

CHAPTER–V (5.3)
Allotment of Institutional Properties

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5.3 Allotment of Institutional Properties

Introduction

5.3.1 The NOIDA (Preparation and Finalisation of Plan) Regulations, 1991 defines “institutional use” under clause 2 (f) as use of any land/building or part thereof for carrying on activities like testing, research, demonstration etc., for the betterment of society and it includes educational institutions. These regulations lay down the principles for proper planning and development of the area under NOIDA and also for preparation of Master Plans by NOIDA.

The Policy and Procedures for Institutional Premises Management, 2000 and the Policy and Procedures for Institutional Property Management, 2009, of NOIDA, serve as guiding manuals for management of institutional properties.

Allotment procedure under Institutional category

5.3.2 The allotment of institutional properties was made by NOIDA through Open Ended Schemes (OES)¹. The Institutional wing of NOIDA deals with allotment of institutional plots and follow-up of the post allotment compliances. The Planning wing of NOIDA is responsible for monitoring the compliances of the building completion whereas Finance wing is responsible for maintaining financial records related to recovery of land premium and other revenue dues from allottees. The stages involved from launching of the scheme till follow-up of the post allotment compliances have been depicted in **Chart 5.3** in **Chapter 5**.

Status of allotments of Institutional plots in NOIDA

5.3.3 NOIDA has made allotment of 1,204 plots under the Institutional category since its inception. During the audit period 2005-2018, NOIDA brought out 13 schemes² in which 511 allotments were made under Institutional category. The overall position of allotments under this category is depicted in **Table 5.3.1**.

Table 5.3.1: Category-wise allotment of Institutional plots

Sl. No.	Category of Property	No. of Allotments	Allotted Area (in sqm)	Premium (₹ in crore)
1	Farm houses	159 ³	18,37,340	638.67
2	Office/Corporate office	203	4,37,100	400.43
3	Information Technology (IT) /IT Enabled Services (ITES)	80	5,66,411	350.14
4	Educational	20	3,83,996	238.57
5	Hospitals/Nursing Homes	12	1,33,417	250.15
6	Milk Dairy	35	1,801	0.98
7	Miscellaneous ⁴	02	10,404	12.35
Total		511	33,70,469	1,891.29

Source: Information furnished by NOIDA.

¹ Except for hospitals and nursing home plots.

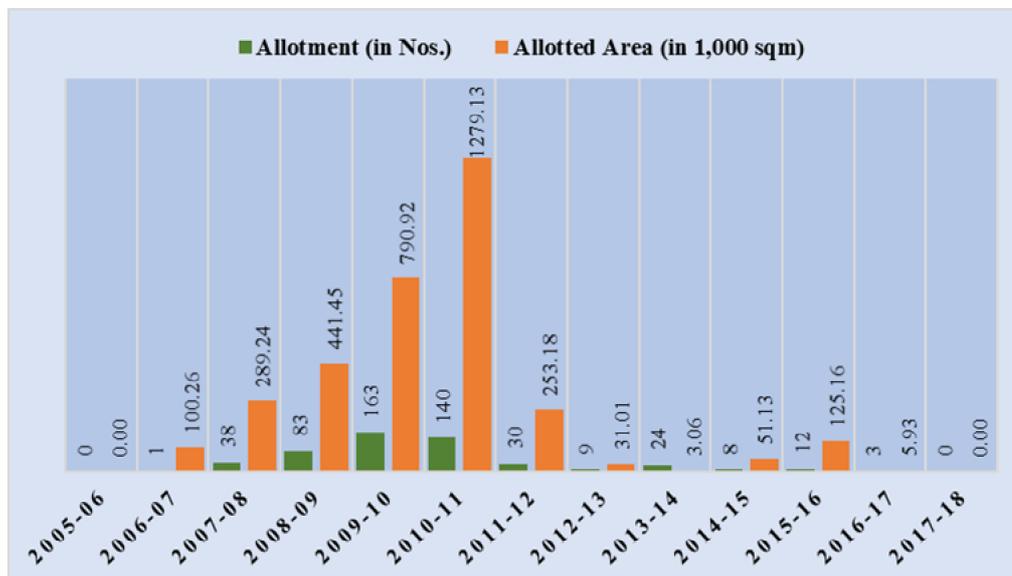
² OES-2008, OES-II/2008, OES-III/2008, OES-IV/2008-09, OES-V/2008-09, OES 2010 (FH), OES 2010-11, OES 2015(4), OES 2015-16, IT SEZ scheme, Direct allotment on fixed allotment rate, Scheme in compliance of Hon'ble High court order dated 18.10.2012, Nursing Home plot scheme 2012-13.

³ This includes two sub-divided plots.

⁴ This category includes one plot of Police Station and one plot meant for religious purpose.

Year-wise number of plots allotted and its aggregate area during the period from 2005 to 2018 has been depicted in **Chart 5.3.1**.

Chart 5.3.1: Year wise allotment of Institutional Plots



Source: Information furnished by NOIDA.

From the above data, it is evident that out of total allotments in 511 cases with aggregate area of 33,70,469 sqm, 386 allotments for 25,11,497 sqm area were made during the three years from 2008-09 to 2010-11 only, representing approximately 75 per cent of allotments by number of cases as well as by area allotted.

Scope of audit

5.3.4 Out of 511 allotments made in the Institutional category during 2005-2018, audit analysed 104 cases on sample basis, which included 51 cases of farm house allotments and 53 cases of other categories of Institutional allotments, besides conducting physical verification of two⁵ sites. Audit also sourced information from the Registrar of Companies (RoC) with a view to analyse the registration status, ownership and shareholding and the transfer of plots through transfer of shares of allottee companies.

Audit findings

5.3.5 The audit findings, as a result of examination of sample cases and physical verification, wherever carried out, are discussed in the ensuing paragraphs. These audit findings have been grouped as under:

- Deficiencies in system and procedures (Paragraph 5.3.6)
- Faulty design and implementation of schemes (Paragraphs 5.3.7 to 5.3.7.3)
- Allotments in contravention of prescribed terms and conditions (Paragraphs 5.3.8 to 5.3.8.3)
- Deficiencies in post-allotment compliances (Paragraphs 5.3.9 to 5.3.9.3)
- Map/layout related discrepancies (Paragraphs 5.3.10 to 5.3.10.3)
- Discrepancies related to terms of payments (Paragraphs 5.3.11 to 5.3.11.2).

⁵ Plot number C1, Sector 153 and plot number 01, Sector 143 B.

Deficiencies in systems and procedures

5.3.6 On analysis of the various schemes brought out by NOIDA, Audit observed the following shortcomings at the scheme formulation stage by the Institutional wing of NOIDA:

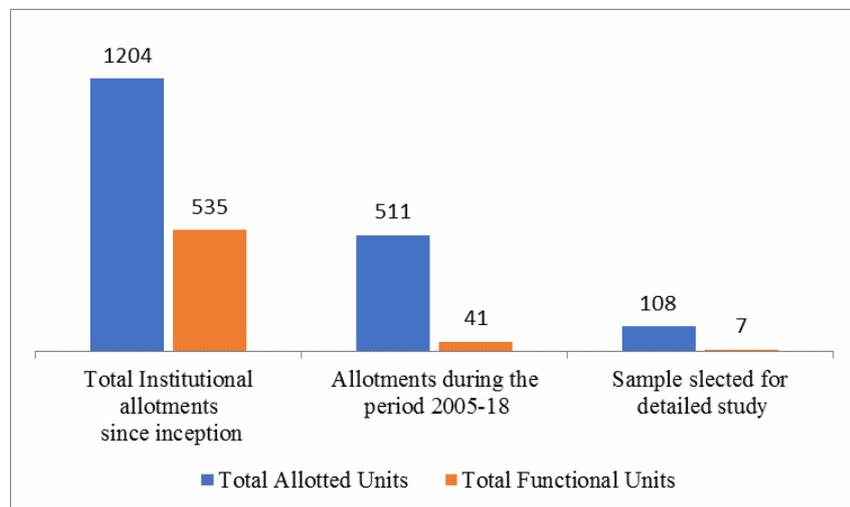
- Before bringing out any allotment scheme, no objective data was collected or discussed in the Board meetings in respect of assessment of demand for institutional plots.

In its reply, NOIDA stated (August 2020) that schemes were published in national and local newspapers, which is an effective medium for assessment of demand. This practice has been prevalent in NOIDA since inception.

The reply of NOIDA makes it evident that no assessment of demand was undertaken before launch of the schemes and its publication in newspapers.

- As per the conditions laid down in the scheme brochure, on completion of the specified percentage of the maximum permissible covered area, a certificate of functionality is issued to the allottee. Functionality denotes implementation of the project within the prescribed time from the date of execution of lease deed. However, Audit observed that NOIDA did not formulate any policy to enforce the functionality of the allotted plots which resulted in very low percentage of functional units. The position of functional units as of 31 March 2020 out of total units allotted by NOIDA (since inception) has been summarised in **Chart 5.3.2**.

Chart 5.3.2: Allotments and Functional units under Institutional category



Source: Information furnished by NOIDA.

In reply, NOIDA stated (August 2020) that in cases of plots remaining as non-functional units within due time, there are provisions for levy of extension charges and for impounding of deposited amount after cancellation.

