

CHAPTER IX : MINISTRY OF URBAN DEVELOPMENT

Delhi Development Authority

9.1 Shortcomings in developing the Residential Complex at Commonwealth Games Village on PPP mode

DDA provided a 'Bailout Package' of Rs. 766.89 crore to the Developer of the residential complex at Commonwealth Games Village by purchasing 333 numbers of apartments to bail out the Developer from financial crunch. An audit appraisal of Package in the month of June 2009 revealed various shortcomings:

Highlights

DDA purchased 333 flats from the Developer of Commonwealth Games Village at a cost of Rs. 766.89 crore ignoring the recommendation of the Evaluation Committee constituted by DDA resulting in avoidable extra expenditure of Rs. 89.24 crore

(Paragraph 9.1.1, 9.1.2 and 9.1.3)

DDA allowed the developer to construct excess floor area of 4,40,301 square feet for which upfront amount of Rs. 65.23 crore should have been recovered from the developer.

(Paragraph 9.1.4)

Introduction

The Delhi Development Authority (DDA) was assigned the work of development of the Commonwealth Games Village. The development plan of the Games Village envisaged construction of residential complex, international zone, training areas, village operation and support area and other services.

For construction of residential complex for accommodating 8000 athletes and officers of the Games, DDA awarded a contract (September 2007) to M/s Emaar MGF Construction Private Ltd. (Developer). As per the agreement, the Developer was to construct 1152 flats, common facilities like community hall, library, shopping complex, parking slot etc. under Public Private Partnership (PPP) mode. The Developer was required to develop the aforesaid infrastructure over a land of 11 hectares. As per the PPP agreement, the DDA

was to get Rs. 321 crore as upfront fee and one third of built-up apartments whereas the remaining two third apartments and full commercial built-up area was to belong to the Developer. In terms of agreement, the Developer was solely responsible for arranging all funds for construction and development of the project.

9.1.1 Bailout Package:

The Developer approached DDA in December 2008 and again in February 2009 for financial assistance citing reasons of slow down in the real estate sector and difficulties in raising the resources from the market and the financial institutions. The former requested financial assistance through two options viz. either returning the upfront premium of Rs. 321 crore as a loan on nominal interest rate against security of apartments or purchase of 250 apartments by DDA as per the requirement of funds.

DDA decided (February 2009) to purchase the apartments from the Developer on the plea that the project was of national prestige and it was to be completed in time. It constituted (March 2009) a four member Evaluation Committee comprising experts from the Central Public Works Department, National Building Construction Corporation Limited, Housing and Urban Development Corporation and DDA, to determine and recommend the purchase price per sq. ft. plinth area of the apartments, the total funding requirement of the Developer etc. The Evaluation Committee appointed two consultants viz. M/s Garg A. Associates, (Consultant A), a real estate consultant and M/s K.N. Goyal & Co (Consultant B), Chartered Accountant already working with DDA. DDA finally purchased (May 2009) 333 apartments for Rs. 766.89 crore from the Developer at the rate of Rs. 11,000 per sq. ft. plinth area. The amount was to be released in five installments, out of which an amount of Rs. 500 crore had been released to the Developer till January 2010.

Audit scrutiny revealed that while taking the above decision, the terms of PPP agreement defining the rights and obligations of the parties underwent a drastic change. As per the agreement, the financing risk was with the Developer who was responsible for arranging funds. The allocation of financing risk to the Developer was crucial to determining the amount of upfront fee and the sharing ratio of apartments built. However, the subsequent decision of DDA to buyback 333 apartments at Rs 766.89 crore inclusive of developer's margin substantively altered the balance of risks and obligations shared by the Developer and DDA. The rate of Rs. 11000 per sq. ft. determined in the background of the necessity and urgency to complete a

project of national importance in time which was higher than the rate recommended by a duly constituted committee of subject experts was not in the best interest of DDA as detailed below:

9.1.2 Non-adherence of the recommendation of the Committee

The Evaluation Committee *inter-alia* recommended (April 2009) in its report that DDA should consider providing financial assistance to the Developer by way of loan as requested by the Developer by creating *pari passu* charges along with the existing bankers on unsold apartments. But this recommendation was neither indicated in the note submitted to the Vice Chairman of DDA nor mentioned in the background note submitted to the meeting held in April 2009 under the chairmanship of the Lt. Governor, in which the decision was taken to purchase the apartments from the Developer at the rate of Rs. 11,000 per sq. ft. Thus, DDA purchased 333 flats without taking into consideration the recommendation of the Evaluation Committee regarding grant of loan to the Developer.

