

# **CHAPTER–V (5.2)**

## **Allotment of Commercial Properties**



## CHAPTER-V

### Allotment of Properties

#### 5.2 Allotment of Commercial Properties

##### Introduction

**5.2.1** The NOIDA (Preparation and Finalisation of Plan) Regulations, 1991 provides that ‘Commercial Use’ means the use of any land or building or part thereof for carrying on any trade, business or profession, sale of goods of any type whatsoever and includes private hospitals, nursing homes, hostels, hotels, restaurants, boarding houses not attached to any educational institution, consultant offices in any field, cottage and service industries.

The allotment of commercial properties of NOIDA and other matters incidental to the management of commercial properties are governed by the Policies & Procedures for Commercial Property Management, 2004 of NOIDA. These rules define three types of commercial properties sold by NOIDA *i.e.* built-up shops, actual users’ plots and builders’ plots. Commercial wing of NOIDA deals with allotment of commercial plots and follow-up of the post allotment compliances. The Planning wing of NOIDA is responsible for monitoring the observance of the building completion.

##### Allotment Procedure

**5.2.2** The allotment of commercial properties was made by NOIDA through closed ended schemes<sup>1</sup>. The number and size of plots available for allotment were specified in the scheme and these schemes were open for a specified period during which bids were accepted. The allotment of properties was made by following the procedure given in **Chart 5.2** of **Chapter 5**.

##### Status of allotments of commercial plots in NOIDA

**5.2.3** During the period 2005-2018, NOIDA made 320 allotments in the commercial category through 41 closed ended schemes. An overview of total commercial allotments by NOIDA is depicted in **Table 5.2.1**.

**Table 5.2.1: Status of allotments of commercial property by NOIDA**

Sl. No.	Type of property	No. of schemes	No. of schemes in which allotment was made	Plot size range (sqm)	No. of allotments	Allotted area (sqm)	Premium (₹ in crore)
1.	Commercial Builders Plots	23	12	782.42 to 6,14,000	40	15,89,988	19,005
2.	Small Commercial plots	7	5	15 to 1,963.88	68	9,646	371
3.	Sports City	5	4	52,686.84 to 12,00,000	5	32,83,187	5,598
4.	Nirmit Parisampattiya (Built shops, halls and other constructed assets)	3	3	2.92 to 185.25	165	3,438	50

<sup>1</sup> Scheme with a defined time window for making applications.

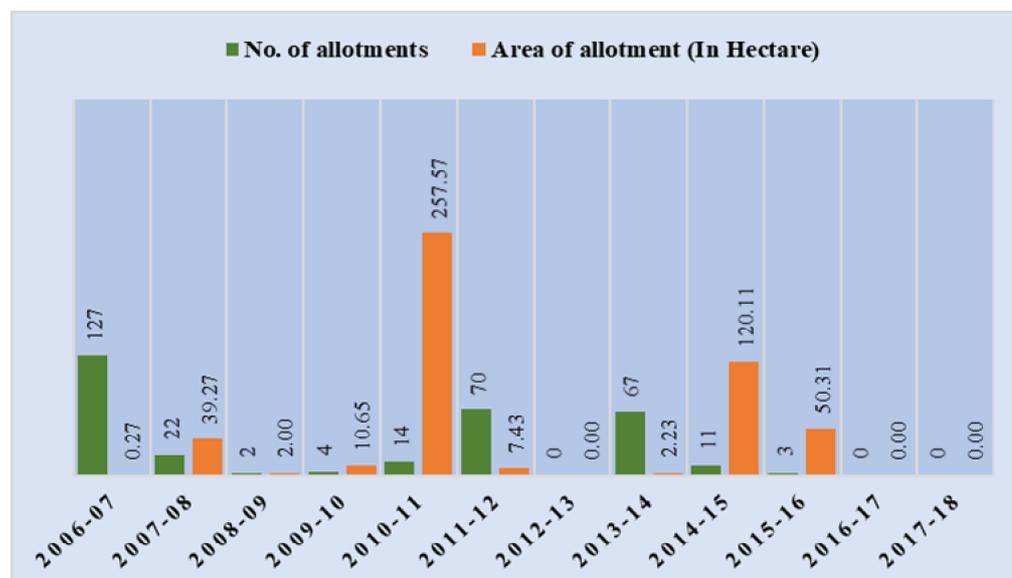
Sl. No.	Type of property	No. of schemes	No. of schemes in which allotment was made	Plot size range (sqm)	No. of allotments	Allotted area (sqm)	Premium (₹ in crore)
5.	Bankers Plot	1	1	102.86 to 450	42	12,181	240
6.	Petrol Pump Plot	1	0	NA	0	0	0
7.	Shopping Mall Plot	1	0	NA	0	0	0
<b>Grand Total</b>		<b>41</b>	<b>25</b>		<b>320</b>	<b>48,98,440</b>	<b>25,264</b>

Source: Information furnished by NOIDA.

From the above table it is evident that 67.03 per cent of land was allocated for Sports City (five allotments) and 32.46 per cent for builder plots (40 allotments). Further, 275 allotments made in all other categories were allocated 0.51 per cent of total area allotted in commercial category.

Position of year-wise number of plots allotted and its aggregate area during the period from 2005-06 to 2017-18 has been depicted in **Chart 5.2.1**.

**Chart 5.2.1: Details of Year wise allotments of Commercial properties**



Source: Information furnished by NOIDA.

From the graph above it is apparent that 52.60 per cent of area was allotted in the year 2010-11, which comprised of 9,95,496.80 sqm of builder plots and 15,80,200 sqm of sports city plots.

### Scope of Audit

**5.2.4** NOIDA allotted 320 commercial plots measuring aggregate area of 48,98,440.47 sqm during the period covered by the Performance Audit i.e. 2005-06 to 2017-18. Out of these 320 allotment cases, Audit selected a sample of 46 cases involving area of 48,05,156.36 sqm and premium of ₹ 23,501.39 crore and analysed 39 cases<sup>2</sup> involving ₹ 21,494.08 crore. These consisted of

<sup>2</sup> Files of seven cases could not be analysed due to production of records at the end of the Audit (27-28 November 2019).

five<sup>3</sup> Sports City plots for ₹ 5,597.92 crore, 19 Commercial Builders plots for ₹ 15,764.21 crore, nine Bankers plots for ₹ 54.73 crore and six small commercial plots for ₹ 64.80 crore. Besides conducting physical verification of some of the sites, Audit also sourced information from the Registrar of Companies (RoC) with a view to analyse the ownership and shareholding of allottee companies, the transfer of plots through transfer of shares and to find out the objectives of allottee companies.

### Audit Findings

**5.2.5** This section deals with allotments of all commercial properties except Sports City. The section on Sports City is appended separately under Chapter V (5.2). The audit findings, as a result of examination of sample cases *vis-a-vis* the result of physical verification wherever carried out, are discussed in ensuing paragraphs. These audit findings have been grouped as under:

- Scheme related deficiencies (discussed in Paragraphs 5.2.6 to 5.2.6.1).
- Preponderance of allotment to select groups and undue favour thereto (discussed in Paragraphs 5.2.7 to 5.2.7.4).
- Allotment related observations (discussed in Paragraphs 5.2.8 to 5.2.8.4).
- Discrepancies related to allocation of land (discussed in Paragraphs 5.2.9 to 5.2.9.2).
- Discrepancies in payment related issues (discussed in Paragraphs 5.2.10 to 5.2.10.3).

### Scheme related deficiencies

**5.2.6** Audit observed the following deficiency in the formulation of Schemes and their implementation by NOIDA:

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

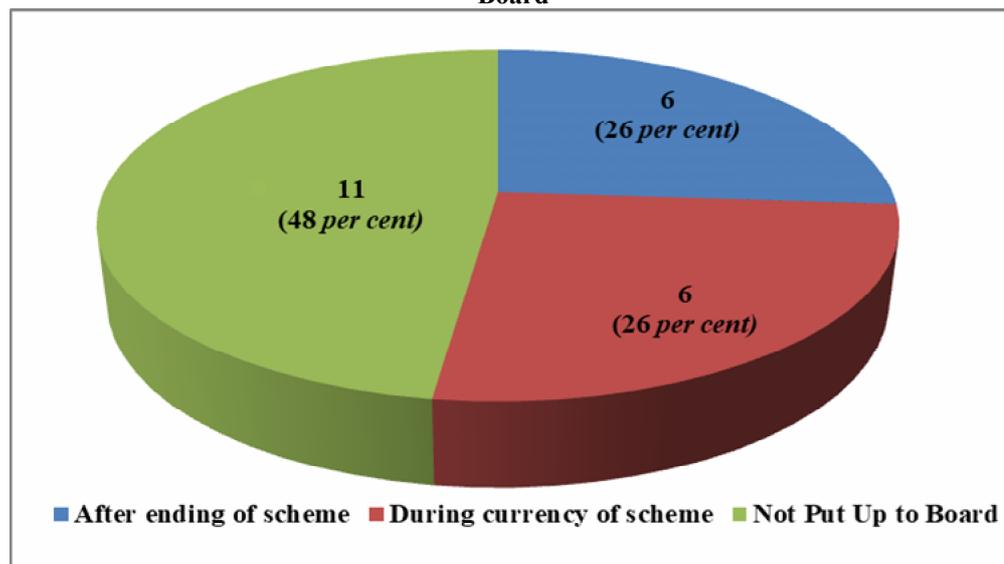
**5.2.6.1** As discussed in **Paragraph 5.1.6.1**, the scheme brochure is a significant document in the context of allotment which governs the process of bidding, allotment and execution of the project. The brochure specifies the terms and conditions of the allotment which also form the basis of subsequent agreement between the allottee and the home buyers. In view of the underlying importance, the brochures of the schemes should have been approved by the Board before the launch of the schemes. Therefore, the changes to terms and conditions of allotment should have been approved by the Board.

