

Chapter III

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MIDC allotted land to prospective entrepreneurs considering, inter alia, proposed investment and employment generation mentioned in the Detailed Project Report (DPR). There was, however, no database/system to ascertain/record allottee wise details regarding actual employment generated and investment made by an allottee vis-a-vis the DPR. MIDC, thus, confined its role to development/allotment of land in IAs and outcome based approach to industrial development (investment and employment generation) was lacking.

MIDC had not formulated any action plan/system for acquisition of surplus/ unutilised land with the allottees, for allotment to new entrepreneurs as envisaged in Section 42A of the MID Act. Thus, MIDC did not ensure optimal utilisation of IAs as mandated in the MID Act.

Four policies implemented by MIDC for development/disposal of plots in IAs (allotment rate, grant of possession of plot, mixed land use on industrial plot and recovery of arrears as land revenue) contravened express provisions of the MID Act, MIDC Disposal of Land Regulations, 1975 (DLR) and Development Control Regulations (DCR), 2009.

MIDC did not ensure timely finalisation of tenders within the validity period as per delegation of powers which resulted in cancellation of tenders and re-tendering at extra cost.

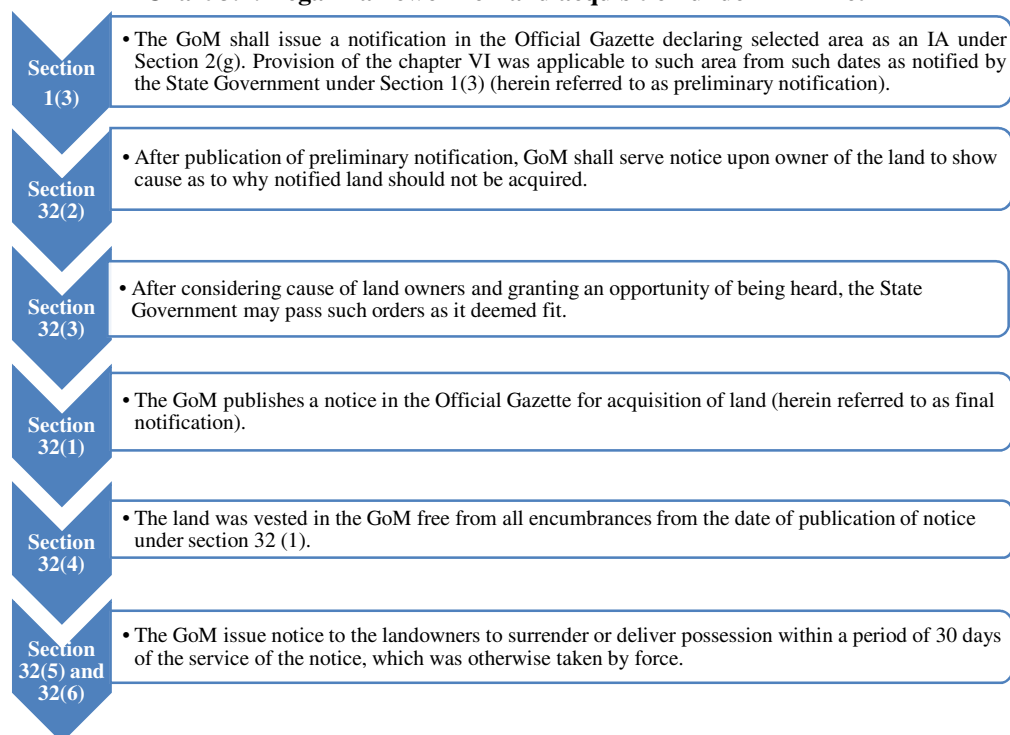
3.1 Land acquisition

Overview of legal framework for land acquisition

The GoM acquires land under chapter VI of the MID Act and places it in possession of MIDC for establishment of IAs. The GoI notified (September 2013) Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act). The GoM notified (April 2018) that the provisions of the LARR Act, 2013, would however, not be applicable for acquisition of land under the MID Act. Subsequently, the GoM amended the MIDC Act 2019 (April 2019) which provided that the State Government shall adhere to the provisions of LARR Act, 2013 relating to the determination of amount of compensation in accordance with first schedule and rehabilitation and resettlement specified in second and third schedules, being beneficial to affected families, in land acquisition cases which are referred to Collector for determination of compensation under section 33 (3) of the MID Act.

