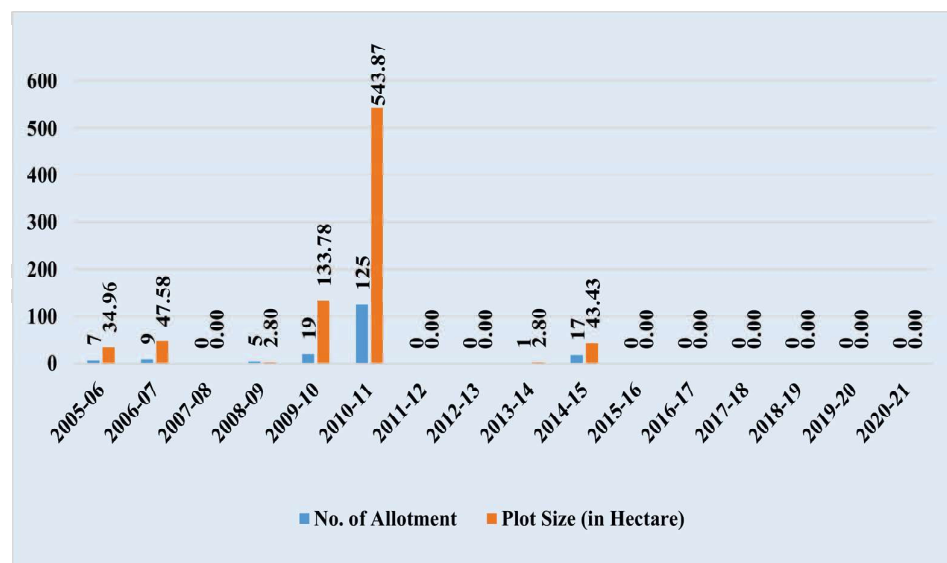
⁵ Audit covered the period from 2005-06 to 2017-18. However, the status of events covered in the Chapter has been updated upto 2020-21.

⁶ Builders plots: 91 and Group Housing plots: three.

⁷ Builders plots: 80,92,229 sqm and Group Housing plots: 72,812 sqm.

premium along with details of their coverage in sample are given in **Appendix-5.2.1**. The year-wise number of plots and the area allotted during these years is also depicted in **Chart 5.2.1**.

Chart 5.2.1: Year-wise allotment of Builders/Group Housing Plots

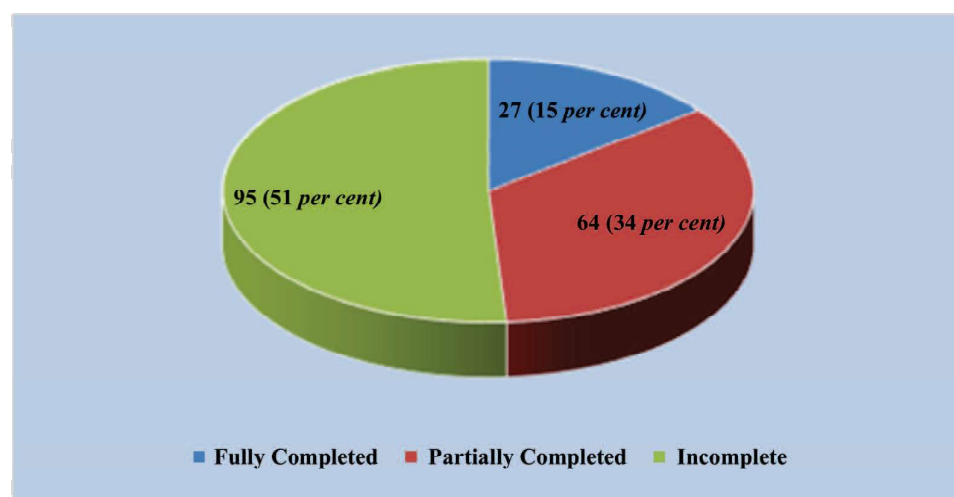


Source: Information furnished by GNIDA.

It can be seen that maximum allotments of 144 plots having area of 677.65 hectare (67,76,481 sqm) were done during 2009-10 and 2010-11. This translated to approximately 79 per cent and 84 per cent of total allotments in terms of number and area respectively allotted during the period 2005-06 to 2020-21.

Completion status: The year-wise details of the allotments where the stipulated completion period of first phase/full construction was already over vis-a-vis the status of actual completion as of April 2021 is given in **Appendix-5.2.2**. The summarised status of completed (part/full) and incomplete projects in respect of the allotments is shown in **Chart 5.2.2**.

Chart 5.2.2: Status of Completion of Projects (In numbers)



Source: Information furnished by GNIDA.

It is evident from the chart above that out of 186 plots (including sub-divided plots) allotted during the period 2005-06 to 2014-15, only 27 Builder/Group Housing allottees could complete their projects as against targeted completion of 148 projects as of April 2021. Further, 95 Builders/Group Housing allottees could not even partially complete the construction.

Amounts overdue against allottees: The allottees are required to pay premium⁸ and lease rent against the allotted plots. In case of default, penal interest at the rate of three *per cent* is levied on the defaulted amount as per brochure conditions.

As of April 2021, overdue against the land premium (principal), lease rent and interest was ₹ 12,059.08 crore against 172 allottees (61.21 *per cent*) out of 281 allotments (including sub-divided plots) made since inception (1991) to 2014-15. Out of this, overdue of ₹ 10,732.44 crore pertained to allotments made during the year 2005-06 to 2014-15, as detailed in **Table 5.2.1**.

Table 5.2.1: Status of overdue amount against allottees

Period	Total Number of allotments	Number of allotments against which dues were outstanding	Overdue against defaulting allottees (₹ in crore)			
			Principal amount	Interest/ penal interest	Lease Rent	Total
2005-06 to 2014-15	186	151	4681.67	5961.48	89.29	10732.44

Source: Information furnished by GNIDA.

It is evident from the above that GNIDA has overdue of ₹ 10,732.44 crore to be recovered from 81 *per cent* of total Builder/Group Housing allottees as of April 2021.

The age-wise analysis of above overdue is detailed in **Table 5.2.2**.

Table 5.2.2: Age-wise analysis of overdue as of April 2021

Period of overdue	No. of defaulting allottees	Overdue against defaulting allottees up to April 2021 (₹ in crore)
Above 10 years	4	911.76
Five to 10 years	30	4675.82
Three to five years	32	1512.09
Below three years	85	3632.77
Total	151	10732.44

It may be seen from the above table that an amount of ₹ 7,099.67 crore was overdue from 66 allottees for more than three years, however, GNIDA did not cancel the plots of defaulting allottees in accordance with the terms and conditions⁹ of the allotment.

In view of the large pendency in delivery of flats due to persistent delay in completion of the projects by the builders and in the context of dues of the Authorities, the issues relating to plight of home buyers were discussed at various forums. In this regard, Hon'ble Supreme Court delivered a judgment in July 2019 in the case of Bikram Chatterji and Others vs. Union of India and

⁸ The balance land premium alongwith interest after adjustment of allotment money is recovered in instalments.

⁹ Allotments were liable to be cancelled in case of default on the part of the applicant/allottee/lessee for breach/violation of terms and conditions of registration/allotment/lease and/or non-deposit of allotment money.

Others¹⁰ on the issues related to Amrapali Builders. The facts of the case and observation of the Hon'ble Supreme Court are following:

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 projects, 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 either to the Authorities or to the banks. The dues of GNIDA alone stood at ₹ 3,234.71 crore as on 15 January 2019.

In the instant case, Hon'ble Supreme Court held (23 July 2019) 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 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 realisation 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

¹⁰ Writ Petition (C) 940/2017.

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 Supreme Court decided, in context of dues of Authorities, 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 by sale of other properties which have been created from the money diverted.

The landmark judgment in the above case has brought into sharp focus the issues plaguing the housing sector in NOIDA/GNIDA. Similar issues of incomplete projects by the allottees and huge pendency of dues of GNIDA, observed in the audit have been discussed in detail in the **Paragraphs 5.2.4 to 5.2.8.3.**

Audit Coverage

5.2.3 As per data obtained from GNIDA at the time of selecting sample (January 2018), GNIDA had allotted 188 plots¹¹ (Builders plots: 186 and Group Housing plots: 2) under Builders/Group Housing schemes during the period covered in Performance Audit, *i.e.*, 2005-06 to 2017-18. Out of these, allotment of 58 Builder/Group Housing plots were selected on the basis of stratified random sampling for detailed examination in the Performance Audit.

Out of cases selected in sample, the Builders Division of GNIDA furnished allotment files of only 35 Builder/Group Housing plots¹² and allotment files of 23 cases¹³ were not submitted during the course of audit from December 2018 to November 2019. Further, the Planning Division also did not submit 48 files of building completion and map approvals during the course of audit out of 58 allotments cases selected in sample.

Thus, Audit examined the allotment files of 35 plots¹⁴ submitted by Builders Division and ten files of building completion/map approvals submitted by Planning Division besides conducting joint physical verification of two sites.

Audit Findings

The audit findings as a result of examination of the records of the sample cases furnished to Audit and limited physical verification are discussed in succeeding paragraphs. These audit findings have been grouped as under:

¹¹ There was mismatch between the data of allotted plots submitted by GNIDA in January 2018 (188 plots as mentioned in Paragraph 5.2.3) and in April 2021 (186 plots as mentioned in Paragraph 5.2.2).

¹² Builders: 33 plots (including one cancelled plot); Group Housing: two plots.

¹³ Amrapali Leisure Valley Private Limited, Amrapali Dream Valley Private Limited, Amrapali Smart City Private Limited, Amrapali Smart City Private Limited, Amrapali Centurian Park Private Limited, Ansal Properties and Infrastructure Limited, Gaursons Hi-Tech Infrastructure Limited, Supertech Limited, Mahagun (India) Private Limited, AIMS Golf Town Developers Private Limited, ATS Infrastructure Limited, Nirala Infratech Private Limited, SJP Infracon Limited, Purvanchal Projects Private Limited, Steller Spring Private Limited, Earthcon Universal Infratech Private Limited, AVJ Developers (India) Private Limited, Starcity Buildcon Private Limited, Antriksh Engineers Private Limited, Assotech-Omni Consortium, Starcity Buildcon Private Limited, Decent Buildwell Private Limited and Anticement Infrastructure Private Limited.

¹⁴ Including one plot allotted to Unitech Limited which was although selected in the sample of 58 files in January 2018 and was examined but was cancelled by GNIDA due to defaults in payments.

- Launch of schemes without approval (*Paragraphs 5.2.4 to 5.2.4.2*);
- Deficiencies relating to schemes' brochures and brochure conditions not being complied with (*Paragraphs 5.2.5 to 5.2.5.16*);
- Irregularities in evaluation of bids and allotments (*Paragraphs 5.2.6 to 5.2.6.5*);
- Post allotment irregularities (*Paragraphs 5.2.7 to 5.2.7.13*); and
- Outcome of allotments of builder plots (*Paragraph 5.2.8 to 5.2.8.3*).

Launch of Schemes without approval

5.2.4 Brochure is a document containing complete terms and conditions for the allotment of properties. The terms and conditions of the brochure are also included in the lease deed. The schemes brochure needs to be approved by the Board prior to launch of the scheme. Further, in case of any change in land use required for launching a scheme, such change needs prior approval of GoUP. Cases of violation in this regard are discussed in succeeding paragraphs:

Terms and conditions of the schemes not approved by the Board prior to their launch

5.2.4.1 Sections 3 and 7 of the Uttar Pradesh Industrial Area Development Act (the Act), 1976 provide for constitution¹⁵ of the Authority, *i.e.*, GNIDA (as a body corporate hereinafter referred to as the Board) and power of Authority in respect of transfer of land respectively. As per Section 7 of the Act, "the Authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to Authority on such terms and conditions as it may, subject to any rules that may be made under this Act, think fit to impose".

The Board of GNIDA in its 20th meeting (26 March 1996) *inter alia* delegated the powers conferred under Section 7 of the Act to the CEO subject to the overall directions of the Board. Thus, the Board had not delegated full power to the CEO with respect to sale, lease or transfer of land.

In the context of allotment of land, the scheme brochure is an important document which governs the process of bidding, allotment and execution of the project. The brochure also specifies the terms and conditions of allotment, as decided by GNIDA. The prospective buyers 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 GNIDA 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 buyers¹⁶. In view of the underlying importance, the brochure of the schemes should have been discussed and approved by the Board before the launch of the scheme. Further, any changes to terms and conditions of allotment should have been approved by the Board.

¹⁵ Consisting of 11 members, *viz.*, five ex-officio members, five nominated (by State Government) members and one Chief Executive Officer.

¹⁶ The State Consumer Disputes Redressal Commission, UT Chandigarh in the case of Neha Ahluwalia *vs.* Omaxe Chandigarh Extension held (25 November 2019) that it is a settled law that brochure is a part of contract. The National Consumer Disputes Redressal Commission in the case of Brigadier (Retired) Kamal Sood *vs.* DLF Universal Limited also observed (20 April 2007) that it is a settled law that brochure is part of the promise on which the contract is based.

Audit noticed that a total of nine schemes for allotment of builder plots were launched during the period 2005-06 to 2014-15. Out of these nine schemes, CEO launched eight schemes¹⁷ without obtaining prior approval of the Board. The date of approval of these schemes by the CEO, the period of launch and status of their approval to the Board are given in **Table 5.2.3**.

Table 5.2.3: Status of sanction of schemes by the Board

Sl. No.	Name of the scheme	Date of approval by CEO	Period of launch	Date of approval by Board
1	BRS 11/2006	04-04-2006	10-04-06 to 09-05-06	Not put up to Board
2	BRS 01/2008-09	15-01-2009	16-01-09 to 06-02-09	Not put up to Board
3	BRS 01/2010(I)	21-01-2010	22-01-10 to 16-02-10	28-04-2010
4	BRS 02/2010	03-03-2010	06-03-10 to 23-03-10	28-04-2010
5	BRS 03/2010	21-06-2010	22-06-10 to 16-07-10	25-02-2011
6	BRS 04/2010	03-11-2010	11-11-10 to 10-12-10	25-02-2011
7	BRS 05/2010-11	21-02-2011	24-02-11 to 18-03-11	29-03-2011
8	BRS 01/2014-15	04-06-2014	05-06-14 to 26-06-14	Not put up to Board

Source: Main allotment files of Builders Division, GNIDA.

It is evident from above that although the brochures of the above schemes were approved by the CEO, these were not submitted to the Board for approval prior to launch of the schemes. Out of the above eight schemes, brochures of five schemes were submitted to the Board after 11 days to seven months from their launch period for *ex-post facto* approval by the Board. In the remaining three schemes, the brochures were not submitted to the Board even for the *ex-post facto* approval.

Despite the fact that the Board of GNIDA had not delegated full powers to the CEO with respect to sale, lease or transfer of land, CEO launched eight schemes without prior approval of the Board. Out of these, three schemes were not submitted to the Board even for *ex-post facto* approval.

As the terms and conditions of the scheme brochures were the most significant documents which governed the process of bidding, allotment, realisation of premium and the execution of the project and the full power of its approval was not delegated by the Board to the CEO, these terms and conditions were required to be apprised and approved by the Board prior to the launch of the schemes. In its absence, the Board failed to exercise control over the undue relaxations and lack of uniformity across the schemes as discussed in **Paragraphs 5.2.5 to 5.2.5.14**. This entails both a serious dereliction of duty by the concerned officials of GNIDA as well as oversight and control failure on the part of the Board.

During the Exit Conference (January 2021), GNIDA stated that as per Board's meeting dated 26 March 1996, full powers have been delegated to the CEO. They usually seek prior approval of the Board in important cases of policy change only and in rest of the cases *ex-post facto* approval/perusal is sought. On being pointed out by Audit that Government should look into the matter so that prior approval is sought when major issues are involved or there is a departure from established past approach, the State Government expressed its agreement in this regard and stated that in case of urgency, *ex-post facto* approval of the Board should be obtained.

The assertion of GNIDA as regards to delegation of full power by the Board to CEO is factually incorrect as the power delegated to the CEO was subject to the overall directions of the Board. Further, the contention of GNIDA that

¹⁷ Except scheme RTS 01/2010 where the Board had authorised the CEO for the determination of terms and conditions of the scheme. The scheme was, however, put up to the Board for *ex-post facto* approval on 28 April 2010.

prior approval of the Board in important cases of policy change was sought is also incorrect as cases of significant changes in the terms and conditions of allotment regarding permission to transfer/sale of the shareholdings in the consortium (*Paragraphs 5.2.5.9 and 5.2.5.10*), reduction in reservation and allotment money (*Paragraph 5.2.5.13*), allowance of higher Floor Area Ratio prior to the approval of the Government (*Paragraph 5.2.5.16*) and penalty for delay in submission of Building Plan (*Paragraph 5.2.7.8*) without seeking approval of Board were noticed.

Launch of scheme prior to approval of change in land use from GoUP

5.2.4.2 GoUP directed (23 September 1997) GNIDA that as GNIDA was in the National Capital Region (NCR), the regulations of the NCR were also applicable to GNIDA and therefore, any land use change may not be done without the prior approval of the Government.

GNIDA, in its 81st Board meeting, approved (November 2009) interchange of various land uses of the pre-planned land. The interchange was mainly due to conversion of a large chunk of land along the 130 metre road earmarked for Industrial use to Builder/Group Housing use on the ground that the land would fetch good rates in the bids and would improve the cash flow/liquidity of GNIDA. The CEO sent (29 December 2009) the revised Master Plan-2021 to the GoUP for approval with the request to send the same to the NCRPB for approval. The interchange of land use of 2,774.58 hectare was approved by GoUP on 30 March 2010. Master Plan 2021 (with changed land use) was approved by NCRPB on 24 August 2012.

The CEO prior to the approval (30 March 2010) of land use change by the GoUP launched three group housing schemes on the land designated for industrial use and allotted 24 builder plots which also led to loss of ₹ 167.74 crore.

Audit noticed that the CEO, prior to the approval (30 March 2010) of the land use change by the GoUP, approved (January 2010 to March 2010) and launched three schemes for allotment of builder plots, viz., RTS 01/2010(I), BRS 01/2010(I) (launched in January 2010), and BRS 02/2010 (launched in March 2010) as per the proposed changed land use. Consequently, 24 builder plots (22,94,981 sqm) were allotted (March 2010 to May 2010) at the sale price¹⁸ for the year 2009-10. It is pertinent to mention that 19 of these plots were allotted during April 2010 to May 2010. Since the approval of change in land use was in process, the launching of scheme during January 2010-March 2010 was irregular in the absence requisite approval of GoUP. This also led to loss of revenue on account of land premium as the revised rates (2010-11, effective from April 2010) would have been applicable had these schemes were launched after approval of GoUP. Thus, GNIDA had to bear revenue loss of ₹ 167.74 crore¹⁹ (*Appendix-5.2.3*) against the sale price for the year 2010-11 due to inappropriate hurry in launching schemes without approval of change of land use by the GoUP.

During the Exit Conference (January 2021), the State Government stated that action has already been taken against the concerned officials for launching the schemes prior to the approval of land use change by the Government. GNIDA confirmed the punitive action against the concerned staff.

¹⁸ The sale price was not revised in the year 2009-10 by GNIDA citing economic slowdown.

¹⁹ After adjusting interest of ₹ 22 lakh earned at the rate of four *per cent* simple interest on the amount of registration/reservation money deposited by the allottees.

Deficiencies relating to schemes' brochures and brochure conditions not being complied with

5.2.5 GNIDA had not formulated any working manual for allotment of builder plots due to which there was lack of uniformity in terms and conditions of the brochures and system of allotment as compared to other categories of allotments. Further, the Chief Executive Officer (CEO) allowed various relaxations to the consortium of builders in the subsequent schemes²⁰ launched in January 2009 and onwards. These scheme brochures were either not put up to the Board or were put up for *ex-post facto* approval of Board after the launch of the schemes. It has led to discretion and adhocism in allotment of plots due to complete lack of policy guidance, as discussed in succeeding paragraphs.

Opening of Escrow Account not included in the schemes brochures

5.2.5.1 An escrow account is a temporary contractual arrangement between two transacting parties where a third party (usually a bank) holds the financial payments until specified conditions are met. Having an escrow account reduces the risk of not fulfilling the contractual commitments. In order to safeguard the interest of GNIDA as regard 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 is a reliable mechanism.

It is also notable that the Real Estate (Regulation and Development) Act, 2016 (RERA Act), notified on 26 March 2016, under section 4 (2) (I) (D) *inter alia* provided that 70 per cent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account in a scheduled bank to cover the cost of land and construction and shall be used only for that purpose.