The reply is not acceptable as despite obvious penal provisions regarding impounding of deposited amount after cancellation of plot, NOIDA did not enforce these penal provisions in cases where plots remained non-functional for a considerable period.

- The schemes brought out by NOIDA were OES. In such schemes there was no specified period for which the scheme was to run. Also, Audit noticed that the number and size of the plots did not remain firm throughout the scheme period. Scrutiny of records revealed that the schemes brought out by NOIDA during the audit period were oversubscribed. As a result, there was substantial scope for exercise of discretion by the Institutional wing of NOIDA.

In its reply, NOIDA stated (August 2020) that under the Institutional category, plots are planned according to the requirements of applicants which keep varying from time to time. This process allows NOIDA to dispose of its plots smoothly.

The reply is not acceptable as NOIDA failed to address the issue of not specifying the period of the scheme and availability of number and size of plots for allotment. As a result, there was scope for discretionary approval in the hands of the Plot Allotment Committee (PAC).

- The allotments were made after interview of applicants by PAC. However, PAC did not have any objective and transparent criteria for assessing the applications received. On the basis of application documents, UPICO’s report, proposal by the applicant and the interview, PAC adjudged the application as satisfactory or unsatisfactory, without detailing the basis of its judgement. Thus, the entire system of allotment lacked objectivity and transparency. Such a practice left a lot of scope for exercise of discretion by PAC which has been brought out in **Paragraphs 5.3.8.1 to 5.3.8.3**.

In its reply, NOIDA stated (August 2020) that as per the prevalent delegation of powers, the CEO has complete authority to decide on allotments. PAC is constituted by the CEO consisting of officers from various wings of NOIDA which evaluate the applications based on applicants’ position, capability for execution of projects, liquidity, financial management and applicants’ commitment to the project. The CEO, it stated, takes the final decision on allotments and PAC only makes recommendations.

The reply is not acceptable as it details the authorities and powers of the CEO of NOIDA with respect to allotment but does not address the audit observation regarding lack of objective and transparent criteria and consequent use of discretion in the allotments.

- UPICO was appointed as consultant/evaluator of the applications without obtaining quotations or inviting competitive bids.

In its reply, NOIDA stated (August 2020) that UPICO is a Government organisation and NOIDA has for many years involved UPICO for preparation of schemes, evaluation of applications and advising about scheme implementation. Their engagement without tender is a normal process.

The reply of NOIDA confirms that due process of inviting competitive bids was not followed in the instant case. Findings of audit in this and other chapters point to a number of shortcomings on the part of UPICO in its evaluation process, which together with infractions on the part of officials in NOIDA, has caused huge losses to NOIDA and undue and unjust gain to allottees.

Faulty design and implementation of schemes

5.3.7 Audit noticed that there were deficiencies both in formulation of schemes brought out under Institutional category in NOIDA as well as in their implementation, which led to financial losses to NOIDA. These are discussed below:

Loss due to allotment of Office/Corporate Office Plots under Institutional category

In contravention to NOIDA's prevailing regulations, it allotted 202 offices/corporate offices plots under Institutional category instead of Commercial category which resulted into a loss of ₹ 3,031.87 crore to NOIDA.

5.3.7.1 As discussed in **Paragraph 5.3.1**, Plan Regulations, 1991 define institutional use as “the use of any land/building or part thereof for carrying on activities like testing, research, demonstration etc., for the betterment of the society and it includes educational institutions”. These regulations lay down the principles for proper planning and development of the area under NOIDA and also for preparation of Master Plans by NOIDA.

Further, as per the definition of land use of premises/activities under the Master Plan 2031⁶, office/corporate office was defined as “A premise used for office of commercial establishment, profit making organisation and other institutions”. NOIDA had itself launched a scheme for allotment of office plots during February-March 2007 under Commercial Category. Thus, from a perusal of the above facts, it is evident that plots for corporate office ought to be categorised under commercial category.

Moreover, on comparing the allotment of offices in another development authority in the vicinity, Audit noted that allotment of office spaces is covered under commercial category in Delhi Development Authority (DDA) also. Further, as per the provisions of Section 8 of the Companies Act, 2013 (Section 25 of the erstwhile Companies Act, 1956)- “an association having objects to promote commerce, art, science, religion, charity or any other useful purpose and not having any profit motive can be registered as Non-Profit Company”.

It is also notable that initially, as per clause 10.2.1 of the scheme brochure of OES-III 2008, commercial offices were allowed as permissible activities under Institutional Category. However, immediately after the launch of the scheme, NOIDA withdrew (17 October 2008) the permissible use of commercial office in order to restrict the commercialisation of office plots classified under institutional allocation. A corrigendum in this regard was also published (20 October 2008) by NOIDA in newspapers. However, in spite of the corrigendum, NOIDA allotted plots to corporate offices in this scheme and a subsequent scheme (OES 2010).

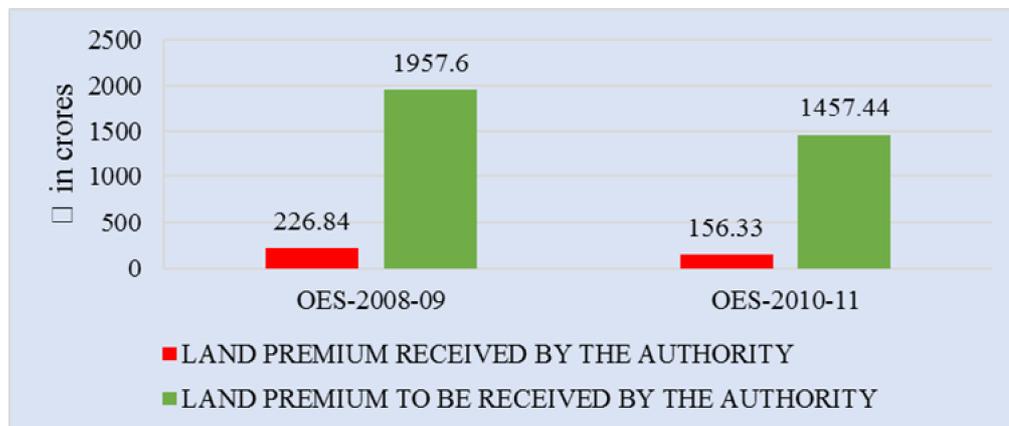
Thus, it is clear that as per NOIDA's own regulations in force, extant rules as well as those of a similar entity (DDA) within NCR, the allotment of land for corporate office/offices should have been categorised under commercial (activity) category. However, in blatant disregard of all of the above, NOIDA made allotment of 202 plots for offices/corporate offices under Institutional category in two OES (OES III-2008 and OES-2010). Audit observed that the rates for Institutional category allotments in these cases ranged from ₹ 7,800 per sqm to ₹ 22,464 per sqm, while the corresponding rates under Commercial category ranged from ₹ 61,000 per sqm to ₹ 99,000 per sqm. Hence, allotments of 4,25,100 sqm area made in two schemes (during the period 11

⁶ Chapter 7-3, para 4.2 (at S. No.56).

October 2008 to 28 August 2012) at lower rates applicable for Institutional category resulted in loss of ₹ 3,031.87 crore⁷ to NOIDA (**Appendix-5.3.1**).

The scheme-wise details of land premium received and to be received by NOIDA in both the schemes is depicted in **Chart 5.3.3**.

Chart 5.3.3: Loss to NOIDA in OES III-2008 and OES- 2010



Source: Information compiled by Audit.

In this respect, information obtained from the records of the RoC confirms that, out of 202 entities (to whom plots were allotted for corporate offices/offices), only 145 companies were found to be registered with the RoC and none of these 145 companies was registered as “Not for Profit Company” in the records of RoC. Further, these allotments were made on the basis of interviews which accorded vast discretion in allotments of plots.

Moreover, the orders of Government of Uttar Pradesh (GoUP) regarding stamp duty⁸ provide that on every transfer of property of more than ₹ 1,000, stamp duty was applicable at the rate of ₹ 50 on every ₹ 1,000 or part thereof *i.e.* at the rate of five *per cent* of value of property. Thus due to under recovery of rates, not only was NOIDA deprived of income amounting to ₹ 3,031.87 crore but it also resulted in short levy of stamp duty amounting to ₹ 151.59 crore on the allotments which was a loss of revenue to the Government exchequer.

In its reply, NOIDA stated (October 2020) that the schemes were brought in with practical approach and keeping in view the interest of the Authority. NOIDA is independent for making its rules/conditions for schemes. During the period 2008-11, the allotments were made to offices, IT/Information Technology Enabled Services (ITES) units, various schools and social establishments under Institutional category. All these allotments were in order with respect to Master Plans/Building regulations and Government orders. Further, as per the schemes’ brochures the allotments were not restricted for “Not for profit Company”.

The reply of NOIDA is not acceptable. During the period when allotment was made under the Institutional category, the applicable Regulations in force were unambiguous about the activities that could be covered by the category *viz.* testing, research, demonstration etc. for the betterment of the society and educational institutions. None of the cases highlighted by Audit in **Appendix 5.3.1** under any circumstances qualify to be categorised under

⁷ Including the loss of ₹ 161.75 crore pointed out in Paragraph number 4.11.

⁸ Notification no. SR-5-2756/11-2008-500 (165)-2007 dated 30 June 2008.