The legal framework for various stages involved in land acquisition as provided in the MID Act under chapter VI is depicted in **Chart 3.1**.

Chart 3.1: Legal framework of land acquisition under MID Act



(Source: MID Act, 1961)

The procedure for land acquisition is as follows:

The Land Selection Committee headed by concerned Deputy CEOs is entrusted with preliminary selection of land for IAs. The proposals with approval of CEO are submitted to the High Power Committee (HPC) headed by Principal Secretary (Industries) of the GoM. The proposals approved by the HPC are submitted to the GoM for issue of preliminary notification of IA under Section 1(3) and final notification under Section 32(1) of the MID Act after completing land acquisition process including public hearing. Apart from this procedure, MIDC is also empowered to purchase land by agreement under section 15(b) of the MID Act from the concerned land owners.

Details of land acquired, in possession and allotted during 2014-2021 are shown in **Table 3.1**.

Table 3.1: Status of land acquired and allotted during 2014-21

(In hectare)

| Year | Land in possession at beginning of the year | Land acquired during the year | Total land in possession at end of the year | Land allotted during the year |
|---------|---|-------------------------------|---|-------------------------------|
| 2014-15 | 63,357 | 3,762 | 67,119 | 1,153.76 |
| 2015-16 | 67,119 | 3,333 | 70,452 | 506.04 |
| 2016-17 | 70,452 | 1,275 | 71,727 | 429.56 |
| 2017-18 | 71,727 | 3,544 | 75,271 | 720.31 |
| 2018-19 | 75,271 | 1,418 | 76,689 | 847.84 |
| 2019-20 | 76,689 | 921 | 77,610 | 231.00 |
| 2020-21 | 77,610 | 1,707 | 79,317 | 432.00 |

(Source: Information furnished by MIDC)

Timelines for completion of acquisition of land

3.1.1 MIDC was established under Section 3 of MID Act to promote and assist in the rapid and orderly establishment, growth and development of industries. Therefore, it was of utmost importance to complete process of land acquisition, including cancellation/de-notification of proposed IAs, if any, within a reasonable time. Audit, however, observed that MID Act did not provide for any timelines for completion of land acquisition. Further, as per rule 30 of MIDC Rules, 1962; de-notification (withdrawal of notified land from acquisition) was not permissible after a period of 35 years.

MIDC stated (December 2021/August 2022) that a proposal for amendment of MID Act for automatic lapse of notification after 18 years has been submitted (April 2021) to GoM, which was under their active consideration.

Non-recovery of compensation amount for denotified land

3.1.2 MIDC transferred land compensation amount to concerned State Land Acquisition Officers (SLAOs) for payment to landowners. As on 31 March 2021, an amount of ₹ 4.31 crore was not recovered from SLAOs concerned in respect of five IAs which were de-notified during 1985 to 2005.

MIDC stated (August 2022) that there is an effective system for reconciliation and monitoring of unspent amount. Reply is not tenable as despite lapse of considerable period after de-notification, recovery of balance amount lying with the SLAOs had not been effected.

Discrepancies in land acquired by MIDC at Adali, Sindhudurg

3.1.3 The GoM issued notification (December 2013) for acquisition of land for development of an IA in Adali (Sindhudurg district) under MID Act and the Board approved (February 2014) acquisition under Section 15(b) of the MID Act. Subsequently, MIDC executed/registered (April 2014 to January 2017) agreements with private owners for acquisition of land in Adali.