GNIDA did not incorporate clause requiring the builders to open escrow account in its scheme brochures. Consequently, it failed to ensure timely payment of its dues and completion of projects imperiling its own interests as well as those of home buyers.

Audit noticed that GNIDA failed to include the condition for opening of Escrow Account by the builders in the terms and conditions of the schemes launched during the period 2005-06 to 2014-15. Notably, the allottees defaulted continuously in payment of instalments of the premium of the allotted plots causing accumulation of dues of ₹ 2,234.81 crore upto April 2021 in 28 cases out of 34 cases test checked in audit. Further, it could not be ensured that the allottees applied the funds collected by them on the concerned projects or diverted elsewhere. The absence of checks and balances resulted in incomplete projects. Out of 34 allotments only seven projects²¹ could be completed²² up to April 2021. Further, out of these seven completed projects, overdue of premium of ₹ 486.26 crore was outstanding for payment as on April 2021 in respect of four cases²³.

²⁰ Schemes, viz., BRS 01/2008-09, BRS 01/2010(I), BRS 02/2010, BRS 03/2010, BRS 04/2010.

²¹ M.I. Builders Private Limited (Alpha 02, GH-02), County Infrastructure Private Limited (Techzone IV, GH 05B), U.P. Township Private Limited (Omicron 3, GH 01), Supertech Construction Private Limited (Omicron 1, GH 02), SDS Infratech Private Limited (Omega 2, GH 01), Santushti Sahkari Avs Samiti Limited (GH 4) and K N Consultants Private Limited (Omicron 3, GH 06).

²² Out of remaining 27 sample files submitted to Audit, in 16 cases the projects were partially complete (First Phase) and in 11 cases even the first phase was not completed.

²³ M.I. Builders Private Limited (Alpha 02, GH-02), Supertech Construction Private Limited (Omicron 1, GH 02), SDS Infratech Private Limited (Omega 2, GH 01) and K N Consultants Private Limited (Omicron 3, GH 06).

Audit further noticed that GNIDA although adopted (December 2016) the ‘Project Settlement Policy’ issued by GoUP for re-schedulement of dues against allottees who had defaulted in payment but failed to ensure its compliance with respect to opening of Escrow Account at the time of re-schedulement of dues. In six cases²⁴, although re-schedulements once to thrice were allowed to the builders after December 2016 but opening of Escrow Account was not ensured at the time of such re-schedulements. Notably, the dues in these cases amounted to ₹ 404.63 crore (April 2021). Further, in two other cases²⁵, the Escrow Accounts were opened in May 2019/July 2019 but with delay of more than two years after the date of their re-schedulements (January 2017/June 2017). Dues in these two cases amounted to ₹ 116.57 crore (April 2021). Thus, by failing to impose the requirement of Escrow Account, GNIDA has imperiled its own interests as well as those of home buyers.

Checks and balances could have been automatically exercised in eliminating the accumulation of dues, if there had been the practice of operation of the Escrow Account. GNIDA had, however, in its scheme BRS 2021-22, ‘Builders plot for development of Pradhan Mantri Avas Yojna unit in Greater Noida’ launched in October 2021, incorporated a clause for opening escrow account by the allottee.

GNIDA accepted the audit observation and stated (November 2020) that earlier published scheme brochures did not include a condition requiring the builders to open an Escrow Account, however, notices were issued to the builders to open Escrow Account. GNIDA further stated that the condition of opening Escrow Account is being included in schemes to be published in the future.

Removal of clause for obtaining bank guarantee/performance bank guarantee

5.2.5.2 In order to safeguard the financial interest of the organisation, it is prudent to obtain reasonable amount of performance guarantee for due performance of the contract. The scheme BRS 06/2003 launched in June 2003 by GNIDA provided that the builder was required to deposit with GNIDA a Performance Bank Guarantee (PBG) of an amount fixed by GNIDA. This PBG clause was meant to safeguard the interest of GNIDA against the defaults by the builders in payment of dues and completion of projects in the stipulated period thereby also safeguarding the interest of the ultimate home buyers for timely delivery of the flats.

Audit noticed that GNIDA, with the approval of CEO, excluded the PBG condition in the brochure from July 2004 (Scheme BRS 09/2004) onwards. Scrutiny of records revealed the fact of removal of PBG clause from the brochure condition in nine scheme brochures. Out of the nine scheme brochures, CEO of GNIDA approved eight schemes brochures without approval of the Board. *Ex-post facto* approval was obtained for five schemes

GNIDA excluded the existing clause pertaining to submission of Performance Bank Guarantee by the builders from the scheme brochure of BRS 09/2004 onwards.

²⁴ Amrapali Leisure Valley Developers Limited, Anthem Infrastructure Private Limited, Supertech Limited, Ajay Enterprises Private Limited, Arham Escon Private Limited and Shirja Real Estate Solutions Private Limited.

²⁵ Sam India Abhimanyu Housing (Sector 16 C, GH-2) and Nirala Housing Private Limited Sector 16, GH-3).

brochures from the Board. The remaining three schemes brochures were not submitted to the Board for approval.

As a result, GNIDA failed to safeguard the interest of home buyers as 137 projects (83.54 *per cent*) were not completed by the builders even after lapse of stipulated period²⁶ (after allowing zero period) against 164 projects due for completion as of April 2021. The delays in these project ranged from one year to eight years causing distress to 1,91,827 homebuyers²⁷ and the dues in case of 137 out of above 164 allottees accumulated to ₹ 9,507.75 crore²⁸ as of April 2021. In the absence of PBG, GNIDA could not recover any pending dues.

It was, further, noticed that in case of Parsavnath Developers Limited²⁹ despite the scheme brochure (BRS 06/2003)³⁰ specifically providing for obtaining PBG for an amount to be fixed by GNIDA, GNIDA failed to fix such amount and obtain PBG for it from the allottee. Neither the construction of the project was completed even after lapse of almost 13 years from the year of allotment nor the dues amounting to ₹ 103.12 crore could be realised as discussed in **Paragraph 5.2.8.3.**

- The scheme BRS 06/2003 (launched in June 2003) to BRS 11/2006 (launched in April 2006) required the builders to deposit Bank Guarantee (BG) for the 50 *per cent* of the estimated cost of internal development within 30 days of the sanction of scheme in the form of BG. Audit noticed that provision for submission of BG equivalent to 50 *per cent* of internal development cost was excluded from BRS 01/2008-09 (launched in January 2009) and subsequent schemes with the approval of the CEO without any reasons on record. As a result, GNIDA failed to safeguard itself against internal development works not being completed by the builders, which was a pre-requisite for completion of the project besides extending undue benefit of ₹ 573.73 crore (**Appendix-5.2.4**) to 158 allottees on account of BG not submitted.

The Government may like to examine the circumstances in which practice of obtaining BG/PBG, which would have gone a long way in protecting the interests of GNIDA and the home buyers, was omitted from the brochure and fix responsibility in the matter.

During the Exit Conference (7 January 2021), GNIDA accepted the facts and stated that an internal Committee has been formed to deliberate on the best practices and to study whether to re-introduce the provision for BG.

The State Government instructed (January 2021) GNIDA to obtain prior approval of the Board on this issue and fix responsibility for the specific case of omission pointed out by the Audit. GNIDA promised to fix the responsibility in the matter of removal of clause pertaining to PBG/BG after September 2004 and also agreed to take action in cases where PBG/BG was

²⁶ Seven years from the date of execution of lease deed.

²⁷ Calculated on the basis of Person Per Hectare (PPH) sanctioned for the respective plots and a dwelling unit constituting 4.5 persons.

²⁸ Overdue amount against 137 builder allottees: ₹ 9,610.88 crore less dues of Parsavnath Developers Limited amounting to ₹ 103.12 crore.

²⁹ Allotted plot number 11, Sector-PI in April 2006 under BRS 06/2003.

³⁰ Sub clause 3 of Clause L (Possession).

not obtained inspite of provisions in the scheme brochure. Details of specific action taken are awaited (March 2022).

Issue of mortgage permission without clearing of dues

5.2.5.3 The Policy and Procedure for Industrial Property Management (Industrial Policy), 2005 of GNIDA effective from 23 June 2005 *inter alia* provided that in case of mortgage of industrial plot, the allottee will make the due payments regularly from time to time to GNIDA. The above provision was changed in the Policy and Procedure for Industrial Property Management, 2009 (Industrial Policy 2009) effective from 20 January 2009 which provided that for grant of mortgage permission, the lending institution/bank shall clear all the over dues and dues of GNIDA or give an undertaking to this effect or the institution/allottee(s) has already made 100 *per cent* payment to GNIDA. The allottee was required to submit application along with consent of Financial Institution and a 'No Objection Certificate' (NOC) regarding full payment/no arrear from concerned Property Division of GNIDA.

Scheme brochures of Builder/Group Housing upto BRS 03/2010 launched in June 2010 provided that the mortgage permission shall be issued on receipt of payment by the allottee or on receipt of assurance of payment by bank or any other suitable arrangements in mutual settlement amongst GNIDA, developer and the financial institution/Bank. The conditions for permission for mortgage were changed in the subsequent scheme brochures BRS 04/2010 launched in November 2010 and onwards to the effect that the permission would be granted subject to the condition that the allottees have cleared up to date dues of the plot premium and lease rent.

Audit noticed that:

GNIDA granted 22 mortgage permissions on 12 allotments test checked in Audit without obtaining the required undertaking from the concerned lending institutions for payment of balance premium or clearance of upto date dues as per condition of applicable brochure.

- mortgage permissions were granted on the allotments upto the scheme BRS 03/2010, with the condition that the concerned lending institution would provide an undertaking to GNIDA for payment of the balance premium, GNIDA failed to develop any mechanism to monitor the amount of actual loan availed by the allottee against such permission of mortgage. It also failed to obtain the required undertaking from the concerned lending institution for payment of the balance premium to GNIDA as these were not available on record in respect of 17 mortgage permissions granted during the period March 2006 to September 2017 on nine allotments up to BRS 03/2010 test checked in audit despite outstanding dues of premium ranging between ₹ 0.36 crore and ₹ 72.01 crore (**Appendix-5.2.5**). The total outstanding dues of premium of the aforesaid nine allottees accumulated to ₹ 1,156.53 crore (April 2021);
- the condition for mortgage approved in the Industrial Policy 2009 and the existing condition prescribed in Builder allotments at the time of granting permission for mortgage in the earlier allotments which secured the balance premium of GNIDA was relaxed (November 2010) in the scheme brochures BRS 04/2010 and onwards with the approval of the CEO, GNIDA to the effect that it ensured the payment of only up to date dues by the allottee; and
- the Builders Division failed to comply with even the changed conditions of the scheme brochures of builder plots which prescribed for issue of mortgage on clearance of up to date dues by the allottee in the following cases given in **Table 5.2.4**.

Table 5.2.4: Status of default at the time of issue of mortgage permission

Sl. No	Name	Allotment Date	Plot No./Sector	Date of mortgage permission	Defaulted amount on date of issue of mortgage permission (₹ In crore)	Overdue as on April 2021 (₹ In crore)
1	Himalaya Real Estate Private Limited	01-03-2011	GH-10B, Techzone-IV	11-07-2013	5.57	-
				13-02-2017	9.33	
2	Ajnara Realtech Limited	04-02-2011	GH-02B, Sector-16	20-02-2014	9.77	49.06
				16-09-2016	7.37	
3	PSA Impex Private Limited	30-03-2011	GH-06B , Chi-05	11-02-2015	5.32	36.24

Source: Information furnished by GNIDA.

It is clear from the above that GNIDA, despite default and outstanding dues ranging between ₹ 5.32 crore and ₹ 9.77 crore towards the premium of plot, additional compensation and lease rent, issued (July 2013 to September 2016) permission to mortgage which was totally irregular. The total outstanding dues of premium against the aforesaid two out of three allottees accumulated to ₹ 85.30 crore (April 2021). No action has been taken by GNIDA in this regard.

Thus, GNIDA not only failed to secure its future dues but also continued to issue permission³¹ to mortgage in spite of outstanding overdue in violation of the conditions of the brochures. It further failed to monitor the utilisation of fund received from mortgage of plot and progress of construction work to protect the interest of prospective home buyers. The Hon'ble Supreme Court has observed in its judgment³² in the case of Amrapali builders that *"Despite default, they continued to issue permission to mortgage/NOCs for that purpose in spite of the fact that there was no payment of premium and advance annual lease rent up to date. The authorities have acted in breach of clause 7 of the conditions of the lease deed, they failed to monitor the progress of the project to protect the interest of the public"*.

In its reply, GNIDA stated (November 2020) that the allottees had to make payment along with interest as per the payment plan. The builders in order to sustain the project needed mortgage permission to avail loan so that they could make the payment against dues and execute the construction work. Generally, permission to mortgage was issued by GNIDA after up to date payment of dues at the date of issue of mortgage permission. However, in certain cases, the conditional mortgage permission was issued on the basis of undertaking/affidavit given by the allottees with the objective that the allottee would make the payment of overdue against the plot on receipt of loan from the Financial Institution/Bank.

The reply does not address the failure to enforce the conditions specified in the brochure at the time of issue of mortgage permission and the relaxation in conditions of mortgage permission in the subsequent brochures. The contention of GNIDA regarding ensuring the upto date payment of dues at the time of issuing the permission was not found correct in view of the number of cases observed by Audit in contradiction to it. Further, the undertaking for

³¹ With the approval of ACEO/Manager (Builders Division).

³² Writ Petition (C) 940/2017 Bikram Chatterji and Others vs. Union of India and Others.

payment of the balance dues was required to be obtained from the concerned Financial Institution/Bank and not from the allottee which was not available in any case.

During the Exit Conference (January 2021), the State Government, in a similar audit observation on the issue of mortgage permission without clearing of dues in Chapter-V (6): Allotment of Farm Houses Plots, assured that action would be taken against the concerned official after examining the violation of terms and conditions. Further, the Government also assured to review the mechanism in terms of conditions of permission to mortgage the plots by constituting a Committee. Specifics of action taken are awaited (March 2022).

Issue of Occupancy Certificate without clearance of dues

5.2.5.4 As per financial prudence, GNIDA should safeguard its financial interest by ensuring the clearance of outstanding dues prior to sanctioning building plan or issue of occupancy/completion certificate.

Contrary to the prevailing practice, occupancy certificates in three cases were issued without recovering outstanding dues from the builders which have further accumulated to ₹ 73.25 crore as of April 2021.

Audit noticed that GNIDA issued occupancy certificates in three cases³³ in spite of the outstanding dues ranging between ₹ 6.64 crore and ₹ 13.35 crore towards the premium of plot, additional compensation and lease rent. Total outstanding dues of premium in the above three cases accumulated to ₹ 73.25 crore (April 2021).

Thus, GNIDA failed to safeguard its financial interest by issuing occupancy/completion certificate without ensuring the clearance of dues.

In its reply, GNIDA stated (November 2020) that the Planning Division, before issuing completion certificate, obtains details from the Builders Division regarding pending dues against the plot. Further, Builders Division after getting the upto date dues deposited by the builders issues 'No Dues Certificate' to the Planning Division.

GNIDA, although in its reply, specified the system of issuing completion certificates by Planning Division after ascertaining 'no dues' from the Builders Division, this was not complied with in the three cases pointed out by Audit and occupancy certificates were issued to the builders despite of dues against them.

Relaxations to consortium and its adverse impact

5.2.5.5 Uttar Pradesh Procurement Manual for 'Procurement of Goods'³⁴ defines consortium as an association of several persons, firms or companies. GNIDA allowed consortium to participate in the bids from the scheme BRS 09/2004 launched in July 2004. A condition was introduced in the scheme brochure BRS 01/2008-09 (launched in January 2009) which required the members of consortium to 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) to execute the project.

Audit noticed that GNIDA kept relaxing the eligibility conditions for consortium in the bidding as summarised in **Table 5.2.5**.

³³ Anthem Infrastructure Private Limited, Today Homes and Infrastructure Private Limited and Ajnara Realtech Limited.

³⁴ Issued by Department of Micro, Small and Medium Enterprises, GoUP on 1 April 2016.

Table 5.2.5: Relaxation to consortium in subsequent brochures

Original conditions of brochures (benchmark)			Revised conditions of the brochure (relaxations)		
Scheme No.	Month of launch	Condition	Scheme No.	Month of launch	Condition
Eligibility criteria for participation of a consortium					
BRS 11/2006	April 2006	Largest shareholder of the consortium was required to singly qualify the minimum eligibility criteria of net worth, solvency and turnover.	BRS 01/08-09	January 2009	The condition was relaxed wherein aggregate qualifications of all the consortium members could be considered for ensuring the technical and financial eligibility of the consortium instead of the technical and financial eligibility of only the single largest shareholder of the consortium being considered earlier.
BRS 1/2008-09	January 2009	Largest shareholder shall be the Lead Member (LM) having at least 26 <i>per cent</i> share. Other Relevant Members (RM) were required to have at least 10 <i>per cent</i> shareholding in the consortium.	BRS 3/2010	June 2010	Minimum shareholding of Relevant Member reduced to five <i>per cent</i> .
		LM and RMs were required to maintain their shareholding till the completion certificate for whole project issued by GNIDA for the complete construction. In exceptional circumstances, the change in shareholding structure of the consortium may be permitted by GNIDA.	BRS 1/2010(I)	January 2010	Only LM was required to maintain its shareholding and that too till completion of first phase.
		Consortium members would be jointly and severally responsible for the successful implementation of the project as per Memorandum of Agreement (MOA) of the consortium members submitted at the time of submission of the bid.	BRS 3/2010	June 2010	Condition dispensed with.
		No provision for sub-division of plot.	BRS 1/2010(I)	January 2010	Sub-division of plot was allowed between the RM/SPC in any combination and to any third party subject to minimum area of 20,000 sqm of each sub-divided plot (<i>as discussed in Paragraphs 5.2.5.9 and 5.2.5.10</i>).
BRS 1/2010 (I)	January 2010	Minimum area for sub-division of plot was 20,000 sqm.	BRS 3/2010	June 2010	Minimum area reduced to 10,000 sqm.
BRS 11/2006	April 2006	No provision for change in shareholding of consortium at any stage.	BRS 1/2008-09	January 2009	The applicant/SPC will be allowed to transfer/sell up to 49 <i>per cent</i> of shareholding, provided original RM and LM shall continue to hold at least 51 <i>per cent</i> of shareholding and LM remain unchanged till the CC issued for project (<i>as discussed in Paragraph 5.2.5.7</i>).

Original conditions of brochures (benchmark)			Revised conditions of the brochure (relaxations)		
Scheme No.	Month of launch	Condition	Scheme No.	Month of launch	Condition
Eligibility criteria for participation of a consortium					
BRS 01/ 2008-09	January 2009	The applicant/SPC will be allowed to transfer/sell up to 49 <i>per cent</i> of shareholding, provided original RM and LM shall continue to hold at least 51 <i>per cent</i> of shareholding and LM remain unchanged till the CC issued for project.	BRS 01/ 2010(I)	January 2010	The applicant/SPC will be allowed to transfer/sell up to 49 <i>per cent</i> of its shareholding, provided original RM and LM shall continue to hold at least 51 <i>per cent</i> of shareholding with LM holding at least 26 <i>per cent</i> till the issue of CC of one phase of project.
BRS 01/ 2010	January 2010	The applicant/SPC will be allowed to transfer/sell up to 49 <i>per cent</i> of its shareholding, provided original RM and LM shall continue to hold at least 51 <i>per cent</i> of shareholding with LM holding at least 26 <i>per cent</i> till the issue of CC of one phase of project.	BRS 04/ 2010	November 2010	The lessee/sub lessee(s) will be allowed to transfer up 100 <i>per cent</i> of its shareholding, provided the LM shall continue to hold at least 26 <i>per cent</i> of shareholding in the SPC till the CC of project is obtained from the GNIDA (<i>as discussed in Paragraph 5.2.5.7</i>).

Source: Scheme brochures provided by GNIDA.

Thus, it is evident from the above Table that between January 2009 and November 2010, conditions relating to financial eligibility, continuation of LM/RM and their shareholdings in the SPC were continuously diluted with the approval of the CEO without prior approval of the Board (as discussed in **Paragraph 5.2.4.1**). Failure to bind all the consortium members to stay in the SPC till final completion of the project and sub-division of the plots attracted ineligible bidders to join the consortium and later on acquire the plot from back door with independent³⁵ liability.

