

## CHAPTER VII

### MAHARASHTRA HOUSING AND AREA DEVELOPMENT AUTHORITY

Maharashtra Housing and Area Development Authority (MHADA) has been established by the Maharashtra Housing and Area Development Act, 1976. MHADA co-ordinates and controls the activities of seven Regional Housing Boards set-up for each revenue division in the State viz. Mumbai, Konkan, Pune, Nashik, Nagpur, Amravati, Aurangabad. The Authority functions under the administrative control of the Housing Department, Government of Maharashtra.

The disposal of land of MHADA on lease is governed by:

- Maharashtra Housing and Area Development (Disposal of Land) Rules, 1981 [MHAD(DL) Rules]
- Maharashtra Housing and Area Development (Disposal of Land) Regulations, 1982 [MHAD(DL) Regulations]

#### 7.1 Organisational set up

The Authority constitutes of a President, a Vice President & Chief Executive Officer and seven other members all appointed by the State Government. The Vice President and Chief Executive Officer is the administrative head of the Authority. The issues relating to allotment of land, verification of eligibility conditions, execution of lease deed, etc., for Mumbai and Pune are handled by the Mumbai and Pune Boards, respectively.

The Mumbai Board is headed by a Chief Officer assisted by a Joint Chief Officer and three Asst. Land Managers. The Pune Board is headed by a Chief Officer and assisted by a Dy. Engineer (Land).

#### 7.2 System of allotment

MHADA allots the vacant land by inviting tenders/application or by offering/accepting bids from the Government, local authority, public sector undertaking, public charitable trusts or societies. The plots are also allotted in accordance with the directions of the State Government under Regulation 16 of MHAD(DL) Regulations, 1982. Land admeasuring 3,55,355.18 sq m in 112 cases was allotted under Regulation 16 by MHADA.

In order to allot the land under Regulation 16 a cabinet sub-committee is constituted with Minister of Housing as President and Ministers of Finance and Industry, State Minister of Housing and Principal Secretary, Housing as Members.

Regulation 16 of MHAD (DL) Regulations, 1982 framed under MHAD Act requires that the plots reserved for amenities or for purely commercial purposes in any layout prepared by the concerned Municipal Corporation in a land situated in Greater Bombay, Thane, Ulhasnagar, Pune, Kolhapur, Sangli-Miraj, Solapur, Nashik and Nagpur and two *per cent* plots reserved for residential use and to be allotted to the individual or co-operative housing societies shall be dealt in accordance with the directions of the State

Government. Only land allotted as per Regulation 16 were selected by Audit for test check.

Land is given for commercial, residential, educational and social purposes. The period of lease is 30 years and lease premium and lease rent is recovered vide Resolution No. 3094 of MHADA dated 16 November 1992 revised by MHADA from time to time.

On the request of the applicant, the Government of Maharashtra in exercise of the powers under Regulation 16 of MHAD (DL) Regulations, 1982, decides in its cabinet sub-committee meeting to lease out the plot of land developed by MHADA to the applicant and Government in Housing Department directs MHADA to allot the plot of land on lease to the applicant on the terms and conditions as given below:

1. As per the Development Control Regulation
2. As per the rules and regulations of Municipal Corporation of Greater Mumbai
3. As per the rules and regulation of MHADA
4. As per the pricing policy of MHADA

In response to the Government directives, MHADA allots the plot of land to the applicant and after verification of all the eligibility conditions, issues offer letter communicating the terms and conditions of allotment to the applicant and requests the lessee to make payment towards lease premium and lease rent. Once the lessee accepts the terms and conditions of allotment and makes the full payment towards lease premium and lease rent, as per Regulation 10 MHAD (DL) Regulations, 1982 lease deed is executed between the lessee and MHADA.

The results of the Performance Audit are mentioned in the succeeding paragraphs.

### **7.3 Non-resumption of land**

Section 10 of the MHAD(DL) Regulations, stipulated that the possession of land shall not be delivered in the hands of the lessee before the execution of the lease deed.

**7.3.1** A plot admeasuring 3,104 sq m was reserved for a drama theatre in Kannamwar Nagar, Vikhroli, however, it was allotted to Maharashtra Kamgar Kalyan Mandal for construction of a swimming pool with the instructions that deresrvation shall be got done by the lessee and construction of the pool was to be completed within one and a half years from the date of handing over possession of the land. No lease deed was, however, executed.