Audit observed that:

- MIDC, while preparing layout for development of Adali IA, carried out (January-March 2016) detailed survey and contour survey of IA, wherein discrepancies in land areas were observed in a particular portion (Gat No. 665 A). Actual measurement of land carried out (September-November 2018) by competent authority of GoM revealed that land area was only 230.55 hectare against land area of 264.74 hectare mentioned in 7/12 extract¹¹ (*i.e.* lower by 34.19 hectare and valuing ₹ 4.85 crore¹²). MIDC preferred (September 2021) an appeal to GoM for reconciliation of 7/12 extracts, which was pending (August 2022). This indicated systemic flaw in land acquisition as final notification was issued for acquisition of land and payment made of compensation even before carrying out survey and actual measurement of land and reconciliation thereof.

¹¹ The 7/12 extract is an information document prescribing details about a specific piece of land such as survey number, area, date and more particulars about the existing owner's name.

¹² Acquisition cost of ₹ 14.20 lakh per hectare x 34.19 hectare.

- As per the contour map of Adali IA prepared by MIDC, land admeasuring 52 hectare (steep slope/thick forest land) was adjoining one boundary/outskirts of the IA. Hence, it should not have been acquired as it was unsuitable for development.

MIDC accepted (December 2021/August 2022) that detailed measurement was not carried out before issue of final notification/ registration in the instant case in deviation from prevailing procedure. MIDC further stated that sometimes they had to acquire such land, even if some part of the land comes under landlocked *i.e.* not approachable, due to development of IA or to maintain the continuity in land acquisition.

Reply of MIDC is not tenable as it had acquired 52 hectare land on boundary/outskirts of IA despite having the knowledge that it was not suitable for development of an IA.

3.2 Development of industrial areas

As per MIDC DLR, MIDC is required to prepare layout of the land transferred/ placed at its disposal by the State Government for development as IA and dispose of plots of land in such IAs to allottees for development of allotted plots. MIDC carries out developmental/infrastructure works in IAs like construction of roads, water supply system, drainage system, street lights, waste/effluent treatment plants, fire station *etc.* as well as operation and maintenance thereof. Audit scrutiny revealed the following:

Lack of outcome based approach to industrial development

3.2.1 MIDC allotted land to prospective entrepreneurs considering, *inter alia*, proposed investment and employment generation mentioned in the Detailed Project Report (DPR), which was a mandatory requirement for land allotment. Audit observed that there was no system in MIDC for recording/compiling and reviewing actual employment generated and investment made by an allottee *vis-a-vis* DPR. Further, there was no database/system to ascertain/record allottee wise details regarding commencement of activity as proposed in the DPR and for closed/sick units. In the absence of such a system, actual employment generated/ investment made by allottee in IAs of MIDC was not ascertainable.

MIDC, thus, confined its role to development/allotment of land in IAs and outcome based approach to industrial development (investment and employment generation) was lacking.

MIDC accepted (December 2021/August 2022) that it would develop a provision in the existing customer portal for customers to upload audited self-declaration document stating the actual investment made in a unit and number of employees working.

The Economic Survey (ES) of Maharashtra prepared annually by GoM, *inter alia*, contained details of investment and employment generation by industrial units in MIDC, which was compiled on the basis of information

submitted by MIDC. As there was no system/database in MIDC for recording/compilation of actual employment generated and investment made by an allottee, relying on such figures for preparation of ES may not be appropriate.

Recommendation No. 4: MIDC may evolve a system of recording/monitoring of actual investment and employment generation by allottees vis-a-vis their DPRs to ensure that expected outcomes of industrial development from such land allotment are achieved.

Failure to ensure optimum utilisation of land with allottees

3.2.2 Section 42A of the MID Act provided for acquisition of unutilised surplus lands with the allottees in IAs and accommodating another industry on such unutilised portion for enabling MIDC to properly discharge its functions of promoting rapid growth and development of industries.