Audit observed that for successful execution of a project, the consortium consisting of different companies is required to work in unison but GNIDA's relaxations of conditions has served to weaken the consortiums and their commitment which has contributed to not completing of the projects. With the reduction in builders' responsibility to complete the project, GNIDA has also compromised the position of the home buyers who invested their life savings in the projects.

Audit examination revealed that GNIDA allotted 60 plots during 2009-10 to 2014-15 out of which 40 plots were allotted to consortiums of companies and 20 plots were allotted to individual companies. The above 40 plots allotted to the consortiums were further sub-divided in 127 independent plots.

Audit examined allotment files of 34 Builder/Group Housing plots (including sub-divided plots) allotted during the period 2005-06 to 2014-15. Out of these, 24 plots were allotted/sub-divided³⁶ to the consortium/members of consortium, two plots sub-divided in favour of companies who were not in the consortium and remaining eight plots³⁷ allotted to individual companies.

Failure to bind all the consortium members to stay in the SPC till final completion of the project and allowing sub-division of the plots attracted ineligible bidders to join the consortium and later on acquire the plot from back door.

³⁵ Payment of proportionate share of lease premium, lease rent and other charges payable to GNIDA in the proportion of the sub-divided/sub-leased land.

³⁶ 20 plots were sub divided plots.

³⁷ Builder: six plots and Group Housing: two plots.

Audit analysed, in aforesaid 24 plots, the status of formation of SPC and the technical/financial eligibility of the SPCs/members of the consortium in whose favour the plots were sub-divided into 24 plots. The summarised position is given in **Table 5.2.6**.

Table 5.2.6: Status of SPC formation and eligibility for the sub-divided plots

Sl. No.	Particulars	Status of technical and financial eligibility			Total
		Eligible	Not eligible	Information not available	
1	2	3	4	5	6
1	SPC formed as per MoA (including sub-divided plots)	5	-	-	5
2	SPC formed but not as per MoA (including sub-divided plots)	4	2	2	8
3	Sub Total (SPC formed) (1+2)	9	2	2	13
4	SPC not formed (whole plot allotted in the name of Lead Member)	-	2	-	2
5	SPC not formed (sub-divided plots allotted to Lead Member)	1	1	1	3
6	SPC not formed (sub-divided plots allotted to Relevant Members)	-	4	2	6
7	Sub Total (SPC not formed) (4+5+6)	1	7	3	11
Total (3+7)		10	9	5	24

Source: Compiled by the Audit on the basis of records submitted by GNIDA.

Further details are contained in **Appendix-5.2.6**.

It is evident from the above Table that plots were sub-divided without ensuring the formation of SPC and eligibility of the allottees as discussed in succeeding paragraphs.

SPC not formed/the continuance of the members of consortium not ensured

5.2.5.6 The terms and conditions³⁸ of the brochure provided that in case of allotment to the consortium, its members were required to form a SPC to carry out all the subsequent responsibilities of the allottee. The shareholding of the consortium members in the SPC was to be in accordance with that proposed in MoA at the time of submission of bid.

GNIDA failed to monitor and regulate the formation of SPC as per terms and conditions of the scheme brochure and allowed the key members of the consortium to exit the project.

Audit noticed in the scrutiny of 34 allotment files that in 11 cases (as indicated in **Table 5.2.6**), the consortium members did not form the SPC as required by the terms and conditions of the brochure (**Appendix-5.2.7**). Further, in eight other cases, SPCs were formed but were not in accordance with the shareholding proposed in the MoA as detailed in **Appendix-5.2.8**.

Audit noticed that in two out of above 11 cases where SPC was not formed, the members of the consortium on the credentials of whom the plots were allotted were allowed to exit the project after allotment and GNIDA allotted the plots to the Lead Members who did not possess the required eligibility to execute the project, as given in **Table 5.2.7**.

³⁸ Clause 8 (d).

Table 5.2.7: Details of allotments in which key member exited

Sl. No.	Consortium members	Required parameters for technical qualification	Available credentials	Member on credential of whom plot was allotted (key member) and who exited the project	Allotment made to	Details of allotment of plot		Date of lease deed/ Date of exit of key member
						Plot number and Sector	Date of allotment	
1.	SDS Infratech Private Limited (LM)	Work experience: Minimum two executed projects in last five years; Net worth: ₹ 5 crore; Total Turnover during last three years: ₹ 25 crore; Liquidity: ₹ 2 crore	Work experience: not stated; Net worth: not stated, Total turnover: not stated, Liquidity: ₹ 2.82 crore	Divine (India) Infrastructure Private Limited (RM)	SDS Infratech Private Limited (LM)	GH-1, Sector Omega 2 (BRS 01/2008-09)	29 July 2009	27 August 2009
	Divine (India) Infrastructure Private Limited (RM)		Three completed projects; Net worth: ₹ 4.33 crore; Total turnover: ₹ 41.87 crore; Liquidity: not stated					
2.	UP Township Private Limited	Work experience: Minimum two executed projects in last five years; Turnover for each of last three years: ₹ 20 crore; Solvency: ₹ 5 crore	Work experience: not stated; Turnover for each of last three years: not stated; Solvency: not stated	Chaddha Sugars Private Limited	UP Township Private Limited	GH-1, Sector Omicron 3 (BRS 10/2005)	20 April 2005	21 July 2005
	Uppal Housing Private Limited		Work experience: two completed projects; Turnover for each of last three years: nil, ₹ 20.80 crore, ₹ 27.57 crore; Solvency: not stated					
	Chaddha Sugars Private Limited		Work experience: not stated; Turnover for each of last three years: ₹ 83.08 crore, ₹ 84.84 crore, ₹ 110.31 crore; Solvency: ₹ 28.96 crore					

Source: Compiled by the Audit on the basis of records submitted by GNIDA

It is evident from the above Table that the key members on the basis of whose credentials the plots were allotted were allowed to exit the project prior to the execution of lease deed proving that their joining was only to facilitate allotment of plots. This resulted in breach of terms and conditions of the allotment and negated the objective of allotting to a consortium. The exit of key members of the consortium immediately after allotment in the above cases indicates lack of monitoring, regulatory control and nullification of the objective of creating an SPC besides undue benefit to ineligible allottees. The amount of undue benefit could not be ascertained as it involved transactions between third parties, *i.e.*, other than GNIDA which was not available with GNIDA.

In its reply, GNIDA stated (November 2020) that the clause 8 (e) of the scheme brochure provided that execution of lease deed may be made in favour of either the Relevant Member(s) or the SPC(s) which should be a registered firm or an incorporated company. The Relevant Members/SPCs may, separately, or together in any combination, sub-divide this allotted plot.

The reply of GNIDA is not acceptable as clause 8 (d) provides that members shall submit a registered MoA conveying their intent to jointly apply for the scheme, and in case a plot is allotted to them, to form a SPC that will subsequently carryout all responsibilities as the allottee. The insertion of a

contradictory provision in the scheme brochures allowed the allottees to manipulate the provisions in their favour which proved detrimental to the interest of GNIDA and the home buyers. This indicated the failure of internal controls in the Marketing Division, Builders Division and Legal Division in ensuring the compliance of the terms and conditions of the scheme brochures.

During the Exit Conference (7 January 2021), the State Government accepted the facts and agreed with the observation stating that a lock-in period for the members of the consortium till completion of the projects should be incorporated by the GNIDA to address the gap pointed out by Audit.

5.2.5.7 The conditions of the brochures up to the scheme BRS 01/2008-09 launched in January 2009, provided that the Lead Member (LM) with share of at least 26 *per cent* of the shareholding in the SPC along with the original Relevant Members (RM) shall hold at least 51 *per cent* of the shareholding in the SPC till the completion of the project (which was relaxed to completion of first phase only from BRS 01/2010(I), launched in January 2010 and onwards). The condition was further diluted (3 November 2010: BRS 04/2010 and 21 February 2011: BRS 05/2010-11) allowing transfer of entire shareholding by relevant members subject to the condition that LM shall continue to hold 26 *per cent* shareholding in SPC till completion of the project. First phase was required to be completed within three years and the full project was to be completed within seven years or the extended period, if any.

In order to ensure the shareholding by the LM and RM in the SPC till the prescribed period of completion (first phase/full project), GNIDA should have monitored shareholding at periodical intervals from the allottee SPC.

Audit noticed that in all 13 cases where SPC was formed (as indicated in **Table 5.2.6**), GNIDA failed to obtain any documents from the allottees or any other source such as Registrar of Companies or keep a watch to ensure the compliance of above clause. Audit collected the information of shareholding of the SPC companies from the Registrar of Companies (RoC), Delhi and noticed that in six cases³⁹ of SPC, nine Lead Members/Relevant Members left the SPC at the later dates, prior to completion of the projects as detailed in **Table 5.2.8**.

Table 5.2.8: Details of Special Purpose Companies in which Lead Member/Relevant Member left the SPC prior to completion of Projects

Sl. No.	Plot No. and sector	Scheme/ (Date of allotment)	Name of the SPC	Consortium members in the SPC at the time of allotment	Consortium Members who left the SPC at a later date	Year of leaving the SPC	Status of Completion (April 2021)
1.	GH-1, Sector Omicron-1	BRS 11/2006 (15 September 2006)	U.P. Township Private Limited	Uppal Housing Private Limited (LM)	Uppal Housing Private Limited (LM)	2011-12	Partially completed
				Waves Builders Private Limited	Waves Builders Private Limited	2007-08	
				Pelo Enterprises Private Limited			
				Rado Enterprises Private Limited			
2.	GH-7 A, Sector 16 B	BRS 02/2010 (10 May 2010)	Anthem Infrastructure Private Limited	Bengal Silver Spring Projects Limited (RM)	Bengal Silver Spring Projects Limited (RM)	2011-12	Partially completed
				Zodiac Buildwell Private Limited (RM)			

³⁹ Including one case (Jatasya Promoters Private Limited) other than sample but related to examination of sample cases.

Sl. No.	Plot No. and sector	Scheme/ (Date of allotment)	Name of the SPC	Consortium members in the SPC at the time of allotment	Consortium Members who left the SPC at a later date	Year of leaving the SPC	Status of Completion (April 2021)
				Paradise Arcade Private Limited (RM)			
3.	GH-3, Sector 16	BRS 04/2010 (1 March 2011)	Nirala Housing Private Limited	Nirala Developers Private Limited (LM) Exotica Housing Infrastructure Company Private Limited Span Buildtech Private Limited	Nirala Developers Private Limited (LM) Exotica Housing Infrastructure Company Pvt. Ltd.	2017-18 2013-14	Partially completed
4.	GH-1 B, Sector 10	BRS 05/2010-11 (30 March 2011)	Dhanya Promoters Private Limited	Mastiff Industries Private Limited (LM) Surprise Suppliers Private Limited (RM)	Surprise Suppliers Pvt. Ltd. (RM)	2013-14	Not Completed
5.	GH-1 D, Sector 10	BRS 05/2010-11 (30 March 2011)	Nivas Promoters Private Limited	Mastiff Industries Private Limited (LM) Surprise Suppliers Private Limited (RM)	Surprise Suppliers Pvt. Ltd. (RM)	2013-14	Not Completed
6.	GH-1 C, Sector 10	BRS 05/2010-11 (30 March 2011)	Jatasya Promoters Private Limited	Mastiff Industries Private Limited (LM) Surprise Suppliers Private Limited (RM)	Mastiff Industries Pvt. Ltd. (LM) Surprise Suppliers Pvt. Ltd. (RM)	2014-15 2014-15	Not Completed

Source: Compiled by the Audit on the basis of information collected from the ROC.

It is evident from the above Table that the members of consortium left the SPC subsequently within the period ranging between six months and eight years from the date of allotment prior to the completion of projects and none of these projects are completed.

Thus, due to lacunae in the policy of GNIDA for not binding all the members till the completion of the project, the members of consortium left the project which forfeited the objective of the allotment to the consortium against their combined eligibility to execute the project.

Audit further noticed from the information collected from the RoC, Delhi that in two of the above cases⁴⁰ the Lead Members who were required to maintain at least 26 *per cent* shareholding in the SPC till the completion of at least first phase did not comply with the condition of the brochure and left the SPC. A case study in this regard is discussed below:

Case study

A plot⁴¹ was allotted (March 2011) to a consortium of Mastiff Industries Private Limited (LM) and Surprise Suppliers Private Limited (RM). The plot was sub-divided (October 2012) in four plots and four separate SPCs⁴² were formed by including both consortium members in each of four SPCs. Even first phase was not complete (April 2021) in any of the four sub-divided plots. As per terms and conditions of scheme brochure and lease deeds, the LM⁴³ was required to maintain at least 26 *per cent* shareholding in all the four SPCs.

Audit noticed from the information collected from Registrar of Companies (ROC), Delhi that while LM continued to hold more than 26 *per cent* shareholding in three SPCs⁴⁴ it sold off its entire shareholding of 26.4 per cent (3,700 shares out of 14,000 shares) in Jatasya Promoters Private Limited during 2014-15 as indicated by the returns filed for the period March 2015 and onwards.

⁴⁰ Sl. No. 1: UP Township Private Limited and Sl. No. 6: Jatasya Promoters Private Limited.

⁴¹ GH-1, Sector-10.

⁴² Hebe Infrastructure Private Limited, Dhanya Promoters Private Limited, Nivas Promoters Private Limited and Jatasya Promoters Private Limited.

⁴³ Mastiff Industries Private Limited.

⁴⁴ Hebe Infrastructure Private Limited, Dhanya Promoters Private Limited and Nivas Promoters Private Limited.

Thus, the LM did not maintain the required shareholding of 26 *per cent* till the completion of first phase as specified in the terms and conditions of the brochure and GNIDA in absence of any mechanism failed to ensure its compliance.

Thus, GNIDA could not ensure compliance of the conditions of allotment due to not monitoring the shareholding of the SPC at periodical intervals. Lead Members notably exited the SPC. In above two cases, even the first phase of the Group Housing projects could not be completed.

During the Exit Conference (January 2021), the State Government accepted the similar audit observation (previous **Paragraph 5.2.5.6**), and stated that a lock-in period for the members of the consortium till completion of the projects should be incorporated by the GNIDA. Orders for change in policy are awaited (March 2022).

Irregular extension of facility for sub-division of plots

5.2.5.8 With a view to counter the challenges of economic slowdown, the GoUP brought out (January 2009 and October 2009), various facilities for the existing allottees who were either defaulting in payments or had not completed their projects which *inter alia* allowed for sub-division of the existing plots on levy of transfer charges at the rate of two *per cent* of the prevailing sale price upto March 2010 (extended further in September 2010 for the period upto March 2011).

Although the facility for sub-division of the existing plots was introduced by the GoUP for the existing defaulting allottees, GNIDA made it a permanent feature by incorporating it in the scheme brochures commencing from scheme BRS 01/2010(I) launched in January 2010.

Audit noticed that although the facility for sub-division of the existing plots was introduced by the GoUP for the existing defaulting allottees, GNIDA, with the approval of the CEO, made it a permanent feature by incorporating it in the upcoming scheme brochures commencing from scheme BRS 01/2010(I) launched in January 2010 and accordingly extended the benefit not only to the allottees encountering difficulties but also to all prospective allottees.

In its reply, GNIDA stated (November 2020) that the scheme brochure did not provide for levy of transfer charges in case of sub-division of plot in favour of consortium members/SPC constituted by them. As per the scheme brochure, transfer charges were payable in case the main allottee sub-divided the plot in favour of any third party.

The reply of GNIDA does not address the audit observation that the above GoUP order for sub-division of plot was only meant for the defaulting allottees/allottees where completion certificates were not issued in respect of the existing schemes and was therefore not to be extended to the allottees of upcoming schemes.

Sub-division of plot to ineligible member(s) of the consortium

5.2.5.9 As per the terms and conditions of the brochure, in case of bids by a consortium, the aggregate eligibility of all the consortium members (LM and RMs) was considered. From the scheme BRS 01/2010(I) onwards launched in January 2010, GNIDA allowed sub-division of plot between the Relevant Members/SPC in any combination subject to minimum area of 20,000 sqm (reduced further to 10,000 sqm from BRS 03/2010 launched in June 2010) of each sub-divided plot. In such case, the sub-lessee was bound to comply with the provisions of payment of proportionate share of lease premium, lease rent and other charges payable to GNIDA in the proportion of the sub-divided/sub-leased land. Further, any default in payment by such sub-lessee was not to be considered as default of the lessee (original allottee).

GNIDA allowed sub-division of plots in favour of incapable members of the consortium without evaluating their individual capabilities which adversely affected the interest of home buyers as all the 14 projects were still incomplete (April 2021) with accumulated dues amounting to ₹ 725.99 crore.

Audit noticed that as the plots were allotted on the basis of aggregate technical and financial eligibility of all the members of the consortium, the eligibility of each consortium member was known to GNIDA. In spite of this fact, GNIDA did not take cognizance of the fact and allowed the sub-division of plots in favour of ineligible members of the consortium without ensuring the technical and financial eligibility prescribed for size corresponding to the sub-divided plots. Consequently, the sub-division was allowed in favour of 15 members⁴⁵ of the different consortiums which were not eligible and therefore incapable of executing the projects (*Appendix-5.2.9*).

Thus, the sub-division attracted ineligible entities to join the consortium and secure an allotment through the back door. Given their weak financials, it was observed that this resulted in not completing of the projects which adversely affected the interest of home buyers. Out of the above 15 cases of sub-division, the projects were not complete in all 14 cases even after a delay of five to nine years from the stipulated date of completion (as on April 2021). In seven of these cases, even the first phase of the project was not completed after a delay of two to five years from the stipulated date of completion (as on April 2021). One allotment (Kinetic Buildtech Private Limited) had to be cancelled for failure to pay dues on 5 June 2017. The dues of ₹ 725.99 crore (*Appendix-5.2.9*) to GNIDA were also outstanding in respect of 14 allottees as of April 2021.

GNIDA accepted the audit observation and stated (November 2020) that such provisions could be included in the schemes to be launched in future.

Sub-division of plot in favour of ineligible third party

5.2.5.10 The terms and conditions of the scheme brochure BRS 01/2010(I) launched in January 2010 and onwards, allowed for sub-lease/transfer of the plot to third party on the payment of transfer charges subject to the prescribed minimum size of 20,000 sqm. The minimum size was reduced to 10,000 sqm with the approval of the CEO (from BRS 03/2010 launched in June 2010).

Audit noticed that in two cases, GNIDA allowed⁴⁶ the transfer of sub divided plots to third party (Arham Escon Private Limited and Balaji Hi Tech Construction Private Limited which was later on transferred to New Tech La Palacia on 22 September 2014) without obtaining the credentials and evaluating their competence according to the technical and financial eligibility criteria prescribed in the brochure for the similar size of plots. As a result, even first phase of the project (15 per cent of FAR) could not be completed by the allottees after the lapse of nine years (Arham Escon Private Limited) and six years (New Tech La Palacia) from the year of lease deed as of April 2021.

A case study showing the sub-division of plots to the members of consortium and third party without ensuring eligibility is discussed below:

GNIDA allowed sub-division of two plots in favour of third parties without evaluating their eligibility.

⁴⁵ Sample cases test checked: seven (as indicated in row 7, column 4 of Table 5.2.6); other related cases noticed from the main file: eight.

⁴⁶ 20 September 2016: Arham Escon Private Limited (sub-divided plot no. GH 2A/1, Sector 1 Area: 10,627 sqm from the plot no. GH 2A of Shubhkamna Buildtech Private Limited of 33,538 sqm allotted in BRS 03/2010, sub-lease deed executed on 27 September 2016); 2 May 2013: Balaji Hi Tech Construction Private Limited (sub-divided plot no. GH-09 A, Sector Tech zone IV with area 12,479 sqm from plot no. GH-09 of Amrapali Dream Valley of 2,60,307 sqm, allotted in BRS 03/2010, sub-lease deed executed on 31 July 2013 which was transferred to New Tech La Palacia on 22 September 2014).