Institutional category. For wilful allotment made under Institutional category to corporate offices and the consequent loss of over ₹ 3,000 crore caused to NOIDA, the Government should take exemplary action against all the delinquent officers.

Loss due to allowing inadmissible rebates to IT/ITES plots

Due to incorrect application of GoUP Policy and continuation with it even after the withdrawal by GoUP, NOIDA incurred loss of ₹ 147.40 crore on 153 allotments made for the IT/ITES units.

5.3.7.2 As per clause 10.6 of the Uttar Pradesh Information Technology Policy-2004 (IT policy) of GoUP, 'every IT/Electronic unit having investment proposal of ₹ 50 crore and above was to be categorised as mega investment unit' and all the Development Authorities, Industrial Development Authorities and Uttar Pradesh Awas Evam Vikas Parishad were required to provide land to these mega investment units, at a minimum rebate of 25 per cent on the prevalent sector rate.

This IT policy was adopted by NOIDA Board in its 124th Board meeting held on 28 March 2005. Later, GoUP (October 2012) terminated the IT policy of providing land at 25 per cent rebate in Tier I cities (Noida and Greater Noida).

Audit observed that NOIDA, while fixing the concessional price of IT/ITES plots, did not consider the criteria for mega investment unit and applied a universal rebate of 25 per cent while calculating the sector rate of plots allotted for IT/ITES units irrespective of their proposed investment plan. Thus, due to incorrect application of GoUP Policy, ineligible applicants of IT/ITES plots also received rebate in the price of plots. During the period 2005-06 to 2011-12, NOIDA allotted 144 plots (under Industrial and Institutional category) consisting of total area of 5,50,001.93 sqm for the IT/ITES industry in which the proposed investment plan was less than ₹ 50 crore and suffered loss of ₹ 84.23 crore on allotment of these plots {**Appendix 5.3.2(a)**}.

Audit further observed that even after GoUP discontinued the rebate for Tier I cities in the Policy of 2012, NOIDA continued to provide the rebate to IT/ITES plots and during the period 2012-13 to 2015-2016. NOIDA allowed inadmissible rebate which resulted in loss of ₹ 63.17 crore on the sale of nine IT/ITES plots consisting area of 1,84,871.50 sqm {**Appendix 5.3.2(b)**}.

The scheme-wise details of the loss incurred by NOIDA due to allowing inadmissible rebate to IT/ITES plots are detailed in **Table 5.3.2**:

Table 5.3.2: Scheme wise details of loss incurred by NOIDA in sale of IT/ITES plots

Sl. No.	Name of scheme	Duration of Scheme	Number of allotments ineligible to get rebate	Area (in sqm)	Loss to NOIDA (₹ in crore)
1.	Noida/IP/2006-07/OES/01	08.09.2006 to 06.02.2007	33	2,04,400	25.55
2	Noida/IP/2007-08/OES/01	06.08.2007 to 16.08.2007	19	87,780	14.04
3	Institutional/OES/2008(I)	18.01.2008 to 11.02.2008	30	1,44,796	23.17
4	Institutional/OES/2008(II)	20.06.2008 to 10.10.2008	62	1,13,025	21.47
5	Noida/IP/2013-14/OES/01	15.09.2013 to 13.02.2014	01	1,00,000	29.90
6	Institutional/OES/2015-16	26.02.2015 to 30.12.2015	08	84,872	33.27
	Total		153	7,34,873	147.40

Source: Information compiled by Audit.

Hence, due to universal application of rebate for all IT/ITES units irrespective of the investment made by them and continuing with it even after October 2012, NOIDA provided undue favour to the allottees which resulted in loss to NOIDA of ₹ 147.40 crore on 153 allotments made for IT/ITES units.

In its reply, NOIDA stated (October 2020) that on the basis of IT Policy of GoUP, the Board decided to grant 25 *per cent* rebate on sector rate for promoting IT/ITES activities in the region, however, it was applicable to all IT/ITES units equally and not for only mega units. Further, this rebate was continued in succeeding years also.

The reply is not acceptable as IT Policy- 2004 of GoUP provides that this rebate was only applicable to mega units. But the decision taken by NOIDA Board was in supersession of GoUP policy and led to undue benefit to the allottees, NOIDA neither informed GoUP nor sought any special dispensation for this departure from GoUP policy. Moreover, the delegated powers to the Board of NOIDA need to be exercised in a fiduciary manner to safeguard the interests of NOIDA. This decision, on account of which NOIDA suffered a loss of ₹ 147.40 crore, was neither in compliance of GoUP orders nor in NOIDA’s interest.

The Government may consider making it mandatory for all Development Authorities to obtain specific approval of the Government before it can provide the special dispensation which is beyond laid down GoUP’s policies/orders.

5.3.7.3 The GoUP, with a view to develop Uttar Pradesh as a leading IT/ ITES investment destination, introduced the UP IT and Start-up Policy 2017-2022. This policy included a provision to provide reimbursement upto 25 *per cent* of the cost of land to IT/ITES units on purchase of land from State agencies at prevailing sector rates. This rebate was to be reimbursed from the State Budget.

As discussed in **Paragraph 5.3.7.2**, the NOIDA Board, in 124th Board meeting held on 28 March 2005, had already approved a rebate of 25 *per cent* in the allotment rates for IT/ITES plots. The rates declared by NOIDA for subsequent years have 25 *per cent* in-built rebate for IT/ITES plots.

On 11 June 2018, NOIDA allotted plot no. 01 measuring 302,670 sqm in Sector 157 to M/s Tata Consultancy Services at the land rate of ₹17,002.40 per sqm under a scheme for allotment of Industrial Plots-II (2017-18). The allottee requested (09 August 2018) GoUP and the CEO, NOIDA to provide a reduction of 30 *per cent* in the price of plot as the unit can be categorised under Mega Plus unit⁹. Considering the request of the allottee, GoUP provided (4 January 2019) a rebate of 25 *per cent* on the price of land as provided in the UP IT and Start up Policy 2017-2022 and directed NOIDA that amount of this rebate would be borne by NOIDA itself. Accordingly, the revised allotment letter (25 January 2019) considering 25 *per cent* rebate on land rate was issued to the allottee. NOIDA, at no point, drew the attention of GoUP to the in-built rebate in the sector rates of IT/ITES plots and an additional rebate of 25 *per cent* equivalent to ₹ 176.89 crore was provided to the allottee in respect of plot premium and one-time lease rent, which has been borne by NOIDA.

In its reply, NOIDA stated (August 2020) that the above allotment was made at the prevalent rate applicable at that time. The decision of granting rebate was taken at the level of the Government.

The reply is not tenable as the UP IT and Start-up Policy 2017-2022 provides that reimbursement up to 25 *per cent* of the cost of land shall be given to

⁹ Units having investment of more than ₹ 200 crore or employment of more than 5000 workers.

IT/ITES units on purchase of land from State agencies at prevailing sector rates. The rates for IT/ITES units in NOIDA were already discounted by 25 per cent as per NOIDA's own policy. Since 25 per cent additional rebate was provided by the GoUP, the Authority should seek reimbursement for it from the GoUP as per UP IT and Start-up Policy 2017-2022.

Allotments in contravention of prescribed terms and conditions

5.3.8 The discrepancies observed in allotment of Institutional category plots are discussed in the following paragraphs:

Discretionary allotments

5.3.8.1 Audit observed that NOIDA, by failing to lay down the criteria for evaluation of applications and to provide the basis of approval/disapproval by the PAC and the CEO, delegated vast amount of discretionary powers to PAC and the CEO. Audit analysed the allotments made and observed the following instances of misuse of delegated powers:

Case Study

NOIDA launched an OES for allotment of Institutional plots for educational, training, research, software, IT/IT enabled services etc. in 2005. Under this scheme the plots were allotted by the CEO on the recommendations of PAC headed by Additional CEO of NOIDA on interview basis.

Scrutiny of records revealed that M/s Vaani Vandana Educational & Welfare Society had submitted (February 2005) its application for allotment of 1000 sqm of institutional plot for establishment of play/primary school. PAC rejected (30 September 2005) the application as applied plot size was not available in the sector. Against the decision of PAC, an appeal was made by the applicant to the CEO for reconsideration of the case. The CEO of NOIDA accepted the appeal of the allottee and directed (July 2006) that a fresh application be submitted for the allotment. Here, it is pertinent to mention that there was no provision of appeal/reconsideration of the decision of PAC in the brochure. Thus the chance given to the allottee was totally based on the discretion of the CEO.

The allottee submitted a fresh application for allotment of plot on 04 September 2006 and in PAC meeting of 15 September 2006 the recommendation for allotment was made which was finally approved by the CEO and allotment letter was issued on the same day i.e. 15th September 2006. As per clause 1(C) of the brochure "Registration money equivalent to 10 per cent of total premium of plot area for which application was being submitted should be deposited in favour of NOIDA." But in contravention of the above condition, the allottee did not deposit the application form along with the required 10 per cent registration amount (deposited only ₹ 5.05 lakh instead of ₹ 11.52 lakh). Despite insufficient registration amount, the application was accepted by NOIDA and allotment made for a plot of 1,439.97 sqm land in Sector 22 of NOIDA. From the above it is evident that the established procedures were not followed in allotment of plot which resulted in discretionary allotment of plot costing ₹ 1.15 crore (1,439.97 sqm X ₹ 8,000). It was also observed that the ownership of the plot was subsequently transferred (September 2009) through 100 per cent change in shareholding. The grant of privilege is further evidenced by the ensuing development that at

the time of change in shareholding, the Standing Committee¹⁰ recommended (February 2011) levy of proportionate Change in Shareholding (CIS) charges, but NOIDA issued notice for recovery amounting to ₹ 5.32 lakh only instead of ₹ 39.92 lakh leviable as per extant provisions in this regard. The entire matter needs thorough investigation to establish why and how all procedures were dispensed with in the case and special privilege accorded to the beneficiary.

