CHAPTER–V (3)

Allotment of Commercial Properties

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V (3) Allotment of Commercial Properties

Introduction

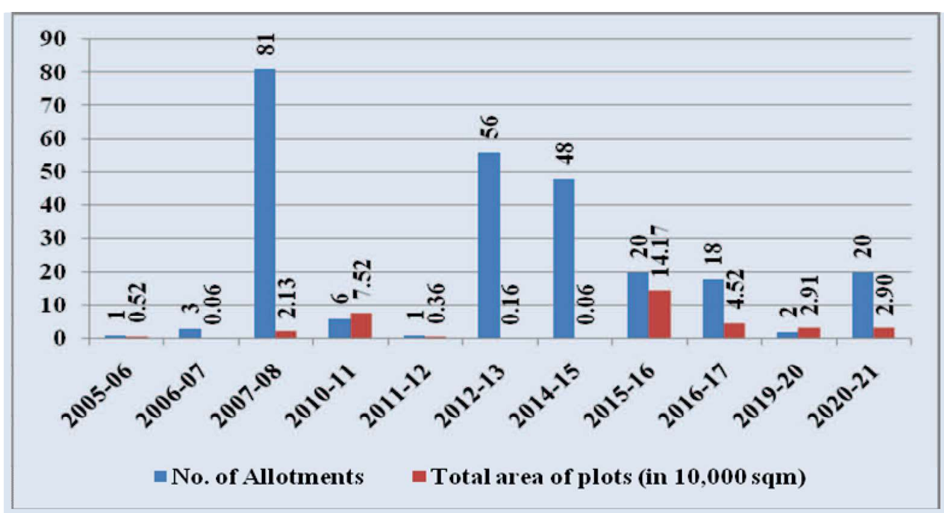
5.3.1 Greater Noida Industrial Development Area (Preparation/Revision of Master Plan) Regulations, 1998 defines 'commercial land uses' as area of land allocated for wholesale/retail markets, specialised markets and other allied commercial activities. The allotment of the commercial properties of GNIDA and other matters incidental to the management of commercial properties were governed by its Manual for Commercial Property Management, 2008.

GNIDA develops commercial properties, which includes commercial builder plots for development of commercial complexes, actual user plots and built-up shops/kiosks, *etc*. Allotments of these commercial properties are made to the highest bidder. Commercial Division of GNIDA deals with allotment of commercial properties and follows-up the post allotment compliances. Planning Division of GNIDA is also responsible for monitoring of construction of commercial properties and their completion.

Status of allotment of commercial properties

5.3.2 GNIDA allotted 763 Commercial Properties (including sub-divided plots) measuring 23,47,130 sqm since its inception (January 1991) to March 2021, Out of this, GNIDA allotted 256 commercial properties (including sub-divided plots) measuring 3,53,070 sqm during the period 2005-06 to 2020-21. Year-wise number of Commercial Properties (plots/sub-divided plots) allotted and their total area during the period 2005-06 to 2020-21 is depicted in **Chart 5.3.1**.

Chart 5.3.1: Year-wise allotment of Commercial Properties



Note: No allotment was made in the years 2008-09, 2009-10, 2013-14, 2017-18 and 2018-19

Source: Information furnished by GNIDA.

As on April 2021, overdue against the land premium (principal), lease rent and interest/penal interest was ₹ 1,873.01 crore against 413 Commercial Properties (54.13 *per cent*) out of 763 Commercial Properties allotted since inception (1991) which were largely against the allotments made since inception to the period covered in Audit, *i.e*, up to 2017-18. Out of above overdue of

₹ 1,873.01 crore, overdue of ₹ 1,746.86 crore pertained to allotments made during the year 2005-06 to 2020-21, as detailed in **Table 5.3.1.**

Table 5.3.1: Overdue amount against allottees

Total number of allotments	Number of allotments against which dues were outstanding	Overdue against defaulting allottees up to April 2021 (₹ in crore)			
		Principal amount	Interest on principal	Lease rent including interest	Total
256	157	709.79	962.16	74.91	1,746.86

Source: Information furnished by GNIDA.

The age-wise analysis of above overdue is detailed in **Table 5.3.2.**

Table 5.3.2: 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	13	232.10
Five to 10 years	48	119.80
Three to five years	32	28.18
Below three years	64	1366.78
Total	**157**	**1746.86**

It may be seen from the above table that an amount of ₹ 380.08 crore was overdue from 93 allottees for more than three years. The reasons for overdue as analysed by Audit were lack of pursuance by GNIDA in recovery of dues, delay in issue of checklist for execution of lease deed and sub-division of plots in favour of ineligible members of the consortium. GNIDA did not cancel the plots of defaulting allottees in accordance with the terms and conditions[1] of the allotment.

Audit Coverage

5.3.3 As per data obtained (January 2018) from GNIDA at the time of selecting sample for detailed examination of allotment cases, GNIDA had allotted 229 commercial properties during the period of Performance Audit, *i.e.,* 2005-06 to 2017-18. Out of these allotments, a sample of 18 cases of allotments of Commercial Properties were selected (August 2018) for detailed examination in Performance Audit. However, records related to 17 Commercial Properties were examined in Audit, as GNIDA did not produce records in respect of one allotment[2]. Besides, joint physical verification along with the representatives of GNIDA of one site[3] was also conducted by Audit.

Audit findings

The audit findings brought out in succeeding paragraphs are grouped as under:

- Deficiencies in systems and procedures regarding lack of time frame for issuing checklist ***(Paragraph 5.3.4);***

[1] Allotments were liable to be cancelled in case of default on the part of the tender/allottee/sub-lessee(s) or any breach/violation of the terms and conditions of the tender, allotment, lease and/or non-deposit of the allotment amount, installments or any other dues.
[2] AVJ Tower Private Limited: Sector Alpha-2 Commercial Belt, Plot no. C-1.
[3] Unsold commercial shops in Delta 2 Sector of Greater NOIDA.

- Violation of the policy and provisions of Manual for Commercial Property Management *(**Paragraphs 5.3.5 to 5.3.5.4**)*;
- Terms and conditions of Brochures not complied with *(**Paragraphs 5.3.6 to 5.3.6.2**)*;
- Undue benefits in allotments (***Paragraphs 5.3.7 to 5.3.7.3***)*;* and
- Outcome of allotments of commercial properties *(**Paragraphs 5.3.8 to 5.3.8.2**)*.