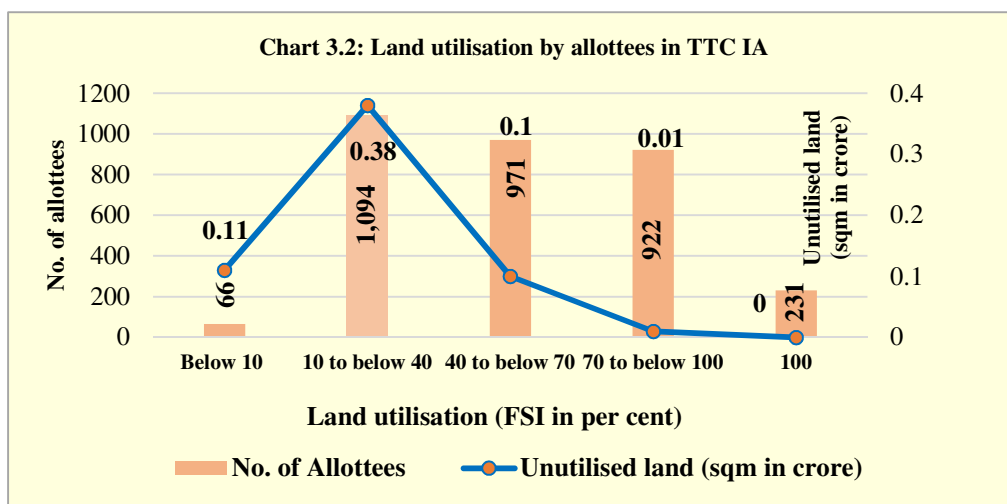
As per Section 42A(1) of the MID Act, with a view to ascertain whether any industrial area developed by the MIDC has been fully utilised for industrial purposes or not, GoM may direct the MIDC to submit a six-monthly report. Further, Section 42A(4) provided that if upon the report submitted by the MIDC and after giving reasonable opportunity of being heard, the State Government was satisfied that any plot holder did not utilise the maximum buildable area of his plot for a period of five years or more from the date on which possession of the plot was delivered to him or not likely to utilise the unutilised portion for industrial purposes within a reasonable period, the State Government may acquire such unutilised portion as per laid down procedure.

Audit observed that GoM neither directed MIDC to submit six-monthly report nor MIDC had prepared any report in this regard during the audit period. In 187 IAs, MIDC had already allotted more than 80 *per cent* of plots and hence there was limited scope or no scope for further industrial development in these IAs. MIDC had no action-plan/system for acquisition of surplus/unutilised land with the allottees in these IAs, for allotment to new entrepreneurs as envisaged in Section 42A to ensure optimal utilisation of IAs.

Audit further observed that:

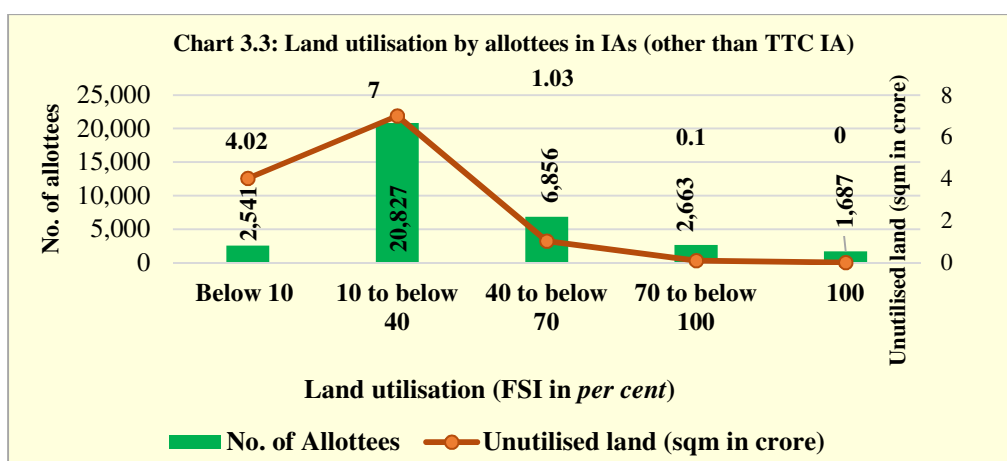
- As per Regulation 18.1 of Development Control Regulations (DCR), 2009 of MIDC, an industrial allottee was eligible to develop plot with maximum Floor Space Index (FSI) of one (100 *per cent*). MIDC granted Building Completion Certificate (BCC)/Occupation Certificate (OC) to allottees on utilisation of FSI upto 0.20 (20 *per cent*) within development period of three to five years, which was revised (June 2019) to 0.40 (40 *per cent*) FSI in respect of new plots only. MIDC, however, had not incorporated provision in the allotment order and/or lease deed, regarding maximum FSI to be achieved, as may be reasonable, considering nature/activity of unit and provisions of DCR. MIDC policy was, therefore, not in line with provisions of Section 42A of the MID Act and consequently there was no legal binding on an allottee to utilise the maximum buildable area of his plot within stipulated period.