In its reply, the Ministry (November 2009), did not address the issue as to why the recommendation of the Evaluation Committee for granting of loan was not brought to the notice of the higher authorities for consideration and decision.

9.1.3 Avoidable extra expenditure of Rs. 89.24 crore due to purchase of apartments at higher rates

The Evaluation Committee, on the basis of the reports submitted by the Consultants, recommended (April 2009) the purchase price ranging from Rs. 9,382 to Rs. 9,720 per sq. ft. of plinth area. It also recommended that the final price might be negotiated by DDA with the Developer.

Scrutiny of records revealed that DDA finally purchased 333 apartments costing Rs. 766.89 crore at the rate of Rs. 11,000 per sq. ft. demanded by the developer. DDA accepted the higher rates on the ground that the rates recommended by the consultants did not include the developer's margin, overheads and project management charges.

The reasons cited for purchase at a rate higher than the range recommended by the Evaluation Committee of DDA is not acceptable as the Consultant A worked out the rate of Rs. 7425 per sq ft by adopting cost approach method based on CPWD plinth area rates, which included contractor's profit and overhead costing in addition to 25 *per cent* escalation for better specifications

of the project. Further, the rate worked out by the same consultant by adopting market approach was Rs. 9720 per sq. ft. of plinth area. This rate was arrived at on the basis of average selling price of apartments in the subject micro market, which was around Rs. 7200 per sq. ft. This rate was taken as benchmark rate and increased by 35 *per cent* to compensate for richer specifications of the project. Consultant B recommended (9 April 2009) purchase price between Rs. 9,382 and Rs. 9,735 per sq. ft. in the report submitted to the Evaluation Committee. Subsequently, he suggested (21 April 2009) 10 *per cent* as developer's margin, overheads and project management charges besides 10 *per cent* return on capital and revised the purchase price to Rs. 10245 per sq. ft. He further increased (23 April 2009) the developer's margin to 15 *per cent* from 10 *per cent* which enhanced the rate to Rs. 11056 per sq. ft. The price was changed frequently by the Consultant B without giving reasons for non preparation of the justified rate in one go.

Thus, purchase price worked out by the two consultants ranged from Rs. 7425 to Rs. 9735 and the Evaluation Committee finally recommended the rate of Rs. 9720 per sq. ft. for the apartments, which included developer's margin, overheads and project management charges.

Instead of analyzing and providing the justification for increase in rate which was at variance with the rates suggested by the Evaluation Committee, DDA arrived at the rate of Rs. 11,000 acceptable to the Developer. This resulted in avoidable extra expenditure of Rs. 89.24 crore.

The Ministry stated (November 2009) that the Evaluation Committee recommended purchase price between Rs. 9382 and Rs. 9720 per sq. ft. Thereafter, the Vice Chairman, DDA constituted a Negotiation Committee, to consider the report of the Evaluation Committee and negotiate with the Developer. The Negotiation Committee noted that Evaluation Committee had not provided for any margin to the Developer and in the report of the Technical experts, cost of parking had not been considered. Then, the financial expert (one of the consultants) furnished a revised working cost of Rs. 11056 per sq. ft., comprising the estimated project cost, allowance towards developer's margin, overheads and project management charges at the rate of 15 *per cent* and cost of capital invested by the Developer at the rate of 10 *per cent* and the Developer's demand of Rs. 11000 per sq. ft. was accepted.

The reply of the Ministry is not acceptable in view of the fact that while assessing the value of the project by applying cost approach, the consultant A worked out the rate of Rs. 7425 per sq. ft. of plinth area after allowing 25 *per*

cent escalation for better specifications. Moreover, he clearly stated that for all the calculations, he had considered CPWD plinth area rates duly adjusted to cost indexation of March 2009 which included contractor's profit and overhead costing. Further, the rate recommended by the Evaluation Committee included the cost of parking.