Scrutiny of records revealed that the brochures of the schemes of all 23 commercial builders plot schemes launched during the period 2007-08 to 2017-18 were approved by the CEO. The status of approval of these schemes by the Board are given in **Appendix-5.2.1** and summarised in **Chart 5.2.2**.

11 out of 23 commercial builders' plot schemes launched during 2007-08 to 2017-18 were not put up to Board for approval.

<sup>3</sup> Additional land 52,686.84 sqm {Plot No. 150/SC-01 (Part)} was allotted to M/s Logix Infra Developers Pvt. Ltd. on 28-Feb-2014 which is shown as a separate plot in the master data of NOIDA.

Chart 5.2.2: Details of approval of commercial builders scheme by the Board



Source: Information compiled by Audit.

From the above pie-chart it is evident that not a single scheme was submitted to the Board for approval prior to its launch. In 12 schemes, out of the 23 schemes, *post facto* approval of brochures was obtained with a delay ranging from four days to 17 months from their launch date. In 11 schemes, the brochures were not even submitted to the Board for approval. The fact that no scheme was approved before its launch indicated that the Board was not kept apprised of the changes to the terms and conditions. Audit observed that laying down the terms and conditions of the scheme and allotment thereagainst constitutes the most essential aspect of the functions performed by the Board of NOIDA. Non-consideration of the above entails a control failure on the part of the Board.

In its reply, NOIDA stated (August 2020) that the CEO of NOIDA was delegated full authority to take decisions as per UPIAD Act, 1976. The CEO can approve the terms and conditions recommended by the Committee. The CEO forwards only those matters to board for approval/*post facto* approval in which change in terms and conditions of the scheme or policy matter is involved. These schemes were approved by the CEO and *post facto* approval was obtained in those cases which were ordered by the CEO to be put up to the Board.

As evident from the reply, the changes to terms and conditions were to be submitted for the Board’s approval, yet these were submitted *post-facto*. The CEO submitted 12 out of 23 schemes for the Board’s approval, but this was done *post facto*. Further, schemes were not submitted for the Board’s consideration which implies that the Board was kept oblivious of the schemes. Since the said schemes involved NOIDA’s primary function and allotments of substantial value, the consideration and approval of the Board should have been obtained prior to launch of the schemes.

Audit noticed that the CEO exercised the delegated power in a manner that was against the interests of NOIDA, as discussed in succeeding paragraphs. This also brings out the fact that the CEOs exercised unbridled powers and at times, bypassed the Board by failing to apprise the Board of the schemes as well as by changing the terms and conditions without the Board’s approval

even to the detriment of the Authority as in case of reduction of lease rent as discussed in Paragraph 5.2.10.1.

### Preponderance of allotment to selected groups and undue favours thereto

Out of 48.98 lakh sqm of commercial area allotted during the period under audit, 79.83 per cent was allotted to three groups viz. Wave, Logix and Three C groups which have overdues of ₹ 14,958.45 crore as of 31 March 2020.

5.2.7 Analysis of the allotment data revealed that out of the total area of 48,98,440 sqm allotted in commercial category during the period under audit, 79.83 per cent comprising 39,10,376 sqm area was allotted to three groups viz. Wave, Logix and Three C groups. The preponderance of allotment to these groups and the benefits extended against these allotments are detailed in Table 5.2.2.

Table 5.2.2: Details of allotments to Wave, Logix and Three C Group

Particulars	Wave	Logix	Three C
Area Allotted (in sqm):	6,63,104	10,76,238	21,71,034
Builders Plots	6,63,104	1,68,250	1,38,286
Sports City Plots	-	9,07,988	20,32,748
Number of plots:	4	6	6
Builders Plots	4	4	4
Sports City Plots	-	2	2
Cases of allotments inspite of inadequate turnover	-	4	-
Exit from Group/Consortium	1	2	2
Plot Transfer	-	3	5
Granting Re-schedulement	-	2	1
Grant of Mortgage Permission	1	1	1
Period of allotment	August 2008 to June 2010	March 2010 to March 2011	March 2010 to October 2014
Dues as on 31 March 2020	₹ 4,424.70 crore	₹ 5,839.96 crore	₹ 4,693.78 crore
Builders Plots	₹ 4,424.70 crore	₹ 4,365.88 crore	₹ 2,879.96 crore
Sports City Plots	-	₹ 1,474.08 crore	₹ 1,813.82 crore

Source: Information compiled by Audit.

Against allotments of ₹ 15,694.73 crore, the overdues of NOIDA against the above allotments stood at ₹ 14,958.45 crore as of 31 March 2020. Audit analysed the above allotments and found that:

- NOIDA had not prescribed any criteria to assess the capability of the promoters of the allottee companies/group of companies to complete the projects within the prescribed time, while making multiple allotment of plots to the same group. As a result, 12 projects of the 16<sup>4</sup> allotted plots could not be completed so far (November 2020) despite lapse of the prescribed period.
- Apart from non-completion of projects by the allottees, in 14 of the 16 cases the dues of NOIDA have also accumulated to ₹ 14,958.45 crore as on 31 March 2020.

In its reply, NOIDA stated (August 2020) that it had not given preference in allotment to any group and allotted the land to those who were technically eligible and quoted highest financial bid. Notices have been issued to those allottees who did not pay the dues in a timely manner. Cancellation process is being initiated after issuing final notice in those cases where third party rights have not been created. Recovery notices are being issued for recovery of dues in those cases where third party rights have been created.

<sup>4</sup> Including one allotment of plot 18/L-5 which was cancelled.

Government of Uttar Pradesh (GoUP), during the exit meeting held on 30 September 2020, assured that NOIDA would build in proper safeguards in future schemes/brochures to avoid allotment to the same entities who were not financially capable to complete multiple projects. While NOIDA has stated that recovery proceedings have been initiated, no concrete action has been taken/intimated even though six to 10 years have elapsed and projects remain incomplete with overdues spiraling. The fact remains that in absence of inbuilt safeguards NOIDA made multiple allotments to the same groups and failed to monitor execution of projects.

Some of the issues related to allotment to these three groups are discussed in **Paragraphs 5.2.7.1 to 5.2.7.4.**

***Execution of lease deed in favour of consortium member instead of in favour of Special Purpose Company (SPC) and facilitating stamp duty evasion***

**5.2.7.1** The terms and conditions of the brochure<sup>5</sup> provided that the lease deed was required to be done in the name of the SPC constituted. Under this scheme a commercial plot no C-1/44 (42,150 sqm) was allotted (26 March 2010) to a consortium (M/s Madhaviata Granite (India) Ltd. Consortium) consisting of Three C Universal Developers Pvt. Ltd. and Madhaviata Granite (India) Ltd. After the allotment, the lease deed was executed (31 March 2010) in favour of one of the consortium constituents, viz. Madhaviata Granite (India) Ltd. upon request (March 2010) of the allottee.

Thereafter, the allottee requested (October 2011) NOIDA to execute the legal documents/lease deed in favour of SPC (M/s Kingswood Hotels Private Limited) formed by the consortium members. On the allottee’s request, NOIDA approved (15 February 2012) the constitution of the SPC. The allottee thereafter requested NOIDA (15 February 2012) for transfer of the plot in favour of SPC without fee and execute correction in the earlier lease deed. In this regard legal opinion was sought by NOIDA<sup>6</sup> wherein it was opined that there was no provision under law to amend the registered deed in favour of any person or company without payment of stamp duty. The standing committee<sup>7</sup> of NOIDA (December 2013) decided that the lease deed was not as per the terms and conditions of the brochure and recommended to cancel the earlier lease deed and execute a lease deed in favour of SPC levying complete stamp duty<sup>8</sup>. Accordingly, NOIDA issued (January 2014) a notice to the allottee for executing a lease deed in favour of SPC. In view of no response from the allottee, the matter was again referred (January 2015) to the Standing Committee which recommended for a final notice to the allottee for execution of lease deed within 30 days after settling all dues. Subsequently, the CEO instructed to issue cancellation notice on 24 April 2015. Again, a letter was sent to the allottee on 30 April 2015 mentioning that if the lease deed is not executed within 30 days then action will be taken as per terms and conditions of the brochure without giving any chance and the plot will be

**The allottee was extended every possible favour in contravention of the rules and regulations and neither the plot was cancelled nor the allotment money was forfeited despite non payment of dues amounting to ₹ 1,105.06 crore as on 31 March 2020.**

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<sup>5</sup> Clause C.8.d and C.8.e of scheme no. 2009-10/Builder plots I.

<sup>6</sup> From Stamp & Registration Department and legal opinion.

<sup>7</sup> The committee consisted of Deputy General Manager (Commercial), Chief Architect and Town Planner, Finance Controller, Administrative Officer, Chief Legal Advisor and OSD (M)

<sup>8</sup> Approx. ₹ 21.43 crore worked out at the rate of five per cent on ₹ 428.67 crore premium of the plot.

cancelled, amount will be forfeited and possession will be taken back. The allottee again did not comply with the instructions of the letter within 30 days. However, the allottee requested (June 2015) to execute the correction in the lease deed. NOIDA, in contravention of legal opinion, allowed the correction in the lease deed at the allottee's risk and a correction document was executed by NOIDA on 15 July 2015. However, the allottee informed (21 July 2015) that the sub registrar was not registering the correction document without levy of stamp duty.

