

# INFRA LIVE



**Noida World One & Alphathum  
Grab IT & ITeS Park Land**

## Max Square Exposé

**Joint investigation with former DG of CAG, RB Sinha**



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In this edition, we focus on land grabs in the NCR region by the Max group and other real estate companies, wherein the chosen methods are illegal acquisition of assets and mis-statements, causing loss to the Uttar Pradesh government, bankers and retail buyers.

The Max Square project in Sector 129, Noida is replete with illegalities. The Max group acquired this prime commercial plot at undervalued rates from Axis Bank, the lenders of the bankrupt Jaypee group. Time schedules are indicative of a deep collusive arrangement between Max group and Axis Bank to steal assets during the 'look back' period of Insolvency proceedings thereby causing loss to other financial creditors. The apex court in a detailed judgement dated February 20, 2020 had held such transactions illegal as the banks cannot move assets of a bankrupt borrower to a third party and cause loss to other claimants. But this is what precisely happened.

Both, Jaypee Infratech Ltd (JIL) and its holding company Jaypee Associate Ltd (JAL) had borrowed money from a host of bankers including Axis Bank, and individuals flat allottees had also advanced money to JAL/ JIL. Hundreds of ordinary families who had invested their life-savings in the Jaypee group did not get any refunds/ interests. Homebuyers are also to be treated as financial creditors at par with secured lenders such as banks, the Supreme Court has held. JIL /JAL loans were declared NPA first by LIC in September 30, 2015, and by March 31, 2016 several other banks also did the same. The IBC Act became operational on December 1, 2016. It was clear that JIL / JAL would go under insolvency proceedings. NCLT admitted the petition of a lender on August 9, 2017.

Four months before this happened, Axis Bank struck a debt swap deal and acquired three prime commercial land parcels from JAL/JIL. Back to back release deed and subsequent sub-lease deeds were executed in favour of Axis Bank (March 23-25, 2017). This transaction of corporate debtor JAL/JIL was within the look-back period of one year preceding the date of commencement of Corporate Insolvency Resolution Process and is disallowed under Sections 44 & 46 of IBC 2016. Plainly put, this acquisition is legally untenable.

This illegally acquired land was then sold to Max group company at a throwaway price and has been developed as Max Square project. It has not been registered with UP Real Estate Regulatory Authority (UP-RERA). Read the cover story for details on how investments were made in this project. Also, in the edition, how tainted promoters rolled out Noida World One and Alphathum projects by grabbing IT & ITeS Park lands.





# Max Square

**Sector 129, Noida project marred by illegalities. Prime commercial plot procured cheap from Axis Bank, lenders of bankrupt Jaypee Group. Axis Bank had acquired the land under questionable circumstance from Jaypee Infratech in March 2017, during the 'look-back' period of Insolvency proceedings**

**C**an a bank transfer assets of a bankrupt borrower to a third party at undervalued rates at the cost of other lenders or financial creditors and other claimants after a case of insolvency against such borrower has been admitted by NCLT? The answer is no. In a detailed judgement of February 20, 2020, the apex court held such

transaction to be illegal which cause loss to the other stakeholders and set aside the order passed by NCLAT, while upholding the order passed by NCLT. The relevant part of the judgement is reproduced below.

*25.2. As noticed, in the scheme of such provisions in the Code, the underlying concept is to disregard and practically annul such transac-*

*tions which appear, in the course of insolvency resolution or liquidation, to be preferential so as to minimise the potential loss to other stakeholders in the affairs of the corporate debtor, particularly its creditors.*

*27. For what has been discussed hereinabove, we are clearly of the view that the transactions in question are*



*hit by Section 43 of the Code and the Adjudicating Authority, having rightly held so, had been justified in issuing necessary directions in terms of Section 44 of the Code in relation to the transactions concerning Property Nos. 1 to 6. NCLAT, in our view, had not been right in interfering with the well-considered and justified order passed by NCLT in this regard.*

In the instant case, Jaypee Associate Ltd (JAL), the holding company of Jaypee Infratech Ltd (JIL) had borrowed money from a host of bankers including Axis

Bank and individuals flat allottees of JAL/ JIL from whom JAL/ JIL took substantial booking amounts but did not deliver them the flats. There were hundreds of depositors also who had invested their life-savings in the Jaypee group but were not getting their refunds/ interests. Recently, the Supreme Court has held that homebuyers are also to be treated as financial creditors at par with secured lenders such as banks.