9.1.4 Non-recovery of upfront amount of Rs.65.23 crore from the developer for construction of excess floor area

Request for Proposal (RFP) issued by DDA in May 2007 included the total land of 11 hectare for development of the residential complex having maximum floor area ratio (FAR) of 200 excluding the area under convenience shopping, two anganwaries and milk booth. As no response was received from the bidders against the RFP, the High Power Committee of DDA revised (June 2007) the conditions of the RFP and added an addendum to RFP document which was also a part of the agreement. As per Addendum to RFP, the bidders were to quote the upfront amount on the basis of area of 2,01,280 sq. m i.e. 21,66,577 sq. ft. Provisions of the agreement further provided that if more FAR (floor area) was achieved, the upfront payment and the DDA's share in the residential facility would be increased on pro-rata basis. The Developer paid an amount of Rs. 321 crore as an upfront amount to DDA during the award of the project.

Scrutiny of records revealed that the Developer had actually constructed 26,06,878 sq ft. floor area (plinth area), as worked out by both the consultants appointed by the Evaluation Committee in April 2009. Consequently, the Developer constructed excess plinth area equivalent to 4,40,301 sq ft. for which an upfront amount of Rs. 65.23 crore should have been recovered from the Developer as detailed below:

1	Floor area allowed as per the agreement (A)	21,66,577 sq. ft.
2	Floor area actually constructed (B)	26,06,878 sq. ft.
3	Area excess floor area constructed by the Developer (A-B)	4,40,301 sq. ft.
4	Total upfront amount paid by the Developer	Rs. 321 crore
5	Proportionately increased upfront amount due to construction of excess floor area= $(321 \text{ crore} / 21,66,577) \times 26,06,878$	Rs. 386.23 crore
6	Upfront amount recoverable from the Developer for excess floor area constructed	Rs. 65.23 crore

It was also noticed that DDA's share in the residential facility was automatically increased as DDA received one-third share from the whole project as per the conditions of the contract, but the additional upfront amount of Rs 65.23 crore due to construction of excess floor area had not been claimed by DDA from the Developer as of February 2010.

The Ministry stated (November 2009) that during the pre-bid conference, it was stated by DDA that if more FAR was achieved, the upfront payment of DDA's share in the Residential Facility would be increased on pro-rata basis and hence, there was no loss to DDA. DDA also stated (February 2010) that decision on the construction of excess FAR would be taken after the completion of the project.

The reply of the Ministry, however, did not address the reasons for not claiming this amount from the Developer when the excess FAR became known.

9.1.5 Non- recovery of Rs. 20.31 crore from the Developer towards cost of electrification

As per the agreement, the cost of external electrification of residential complex carried out by BYPL (Executing Agency) was to be borne by the Developer. The load sharing between DDA and the Developer at the Games Village was in the ratio of 6.3:20.793 MVA from the dedicated grid station to be installed by BYPL at Games Village.

Scrutiny of records revealed that the total cost of installation of grid sub station and 11 KV feed substation and LT distribution for residential apartments at the Games Village was Rs. 26.47 crore and DDA paid the entire cost to the executing agency in two installments of Rs. 11.42 crore and Rs. 15.04 crore in August 2008 and October 2008 respectively.

Thereafter, DDA demanded (November 2008) from the Developer its share of Rs. 20.31 crore along with interest of Rs. 36.36 lakh. The fact remained that DDA had not recovered the amount as of November 2009.

While accepting the audit observation, Ministry stated that the DDA would recover the amount due along with interest by invoking the Developer's Performance Guarantee lying with DDA. DDA, however, had not clarified the reasons for non- realisation of the amount despite lapse of more than one year.

9.1.6 Short-payment of labour cess of Rs. 4.12 crore

As per the order of the Labour Commissioner (August 2005), labour cess was to be recovered at the rate of one *per cent* of the estimated cost, from the builder or owner or both as per the collaboration agreement at the time of approval of building plan.