In its reply, NOIDA stated (October 2020) that the provision in the Office Order of 03 January 2005 states that “in a case where, the application was rejected by NOIDA, an appeal can be made to the CEO and after accepting the appeal a further chance can be given to the applicant”. Regarding under charge of registration amount, NOIDA accepted the audit observation and stated that after issuing show cause notice to the members of the committee, required action will be taken. With regard to CIS charges, it was stated that charges were recovered as per the office orders and orders of GoUP in this regard.

The reply is not acceptable. There was no provision of appeal in the scheme brochure of Institutional wing as well as other allotment wings of NOIDA. The instant case is a clear exception from the brochure provisions. The standing committee specifically stated that “it is a case of 100 per cent change in management and proportionate CIS may be recovered.” But despite recommendations of the standing committee the CIS amount due was not recovered. The reference to GoUP orders is incorrect as it was related to the transfer charges and not to CIS charges. With respect to the under recovery of registration charges NOIDA accepted the lapse and assured to take appropriate action. However, no action was taken till date (November 2020) in this regard. Further, the reply does not indicate what action against the concerned officer(s) is proposed for according special dispensation in the instant case.

Allotment to Companies which were not even incorporated

Against the terms and conditions of brochure, NOIDA made allotments to companies which were not even incorporated at the time of submission of applications.

5.3.8.2 NOIDA launched three OES¹¹ for allotment of various institutional plots during 2008. As per clause 1(b) of the OES brochure “the allotment of the land will be made only in favour of a charitable trust/society/duly registered partnership firm or company constituted and incorporated in India and registered with the competent authority”. Hence, it implies that only a registered applicant was eligible for making an application. Audit noticed that NOIDA itself has rejected four applications {one application under the Scheme OES (III) 2008 and three applications under the Scheme OES 2015(1)} of the allottee on the ground that these were not incorporated at the time of submission of application. Further clause 15 of the brochure provides that “if the allotment is found to be obtained by any misrepresentation, concealment, suppression of any material facts by the allottee, the allotment of plot will be cancelled and entire money deposited by the allottee shall be forfeited and legal action will be taken”.

Scrutiny of the records revealed that in four cases out of 53 sampled cases, land was allotted to companies which were not even incorporated at the time

¹⁰ This standing committee was NOIDA’s internal committee headed by Deputy Chief Executive Officer. The other members of the committee were Manager (Institutional), AGM (Institutional), Chief Town Planner, Finance Controller and Chief Financial Consultant.

¹¹ OES -2008, OES (II) 2008 and OES (III) 2008.

of submission of application. Further, NOIDA did not take any action¹² against the allottees in line with the provisions of the brochure as discussed in succeeding paras.

- **M/s Omega Info Projects Private Limited (Plot No. 12, Sector 126):** The Company submitted the application for allotment of IT/ITES plot measuring 3,000 sqm. under the Scheme OES-I on 24 January 2008 and as required in the application form, stated that the certificate of incorporation was enclosed. Audit noticed that the Company was not registered/incorporated on the date of application (24 January 2008) but it was incorporated on 18 February 2008 (as per the incorporation certificate issued by RoC). This fact was also highlighted by UPICO in their report. But PAC, in spite of the fact being specifically highlighted by UPICO in its report, while evaluating the application did not consider the above misrepresentation and concealment of facts by the applicant Company and recommended for allotment of plot no. 12 sector 126 to the Company at its discretion. The allotment of the plot was made on 28 March 2008. Audit further noticed that the allottee transferred the plot to another Company in December 2009 and thereafter it was further transferred in May 2015, which is indicative of the fact that allottee/transferees were trading in the plot.
- **Saburi Infotech (Plot No. C- 30/7/1, Sector 62):** The Company submitted its application for allotment of 4000 sqm of IT/ITES plot on 06 February 2008 under the company name of “Proposed Pvt. Ltd. Company” (as the name of the Company was not registered upto that date). The Company was incorporated on 05 March 2008, however PAC recommended the allotment of plot in favour of the Company against the terms of the brochure. The allotment letter for the plot was issued on 28 March 2008. This plot was also transferred to another company in January 2016 which is indicative of trading in the plot by the allottee.
- **Aarvak KPO Solutions Private Limited (Plot No. A-17, Sector 136):** The Company submitted the application for allotment of 1,000 sqm of land on 28 July 2008 under the scheme OES-II and clearly mentioned in the application that the proposed company (M/s Arvak KPO Solutions Private Limited) is under incorporation. The incorporation certificate was issued on 12 August 2008 and the plot was allotted on 09 September 2008. Audit further noticed that 100 *per cent* shareholding of the allottee Company was changed (March 2017) resulting in transfer of plot.
- **Hi Lead Infotech (P) Limited (Plot No. C-1, Sector 153):** Audit observed that the Company applied for a plot under the scheme for IT/ITES uses stating that the registration certificate of incorporation is enclosed with the application. However, actually at the time of application (05 August 2008) the Company was not registered, as the incorporation certificate of the Company was issued on 11 August 2008 by RoC. This fact was also highlighted by UPICO in its report. But in spite of UPICO observation, PAC recommended (09 September 2008) allotment of plot to the Company which was approved by the CEO on 09 September 2008. The allotment letter was issued to the Company on 12 September 2008 for the plot measuring 20,000 sqm at a premium of ₹ 12.27 crore.

¹² Except in case of Hi Lead Infotech (P) Ltd. where the allotment was cancelled on complaint. However, the allotment was reinstated by the Hon’ble High Court.

The above fact was highlighted through a complaint received in NOIDA (14 November 2013). NOIDA, after investigating the merits and facts of the case, issued a show cause notice to the Company and consequently cancelled the lease deed (23 February 2015) as allotment of land was obtained through misrepresentation of facts.

Subsequently, the Company filed (27 February 2015) a writ petition in the Hon’ble High Court, Allahabad against the above cancellation order. The Hon’ble High Court, Allahabad in its final judgement (29 November 2016) held that *“the screening committee had full opportunity to go through the application and detect misrepresentation, if any, but the said right was not exercised and when the project has gone too far by making large scale investment and third party rights have also been created, then if one fine morning NOIDA has woken to find out that wrong facts has been mentioned in the application form and thus inviting action by way of cancellation of sale deed cannot be approved”*. Accordingly, the order of NOIDA dated 23 February 2015 regarding the cancellation of lease deed was quashed and set aside.

Hence, due to non-judicious act of NOIDA an ineligible Company obtained land through misrepresentation and concealment of facts. The PAC, in spite of fact of non-incorporation being highlighted by UPICO, recommended the allotment which was approved by the CEO. This resulted in allotment of the plot to an ineligible applicant.

During the exit conference (9 October 2020) the Government and NOIDA accepted the audit contention that the companies should be incorporated at the time of submission of application. The Government also directed NOIDA to modify the condition for future schemes and make the process transparent with specific provisions in this regard. The compliance shall be reviewed in next audit.

- Further, as the plot was allotted for IT/ITES purposes only no other uses were permissible on this plot. However, during physical verification by the audit team along with officials of NOIDA on 6 December 2019 it was noticed that a plot allotted to Hi Lead Infotech (P) Limited was leased for commercial activities other than IT/ITES which is also depicted in the photograph below:



In its reply, NOIDA stated (August 2020) that commercial activities on IT/ITES plots is against the terms of allotment and lease deed. The process of issuing notice to the allottee in this regard is under process. However, NOIDA has not taken any action as yet (October 2020).

Thus, all the four cases brought out above indicate that there were serious acts of omission/commission on the part of PAC, a point that has also been highlighted by the Hon'ble High Court in its judgment in one case.

The Government may consider investigating the matter and fix responsibility on the concerned member(s) of PAC for their role in the matter.

Allotments in departure from prescribed procedure

Special dispensations accorded by PAC to enable rectification of the shortcomings in submitted applications together with concealment of the facts in the minutes of PAC resulted into allotment of plots to entirely ineligible applicants.

5.3.8.3 As per clause 1.6 of the scheme {OES 2015(01)} brochure the application along with the requisite documents were to be screened by a duly constituted sub-committee/screening committee. Incomplete application without requisite documents was not to be recommended for interview of the applicant. The terms of the brochure further provided that the applicant should have positive net worth/surplus investable funds. The statement of sources of funds and liquidity certificate from any nationalised bank were also required to be submitted with the application. Further, as per clause 17 of the scheme brochure, if the allotment is found to be obtained by any misrepresentation, concealment, suppression of any material facts by the allottee/lessee, the allotment of plot may be cancelled and legal action may be taken.