Deficiencies in systems and procedures regarding lack of time frame for issuing checklist

GNIDA has not prescribed timeframe for issuing checklist after allotment which led to delay in execution of lease deed and consequent loss of lease rent.

5.3.4 GNIDA has prescribed in the Brochures of the schemes for the commercial properties that allottee is required to execute lease deed within one month (in case of shops/kiosks and milk booths) to two months (in case of plots) from the date of issue of checklist[4] which shall be issued immediately after receipt of allotment money. However, it has not prescribed time taken for issuing checklist from the date of allotment to enable execution of lease deed.

Audit noticed that GNIDA had issued checklist with delays[5] of 184 days to 2,925 days from the date of receipt of allotment money in six out of 17 cases of allotments of Commercial Properties checked in audit. As a result, the execution of lease deeds in these cases was delayed which also resulted in loss of lease rent for the period of delay. The details of these cases showing period of delay and consequential losses are summarised in **Table 5.3.3.**

Table 5.3.3: Details of cases showing period of delays and consequential losses

Sl. No.	Name of allottee	Type of property	Date of allotment	Date of Receipt of Allotment Money	Checklist to be issued on	Checklist issued on	Period of delay (in days)[6]	Premium (₹ in crore)	Loss of lease rent (₹ in lakh)
1.	Ankur Gupta	Shop	31.12.2007	06.02.2008	11.02.2008	08.09.2011	1305	3.63	32.42
2	Housing Development and Infrastructure Limited	Hotel	06.08.2008	06.10.2008	11.10.2008	19.02.2010	496	69.30	235.44
3.	Regal Emporia Infratech Private Limited (Consortium)	Plot	19.11.2010	18.01.2011	23.01.2011	26.07.2011	184	46.74	58.91
4.	Balaji Enterprises	Milk and Vegetable Booth	26.02.2013	23.03.2013	28.03.2013	Not issued	2925	0.66	13.22
5.	Rajesh Kumar Verma	Shop	15.12.2014	07.01.2015	12.01.2015	05.09.2017	967	0.12	0.85
6.	Gaurav Kumar Yadav	Kiosk	15.12.2014	12.01.2015	17.01.2015	27.02.2017	772	0.15	0.77
Total									**341.61**

***Source: Data provided by GNIDA*.**

Thus, it is evident from above Table that in six cases (35 *per cent*) out of 17 test checked cases there was loss of lease rent to the extent of ₹ 3.42 crore calculated at the applicable rate of 2.5 *per cent* per annum on the premium

[4] Check list is issued by GNIDA to the allottee providing information regarding documents and fees required for execution of lease deed of allotted property.

[5] In the absence of any timeline for issue of check list after receipt of allotment money, Audit has computed delays after allowing five days for issue of check list.

[6] Period of delay was calculated upto March 2021, where checklist not issued by GNIDA.

amount on account of failure of GNIDA in issuing checklist immediately after receipt of allotment money from allottee. Besides financial loss to GNIDA, these delays also adversely affected timely development of these properties and created inconvenience to allottees despite deposit of allotment money.

Audit further noticed that in one case of allotment[7] out of above six cases, the allottee did not execute the lease deed within the prescribed time frame of 60 days after issue of check list. The lease deed was executed by the allottee on 17 October 2012, *i.e.,* with the delay of 80 days[8] from the due date of execution of lease deed (24 September 2011). However, GNIDA benefitted the allottee and recovered penalty for only 27 days only from 24 September 2011 to 20 October 2011. As a result, there was short recovery of penalty from the allottee for the period 25 August 2012 to 16 October 2012 (53 days) amounting to ₹ 33.93 lakh.

In its reply, GNIDA stated (October 2020) that plots are allotted by its Commercial Division. Thereafter, lease plans of the plots are prepared by the Project and Planning Divisions. On receipt of lease plan from the Project and Planning Divisions, the checklist is issued by the Commercial Division to the allottee for completing all the formalities and executing the lease deed. It is not possible for the Commercial Division to issue checklist without receipt of lease plan from the Project and Planning Divisions.

The reply highlights systemic failure of GNIDA due to which lease plans were not prepared before invitation of bids. Further, GNIDA also failed to prescribe any guideline for ensuring the availability of lease plan before invitation of the respective bids. GNIDA also failed to prescribe any time frame for issue of checklist after the receipt of allotment money.

Violation of policy and provisions of Manual for Commercial Property Management

5.3.5 The Management of GNIDA failed to ensure compliance of the provisions of the Manual for Commercial Property Management, 2008, as discussed below:

Change in technical eligibility criteria in contravention to MCPM

The condition of approved MCPM that only the Lead Member shall be considered for technical eligibility was not included in the scheme brochures, which led to allotment of commercial properties to ineligible bidders.

5.3.5.1 The Board of GNIDA, in its 68th meeting held on 8 April 2008, approved the Manual for Commercial Property Management, 2008 (MCPM). Clause-A(v) of the MCPM provides that, in case of bidding by a consortium for allotment of Commercial Property, members of the consortium will have to specify one Lead Member and the technical qualification of only the Lead Member shall be considered for technical eligibility. This clause was significant to hold the Lead Member, being major shareholder, accountable for the project.

The above condition of technical eligibility provided in the MCPM was changed in the Brochure of very first scheme of Commercial Allotment, *viz.*, Commercial Builder Plot-I (CBP-I) launched (20 August 2010) after the approval of MCPM. The changed technical criteria provided that technical

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7 Regal Emporia Infratech Private Limited.

8 Excluding zero period between 21 October 2011 and 24 August 2012, which was allowed to those allottees who were affected due to Hon'ble Allahabad High Court Judgement dated 21 October 2011 in case of Gajraj and Others vs. State of Uttar Pradesh and Others (Writ Petition C. No. 37443 of 2011).

qualification of the Lead Member as well as its Relevant Members and their subsidiaries and holding companies shall be jointly considered for technical eligibility of the bid, instead of the technical qualification of only Lead Member. This change in eligibility condition for consortium members was approved (19 August 2010) by the CEO of GNIDA without recording any justification for the deviation from MCPM. Four commercial plots were allotted (19 November 2010) under this scheme (CBP-I).