Case study

GNIDA allotted (25 January 2011) a plot⁴⁷ measuring 2,03,422 sqm to a consortium of eight members with Panchsheel Buildtech Private Limited as the Lead Member (54 *per cent*) and Supertech Construction Private Limited (five *per cent*) as one of the seven Relevant Members (RM). The plot was allotted solely on the credentials (technical and financial eligibility) of Supertech Construction Private Limited (RM) as per details in table below:

Sl. No.	Particulars	Percentage holding in the consortium	Technical Eligibility (Minimum two Completed Projects during last 5 years) (in lakh sqft)	Financial Eligibility		
				Net worth as on 31 March 2010 (₹ in crore)	Total Turnover during last three years (₹ in crore)	Solvency (₹ in crore)
Eligibility required as per brochure			15	60	200	10
Eligibility of the members						
1.	Panchsheel Buildtech Private Limited	54.44	Not Submitted	3.89	122.69	10
2.	Supertech Limited	5	34.98	157.22	777.11	Not Submitted
3.	Dreamland Promoters and Consultants Private Limited	5	Not Submitted	Not Submitted	Not Submitted	Not Submitted
4.	Cosmos Infra Estate Private Limited	8.47	Not Submitted	Not Submitted	Not Submitted	Not Submitted
5.	Ratan Buildtech Private Limited	8.29	Not Submitted	Not Submitted	Not Submitted	Not Submitted
6.	Baibhaw Construction Private Limited	5.01	Not Submitted	Not Submitted	Not Submitted	Not Submitted
7.	Seimens Construction Corporation	5.01	Not Submitted	Not Submitted	Not Submitted	Not Submitted
8.	Anusha Engineering Consultants	8.78	Not Submitted	Not Submitted	Not Submitted	Not Submitted
Total		100	34.98	161.11	899.80	10

Audit noticed that the consortium members did not form the Special Purpose Company (SPC) on allotment, constituting all the members in the shareholding specified in the MoA, as required by the terms and conditions of the brochure.

GNIDA allowed sub-division (3 May 2011) of the plot into six plots⁴⁸ in favour of the consortium members without ascertaining their technical and financial eligibility against the corresponding size of sub-divided plots. The lease deeds were executed on 19 October 2012. It further allowed (July 2014) Panchsheel Buildtech Private Limited (Panchsheel) to sub-divide and transfer a part⁴⁹ of its plot to an ineligible third party (other than consortium member), viz., JRS Conbuild Private Limited, which was a newly incorporated (February 2014) company thus did not possess any experience.

Further, the original plot was allotted to consortium on the basis of credentials of Supertech Limited (Supertech) alone as other members did not submit their technical and financial eligibility to execute project. Supertech purchased five *per cent* shares in the existing company of Panchsheel which would act as an SPC for a sub-divided plot of an area of 1,21,231 sqm although as per the proportion proposed in the MoA (five *per cent* of Supertech against 54.44 *per cent* of Panchsheel), it was required to hold 8.4 *per cent* in the SPC. Further, Supertech decreased its shareholding in the SPC to 2.08 *per cent* in the year 2013-14 immediately following the execution of lease deed (19 October 2012) and before due date of completion of the project in April 2018.

⁴⁷ GH-1, Sector 16 under BRS 04/2010.

⁴⁸ Panchsheel Buildtech Private Limited (SPC of Panchsheel Buildtech Private Limited and Supertech Limited), Dreamland Promoters and Consultants Private Limited, Cosmos Infra Estate Private Limited, Ratan Buildtech Private Limited, B S Buildtech (Partnership deed between Baibhaw and Siemens) and Anusha Engineering Consultants.

⁴⁹ 13,500 sqm.

Thus, due to the above policy of not retaining of all the consortium members till completion of the project and sub-division of the plots among and other than consortium members compounded by the lapses in ensuring their eligibility prior to sub-division, the ineligible bidders joined to form a consortium and later on acquired independent plots through backdoor with their independent liability. This has now resulted in six⁵⁰ out of above seven plots remaining incomplete. Further, it also resulted in accumulation of dues of premium of ₹ 109.12 crore (April 2021) against the above six plots.

In its reply, GNIDA stated (November 2020) that sub-lease deed for the part of land was executed, as per terms and conditions of the scheme brochure, in favour of main allottee after the deposit of transfer charges. There was no provision in the brochure to analyse the technical and financial eligibility of the buyer.

The reply of GNIDA is not acceptable as lack of due diligence by GNIDA in allowing the project to be sub-divided without evaluating the technical and financial eligibility of the buyer was against the doctrine of public trust and gave a back door to the allottees to manipulate eligibility condition. The Hon'ble Supreme Court observed⁵¹ that "*the State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse, etc., acts as a trustee and, therefore, has to act fairly and reasonably*". GNIDA as a trustee was expected to protect the interest of home buyers as well as of its own by acting diligently.

Loss due to sub-division and transfer of plots without development

5.2.5.11 The sub-clause 8 (e) of BRS 03/2010 provided that lease deed will be executed in favour of either the RM(s) or the SPC and the RM/SPC may separately or together in any combination sub-divide the plot subject to minimum area of each sub-divided plot not being less than 10,000 sqm.

Clause O 'Execution of sub-lease deed' of the scheme brochure provided that after the approval of the lay-out plan by GNIDA, the lessee (allottee) shall have the option to sub-lease portions of land earmarked for Group Housing, subject to minimum plot size of 10,000 sqm. The lessee shall sub-lease an area only once the internal development work such as internal roads, sewerage, drainage, culverts, water supply electricity distribution/transmission lines, street lighting, etc., in that area is under progress.

GNIDA allotted (27 July 2010) a plot measuring⁵² 4,20,328 sqm to the consortium of Gaursons Promoters Private Limited, Buland Buildtech Private Limited and Arcity Infrastructure Private Limited. The plot was sub-divided (14 September 2010) between the consortium members as shown in **Table 5.2.9:**

⁵⁰ Dreamland Promoters and Consultants Private Limited, Cosmos Infra Estate Private Limited, Ratan Buildtech Private Limited, BS Buildtech (Partnership deed between Baibhaw and Seimens), Anusha Engineering Consultants and JRS Conbuild Private Limited (excluding plot of Panchsheel Buildtech Private Limited completed on 23 April 2018).

⁵¹ Para 38 of Noida Entrepreneurs Association vs. Noida and Others (2011) 6 SCC 508.

⁵² As per lease deeds.

Table 5.2.9: Sub-division of plot

Name of the consortium member	Area (in sqm)
Gaursons Promoters Private Limited	379421
Buland Buildtech Private Limited	20286
Aarcity Infrastructure Private Limited	20621
Total	420328

Source: Compiled from the records submitted by GNIDA

GNIDA, in violation of the conditions of the scheme brochures, allowed sub-division of the plot and its sub-lease to nine parties. This led to loss of ₹ 79.37 crore to GNIDA.

GNIDA further approved (November 2012) the proposal of Gaursons Promoters Private Limited (allottee) for sub-division of the area into 10 plots. Of this, one plot of area 2,69,761 sqm was retained by the allottee itself and remaining nine plots with total area of 1,43,500 sqm were allowed to be transferred to other than consortium members without ensuring their financial/technical eligibility on the payment of two *per cent* transfer charges.

Audit noticed that the fee for approval of layout plan and plan processing were deposited by Gaursons Promoters Private Limited for the first time in July 2013. Thus, the layout plan was not approved till July 2013 and the internal development work was not commenced. GNIDA, however, in violation of the conditions of the scheme brochure, allowed (November 2012) sub-division of the plot and its sub-lease to nine parties.

The policy of allowing sub-division and transfer also led to loss of income to GNIDA. Had GNIDA itself allotted the said land as individual plots at the approved allotment rate of ₹ 19,100 per sqm for the year 2012-13, it could have earned an extra amount of ₹ 79.37 crore⁵³ (after adjusting ₹ 2.18 crore towards interest⁵⁴ earned by GNIDA on the amount deposited⁵⁵ by the allottee and internal development cost⁵⁶ of ₹ 26.69 crore to be incurred by GNIDA).

In its reply, GNIDA stated (November 2020) that the plot was allotted/sub-divided in favour of allottee by GNIDA according to the terms and conditions of the brochure. Sub-lease deed had been executed, in favour of third party, after obtaining transfer charges (two *per cent*) as per the provision of the scheme brochure. Since sub-lease deed was executed by the main allottee out of its allotted plot, therefore, sub-division was carried out at the allotted rate.

The reply does not address the issue raised by the Audit regarding sub-division of plot before approval of the layout and start of internal development work. Further, upholding the doctrine of public trust the Hon'ble Supreme Court observed⁵⁷ that authorities are bound to ensure that builders act in accordance with the objective behind the acquisition of land and the conditions on which allotment had been made.

Thus, due to above relaxations as discussed in **Paragraphs 5.2.5.5 to 5.2.5.10**, the ineligible bidders came through the route of loosely framed consortiums to secure the allotment and subsequently, sub-divided it among themselves with the collusion of GNIDA which vitiated the very purpose of allotment.

⁵³ 1,43,500 sqm x (₹ 19,100 - ₹ 11,557).

⁵⁴ At the simple interest of four *per cent* per annum.

⁵⁵ Proportionate amount deposited for 1,43,500 sqm.

⁵⁶ Prevailing internal development cost of ₹ 1860 per sqm for 1,43,500 sqm.

⁵⁷ Para 73 of Writ petition (C) 940/2017 of Bikram Chatterji and Others vs. Union of India and Others on the issues related to Amrapali Builders.

The Hon'ble Supreme Court in its judgment relating to Amrapali Builders stated⁵⁸, “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 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”.

The above relaxations, facilitated the ineligible bidders to form a consortium, secure the allotment and sub-divide it among themselves soon after allotment with independent liability as regards commitment for construction and payment of dues. This was further fueled by allowing them to trade in the land allotted either by way of sub-dividing it in favour of any third party outside consortium or allowing the SPC formed by the consortium members to sell their holdings prior to completion of the project.

Absence of mechanism to ensure the required shareholding

5.2.5.12 The Board of GNIDA allowed⁵⁹ (May 2013) the allottee to execute lease deed in favour of its subsidiary company provided that it held at least 90 per cent shareholding in such subsidiary company. Accordingly, GNIDA allowed (May 2014) UP Township Private Limited⁶⁰ to execute sub-lease deed in favour of its subsidiary company, i.e., UP Township Infrastructure Private Limited.

Audit noticed that GNIDA did not devise any mechanism to verify the shareholding pattern of the allottee from time to time. Audit cross verified the Annual Returns⁶¹ filed by the allottee parent company (UP Township Private Limited) with the Registrar of Companies (ROC), Delhi for the financial years 2014-15, 2015-16, 2016-17 and 2017-18 and noticed that UP Township Infrastructure Private Limited⁶² was not its subsidiary during these years. Thus, in absence of any mechanism to detect the changes in shareholding of the allottee/subsidiary company, GNIDA failed to ensure the adherence of its Board's decision.

In its reply, GNIDA stated (November 2020) that as per terms and conditions, the transfer charge was not leviable in case of sub-lease deed in favour of subsidiary company.

The reply does not address the issue raised by the Audit regarding evolving a mechanism to ensure the compliance of the Board decision regarding maintaining shareholding pattern in case of sub-lease to subsidiary company.

Other Relaxations and discrepancies adversely affecting the interest of GNIDA

5.2.5.13 GNIDA allowed other relaxations such as reduction in reservation and allotment money, increase in period allowed for execution of lease deed and irregular allowance of higher Floor Area Ratio (FAR) and Ground Coverage (GC) in the schemes launched during the audit period as discussed in the succeeding paragraphs.

⁵⁸ Paragraph 77.

⁵⁹ 95th Board meeting, Agenda item 22.

⁶⁰ GH-01A Sector-Omicron-01 (BRS 11/2006).

⁶¹ Form No. MGT-7, pursuant to sub-section 1 of section 92 of the Companies Act, 2013 and sub-rule 1 of the rule 11 of the Companies (Management and Administration) Rules, 2014.

⁶² Incorporated on 13 March 2013.

(i) Reduction in reservation and allotment money

The terms and conditions pertaining to payment of land premium are crucial for ensuring the realisation of dues of GNIDA in time. The relaxations relating to payment terms in the subsequent brochures affecting the cash inflow are summarised in **Table 5.2.10**.

Table 5.2.10: Relaxations relating to payment terms

Original conditions of brochures (benchmark)			Revised conditions of the brochures (relaxations)		
Scheme No.	Month of launch	Condition	Scheme No.	Month of launch	Condition
BRS 09/2004 to BRS 11/2006	BRS 09/2004 (July 2004), BRS 10/2005 (January 2005), BRS 11/06 (April 2006)	The allottees were required to deposit 10 <i>per cent</i> of the total premium of the plot as reservation/acceptance money within one month of issue of reservation cum acceptance letter. The allottees were then required to pay 20 <i>per cent</i> of the total premium as allotment money within two months from the date of issue of allotment letter. The remaining 70 <i>per cent</i> was payable along with interest in ten equal half yearly installments ⁶³ .	BRS 01/2008-09	January 2009	The allotment money was reduced from 20 <i>per cent</i> to 10 <i>per cent</i> , another 10 <i>per cent</i> to be paid in succeeding four equal half yearly installments after one year from the date of allotment. The remaining 70 <i>per cent</i> was payable in succeeding 11 half yearly installments.
			BRS 01/2010 and RTS 01/2010(I)	January 2010	The allotment money was further reduced to five <i>per cent</i> along with reduction in reservation money/acceptance money from ten <i>per cent</i> to five <i>per cent</i> . The remaining 90 <i>per cent</i> was payable in 16 half yearly installments after a moratorium period of two years.
			BRS 01/2014-15	June 2014	The relaxation was ended to the extent that allotment money was increased to 15 <i>per cent</i> of total premium payable within 90 days from the issue of allotment letter.

Source: Scheme brochures for allotment of builders plots

GNIDA unilaterally decided to reduce the amount to be paid by the builders as reservation and allotment money which facilitated the builders to get these plots by paying less upfront money and deferred the commitment of the builders to the project completion.

Audit noticed that the GoUP had specified in its order (6 January 2009), the necessary measures to be taken to counter economic slowdown on the recommendation of the high level committee which did not provide for any reduction in reservation and allotment money payable by the allottees. Despite the fact that the Board of GNIDA had not delegated full powers to the CEO with respect to sale, lease or transfer of land, as these powers were subject to overall directions of the Board, the reservation and allotment money was reduced from 30 to 20 *per cent* with the approval (15 January 2009) of the CEO while taking the approval of the terms and conditions of BRS 01/2008-09. The relaxed terms and conditions were not put up to the Board even for *ex-post facto* approval so far (April 2021). Subsequently, GNIDA in 78th Board meeting⁶⁴ unilaterally decided (May 2009) to provide further relief by reducing the amount of reservation and allotment money to 10 *per cent* citing the grounds of global economic slowdown although no such relief was prescribed in the aforesaid GoUP order (January 2009).

Accordingly, the reservation and allotment money was further reduced to 10 *per cent* during opening of six⁶⁵ schemes (January 2010 to February 2011) which facilitated the builders to get these plots by paying less upfront money at the time of allotment on one hand and on the other hand it resulted in deferment of the financial commitment of the builders. This resulted in 20 *per cent* less inflow of funds to the extent of ₹ 1,438.46 crore against the allotment of 137 plots to the builders during the above period. As of April 2021, the

⁶³ In six instalments under BRS 11/2006 scheme.

⁶⁴ Agenda item number five.

⁶⁵ BRS 01/2010(I), RTS 01/2010(I), BRS 02/2010, BRS 03/2010, BRS 04/2010 and BRS 05/2010-11

overdue of premium against the builders who were extended this facility accumulated to ₹ 8,060.18 crore⁶⁶. Further, 35 out of above 137 builders did not even pay the deferred allotment money of 20 *per cent* amounting to ₹ 294.02 crore so far (April 2021). Besides, 121 out of above 137 projects⁶⁷ were not completed (April 2021) by the builders within the stipulated period of seven years (after allowing zero period⁶⁸).

Thus, the sharp reduction in allotment money adversely affected the financials of GNIDA as it had taken loan of ₹ 16,419.10 crore during the period April 2009 to March 2014 for land and infrastructure development. Had the reservation and allotment money not been reduced, loan amount to the extent of ₹ 1,438.46 crore could have been avoided. Further, the reduction in allotment money prompted the builders to defer the commitment of construction as they utilised the available liquidity in acquiring the plots instead of completing the existing project and left the home buyers in the lurch. The Hon'ble Supreme Court in its judgment⁶⁹ relating to Amrapali Builders observed, "*The land allotted at throw away prices of ten 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, GNIDA stated (November 2020) that keeping in view the economic situation and demand for land in the real estate market; the terms and conditions of the allotment were amended from time to time by GNIDA. The payment system for new allottees was amended in view of 78th meeting⁷⁰ of the Board and GoUP order⁷¹ dated 25 October 2009.

The reply is not acceptable as necessary economic measures required to be taken to counter economic slowdown as per aforesaid GoUP order were meant for the existing defaulter allottees and not for the prospective bidders under new schemes. Besides, GNIDA did not enhance control to ensure that the projects got completed.

(ii) Injudicious relaxation for execution of lease deed

Injudicious change in terms and conditions pertaining to execution of lease deed resulted in unwarranted extension of period of completion.

The provisions with regard to execution of lease deed in a defined time frame are expected to be provided in the brochures. Accordingly, similar provisions are to be incorporated in the checklist which is issued for execution of lease deed after the receipt of allotment money.

Audit noticed that the brochures of the schemes upto BRS 11/2006 launched in April 2006 did not prescribe the period within which the lease deed was to be executed. This was also not specified in the checklists issued for the above schemes. The Marketing Division of GNIDA proposed for the first time in the scheme (BRS 01/2008-09) launched in January 2009, a period of 30 days to execute lease deed from the date of issue of checklist. The Committee⁷²

⁶⁶ Principal amount: ₹ 3,339.74 crore and Interest: ₹ 4,720.44 crore.

⁶⁷ Completion of project was not due in four cases.

⁶⁸ In the zero period, allottees are provided the facility of interest waiver for the period during which possession of plot could not given due to encroachment or dispute. Zero period of 308 days during 21 October 2011 to 24 August 2012 was allowed.

⁶⁹ Paragraph 98 of judgment of July 2019 in Writ Petition (C) 940/2017.

⁷⁰ 28 May 2009.

⁷¹ 1470/77-4-09-142N/08.

⁷² Comprising GM (Finance), Deputy GM (Planning), Deputy GM (Project), Manager (Legal) and Manager (Builders Division)

constituted for the purpose of deciding the terms and conditions of the scheme brochure, however, during the process of obtaining the approval (January 2009) of the CEO on the terms and conditions of scheme brochure excluded (January 2009) this provision from the brochure without recording any reason.

In absence of any time frame for execution of lease deed specified in the above scheme brochure, the Manager, Builders Division issued checklists to the allottees prescribing a period of 60 days for execution of lease deed from the date of issue of checklist. This period was, however, further included in the brochures of the subsequent schemes⁷³. As completion period is allowed from the date of execution of lease deed, in case of 121 allotments made during the period 2008-09 to 2014-15 the completion period was automatically extended by one month (30 days).

In its reply, GNIDA stated (November 2020) that in the earlier builder schemes certain terms and conditions were not included, which were amended from time to time, based on the situations/experience, in the forthcoming schemes. Presently, lease deed was required to be executed within 60 days from the date of issue of checklist. Thereafter, penalty as per the scheme brochure was being levied.

The reply does not address the issue raised by Audit regarding exclusion of proposed clause for execution of lease deed within 30 days of issue of checklist without any justification. Further, any relaxation to be made should be in public interest after recording justification and obtaining appropriate authorisation, in this case of the Board.

Inadequate penal provisions for Builders/Group Housing category for not executing lease deeds

5.2.5.14 The objective of providing penal provisions is to deter the concerned party to act against the conditions prescribed for the desired outcome. GNIDA did not prescribe in the scheme brochure any penalty for delay in execution of lease deed beyond stipulated period in the Builders/Group Housing schemes launched during April 2005 to December 2009 and Institution/IT scheme launched during April 2005 to March 2008.

As per scheme brochures for the allotment of properties under various categories, the respective property Divisions of GNIDA (Builders, Commercial, Institutional and Industrial Divisions) were required to issue checklist for execution of lease deed after the confirmation of receipt of allotment money. The allottee was required to execute lease deed within the prescribed period from the date of allotment/issue of checklist. In case of delay in execution of lease deed beyond the stipulated period, the provisions for levy of penalty have been provided for various categories. These are tabulated in **Table 5.2.11**.

⁷³ BRS 01/2010(I) to BRS 01/2014-15 launched during January 2010 to June 2014.