Scrutiny of records revealed that the Developer had deposited only Rs. 24.75 lakh at the time of approval of Building Plan and thereafter Rs. 30 lakh upto May 2008. It was also noticed that the estimated cost of the project was Rs. 1168.20 crore as worked out by the consultant appointed by the Evaluation Committee. Out of Rs. 1168.20 crore, an expenditure of Rs. 467.27 crore had already been incurred by the developer as of April 2009. Thus, total cess paid by the Developer upto this period should have been Rs. 4.67 crore. Consequently, there was a short payment of labour cess by Rs. 4.12 crore as of April 2009.

The Ministry stated that in this residential project, as DDA was not paying any amount to the Developer on account of construction, no record of labour cess was being maintained by DDA.

The reply of the Ministry is not acceptable as the housing project is being developed under agreement with DDA and the builder is constructing the flats on sharing basis with DDA. As such both the parties were responsible for the payment of labour cess. Besides, payment of labour cess is a statutory requirement and hence DDA was required to ensure that it was paid by the Developer.

9.2 Blocking of funds

Award of work of providing and laying peripheral sewer lines without proper survey of site resulted in blocking of Rs. 2.80 crore.

The work of providing and laying a peripheral sewer line at Shalimar Bagh was awarded (November 2004) at a cost of Rs. 1.71 crore to a contractor with date of completion as 12 August 2005. Out of total seven lines, the work of laying of five sewer lines had been completed to the extent of 70 *per cent* and a payment of Rs. 1.47 crore had been made to the contractor (August 2006).

The Executive Engineer pointed out (March 2005) the difficulties in excavation for laying the remaining of 700 and 900 mm dia pipelines along the main road which was congested due to heavy traffic and in shifting

existing utility services like water supply lines, sewer lines, storm water drains, electrical cables and poles and telephone lines. As the time and expenditure required to tackle the above would be high, DDA withdrew (January 2007) the work of laying 700 mm dia line amounting to Rs. 71 lakh and awarded (September 2007) after more than two years to another contractor at the tendered cost of Rs. 1.25 crore. The work was to be completed by using trenchless technology by March 2008. The contractor had been paid Rs. 1.33 crore up to July 2009 and the work was not completed as of August 2009.

Audit scrutiny (October 2008) revealed that the Executive Engineer who pointed out the difficulties as above in March 2005 had confirmed availability of site in August 2004. The detailed estimates framed in July 2004 also stated that the site was available. It was also noticed that the laying of a 900 mm dia sewer line which was to be carried out by the original contractor through open excavation had not been started.

Ministry, in its reply, stated (August 2009) that the estimates were prepared on the basis of general survey of the site and that site conditions got changed at the time of actual execution of work with the passage of time. The reply further added that the site conditions were beyond control of DDA and programme of construction had to be modified as per actual site conditions. Regarding laying of the 900mm dia pipe, the Ministry stated that the same would be got executed either from the original contractor or at his risk and cost.

The reply is not acceptable as the difficulties pointed out by the Executive Engineer in March 2005 could have been noticed while framing the detailed estimates in July 2004 which clearly confirmed site availability. Further, completion of the work was uncertain as excavation technology for balance of work was to be finalized. Also the decision on construction of SPS (Sewerage Pumping Station) to which ultimately the sewer lines were to be connected was to be taken.

Thus, it was evident that the estimates for the work were prepared without proper survey of the site. Besides, there was no coordination between DDA and the concerned local bodies to free the site from the aforesaid encumbrances before going in for tender.

The inadequacies resulted in blocking of funds of Rs. 2.80 crore. Besides, the work remained incomplete even after a lapse of around five years.

9.3 Avoidable expenditure

Rejection of reasonable and comparable tender without proper justification resulted in avoidable expenditure of Rs. 2.11 crore.