Audit observed that in all the 24 applications received in the scheme {OES 2015(01)}, the screening consultant, UPICO, had not recommended the cases for allotment, mentioning the shortcomings in the applications. However, NOIDA in contravention of terms and conditions of scheme brochure, communicated the deficiencies in the application form to the applicants and gave chance for submission of the requisite documents. A revised screening report was also taken from UPICO for 20 cases and other four applications were rejected as the constitution of applicant entity was not registered. Allotments were then recommended for 14 entities by the PAC. The discrepancies observed by Audit in four sampled cases are detailed below:

(i) M/s Saks Developers Private Limited (Plot No. A-92 Sector 153):

A plot measuring 9,860 sqm was allotted (29 March 2016) to M/s Saks Developers Private Limited for establishment of IT/ITES units under the scheme for a premium of ₹ 12.19 crore. Audit observed the following discrepancies in the allotment:

- The allottee did not submit liquidity certificate and statement of sources of fund at the time of submission of the application. Based on the scrutiny of the application, UPICO in its report dated 03 February 2016 also recommended the case as negative for allotment of plot.
- In the subsequent evaluation, UPICO recommended that 'based on documents submitted, net worth of the promoters is insufficient, but as per letter attached from the shareholders of the company that if land is allotted then they will raise capital, the case may be considered'.
- The project cost was ₹ 42.20 crore against which ₹ 12.20 crore was shown as promoters' equity and balance ₹ 30 crore was to be met from bank finance. However, as per Balance Sheet, the networth of the

applicant was ₹ 0.75 crore and further, documents of bank finance for only ₹ 9.25 crore were submitted by the applicant against ₹ 30 crore.

- Audit further noticed that the application for the allotment of land (08 June 2015) was made in the name of M/s Saks Developers Private Limited and in October 2015 the constitution of the allottee was changed from Limited Company to Limited Liability Partnership. In the meeting of PAC (March 2016) this fact was not disclosed by the allottee and the land was allotted to the applicant. However, before execution of the lease deed this fact was communicated (27 May 2016) by the allottee to NOIDA and it requested that the lease deed be done in favour of Saks Developers LLP.

Here, it is pertinent to mention that even after the above concealment of facts came to the knowledge of NOIDA, it did not initiate any action under aforementioned clause 17 of the brochure against the allottee and the lease deed was executed in favour of M/s Saks Developers Private Limited on 26 October 2016. Naturally, on the date of lease deed M/s Saks Developers Private Limited did not exist. Due to change in constitution, the bank guarantee against stamp duty exemption¹³, submitted in name of M/s Saks Developers Private Limited was also rendered void.

Audit noticed that UPICO, in its revised report dated 16 March 2016, had recommended the case for consideration despite stating that net worth of the promoters was insufficient. These vital points were not even recorded in the minutes of PAC and in spite of all the above shortcomings, PAC recommended (March 2016) the allotment of plot in favour of the allottee. This indicates undue favour by NOIDA as no action was taken against the applicant for the concealment of facts and its misrepresentation. Further, regarding concealment and misrepresentation of facts by the allottee in respect of LLP and bank guarantee, no action was taken by NOIDA till date (December 2020) even after the facts came to the notice of NOIDA at the time of execution of lease deed in October 2016.

(ii) M/s Best News Company Private Limited (Plot No. C-56A/18, Sector 62): A plot measuring 1,924.50 sqm was allotted (30 March 2016) to M/s Best News Company Private Limited (Company) for establishment of IT/ITES unit under the scheme for a premium of ₹ 2.38 crore. Audit observed the following discrepancies in the allotment:

- The required documents such as implementation schedule, cash flow and land use pattern were not submitted along with the application form. This fact was also highlighted by UPICO in its report dated 03 February 2016 and they recommended the case as negative for allotment of plot.
- In the subsequent evaluation, UPICO recommended that ‘based on documents submitted, net worth of the promoters is insufficient, but as per letter from the promoter that if allotted then he will pay 100 per cent amount within 15 days, hence the case may be considered’.
- Audit observed that as per the documents submitted by the Company, the total project cost was ₹ 21.15 crore out of which 74.94 per cent

¹³ Exemption of stamp duty was provided against Bank Guarantee to ensure the timely completion of the project as specified in the brochure and Government orders. If the construction was not completed within specified period, the exemption so provided stands cancelled and amount of stamp duty along with interest was to be deposited by the allottee.

(₹ 15.84 crore) was to be met from the promoters' equity only. But as per the Balance Sheet submitted by the Company the net worth of the Company was negative in both the years viz. 2012-13 and 2013-14. In fact, the Company was incorporated in the year 2011-12 and the promoters' equity was non-existent to meet the promoters' contribution in project cost.

- About the insufficiency of promoters' equity, the applicant stated that they were financially sound and would pay 100 *per cent* land premium within 15 days and hence requested to allot the plot which was of ₹ 2.38 crore only. Here, the applicant did not mention about the sources for the remaining amount required for project implementation from promoters' equity i.e. ₹ 13.46 crore (₹ 15.84 crore - ₹ 2.38 crore).

It is notable that none of these vital points which confirmed the lack of eligibility for allotment of the plot were even recorded in the minutes of PAC and brought to the notice of the CEO. PAC also concealed the fact of UPICO's initial report and stated that "UPICO in its screening report has also recommended about the consideration for allotment" and recommended for allotment of the plot. It is pertinent to point out that UPICO in its first report had recommended the case as negative and in the revised report dated 16 March 2016 recommended the case for consideration despite stating that the net worth of the promoters was insufficient.

(iii) SKS Educational and Social Trust (Plot No. SS, Sector 137): A plot measuring 14,709.19 sqm was allotted (30 March 2016) to M/s SKS Educational and Social Trust for the establishment of senior secondary school under the scheme for a premium of ₹ 30.99 crore. Audit observed the following discrepancies in the allotment:

- UPICO in its initial evaluation report dated 03 February 2016 did not clearly indicate if the case was positive or negative. In all other reports of UPICO, the conclusion were unambiguous, stating either "positive" or "negative". However, in this case, UPICO remarked that "project cost is not ascertainable and means of finance is not understandable" but the final remark was left blank which showed the failure of UPICO to evaluate and clearly state facts in its report.
- In the revised report dated 16 March 2016, UPICO recommended the case after adding the net worth of a member of the applicant Trust instead of considering the net worth of the applicant only.

It is notable that none of these vital points which confirmed the lack of eligibility for allotment of the plot were recorded in the minutes of PAC for bringing to the notice of the CEO when PAC recommended for allotment of plot.

(iv) Hillwood India Society (Plot No. NS-1, Sector 122): A plot measuring 1,926 sqm was allotted (01 April 2016) to M/s Hillwood India Society for establishment of Nursery school in Noida under the scheme at premium of ₹ 5.68 crore. Audit observed the following discrepancies in the allotment made:

- UPICO in its screening report dated 03 February 2016 recommended the case as 'negative' pointing out that promoters' equity was insufficient to meet the project.
- Further in the revised report dated 16 March 2016, UPICO recommended the case after adding the net worth of the associate societies of the applicant whereas in the initial report UPICO itself had not considered the net worth of these associate societies.

Audit observed that even though the brochure conditions provided for considering only applicant’s networth and UPICO’s report also brought out the issue, the PAC failed to exercise the requisite due diligence and recommended the allotment. The total project cost was ₹ 14.40 crore against which the networth of the applicant was only ₹ 3.05 crore and rest was sought to be made from associated societies. In the revised report dated 16 March 2016, UPICO recommended the case after adding the net worth of the associate societies of the applicant whereas in the initial report UPICO itself had not considered the net worth of these associate societies.

Audit observed that in all four cases discussed above, the PAC failed to bring to light the fact of UPICO’s initial report being negative/blank. It is notable that none of these vital points which confirmed the lack of eligibility for allotment of the plots were recorded in the minutes of PAC for bringing to the notice of the CEO when PAC recommended for allotment. Based on the recommendation of PAC, the allotments were approved by the CEO on 28 March 2016. Audit observed that in the above cases the recommendations of PAC were irregular and they misrepresented the facts which resulted in discretionary allotment of plots costing ₹ 51.24 crore.

In its reply, NOIDA stated (October 2020) that the chance for re-submission of records was provided to all the applicants under the schemes and as such there was no special dispensation. Audit had not considered the re-evaluation report of UPICO which recommended for consideration of the case for allotment. After considering all aspects, the PAC recommended for allotment which was approved by the CEO.

The reply is not acceptable in view of the brochure condition providing for rejection of incomplete applications. From a perusal of other schemes of Institutional wing as well as other allotment wings of NOIDA it is evident that no such practice of intimating deficiencies or giving chance for re-submission of documents and re-evaluation by UPICO was prevalent in NOIDA. This special dispensation was adopted only in this scheme out of the schemes examined in audit. The lack of due diligence by PAC, together with omission and concealment of key facts, indicates a serious breach of propriety on the part of PAC which is entrusted with fiduciary duties in allotment of land.

The instances brought out above point to serious contravention of rules and concealment of facts by PAC. The Government should consider taking exemplary action against the concerned members of PAC.

Deficiencies in post-allotment compliances

5.3.9 The deficiencies observed in post-allotment compliances in contravention of scheme guidelines are discussed in ensuing paras. A case study showing the chain of events in a particular allotment case is produced hereunder:

Case Study

Undue favour to M/s Anand Infoedge Pvt. Ltd.