Table 5.2.11: Provisions for levy of penalty on delay in execution of lease deed under various categories

Category of allotment	Period	Period prescribed for execution of lease deed	Provisions for levy of penalty on delay in execution of lease deed
Builder/ Group Housing	April 2005 to May 2009	Not prescribed	No provision for levy of penalty.
	June 2009 to December 2009	60 days from the date of issue of checklist (provided in the checklist)	No provision for levy of penalty.
	January 2010 to date (November 2019); the last scheme BRS 01/2014-15 was launched in June 2014	60 days from the date of issue of checklist (provided in the scheme brochure)	₹ 10 for 1,000 sqm per day (one paisa ⁷⁴ per sqm per day).
Commercial	April 2005 to March 2014	April 2005 to March 2010: One year from the date of allotment for shops; and April 2010 to 2 March 2014: 30 days for shops from the date of issue of checklist	One <i>per cent</i> of total land premium for the delay of first six months and thereafter at two <i>per cent</i> , four <i>per cent</i> and eight <i>per cent</i> for each subsequent half year.
		April 2010 to 2 March 2014: 60 days for commercial builder plot	Five <i>per cent</i> of land premium annually calculated proportionately on day to day basis.
	April 2014 to date (November 2019)	30 days for shops from the date of issue of checklist	One <i>per cent</i> of total land premium for the delay of first six months and thereafter at two <i>per cent</i> , four <i>per cent</i> and eight <i>per cent</i> for each subsequent half year.
		120 days for commercial builder plot from the date of issue of checklist	Five <i>per cent</i> of land premium annually calculated proportionately on day to day basis.
Institutional/ IT	April 2005 to March 2008	Not prescribed	No provision for levy of penalty.
	April 2008 to date (November 2019)	30 days from the date of issue of checklist	2.5 <i>per cent</i> of land premium for first year and 3.75 <i>per cent</i> of land premium for second year proportionately on monthly basis and thereafter one <i>per cent</i> of land premium for each subsequent month.
Industrial	April 2005 to December 2012.	18 months from the date of allotment	Three <i>per cent</i> of the total premium upto the delay of first six months and thereafter at the rates of four, five, six, seven, eight and nine <i>per cent</i> for each subsequent half year.
	January 2013 to November 2019	60 days from the date of issue of checklist	2.5 <i>per cent</i> of the total premium of the land along with ₹ 20 per sqm for each day.

Source: Compiled by Audit on the basis of Manual and scheme brochures for allotments

⁷⁴ ₹ 10/1,000 sqm.

It is evident from the above Table that there were different rates and methods for levy of penalty for the delay in execution of lease deed among various categories of allotments.

The implication of varying rates of penalty for various categories of allottees was worked out by Audit for an illustrative sample plot of 1,000 sqm in which execution of lease deed was delayed for varying periods during 2018-19. The same is depicted in **Table 5.2.12**.

Table 5.2.12: Implication of varying rates of penalty for various categories of allottees

Category of allotment	Prevailing sale price for 2018-19 (₹ per sqm)	Value of land premium for illustrative plot of 1000 sqm (₹ in crore)	Amount of penalty (₹ in lakh)		
			Delay of six months	Delay of one year	Delay of two years
Builder/Group Housing	28230	2.82	0.02	0.04	0.07
Commercial	46190	4.62	11.54	23.10	46.2
Institutional/IT	15005	1.50	1.88	3.75	9.38
Industrial	10790	1.08	38.70	75.70	148.70

Source: Compiled by Audit on the basis of Manual and scheme brochures for allotments

GNIDA did not evolve a uniform system of penalty for delay in execution of lease deed among different categories of allotment. Further, the penalty levied under Builder/Group Housing category was insignificant and acted as a catalyst for the builders to delay the execution of lease deed.

It is evident from the above Table that:

- The penalty was highest for the defaulters in industrial category and was lowest for the defaulters in the Builder/Group Housing category. The quantum of penalty for Builder/Group Housing category was a small fraction⁷⁵ of all other categories.
- It is also notable that unlike other categories, in case of Builder/Group Housing, levy of penalty is on the basis of area (sqm.) and not as percentage of the land premium, hence, the amount of penalty based on area remains unchanged, unless revised, even when land rate was enhanced. The penalty for this category was not revised since January 2010.

Thus, fixation of penalty for delay in execution of lease deeds was not commensurate with the value and purpose of allotment of plots, particularly in the case of Builder/Group Housing category. Instead, it worked as a catalyst for delaying execution of lease deed and eventually the completion of the project, even without paying any time extension charges to that effect. There was also failure to review and revise the rates in the last nine years.

During the Exit Conference (January 2021), the State Government and GNIDA accepted the audit observation. GNIDA further stated that a committee has been formed to study the penal provision and to rationalise the penalty structure for different categories so that it could serve as an effective deterrent for all the allottees. The State Government added that the penalty

⁷⁵ For a minimum Builder/Group Housing plot of 10,000 sqm., a delay of six months in execution of lease deeds would for instance attract a penalty of only ₹ 20,000 on the Builder. In terms of ratios, for example, for a delay of six months in execution of lease deed, it emerges that this was of the order of 1:1,935, 1:577 and 1:94 for Industrial, Commercial and Institutional/IT categories respectively.

regime should serve as a deterrent and in case of protracted delays in execution of lease deed, the allotment should stand cancelled.

Delays in execution of lease deeds

5.2.5.15 Audit further analysed that out of 183 allotments made to builders during the period 2005-06 to 2014-15, in 28 cases (15 *per cent*) the lease deeds were not executed so far (April 2021). Out of remaining 155 cases, lease deeds were executed in the permissible period of 150 days⁷⁶ from the date of allotment in respect of only 55 cases while in other 100 cases lease deeds were executed with delay of upto seven years beyond the permissible period (April 2021) as summarised in **Table 5.2.13**.

Table 5.2.13: Delay in execution of lease deed

Sl. No.	No. of Allotments	Range of delay
1	51	Less than five months
2	49	More than five months to seven years
Total	100	

Source: Analysed by the Audit from the data obtained from the Systems Department, GNIDA.

It is evident from the above Table that due to absence/inadequate penal provision for delay in execution of lease deed, the lease deeds were executed with the delay of upto seven years.

This also resulted in extension of the completion period of the projects and consequent delay in delivery of home to the ultimate buyers. Besides, GNIDA was further deprived of lease rent for the period of delay as the levy of lease rent for this period would not be recovered in future. The unusual delay in execution of lease deeds also increases the scope for speculation.

In its reply, GNIDA stated (January 2020) that in 32 cases, the lease deed had been executed; however, the same was not updated in the System which would be updated. It further stated (August 2020) that in case of delay in execution of lease deed, penalty was levied as per the scheme brochures.

The reply is not acceptable as Audit considered the updated data provided by Systems Department on 12 April 2021. Further, the penalty levied by GNIDA as per scheme brochures were low and ineffectual as already discussed in **Paragraph 5.2.5.14**.

Irregular allowance of increased Floor Area Ratio

5.2.5.16 Section 9 (2) of the Uttar Pradesh Industrial Area Development Act, 1976 confers on GNIDA the powers to make regulations for the erection of the building, with the previous approval of the State Government. Accordingly, GNIDA formulated Building Regulations, 2000 (amended⁷⁷ in 2006 and 2011) notified (July 2000) by the Government of Uttar Pradesh. The Building Regulations (BR) *inter alia* prescribe the permissible Floor Area Ratio (FAR) and Ground Coverage (GC) for various categories of land use. Additional FAR and GC allow the builders to construct more covered area and to cover more area on the ground on the given plot, respectively.

⁷⁶ 150 days includes permissible period of 30 days to deposit reservation cum acceptance money, 60 days to deposit allotment money and 60 days to execute lease deed from the date of issue of check list. The approved zero period of 308 days was also allowed in the eligible cases.

⁷⁷ GNIDA Building Regulation, 2005: effective from 9 January 2006 and GNIDA Building Regulation, 2010: effective from 1 January 2011.

Brochure-wise details of schemes, number of plots offered and comparison of development norms (FAR and GC) permissible as per the prevailing Building Regulations and allowed by GNIDA are given in **Table 5.2.14**.

Table 5.2.14: FAR and Ground Coverage

Sl. No.	Particulars of the scheme brochure	Period of launch of the scheme	No. of allottees	As allowed in brochure		Permissible as per prevailing Building Regulations (BR)		
				FAR	GC	BR applicable	FAR	GC
1.	BRS 01/2008-09	16-01-09 to 06-02-09	15	2.75	35	BR 2006	1.75	30
2.	BRS 01/2010(I)	22-01-10 to 16-02-10	8	2.75	35	BR 2006	1.75	30
3.	BRS 02/2010	06-03-10 to 23-03-10	23	2.75	35	BR 2006	1.75	30
4.	BRS 03/2010	22-06-10 to 16-07-10	48	2.75	35	BR 2006	1.75	30
5.	BRS 04/2010	11-11-10 to 10-12-10	35	2.75	35	BR 2006	1.75	30
6.	RTS 01/2010(I)	22-01-10 to 15-02-10	7	2.75	35	BR 2006	1.75	30
Total			136					

Source: Compiled by the Audit on the basis of records submitted by GNIDA.

GNIDA, without prior approval of GoUP, irregularly allowed higher FAR and Ground Coverage valuing ₹ 1,558.40 crore to 136 builders which otherwise was purchasable.

Audit noticed that GNIDA irregularly allowed higher FAR of 2.75 and GC of 35 *per cent* equivalent to 36,70,164 sqm (906.92 acre) against purchasable FAR valuing ₹ 1,558.40 crore to 136 builder allotments by incorporating it in the brochures during January 2009 to December 2010 against the FAR of 1.75 and GC of 30 *per cent* permissible in the prevailing Building Regulations, 2006 (discussed in detail in **Paragraph 4.5** in the Chapter-IV on Pricing of Properties). Thus, GNIDA overlooked its interest and unscrupulously allowed higher FAR and GC in breach of Section 9 (2) of the Act, 1976.

In its reply, GNIDA stated (November 2020) that prior to the notification of Building Regulations of GNIDA⁷⁸ (December 2010), the builder schemes were being launched from time to time in the background of Building Regulation⁷⁹, 2006.

The reply of GNIDA does not address the issue raised by Audit regarding allowance of higher FAR and GC in contravention of the prevailing BR and without prior approval of the GoUP.

During the Exit Conference (January 2021), the State Government, on the issue of FAR and GC (**Paragraph 4.5** in the Chapter-IV on Pricing of Properties), accepted that higher FAR means more infrastructure and therefore, should translate in higher prices and also agreed for corrective action in this regard.

Irregularities in evaluation of bids and allotments

GNIDA did not devise any mechanism to ensure the intactness of the plots before its allotment resulting in unnecessary delay in completion of projects and financial loss to GNIDA.

5.2.6 Audit noticed that GNIDA not only provided various undue relaxations to builders but also extended undue favours in allotment of plots as discussed in succeeding paragraphs.

Losses due to allotment of plots without ensuring its intactness

5.2.6.1 As a matter of prudence, GNIDA should ensure that plots to be allotted to the builders are free from all encumbrances/encroachment and disputes to enable them to construct dwelling units and allot it to the ultimate home buyers within the time prescribed in the policy/rules of the GNIDA. Allotment without ensuring the same, gives rise to disputes with the allottee later on

⁷⁸ Notification number 2159/77-4-10-28 Bha/91 dated 20 December 2010.

⁷⁹ Notification number 34/77-4-10-067284 Bha/91 dated 28 January 2006.

resulting in unpaid dues and their re-schedulement, allowance of zero period and delay in construction of projects.

Audit noticed that GNIDA did not have a foolproof system to ensure the intactness of the plots (free from all encumbrances), prior to issuing allotment letters to the allottee. Instead, it had been allotting undeveloped/disputed/unacquired land, which led to delays in the construction of projects, besides financial losses to GNIDA.

Out of 34 cases⁸⁰ checked in audit, Audit noticed that in two cases of allotments the allotted plots were disputed/encroached at the time of allotment as detailed in the **Table 5.2.15**.

Table 5.2.15: Allotment of encroached/disputed area

Sl. No.	Name of the allottee	Plot No.	Date of allotment	Area allotted/as per Lease plan (in sqm)	Encroached/disputed area (in sqm)	Date of peaceful possession	Remarks	Reasons
1.	Gaursons Promoters Private Limited (Consortium)	GH-3 Sector-16C	27 July 2010	454168	33840	May 2013 (for an area of 3,207.49 sqm only)	As per lease plan submitted by Planning Division, 33,840 sqm area out of total allotment area was disputed. Out of the disputed area, 3,207.49 sqm was allotted in May 2013. The remaining area of 30,632 sqm could not be allotted so far (March 2021).	Area was affected by the stay of the Hon'ble High Court.
2.	Shirja Real Estate Solutions Private Limited	GH-3 C Sector-10	7 July 2014	20000	20000	March 2019	Correction deed for revised area of 18,380 sqm was executed on 4 October 2018 and the physical possession was handed over on 8 March 2019 after more than four years from the date of original allotment.	Existence of under-ground gas pipe line (affected area 1620 sqm).
Total				474168	53840			

Source: Compiled by the Audit on the basis of records submitted by GNIDA

Had the above plots been allotted after ensuring their intactness, GNIDA would have earned an additional revenue of ₹ 0.65 crore⁸¹ at the rates prevailing in March 2019.

GNIDA accepted the audit observation and stated (August 2020) that in certain cases encroached/disputed land was allotted. GNIDA would try to avert the recurrence of the same in the future.

Irregular allotment to technically ineligible bidders

5.2.6.2 GNIDA invited bids for allotment of builder plot under two bid system, viz., technical and financial bids. The scheme brochures defined the technical⁸² as well as financial⁸³ eligibility criteria to evaluate technical bids of

⁸⁰ Excluding one plot allotted to Unitech Limited cancelled later on during audit period.

⁸¹ Shirja Real Estate Solutions Private Limited: premium of land at prevailing (2018-19) reserve price: ₹ 51.89 crore (₹ 28,230 X 18,380 sqm) *minus* {Premium of land at bid rate (2014-15): ₹ 44.48 crore (₹ 24,200 X 18,380 sqm) *minus* ₹ 6.76 crore (simple interest at the rate of eight *per cent* on amount deposited till 8 March 2019)}. In case of Gaursons Promoters Private Limited amount of loss was not calculated as out of disputed area of 33,840 sqm, 3,207.49 sqm was given in May 2013 after charging interest at the rate of 12 *per cent* per annum on the allotment rate and remaining area was encroached (April 2021).

⁸² Completed works in the past five years.

⁸³ Net worth, solvency and turnover during last three years.

the prospective allottees. It further provided⁸⁴ that the financial bid of only technically qualified bidders was to be opened. It also required the relevant documents in support of above to be submitted mandatorily along with the bid. The technical bid comprising of technical and financial eligibility of the bidder should have been verified/cross checked from the submitted documents and evaluated correctly by GNIDA. In case the relevant documents were not submitted or one or more parameters of technical and financial eligibility criteria were not fulfilled, the bidder was not technically qualified and therefore ineligible. In all such cases, the next stage, viz., opening of the financial bid was not warranted, let alone the bidder being considered for allotment.

In four cases out of 34 cases test checked, Audit noticed that the allottees did not submit the complete/sufficient documents in support of their technical eligibility as laid down in the scheme brochures. The details are as follows.

- The terms and conditions of BRS 01/2008-09 launched in January 2009 pertaining to work experience for ensuring technical qualification *inter alia* provided for submission of details of minimum two completed projects related to real estate development and construction activities of bonafide allotted land/commercial development/IT, ITEs projects in last five years.

Audit noticed that:

(i) Today Homes and Infrastructure Private Limited (Applicant) submitted its bid for plot BRS-07 (area: 20,947 sqm and premium: ₹ 21.78 crore) in Sector Omega-I/P-2 as a sole applicant. In support of work experience, the applicant, however, furnished the completion certificates/work experience of six other companies⁸⁵ which were neither the holding/subsidiary company of the applicant. Despite the bidder not being technically qualified, as per the brochure conditions, the Bid Evaluation Committee not only opened (February 2009) the financial bid of the applicant but recommended (February 2009) for the allotment of plot which was approved (February 2009) by the CEO.

(ii) SDS Infratech Private Limited did not submit completion certificate as required by the scheme brochure along with its bid for a plot GH01 A and GH01 B (total area: 44,455 sqm and premium: ₹ 46.02 crore) in Sector Omega II. Instead it submitted copy of compounding map⁸⁶. The scheme brochure did not specify the compounding area to be considered as work experience. Nonetheless the Bid Evaluation Committee opened (February 2009) the financial bid of the applicant and recommended (February 2009) the allotment of plot and the same was approved (February 2009) by the CEO.

- The terms and conditions of BRS 01/2010(I) launched in January 2010 *inter alia* required the bidder to submit details of minimum two completed projects for 15 lakh sq.ft in aggregate related to real estate development and construction activities during last five years as technical qualification for plots

Despite the fact that the bidders did not submit the required documents in support of their eligibility the Bid Evaluation Committee recommended the allotment of plots worth ₹ 272.70 crore to four bidders which was also approved by the CEO.

⁸⁴ Point number 3 of Clause F (Acceptance of Tender).

⁸⁵ Sheetal International Private Limited, GPS Properties Private Limited, Vikhiyat Properties Private Limited, Pallah Portfolios Private Limited, Fasal Agrifin Private Limited and SIM Exports Private Limited.

⁸⁶ A map in which the layout of unauthorised/additional construction or development is submitted by a builder/developer to the competent authority for regularisation and approval.

above one lakh sqm. The bidder was also required to submit copy of compounding/completion certificates for each project issued by the competent statutory authority.

Audit noticed that a consortium of Supertech Limited and Panchsheel Limited applied for a plot GH-08 (area: 2,04,000 sqm and premium: ₹ 204.90 crore) in Sector-1. Although, the bidder submitted a list of three completed projects aggregating 16.23 lakh sq. ft, it submitted the copy of completion certificate in respect of only one of the above projects. The Bid Evaluation Committee not only recommended (February 2010) the opening of financial bid of the applicant but also recommended (February 2010) for the allotment of plot to the consortium, which was approved (March 2010) by the CEO.

- The terms and conditions of the scheme brochure (BRS 03/2010) *inter alia* provided criterion of minimum net worth of ₹ 60 crore for technical qualification for plot area of above one lakh sqm. In case of the bid by a consortium, the lead member and the relevant members were required to fulfill the above criterion jointly. The bidders were required to submit *inter alia* a statement of net worth certified by the statutory auditors/Chartered Accountants and copy of annual reports with audited accounts for the last three years (2006-07, 2007-08 and 2008-09) with the technical bid. In case of a consortium, these documents were required to be submitted by each member of the consortium.

Audit noticed that a consortium of five members⁸⁷ lead by Sam India Infrastructure Private Limited submitted a bid for the plot GH-2, Sector 16 C (area: 1,01,264 sqm and premium: ₹ 117.07 crore). The bidder although submitted a CA certified statement of net worth of the consortium members aggregating ₹ 62.69 crore against the required net worth of ₹ 60 crore, but did not submit the annual reports of all the members in its support. It submitted the annual reports of only one consortium member⁸⁸ with net worth of ₹ 6.56 crore. Despite this, the Bid Evaluation Committee⁸⁹ recommended (July 2010) for allotment of plot to the consortium and the same was approved (July 2010) by the CEO.

Thus, the above allottees did not submit the required documents in support of their eligibility, therefore, their financial bids should not have been opened. The Bid Evaluation Committee of GNIDA not only opened their financial bids but also recommended the allotment of plots valuing ₹ 272.70 crore to above four bidders which was also approved (February 2009 to July 2010) by the CEO in violation of brochure conditions.

One⁹⁰ of the above four plots was sub-divided into two plots. The projects were not completed by the allottees in four out of five plots (including sub-divided plots) after the expiry of two to four years from the prescribed timeframe as of April 2021.

⁸⁷ Sam India Infrastructure Private Limited, Abhimanyu Housing Private Limited, Sam India Buildwell Private Limited, Mag Associates Private Limited, Prashant Enterprises.

⁸⁸ Sam India Infrastructure Private Limited.

⁸⁹ Consisting Assistant Law Officer, Tehashildar, General Manager (Builder), General Manager (Planning), General Manager (Project) and General Manager (Finance) headed by the Officer on Special Duty.

⁹⁰ GH-08, Sector-1

During the Exit Conference (January 2021), the State Government and GNIDA accepted the audit observation. The State Government further assured action against the concerned officials responsible for this. Specific action taken against responsible officers is awaited (March 2022).

Allotment of plots to defaulters

5.2.6.3 The terms and conditions of the scheme brochure BRS 06/2003 launched in June 2003 provided that a builder/company having any kind of default in Noida/GNIDA would not be eligible for participating in the bid. This condition was, however, not included in the brochures of subsequent schemes launched during the period July 2004⁹¹ onwards.