Ex-post facto approval of the Brochure was obtained from the Board of GNIDA in its 87th meeting held on 25 February 2011 without discussion of the agenda note regarding any justification for the change in the condition. Audit further observed that GNIDA did not specifically apprise the Board regarding change in technical criteria which was in deviation from MCPM approved by the Board in April 2008. Further, there was no reasoning in the agenda note how public interest would be better served by effecting such a change.

The above changed technical eligibility criteria was continued in the subsequent schemes also. Audit further noticed that on account of the changes effected, the Lead Members in five cases of allotments of Commercial Builder Plots had Nil turnover/experience/net-worth, *etc.,* as detailed in **Table 5.3.4**.

Table 5.3.4: Details showing technical/financial experience of the Lead member

Sl. No.	Name of consortium (SPC)	Lead Member	Plot No./Sector/ Scheme	Allotment date	Plot size (in sqm)	Technical experience of Lead Member	Status of the project
1.	Ecotech Printpac Private Limited (Consortium of five members)	Ecotech Printpac Private Limited	C-2/ Sector 4 (CBP I)	19.11.2010	20235	Had not submitted any work experience[9]	Not Completed (prescribed completion date: 17 October 2015)
2.	Startle Infrastructure Private Limited (Consortium of three members)	Startle Infrastructure Private Limited	CS-26/ Sector Swarn Nagri (CBP III)	12.08.2015	1400	Had submitted 'Nil' work experience[10]	Not Completed (prescribed completion date: 17 February 2021)
3.	Shree Vinayaka Infraspace	Ankur Mittal	CS-3/ Sector Alpha-01 (CBP V)	29.02.2016	1200	Experience submitted by the Lead Member was for 4,300 sq ft against the required experience of 50,000 sq ft. The consortium only qualified the technical eligibility on the basis of experience of having executed project on area of 3.57 lakh sq ft pertaining to a Relevant Member[11]	Completed on 7 March 2018
4.	Mart Builders Private Limited (Consortium of six members)	Mart Builders Private Limited	C-3/16B (CBP VII)	4.11.2016	18900	Lead Member was a newly incorporated Company incorporated on 20 September 2016, three days prior to the date of	Not Completed (prescribed completion date: 7 June 2020)

9 Work experience was submitted by a relevant member, Surprise Suppliers Private Limited.

10 All works shown as completed in support of the experience of consortium pertained to the Relevant Member (Beaver International (India) Private Limited) having only five *per cent* shares in the Consortium.

11 Hi-Tech Developer Private Limited was having only five *per cent* shares in the Consortium.

Sl. No.	Name of consortium (SPC)	Lead Member	Plot No./Sector/ Scheme	Allotment date	Plot size (in sqm)	Technical experience of Lead Member	Status of the project
						entering (23 September 2016) the MoU for consortium with net worth of ₹ one lakh only. Not submitted any work experience	
5.	Shagun Associates (P) Limited (Consortium of two members)	Shagun Associates (P) Limited	CS-29/ Sector 36 (CBP VII)	4.11.2016	2000	Had not submitted any work experience[12]	Not Completed (prescribed completion date: 7 June 2020)

Source: Data provided by GNIDA.

Thus, as can be seen from **Table 5.3.4**, the allotments were made in favour of the consortiums where the Lead Members were having nil/inadequate experience. This became possible only due to change in the condition of the eligibility criteria giving benefits to ineligible lead member. Further, four out of five projects were incomplete even beyond 54 days to 2,065 days after prescribed period of completion for these project, indicating direct adverse impact of change in the condition of the eligibility criteria.

In its reply, GNIDA accepted (October 2020) the audit observation.

Incorrect fixation of lease rent in violation of GoUP and Board's order

5.3.5.2 The GoUP order[13] (25 October 2009), to counter the challenges of the economic slow down, *inter-alia* provided relief to allottees of commercial properties by reducing the lease rent to one *per cent* per annum from 2.5 *per cent* per annum of premium in respect of properties allotted up to 31 March 2010 (further increased for properties allotted up to 31 March 2011). This was adopted by GNIDA in the 81st Board meeting held on 6 November 2009.

GNIDA went beyond GoUP order to fix reduced lease rents in two scheme brochures, which led to loss of lease rent of ₹ 5.24 crore in six allotments.

GNIDA launched the schemes for CBP-I and CBP-II on 20 August 2010 and 4 March 2011 respectively, without prior approval of the Board. The Brochures were, however, approved by the Board *ex-post facto* on 25 February 2011 and 29 March 2011 respectively. The condition (M) of the Brochures of these schemes provided for payment of annual lease rent in the following manner:

- The lease rent at the rate of ₹ one per sqm per year for the first three years from the date of execution of the lease deed;
- Thereafter, the lease rent shall be payable at the rate of one *per cent* of the total premium of the plot for next seven years of first ten years;
- After ten years from the date of execution of the lease deed, the lease rent may be increased at the rate of 50 *per cent* and that rate will be applicable for the next ten years and this process will continue for future.

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[12] All works shown as completed in support of the experience of consortium pertained to the Relevant Members (Universal Contractors and Engineers Private Limited) having only five *per cent* shares in the Consortium.

[13] G.O. No. 1470/77-4-09-142N/08 dated 25 October 2009.

Audit noticed that, as per order of the GoUP as well as the decision of the Board in the 81st meeting, lease rent was to be charged at the rate of one *per cent* of the premium for first ten years from the stipulated date of execution of the lease deed. However, the CEO of GNIDA, without apprising the GoUP and Board, at his own approved (19 August 2010) the condition for payment of the lease rent at the rate of ₹ one per sqm in the scheme brochures of CBP-I, which was also applied in the subsequent scheme (CBP-II). As per notes for approving the brochure, the rate of ₹ one per sqm per year for the first three years was reportedly proposed to attract investors as was done in NOIDA. However, this change was in contravention of the considered decisions of GoUP and Board taken in view of economic slowdown. Further, while the proposal for reduced lease rent for the first three years was submitted to the Board, GNIDA did not apprise the Board about GoUP's order (25 October 2009) and Board's own earlier decision (6 November 2009) of charging lease rent at the rate of one *per cent* per annum.