Scrutiny of records revealed that the request was made because the allottee was unable to raise funds from the financial institution on the grounds that the lease deed was against the terms and conditions of the brochure, requiring deed in favour of SPC. Audit observed that the correction deed was also executed without considering the issue of stamp duty and in disregard of the opinion of the standing committee. Even though the allottee continuously defaulted, neither were the dues recovered nor was the plot cancelled. The allottee, Madhavalata Granite (India) Ltd., was extended every possible favour in contravention of the rules and regulations and allowed inordinate time extension of more than eight years, so that the stamp duty of ₹ 21.43 crore due to the Government could be avoided by the allottee, even as the payment of NOIDA's dues from the allottee have spiraled to ₹ 1,105.06 crore as of 31 March 2020.

Thus, NOIDA, in order to facilitate the allottee to avoid payment of stamp duty, kept condoning the non-payment and also failed to take punitive action against the allottee, thereby granting it an undue favour. It is pertinent to mention here that the Hon'ble Supreme Court has observed in the case of Amrapali Builders that<sup>9</sup> *"They (the builders) have violated every condition, but still, the Authorities were bent upon to condone everything. This reflects absolute dereliction of duty cast upon the Authorities."*

In its reply, NOIDA accepted the fact that the lease deed was executed against the terms and conditions and stated (September 2020) that the matter was examined by the Additional Chief Executive Officer (ACEO) of NOIDA who concluded that cancellation of the plot and forfeiture of allotment money would be done as soon as after no objection certificate from CBI, who had the original file with them, was received<sup>10</sup>.

Audit noted that NOIDA cancelled (November 2020) the allotment of this plot to the allottee, Madhavalata Granite (India) Ltd. The fact confirms grant of undue favour to the allottee Madhavalata Granite (India) Ltd. The Government may consider fixing responsibility of concerned officials of NOIDA for their role in the matter.

***Undue favour in allotment and in ensuring compliance of conditions***

**5.2.7.2** A commercial plot (no. CC-01 Sector 25A & 32 measuring 6,18,952.75 sqm) was allotted on 11 March 2011 to Wave Infratech Private Limited (consortium) at a total premium amount of ₹ 6,569.98 crore.

On the basis of records made available, Audit observed that the allottee was granted undue benefits as discussed in the following paragraphs.

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<sup>9</sup> Bikram Chatarjii & others Vs Union of India and others, writ petition (C) 940/2017.

<sup>10</sup> Documents seen by Audit from shadow file.

**Special dispensation was made as for contiguous allotment, two sectors were merged and the two parks and green belt was included in the plot area besides non-compliance of post allotment conditions.**

- Two unique conditions, one for constructing an underpass below the MP Road no. 2, and another for construction of a parking for 2,500 vehicles exclusively for the use of the Metro station, were included in the lease deed to support the connection between areas of two adjoining sectors. However, these two conditions were not complied with, defeating the very purpose of providing non-contiguous plots of two different sectors separated by a road for the proposed City Centre.
- The plot was created by merging the area of two sectors (25-A and sector 32) between which MP Road no. 2 was passing through. Further, two parks and an area of green belt were also included in the parcel of land from which the plot was carved out. As the land was not contiguous, merging land belonging to two different sectors separated by a road was highly irregular.
- Wave Infratech failed to execute the project and it had surrendered (December 2016) a part of the land under the Project Settlement Policy (PSP) of the government and out of 6,18,952.75 sqm land initially allotted, 1,64,821.13 sqm land was allotted to the allottee. Audit further noted that NOIDA had cancelled (February 2021) allotment of 1,08,421.13 sqm land due to non-payment of dues.

The instant case points to an allotment made by NOIDA in disregard of all established procedures. Special dispensation was made as for contiguous allotment, two sectors were merged and the two parks and green belt was included in plot area. The compliance of post allotment conditions was also not ensured by NOIDA. The above facts clearly point to undue favour being granted to the allottee.

In its reply, NOIDA stated (August 2020) that some special provisions were made in the scheme due to location of the land to make the plot practically feasible.

The reply confirms the audit contention that special dispensation was provided to the selected allottee in supersession of established rules.

***Allotment of plot without removing encumbrances and inaction on restoration application resulting in grant of PSP benefit to the allottee***

**5.2.7.3** Clause Y-3 of the brochure conditions provides that if due to any “*Force Majeure*” or any circumstances beyond NOIDA’s control, NOIDA is unable to make allotment or hand over the possession of the allotted plot, the entire earnest money and/or deposits, as the case may be, will be refunded without interest, as per the prevailing policies of NOIDA.

**The plot was allotted without removing encumbrances resulting into loss of ₹ 13.12 crore.**

- A scheme no 2008-09 (commercial builder plot III) for allotment of a sub-judice plot no. L-2A/18 was launched from 22 November 2008 to 12 December 2008. On the basis of highest financial bid opened on 19 December 2008, a Wave group company, M/s Flora & Fauna Housing and Land Development Private Limited, was shortlisted. The allotment letter was issued on 19 May 2010 after the existing petition on the plot was withdrawn by the previous allottee<sup>11</sup>. The allotment rate was based on the quoted rates of 2008-09. Thus, NOIDA showed undue haste by inclusion of a property which

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<sup>11</sup> The plot was earlier allotted to M/s GSR Granite Private Limited which was cancelled due to pending dues. M/s GSR Granite Private Limited agreed to re-allot the plot at the condition that the final decision of the Hon’ble Supreme Court of India would be binding.

was under litigation. Moreover, it did not exercise its power as per clause Y-3 of brochure for returning the allotment money as mentioned above. Thus, the allotment in 2010-11 at the rates of 2008-09 resulted in loss to NOIDA amounting to ₹ 13.12 crore<sup>12</sup>.

In its reply, NOIDA accepted the audit contention that the plot should be allotted when it is encumbrance free and stated (September 2020) that the ACEO further examined the matter and recommended that in future, only those plots will be included in the schemes which will be found encumbrance free after physical verification.

The facts confirm that NOIDA suffered loss by not complying with the brochure condition for which no responsibility was fixed.

- In December 2016, the GoUP introduced a Project Settlement Policy (PSP) to facilitate the builders by providing an option of partial surrender of the plot for those allottees who had started the project but were unable to execute it. In such cases 15 *per cent* of deposited premium was to be forfeited and proportionate land for remaining 85 *per cent* amount of the premium would be allotted and treated fully paid up at the original allotment rate; in case any builder required additional land if third party rights were created in the plot, additional land would be allotted at presently prevailing rate.

Audit observed that on account of pending overdues amounting to ₹ 91.99 crore, the allotment of the above plot (L-2A/18, M/s Flora & Fauna Housing and Land Development Private Limited), was cancelled by NOIDA on 24 July 2015. The allottee applied (22 October 2015) for restoration of the plot, but no action was taken by NOIDA on this application. In this regard, the Policies and Procedure for Commercial Property Management (Manual) issued by NOIDA (October 2004) provides that rejection/acceptance of restoration request will be taken within a month at the level of Chief Executive Officer or any other officer authorised by him.

Thereafter, the allottee applied for partial surrender of the plot in January 2017 under PSP. NOIDA on 28 June 2018 sanctioned PSP with the direction to get the restoration charges deposited. The allottee surrendered 2,536 sqm of land and 3,525 sqm of land was considered for re-allotment and fully paid. Thereafter, NOIDA approved allotment of 10,798.80 sqm land in order to meet third party (rights) obligation at the rate ₹ 1,86,000 per sqm.

Audit observed that the PSP was available to existing allottees only and not to the allottees of cancelled plots. However, on account of NOIDA's failure to decide on the restoration application within prescribed time limit of one month as per Manual, the allottee was granted PSP facility.

In its reply, NOIDA stated (August 2020) that PSP was introduced by the Government as an Exit Policy cum Relief Package on the proposal of NOIDA. The allottee of the plot had requested for relief as per clause 4 (c) of PSP which allowed partial surrender of the plot for those allottees who had started the project but were unable to execute it. It was also stated that the matter was put up in the standing committee and the committee had recommended for acceptance of the application of partial surrender considering the comments of Finance wing, Planning wing, Work circle and Legal wing. NOIDA further

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<sup>12</sup> When compared to the allotment of plot in same sector and same allottee in June 2010.

stated that since third party rights were created on this plot and though the plot stood cancelled, it was necessary to complete the project and hand over the flats to buyers. Thus, it was necessary to restore this plot for this purpose so that the builder could get rights to complete the project on this plot.

The reply is not acceptable as the allottee had failed to deposit the dues and the plot was cancelled on 24 July 2015. The PSP was available to existing allottees only and not to the cancelled plot allottees. However, NOIDA’s failure to decide on the restoration application within the prescribed time limit of one month led to grant of PSP benefit the allottee.

Based on above audit observation in sampled case, it is recommended that NOIDA should review all such cases wherein indecision by NOIDA on restoration application has resulted in benefit of PSP scheme to allottees of cancelled plots.

***Non cancellation of allotment inspite of non-deposit of any installment***

**The plot was not cancelled and allotment money amounting to ₹ 55.63 crore was not forfeited despite non deposit of any instalment for more than nine years. After being pointed in Audit, NOIDA cancelled the plot and forfeited the deposit.**

**5.2.7.4** As per the provision of the brochure, the allotment money has to be deposited within 90 days of allotment and further extension of maximum 120 days at penal interest of 14 *per cent* was allowable. The brochure also provides that the lease deed has to be executed within 180 days of allotment failing which penalty of five *per cent* per annum of the total premium was leviable. Further, in case the plot is surrendered after 30 days from the date of allotment the total deposited amount or 30 *per cent* of total premium, whichever is less, will be forfeited and the remaining amount will be refunded without interest.