Though, the possession of the plot was handed over in 1998, the swimming pool had not been constructed.

MHADA directed (July 2003) the Mandal to return possession of the land. However the said plot had not been resumed by MHADA in spite of a lapse of nine years.

**7.3.2** A reference is invited to para no. 3.3.1 of the Comptroller and Auditor General's (Civil) Audit Report 2008-09. Land admeasuring 10,000 sq m at Oshiwara reserved for a hospital was allotted to Nargis Dutt Memorial Trust in October 2000 for establishing a hospital. The Trust was required to make payment of ₹ 21.37 crore towards lease premium in December 2007, which was reduced to ₹ 11.71 crore in February 2009. The Trust paid an amount of ₹ 2.93 crore only in February 2009. No further payments have been made by the Trust till date.

Thus, despite a lapse of more than 12 years neither action has been taken to resume the land nor the Trust has been directed to construct the hospital.

**The Government in Housing Department may consider directing MHADA to institute strict action in the event of non-compliance of the terms and conditions of lease.**

**7.3.3** Land admeasuring 924 sq m at Oshiwara was allotted (February 1993) to Bruhad Mumbai Gujarathi Samaj (Trust) for construction of a Health Centre. As per clause 2(c) of the lease deed, the land was to be used for construction of a building for social and educational activities and not for any other purpose not specifically permitted by MHADA. Further, as per clause 2(k) of the lease deed, the Trust could not assign, sublet, underlet or transfer the possession in whole or in part and also change the use of land without previous written permission of MHADA.

We noticed from the order (May 2010) passed by the Joint Charity Commissioner, Greater Mumbai Region, Mumbai that the Trust had sub-leased 224.35 sq m of constructed area to M/s Satra Properties (I) Ltd for commercial use for a premium of ₹ 2.17 crore and a monthly rent of ₹ 15,000. Subsequently, the Trust requested (July 2010) MHADA for a "No Objection Certificate" for the sub-lease. MHADA directed (April 2011) the Trust to furnish the dates on which the land was subleased and the premium amount accepted since the same had not been communicated to them.

Thus, the property was sub-leased without the prior permission of MHADA.

**The Government in Housing Department may consider directing MHADA to ensure that the lessees fulfill the eligibility criteria laid down to prevent commercial exploitation of land meant for social purpose.**

## **7.4 Violations of Act/Rules**

### **7.4.1 Allotment of land in violation of regulations**

Regulation 5 of the MHAD(DL) Regulations stipulates that vacant land to be used for other than residential purpose shall be allotted to a public charitable trust or a society registered under the Societies Registration Act, 1860.

Government in Housing Department allotted (December 2002) a plot admeasuring 40,000 sq m (comprising some land reclaimed by MHADA, mangroves<sup>1</sup> and creek<sup>2</sup>) to Crescent 3M Gymkhana at Andheri (W), Mumbai,

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<sup>1</sup> A class of medium sized trees growing in the saline coastal sediments in the tropics. They are of ecological importance.

<sup>2</sup> A water channel connected to the sea which is affected by ebb and flow of ocean tides.

a company incorporated under the Companies Act, 1956 for a Recreation Centre. MHADA issued (April 2005) an offer letter and a lease deed was executed on 14 October 2005 on receipt of lease premium of ₹ 75 lakh and capitalized lease rent of ₹ 23.43 lakh from the lessee. However, the High Court vide judgement dated 6 October 2005, ordered a total freeze on the destruction and cutting of mangroves, dumping of debris in mangrove areas and carrying of construction activity within 50 meters of such areas in the entire State of Maharashtra. The order also forbade any authority from granting permission for development activity in lands falling under the mangrove areas regardless of the nature of ownership of the land.

Thus, the allotment made subsequent to the Court judgement was in violation of the directions of the High Court.

#### **7.4.2 Delay in execution of lease agreement in violation of the provision of Act/Rules**

Section 10 of the MHAD(DL) Regulations, stipulated that the lease deed shall be executed in favour of the allottee after full payment of the lease premium and possession of the land shall not be delivered prior to the execution of lease deed. Further, as per the terms and conditions of the offer letter, the construction work should be completed within three years from the date of taking over possession of the land or such period as extended by the Authority for an additional premium and/or lease rent on the request of the lessee.