In the context of allotment, the scheme brochure is a significant document which governs the process of bidding, allotment and execution of the project. The brochure specifies the terms and conditions of allotment and the allottee are expected to bid as per the brochure terms and conditions. Therefore, this becomes the basis of agreement[14] between the allottee builder and GNIDA for execution of the project in future. In view of the underlying importance, the brochure of the schemes should have been approved by the Board before the launch of the scheme. Further, any change to terms and conditions of allotment should have been approved by the Board. The CEO of GNIDA, however, exceeded its authority and approved reduced lease rent in the Brochures of CBP-I and CBP-II schemes violating the orders of GoUP as well as Board. This led to loss of revenue in six cases of allotments under the above two schemes (CBP-I and CBP-II) as summarised in **Table 5.3.5**.

Table 5.3.5: Loss of lease rent

SI. No.	Name of scheme	Name of Allottee	Plot No./ Sector	Area of plot (sqm)	Premium of plot (₹ in crore)	Lease rent at the rate of ₹ one per sqm for three years (₹ in lakh)	Lease rent at the rate of one *per cent* of the Premium for three years (₹ in lakh)	Loss to GNIDA (₹ in lakh)
1.	CBP-I	Regal Emporia Infratech Private Limited	C-2/ Sector 4	20235	46.74	0.61	140.23	139.62
2.	CBP-I	Asteroid Shelters Homes Private Limited	C-1A/ Sector 4	10235	23.75	0.31	71.24	70.93
3.	CBP-I	Vardhman Infra Developers Private Limited	3A/ Sector Alpha 1	11600	27.47	0.35	82.42	82.07
4.	CBP-I	Radiant Infraventures India Private Limited	C-1/ Sector 4	10000	23.20	0.30	69.61	69.31
5.	CBP-II	Adihm Developers Private Limited	C-3/ Sector Alpha 2	11584	26.89	0.35	80.66	80.31

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

Sl. No.	Name of scheme	Name of Allottee	Plot No./ Sector	Area of plot (sqm)	Premium of plot (₹ in crore)	Lease rent at the rate of ₹ one per sqm for three years (₹ in lakh)	Lease rent at the rate of one *per cent* of the Premium for three years (₹ in lakh)	Loss to GNIDA (₹ in lakh)
6.	CBP-II	A V J Towers Private Limited	C-1/ Sector Alpha 2	11584	27.52	0.35	82.57	82.22
Total						**2.27**	**526.73**	**524.46**

Source: Data provided by GNIDA.

As is evident from **Table 5.3.5**, relaxation reduced lease rent significantly and GNIDA suffered loss of lease rent of ₹ 5.24 crore for the first three years in six cases of allotments due to fixing of lease rent on lower side in violation of orders of GoUP.

In its reply, GNIDA stated (October 2020) that the lease rent was realised as per conditions of brochures which was approved in 88th meeting of the Board held on 29 March 2011.

The reply is not acceptable, since fixing lease rent at the rate of ₹ one per sqm per year for the first three years from the date of execution of the lease deed, was in violation of GoUP order (25 October 2009) which provided for relief to allottees of commercial properties by reducing the lease rent to one *per cent* per annum from 2.5 *per cent* of premium. Further, CEO exceeded its authority and reduced the lease rent of commercial properties without obtaining approval of Board prior to launch of CBP-I and CBP-II schemes. Further, Board of GNIDA also went beyond the GoUP order (25 October 2009) while according *ex-post facto* approval to the brochures of CBP-I and CBP-II schemes.

Charges for Change in Constitution not levied

5.3.5.3 Clause-N of the MCPM of GNIDA provides that charges for 'Change in Constitution' (CIC) of an allottee organisation shall be levied in proportion of the shares transferred. No CIC charges are, however, to be levied in case incoming partner(s) or shareholder(s) are within blood relation.

GNIDA incurred loss of ₹ 1.07 crore due to not levying CIS charges on transfer of three commercial properties through change in shareholding.

Clause-N (11) of the MCPM further provides that CIC charges wherever applicable shall be levied on the extent of shareholding held by other than the original allottee(s)/transferee(s). The CIC charges payable as above shall be equivalent to the transfer charges. The transfer charges shall be at the rate of 10 *per cent* of the total premium/rate of the plot/shop/built-up space.

The Board of GNIDA decided, in its 86th meeting (October 2010), that registration of CIC deed for Change in Shareholders (CIS) under the Registration Act, 1906 was not required. In compliance, GNIDA issued an office order (November 2010) through which it abolished CIS charges and the requirement of taking approval for change in shareholding. This order was based on GoUP order (11 October 2010), which was subsequently rescinded (February 2020) by GoUP on the grounds of heavy tax evasion.

Audit noticed that GoUP order (11 October 2010) was a clarification that registration of CIC deed and payment of stamp duty was not required in case of change of company's name/change in shareholding. Though GoUP order did not relate to CIS charges levied by GNIDA, GNIDA still went ahead and abolished the provision of CIS charges quoting the GoUP order. This facilitated the allottee company to transfer plot in favour of another set of shareholders without any charges.

Out of 17 sampled cases checked in audit, 50 to 100 *per cent* shareholdings were changed during the period May 2013 to January 2016 in case of three allottees[15]. However, an amount aggregating ₹ 1.07 crore on account of CIC charges was not recovered from the allottees in these three cases resulting in loss of revenue to GNIDA. Further, change of 100 *per cent* shareholding after allotment of plots has resulted in non-transparent allotments to ineligible allottees by manipulation of system.

During the Exit Conference (January 2021), GNIDA stated that comprehensive orders in the year 2019 incorporating all best practices have been issued[16]. Further, the State Government accepted the Audit observation and directed GNIDA to examine whether there was any violation of the brochure conditions.

Loss of interest due to change in payment terms

5.3.5.4 GNIDA Board had approved the brochure of CBP-I and CBP-II schemes on 25 February 2011 and 29 March 2011, respectively. Under these schemes, the allottee had to deposit 10 *per cent* of the tendered amount, after adjustment of earnest money, within 60 days from the date of issue of allotment letter. The balance was payable in 16 half yearly installments[17] along with interest computed from the date of allotment.