A plot measuring 1,00,980 sqm (valued ₹ 49.98 crore) was allotted (March 2008) to M/s Anand Infoedge Private Limited (Company) under the OES-2008 for establishing IT/ITES projects in Sector 143 B Noida. The lease deed for the plot was executed on 21 August 2008 and possession of land was given on 29 August 2008.

From scrutiny of records, Audit noticed the following irregularities with regard to allotment, payment of dues and in map approval as detailed below:

1. Allotment: The Company was incorporated on 27 September 2007 and the promoters had no background in IT/ITES business. As per the brochure requirement, the applicant company did not submit the three years Balance Sheet, as there was none available at the time of application.

2. Failure to pay instalments: After depositing 30 *per cent* as allotment money, the allottee did not pay any instalment as per the terms of the lease deed. Subsequently, the overdue amount of the allottee was rescheduled (August 2011) but the allottee never paid the (rescheduled) instalments to NOIDA and its total dues stood at ₹ 159.98 crore as on 30 September 2020.

3. Map approval in spite of pending dues: As per orders of the CEO (29 January 2013), it was mandatory to obtain 'No Dues Certificate' from Accounts wing for the approval of maps.

In violation of this order, the CEO irregularly approved (January 2015) the revised building plan which provided the Company three months' period to clear its dues failing which the approval of map would automatically stand cancelled. However, the Company did not clear its dues till date (September 2020) and NOIDA did not take any enforcement action against the allottee. Hence, the approval of the revised building plan by NOIDA violating its own order also resulted in undue benefit to the allottee. The approved map also stood cancelled due to non-payment, yet the allottee has continued with the construction and NOIDA failed to take any action. A joint physical verification of the plot was conducted by the Audit team along with officials of NOIDA on 6 December 2019 to ascertain the present status of development. Photographs taken during joint physical verification and at two other points (May 2015 and January 2018) as obtained from Google Earth are depicted below.

Photograph 5.3.2: Position of construction in December 2019



Photograph 5.3.3: Image of May 2015 showing vacant area



Photograph 5.3.4: Image of January 2018 showing constructed building



It is evident from the foregoing that in spite of lapse of the validity of the sanctioned map, NOIDA has allowed the allottee to carry out construction unabatedly.

4. Use of land for non-permitted activity: Though the brochure condition allowed captive utilisation of 25 *per cent* space for residential, commercial and institutional purposes, it transpires from media and newspaper reports that the allottee has started selling commercial space and villas on the plot. NOIDA, instead of restraining the allottee, requested (20 June 2014) the State Government to allow sale of the space meant for use other than Institutional use which was not accepted (18 December 2014) by the Government. Thus, NOIDA, in spite of blatant violation of clauses of the lease deed, attempted to regularise the contraventions for the allottee.

It was observed that the project was launched in the name of Festival City and was to be of commercial nature. It was being promoted by Mist Sales Private Limited wherein 59 *per cent* area of allotted land was planned as commercial as evident from its RERA registration. NOIDA issued (30 November 2012) a public notice informing that as per approved drawing 10 *per cent* area can be used for residence of the staff only and therefore any sale/purchase of such residences will be illegal. It clearly indicates that NOIDA was aware of the use of the plots by the allottee for purposes other than those mentioned in the lease deed, yet it failed to take appropriate remedial action in spite of the blatant violation on the part of the allottee.

5. Examination of data received from ROC

On further analysis of facts with data obtained by Audit from RoC, it was observed that the shareholding of the applicant Company (50 *per cent* each of Kapil Raj Anand and Sarla Anand) was changed completely before the lease deed was executed (21 August 2008) in favour of M/s Pious Infrastructure Private Limited, M/s Ayam Anand Infotech Private Limited, M/s Magnum Garments Private Limited and M/s CHL Limited. Thereafter the shareholding was again changed (18 September 2012) and passed on in favour of M/s Grand Express Developers Private Limited (Grand Express). The Director of the Company was Shree Satinder Singh Bhasin and the Company has made investment in many related companies. Further, shareholding of Grand Express in the company was transferred to Bhasin Motors Limited and Bhasin Infotech and Infrastructure Private Limited. Hence, the shareholding of the Company changed three times before making it functional. However, NOIDA failed to impose the CIS charges of ₹ 35.96 crore. This constituted a further undue benefit to the allottee.

M/s Mist Avenue Private Limited, incorporated in October 2012, who was appointed as marketing/developing agent of the allottee after change in shareholding, started collecting money from the public on the premise of providing villas and commercial spaces on the plot. From a perusal of the Balance Sheets of Mist Avenue Private Limited, it was observed that ₹ 401.36 crore (approx.) was collected as booking amount from the prospective buyers for villas/commercial spaces etc. during the period 2012-13 to 2016-17.

Further, ₹ 322.22 crore was subsequently transferred to other companies of the Director *viz.* Bhasin Infotech and Infrastructure Private Limited, Grand Venice Developers Private Limited, Capital Scooters Private Limited, Grand Express Developers Private Limited, Bansidhar Ganga Prasad Private Limited, Bhasin Motors Limited, Bhasin Scooters Private Limited, Bhasin Cars Private Limited, Mist Homes Private Limited, Dhoomketu Builders And Developers Private Limited etc as loans to related parties. Thus, the intention of the allottee was very clear since the beginning as it never intended to establish IT/ITES business.

From the above, the following emerges:

- NOIDA extended undue favour to the allottee in allotment at every stage during land allocation, during payment and while permitting land use in contravention of rules. The allottee’s requests’ to NOIDA/Government to approve/condone such contraventions were also in evidence.

- The allottee intended to establish the project as a commercial space as evident from its applications filed before RERA.

- Money was being routed through sister concerns under the same management. Many litigations are pending in courts against the promoter, Shri Satinder Singh Bhasin, for non-refund of money which has also been widely reported in the media.

In its reply, NOIDA stated (October 2020) that the Company was incorporated on 27 September 2007 and thus the three-year balance sheet was not available. The allottee had total dues of ₹ 159.98 crore (as on 30 September 2020) and did not pay any amount since re-schedulement of its dues. The position of non-payment of dues after three months' time was required to be brought to the notice of the CEO and for this negligence action would be taken against the concerned officials. NOIDA had only sent the proposal to the State Government regarding change in Floor area ratio (FAR) and sale of space in market which was not accepted by GoUP. Besides all this, NOIDA had in its reply clearly stated that the allotment should have been cancelled when irregularities came to the notice of NOIDA but only show-cause notices were issued at that time.

The reply confirms that despite indicating that the allotment to M/s Anand Infoedge Private Limited should have been cancelled when irregularities came to the notice of NOIDA, no concrete action to cancel the allotment in accordance with the rules and regulations has yet been taken (October 2020). It is also not clear how a significant case of infraction has been allowed to continue for 12 years by NOIDA. This is a matter that needs to be thoroughly investigated.

Changes in Shareholding

NOIDA suffered a loss of ₹ 83.47 crore due to non-levy of Change in Shareholding charges besides facilitating transfer of plots by 11 allottees to another set of shareholders who otherwise may not have been qualified for the allotment.

5.3.9.1 As per the provision of clause B-3 (read with clause B-7) of the Policy and Procedure for Institutional Property Management (2009), the CIS charges 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, if the change in shareholding occurs before the unit is declared functional by NOIDA, CIS charges will be 1.5 times of the normal CIS charges. Thereafter CIS charges will be increased at the rate of 50 *per cent* of the normal CIS charges for every subsequent change in shareholding.

Further, NOIDA issued an office order on 27 October 2010 abolishing the CIS charges and the requirement of deed for registering changes in shareholding. This order was based on GoUP order (11 October 2010) which stated that the changes in shareholding could not be considered as transfer of property of a company and consequently stamp duty on transfer was not leviable. Audit noticed that GoUP orders did not address the CIS charges levied by NOIDA but NOIDA abolished the provision of CIS charges on the pretext of GoUP orders. NOIDA's order allowed the allottees to transfer ownership of companies holding allotted plots without payment of any charges to NOIDA. Thus, through this order NOIDA not only suffered loss of revenue but it also facilitated the allottee company to transfer the plot in favour of another set of shareholders, without any charges, who otherwise may not have been qualified for the allotment of plot. The said order of GoUP was rescinded on 04 February 2020 to stop tax evasion through this route. Audit observed that NOIDA failed to levy CIS charges in 11 cases amounting to ₹ 83.47 crore (**Appendix-5.3.3**).

In its reply, NOIDA stated (August 2020) that the decision of NOIDA (27 October 2010) of not charging CIS charges from companies was based on GoUP order (11 October 2010). Moreover, Hon’ble High Court, Allahabad has also quashed (26 September 2003) the demand of CIS charges in a particular case.

The reply is not acceptable as the Government orders dated 11 October 2010 was regarding non-levy of stamp duty and nothing was mentioned in the order about CIS charges. The contention of the Audit is further reconfirmed by the fact that GoUP had rescinded the order in February 2020 stating that this resulted in decrease in revenue of the Government. Moreover, regarding order of the Hon’ble High Court (26 September 2003) quashing the demand of CIS charges, it is to state that the CIS charges were introduced subsequently through Policy and Procedures for Institutional Property Management in March 2009.