A commercial plot (CC-04 in sector 32 measuring 50,000 sqm) was allotted to M/s Logix Buildwell Private Limited on 28 March 2011 at a total premium amount of ₹ 556.25 crore. The allottee was given extension (31 January 2012) for depositing allotment money in view of the Board’s decision (175<sup>th</sup> meeting on 25 November 2011) and an undertaking was to be given by the allottee for timely payment in future. The allottee did not give the undertaking and demanded to issue checklist<sup>13</sup> for lease deed despite not depositing any moratorium installments. As a result, the lease deed was not executed.

Despite non-deposit of the dues and non-execution of the lease deed, the allottee was given multiple chances for regularisation. No action was taken for cancellation of the plot and forfeiture of the allotment money. When a proposal was put up to the CEO (28 February 2018) to cancel the plot and forfeit the entire deposited amount, the CEO, NOIDA directed (6 March 2018) to inform the allottee regarding the clause of the brochure for surrender of the plot. Subsequently, the allottee applied (September 2017) for surrender of the plot and asked for refund of entire deposited allotment money for which no decision was taken.

Audit observed that NOIDA did not forfeit allotment money amounting to ₹ 55.63 crore and no action for surrender/cancellation of the plot was taken (September 2020). As a result, land worth ₹ 795 crore<sup>14</sup> remained with the allottee. On the contrary, it was observed that while a notice was issued to the allottee for encroachment of green belt and NOIDA land of approx. 20,000 sqm, no further action or realisation of penalty was found in the records

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<sup>13</sup> It is a list of documents/formalities required before execution of lease deed.

<sup>14</sup> At the applicable rate of ₹ 1.59 lakh per sqm for B category sectors for the year 2019-20.

furnished to Audit. Thus, undue favour was allowed to the allottee at each and every juncture and instead of cancelling/surrendering the plot and forfeiting the total deposited amount, no action was taken till September 2020, i.e., even after lapse of more than nine years. NOIDA had failed to take action in spite of contravention of laid down terms and conditions of the brochure and the decision of the Board.

In its reply NOIDA stated (September 2020) that Hon'ble High Court had stayed (January 2013) for creation of third party rights and the case was still pending. However, the cancellation of plot would be done soon as per rule.

The reply is not acceptable, as the Hon'ble High Court in its order had stated that third party rights would not be created by the respondent and it had not stayed for recovery of dues or cancellation of plot. Further, as recommended (March 2018) by Legal wing, there was no legal implication for cancellation. Audit further noted that NOIDA cancelled (March 2021) the allotment of this plot and forfeited the amount deposited by the allottee. Thus, due to inaction on the part of NOIDA and undue favour extended to the allottee, land worth ₹ 795 crore remained with the allottee for more than nine years and there was no development on the property.

#### Allotment related observations

**5.2.8** The shortcomings observed in the allotments made under Commercial category *vis-à-vis* the terms and conditions laid down are discussed hereunder:

##### *Allotment to entities not fulfilling the laid down criteria*

**5.2.8.1** The process of auction for Commercial plots in NOIDA entailed two stage bidding with technical bid and financial bid being called for. The technical bid consisted of technical eligibility criteria which were in terms of size of projects executed by bidders and the financial eligibility criteria which provided the required minimum net-worth, solvency and turnover to be satisfied. The brochure provided that the financial bids of only technically qualified bidders shall be opened. Thus, the bids of those applicants who did not qualify the technical eligibility criteria should not be opened.

Audit observed that in the following cases, the bidders failed to satisfy the laid down norms but NOIDA failed to evaluate the submitted records and allotted the plots despite evident shortcomings.

##### *Allotments made to entities that were prima facie ineligible*

**5.2.8.2** The condition laid down in various brochures for allotment of commercial builders' plots required minimum total turnover of ₹ 200 crore from real estate activities for the last three accounting years. Real estate development and construction activities were stated to include land development/housing/colonising jobs of *bona fide* allotted land/commercial/IT/ITES projects development (excluding merely trading in real estate). Thus, non-fulfilment of this criteria renders the bidders ineligible. However, in contravention of the above stipulations, Audit observed that in the following three test-checked cases allotments were made to entities which did not possess turnover from real estate activities as detailed in **Table 5.2.3**.

Allotments worth ₹ 1,680.93 crore for 1,43,250 sqm land were made to consortiums that *prima facie* failed to meet technical eligibility criteria.

**Table 5.2.3: Details of entities that were ineligible due to lack of required minimum turnover from real estate activities**

Sl. No.	Plot No., Allottee Name, Area, Date of Allotment	Premium (₹ in crore)	Name of Consortium Constituents	Turnover claimed in technical bid (₹ in crore)	Turnover (activity) as per balance sheets of bidders	Actual Turnover from real estate activities (₹ in crore)
1.	A-1/124, M/s Logix Realtech Private Limited (Consortium) 64,550 sqm, 21 December 2010	841.41	M/s IT Enfraseservices Private Limited (five per cent)	94.92	Rental receipts, other business receipts	0
			M/s V.C. Solutions Private Limited (25 per cent)	103.89	Fees and services, construction and supervision charges, sales	0
			M/s Logix Soft Tel Private Limited (40 per cent)	32	Rent, business receipts	0
			M/s NOIDA Cyber Park Private Ltd (five per cent)	40.82	Rental, service and maintenance charges and other income	0
			M/s Logix Buildcon Private Limited (25 per cent)	0	NIL	0
2.	C-03/105, M/s Logix Estate Private Limited (Consortium), 28,700 sqm, 23 June 2010	283.27	M/s IT Enfraseservices Private Limited (10 per cent)	94.92	Rental receipts, other business receipts	0
			M/s V.C. Solutions Private Limited (10 per cent)	107.02	Fees and services, construction and supervision charges, sales	0
			M/s Logix Soft Tel Private Limited (45 per cent)	32	Rent, business receipts	0
			M/s NOIDA Cyber Park Pvt. Ltd (10 per cent)	40.70	Rental, service and maintenance charges and other income	0
			M/s Logix Realtors Private Limited (25 per cent)	0	NIL	0
3.	CC-04/32, M/s Logix Buildwell Private Limited (Consortium), 50,000 sqm, 28 March 2011	556.25	IT Enfraseservices Private Limited (five per cent)	94.92	Rental receipts, other business receipts	0
			M/s V C Solutions Private Limited (25 per cent)	103.89	Fees and services, construction supervision charges, sales	0

Sl. No.	Plot No., Allottee Name, Area, Date of Allotment	Premium (₹ in crore)	Name of Consortium Constituents	Turnover claimed in technical bid (₹ in crore)	Turnover (activity) as per balance sheets of bidders	Actual Turnover from real estate activities (₹ in crore)
			Logix Soft Tel Private Limited (35 per cent)	32	Rent, business receipts	0
			Noida Cyber Park Private Limited (five per cent)	40.66	Rental, service and maintenance charges and other income	0
			Lakshmi Constructions (five per cent)	15.53	Contract receipts and scrap sales	0
			Logix Developers & Infrastructure Private Limited (25 per cent)	0	Not submitted	0

*Source: Information compiled by Audit.*

As evident from **Table 5.2.3**, NOIDA allotted 1,43,250 sqm land worth ₹ 1,680.93 crore to three consortiums which were not eligible for allotment of land. With no turnover from real estate activities, these entities should have been disqualified at the technical bid stage itself but on account of undue favour in evaluation, they were allotted plots. It is notable that the applications including technical bids were vetted by UPICO and thereafter bids were evaluated by the Plot Allotment Committee, but both failed to evaluate the records submitted in the bid and proceeded to allot plots to applicants not fulfilling the criteria, which clearly shows grant of undue favour. The case in question points to lack of due diligence by the PAC tasked with the responsibility of recommending allotment of valuable assets.

In its reply, NOIDA accepted the audit contention and stated (September 2020) that the Internal Committee of NOIDA examined the matter and found that as per the terms and conditions of the brochure, experience of real estate and construction activities was essential. UPICO was responsible for preparation of terms and conditions of allotment, evaluation of technical bids, opening of bids etc. and NOIDA was dependent on UPICO in these matters. Officials of NOIDA had made allotment on the basis of trust placed on UPICO report. Experience of real estate activities was necessary and its absence is a serious flaw. From examination of documents, no supporting documents were found in support of real estate activities. After obtaining clarification from the allottee, responsibility will be fixed in the matter.

From the reply it is evident that the allotments were made to ineligible entities. NOIDA has accepted the audit contention and assured to fix responsibility in the matter. Further, it is pertinent to point out that the technical bids of rejected bidders were not submitted for audit scrutiny. The Government should, in view of the facts and acceptance of the audit findings, take action against the concerned delinquent official (s).

#### ***Exit of relevant member after allotment***

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

Exit of key members, who helped to satisfy the technical eligibility criteria, from consortiums resulted in ownership of properties in hands of otherwise ineligible members.

stipulations regarding tenure, roles and responsibilities of consortium members were slack and NOIDA kept on relaxing these conditions (as discussed in detail in Paragraph 5.1.6.9). Audit observed that in practice, the companies misused the consortium mechanism.

**Case study**

**Exit of member who helped to satisfy the criteria of net worth**

In an allotment made (21 December 2010), under scheme no 2010-11 (commercial builders plot IV) to a consortium led by M/s Vistar Constructions Private Limited (Plot no C-01/98), as per the eligibility criteria laid down in the brochure, minimum net worth required for bidding for the plot was ₹ 80 crore. It was noticed that the net worth of the consortium constituents was as follows:

Name of Constituent	Share percentage	Net worth (₹ in crore)
M/s Vistar Constructions Private Limited	55	3.09
Three C Universal Developers Private Limited	25	14.90
M/s Advance e-Graphics Camp Logics Solution Private Limited	15	Not submitted
M/s Jakson Limited	5	251.84

Thus, the consortium qualified the criteria of net-worth predominantly on the basis of the credentials of M/s Jakson Ltd. However, it was observed that later M/s Jakson Limited exited (8 January 2012) the project within 13 months of the allotment and their shareholding was taken over by M/s Three C Universal Developers Private Limited. As such, the member who contributed most in fulfilling the allotment qualifications, exited the project once the allotment was finalised leaving the land/project to companies who by themselves were incapable of qualifying.