- MIDC had decided (June 2017) to implement scheme in one IA (Trans Thane Creek (TTC)), whereby allottees (including closed industries) were granted opportunity to return excess/untilised land. It was further directed to take action against that allottee, who did not participate in the scheme as per Section 42A of the MID Act. Audit observed that none of the allottees participated in the said scheme and MIDC had not taken any action for acquisition of unutilised portion of plot till date (December 2021). Data analysis in respect of TTC IA revealed that only 231 (seven *per cent*) out of 3,284 allottees had fully utilised their plots. In case of remaining 3,053 allottees, land admeasuring 60.51 lakh sqm was lying unutilised as given in **Chart 3.2**.



(Source: Information furnished by MIDC)

Data analysis in respect of allottees from the other 158 IAs revealed that 1,687 (five *per cent*) out of 34,574 allottees had utilised maximum FSI. There was unutilised land admeasuring 12.15 crore sqm with 32,887 allottees as given in **Chart 3.3**.



(Source: Information furnished by MIDC)

MIDC stated (December 2021/August 2022) that utilisation of the entire plot could not be achieved by all plot holders considering nature of industrial activity and requirement of open spaces/marginal space as per DCR/other statutory norms and hence maximum 60 *per cent* of plot area was consumed. It was also

stated that a plot holder could consume 100 *per cent* FSI but it could not be considered as a target considering that plot was developed in phased manner considering their requirements, finance and market conditions and hence all plots could not achieve optimal utilisation. Further, a revised policy had been implemented in June 2019, whereby it was made compulsory for allottees to consume minimum 40 *per cent* FSI to obtain BCC on the plot with provision for extension of additional two years on payment of non-utilisation charges, failing which procedure had to be initiated to resume non-utilised land from the plot as per Section 42A of the MID Act.

Reply of MIDC is not tenable on the following grounds:

- MIDC amended (November 2019) the policy regarding 40 *per cent* FSI whereby plot holders, who had obtained BCC prior to June 2019 (and in production) be excluded from requirement of 40 *per cent* FSI. Such policy was based on the date of BCC obtained, besides being discriminatory and was in violation of express provisions of Section 42A, which provided for acquisition of unutilised land from all plot holders without any such classification based on date of BCC.
- The Policy of uniform consumption of lower percentage of 40 *per cent* FSI to be achieved by all the new allottees also lacked justification because MIDC itself stated that FSI consumption varied considering type of industry/phase wise development programme and maximum 60 *per cent* to 100 *per cent* of the plot area could be consumed.
- Reply is silent on the issue of not incorporating condition regarding achievement of maximum FSI in the lease deed/allotment order and lack of system for identification/reporting of unutilised buildable area in each plot, thereby failing to ensure compliance with Section 42A of the MID Act.
- Reply is silent on the issue of failure to acquire possession of unutilised land with allottees as per Section 42A in TTC IA despite clear directions of the Board. Further, reply is silent on lack of action against allottees having less than 40 *per cent* FSI in other IAs, which constituted 68 *per cent* of total allottees analysed.