Transfer of plots without levying charges

5.3.9.2 As per clause 11 of the scheme (OES-2008) brochure the allottee can transfer the whole plot with the prior permission of NOIDA, subject to the condition that the plot is declared functional. The transfer charges are 10 *per cent* of the prevailing rate of allotment at the time of transfer of the plot. Later on, the condition of being functional was withdrawn vide Policy and Procedure for Institutional Property Management (2009). Thus, only permission was required in case of transfer after payment of transfer charges.

Audit noticed that an allottee (M/s Surya Jyoti Software Private Limited) transferred its plot (April 2013) vide a share purchase agreement¹⁴ without any permission from NOIDA for a total sale consideration of ₹ 44.81 crore to M/s Cosmic Construction Limited.

Audit further observed that though the matter was in the notice of NOIDA, it did not demand the transfer charges of ₹ 4.48 crore. This resulted in loss to NOIDA of ₹ 4.48 crore and by this action NOIDA also caused loss of stamp duty of ₹ 2.24 crore¹⁵ to the government exchequer. Further, in spite of breach of conditions of the brochure, the allotment was not cancelled.

In its reply, NOIDA stated (October 2020) that it had not permitted the transfer of plot and in the records of NOIDA the plot is still in the name of the allottee.

The reply is not acceptable as it is well established from the records of NOIDA that the plot was transferred for a consideration of ₹ 44.81 crore on 16 April 2013 and thus transfer charges were to be recovered accordingly.

Loss to Government exchequer due to inaction on the part of NOIDA

5.3.9.3 As per GoUP notifications (January 2005, December 2005 and August 2009) the lease deed of the land used for IT/ITES and educational institution purpose was exempted from payment of stamp duty. In such cases a bank guarantee was required to be obtained in respect of stamp duty from the allottee before the execution of lease deed and handing over of the land.

¹⁴ The agreement was subsequently cancelled (25 February 2016) by the allottee (approx three year after entering into agreement) on the ground of non-payment of total agreed consideration.

¹⁵ 5 *per cent* of ₹ 44.81 crore.

Further, as per provisions of clause 3 of GoUP notification (October 2009), if the allottees of IT/ITES plots failed in obtaining the building plan approved by NOIDA within a period of 42 months or complete the construction within seven years from the date of possession, the stamp duty so exempted would be required to be deposited along with interest through the respective agency in Government accounts by revoking the deposited bank guarantee.

Audit noticed non-compliance of above provisions in two cases as brought out in **Table 5.3.3**.

Table 5.3.3: Loss of Revenue due to non-compliance of provisions of exemption of stamp duty

Particular	Details of allottees	
	M/s Surya Jyoti Software Private Limited	M/s KRN Education Private Limited
Area of the plot (in sqm.)	20,002.40	20,340
Purpose of plot	IT/ITES	School
Value of plot (₹ in crore)	9.80	18.15
Amount of Bank Guarantee (BG) required (₹ in crore)	1.09	1.16
Date of allotment	28.03.2008	29.12.2010
Date of actual possession of total area by allottee	13.06.2011	12.01.2011
Scheduled date of completion of 100 per cent construction	13.06.2018 (within seven years of possession)	12.01. 2014 (within three years of possession as per brochure)
Actual date of completion of 100 per cent construction	Not completed (as of March 2020)	September 2014 (late by eight months)
Scheduled date of obtaining of BG	13.06.2011 (from date of possession)	12.01.2011
Actual date on which of BG was obtained	15.09.2014 (late by more than three years)	07.01.2011
Validity of BG (upto)	14.03.2018	07.06.2016
Scheduled date of validity of BG. (i.e. scheduled date of 100 per cent completion)	13.06.2018	12.01. 2014
Whether BG encashed	No	No

Source: Information compiled by Audit.

From the above, it is evident that in one case the BG was obtained late by three years and in both the cases BG was not encashed in spite of the default in completion of the projects. This has resulted in loss of revenue of ₹ 4.84 crore¹⁶ to the Government.

In its reply, in respect of M/s Surya Jyoti Software Private Limited, NOIDA accepted (August 2020) that due to mistake the BG was not taken at the time of lease deed. Further, action as per rules is in process for the lapsed BG. In respect of M/s KRN Education Private Limited, NOIDA stated (October 2020) that completion certificate was obtained by the allottee within the stipulated period in September 2014.

¹⁶ ₹ 2.25 crore towards stamp duty BG and ₹ 2.59 crore as interest for 10 years and three years respectively at the rate of 18 per cent.

The reply in respect of M/s KRN Education Private Limited is not acceptable as the scheme brochure clearly stipulated that the completion certificate was to be obtained by the allottee within a period of three years from the date of lease deed upto January 2014 (i.e. three years from January 2011). However, as per the condition of lease deed the period of completion was provided as seven years. Thus, the condition of the lease deed was in contravention of the of brochure conditions. In case of M/s Surya Jyoti software Private Limited, NOIDA has accepted the lapses in procedure but not taken any action in this regard. The responsibility needs to be fixed in this regard in above cases.

Map/Layout related discrepancies

5.3.10 After allotment by the Institutional wing, the possession of land is handed over to the allottee by the respective Works Circle of NOIDA in whose jurisdiction the plot falls. The Works Circle is also tasked with the developmental work on the acquired land. The Planning wing 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 by-laws. The discrepancies observed in this regard are discussed below:

5.3.10.1 Allotment without acquisition/possession

Audit noticed that in three cases NOIDA allotted the plots without acquisition of land or having possession of the same as detailed in **Table 5.3.4**.

Table 5.3.4: Loss due to allotment of plots without acquisition/possession

In three cases NOIDA allotted plots without ensuring its acquisition/possession resulting in loss of ₹ 282.51 crore.

Particulars	Name of allottees		
	V.C Infracon	M/s Surya Jyoti Software Private Limited	M/s Jam Vision Tech Private Limited
Area of the plot (in sqm)	1,20,000	20,002.40	20,000
Date of Allotment	07.06.2011	28.03.2008	28.03.2008
Date of execution of Lease deed	10.08.2011	27.06.2008	31.07.2015
Date of actual possession of part area	30.08.2011	November 2008	The site plan was changed and another plot was allotted to the allottee as the said plot was encroached
Area of land with NOIDA at the time of Allotment (in sqm)	38070	15000	
Area of remaining land (in sqm)	81930	5,002.40	
Date of handing over of remaining land	Till date (October 2020) not handed over	13.06.2011	31.07.2015
Reasons for partial/non transfer	Not acquired fully by NOIDA		Encroachment
Whether zero period ¹⁷ was allowed	No, as the complete land was not handed over till date	Yes	Yes
Loss incurred due to allowance of zero period (₹ in crore)	-	2.24 (including ₹ 1.04 crore as interest) ¹⁸	24.03

¹⁷ In the Zero Period allottees are provided the facility of interest waiver for the period possession is not given, and period of instalments increases for the period which was considered as Zero Period.

¹⁸ {(Premium amount ₹ 7.64 crore*32 months*11 per cent)/1,200}.

Particulars	Name of allottees		
	V.C Infracon	M/s Surya Jyoti Software Private Limited	M/s Jam Vision Tech Private Limited
Loss due to difference in land rate at the time of allotment and rate at the time of actual possession (₹ in crore)	240.60 ¹⁹ (on the basis of prevailing rate in 2017-18)	1.20 ²⁰	14.44
Total loss (₹ in crore)	240.60	3.44	38.47

Source: Information compiled by Audit.

From the above table, it is evident that NOIDA allotted plots without ensuring acquisition/possession of the same which has resulted in loss of ₹ 282.51 crore.

In its reply, NOIDA accepted (October 2020) the audit observation and stated that in future allotments will be made only of the completely acquired land where possession of NOIDA exists.

Though NOIDA has accepted the audit observation yet it is silent about the loss already incurred in these allotment cases. Moreover, NOIDA did not envisage any action against the defaulting officials in the above cases.

Undue benefit by allowing excess Floor area ratio (FAR)

Contrary to the provision of brochure, NOIDA allowed excess FAR of 2 instead of 1.5 which resulted into undue benefit of ₹ 29.63 crore to 16 allottees.

5.3.10.2 Clause 10.1 of the OES III/2008 scheme (launched on 11 October 2008) brochure provided that as per the prevailing provisions of Building Regulation²¹, total 1.5 FAR is permissible for corporate office plots. It was further provided in the brochure that the proposal to increase the total permissible FAR from 1.5 to 2 is under consideration of NOIDA. But only the total permissible FAR on the date of allotment shall be admissible to the allottee and no claim to enhance the FAR shall be entertained by NOIDA later on.

Audit noticed that the change in FAR from 1.5 to 2 was notified by GoUP on 04 July 2009 and hence the allotments made under the scheme before 04 July 2009 were entitled for prevailing FAR of 1.5 only. However, in contravention of the above conditions of the brochure, NOIDA permitted the enhanced FAR of 2 to all the allottees of the scheme irrespective of their date of allotment.

Audit noticed that out of 61 cases where the maps were approved by NOIDA, in 16 cases the date of allotment was before 04 July 2009 (date from which GoUP enhanced the permissible FAR). Hence, as per the brochure conditions only 1.5 FAR was permissible in these cases. However, increased FAR of 2 was given by NOIDA in these cases. Further, in all these cases NOIDA failed to charge the amount of purchasable FAR of ₹ 29.63 crore (**Appendix-5.3.4**) which amounted to financial benefit to the allottees.