Similarly, in three other cases listed below the members who contributed most in fulfilling the allotment qualifications, exited the project once the allotment was finalised and handed over the land/project to companies who by themselves were incapable of qualifying as detailed in Table 5.2.4.

**Table 5.2.4: Details of exit of relevant member after allotment**

Sl. No.	Plot No. and Allottee	Date of allotment	Consortium Member	Share percentage of consortium members (per cent)	Criteria fulfilled by the consortium members	Eligibility criteria	Date of exit	Remark	
1.	C-1/44, Madhavilata Granite (India) Ltd. (Consortium)	26.03.2010	Madhavilata Granite (India) Ltd.	90	Not claimed	Turnover of ₹ 200 crore from real estate activities	Not exited		
			Three C Universal Developers Private Limited	10	₹ 333.35 crore				31.03.2010
2.	C-171/15, AIMS Sanya Developers (Consortium)	29.11.2011	AIMS Sanya Developers Private Limited	55	Not claimed	Turnover of ₹ 200 crore from real estate activities	Not exited		
			Seven R Hotels Private Limited	40	Not claimed				Not exited
			ABA Builders Private Limited	5	₹ 399.05 crore				

Sl. No.	Plot No. and Allottee	Date of allotment	Consortium Member	Share percentage of consortium members (per cent)	Criteria fulfilled by the consortium members	Eligibility criteria	Date of exit	Remark
3.	A-1/124 Logix Realtech Private Limited (Consortium)	21.12.2010	IT Enfraseservices Private Limited	5	₹ 0.06 crore sqft.	Aggregate construction of minimum 10 lakh sqft. from minimum 2 real estate projects.	11.04.2011	Exited the project even before execution of the lease deed.
			V.C. solutions Private Limited	25	-		Not exited	
			Logix Soft Tel Private Limited	40	-		Not exited	
			NOIDA Cyber Park Pvt. Ltd	5	₹ 0.14 crore sqft.		11.04.2011	Exited the project even before execution of the lease deed.
			Logix Buildcon Private Limited	25	-		Not exited	

Source: Information compiled by Audit.

From the above table it is evident that the company on whose credentials the consortium qualified the eligibility criteria subsequently exited the project within a short period after allotment, ranging from five days to four months for the companies for which information was made available. Thus, the ownership of the land allotted was passed to constituents who by themselves were incapable of qualifying. This also enabled otherwise ineligible companies to garner a large area of land measuring 1,54,136 sqm. It is also evident that the share of none of these exiting members in the respective consortium exceeded 10 per cent. From the above analysis, it is evident that these members joined the consortium only for facilitating allotment by lending their credentials (profile) and thereafter exited the SPC. From the above table, it can be concluded that this system of profile lending was widely prevalent in NOIDA.

In the above four cases of allotment it was observed that none of the plots could be made functional even after lapse of more than eight years of allotment as detailed in **Table 5.2.5**.

**Table 5.2.5: Status of exit of relevant member after allotment**

Sl. No.	Plot No.	Name of the Allottee	Status of project	Area (in sqm)	Allotment premium (₹ in crore)	Outstanding dues (₹ in crore)
1	C-01/98	M/s Vistar constructions Private Limited	Map not sanctioned	22,136	219.70	572.62
2	C-1/44	Madhavalata Granite (India) Ltd.	Map not sanctioned	42,150	428.67	1,105.06
3	C-171/15	AIMS Sanya Developers	Map sanctioned in January 2019	25,300	382.03	404.27
4	A-1/124	Logix Realtech Private Limited	Map not sanctioned	64,550	841.41	1,658.85
<b>Total</b>				<b>154,136</b>	<b>1871.81</b>	<b>3,740.80</b>

Source: Information compiled by Audit.

From the above, it may be seen that as on date, all the above projects are lying incomplete<sup>15</sup> which has adversely impacted the interest of the buyers and NOIDA, as dues against allotment value of ₹ 1,871.81 crore are ₹ 3,740.80 crore (with interest and lease rent).

In all the above cases, it is evident that NOIDA failed to lay down any condition for a minimum period for which the group of companies should associate for completion of the project jointly as a consortium. This enabled the bidders to form a consortium for the purpose of qualifying the criteria and exit once the formal approval was in place, paying no heed to the execution of the project while NOIDA remained a mute spectator to the exits.

In its reply, NOIDA accepted the audit contention and stated (September 2020) that Internal Committee of NOIDA examined the matter and found that there would be no relevance of technical eligibility criteria if the relevant member<sup>16</sup>, whose credentials were used, exited the project after allotment. Hence, the brochure was deficient to this extent. Action against UPICO is being recommended for deficiencies in the allotment process. Further, in future schemes, a clause regarding restrictions on exit of relevant member, whose credentials were used for qualifying technical eligibility, will be introduced in the brochure.

In view of the audit findings and acceptance by NOIDA, the Government should issue suitable guidelines/directions to all Authorities to ensure that such loopholes are plugged.

#### ***Transfer of plot through change in shareholding***

**5.2.8.4** As per the provision of clause I of the Policy and Procedure for Commercial Property Management (October 2004), the charges for Change in Shareholding (CIS) will be 10 *per cent* on 100 *per cent* change in shareholding and for less than 100 *per cent* change, CIS charges would be proportionate to the change of shareholding on *pro-rata* basis. Further, NOIDA issued an office order on 27 October 2010 which stated that in respect of plots allotted to companies no CIS charges would be recovered as “change in shareholding does not constitute the change in ownership of a company” and the same was also incorporated in the brochure of the schemes. Audit noticed that the above order of not considering the change of shareholding as change of ownership is against the basic principles of a company limited by shares. Audit observed that on the one hand, NOIDA provided allotment to SPCs, constituted specifically for purpose of allotment of a particular plot, and on the other hand it adjudged that change in shareholding did not constitute change in ownership.

**NOIDA not only facilitated the allottee company to sell/transfer the plot in favour of another set of shareholders who may not have otherwise qualified for the plot allotment but it also suffered loss of revenue amounting to ₹ 83.49 crore due to transfer of plot through change in shareholding without levying the CIS charges.**

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<sup>15</sup> As on September/November 2020.

<sup>16</sup> Relevant member denotes members of consortium other than lead member, who was the majority shareholder. Relevant members have minority stake in the consortium.

**Case Study****Change in ownership pursuant to change in shareholding**

As per C.7.d of the scheme brochure {2010-11 (Commercial Builder Plot-IV)} ‘The members shall submit a registered/notarised Memorandum of Agreement (MOA) conveying their intent to jointly apply for the scheme, and in case the plot is allotted to them, to form Special Purpose Company (ies), hereinafter called SPCs, that will subsequently carry out all its responsibilities as the allottee. The registered MOA must specify the equity shareholding of each member of the Consortium in the proposed SPCs. Commercial plot no. A-1 in sector 124 measuring 64,550 sqm was allotted to M/s Logix Realtech Private Limited (Consortium) on 21 December 2010. Consortium members as per the MoU submitted were M/s Logix Soft Tel Private Limited (40 per cent), M/s V.C. Solutions Private Limited (25 per cent), M/s Logix Buildcon Private Limited (25 per cent), M/s IT Enfraservices Private Limited (five per cent) and M/s NOIDA Cyber Park Pvt. Ltd (five per cent).

The allottee requested (April 2011) to subdivide the plot and execute lease deed in the name of two SPCs. The first SPC was M/s Logix Realtech Pvt. Ltd (shareholding of M/s Logix Soft Tel Private Limited 50 per cent, M/s V.C. Solutions Private Limited 25 per cent and M/s Logix Buildcon Private Limited 25 per cent) and the second SPC was M/s Logix Buildcon Private Limited (shareholding of M/s Logix Soft Tel Private Limited (99.99 per cent) and Shri Shakti Nath (0.01 per cent).

M/s IT Enfraservices Private Limited and M/s NOIDA Cyber Park Private Limited, whose credentials were used for technical qualification, were removed from the SPCs formed for execution of lease deed of sub-divided parts. Thus, the shareholding in SPC mentioned in the MoU was not maintained at the time of lease agreement against the provision of the brochure. Further, resolution of all the relevant members for subdivision of the plot was also not submitted by the allottee.

The allottee (M/s Logix Real Tech Pvt. Ltd of subdivided plot A-1/A sector 124) changed its name to ATS Heights Pvt Ltd. It requested (21 March 2016) to change the same in the documents of NOIDA and NOIDA accorded the same without any transfer charges. Audit noticed that the address of the company, 50 per cent shareholding and 50 per cent directors were also changed with the name of the company. Thus, ownership of the company was changed but no transfer charges were levied by NOIDA resulting in undue benefit to the allottee amounting to ₹ 30.20 crore.

In its reply, NOIDA (September 2020) accepted the audit observation and stated that constitution of SPC with new members was incorrect. Responsibility will be fixed in this regard. Further action in the matter is awaited.

Similarly, audit observed that the shareholding was changed in the following cases as depicted in **Table 5.2.6**.