We observed that possession of land was given three months prior to the execution of lease deed (March 1994) to Anchor Foundation and about six years prior to the execution of lease deed (October 1993) to Vagad Vishal Oswal Vikas Samaj. The lessees failed to complete the construction within the stipulated period. MHADA failed to take action against the lessees.

The matter was brought to the notice of MHADA (August 2012). Reply is awaited (March 2013).

### **7.5 Lease premium, lease rent, etc.**

#### **7.5.1 Non-levy of interest on delayed payment**

As per the provisions of Resolution no. 5882 of MHADA dated 20 February 2003, delayed payments by the lessee on account of cost of land including lease premium and/or capitalised amount of lease rent attracts interest @ 18 *per cent* in case of commercial use and 13.5 *per cent* in other cases.

A recreation ground admeasuring 4,425 sq m was allotted (March 2002) to M/s Legend Recreation Club by the Government in Housing Department. Letter demanding payment of ₹ 1.65 crore was issued (January 2006) to the Club and the payment was to be made within 30 days from date of the receipt of the letter by the Club.

We observed that the Club paid ₹ 5 lakh and the balance amount of ₹ 1.60 crore in four installments between April 2006 and November 2007. The installments were paid after delays ranging from 28 days to 626 days and

attracted interest of ₹ 33.42 lakh on the delayed payments. However, interest for delayed payments was not levied.

Failure of MHADA to institute any action for the recovery of interest from the club resulted in loss of revenue amounting to ₹ 33.42 lakh.

The matter was brought to the notice of MHADA (August 2012). Reply is awaited (March 2013).

### 7.5.2 Short levy of lease premium

We noticed in the following three cases, lease premium rate was incorrectly applied which resulted in short levy thereof as follows:

Name of housing society	Built-up Area (sq m) /Rate (₹)	Premium		
		Leviable	Levied	Short levy
		(₹ in crore)		
As per Resolution No.3094 dated 16 November 1992 the rate of premium included three elements viz, rate of under developed plot five years prior, interest thereon and updated Development Cost. In the following two cases, interest portion on land was omitted to be levied .				
Akashganga Housing Co-op. Society (Yashodeep), Oshiwara	<u>3,492</u> 3,610	1.26	0.87	0.39
Shivai Co-operative Hsg.Society (Tarangan), Oshiwara	<u>1,320</u> 8,330	1.10	0.80	0.30
The premium is payable at the rates prescribed in Annual Schedule of Rates (ASR). The land was offered in 2005. In accordance with the Resolution No.5931 dated 21 June 2003 the rate of the ASR of that year should be applied in which the land is offered. But rates of ASR of 2002 were incorrectly applied as mentioned below :				
Siddhant Sahkari Grihnirman Sanstha, Aramnagar, Versova	<u>1,394.75</u> 25,515	3.34	0.58	2.76
After we pointed out these cases, MHADA stated that Government had directed (March 2004) to charge the premium and lease rent based on the market rate applicable at the time of decision taken by the cabinet sub committee (August 2002). The reasons for this undue favour were not found on record as the prevailing market rates ought to have been applied.				

### 7.5.3 Non-recovery of lease rent

As per the conditions of lease deed, lease rent is payable annually by the lessees within five days from the completion of the year of lease. In case of default in payment of lease rent for 30 days, penal interest @ 16.5 per cent per annum is leviable on the amount of lease rent due.

We noticed that there was no system of raising demands in MHADA, the payment of the lease rent was left to the lessees. Audit observed that in six cases the lessees had not paid their lease rent for periods ranging from 10 to 16 years. In the absence of any system, this had escaped the notice of MHADA. Based on the lease rents calculated as per the lease deeds of the

respective lessees lease rent of ₹ 1.93 crore as detailed in **Appendix –XII** was recoverable from the lessees.

The matter was brought to the notice of MHADA (July 2012). Reply is awaited (March 2013).

**The Government in Housing Department may issue necessary instruction to MHADA for reviewing all cases in respect of lease rent and demands for outstanding lease rent may be worked out and issued.**