Delhi Development Authority (DDA) invited (July 2003) tenders from contractors on the basis of a select list of approved contractors for executing infrastructure development projects for construction of Command Tank-5 and a pump house in Sector-17, Dwarka Phase-II at an estimated cost of Rs. 6.49 crore. Three tenders were received and the lowest tenderer was called for negotiation as per directions (September 2003) of the Work Advisory Board (WAB). The Chief Engineer after negotiation recommended (November 2003) that the offer of Rs. 6.23 crore, which was 4.03 *per cent* below the estimated cost and 15.61 *per cent* below the justified rate, was reasonable and comparable with the rates at which works of similar nature had been awarded earlier. WAB rejected (December 2003) the tender without any justification and decided to recall the tenders from the entitled category of contractors.

Tenders were re-invited (September 2005) after more than one and half years with the same estimated cost and WAB awarded (February 2006) the work to the same contractor at the negotiated amount of Rs. 8.34 crore.

Scrutiny (May 2008) revealed that the tender had been invited at the first instance from the approved select list of contractors for executing infrastructural development projects. Also negotiations with the lowest tenderer had been conducted following the directives of the WAB. However the tender which was justified to be reasonable and comparable had been rejected without proper grounds resulting in avoidable extra expenditure of Rs. 2.11 crore.

The Ministry in its reply stated (August 2009) that though the negotiated rate of Rs. 6.23 crore was 4.03 *per cent* below the estimated cost, the same was not brought down to the reasonably acceptable extent and did not match with the rates at which similar works had been awarded in the past. Further, the ministry added that the approved select list was basically from amongst the contractors who were eligible for tenders for works costing Rs. 10 crore and above while the present tender was falling between Rs. five crore and Rs. 10 crore which would have led to legal complications.

The reply is not acceptable as the position brought by the Ministry is not consonance with the agenda/ minutes of the meeting of the WAB held in December, 2003. The agenda note contained detailed reasoning for concluding

that the rates were reasonable and comparable with the rates at which similar works were awarded while the minutes were silent about the justification of rejection. Further rejection of tender on grounds of eligibility of contractor is also not acceptable as the same was not discussed in the first WAB meeting of September 2003 and was clearly an after thought.

Thus rejection of the tender resulted in avoidable expenditure of Rs. 2.11 crore.

9.4 Avoidable expenditure

Rejection of the tender in first call by the Delhi Development Authority in contravention of provisions of the CPWD Works Manual resulted in avoidable expenditure of Rs. 1.16 crore.

Para 18.12.1 of the CPWD Works Manual (2003) provides that variations up to plus five *per cent* in the tendered amount over the amount worked out at prevalent market rates (justified rates) may be ignored. In cases of greater emergency, variations up to plus 10 *per cent* might be allowed, but in no case, rates higher than 10 *per cent* should be accepted.

The Delhi Development Authority (DDA) invited tenders for work relating to Lower Income Group houses in Rohini in April 2006. After negotiation, the offer of the lowest tenderer was Rs. 9000 per sqm, which was 2.54 *per cent* above the justified rate of Rs. 8,777 per sqm. This offer was rejected by the Works Advisory Board (WAB) in January 2007 on the recommendations of the Chief Engineer (Rohini) who stated that the rates were more than the justified rate.

DDA awarded (October 2007) in the second call the work at the negotiated rate of Rs. 9967.30 per sqm. The total cost of the work was Rs. 16.68 crore to be completed by 28 August 2009. The work was in progress and the expenditure incurred was Rs. 11.94 crore as of July 2009.

Thus, rejection of the first tender by DDA in contravention of CPWD manual resulted in an avoidable extra expenditure of Rs. 1.16 crore.

Ministry stated (September 2009) that the WAB had rejected the tenders during the first call due to higher rates.

The reply of the ministry is not acceptable as the rates quoted by the contractor were only 2.54 *per cent* above the justified rate and acceptable as per the CPWD Works Manual. Further, rejection of the first tender was not justified

as DDA was aware of the average annual escalation in prices of building materials.

9.5 Extra expenditure due to uneconomical carriage of fly ash

Delhi Development Authority incurred extra expenditure of Rs. 69.29 lakh on carriage of fly ash from Badarpur Power Plant instead of the power plant situated at Rajghat.

As per notifications of the Ministry of Environment and Forests, (September 1999 and April 2007), every person engaged in any activity involving building construction was required to use building materials composed wholly or partly of fly ash/pond ash instead of clay, top soil, sand etc. All local bodies or development authorities were also to use ash or ash-based products in building materials, roads, embankments or for any other use. The fly ash was available free of cost at thermal power plants.