On September 30, 2015 LIC of India Ltd had declared the bank loans of JIL as non-performing assets (NPA), and by March 31, 2016, several other banks too had declared the bank loans of JIL as NPA. Sensing trouble in realising its dues, Axis Bank entered into a debt-swap arrangement with JIL/

JAL under which it took over a few parcels of lands from JIL and reduced the debt of JAL to that extent. The modus operandi followed in this case is as follows.

On March 23, 2017, Axis Trustees Services Ltd (ATSL), JIL and its holding company Jai Prakash Associates Ltd (JAL) executed released deed of registered mortgage of 10.84 acre land. On March 24, 2017, a charge deed was executed for a sub-set of land parcels. On March 25, 2017, a release deed was executed to release charge of the following three plots at Sector 129, Noida: (i) C3-C (2.60 acre), (ii) C3-B1 (1.96 acres), and (iii) C3-B2 (1.96 acres), with a condition that JIL/ JAL will execute a sub-lease deed in favour of Axis Bank. JIL/JAL executed the sub-lease deed on the same date.

The extraordinary hurry of Axis Bank to adjust the outstanding amount of loans of JAL during 23-25 March 2017 was primarily aimed to get out of the impending Corporate Insolvency Resolution Process (CIRP) under IBC 2016 as their dues would occupy a lower rank in the list of priority of creditors under Section 53 of the Code, if the CIRP of the Corporate Debtor JIL were to commence.

Thus, Axis Bank acquired these three prime commercial plots under patently questionable circumstances from JIL in March 2017, well after declaration of bank loans of JIL as NPA in 2015-2016 and commencement of the operation of IBC 2016 which came into effect from December 1, 2016.

It was evident that Axis Bank as a lender had deliberately taken pre-emptive action to protect its interest as IBC Act had already come into operation in December 2016 and there was every likelihood that Jaypee Group would go under insolvency proceedings as their loans had become NPA more than a year earlier. Since JIL came under insolvency proceedings with effect from August 9, 2017, this transaction of corporate Debtor JIL to sub-lease the plot of land to Axis Bank was within the

look-back period of one year preceding the date of commencement of CIRP and therefore covered under Sections 44 & 46 of IBC 2016.

### **JIL taken to NCLT in August 2017**

In August 2017, the IDBI Bank, the prime lender to JIL, petitioned the National Company Law Tribunal (NCLT), Allahabad to initiate insolvency proceedings against JIL for defaulting on Rs 526 crore loans. NCLT Allahabad admitted the IDBI Bank's application under Insolvency Bankruptcy Code (IBC) against corporate debtor JIL and initiated the Corporate Insolvency Resolution Process (CIRP) under IBC with effect from August 9, 2017 and appointed an Insolvency Resolution Professional (IRP). NCLT further directed commencement of moratorium under Section 14 of the IBC with immediate effect, until completion of CIRP process or until the approval of resolution plan under sub-section (1) or order for liquidation of Corporate Debtor JIL under Section 33.

The matter has since been heard and decided at various levels - by NCLT, NCLAT and the Supreme Court several times. The apex court has passed several orders on the subject. However, the CIRP has not yet been completed. Further the resolution plan submitted by the selected bidder has not yet been approved. Therefore, the moratorium on JIL under Section 14 of IBC still continues.

It is therefore evident that there is moratorium for prohibiting all of the following, namely: -

- a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor (JIL) including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. transferring, encumbering, alienating or disposing off by the corporate debtor (JIL) any of its assets or any legal right



- or beneficial interest therein;
- c. any action to foreclose, recover or enforce any security interest created by the corporate debtor (JIL) in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
  - d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor (JIL) since

transactions was:

- a. With any person within the period of one year preceding the insolvency commencement date; or
- b. With a related party within the period of two years preceding the insolvency commencement date.