Recommendation No. 5: Action as stipulated under MID Act for reporting and acquisition of surplus/unutilised land with allottees may be initiated.

Policies in violation of provisions of MIDC Act/Regulations

3.2.3 The GoM notified MID Rules, 1962 under Section 63(1) of the MID Act for implementation of this Act. Further, GoM notified MIDC Disposal of Land Regulations (DLR), 1975 and Development Control Regulations (DCR), 2009 as per powers conferred under 64(1) of the MID Act. Audit observed that four policies implemented by MIDC were contrary to the provisions of the MID Act/Regulations and thus, these policies were invalid/*ultra vires* as given in **Table 3.2**.

Table 3.2: MIDC policies in violation of express provisions of MID Act/Regulations

| Sl. No. | Description | Applicable provision of MID Act/ Regulations | Policy of MIDC | Audit remarks |
|---------|--|---|--|---|
| 1 | Allotment rate | As per Regulation 9 of MIDC DLR, payment of Earnest Money Deposit (EMD) was not to be construed as any commitment or obligation on the part of MIDC that a particular plot or any plot shall be allotted to applicant at the rate prevailing at the time of payment of deposit. | As per MIDC policy (January 2012), land allotment was made at rates prevailing on the date of issue of offer letter provided EMD was paid within stipulated period of 15 days as per condition incorporated in the offer letter. | As per policy implemented, offer letters thus provided an obligation for allotment at rate prevailing on the date of payment of EMD which contradicted statutory provision as EMD was not to be construed as any commitment to allot a plot at the rate prevailing at the time of payment of Deposit. Audit observed instances where offer letters were issued though demarcated plots were not available for allotment in the layout of IAs. Subsequently, allotment orders were issued on demarcation of plots when land rates were revised. Similarly, instances of delay in issue of circulars for revised rates after approval of Board decision were observed. In above cases, MIDC had liberty to charge lease premium as per rates applicable as on the date of allotment order as per provision of the MIDC DLR. This was not ensured which resulted in loss to MIDC as discussed <i>infra</i> . |
| 2 | Grant of possession of plot to an allottee | As per Regulation 13 of MIDC DLR, no allottee shall be given possession of the plot allotted to him before execution of lease agreement. The GoM had also directed (October 2006) that possession of Government land shall not be given unless the agreement was executed and registered. | As per MIDC policy (May 1998), advance possession could be granted to allottees before execution of Agreement to lease. | During April 2014 to March 2021, MIDC granted advance possession of plots admeasuring 74.17 lakh sqm to allottees in 2,264 out of 3,302 cases (69 per cent). This was in violation of MIDC DLR. |

| Sl. No. | Description | Applicable provision of MID Act/ Regulations | Policy of MIDC | Audit remarks |
|---------|-------------------------------------|---|--|--|
| 3 | Mixed land use on industrial plot | There was no provision for mixed land use on an industrial plot in MIDC DCR, 2009 (<i>i.e.</i> support services, commercial <i>etc.</i> on a part/portion of plot). | MIDC policy allowed mixed land use to following categories of industrial plot holders: <ul style="list-style-type: none"> • Micro and Small Enterprises were granted (July 2012) utilisation of 20 <i>per cent</i> of built up area for support services/ commercial purpose excluding residential/ educational use. • Automobile Body Building (ABB)/spare parts permitted (November 2014) to utilise (self/sub-letting) built up area of 10 <i>per cent</i> for related commercial activity of Garage, Workshop and showroom. • Mega projects for automobile industry granted (November 2019) permission to utilise (self/sub-letting) built up area of 10 <i>per cent</i> for all commercial purposes related to original activity of ABB/spare parts including Garage, Workshop, showroom and financial services. | Permission of mixed use without amendment of DCR was irregular. |
| 4 | Recovery of arrears as land revenue | As per Section 51 of the MID Act, all sums payable/ recoverable from any person and all charges/expenses incurred in connection therewith was recoverable as an arrear of land revenue. | As per MIDC policy, arrears/dues recoverable in excess of land premium amount paid was written off in respect of allottees who returned plot on their own or where possession of plots was resumed by MIDC. | During April 2014 to March 2021, MIDC had written off dues/arrears of ₹ 23.88 crore which was recoverable from 353 allottees in 11 ROs. MIDC policy was thus in violation of express provision of MID Act. |