Though the approval of GoUP had not been received, the brochure contained indication for enhanced FAR, once approved by GoUP. Such indicative covenants in the brochure are contrary to the principles of conservatism and result in speculation on the part of applicants. In such a case the scheme should not be launched or it should be launched as per the prevailing norms as

¹⁹ 1,20,000 sqm x (₹ 36,200 per sqm - ₹ 16,150 per sqm)

²⁰ Considering the allotment rate of ₹ 7,300 in the year 2011-12.

²¹ New Okhla Industrial Development Area Building Regulations and Directions, 2006.

on the date of notification of the scheme. From this it is clear that NOIDA passed on the future benefit to the allottees before it became due.

In its reply, NOIDA stated (August 2020) that at the time of launch of scheme (2008) Building Regulations 2006 were prevalent and FAR of 1.5 was applicable for office uses. In the 160th meeting (26 February 2009), the Board of NOIDA, approved the proposal to enhance the FAR from 1.5 to 2. This proposed enhanced FAR was approved by GoUP on 04 July 2009. Meanwhile, a public notice was issued (18 November 2008) by NOIDA stating that “all the allottees will get the FAR as decided by GoUP on the proposal of NOIDA” and accordingly FAR of 2 was given to all the allottees of the scheme.

The reply is not acceptable as the revision in FAR can only be effected after approval of the State Government. NOIDA had irregularly provided and allowed enhanced FAR before the approval of GoUP. Here, the provision of enhanced FAR was made even before its approval by the Board of NOIDA which resulted in undue benefit of ₹ 29.63 crore to allottees.

The basis for NOIDA making such provision of increase in FAR without the approval of the State Government needs to be reviewed by the State Government for necessary action.

Non levy of Map Approval Fees

5.3.10.3 As provided in clause 5 of the Building Regulation 2010, every person who intends to erect a building within the Industrial Development Area shall give an application in the designated form. Further, in case of any objection, the fees so paid shall not be refunded to the applicant but the applicant shall be allowed to resubmit the plan without any additional fees after complying with all objections within a period of sixty days from the date of receipt of the objection order. If the plan is submitted after sixty days, fresh plan fees shall be charged.

Audit noticed that the allottee (M/s Surya Jyoti Software Private Limited) had submitted the building plan on 19 January 2009 and objection was raised on 11 February 2009. But the allottee failed to comply with the directions of NOIDA within the stipulated time of sixty days and submitted the revised map on 31 May 2013 without payment of any fees. NOIDA considered the application and again raised objection on 18 June 2013 but for the second time also the plan was not submitted within sixty days. It was submitted on 31 October 2013. Thus, as per the rules NOIDA should have charged the plan fee twice. However, NOIDA failed to enforce the provisions of building regulation and did not charge the amount of ₹ 0.40 crore (FAR of 1,15,017 sqm * Building Permit Fee of ₹17 per sqm) being the amount of fees and *malwa*²² charges, which amounted to undue benefit to the allottee to that extent.

Similarly, in case of Anand Infoedge Private Limited, the allottee had submitted the building plan on 16 February 2012 but the application was not complete in all respects and hence, NOIDA had intimated to the allottee to resubmit the plan on 12 March 2012. The allottee failed to comply with the directions of NOIDA within the stipulated period of sixty days and submitted the revised plan only in October 2012. Thus, as per rules NOIDA should have charged the plan fee again. But NOIDA failed to enforce the provisions of

²² *Malwa* is the debris at construction site.

building regulations and did not charge the amount of ₹ 0.55 crore (3,20,077.50 sqm * ₹ 17) being the amount of fees and *malwa* charges. This amounts to undue benefit to the allottee to that extent.

In its reply, NOIDA stated (August 2020) that considering the audit observation, an office order was issued on 08 February 2019 regarding forfeiture of building permit fees in cases where the objections were complied after the specified period.

The reply is not acceptable as the office order was not effective retrospectively and due to slackness on the part of NOIDA, it lost revenue of ₹ 0.95 crore for which no responsibility was fixed.

Discrepancies related to terms of payments

5.3.11 The shortcomings observed in issues related to payment terms are discussed hereunder:

Allowing payment in instalments in contravention of GoUP policy

5.3.11.1 GoUP announced the UP Special Economic Zone (SEZ) Policy, 2006 to promote industries in the State. This Policy was adopted by the Board of NOIDA in the 137th meeting held on 01 September 2006 and accordingly a scheme was launched by NOIDA on 29 September 2006 for IT SEZ plots. As per clause 4.2 of the UP SEZ Policy 2006, NOIDA was required to obtain the entire premium of land upfront before execution of lease deed. This provision was again reiterated in the amended SEZ Policy of 2007 which provided that “the total cost of land shall be recovered upfront as lease premium before the execution of lease deed”.

There were a total of nine plots earmarked by NOIDA for the IT SEZ in the scheme. NOIDA received 20 applications which were examined by the PAC and allotment of nine plots were made.

Audit noticed that in contravention of the above clause of the IT SEZ Policy, NOIDA did not collect the entire land premium upfront and allowed lessees of these nine plots to deposit 30 *per cent* of the land premium at the time of allotment and the remaining balance 70 *per cent* land premium in 16 half-yearly instalments (eight years) with interest at the rate of 11 *per cent* as in case of other allotments.

Hence, in contravention of the UP SEZ Policy 2006, NOIDA provided undue benefit to the developers.

In its reply, NOIDA stated (August 2020) that NOIDA had sent a proposal to the Government regarding change in the terms and conditions of IT SEZ plot allotment and the Government stated that NOIDA could take a decision on the terms and conditions. Hence, this decision was taken in line with the Government directions.

The reply is not acceptable as the decision was taken in contravention to the policy of the Government of Uttar Pradesh.

Loss on Reschedulement of dues

5.3.11.2 In view of GoUP orders of 6 January 2009 and 25 October 2009²³ regarding policy of exemption due to recession, M/s Anand Infoedge Private Limited (allottee) applied for the re-schedulement of its dues on 16 December

²³ Regarding measures to deal with the economic recession.

2009 which was accepted by NOIDA on 30 August 2011. Audit noticed that the calculation of re-schedulement was not in consonance with the original lease deed. As per clause 1 of the lease deed, three *per cent* penal interest was to be imposed on the allottee for default in payment. Thus, interest at the rate of 14 *per cent* (11 *per cent* original rate plus 3 *per cent* penal interest) was required to be calculated on the overdue amount. However, NOIDA calculated interest at the rate of 11 *per cent* and extended undue benefit of ₹ 7.22 crore to the allottee.

Further, NOIDA started (31 May 2013) the policy of re-schedulement for the overdues of allottees. The policy of re-schedulement was valid upto the next six months only (i.e upto 28 November 2013). Also, it was ordered (20 September 2013) that no re-schedulement facility would be provided to the allottee who has been given zero period facility earlier. Accordingly, the re-schedulement benefit would only be applicable for allottees who had not been granted zero period earlier.

But in contravention of the above orders, NOIDA provided (November 2014) the facility of re-schedulement to an allottee (M/s Surya Jyoti Software Private Limited) after the zero period facility for the period 04 November 2008 to 06 June 2011 given to it earlier. Further, no amount was deposited by the allottee as per the re-schedulement plan. This re-schedulement of dues facilitated map approval of the allottee as it was granted no-dues certificate after re-schedulement (as the map would not have been approved without the no-dues certificate as per the CEO’s order of 2013).

In its reply, NOIDA stated (August 2020) that as per the directions of the CEO the matter is under examination of the committee and reply will be submitted in due course. However, no further reply has been received from NOIDA so far (March 2021).

Conclusion

The purpose of making allotments under Institutional category was to use any land/building or part thereof for carrying on activities like testing, research, demonstration etc. for the betterment of society and it includes educational institutions. However, the allotments made under the Institutional category were *ab-initio* improper.

Scrutiny of actual allotments made, a significant percentage of which were in the three years period from 2008-09 to 2010-11, revealed serious contravention of rules and orders and misrepresentation, wilful concealment of facts by PAC. It recommended allotments in a number of cases to entirely ineligible entities. This was further exacerbated by making allotments to entities of commercial nature like Private offices/Corporate offices under the Institutional category. This translated in substantial loss to NOIDA, given the differential in allotment price of plots under these categories. In the follow-up phase, post allotment, approval of maps and payment related issues, the respective wings of NOIDA granted undue favours in contravention of rules as well as terms and conditions.

As on date only eight *per cent* of the Institutional allotments made during the Audit period are functional and the large number of plots were also found to have been transferred defeating the very purpose of allotments under the category.

Recommendations		
Recomm- endation Number	Recommendation	Response of Government
15	The Government should clearly define the activities permitted under the Institutional category to avoid misinterpretation/misuse on account of vague definitions.	Accepted.
16	NOIDA should consider taking stringent action against officials, in particular those in the PAC, who in a number of cases concealed, misrepresented and suppressed material facts, thus, enabling entirely ineligible entities to get allotment of plots.	Accepted in principle. The Government stated that after receiving a factual report from NOIDA, it will examine and take necessary action if there was any malfeasance or misconduct.