The corporate debtor, viz. JIL, is an Indian infrastructure development company which was engaged in the construction and development of the Yamuna Expressway, a 6 lane, 165 km long

Bank and Max group front company Northern Propmart Solutions Ltd (NPSL) informally entered into discussions for taking over one of the above referred plots i.e. C3-C (2.60 acre or 10,527 sqm), Sector 129, Noida. NPSL was incorporated on June 24, 2019 as 100 per cent subsidiary of Max Estates Ltd (MEL), with share capital of Rs 1 lakh.

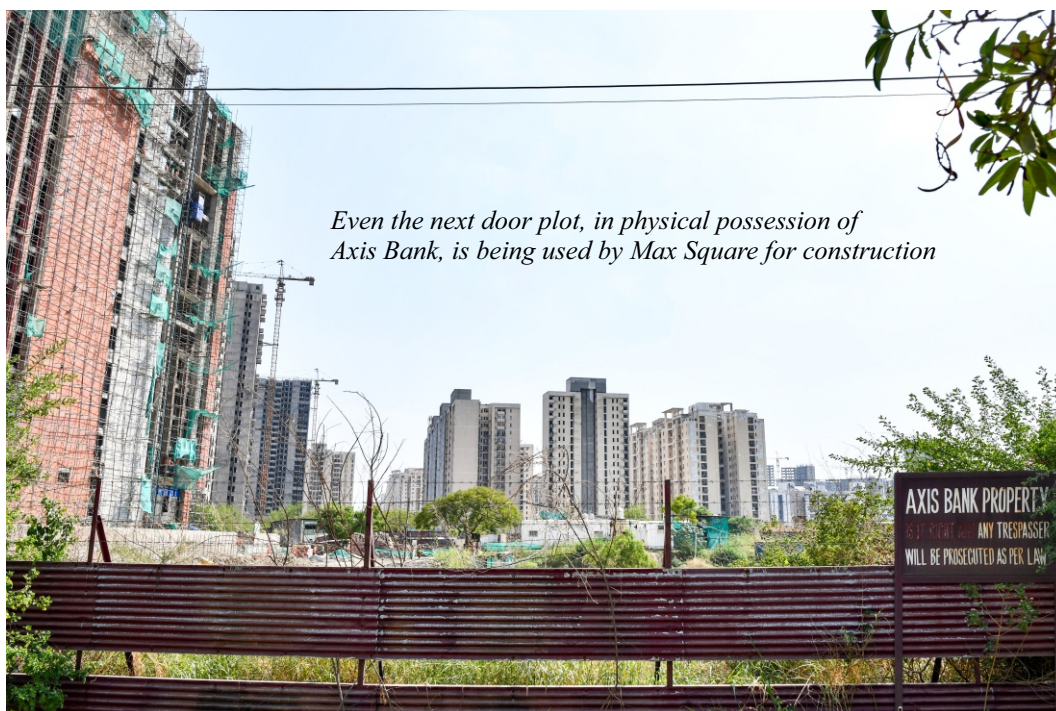
On August 29, 2019, Axis Bank requested Yamuna Expressway Industrial Development Authority (YEIDA) to allow it to sub-lease the said land to NPSL. In

response, on September 3, 2019, YEIDA sought additional information. On December 18, 2019, JAL issued NOC for the sub-lease. Finally, YEIDA granted approval.

In the meantime, Axis and NPSL entered into an agreement to open an escrow account, which was opened on December 11, 2019. Through this escrow account the following pay-

ment was to be secured: (i) YEIDA outstanding dues, (ii) processing fee, transfer charges, JAL transfer charges, and payment to Axis Bank.

From November 26, 2019 to December 17, 2019, Rs 21.23 crore was paid by NPSL to YEIDA and JAL as part of the price of the land. Then Max (NPSL) looked for investor to make the balance payment. For this NPSL's valuation was done. A valuer report shows that, as on December 31, 2019, NPSL had loss of Rs 16 lakh, and had no revenue. It had other assets of Rs 22.6 crore and liability (borrowings) of Rs 22.25 crore.