Audit noticed that in the brochure for CBP-III scheme launched in June 2015, GNIDA changed the payment condition vide which the interest on balance premium (*i.e.*, after payment of allotment money) was to be calculated from the date of deposit of allotment money instead of from the date of allotment. This condition of payment was further relaxed in subsequent schemes (CBP-IV, V, VI[18] and VII) in which interest was to be computed from due date of deposit of allotment money. As a result of these changes, in CBP-III scheme, GNIDA did not charge interest for period from date of allotment to the date of deposit of allotment money. In case of subsequent schemes, no interest was levied for 120 days between date of issue of allotment letter and due date of depositing allotment money. Since this change in procedure for computation of interest affected the revenue of GNIDA and was a policy decision, it was required to be approved by the Board prior to launching of the same. However, these schemes (CBP-III onwards) were not submitted to the Board even for *ex-post facto* approval. The terms and conditions approved by the Board in CBP I and II schemes, were changed in CBP-III scheme onward with the approval (29 May 2015) of CEO.

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[15] Kishore Propmart (P) Limited (allotment of milk and vegetable booths) - 50 *per cent* shareholding changed in May 2014, Euro Engineering Consultant (P) Limited (allotment of shop) - 100 *per cent* shareholding changed in May 2013 and Startle Reality Private Limited (SPC) (allotment of plot) - 100 *per cent* shareholding changed in January 2016.

[16] GNIDA in its order dated 25 June 2019 levied charges for CIC at the rate of 10 *per cent* of premium in case of full CIC and in cases where CIC is less than 100 *per cent*, these charges for CIC would be on a *pro rata* basis.

[17] In view of economic slow down, a moratorium period of 24 months from the date of allotment was allowed and only the interest accrued during the moratorium period was payable in half yearly installments.

[18] No allotment was made under this Scheme.

Audit further noticed that the change in payment terms facilitated the benefit of interest for the period of six days to 120 days in favour of the allottees, which led to loss of ₹ 27.56 crore[19] to GNIDA in 22 cases of allotments of commercial plots under CBP schemes III to VII launched during June 2015 to September 2016 ***(Appendix-5.3.1)***.

In its reply, GNIDA stated (October 2020) that in view of the global economic slowdown, the GoUP directed (October 2009) that the allottees who had not started the payment of premium according to the payment schedule were required to pay ten *per cent* of the premium as reservation-cum-allotment money within sixty days of issue of demand letter which was complied with.

The reply of GNIDA is not acceptable, as it is regarding terms and conditions of CBP-I and CBP-II and without addressing the audit observation regarding change in terms and condition in CBP-III onwards which resulted in financial loss to GNIDA due to charging of interest from actual date of deposit (CBP-III scheme)/due date of deposit of allotment money (CBP-IV scheme onwards) instead of date of allotment as was applicable in CBP-I and CBP-II schemes.

Terms and conditions of Brochures not complied with

5.3.6 During the course of audit, it was noticed that various terms and conditions of the Brochures of the schemes were not complied with, which led to financial losses to GNIDA. These observations are brought out below:

Failure to cancel allotments despite lapse of prescribed period of construction

GNIDA did not cancel allotments of four commercial properties even after lapse of 51 to 164 months from the prescribed timeline for completion of construction.

5.3.6.1 The scheme brochures provided that the lessee shall be required to complete the construction of allotted plot as per approved lay out plan and get completion/functional certificate within a prescribed period. Audit noticed that out of 17 commercial properties checked in audit, in four cases (one shop, one commercial plot and two milk and vegetable booths plots) allotted commercial properties were not completed/made functional despite lapse of prescribed period as detailed in **Table 5.3.6**.

Table 5.3.6: Details of units not made functional even after prescribed period

Sl. No.	Name of allottee	Type of allotment	Date of allotment	Lease deed executed	Due date for completion/ making the unit functional as per scheme brochure	Period of delay up to March 2021 (months)	Premium deposited by allottee (₹ in crore)	Amount to be forfeited (₹ in crore)
1.	Chopra Towers Private Limited[20]	Commercial Plot	28.04.2005	1.02.2006	1.02.2008	157	2.82	0.83
2.	Sunshine Refrigeration India (P) Limited	Milk and vegetable booths	3.07.2006	2.01.2007	2.07.2007	164	0.55	0.55

[19] After excluding interest earned by GNIDA on additional 10 *per cent* allotment money as compared to earlier schemes CBP-I and CBP-II.

[20] The premium of this commercial plot was ₹ 3.34 crore and in case of commercial plot, if allottee default in payment, 25 *per cent* of premium will be forfeited.

Sl. No.	Name of allottee	Type of allotment	Date of allotment	Lease deed executed	Due date for completion/ making the unit functional as per scheme brochure	Period of delay up to March 2021 (months)	Premium deposited by allottee (₹ in crore)	Amount to be forfeited (₹ in crore)
3.	Swagath Continental Private Limited	Shop	31.12.2007	22.06.2009	22.12.2009	135	7.79	7.79
4.	Kishore Propmart Private Limited	Milk and vegetable booths	26.02.2013	9.06.2014	9.12.2016	51	0.25	0.25
Total amount to be forfeited								**9.42**

Source: Records/data provided by GNIDA.

As per terms and conditions of scheme brochure/lease deed in case of the above four allotment cases, in case of failure to comply with the conditions for making shop/plot functional, the allotment/lease shall be liable to be cancelled and the amount deposited till the date of cancellation shall be forfeited in favour of GNIDA. However, GNIDA did not cancel these allotments despite failure of allottees to make the allotted commercial plots/shops functional even after lapse of 51 to 164 months from the prescribed timeline. As a result, the deposits of allottees amounting to ₹ 9.42 crore were also not forfeited which led to undue favour to allottees.

In its reply, GNIDA accepted (October 2020) the audit observation and stated that further action, including penalty, would be taken in cases where allottees had not made their commercial properties functional within due timeline.

Short deduction on cancellation of plot

5.3.6.2 GNIDA allotted (6 August 2008) Commercial Hotel Plot of 20,235 sqm to Housing Development and Infrastructure Limited for ₹ 69.30 crore at the rate of ₹ 34,250 per sqm under CHP 01/08 scheme. The condition no. X of the scheme brochure provided that, if the allotment is cancelled on the ground of failure in payment of dues, 30 *per cent* of the total premium of the commercial plot shall be forfeited and the balance, if any, shall be refunded to the allottee without any interest.

Cancellation of the plot result in forfeiture of 30 *per cent* of the total premium. However, GNIDA failed to forfeit ₹ two crore due to not including the amount of additional compensation as part of premium for forfeiture purposes.