Audit analysed the payment plans obtained from the Systems Division of GNIDA and noticed that due to exclusion of aforesaid condition, GNIDA did not even consider the defaults against the plots allotted by itself at the time of bid evaluation of subsequent allotments and continued making allotments year after year, even with the knowledge that the allottees had been defaulting in making payments as detailed in **Table 5.2.16**.

Table 5.2.16: Details of dues and subsequent allotments

Sl. No.	Name of the allottee	Amount of default at the time of subsequent allotments (₹ in crore)	Details of plot allotted in subsequent schemes			
			Date of allotment	Plot and Sector	Value of plot allotted (₹ in crore)	Amount of Default as of April 2021 (₹ in crore)
1.	Supertech Construction Ltd.	53.58	19 March 2010	GH-08, Sector 1,	174.77	130.53
			23 April 2010	GH-01, Sector 16-B	153.18	147.93
			18 August 2010	GH-06, Sector 16-B	98.61	110.69
Sub Total					426.56	389.15
2	Earthcon Construction Pvt. Ltd.	0.73	30 March 2011	GH-6C, Chi-V	20.99	0
3	Eldeco Infrastructure and Properties Limited	2.88	15 September 2006	GH-03, Omicron-1	59.43	270.14
4	Purvanchal Construction Pvt. Ltd.	3.94	15 September 2006	GH-02, Zeta 1	48.00	160.04
5	Starcity Buildcon Private Limited	1.11	15 July 2014	GH-14, Sector-1	80.49	57.70
Grand Total					635.47	877.03

Source: Information furnished by GNIDA

Injudicious removal of the condition making the defaulter ineligible from participating in the bids helped five defaulters to get seven fresh allotments of ₹ 635.47 crore who kept on defaulting even against the subsequent allotments with their overdue accumulating to ₹ 877.03 crore as of April 2021.

It is evident from above that GNIDA extended undue favour and allotted seven plots valuing ₹ 635.47 crore to five builders inspite of their defaults against the already allotted plots at the time of subsequent allotment. Audit further noticed that these builders kept on defaulting against the subsequent allotments also which accumulated (April 2021) to ₹ 877.03 crore. Besides, the amount of default in case of earlier allotments in respect of above builders accumulated (April 2021) to ₹ 461.99 crore.

The allottees not only defaulted in payment of dues but also failed to complete the projects in the stipulated period. Out of the aforesaid seven projects, only one project was complete (Purvanchal Construction Private Limited: GH 02, Zeta 1), while five projects of three builders, viz., Supertech Construction Limited, Earthcon Construction Private Limited and Eldeco Infrastructure and

⁹¹ BRS 09/2004 launched in July 2004.

Properties Limited were partially complete⁹² and in the project of Starcity Buildcon Private Limited (GH-14, Sector-1), even the first phase of the project was not complete (April 2021).

Thus, due to imprudent removal of the condition making the defaulters ineligible from participation in the bids, GNIDA not only put its financial interests at risk but also increased the agony of large number of the home buyers due to delay in completion of the projects. It is notable that the Hon'ble Supreme Court in its judgment related to Amrapali group observed⁹³ that *"Once NOIDA and Greater Noida Authorities knew very well that there were defaults, they could not have allotted further land to Amrapali group without insisting for payment of its dues"*.

GNIDA accepted the audit observation and stated (August 2020) that such provisions may be incorporated in the scheme to be launched in the future.

Absence of fair competition in allotment of plots

5.2.6.4 The Competition Act, 2012 defines⁹⁴ '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 of the forms of bid rigging is bid rotation in which all conspirators submit bids but take turns to be the lowest bidder. The terms of the rotation may vary, for example, competitors may take turns on contracts according to the size of the contract, allocating equal amounts to each conspirator or allocating volumes that correspond to the size of each conspirator. A bid rotation pattern defies the law of chance and suggests that collusion is taking place⁹⁵.

GNIDA allots the plots by inviting bids. While making the allotments it should ensure that there existed fair competition between the participating bidders. A total of 91 builders allotments⁹⁶ (before sub-division) were made to builders during the period 2005-06 to 2014-15. Thereafter, no allotments were made so far (April 2021). Of these 91 allotments, 63 allotments (69.23 *per cent*) were made during the period 2009-10 to 2014-15. Of these 63 allotments, in 59 allotments (94 *per cent*) only two bids were received, of which against 16 plots eight pair of bidders submitted their bids. Out of the eight pair of cases where the participating bidders were same or of the same group, in five pair of cases, one allotment was made to each of the bidder. Audit noticed that the bid prices in these cases were very close to the reserve price fixed by GNIDA as these were only 0.10 to 5.27 *per cent* higher than the reserve price (**Appendix-5.2.10**).

Instances of bid rotating by the pair of same bidders or of the same group and taking turns to be the lowest bidder for allotment of plots indicated possible collusion and bid rigging by the bidders.

⁹² Supertech Construction Limited: GH 08, Sector 1, GH 01, Sector 16 B, GH 06, Sector 16 B, Earthcon Construction Private Limited: GH 07A, Chi V and Eldeco Infrastructure and Properties Limited: GH-03, Omicron-1.

⁹³ Writ Petition (C) 940/2017 of Bikram Chatterji and Others vs. Union of India and Others on the issues related to Amrapali Builders (Paragraph 77).

⁹⁴ Section 3 of the Competition Act, 2012.

⁹⁵ Advocacy series 3, Competition Act, 2002 'Provisions relating to Bid Rigging' published by Competition Commission of India.

⁹⁶ Excluding three Group Housing plots.

In view of only two bids submitted by the pair of same bidders for the plots and their bid price being only marginally higher than the reserve price, the collusion between the participating bidders was a strong possibility. Thus, in the above 10 allotments of plots valuing ₹ 1,377.28 crore, bid rigging and collusion between the bidders cannot be ruled out resulting in loss to GNIDA value of which is indeterminable. Two out of above ten plots were sub-divided in 14 plots. Out of 22 plots (including sub-divided plots), the projects could be completed by the allottees in only three plots. Remaining 19 plots were incomplete (April 2021) with delays of one to four years from the stipulated completion period. Further, there was overdue of ₹ 1,344.62 crore against premium and lease rent in 14 out of above 22 plots.

The Government may consider having the matter investigated.

In its reply, GNIDA stated (November 2020) that the scheme brochures were published in national newspapers after the approval by the competent authority of the terms and conditions determined by the Allotment Committee but it was felt that builders of National Capital Region participated in most of the schemes. The applicants submitted the technical bids for the allotment as per the terms and conditions of the brochure. After the scrutiny of net worth of company, work experience, turnover and solvency, *etc.*, in the technical bid the allotment was made in favour of successful highest bidders.

The reply being general in nature is not acceptable in view of the fact that in the eight pairs of cases mentioned above, two bidders competed amongst themselves, out of which in five pair of cases, one allotment was made to each of the bidders while in the remaining three cases, the allotments were made to one bidder. The above situation, viewed at a macro level, gives rise to suspicion of regular bid rigging by builders. Further, there were marginal variations in the bid prices from the reserve price in above cases. It is pertinent to mention that plots of large size ranging from 44,000 sqm to 4,54,167 sqm were allotted in the above cases which were later on sub-divided upto the size of 10,000 sqm as permitted in the scheme brochures. Allotment of large size plots discouraged larger participation of bidders and increased possibility of their cartelisation. GNIDA should check the possibility of allotting smaller size plots to encourage participation of more bidders.

Undue favour in allotment of plots

5.2.6.5 GNIDA extended undue favour in allotment of plots as discussed below:

GNIDA allowed participation of two related parties in a bid as competitive parties which vitiated the sanctity of the bidding process.

(i) Bids by related parties: As per Section 6 of the Competition Act, 2002, no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market and such a combination shall be void.

Audit noticed that during January 2010 to July 2010 three schemes, *i.e.*, BRS 01/2010(I), BRS 02/2010 and BRS 03/2010 were launched inviting tenders for allotment of 63 plots⁹⁷. A total of 71 bids⁹⁸ were received for 36 plots⁹⁹ out of these 63 plots offered for auction. In respect of four of the aforesaid plots¹⁰⁰,

⁹⁷ BRS 01/2010(I): 20 plots, BRS 02/2010: 25 plots and BRS 03/2010: 18 plots.

⁹⁸ BRS 01/2010(I): 15 bidders, BRS 02/2010: 24 bidders and BRS 03/2010: 32 bidders.

⁹⁹ BRS 01/2010(I): Eight plots, BRS 02/2010: 12 plots and BRS 03/2010: 16 plots.

¹⁰⁰ BRS 01/2010(I): GH 08, Sector 1; GH 01, Sector 16-B; BRS 02/2010: GH 03, Sector 16-B; and BRS 03/2010: GH 06 Sector 16-B.

only two bidders, viz., Supertech or consortium headed by Supertech Limited and a consortium having Assotech Limited as a LM/RM submitted their bids. Three of these plots¹⁰¹ were allotted to Supertech Limited and one plot¹⁰² was allotted to Assotech Limited.

Audit further noticed that these two bidders were related parties as they were having interest in a joint venture, viz., 'Assotech-Supertech JV' with equal contribution as mentioned in the Balance Sheet submitted by Supertech at the time of submission of bids for above plots thereby compromising the chances of fair competition in bidding process. The allotment of three plots were made to Supertech/consortium of Supertech and Panchsheel Buildtech Limited and one plot to the consortium of Assotech Limited, Ajnara India Limited and Gulshan Developers Private Limited, being the H-1 bidders, at the bid prices which were only 0.44 *per cent*, 2.03 *per cent*, 5.22 *per cent* and 2.21 *per cent* above the reserve price of ₹ 10,000 per sqm. Further, the difference between bid prices of these parties in above cases ranged between 0.06 *per cent* and 1.58 *per cent*. It is also pertinent to mention that Supertech was earlier allotted a plot (GH 1 Sector- Omicron 1) in the year 2006 at the bid of price ₹ 16,000 per sqm against the reserve price of ₹ 3,795 per sqm (326.88 *per cent* above the reserve price).

In view of above related party interests between the competing parties, the collusion between the bidders to take undue advantage and affect the competition adversely cannot be ruled out as indicated by the marginal differences in the rates quoted between them and against the reserve prices. In such circumstances, the bids should have been cancelled and re-tendering should have been undertaken by GNIDA.

Thus, GNIDA extended undue favour to Supertech/its consortium and consortium of Assotech Limited by allotting four plots measuring 7,89,202 sqm valuing ₹ 813.84 crore during March 2010 to August 2010 despite the fact of their mutual related party status being apparent from documents submitted by them to GNIDA. Two¹⁰³ of the four plots were sub-divided into four plots. The allottees failed to complete the projects in any of the above six plots (including sub-divided plots) as of April 2021 with delays ranging from two to three years after the prescribed period. Further, there was overdues of ₹ 531 crore against premium and lease rent in five out of above six plots.

In its reply, GNIDA stated (November 2020) that the schemes were published in national newspapers, but it was felt that builders of National Capital Region participated in most of the schemes. The applicants submitted the technical bids for the allotment as per the terms and conditions of the brochure. The scrutiny of net worth of company, work experience, turnover and solvency, etc., in the technical bid was done by the Allotment Committee. The allotment was made in favour of highest bidders declared successful in technical bid.

The reply of GNIDA does not address the observation raised by Audit on the issue of participation of the related parties as competitors thereby vitiating the sanctity of the bids and no action was taken by GNIDA despite the fact of

¹⁰¹ GH 08 Sector 1 for 2,04,000 sqm (BRS 01/2010(I)), GH 01 Sector 16-B for 4,00,000 sqm (BRS 02/2010) and GH 06 Sector 16-B for 85,202 sqm (BRS 03/2010).

¹⁰² GH-03, sector 16 B for 1,00,000 sqm (BRS 02/2010).

¹⁰³ GH-03, Sector 16 B and GH-08, Sector 1

bidders being related parties was clear from the documents submitted by the bidders.

(ii) Division of the plot making the bidder eligible: The Marketing Division of GNIDA proposed (January 2008) a scheme consisting of 26 Builders/Group Housing plots including plot GH-1, Omega-II with an area of 39,907.73 sqm. However, the aforesaid plot was not included in the scheme brochure at the time of approval of the terms and conditions of the scheme from the CEO. The scheme BRS 01/2008-09 was launched with the opening and closing date as 16 January 2009 to 6 February 2009. Subsequently, it was decided on 2 February 2009 to include the plot GH-1, Omega-II (39,907.73 sqm) along with another plot (GH-10 sector Alpha-I) on the ground that their lease plans were received from Project Division. The corrigendum was published with revised area of the plot GH-1, Omega-II, *i.e.*, 44,455.83 sqm on 5 February 2009 extending the closing date for submission of bids to 12 February 2009.

It was, however, again decided on 9 February 2009, to withdraw plot GH-01 Omega-II along with three other plots¹⁰⁴ from the scheme on the basis of feedback of prospective bidders of no demand for large plots. Accordingly, these plots were divided into two/three plots each aggregating to nine sub-divided plots. The plot GH-01 Omega-II was divided into two plots, *viz.*, GH-01 A: 20,000 sqm and GH-01 B: 24,445 sqm. Out of the nine sub-divided plots, bids were received for six sub-divided plots and allotments were made to the highest bidders for each plot. Both the plots GH-01 A and GH-01 B, Omega-II were allotted (29 July 2009) to SDS Infratech Private Limited (SDS) as it was the highest bidder for these plots among two bidders and three bidders respectively. These plots were later on amalgamated (26 August 2009) on the request of the allottee (3 August 2009).

Audit noticed that although SDS was financially eligible for combined net worth required for both the above plots (₹ 4.33 crore available against required ₹ four crore) yet it was ineligible for the total area (44,455 sqm) of undivided plot (₹ 4.33 crore available against the required ₹ five crore). Audit, further, observed that exclusion of the original undivided plot from the scheme and its re-inclusion (5 February 2009) just before closing date (6 February 2009) of the scheme followed by its division in two plots for the purpose of bidding and then its amalgamation after allotment on the request of the allottee raises the suspicion that modifications in the scheme were done to help the allottee qualify for the plot for which it was otherwise not eligible. Although the allottee has completed the project within the prescribed time, it has defaulted in payment of dues of ₹ 23.14 crore towards premium and lease rent as of April 2021.

In its reply, GNIDA stated (November 2020) that keeping in view the market demand, GNIDA launched builders scheme of small and large plots from time to time. The scrutiny of net worth of company, work experience, turnover and solvency, *etc.*, in the technical bid was done by the allotment committee. The allotment was made in favour of highest bidders declared successful in technical bid.

The reply being general in nature is not acceptable given the turn of events involving exclusion and inclusion of the said undivided plot in the scheme and then its division in two smaller plots within the short period of the tendering

Despite the fact that the bidder was ineligible for original undivided plot, GNIDA allotted this plot by dividing it in two plots and later on allowed the amalgamation of these sub-divided plots which indicates the possibility of the modifications in the scheme being done to help allottee qualify for allotment of the plot for which it was otherwise not eligible.

¹⁰⁴ GH-08, GH-09 and GH-10 in Sector Chi- V.

process. Further, it was also noticed that the allottee submitted compounding map instead of completion certificate for work experience as required by the scheme brochure and was still declared technically eligible for allotment. All this raises doubts regarding possibility of collusion with officials in GNIDA. The contention of GNIDA that there was no demand for large plots is also not correct as the allottee itself requested for amalgamation of plots immediately after the allotment. Government may consider having this case investigated.

Post allotment irregularities

5.2.7 The scheme brochure defines the terms and conditions of allotment and execution of the projects. These conditions are required to be complied with by GNIDA as well as the allottees. Cases of failure in compliance are discussed in succeeding paragraphs.

Delays in issue of allotment letter

5.2.7.1 As per scheme brochure¹⁰⁵ reservation cum acceptance letter is issued to a successful bidder requiring the bidder to deposit reservation money (after adjusting the registration money) within 30 days of the issue of reservation cum acceptance letter. After confirmation of deposit of the reservation money, formal allotment letter is issued with the condition to deposit allotment money within 60 or 90 days as prescribed in the respective brochure. With the issue of allotment letter, the bidder is formally recognised as allottee and balance premium¹⁰⁶ becomes due along with interest thereon. Therefore, allotment letter should be issued immediately after the confirmation of deposit of reservation money.

Further, in respect of the BRS 01/2010 scheme launched in January 2010 and the schemes launched thereafter, the reservation money was reduced from ten *per cent* to five *per cent* of total premium due to which the registration money deposited at the time of bid submission was sufficient to cover the amount of reservation money. Therefore, the Builders Division of GNIDA was in a position to issue the allotment letter immediately after approval of the allotment.

Audit noticed that out of 34 cases examined in audit, in 24 cases GNIDA (Builders Division) issued allotment letters with the delays upto 131 days¹⁰⁷ from the date of deposit of reservation money during the period April 2005 to August 2014. Consequently, time period of recovery of balance premium was extended and GNIDA suffered loss of interest¹⁰⁸ amounting to ₹ 5.70 crore (**Appendix-5.2.11**) for such period of delays. Besides, this also resulted in loss of lease rent amounting to ₹ 86 lakh for the period of delay due to consequential delay in execution of lease deed.

GNIDA accepted the audit observation and stated (August 2020) that delay in issue of allotment letters was attributed to delay in determination and financial scrutiny of installments and administrative approval.

In 24 cases, GNIDA issued allotment letters with delays ranging from three to 131 days which extended the period of recovery of balance premium and also led to the loss of interest of ₹ 5.70 crore.

¹⁰⁵ Sub-clause 2 of clause E.

¹⁰⁶ Land premium after adjusting reservation and allotment money.

¹⁰⁷ After allowing five days time as grace period.

¹⁰⁸ At the rate of eight *per cent* being the lowest rate of interest in respect loan taken by GNIDA.

Delays in issue of checklist

5.2.7.2 Consequent to receipt of allotment money, GNIDA is required to issue checklist to the allottee for execution of lease deed. GNIDA has prescribed in brochures of the schemes that allottee is required to execute lease deed within 60 days from the date of issue of checklist by GNIDA. However, GNIDA has not prescribed time to be taken for issuing checklist from the date of receipt of allotment money to enable the allottee to execute lease deed.

In seven cases, GNIDA issued checklist with the delay ranging from 59 to 733 days which resulted in delay in execution of lease deed and extending the period of completion.

Audit noticed that GNIDA (Builders Division) issued checklist to seven allottees, out of 34 cases of allotments checked in audit, with the delays¹⁰⁹ of 59 to 733 days from the receipt of allotment money. This resulted not only in the delays in execution of lease deed and consequent loss of lease rent amounting ₹ 1.27 crore (***Appendix-5.2.12***) but also extended the period of completion of the project.

In its reply, GNIDA stated (November 2020) that it tried to issue checklist on priority after the receipt of allotment money and lease plan but in certain cases checklist was issued with delays due to delays in receipt of lease plan as there was dispute over the land or the allottee requested for sub-division of plot amongst the consortium members.

The reply confirms that GNIDA issued checklists with delays. Further, the contention of GNIDA that in certain cases delays in issue of checklist was attributable to delays in receipt of lease plan due to dispute over the land or request by the allottee for sub-division of plot, is not acceptable as disputed land should not have been allotted by GNIDA and sub-division of plot should have been expedited in the interest of GNIDA and homebuyers to avoid any delays in completion of projects.

Imprudent change in payment plan

5.2.7.3 GNIDA, in the brochures of schemes¹¹⁰ launched during January 2009 and February 2011, provided for levy of interest from the ‘date of allotment’ but in the brochure of the scheme BRS 01/2014-15 launched in June 2014 this condition was changed to ‘due date of deposit of allotment money’ with the approval of the CEO without any reason on records. Further, this scheme brochure was not submitted to the Board even for *ex-post facto* approval as discussed in ***Paragraph 5.2.4.1***.

Injudicious change in the payment plan resulted in loss of interest of ₹ 16.80 crore in 17 cases as interest on outstanding premium was calculated from the due date of deposit of allotment money instead of date of allotment.

Thus, due to imprudent change in the brochure condition to charge interest on the balance premium from the ‘due date of deposit of allotment money’ instead of the ‘date of allotment’, GNIDA suffered loss of interest of ₹ 16.80 crore in 17 cases (details in ***Appendix-5.2.13***) allotted under the scheme BRS 01/2014-15.

In its reply, GNIDA stated (November 2020) that as per the terms and conditions of the scheme brochures published from time to time, the installments were fixed by calculating the interest on the balance premium from the day next to the due date of deposit of allotment money.