**Table 5.2.6: Details of change in shareholding and shareholding charges**

Sl. No.	Plot No.	Allottee name	Shareholding change (in per cent)	Charges Leviable (₹ in crore)	Remarks
1	C-01/98	M/s Vistar Construction (P) Ltd.	7.50	1.65	First change in shareholding on 8.01.2012
			70	15.38	Subsequently, controlling interest and entire directorship was changed on 21.09.2013
2	A-1/124	M/s Logix Realtech Private Limited	24	20.19	Change in shareholding before lease deed and sub-division of plot

Sl. No.	Plot No.	Allottee name	Shareholding change (in per cent)	Charges Leviable (₹ in crore)	Remarks
3	C-171/15	M/s AIMS Sanya Developers	5	1.91	Change in shareholding before lease deed
4	1/94	M/s B.P.T.P. Limited	100 (of Sub-divided plot)	7.38	100 per cent shareholding of subsidiary having a subdivided plot (28,328.07 sqm) changed.
5	C-3/105	M/s Logix Estate Private Limited	100 (Sub-division of plot)	2.37	Transfer charges were not levied for transfer of sub divided plot (12,000 sqm) to a subsidiary company.
6	C-1/16B	M/s Vistar Construction Private Limited	100 (of subdivided plot)	4.41	100 per cent shareholding of subsidiary having a subdivided plot (3,352 sqm) changed.
<b>Total</b>				<b>53.29</b>	

*Source: Information compiled by Audit.*

Thus, through this order (27 October 2010) NOIDA not only facilitated the allottee company to sell/transfer the plot in favour of another set of shareholders who may not have otherwise qualified for the plot allotment but it also suffered loss of revenue amounting to ₹ 83.49 crore on this head. Since the allotment was made in favour of SPC, who were constituted for executing a specific project, the sale of stake through change in shareholding, in effect constituted transfer of rights in the allotted plots.

The above cases point to the fact that NOIDA facilitated back-door entry to entities not satisfying the qualification criteria. It failed to ensure strict implementation of conditions that were put in place to safeguard the development of prime commercial land. Further, in the Government order dated 11 October 2010 regarding non levy of stamp duty, nothing was mentioned about CIS charges. The contention of audit is further reconfirmed by the fact that the GoUP had rescinded the order in February 2020, stating that this resulted in decrease in revenue of the Government. In this connection, the Companies Act, 1956 provides that shares are movable property which are the proportionate interest of shareholders in the ownership of the Company.

In its reply, NOIDA stated (September 2020) that the Government Order (February 2020) was being proposed for adoption of the Board in which it will also be proposed that all cases of CIS with reference to G.O. be identified for recovery.

The facts confirm that NOIDA had suffered loss due to not exercising due diligence in issuing the order for abolishing the CIS charges.

### Discrepancies related to allocation of land

**5.2.9** After allotment by the Commercial wing, the possession of land is handed over to the allottee by the respective Works Circle<sup>17</sup> in whose jurisdiction the plot falls. The Works Circle is also tasked with the developmental work on the acquired land. The Planning wing headed by the Chief Architect and Town Planner (CATP) prepares the site plan on the basis of which the plots are demarcated. Planning wing also approves the layout plan/map of each plot and ensures that construction is carried out as per prevailing Building bye-laws. The discrepancies observed in the above procedure are discussed hereunder:

#### *Avoidable loss due to delay in handing possession*

**5.2.9.1** Clause Y-3 of the brochure provided that if due to any “*Force Majeure*” or any circumstances beyond NOIDA’s control, NOIDA is unable to make allotment or hand over the possession of the allotted plot, the entire earnest money and/or the deposits, as the case may be, will be refunded without interest, as per the prevailing policies of NOIDA. Where the possession of land is not handed over due to delay on the part of NOIDA, NOIDA granted zero period<sup>18</sup> to the allottee.

The plot C-171/1 was sub-divided in favour of M/s AIMS Sanya Developers Private Limited on 29 November 2011. The physical possession of the plot could not be handed over to the allottee as some sheds of NOIDA’s Works Circle were constructed on the plot. Audit observed that the process of auction of the materials and demolition of godown/sheds was unduly delayed at various levels and the land was finally handed over to the allottee (7 August 2013) after 21 months from allotment of the plot. On account of the delay in handing over the plot, the Board in its 179<sup>th</sup> meeting approved zero period from 29 November 2011 to date of actual possession in favour of the allottee. Thus, due to lackadaisical approach of NOIDA/officials of work circle, NOIDA had to bear loss of interest for the period. This resulted in loss of interest to NOIDA amounting to ₹ 47.28 crore<sup>19</sup> on account of grant of zero period due to avoidable delay by NOIDA.

In its reply, NOIDA accepted the audit contention and stated (September 2020) that the ACEO further examined the matter and recommended that in future, only those plots will be included in the schemes which will be found encumbrance free after physical verification.

While accepting the audit contention in reply, the Management has not proposed appropriate action against the defaulting officials.<sup>20</sup>

- The allottee requested for sub-division of the plot and executed the lease deed in favour of M/s AIMS Sanya Developers Pvt. Ltd. (60% plot area) and M/s Seven R Hotels Pvt. Ltd. (40% plot area). The plot was accordingly sub-divided and lease deed was executed. Further, there was a special clause in the brochure for this plot whereby separate parking facilities of 400 cars for the

<sup>17</sup> Works Circle is a unit of Engineering wing which carries out development works in a designated area.

<sup>18</sup> Zero period is the period for which NOIDA does not charge interest on the outstanding premium.

<sup>19</sup> Interest charged in allotment letter for first three installments upto 29 May 2013.

<sup>20</sup> NOIDA cancelled (August 2020) the allotment due to non payment of dues.

**The plot was allotted without removing sheds on the plot which resulted in delay in handing over the possession of the plot and NOIDA had to grant zero period to the allottee which resulted in loss of revenue amounting to ₹ 47.28 crore.**

DMRC metro station was to be created at the cost of the allottee. The allottee of the subdivided plot (M/s Seven R Hotels Pvt. Ltd.), instead of construction of the parking, made several requests to change the place or relax the clause but NOIDA did not allow this which resulted in avoidable delay due to which even the map for the plot (in which parking area falls) was approved in January 2019 i.e. after seven years and moreover the extended time of construction also elapsed in May 2019. Thus, the purpose of special condition in the brochure was defeated and the public could not get the benefit of the plot.

Scrutiny of records revealed that NOIDA was obligated to provide alternate space and arrangement of parking to the DMRC in November 2013 at its own cost by terminating the existing parking contract at an alternate site till construction of the parking which also constituted an undue benefit to the allottee. In the instant case it is evident that the only steps taken by NOIDA were in favour of the allottee. The allotment was not cancelled inspite of non-execution of the stipulated work and an inordinate amount of time was allowed. Thus, interest of NOIDA was overlooked.

In its reply, NOIDA stated (September 2020) that as per clause of the lease deed (25 May 2012) parking was to be constructed by the allottee of the subdivided plot 171/2, sector- C and the map of the plot was approved on 10 January 2019 which was valid for five years. The allottee had also been granted extension up to 28 May 2019 after payment of the requisite fees and construction was being done on the said plot.

The reply confirms that the map of the plot was approved after almost seven years and valid time extension was also elapsed 18 months ago. However, the parking facility was not yet constructed and NOIDA had to bear the cost of parking for seven years by providing an alternate site free of cost and foregoing revenue of the alternate site.

#### ***Additional ground coverage allowed in map approval***

**5.2.9.2** Audit observed that ground coverage (GC) allowed in the brochure was area within set back<sup>21</sup> line. Accordingly, the allottee of plot no. L2A/18 (plot area 16,859.80 sqm), ground coverage (GC) of 7,799.01 sqm was allowable to M/s Flora & Fauna Housing and Land Development Private Limited, which comes to 46.25 *per cent*. This was clearly spelt out in the map approval file of the allottee, while approving (October 2011) the map with ground coverage of 7,543 sqm proposed by the allottee. Subsequently, GC was increased (September 2013) to 55.62 *per cent* when the revised map was approved by NOIDA without any justification for increase in GC.

In its reply, NOIDA stated (August 2020) that revised map of the plot was approved on 27 September 2013 as per the architectural control drawings and no additional benefit was granted to the allottee.

The reply is not acceptable as the map of the plot was initially approved on 25 October 2011 in which area allowable for ground coverage as per brochure was 7,799.01 sqm. Thus, Planning wing extended an undue benefit to the allottee in the above case for an amount of ₹ 9.98 crore during the approval of revised map by allowing extra GC.

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<sup>21</sup> A specified line parallel to the plot boundaries beyond which no construction is to be undertaken and the space is to be left vacant.

**Discrepancies in payment related issues**

**5.2.10** Finance wing of NOIDA deals with all financial and accounting matters and offers its comments and suggestions on all matters having financial implication. Finance Controller (FC) is the head of the Finance wing who is assisted by Accounts Officers and other staff. The shortcomings observed in payment related issues are discussed hereunder:

***Incorrect fixation of lease rent***

**5.2.10.1** Clause G (1) of The Policies & Procedures for Commercial Property Management, 2004 (Rules) provides that ‘the ground/lease rent shall be charged @ 2.5% of the total premium of the plot for the first 10 years from the stipulated date of execution of lease deed’. However, in respect of builder plots<sup>22</sup>, the ground rent/lease rent was chargeable at the rate ₹ one per sqm per year for the first three years from the stipulated date of execution of lease deed and 2.5 *per cent* per annum for the rest of the seven years of the first ten year period.

The Government Order (25 October 2009), to counter the challenges of the economic recession, *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* of premium in respect of properties allotted up to 31 March 2010 (further increased upto 31 March 2011) and authorised the Board of NOIDA to take further decision in this regard. NOIDA adopted this G.O. in the 165<sup>th</sup> Board meeting (6 November 2009) and decided to take lease rent in commercial properties as applicable for group housing plots. Lease rent charged on group housing plots was one *per cent* of the plot premium for the first 10 years of the lease period.