Due to failure in payment of dues by the allottee, the CEO of GNIDA approved (7 September 2017) for cancellation of the plot. Accordingly, a letter for cancellation of the plot was issued (14 September 2017) to the allottee. GNIDA forfeited a sum of ₹ 20.79 crore (30 *per cent* of the total amount of premium) and refunded (14 September 2017) the balance amount of ₹ 28.39 crore to the allottee.

Audit noticed that GNIDA had issued (June 2013) a demand notice to the allottee for payment of additional compensation of ₹ 6.68 crore, which was levied to recover burden of additional compensation distributed to farmers by GNIDA in compliance of Hon'ble Allahabad High Court Order[21] (October 2011). However, the allottee had not paid the additional compensation to GNIDA. Since the additional compensation is in the nature of

[21] In case of Gajraj and Others *vs.* State of Uttar Pradesh and Others (Writ Petition C. No. 37443 of 2011).

total amount payable by allottee to GNIDA for the allotted plot (*i.e.*, premium of plot), this should have been taken into account for computation of amount liable for forfeiture. However, GNIDA did not forfeit 30 *per cent* of additional compensation due from the allottee, as a result ₹ two crore was short deducted from the allottee.

Further, GNIDA also failed to recover ₹ 13.60 crore due, towards lease rent along with the penalty on outstanding lease rent (till the date of cancellation) from the allottee, which should have been recovered by GNIDA before issuing refund of ₹ 28.39 crore to the allottee. The imprudent action of GNIDA led to loss of ₹ 13.60 crore on account of unrealised lease rent.

Thus, GNIDA had suffered loss of ₹ 15.60 crore due to its failure to forfeit 30 *per cent* of additional compensation due from the allottee and unrealised lease rent on cancellation of plot.

In its reply, GNIDA stated (October 2020) that the deductions on cancellation was done as per the terms and conditions of the brochure. Further, it added that additional compensation is being recovered from the allottees of commercial properties in view of the decision of Hon'ble Allahabad High Court which was not specified in the terms of the brochure. Therefore, amount of additional compensation was not considered as premium of the plot and adjusted at the time of cancellation.

The reply is not acceptable as GNIDA failed to protect its financial interest by not exercising due diligence in recovery of lease rent. The additional compensation recoverable from allottee is in the nature of land premium of the plot, therefore, it was to be considered while computing the amount liable for forfeiture. Further, as noted from the scheme Brochure of Commercial Builder Plot-IV (August 2015), GNIDA inserted a fresh clause in the Brochure that if due to any order/direction of any court or Government of Uttar Pradesh or Authority, increased compensation to the farmers is to be given, then allottee/lessee has to bear proportionate burden of increased compensation at the rate decided by the Authority and the decision of the Authority in this regard shall be final and binding on the Allottee/lessee. However, GNIDA had not inserted any such clause in the scheme Brochure prior to August 2015, which is indicative of lack of due diligence in finalising terms and conditions of brochures.

Undue benefits in allotments

5.3.7 Instances of lack of due diligence noticed in audit are brought out below:

Undue benefit by exempting restoration charges

5.3.7.1 The terms and conditions of the scheme Brochure (MVS 01) launched in May 2006 provided for allotment of milk and vegetable booth on lease basis for a period of 30 years. Further, Clause-Q of the MCPM of GNIDA provided that allottee could restore its cancelled plot within 90 days from the date of issue of cancellation letter by paying restoration charges at the rate of 10 *per cent* of allotment money.

GNIDA allotted (3 July 2006) milk and vegetable booth of 200 sqm to Sunshine Refrigeration India (Private) Limited for ₹ 48.24 lakh at the rate of ₹ 24,122 per sqm.

Audit noticed that the lease deed was executed (2 January 2007) with the allottee for 90 years against the period of 30 years prescribed in the scheme brochure.

Further, the allottee, despite repeated notices issued by GNIDA, did not deposit the outstanding dues which accumulated to ₹ 50.05 lakh (Premium: ₹ 41.99 lakh and Lease rent: ₹ 8.06 lakh) up to 19 September 2013. Therefore, the CEO of GNIDA approved (20 December 2013) for cancellation of the allotment of the plot. The Manager (Commercial Division) of GNIDA, however, despite approval (20 December 2013) of the CEO for cancellation of the allotment of plot, did not serve cancellation notice to the allottee. In the meantime, the allottee deposited ₹ 25 lakh on 13 January 2014 as part payment. The CEO accorded (21 November 2014) approval for not taking restoration charges of ₹ 4.82 lakh from the allottee on the ground that cancellation notice was not served. However, no action was taken against the Manager (Commercial Division) for not issuing cancellation notice. It is pertinent to mention that subsequent to restoration of plot, the allottee deposited (February 2015) merely an amount of ₹ five lakh towards the premium against the dues of ₹ 20.89 lakh outstanding on that date (February 2015). Consequently, the outstanding dues increased to ₹ 69.92 lakh (Premium: ₹ 36.67 lakh and Lease rent: ₹ 33.25 lakh) up to April 2021.

Thus, undue favour was extended to the allottee by executing lease deed for 90 years in place of 30 years as advertised in the brochure. Further, GNIDA was deprived of the restoration charges of ₹ 4.82 lakh due to failure of Manager (Commercial Division) to issue the cancellation notice for the plot. No responsibility had been fixed by GNIDA for the lapses for not issuing the cancellation notice and executing lease for 90 years instead of 30 years.

In its reply, GNIDA stated (October 2020) that the CEO accorded (November 2014) approval for not taking restoration charges from the allottee on the ground that the allottee deposited ₹ 25 lakh before the issue of cancellation notice. On the issue of executing lease deed for 90 years instead of for 30 years, GNIDA stated (March 2022) that action is being proposed.

Though the reply confirms the audit observation, however, no responsibility has been fixed. Besides, GNIDA also failed to correct the lease deed despite lapse of 14 years and is yet to recover the pending dues till date (March 2022), hence possibility of collusion cannot be ruled out.

Loss due to violation of Court injunction

5.3.7.2 GNIDA allotted (June 1995) a Commercial Builder plot of 4,800 sqm to Chopra Towers Private Limited on bid basis in Alpha sector for a premium of ₹ 1.14 crore at the rate of ₹ 2,375 per sqm. However, the allotment was cancelled (July 1995) as the allottee had sought relaxations in the terms and conditions of the allotment in respect of lease rent and interest payment.