¹⁰⁹ After allowing five days time for completion of formalities after receipt of allotment money.

¹¹⁰ BRS 01/2008-09, BRS 01/2010, BRS 02/2010, BRS 03/2011, BRS 04/2011 and BRS 05/2010-11.

The reply is not factually correct as in the six schemes¹¹¹ launched during January 2009 to February 2011, the condition of brochures provided for levy of interest from the ‘date of allotment’. The condition for levy of interest was later on changed to the ‘due date of deposit of allotment money’ in the scheme BRS 01/2014-15 launched in June 2014. Relaxations having financial implication should be made in ‘public interest’ after recording justification and obtaining appropriate authorisation from the Board.

Short recovery from allottees towards allotment of additional area

5.2.7.4 GNIDA makes the allotment on the basis of highest bid received above the reserve price fixed for the builder plot. The terms and conditions¹¹² of the brochure provided that subsequent allotment of any additional area shall be made at the accepted tender rate of the nearby area at the time of communication about the additional land or the original rate of allotment along with simple interest at the rate 12 *per cent* from the date of allotment, whichever is higher.

Audit observed that GNIDA fixes its reserve price for allotment of Group Housing plots for each financial year. If no allotment is made during any year, the reserve price for that year is a benchmark which reflects the minimum available price below which bids would not be accepted.

Audit noticed that in five cases¹¹³, the allotment of additional area of 9,428.78 sqm were made during January 2007 to June 2014 at the rates calculated by adding interest to their respective bid rates at the time of initial allotment instead of at the reserve price prevailing at the time of allotment of additional land which was higher. This resulted in short recovery of ₹ 7.62 crore on account of allotment of additional land.

In its reply, GNIDA stated (November 2020) that additional premium for the increased area of plots were calculated and got deposited by the allottees in accordance with the provision given in the scheme brochure. The brochure did not provide for calculation of additional premium for increased area of plot at the prevailing reserve price.

The reply is not acceptable as GNIDA fixes reserve price annually and accepts the bids only which are above such reserve price. Thus, the reserve price reflects the minimum rate in cases where allotment is not made in any year and should be taken into account to compare with the original rate of allotment¹¹⁴ for fixing cost of additional land. The reply of GNIDA further indicates lacuna in the brochure as it did not clarify that in absence of tender rates of nearby area at time of allotment of additional land the prevailing reserve price would be adopted. This needs to be addressed in the interest of GNIDA.

Not ensuring the passing on of benefit of reduced interest to home buyers

5.2.7.5 The Board of GNIDA, based on reduction in Marginal Cost of funds based Lending Rate (MCLR) and corresponding reduction in rate of interest

¹¹¹ BRS 01/2008-09, BRS 01/2010(I), BRS 02/2010, BRS 03/2011, BRS 04/2011, BRS 05/2010-11.

¹¹² Clause ‘I’.

¹¹³ Supertech Limited, Gaursons Promoters Private Limited, Dhanya Promoters Private Limited, Nivas Promoters Private Limited and Parsvnath Developers Limited.

¹¹⁴ Along with simple interest at the rate 12 *per cent*.

GNIDA failed to evolve a mechanism to ensure that benefits of reduced rate of interest were passed on to the ultimate home buyers by the builder as ordered by the Board.

charged by the Banks from GNIDA, decided¹¹⁵ (22 September 2017) to extend such benefit to all its allottees (including existing allottees) from 1 October 2017 by reducing the prevailing rate of interest (12 *per cent*) and penal interest (15 *per cent*) by one *per cent* to 11 *per cent* and 14 *per cent* respectively with the condition that the Builders were required to pass on such benefit of reduced interest to their respective home buyers.

Audit noticed that GNIDA allowed benefit of reduced interest amounting to ₹ 5.88 crore (*Appendix-5.2.14*) to nine builders but it failed to evolve any mechanism to ensure that the benefit of reduced interest rate was also passed on by the concerned builders to their respective home buyers. The Builders Division did not even intimate the concerned builders for compliance of the Board's decision while revising the payment plans.

GNIDA stated (January 2020) that the revised interest rate was not updated in the System but in case of Builders Division, manual calculation at the revised interest rate was being done by the Finance Division.

On being confirmed that the revised rates were although allowed to the Builders but was not updated in the System data, Audit, further, analysed the data of 184 builder allottees (30 September 2019) and noticed that out of these in case of 144 allottees benefit of reduced interest of ₹ 38.22 crore¹¹⁶ (*Appendix-5.2.15*) and penal interest of ₹ 86.71 crore (*Appendix-5.2.16*) was although not updated in the System data but was extended to builders by the Builders Division. However, passing of the benefit to the home buyers was not ensured as GNIDA could not evolve a mechanism for ensuring it.

Thus, the objective of the Board of reducing the burden of the home buyers was defeated.

In its reply, GNIDA stated (November 2020) that in the office order pertaining to reduction of interest rate there was no such direction requiring the builders to pass on the benefit of reduced rate of interest to their home buyers.

The reply of GNIDA is factually incorrect as the Order dated 10 October 2017 issued by Finance Division in reference to the decision taken by the Board of GNIDA prescribed that the Builder allottees shall extend such benefit to its allottees.

Irregular permission to pay one-time lease rent in instalments

5.2.7.6 The terms and conditions of the brochure¹¹⁷ provide for levy of annual lease rent during the period of lease (90 years) which is payable in advance at the beginning of each year at the rate of one *per cent* of the premium of plot for the first ten years and thereafter to be increased by 50 *per cent* of the prevailing lease rent after each ten years. The allottee is also given the option to pay one-time lease rent which is equivalent to annual lease rent of 11 years. One-time lease rent has to be paid at one go and is not payable in instalments.

Audit noticed in two cases out of 34 cases test checked in audit that although the allottees opted for payment of one time lease rent amounting to ₹ 8.28 crore, GNIDA allowed for its payment in 6 to 14 instalments¹¹⁸ which

¹¹⁵ Agenda item No. 26 of 109th Board meeting.

¹¹⁶ Calculated on the principle amount outstanding as on 30 September 2019.

¹¹⁷ Clause M of BRS 03/2010 and Clause L of BRS 06/2003.

¹¹⁸ Parsavnath Developers Private limited (₹ 3.69 crore in 14 instalments); Fusion Buildtech Private Limited (₹ 4.59 crore in six instalments).

was in breach of the conditions of the brochure and thus, amounted to extending undue favour to the allottees.

In its reply, GNIDA stated (November 2020) that the facility to deposit one-time lease rent in instalments along with interest was given to the allottees with the objective to ensure the possession to home buyers at the earliest and GNIDA did not suffer any financial loss on this account.

The reply is not acceptable as one-time lease rent was equal to annual lease rent of 11 years, otherwise the lease rent was payable annually for the entire period of lease, i.e., 90 years. Thus, payment of one-time lease rent was in itself a facility provided in the brochure. Its further decision for payment in instalments was against the provisions of the brochure and tantamount to undue favour to the builders.

Lease rent not levied on the amount of recovery of additional compensation and consequent loss of stamp duty

GNIDA did not levy and recover corresponding lease rent on the amount of additional compensation recovered from the allottees and did not execute correction/supplementary deed thereby depriving itself and State exchequer of additional lease rent of ₹ 227.05 crore and stamp duty of ₹ 32.33 crore respectively.

5.2.7.7 The terms and conditions of the brochures¹¹⁹ provide that the premium payable for the plot means total amount payable to GNIDA for the allotted plot. The Hon'ble Allahabad High Court in its judgement dated 21 October 2011 in Gajraj and Others vs. State of U.P. and Others (Writ Petition No. 37443) directed for payment of additional compensation to the extent of 64.70 *per cent* of land acquisition rate to the petitioners in addition to the compensation received by them under Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement), Rules, 1997/declaration of award by the ADM (LA) under section 11 (1) of the LAA, 1894. The High Court also allowed the GNIDA to recover such cost of additional compensation from its allottees.

In view of above, GNIDA ordered (November 2011) recovery of the additional compensation at the rate of ₹ 2,015 per sqm from the allottees of the Builder/Group Housing Scheme. The rates were, however, re-determined (June 2019) at the rate of ₹ 1,769 per sqm for allotments made under Builder/Group Housing Scheme. Accordingly, an amount of ₹ 2,168.44 crore (Builder: ₹ 1,019.98 crore, Group Housing: ₹ 1,148.45 crore) was recoverable towards additional compensation as part of the land premium. Against this, GNIDA recovered, only ₹ 419.49 crore upto May 2019.

Further, GNIDA levies annual lease rent at the rate of one *per cent* of the total premium of the plot. The allottee also has the option to pay one-time lease rent which is equivalent to the lease rent of 11 years.

Audit noticed that since additional compensation is a part of land premium/sale consideration of property, the lease rent which is based on the premium of the plots should also have been revised and correction/supplementary deeds for the amount of additional compensation and lease rent thereon was required to be executed. GNIDA, however, failed to levy and recover lease rent of ₹ 227.05 crore¹²⁰ (calculated on the basis of one time lease rent) on the amount of additional compensation of ₹ 2,168.44 crore.

Audit further noticed that correction/supplementary deeds were not executed so far (April 2021). Consequently, the State exchequer was deprived of the

¹¹⁹ Clause 7 of 'G-Payment' of BRS 01/2010(I).

¹²⁰ Builder: ₹ 112.20 crore (₹ 1,019.98 crore x 11 *per cent*) plus Group Housing: ₹ 114.85 crore (₹ 1,148.45 crore x 10 *per cent*).

stamp duty of ₹ 32.33 crore (at the rate of five *per cent* on the amount of additional compensation recovered, i.e., ₹ 419.49 crore and one-time lease rent of ₹ 227.05 crore).

In its reply, GNIDA stated (November 2020) that the amount of additional compensation was being recovered from the allottees as per the order of the Hon'ble High Court which was not included in the terms and conditions of the tender, therefore, amount of compensation was not added in the premium of plot. As a result, lease rent and stamp duty was not imposed on the additional compensation. GNIDA further stated that several builder allottees had filed writ petition against the demand of additional compensation which was pending before the Hon'ble Court.

The reply is not acceptable as terms and conditions of the scheme brochure provide that total amount payable to GNIDA for the allotted plot is referred as premium and additional compensation is recovered from the allottees against the allotted plot. Therefore, lease rent should have been levied and correction deed should have been executed to avoid the leakage of revenue.

Penalty for delay in submission of Building Plan not levied

5.2.7.8 The Builders Residential Schemes (BRS) launched by GNIDA during 2004-05 to 2006-07¹²¹ provided that the allottee was required to submit building plan within three months of execution of the lease deed. In case of delay, penalty at the rate of 0.5 *per cent* of the total premium up to one year was to be levied. However, above provision of penalty for delay in submission of building plan was not included in the subsequent scheme brochures¹²² issued from January 2009 onwards with the approval of the CEO without any reasons on record.

Audit noticed that in case of 48 allotments (2008-09 to 2014-15), the allottees submitted the Building Plans with delay of six to 100 months from the date of execution of their lease deeds. GNIDA, however, could not levy penalty of ₹ 63.97 crore (***Appendix-5.2.17***) for the delay of three to 97 months in submission of building plan by the allottees due to removal of the above penal clause in the respective brochures. Any relaxation to be made should be in public interest after recording justification and obtaining appropriate prior authorisation, in this case from the Board. Thus, GNIDA was not in position to discourage the allottees from delaying the completion of project resulting in consequential delay in delivery to final home buyers.

In its reply, GNIDA stated (November 2020) that approval for the building being constructed under GNIDA was being accorded on the basis of Building Regulations prevailing from time to time in which there was no mention regarding collection of fee for delay in submission of building plan for approval.

The reply is not acceptable as scheme brochures of builders (BRS 09/2004, BRS 10/2005 and BRS 11/2006) issued during 2004-05 to 2006-07 provided the penalty to be levied on the builders in case of delays in submission of building plan beyond permitted time which was, however, removed in the brochure conditions of subsequent schemes resulting in delays in completion of projects and consequential financial loss to GNIDA.

The condition for levy of penalty in case of delay in submission of building plan was removed from the brochures of schemes launched from January 2009 onwards due to which the penalty could not be levied, and projects were delayed.

¹²¹ Schemes BRS 09/2004, BRS 10/2005 and BRS 11/2006.

¹²² Launched during the years 2008-09 to 2014-15.

Cost of minor minerals not recovered

5.2.7.9 GNIDA allots the plots to the builders on lease of 90 years. The terms and conditions of the brochures¹²³ provided that GNIDA had the right to all mines, minerals, coals, washing gold, earth oil, quarries in or under the plot and had full right and power for obtaining it. Ordinary clay and ordinary soil are defined as minor minerals under Section 3 (e) of the Mines and Minerals (Development and Regulation) Act, 1957. Therefore, GNIDA has the right over the disposable earth and sand excavated by the builder, if any, below the ground of the plot.

GNIDA did not evolve any mechanism to monitor the excavation and disposal of sand and soil (minor minerals) by the allottees causing loss of ₹ 31.97 crore.

Audit noticed that GNIDA had no system to monitor the sale/disposal of minerals (earth and sand) excavated by the allottees from plots allotted to them. When Audit cross verified with the data of the District Mining Officer on sample basis, it was observed that since January 2008, 23 Builders/Developers excavated of 30.44 lakh cubic metre¹²⁴ ordinary soil and sand valued at ₹ 72.54 crore¹²⁵ (excluding cost of royalty) by payment of ₹ 6.75 crore towards royalty¹²⁶ at the rate prescribed by the GoUP from time to time. Thus, due to aforesaid failure of internal control mechanism of GNIDA, which had right to sell the minor minerals, it suffered a loss of ₹ 31.97 crore (after adjusting excavation cost of ₹ 40.57 crore).

During the Exit Conference (January 2021), GNIDA stated that it may not be prudent to recover cost of minor mineral from builders/developers. The State Government, however, assured it would examine the issue in the light of audit observation and suitable corrective action will be taken, if required.

Loss of stamp duty due to failure in executing supplementary lease deed for additional FAR

Despite the fact that GoUP ordered for payment of stamp duty on the value of purchasable FAR, GNIDA failed to devise a system for execution of supplementary lease deed in case of purchasable FAR of ₹ 815.20 crore causing loss to State Exchequer of stamp duty of ₹ 40.76 crore.

5.2.7.10 As per Building Regulations, the allottee can purchase increase in FAR and GC as purchasable FAR and GC provided the foundation has not been already laid on the basis of old FAR. The GoUP vide its order dated 16 November 2015 provided for the payment of stamp duty on the value of purchasable FAR from January 2007. Therefore, purchasable FAR needs to be registered as supplementary deed under Section 17 of the Indian Registration Act, 1908 and stamp duty is payable on purchase of additional FAR.

Audit noticed that there was no system in existence in GNIDA for ensuring execution of supplementary deed for the amount of additional FAR allowed subsequently to the builders. Thus, due to absence of mechanism to ensure the execution of supplementary deed for additional FAR of ₹ 815.20 crore (*Appendix-5.2.18*) allowed to 113 builders during January 2014 to March 2021 as required by the aforesaid GoUP's order, the State Exchequer was put to loss of stamp duty of ₹ 40.76 crore (at the rate of five *per cent*).

In its reply, GNIDA stated (November 2020) that the Paragraph 29.3 of Chapter 8 of GNIDA Building Regulations provided the formula for

¹²³ Clause W (Overriding Power over Dormant Properties).

¹²⁴ Ordinary soil: 19.51 lakh cum and sand: 10.93 lakh cum.

¹²⁵ Sale value of soil (after adjusting royalty): ₹ 2.89 crore; Sale value of sand (after adjusting royalty): ₹ 69.65 crore.

¹²⁶ Ordinary soil: ₹ 2.64 crore and sand: ₹ 4.10 crore. As the GoUP removed the royalty payable on ordinary soil with effect from 28 March 2018. Therefore, in case of soil no royalty was paid after 28 March 2018.

calculating the fee to be charged for purchasable FAR. The said formula did not provide for levy of stamp duty on the additional land.

The reply is not acceptable as GoUP order (16 November 2015) provided for the payment of stamp duty on the value of purchasable FAR from January 2007.

Short forfeiture of cancellation amount

5.2.7.11 The scheme brochure (BRS 11/2006) provided that in the case of cancellation of allotment of the plot, an amount equal to 25 *per cent* of the total premium of the plot would be forfeited¹²⁷ and the balance amount was to be refunded to the allottee.

GNIDA allotted (September 2006) a plot¹²⁸ to Unitech Limited (allottee) at a premium of ₹ 555.74 crore. On account of continuous default, GNIDA decided (18 November 2015) to cancel the allotment of plot forfeiting an amount of ₹ 138.93 crore¹²⁹. Audit noticed that GNIDA did not consider the amount of additional compensation of ₹ 81.55 crore recoverable from the allottee as premium of the plot. As a result, GNIDA forfeited only ₹ 138.93 crore instead of ₹ 159.32 crore¹³⁰ and extended undue benefit of ₹ 20.39 crore by way of excess adjustment against the overdue of the allottee.

In its reply, GNIDA stated (November 2020) that amount equivalent to 25 *per cent* of the total premium was forfeited as per the conditions of the brochure and the balance amount was adjusted against the dues of other plots.

The reply is not acceptable as additional compensation levied on the plot was not considered in the total premium for calculation of amount to be forfeited though the brochure condition provides that total amount payable for the plot is referred as premium.

Loss due to not invoking the provisions of undertaking given by consortium members

5.2.7.12 GNIDA allotted (7 August 2014) a plot (GH-03, Sector-10) to a consortium of four members¹³¹ and soon after the allotment the plot was sub-divided in three plots¹³² at the request (10 September 2014) of the allottee. As per undertaking submitted (24 February 2015) by them, the consortium members were jointly and severally liable for the payment of consideration of the area mentioned in the lease deed.

¹²⁷ Subject to the amount deposited by the allottee.

¹²⁸ GH 01, sector-MU for 100 acre. Lease deed of the plot was executed in January 2007. GNIDA issued (November 2011) notice to deposit additional compensation of ₹ 81.55 crore.

¹²⁹ 25 *per cent* of ₹ 555.74 crore.

¹³⁰ 25 *per cent* of ₹ 637.29 crore (₹ 555.74 crore *plus* ₹ 81.55 crore).

¹³¹ Right Realtech Pvt. Ltd.; Lead Member, and three other relevant members, viz. Gaursons India Limited, Shirja Real Estate Solutions Pvt. Ltd. and Kinetic Buildtech Pvt. Ltd.

¹³² GH-3A (area: 22,000 sqm): BRYs Projects Private Limited (SPC of Right Realtech Private Limited-LM and Gaursons India Limited -RM), GH-3B (area: 22,000 sqm): Kinetic Buildtech Pvt. Ltd. and GH-3C (area: 20,000 sqm): Shirja Real Estate Solutions Private Limited.

Audit noticed that allotment of two plots¹³³ were cancelled (21 March 2017 and 5 June 2017) for continuous default of premium¹³⁴ and an amount of ₹ 21.30 crore¹³⁵ was forfeited being the total amount deposited by the allottees. The forfeited amount was less than the required 25 *per cent* of premium, *i.e.*, ₹ 26.62 crore¹³⁶. However, the Builders Division did not invoke the aforementioned clause of the undertaking to recoup the shortfall of ₹ 5.32 crore from other member (Shirja Real Estate Solutions Private Limited) of the consortium causing loss to GNIDA to that extent.

In its reply, GNIDA stated (November 2020) that both the allotments were cancelled as per the terms and conditions of the scheme brochure.

The reply does not address the issue raised by the Audit regarding failure of GNIDA to recover shortfall in the forfeiture from the remaining member of the consortium by invoking the enabling clause relating to their joint responsibility.

Deficiencies in policy related to transfer of Abadi plots

5.2.7.13 GNIDA decided¹³⁷ (October 1997) to provide *Abadi* plots to the families affected by the land acquisition which were dependent on the traditional farming and were residing in the respective villages prior to the establishment of GNIDA. Landless (*Bhumiheen*) farmers also were eligible for allotment of *Abadi* plots. It was further decided that after completing the development work for the *Abadi* area, the allotment rate would be decided on the basis of ‘no profit and no loss’ by taking the actual expenditure on development work and acquisition expenditure in account.