Scrutiny of records revealed that NOIDA allotted 17 commercial builders/sports city plots during 2009-10 and 2010-11 through seven schemes. The scheme brochures provided for payment of yearly lease rent in the following manner:

- At the rate of ₹ one per sqm per year for the first three years from the date of execution of lease deed;
- Thereafter 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, lease rent may be increased at the rate of 50 *per cent* which will be applicable for next ten years and this process will continue in future.

Audit observed that the provision in the brochure for lease rent at the rate of ₹ one per sqm per year for the first three years from the date of execution of lease deed was in contravention to the G.O. as well as the decision of the Board in the 165<sup>th</sup> meeting. The short recovery of lease rent in 17 cases is detailed in **Table 5.2.7**.

**Table 5.2.7: Details of incorrect fixation of lease rent**

Year	No. of cases	Short Recovery of lease rent (₹ in crore)
2009-10	4	33.98
2010-11	13	395.94
<b>Total</b>	<b>17</b>	<b>429.92</b>

**Source:** Information compiled by Audit.

<sup>22</sup> One of the categories out of three specified categories under the Policies and Procedure for Commercial Property Management, 2004.

In 17 allotments, scheme brochure allowed benefits which were beyond the G.O. and cherry-picked between two sets of orders for the benefit of the allottees which resulted in loss of revenue amounting to ₹ 429.92 crore.

Thus, from the above it is evident that NOIDA extended undue financial benefit during the period from 2009-10 to 2010-11 to the extent of ₹ 429.92 crore (**Appendix-5.2.2**).

Audit observed that the prevailing lease rent of ₹ one per sqm in Builder Plot category was already significantly lower than one *per cent* of premium, which ranged between ₹ 75,600 to ₹ 2,23,250 per sqm. However, the fact of lower lease rent prevailing was neither submitted to nor considered by the Board. It is evident to Audit that the scheme brochure allowed benefits which were beyond the G.O. and at the same time it gave benefits as per the Policies & Procedures for Commercial Property Management, 2004. NOIDA thus, cherry-picked between two sets of orders for the benefit of the allottees and overlooking its own interest.

In reply, NOIDA stated (September 2020) that the ACEO examined the matter and found that lease rent at the rate of ₹ one per sqm for the first three years was taken as per the Policies and Procedures, 2004 of Commercial wing. As per the Government Order, 2.5 *per cent* lease rent was reduced to one *per cent*. The matter will be reviewed and lease rent of ₹ one per sqm on large builder plots will be reconsidered.

From the facts above and also the reply of NOIDA, it is evident that the fixing of lease rent on the lower side lacked due diligence. The Board was not apprised of the existing condition and even the Board’s directions were not followed. Further, while accepting the audit contention partially, the Management has not proposed any concrete action to make good the financial losses by recovery from the allottees or the defaulting official(s) of NOIDA.

#### ***Irregular grant of reschedulement facility***

**NOIDA permitted repeated reschedulements in spite of non-payment, in seven cases during the period 2013-18, and failed to effect its own recovery which stands at ₹ 4,257.58 crore after nine years of allotment.**

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

NOIDA, in its 179<sup>th</sup> Board meeting (27 May 2013), introduced a facility of reschedulement of dues for allottees who had defaulted in payment of dues. As per this facility the balance amount due was to be capitalised after calculating applicable penal interest in the dues and such capitalised amount shall be re-scheduled in such a way that the payment plan shall not be more than two times that of the original payment plan and in no case, it will exceed more than 10 years from the original allotment date. This reschedulement facility was to be provided only once. The Finance wing under the Finance Controller was responsible for sanction of reschedulement, which was finally approved by the CEO. Audit observed that the benefit of reschedulement facility granted was irregular in the seven cases given in **Table 5.2.8**.

Table 5.2.8: Details of reschedulment facility to allottees

Sl. No.	Plot No.	Name of the allottee/ suballottee/ Date of Allotment/ Dues as on 31.03.2020	Date of reschedule ment	Audit Observation	Reply of NOIDA	Further remarks of Audit
1	A-1/B/124	M/s Logix Buildcon Ltd. 21 December 2010 Dues: ₹ 657.38 crore	05 November 2015	Reschedulment was given by NOIDA inspite of specific Board direction (25 November 2011) for the allottee that he will pay all the dues timely and will have no right to seek relaxation. An earlier request (06 June 2013) was rejected but reschedulment was allowed subsequently, on the another application of allottee (18 December 2013).	Reschedulment was given with the approval of the CEO in compliance of policy of reschedulment approved by the Board. The Board decided to grant the reschedulment facility to those allottees also whose dues were rescheduled earlier but they did not make payment.	Board had specifically directed (25 November 2011) that the allottee will have no right to seek relaxations in future which effectively forbade grant of reschedulements to this entity. On this ground, reschedulment had been denied on previous occasion (17 October 2013).
2	A-1/A/124	M/s Logix Realtech Ltd. aka ATS Heights Private Limited, 21 December 2010 Dues: ₹ 1,001.47 crore	06 November 2015	First Reschedulment was given by NOIDA inspite of specific Board direction (25 November 2011) for the allottee that he will pay all the dues timely and will have no right to seek relaxation. An earlier request (06 June 2013) was rejected but reschedulment was allowed subsequently on the another application of allottee (17 December 2013).	Dues were rescheduled on 06 November 2011 with the approval of the CEO. The allottee again requested for reschedulment on 26 February 2016 and presented the challan of amount deposited and amount was rescheduled on 16 March 2016. The dues were again rescheduled on 14 October 2017 and 15 per cent amount was to be deposited and the allottee deposited 10 per cent amount. Dues were again rescheduled on 02 February 2018 with approval of the CEO and Board. Therefore, reschedulment was approved by the Board.	Board had specifically directed (25 November 2011) that the allottee will have no right to seek relaxations in future which effectively forbade grant of reschedulements to this entity. On this ground, reschedulment had been denied on previous occasion (17 October 2013). The third and fourth reschedulements were given to ATS Heights Private Limited even without compliance of conditions as indicated in Audit observation column in respect of second reschedulment.
			17 February 2016	First reschedulment was given on the condition that allottee will pay 10 per cent of rescheduled amount immediately and remaining as per schedule otherwise plot will be cancelled but allottee did not deposit the 10 per cent of first rescheduled amount.		
			17 November 2017	Allottee deposited 10 per cent of rescheduled amount unilaterally against the required 15 per cent due to which FC disallowed the reschedulement amount but the CEO sanctioned the reschedulment.		
			02 February 2018	Fourth reschedulment was done at the rate of 11 per cent interest instead of at the rate of 14 per cent interest resulting undue favour to allottee amounting to ₹ 53.46 crore.		

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Sl. No.	Plot No.	Name of the allottee/ suballottee/ Date of Allotment/ Dues as on 31.03.2020	Date of reschedule ment	Audit Observation	Reply of NOIDA	Further remarks of Audit
3	C-3/A/105	M/s Logix Developers Private Limited 23 June 2010 Dues: ₹ 250.47 crore	31 January 2014	First reschedule ment given	Dues were rescheduled on 31 January 2014 with the approval of the CEO which was also approved by the Board. The Board decided in its 185 <sup>th</sup> meeting (25 May 2015) that final chance of reschedule ment of the dues should be given instead of cancellation of the plot. Therefore, dues were rescheduled with approval of the CEO for recovery of the dues.	The reschedule ment given was irregular as it was mentioned that earlier no reschedule ment was given, which was a misrepresentation of the facts.
			10 November 2015	Second reschedule ment was given by NOIDA inspite of non-payment of ₹ 63.84 crore after first reschedule ment.		
			05 May 2016	It was mentioned that earlier no reschedule ment was given, which was a misrepresentation of the facts by the Finance wing.		
4	C-3/B/105	M/s Logix Estate Private Limited 23 June 2010 Dues: ₹ 496.91 crore	17 October 2013	First reschedule ment given.	Dues were rescheduled on 31 January 2014 with the approval of the CEO which was also approved by the Board. The Board decided in its 185 <sup>th</sup> meeting (25.05.2015) that final chance of reschedule ment of the dues should be given instead of cancellation of the plot. Therefore, dues were rescheduled with approval of the CEO for recovery of the dues.	The third reschedule ment given was irregular as during reschedule ment dated 31 January 2014 it was mentioned that it was final chance of reschedule ment of dues, however, again reschedule ment was given (06 November 2015).
			31 January 2014	Second reschedule ment was given by NOIDA inspite of non-payment of ₹ 99.38 crore after first reschedule ment.		
			06 November 2015	Third reschedule ment was given by NOIDA inspite of non-payment of ₹ 191.67 crore after second reschedule ment.		
5	C-171/15	M/s AIMS Sanya Developers 29 November 2011 Dues: ₹ 404.27 crore	25 March 2015	The allottee was earlier (17 July 2014) denied reschedule ment of dues as he had availed the benefit of zero period and the reschedule ment application (12 March 2014) was rejected but later on first reschedule ment was given.	Subdivided part of the plot (171/1, sector 15) had been cancelled and second subdivided part (171/2, sector 15) is depositing the dues timely.	The reply is self-explanatory that due to non-deposit of dues after reschedule ment, NOIDA had to cancel the plot (August 2020).
			09 January 2018	Second reschedule ment was given by NOIDA inspite of non-payment of ₹ 241.48 crore after first reschedule ment. It was mentioned that earlier no reschedule ment was given, which was misrepresentation of the facts by the Finance wing.		
			24 April 2019	Third reschedule ment was given by NOIDA inspite of non-payment of ₹ 321.12 crore after second reschedule ment.		