(Source: Information furnished by MIDC)

MIDC in its reply (August 2022) offered various justifications for implementation of above policies such as difficulties and delays in recovery of dues resulting in plots lying unused for long period of time, conscious decision to grant utilization for support services/commercial purposes, actual field situation, obligation to allot land at premium stated in offer letter etc.

Reply is not tenable as such policies were *ultra vires*, being contrary to the express provisions of the MID Act/Regulations as mentioned in table above.

Policy regarding grant of Occupation Certificate in violation of Regulations

3.2.4 As per DCR, 2009, an allottee was required to obtain Occupation Certificate (OC) from MIDC prior to any occupancy or use of the development so completed. The OC was granted only after the allottee complied with fire safety norms and obtained final No Objection Certificate (NOC) from fire authority of MIDC. Further, as per Section 3(2) of the Maharashtra Fire Prevention and Life Safety Measures Act, 2006, no authority empowered to sanction construction plan of any building or part of a building and to issue certificate of completion thereof, shall issue any certificate of completion or part completion thereof, unless it was satisfied that the owner had complied with the specified requirements for fire safety.

Audit observed that MIDC implemented (September 2015) a policy, whereby allottees who had commenced production without obtaining mandatory Fire NOC and OC, could thereafter make application to MIDC for grant of OC without any restriction of time limit. The policy further provided for regularisation of such cases by granting free time limit extension of 90 days for obtaining OC from the date of approval of application for time limit extension. Thus, MIDC policy granted free regularisation in case of unauthorised commencement of operation/activity without mandatory fire NOC and OC without any deterrence to the requirement under DCR.

MIDC stated (January 2021) that OC was granted only after final NOC was issued by Fire Authority. MIDC reiterated (August 2022) provisions of the policy regarding grant of OC to allottees. Reply is not tenable as the prevailing policy of MIDC allowed commencement of production/activities without OC and fire NOC which also contravened statutory provisions.

Recommendation No. 6: MIDC may ensure that all policies adhere to the statutory provisions.

Extra expenditure on execution of development works in IAs

3.2.5 As per prevailing MIDC policy, Chief Engineer (CE)/CEO was the competent authority vested with powers for acceptance and rejection of tender for works having tendered cost more than ₹ one crore. It was further provided (November 2012) that all the tenders with tendered amount of more than ₹ one crore shall be submitted for perusal to Chairman, MIDC.

Audit observed that the competent authority did not approve the tenders and proposals were forwarded to the Chairman, MIDC without acceptance of offers. Audit observed that during the period from 2014-15 to 2020-21, 13 tenders were cancelled due to non-receipt of proposal from Chairman, MIDC within the validity period and delay ranged between seven to 406 days after lapse of validity period. In one tender, proposal was returned by Chairman, MIDC with remarks that difference between rates offered by L1 and L2 bidder was not practicable. These 14 tenders were subsequently re-tendered and awarded (August 2014 to January 2021) at an extra cost of ₹ 9.93 crore. It was further observed that another tender was not finalised at the level of Management within the validity period and re-tendered at an extra cost of ₹ 1.07 crore. Thus, non-finalisation of 15 tenders within the validity period resulted in extra cost of ₹ 11 crore, besides avoidable delay in execution of development work in IAs.

MIDC stated (December 2021/August 2022) that in future approval letter would be issued to the lowest bidder immediately after the approval of the competent authority.

Recommendation No. 7: MIDC may ensure timely finalisation of tenders within the validity period in accordance with delegation of powers to avoid re-tendering of works.