In this matter, Hon'ble Allahabad High Court directed (September 1998) GNIDA and allottee to maintain *status quo* till further orders. However, GNIDA sub-divided the plot in dispute and allotted (2001-02) it to other parties named Kayson Construction and Kasana Towers at the rates of ₹ 35,108 per sqm and ₹ 22,500 per sqm respectively. Subsequently, the original allottee filed a contempt petition before Hon'ble Allahabad High Court. In view of this, Board of GNIDA approved in 51st Board meeting (November 2004) for out of court settlement with the allottee and direction

Due to violation of court injunction and sub-division and allotment of a disputed plot (under *status quo*), GNIDA suffered loss of allotment premium amounting to ₹ 8.36 crore for allotment at older rate.

was given to fix the responsibility for not complying with the order of Hon'ble Allahabad High Court. Accordingly, the allottee was allotted (April 2005) another plot of 5,200 sqm in the same Sector at a mutually agreed rate of ₹ 6,416 per sqm.

Audit noticed that GNIDA was forced to go for an 'out-of-court' settlement due to its failure to maintain *status quo* on the plot as per the injunction order of Hon'ble Allahabad High Court. As a result, it had to allot a bigger plot at much lower rate of ₹ 6,416 per sqm than the rate of ₹ 22,500 per sqm which was already received at that time. This resulted in loss of allotment premium amounting to ₹ 8.36 crore and consequential loss of lease rent of ₹ 2.29 crore, as worked out in **Table 5.3.7**.

Table 5.3.7: Computation of loss to GNIDA

Particulars	Computation	Amount (₹ in crore)
Value of new plot that would have been received at the lowest rate of allotment in 2001-02 (in case of Kasana Towers)	5,200 sqm at the rate of ₹ 22,500 per sqm	11.70
Less: Value of new plot allotted to Chopra Towers Private Limited	5,200 sqm at the rate of ₹ 6,416 per sqm	3.34
Loss of premium to GNIDA (A)		8.36
Consequential loss of one time lease rent at the rate of 27.5 *per cent* (B)		2.29
	Total	**10.65**

Source: Data provided by GNIDA.

Audit further noticed that GNIDA, after lapse of more than 10 years, constituted (5 August 2014) an Enquiry Committee[22] for determining the responsibility against erring officers/officials. Furthermore, the report of Enquiry Committee was still awaited (March 2022) despite lapse of more than seven years after its constitution and direction (6 August 2014) of the Public Accounts Committee[23] to fix responsibility in the matter.

In its reply, GNIDA stated (October 2020) that the alternative plot was allotted to Chopra Towers Private Limited in compliance of the decision of Hon'ble Allahabad High Court. In the 51st Board meeting, the Board approved allotment of alternative plot, terms and value of plot in view of affidavit filed by GNIDA in the Hon'ble Allahabad High Court.

The fact remains that GNIDA failed to fix responsibility for not complying with the Hon'ble Allahabad High Court's order to maintain *status quo* on the disputed plot which led to financial loss of ₹ 10.65 crore.

Approval of formation of Special Purpose Company without required shareholding of Lead Member

5.3.7.3 GNIDA launched (September 2016) a scheme (CBP-VII/2016-17) for allotment of 44 commercial plots to Builders/Developers on two-bid system (Technical and Financial). The condition no. C-10 of the brochure provides that the Lead Member (on the date of submission of the tender) shall continue to hold at least 30 *per cent* of the shareholding in the Special Purpose Company (SPC) till the occupancy/completion certificate of at least one phase of the project is obtained from GNIDA.

[22] Comprising three members, *i.e.,* GM (Finance), GM (Planning) and GM (Project).
[23] The Public Accounts Committee had discussed this issue in view of report of Local Fund Audit Department for the year 2007-08 on GNIDA.

In violation of terms and conditions of the brochure, GNIDA irregularly allowed sub-division of plot to Viable Venture Private Limited (SPC) in which Lead Member (Mart Builders Private Limited) had no shareholding.

Under the above scheme, GNIDA allotted (4 November 2016) a Commercial Builder Plot measuring 18,900 sqm to a consortium led by Mart Builders Private Limited. There were five Relevant Members in the consortium in addition to the Lead Member.

On the proposal (3 March 2017) of the Lead Member (Mart Builders Private Limited), the CEO of GNIDA accorded approval (28 March 2017) for the sub-division of plot in favour of two SPCs named Mart Promoters (P) Limited[24] (11,777.22 sqm) and Viable Venture (P) Limited[25] (6916.78 sqm). The SPCs executed lease deed with GNIDA on 7 June 2017.

Audit noticed that Viable Venture Private Limited (SPC) was formed by three Relevant Members and the Lead Member (Mart Builders Private Limited) had no shareholding in the SPC. The Manager of Commercial Division of GNIDA, while obtaining approval (28 March 2017) of sub-division of plot, did not ensure that the Lead Member had shareholding of 30 *per cent* in Viable Venture Private Limited (SPC), as detailed in **Table 5.3.8.**

Table 5.3.8: Details showing shareholding status of consortium members in the SPCs

Name of SPC	Name of companies in SPCs	Status in consortium	Shareholding percentage of consortium members in SPC
Mart Promoters Private Limited	Mart Builders Private Limited	Lead Member	48
	Mall Buildtech Private Limited	Relevant Member	44
	Galaxy International Realtech Private Limited	Relevant Member	8
		Total	**100**
Viable Venture Private Limited	Planet Realtech Private Limited	Relevant Member	72
	Bulland Buildtech Private Limited	Relevant Member	14
	Vidyalaxmi Agencies Private Limited	Relevant Member	14
		Total	**100**

Source: Data provided by GNIDA.

Thus, lack of due diligence was evident while approving formation of SPC (Viable Venture Private Limited) due to which the SPC got allotment of sub-divided Commercial Builder Plot of 6,916.78 sqm without having at least 30 *per cent* shareholding of Lead Member which was essential as per condition C-10 of the scheme brochure. This was in violation of condition no. C-10 of the brochure. Audit further noticed that both SPCs were not regular in payment of the dues, which accumulated to ₹ 103.99 crore towards premium and lease rent (April 2021). These projects were due[26] for completion in June 2020 as per the period prescribed in the scheme brochure, however, these projects were not complete (April 2021).