Sl. No.	Plot No.	Name of the allottee/ suballottee/ Date of Allotment/ Dues as on 31.03.2020	Date of reschedule ment	Audit Observation	Reply of NOIDA	Further remarks of Audit
6	C-01B/98	M/s Vistar Construction (P) Ltd. (Sub-divided to M/s Granite Hills Properties Limited) 21 December 2010 Dues: ₹ 572.62 crore	24 November 2014	Reschedule ment was not allowable to allottees who had given affidavit of payment of dues but still had outstanding dues.	Various letters had been issued to the allottee for deposition of the rescheduled amount and the amount was deposited on 23 January 2017. Reschedule ments were given in the interest of the builder/buyer as per the reschedule ment policy time to time approved by the Board.	NOIDA allowed a last chance in the 185 <sup>th</sup> Board meeting (25 May 2015) to those allottees who had earlier availed the facility of reschedule ment and despite that the allottee failed to deposit the dues timely. Yet fourth reschedule ment was again sanctioned.
			03 November 2015	NOIDA allowed a last chance in the 185 <sup>th</sup> Board meeting (25 May 2015) to those allottees who had earlier availed the facility of reschedule ment and despite that the allottee failed to deposit the dues timely. Yet second reschedule ment was again sanctioned.		
			13 May 2016	It was mentioned that earlier no reschedule ment was given, which was misrepresentation of the facts by the Finance wing and third reschedule ment was sanctioned		
			29 November 2016	Fourth reschedule ment sanctioned by NOIDA inspite of non-payment of ₹ 130.03 crore since third reschedule ment.		
7	C-01/16B	M/s Vistar Construction (P) Ltd. (Sub-divided to M/s Boulevard Project Private Limited) 16 June 2010 Dues: ₹ 874.46 crore	24 December 2013	First reschedule ment given.	Reschedule ment was given on 14 December 2013 and ₹ 7 crore was deposited. Second reschedule mnt was given 30 July 2015 by the CEO. This facility was given in pursuance of Board decision as final chance of reschedule ment of dues instead of cancellation. Various letters were issued to the allottee demanding the amount and the allottee deposited ₹ 46.92 crore on 21 November 2015. Fourth reschedule ment was approved by the CEO on 02 May 2016 and demand notice was issued to the allottee. Therefore, the main purpose of granting reschedule ment was to recover the dues.	NOIDA allowed a last chance in the 185 <sup>th</sup> Board meeting (25 May 2015) to those allottees who had earlier availed the facility of reschedule ment and despite that the allottee failed to deposit the dues timely. Yet reschedule ment was again sanctioned. Further, despite giving four reschedule ments, dues amounting to ₹ 874.46 crore is outstanding which defeats the very purpose of the reschedule ment as quoted by NOIDA.
			31 July 2015	Second reschedule ment was given by NOIDA inspite of non-payment of ₹ 243.80 crore after first reschedule ment.		
			01 December 2015	Third reschedule ment given inspite of non-payment of ₹ 243.80 crore after second reschedule ment.		
			24 June 2016	Fourth reschedule ment sanctioned inspite of non-payment of ₹ 101.46 crore since last/third reschedule ment.		

Source: Information compiled by Audit.

Audit noticed that out of the above cases, allottees at Sl. No. 5 and 7 failed to deposit any amount after the initial allotment money. From the above table, it can be observed that in spite of defaults, reschedulements were granted on multiple occasions, which was in contravention of NOIDA’s own policy. As on date, the dues of these allottees have accumulated to ₹ 4,257.58 crore against allotment value of ₹ 2,383.91 crore after lapse of more than nine years.

The facility of reschedulement was introduced to provide relief to the allottees but the Finance wing implemented it in a manner which paid scant regard to the norms of prudence and propriety. By permitting repeated reschedulements inspite of non-payment, NOIDA has failed to effect its own recovery which stands at ₹ 4,257.58 crore in the seven cases above as per information furnished to Audit. Further, NOIDA has also failed to take any action as per the provisions of the UPIAD Act, 1976 despite repeated defaults. The cases bring out another instance of gross dereliction of duty cast upon concerned officials of NOIDA.

The above also exemplifies the violation of Public Trust Doctrine, reiterated by Hon’ble Supreme Court<sup>23</sup>, wherein it was stated that:

*Power vested by the State in a Public Authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact-situation of a case. "Public Authorities cannot play fast and loose with the powers vested in them". A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An Authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other.*

The Government may consider fixing responsibility for the gross negligence on the part of the officials, who in the words of the Hon’ble Supreme Court<sup>24</sup>, “were bent upon to condone everything”.

#### ***Grant of mortgage permission with outstanding dues***

**5.2.10.3** As per the Policies and Procedure for Commercial Property Management (Manual) issued by NOIDA (October 2004), allottee of commercial plots can mortgage the property after making full and final payment and upto date lease rent. The terms and conditions of the brochures provided that mortgage permission shall be granted in favour of a scheduled bank/Government organisation/financial institutions approved by the RBI for the purpose of raising resources for construction on the allotted plot. The lessee/sub-lessee(s) should have obtained valid extension of time for construction and should have cleared up-to-date dues of the plot premium and lease rent. In the following cases Audit observed that mortgage permission was granted to the allottee in-spite of outstanding dues as given in **Table 5.2.9**.

**In violation of manual and terms of the brochures, mortgage permissions were granted in four cases without deposit of up to date dues.**

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<sup>23</sup> In the case of Bikram Chatterjee & others vs Union of India and others, writ petition (C) 940/2017.

<sup>24</sup> In the case of Bikram Chatterjee & others vs Union of India and others, writ petition (C) 940/2017.

Table 5.2.9: Details of mortgage permission to allottees

Sl. No.	Plot No.	Name of Allottee	Name of entity in whose favour mortgage permission was given	Mortgage permission date	Remark
1	C 01/98	Vistar Construction Private Limited	M/s Granite Hills Properties Pvt. Ltd. and M/s Three C Commercial Complex Pvt. Ltd.	11 November 2011	₹ 5.44 crore of moratorium amount was pending.
2	L-2A/18	Flora & Fauna Housing and Land Development Private Limited	M/s Wave City Center Pvt. Ltd.	1 July 2013	Lease rent amounting to ₹ 0.5 lakh was pending.
3	02 B/94	B.P.T.P. Ltd.	M/s BPTP International Trade Center Ltd. \	14 October 2017	Lease rent amounting to ₹ 203.32 crore was pending as of January 2017.
4	A 1/124	Logix Realtech Private Limited	M/s ATS Heights Pvt. Ltd.	26 September 2017	Installment, interest and lease rent amounting to ₹ 381.33 crore was pending as of July 2017.

Source: Information compiled by Audit.

Out of the above cases, it was further observed that in case of Sl. No. 2, a reschedulement was given on 28 June 2013 which converted the overdue amount (₹ 79.16 crore) to future instalments, just prior to issue of permission and in case of Sl. No. 4 the allottee did not had a valid time extension.

In its reply, in respect of M/s Vistar Construction Private Limited and M/s B.P.T.P. Ltd., NOIDA stated (August 2020) that the No Objection Certificate (NOC) for mortgage permission was granted with the condition that the NOC would be valid only after payment of premium and lease rent outstanding against the plot. In the remaining two cases, NOIDA did not furnish a reply.

The reply is not tenable as there was no provision in the scheme brochures for providing conditional mortgage permission/NOC to the allottee without payment of outstanding dues. Further, NOIDA failed to develop any mechanism to ensure compliance of conditions included in the conditional NOC as outstanding dues against the abovementioned four allottees increased to ₹ 2,126.75 crore as on 31 March 2020 from ₹ 669.75 crore at the time of granting conditional NOCs.

As also discussed in **Paragraph 5.1.10.3**, similar lapses of NOIDA have been viewed gravely by the Hon'ble Supreme Court in its judgement<sup>25</sup> (23 July 2019) wherein it was stated that: "Conditional permission to the mortgage was issued without payment of the premium lease money, etc., so as to perpetuate the fraud being done by the promoters."

<sup>25</sup> Writ petition (C) 940/2017 Bikram Chatterjee and others vs. Union of India.

### Conclusion

The saga of allotment in the Commercial Category is indeed one of preponderance of allotment to essentially three groups viz. Wave, Three C and Logix groups. Of the total allotments made during 2005-2018, 79.83 per cent of Commercial land was allotted to them. Examination by Audit reveals that these three entities violated terms and conditions with acquiescence of NOIDA’s officials. The systematic failure to take action therein despite repeated violations combined with the instances of non-payment involving outstanding dues of over ₹ 14,000 crore suggests that the prime objective of NOIDA appeared to be allocation of land to them and enable them to further benefit rather than for purposes of commercial development.

During the period 2010-2013, NOIDA’s failures in due diligence and lacunae in policies led to transfer of Commercial properties to ineligible entities. Allotments were made to entities which did not fulfil the technical eligibility criteria, exit of key members from consortiums resulted in ownership of properties in hands of otherwise ineligible members and properties were also transferred through changes of shareholding. These factors resulted in transfer of properties to entities which failed to execute the projects.

The multiple cases involving dereliction of duties by concerned officials calls for stringent action to be taken by the Government.

### Recommendations

Recommendation Number	Recommendation	Response of the Government
11	NOIDA should review its policies which have resulted in preponderance of allotments in hands of selected allottees who are having huge dues against them.	Accepted. It was stated that NOIDA would build in proper safeguards in future schemes/brochures to avoid allotment to same entities who were not financially capable to complete multiple projects.
12	NOIDA should initiate disciplinary action against officials who have conferred repeated benefits to allottees in the commercial category, in supersession of NOIDA’s interest.	Accepted. It was stated that after the enquiry suitable action would be taken for omission/failure to adherence to conditions of brochures, if any fault is found.