Delhi Development Authority (DDA) awarded (July 2007) the work "C/o 7 Mtr wide carriage way from Alipur-Narela Road to Western Yamuna Canal" to a contractor at the tendered cost of Rs. 15.15 crore. A provision of 1,41,160 cum of fly ash was made in the estimate, which was to be transported from Badarpur Power Plant (BPP). The work was in progress and the concerned division of DDA had paid Rs. 1.96 crore towards carriage and lifts at the rate of Rs. 200 per cum for 97,955.03 cum fly ash to the contractor till July 2009.

Scrutiny of records (October 2008) revealed that seven to eight lakh cum of pond ash was available free of cost at the Indraprastha Power Generation Company Ltd., (IPGCL) and the Pragati Power Corporation (PPCL), Rajghat which were closer to the site as compared to BPP from where the fly ash was carried.

Due to transportation of fly ash from BPP instead of from power plants closer to the site of the work, DDA incurred an avoidable expenditure of Rs. 69.29 lakh.

The Ministry stated (August 2009) that the provision of transportation from Badarpur was included in the estimate on the basis of reports received from the Executive Engineer/ Superintending Engineer regarding nonavailability of fly ash at Rajghat and that the tenders were invited prior to receipt of information about availability of fly ash at Rajghat.

The reply is not acceptable as the stated reports were not furnished along with the reply. Also DDA received information on availability of fly ash at Rajghat

in March 2007 whereas the work was awarded in July 2007. No action was taken by the Authority even after getting the information on availability of sufficient fly ash at Rajghat.

9.6 Blocking of Funds

Commencement of the work by the Delhi Development Authority without ensuring the availability of clear site resulted in foreclosure of contract and blocking of funds of Rs. 68.47 lakh.

Section 15.1.2 of the Central Public Works Department Manual stipulates that before approval of a Notice Inviting Tender (NIT), availability of a clear site is desirable.

The Delhi Development Authority (DDA) awarded (September 2006) the work of providing and laying of a peripheral sewer line in Rohini at the negotiated rate of Rs. 2.90 crore stipulated for completion in May 2007 on the basis of certification of the Executive Engineer of land availability, which was accepted by all higher authorities including the Works Advisory Board. The sewer line was to be connected to the Sewage Pumping Station (SPS) through a rising main to the Sewage Treatment Plant (STP)

The contractor could execute only 21 *per cent* of the work amounting to Rs. 68.47 lakh and the remaining work could not be executed due to large scale encroachment along the alignment of the work as well as stay order of the court. Consequently, DDA foreclosed (July 2008) the work as no useful purpose would be served by waiting for removal of encroachment and stay order as the work on SPS with which the peripheral sewer line was to be connected had not been completed. The connectivity through rising main of SPS with STP was also not taken up due to non availability of land.

Thus, commencement of the work without ensuring the availability of clear site resulted in blocking of funds to the tune of Rs. 68.47 lakh.

DDA accepted (March 2009) the audit observation and stated that the Land Management Branch had not been consulted before approval of the NIT and the matter relating to fixing of responsibility for furnishing incorrect details regarding status of land was being examined. DDA further added that the sewer line which had been laid would be fully utilized. The reply is not acceptable in view of the fact that the Management was aware at the time of foreclosure that no useful purpose would be served by completing the peripheral sewer line as SPS and rising main were to be executed. Besides, neither encroachment in the alignment of sewer line nor stay order of the

Hon'ble Supreme Court had been vacated as of date. Also the work relating to construction of SPS, where the output of this project had to be discharged, stood rescinded (July 2008) and it remained incomplete as of January 2010.

The Ministry stated (August 2009) that the sewer line already laid at site shall be gainfully utilized and as such this expenditure cannot be termed as blockage of funds. The reply is not acceptable as the uncertainties related to completion of balance work due to award of work without ascertaining availability of clear site remained. Also the time frame by which the work relating to construction of SPS as well as connectivity with STP would be completed was not ascertainable and the amount would remain blocked upto that time.