In reply, GNIDA stated (October 2020) that the allotments had been made as per clause 7 (e) of terms and conditions of the scheme brochure which provided for sub-division of the plots and execution of lease deeds in favour of the Lead Member and/or Relevant Member and/or SPCs constituted by the consortium members.

The reply is not acceptable as after sub-division of the plot, lead member of the original allotment was not the Lead Member in one of the SPCs, Viable Venture Private Limited, of the sub-divided plots which violated the condition No. C-10 of the scheme Brochure. Thus, lack of due diligence while approving sub division of plot in favour of SPC without ensuring shareholding of the

[24] Incorporated on 7 March 2017.
[25] Incorporated on 10 March 2017.
[26] Three years from the date of execution of lease deed, which were executed 7 June 2017 in both cases.

Lead Member in both SPCs facilitated exit of the Lead Member from one of the sub divided plot, which was irregular.

Outcome of allotments of commercial properties

5.3.8 As per Master Plan 2021, Greater NOIDA was planned as a city with industry as its main economic activity supported by the residential, commercial, institutional and other such uses required for a comprehensive urban development. The purpose of allotment of commercial properties cannot be fulfilled without actual establishment of the commercial units on the allotted plots/shops within the prescribed time. Audit noticed that commercial properties were incomplete/ not made functional. Besides, built-up shops and kiosks were also lying un-allotted. This defeated the purpose behind taking land from poor farmers and allotting these for development of commercial activities, as discussed below:

Failure in ensuring completion/making units functional

5.3.8.1 As per the data being maintained by GNIDA in its System Department, 335 commercial plots (23,33,952 sqm area) and 428 built-up shops/kiosks (13,178 sqm spaces) were allotted by GNIDA since inception to April 2021.

Audit noticed that:

- Out of the 335 allotted commercial plots, construction of 305 plots were due for completion and of which, 298 plots were due for being made functional up to April 2021, as per the timeline prescribed in their respective scheme brochures. Of 305 plots which were due for completion, construction was completed in only 28 plots (nine *per cent*) whereas even the lease deed was not executed in seven other cases. Further, the data provided by GNIDA indicated 233 plots as functional which included 20 out of 28 completed plots and in the remaining 213 functional plots, the dates of their completion were not mentioned. This indicates that either these plots were incorrectly shown as functional without their actual completion or the dates of their completion were not captured in the data.

- Out of 428 built-up shops/kiosks allotted, 415 built-up shops/kiosks were due for being made functional up to April 2021 as per the terms and conditions in their respective scheme brochures. Of this, 289 built-up shops/kiosks (70 *per cent*) were made functional. Of the remaining 126 built-up shops/kiosks (30.36 *per cent*) which were required to be made functional, even the lease deed was not executed in 14 cases.

Audit noticed that there was lack of monitoring by Planning Division in ensuring construction/completion of the building by the allottees of commercial plots and that of Commercial Division in ensuring that the approved commercial establishments (plots/shops/kiosks) were made functional within the prescribed timeline in the scheme brochures.

During the Exit Conference (January 2021), the State Government and GNIDA agreed with the audit observation and stated that a new law[27] has been

[27] An amendment (July 2020) in UPIAD Act, 1976 by the GoUP provides maximum period of five years from the date of possession or the period fixed in conditions of allotment, whichever is longer, to utilise the plot for the allotted purpose. In case where the aforesaid period had already expired before the date of effectiveness of this amendment, a period of one year was further allowed for utilisation of such plot.

framed to address the issue of the protracted delay in completion/ operationlisation and that cancellation of allotments would be effected where such cases came to light.

Unsold shops and kiosks

5.3.8.2 GNIDA had constructed from time to time shops and kiosks for day-to-day need of habitants of the Greater Noida township. These shops/kiosks were for the use of commercial activities, such as uses for general purpose, barbers, vegetables, dry cleaner and restaurant meant for need of the local habitants. The status of the unsold shops and kiosks as on 19 November 2019 is shown in **Table 5.3.9.**

Table 5.3.9: Status of unsold shops and kiosks

Particulars	Shops	Kiosks
Total number of unsold shops and kiosks	**144**	**38**
Unsold for more than five years	143	37
Unsold for more than three years but less than five years	0	0
Unsold for more than one years but less than three years	1	1
Total cost of unsold shops and kiosks (₹ in crore)	**41.42**	**1.43**

Source: Information furnished by GNIDA.

Schemes launched for shops/kiosks during the period September 2012 to January 2016 did not include unsold inventory of 144 shops and 38 kiosks which resulted in blockade of GNIDA's fund of ₹ 42.85 crore.

Audit noticed that, while launching the schemes for shops/kiosks during the period September 2012 to January 2016, all unsold shops/kiosks were not publicised in the scheme brochures. In recent launching (August 2018) of the scheme for shops and kiosks, only 15 shops and 33 kiosks were included in the scheme brochures against unsold inventory of 144 shops and 38 kiosks. The reasons for not including the unsold shops/kiosks were not on record.

As the shops and kiosks were not allotted despite lapse of more than five years, it indicated that these shops and kiosks had been built-up by GNIDA without assessment of requirement or it had been built-up in isolated locations. On these commercial properties, on one hand the GNIDA's fund to the extent of ₹ 42.85 crore was locked up and on the other hand, it defeated the objective of establishment of commercial facilities on these properties.

In its reply, GNIDA confirmed (October 2020) that shops/kiosks are still unsold. Further, it stated that the schemes are continuously being launched for allotment of these shops/kiosks. Recently, it has been decided to allot vacant shops/kiosks in place of plots to farmers under *Abadi* settlement.

While the reply confirms the fact that shops/kiosks are still unsold, however, it did not address the issue of not including all unsold shops/kiosks in the schemes which indicates lackadaisical approach of GNIDA.

5.3.9 Conclusion

Systemic deficiencies like lack of fixing timeframe for issue of checklist, change in conditions of scheme brochures by CEO for allotment of commercial plots without approval of Board and lack of coordination between Divisions in GNIDA was observed. Instances of short recoveries and not levying of charges were also noticed. Further, most of the allotted Commercial Properties were incomplete and not functional which defeated the objective of the allotment for commercial activities.

5.3.10 Recommendations

Recommendation number	Recommendation
24.	**GNIDA should examine the reasons for lack of completion and functionality of commercial properties and take remedial action. The State Government has accepted the recommendation.**
25.	**A timeframe of issue of checklist should be fixed.**