The allotment of *Abadi* plots was made at the rate of five *per cent* of the land acquired from the farmer subject to minimum area of 60 sqm (later on revised to 120 sqm) and maximum area of 2,500 sqm. The percentage of *Abadi* plot was increased to six *per cent* from April 2003. Further, in view and compliance of the order (October 2011) of Hon’ble Allahabad High Court in case of *Gajraj and Others vs. State of Uttar Pradesh and Others*, GNIDA decided (November 2011) to allot *Abadi* plot at the rate of 10 *per cent*, thereby allotting additional *Abadi* land of four *per cent* to all the land owners where notification under Sections¹³⁸ 6 and 17 of the Land Acquisition Act, 1894 was published after 1 April 2007.

The allotments of *Abadi* plot was made subject to the condition that the farmers/allottees should not have encroached any land in the area of GNIDA and have not filed any petition against GNIDA in any court.

¹³³ GH-3A (allotted to BRYs Projects Private Limited, SPC of Right Realtech Private Limited-LM and Gaursons India Limited -RM) and GH-3B (allotted to Kinetic Buildtech Pvt. Ltd.).

¹³⁴ GH-3A: ₹ 23.49 crore and GH-3B: ₹ 23.71 crore (along with lease rent amounting to ₹ 56.07 lakh each).

¹³⁵ ₹ 10.65 crore (BRYs Projects Private Limited: GH-03A) and ₹ 10.65 crore (Kinetic Buildtech Private Limited: GH-03B).

¹³⁶ ₹ 26.62 crore {25 *per cent* of total premium (₹ 106.48 crore: 44,000 sqm x ₹ 24,200 per sqm)}.

¹³⁷ Agenda item No. 5 of the 26th Board meeting.

¹³⁸ Section 6: Declaration that land is required for a public purpose; Section 17: Special powers in cases of urgency.

For allotment of the *Abadi* plot, the allottee was required to deposit amount of land cost for the allotted plot size (comprising land rate actually paid to the allottee towards compensation and additional compensation and acquisition expenses at the rate of 10 *per cent* thereon) along with development charges as determined by GNIDA from time to time. Besides, one time lease rent of ₹ one only was to deposited irrespective of the allotted plot size. GNIDA, however, levies one-time lease rent at the rate of ten *per cent* of the premium of the plot in case of allotment of residential plots. It also levies transfer charges at the rate of five *per cent* of the cost of plot on transfer of residential properties.

The following deficiencies were noticed in the policy related to transfer of *Abadi* plots:

(i) Negation of the objective of allotment and leakage of lease rent: The policy of allotment of *Abadi* plots on ‘no profit no loss basis’ was adopted to alleviate the hardship faced by the farmers due to land acquisition. GNIDA, however, failed to frame a policy to avoid the misuse or trading of *Abadi* plot by restricting its subsequent transfer or recovering the lease rent applicable on residential plots on such transfer of *Abadi* plots.

GNIDA failed to evolve a system to monitor the transfer of *Abadi* plots with inherent benefits.

Audit noticed that GNIDA did not devise a mechanism to ensure the forfeiture of benefits inherent with the *Abadi* plots in case of subsequent transfer of such plots to other party. Consequently, it allowed transfer of total 3,826 *Abadi* plots measuring 12.85 lakh sqm during the period 2012-13 to 2018-19 without ensuring the levy/recovery of lease rent and other inherent benefits meant for original resident from the transferee of *Abadi* plots. As a result, primary objective of GNIDA for allotment of *Abadi* plot was negated. Besides, GNIDA could not earn revenue ₹ 291.59 crore¹³⁹ towards lease rent.

In its reply, GNIDA stated (November 2020) that as per the policy approved by the Board in 90th meeting (2 September 2011), one time lease rent of ₹ one is charged from the *Abadi* allottee.

The reply does not address the issue raised by the Audit regarding evolving a mechanism to recover inherent benefits associated with the allotment of *Abadi* plot which were meant for the landowners and landless *Bhumiheen* families affected by the land acquisition.

GNIDA did not evolve a mechanism to ensure that the benefit of zero transfer charges on transfer of *Abadi* plots was extended only to the original resident farmers of respective village.

(ii) Absence of provision for levy of transfer charges: The Board of GNIDA decided¹⁴⁰ (27 May 2013) that in case of transfer of *Abadi* plot to an original resident farmer of the same village, no transfer charge would be charged from the such original resident farmer.

Audit noticed that GNIDA did not evolve a mechanism to ensure the compliance of the Board’s order, *i.e.*, transfer of *Abadi* plots without transfer charge would be allowed only to eligible persons (*i.e.*, original residents of the village). It approved transfer of these plots on the basis of documents submitted in support of address proof (*Aadhar* Card, Voter Identification Card *etc.*) instead of domicile certificate for ascertaining the original resident status of the purchaser.

¹³⁹ Calculated at the rate 10 *per cent* as one-time lease rent on premium as applicable in case of residential properties.

¹⁴⁰ Sub-agenda item No. 5 of the 95th Board Meeting.

In its reply, GNIDA stated (November 2020) that as per the policy approved by the Board in 90th meeting (2 September 2011), in case lessee decides to sell the *Abadi* plot individually or collectively and the purchaser after construction, transfers the unit to a third party then transfer charge would not be payable on such first transfer.

The reply does not address the issue raised by the Audit pertaining to absence of mechanism to ensure that transfer of *Abadi* plot without transfer charges is allowed to eligible original resident farmers of respective village only.

(iii) Transfer of *Abadi* plots by farmers to builder: A Group Housing plot GH-01N, Sector-12 measuring 4,920 sqm was allotted (12 September 2011) to 29 farmers of *Itehara* and *Haibatpur* villages as *Abadi* plot which was transferred by the allottees on the same day to Wisdom Infrabuild Private Limited (Builder) for development/construction of flats.

Audit noticed that GNIDA allowed the transfer of Group Housing plot allotted to farmers as *Abadi* plot without charging one-time lease rent and transfer charges depriving GNIDA of ₹ 75.51 lakh (one time lease rent: ₹ 63.89 lakh¹⁴¹ and transfer charges: ₹ 11.62 lakh¹⁴²).

In its reply, GNIDA stated (November 2020) that as per the policy approved by the Board in 90th meeting (2 September 2011), leased back area to farmers (*Abadi* plots) could be used for Group Housing purpose either individually or collectively by the lessee or by selling it to any other party and as per said policy, the aforesaid plot was transferred in favour of Wisdom Infrabuild Private Limited.

Audit observation does not question the settlement reached between farmers and GNIDA for transfer of the *Abadi* plots collectively to the Builder. The audit observation is that although the inherent benefits of token amount of one time lease rent of ₹ one and charging of no transfer charges from the original resident farmer were meant for the landowners and landless families affected by the land acquisition, but GNIDA failed to evolve any mechanism to plug the loophole in the existing policy/system causing trading in *Abadi* plots and consequent leakage of potential revenue. In case the *Abadi* plot is sold to any other party, the rights of GNIDA to collect normal lease rent and transfer charges should have been restored.

Outcome of allotments of builder plots

5.2.8 One of the objectives of GNIDA is to develop urban township on the notified area which cannot be fulfilled without completion of Builder/Group Housing projects within the prescribed time. The position of completion of projects is discussed in **Paragraph 5.2.2** of the Chapter.

Audit findings relating to delay in completion of projects are discussed in detail as below:

Delay in construction of Group Housing projects

5.2.8.1 The schemes launched prior to the launch of BRS 01/2008-09 in January 2009 provided for completion of the project in maximum three phases

¹⁴¹ Calculated at the rate of 11 *per cent* of the premium calculated on the basis of highest bid price of Builder/GH properties received by the GNIDA in March 2011, i.e. (4,920 sqm x ₹ 11,805 per sqm x 11 *per cent*).

¹⁴² At the rate two *per cent* of total premium applicable for residential plot.

Out of 186 allotments, in 68 cases, construction of first phase of projects was not completed as of April 2021. Further, in 121 cases, the projects were not completed (April 2021) even after a delay of one to eight years from the stipulated period of completion.

within total period of three to 12 years from date of allotment/date of execution of lease deed depending upon the size of the plot and the plotted/flatted development. Further, the scheme BRS 01/2008-09 prescribed size-wise completion of FAR¹⁴³ in first phase within three years of the execution of lease deed. It, however, did not prescribe the total period of completion of the project.

The schemes¹⁴⁴ launched in January 2010 onwards prescribed the completion period of the full project in maximum five phases within a period of seven years from the date of execution of lease deed. The required completion of FAR for the first phase was, however, prescribed at the uniform rate of 15 *per cent* irrespective of the area of the plot which was subsequently revised by the Board¹⁴⁵ (September 2017 and November 2017) to the size-wise completion as prescribed in the scheme BRS 01/2008-09.

Audit noticed that in 137 cases¹⁴⁶ out of 186 allotments of Builders/Group Housing plots, the construction of first phase of projects was either not complete (68 cases) as of April 2021 or was completed (69 cases) with delay of one to eight years from the prescribed period of three years (after considering zero period allowed by GNIDA) from the date of execution of lease deed (*Appendix-5.2.19*). Further, 126 cases¹⁴⁷ out of 186 cases were either incomplete (121 cases) or were completed (five cases) with delay of one to eight years from the stipulated period of completion of the full project (*Appendix-5.2.20*).

The Builders Division of GNIDA was tasked with the responsibility of monitoring the progress of the construction and timely completion of projects. The Builders Division, however, failed to uphold the trust of the ultimate home buyers by not monitoring the progress of project completion and ensuring the timely completion of projects by the respective builders.

In its reply, GNIDA stated (November 2020) that notices from time to time were issued by GNIDA for timely completion of projects and efforts were made to get the builder projects completed within time so that home buyers could be given possession of flats at the earliest. But in last few years due to writ petition in the Courts related to land disputes, agitation by local farmers and unauthorised encroachment, the completion of builder projects was delayed. The condition of penalty was provided in the scheme brochures so as to ensure that the builders complete the projects in time.

The reply is not acceptable as out of 186 allottees, 92 allottees have not completed their first phase of construction with delays ranging from one year to thirteen years after considering the zero period allowed from time to time for delays in construction work caused by litigations, agitation by farmers and unauthorised encroachments.

¹⁴³ Consisting of minimum 15 *per cent* to 50 *per cent* of the FAR for various sizes of the plot area; higher the area, lower the required completion of FAR and *vice-versa*.

¹⁴⁴ BRS 01/2010(I), BRS 02/2010, BRS 03/2010, BRS 04/2010, BRS 05/2010-11, BRS 01/2014-15.

¹⁴⁵ In 109th and 110th Board meeting.

¹⁴⁶ First Phase completed in time: three cases; Phasing is not prescribed: 19 cases (partially completed:16 cases, incomplete: 3 cases) and Not due for completion: 27 cases (partially completed:3 cases, incomplete: 24 cases).

¹⁴⁷ Project completed in time: 22 cases (including two cases of Group Housing); Project completion not due (April 2021): 38 cases.

Delay in execution of sub-leases

GNIDA did not have in place a mechanism to collect and monitor the sale of dwelling units by the builders to insist on timely execution of sub-lease with the home buyers.

5.2.8.2 GNIDA issues completion certificate to the allottees for phase-wise completion and on completion of the whole project. Consequent to the issue of completion certificate, GNIDA issues permission to the builders to sub-lease the dwelling units to home buyers in proportion to the amount of premium paid by the allottee till the date of issue of permission after reducing the same by 10 *per cent*. The sub-leases are executed under tripartite agreement between GNIDA, Builder and Home buyer. As per the conditions of the permission for sub-lease, the sub-lease was required to be executed within one year from the date of issue of completion certificate. It also provided that in case of dwelling units remaining unsold at the date of issue of completion certificate, a period of six months shall be allowed for execution of sub-lease from the date of builder buyer agreement (sale). In case of failure to execute the sub-lease within the prescribed period, penalty is to be levied at the rate of ₹ 50 per flat/₹ 100 per flat per day for flats under 100 sqm area/above 100 sqm area.

Audit noticed that GNIDA issued permissions for sub-leases of 7,435 dwelling units to eight builder allottees¹⁴⁸ during January 2014 to July 2018. Out of these, sub-leases of 1,348 dwelling units (18 *per cent*) could not be executed (March 2021) even after the delay ranging between 68 days and 2,631 days from the lapse of one year from the date of issue of their completion certificate. Audit further noticed that GNIDA did not have a mechanism in place to collect and monitor the status of sale of dwelling units by the builders. In absence of the same, GNIDA failed to insist on the builders for timely execution of sub-leases with the ultimate home buyers and could not even levy penalty for delay in execution of sub-lease.

Thus, GNIDA, instead of deterring the builders from delaying the execution of sub-lease deed with the home buyers, facilitated them by not charging any penalty for such delay.

In its reply, GNIDA while explaining the process stated (November 2020) that in case of delay, the tripartite sub-lease deed is being executed after depositing the payable penalty for such delay. It further stated that in case of units unsold on the date of issue of completion certificate, the penalty is to be levied after six months of execution of the builder buyer agreement.

The contention of GNIDA that penalty is recovered at the time of execution of sub-lease deed is not acceptable as it further delays the execution of sub-lease and delivery of dwelling units to the home buyers. Further, as regards unsold units, GNIDA has not devised any mechanism to collect the information from respective builders pertaining to sold and unsold units.

Failure to take action against allottees for not completing the projects

5.2.8.3 The schemes launched prior to the launch of BRS 01/2008-09 in January 2009 provided for completion of the project in maximum three phases within total period of three to 12 years from date of allotment depending upon

¹⁴⁸ Supertech Limited, Panchsheel Buildtech Private Limited, Supertech Construction Private Limited, APV Realty Limited, ELDECO Infrastructure and Properties Limited, Ajay Enterprises Private Limited, SDS Infratech Private Limited and U.P. Township Private Limited.

the size of the plot. The schemes¹⁴⁹ launched in January 2010 onwards prescribed the completion period of the full project in maximum five phases within a period of seven years from the date of execution of lease deed.

The terms and conditions of the above scheme brochures provided that in case the builder does not construct building within the time provided including extension granted, if any, the allotment shall be liable to be cancelled. Clause Y (Cancellation), further, provided that GNIDA may be free to exercise its right of cancellation of allotment in case of default on the part of the builder in deposit of premium amount.

Out of the 34 cases test checked, Audit noticed that in the following two cases, the projects were not completed even within the extended period of three years and no sub-lease was executed by the allottees. Further, these builders continuously defaulted in payment of dues resulting in huge accumulation of dues (April 2021) as given in **Table 5.2.17**.

Table 5.2.17: Accumulated dues

(Amount: ₹ in crore)

Sl. No.	Name of the builder (Plot No.)	Date of allotment	Prescribed period of completion	Month upto which project was to be completed	Delay after the prescribed period of completion (years)	Status of actual completion	Details of sub lease	Amount of Premium at the time of allotment	Details of dues		
									Principal ¹⁵⁰	Interest, penal interest and others	Total dues
1.	Parsavnath Developers, (GH 11, Sector Pi)	05-09-2006	8 years from the date of issue of reservation letter (April 2006)	April 2014	5 years 6 months	No completion (part/full) applied so far	Nil	22.76	25.99	77.13	103.12
2.	Today Homes and Infrastructure Private Limited, (BRS-7, Sector Omega-I/P-2)	01-06-2009	7 years from the date of execution of lease deed (17 June 2009)	June 2016	3 years 4 months	Occupancy certificate for phase I issued on 9 May 2018	Nil	21.78	6.93	5.62	12.55

Source: Compiled by the Audit on the basis of records submitted by GNIDA

Audit along with the representatives of GNIDA conducted joint physical verification (December 2019) of one case, *i.e.*, Parsavnath Developers Private Limited. The project, allotment for which was made in September 2006, envisaged construction of 20 towers comprising 958 units on the plot by Parsavnath Developers Private Limited. Out of these, only three towers¹⁵¹ were complete, structures of other two towers¹⁵² were erected, foundation of two towers¹⁵³ were laid and no work was started in respect of the remaining 13 towers. Even after 13 years, the progress in the completion of the project has been sluggish.

¹⁴⁹ BRS 01/2010(I), BRS 02/2010, BRS 03/2010, BRS 04/2010, BRS 05/2010-11, BRS 01/2014-15.

¹⁵⁰ This indicates rescheduled amount including the outstanding premium along with interest/penal interest clubbed with Principal at the time of re-schedulement.

¹⁵¹ Tower no. 16, 17 and 18.

¹⁵² Tower no. 12 and 14.

¹⁵³ Tower no. 10 and 11.

Photograph 5.2.1: Status of construction at plot No. GH 11, Sector Pi allotted to Parsavnath Developers Private Limited



Completion of the projects within prescribed time and sub-lease of the residential units to the home buyers along with timely payment of dues were the essence of making allotments of plots to the builders. However, inspite of failure of the builders to complete the projects, GNIDA did not initiate any action as per brochure conditions. GNIDA should consider for cancellation of above allotments taking into account the interest of home buyers. The facts brought out provide credence to the observations of the Hon'ble Supreme Court¹⁵⁴ wherein it stated, *“The large numbers of projects which have come up not only in Noida and Greater Noida, but most of them have not been completed by the builders/promoters and they have siphoned buyers' money in large scale. No action has been taken by the Noida and Greater Noida Authorities against builders for cancellation of leases due to violation to fulfil their obligation”*.

In its reply, GNIDA stated (November 2020) that allotments to above builders were not cancelled due to creation of third party rights. Notices were, however, issued to the builders from time to time to deposit the dues.

The reply is not acceptable as these plots were liable to be cancelled as per the conditions of the brochures. Further, though GNIDA cited creation of third party right as the reason for not cancelling the allotments, the concerned home buyers were deprived of their homes due to not completing of the projects. Inspite of the Hon'ble Supreme Court's observation in Amrapali case no action has been taken by GNIDA against builders for cancellation of allotments.

5.2.9 Conclusion

The allotments made to the builders by GNIDA were marked by disregard for the conditions of allotment. The schemes for allotment of Builders/Group Housing plots were launched without prior approval of the scheme brochures by the Board. There were instances of launch of housing schemes prior to the approval of land use change to this category by the GoUP. Important conditions for safeguarding the interests of GNIDA and home buyers such as opening of Escrow Account, submission of Performance Bank Guarantee, penalty for not submitting building plan, etc., were either not included in or excluded from the successive scheme brochures.

¹⁵⁴ As stated in Paragraph 8 of the decision in writ petition (C) 940/2017 Bikram Chatterji and Others vs. Union of India and Others on the issues related to Amrapali Builders.

The permission to mortgage and occupancy certificates were issued by GNIDA without ensuring the clearance of the dues by the allottees. This was further compounded by the relaxations given to the consortiums especially allowing the consortium members to leave the consortium before completion of the projects and sub-division of the plots which facilitated ineligible bidders to join a consortium, secure the allotment and later on acquire the plot through back door by sub-dividing it. Consequently, entities without financial capacity and execution capabilities were left to execute the projects. Reduction in reservation and allotment money allowed the builders to garner plots with payment of less upfront money. Instead of monitoring and regulating the allottees, the conditions were watered down in successive schemes to the detriment of GNIDA and to benefit allottee builders.

GNIDA extended undue favours to the builders by allotting plots to technically unqualified bidders and inspite of defaults by the allottees in earlier schemes. GNIDA also failed to ensure fair competition in evaluation of bids. All the above acts of the GNIDA culminated in failure to complete the projects as only 14.52 *per cent* of total Builders/Group Housing allotments made during audit period had been completed. Large outstanding dues of ₹ 10,732.44 crore were pending against the builders as of April 2021. GNIDA failed to uphold the trust of the home buyers by failing to ensure timely completion of projects by the respective builders and ensuring timely sub-lease to the home buyers.

5.2.10 Recommendations

Recommendation Number	Recommendation
18.	The Government should investigate the nexus between officials of the GNIDA and Builders and also expedite action against officials responsible for/involved in framing policies for allotment that were detrimental to the interest of GNIDA, Government and the homebuyers and against officials responsible for post allotment irregularities. The State Government has accepted the recommendation.
19.	GNIDA should ensure effective monitoring of huge pendency of dues together with its recovery from the willful defaulters. The State Government has accepted the recommendation.
20.	The regulations/orders with respect to mortgage, sub-division of plots and exit from projects should be reviewed/revised to minimise discretion at the hands of the officials. The State Government has accepted the recommendation.
21.	GNIDA should review penal provisions for delays in execution of lease deeds so as to ensure its purpose as a deterrent and also revise the rates from time to time. The State Government has accepted the recommendation.
22.	GNIDA should include a provision in the schemes for opening of escrow account to ensure the payment of dues of GNIDA and to ensure utilisation of the funds collected by builders from the ultimate home buyers in the respective projects themselves.
23.	The regulatory bodies should be made more proactive by the GoUP to ensure the interest of home buyers.