*Even the next door plot, in physical possession of Axis Bank, is being used by Max Square for construction*

the date of commencement of CIRP i.e. August 9, 2017

IBC 2016 further prohibits the preferential transactions under Section 43, undervalued transactions under Section 45, transactions defrauding creditors under section 49 and fraudulent/ wrongful trading transactions under Section 66 of the Corporate Debtors so as to save the interests of the creditors and ensure distribution of assets in order of priority amongst creditors prescribed by the Code. The relevant period (Look-back period/ twilight period) for restriction of such

access-controlled expressway connecting Greater Noida with Agra, and related real estate projects.

Though the CIRP was ongoing and the matter was before the Supreme Court, Axis Bank entered into agreement with a private company (NPSL) in October 2019 and sold the plot of land on February 7, 2020 without taking any approval from IRP/NCLT.

### **Axis Bank sub-leased the patently illegally acquired land to Max Group at throw-away price**

Sometime in June 2019, Axis

On February 7, 2020 MEL invested Rs 35.70 crore in the form of equity, at par, face value of Rs 10. On the same date, NPSL made the balance payment to Axis Bank and got the transfer deed executed in its favour. The details of the payment are shown in table given below: -

The transfer deed itself shows that against a circle rate of Rs 159,000 per sqm, Axis transferred the land sub-lease deed at Rs 72,995 per sqm. This kind of transactions are prohibited under the IBC (see scan-A at pg 23).

It may be pointed out that in 2015, when Gulshan Homes and Infrastructure Pvt Ltd sub-leased the adjacent plot (C3-E1 & C3-E2) in Sector 129, from Jaypee Infratech Ltd and Jaiprakash Associates Ltd, the circle rate was Rs 211,000 per sqm (see scan-B at pg 24). And in 2019/2020, the circle/market value ought to have been at a much higher level when the Max Square deal took place.

NPSL struck a deal with New York Life Insurance (NYLI). On February 12, 2020, MEL and NYLI entered into Shareholders Agreement (SHA) under which MEL retained 51 per cent share in the company while 49 per cent shares were given to NYLI. On March 18, 2020, NYLI invested Rs 34.31 crore in equity and another Rs 34.31 crore in CCDs, in NPSL. On the same day i.e. on March 18, 2020, MEL invested Rs 35.71

crore in NPSL by way of CCDs.

On November 23, 2020, NPSL name was changed to Max Square Ltd (MSL) in which Max Estates Ltd has 51 pc stake, and New York Life Insurance Co 49 pc stake.

### Max Square project launched in questionable circumstances

Located on the Noida-Greater Noida Expressway in Sector 129 of Noida, Max Group on Plot No. C3-C launched a prime commercial project called 'Max Square' in the mid-2020. Max Group in their website claim that their project Max Square is designed to be Indian Green Building Council (IGBC) Gold certified, and a pioneer in nature, health and well-being. It is set to house a first of its kind 10,000 sq ft central forest that seamlessly connects 'nature with work'. The project will have Super Built-up Area of 671,925 sqft.

### Project Max Square not registered with UP RERA

Max Square Ltd has been advertising the project extensively on its website since 2020. However, the project is not registered with the Real Estate Regulatory Authority (RERA), Uttar Pradesh till date.

Section 3 of the Real Estate (Regulation and Development) Act 2016 states that "No promoter shall advertise, market, book, sell

or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act".

Section 11 (2) of the RERA Act provides that the advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have to be entered and include the registration number obtained from the Authority and such other matters incidental thereto.

The RERA Act section (2b) also defines that Advertisement "as any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes."

MSL has not been displaying the UP RERA number on their website while advertising the project on its website, because they are developing the project illegally without registration. Further, the company is not showing the UP RERA number on the site of the project where construction is going on in full swing. When the matter was taken up with the company a fortnight ago, no response was received. Further, the matter was also taken up with Rajive Kumar, Chairman, UP RERA regarding non-registration of project Max Square two weeks ago but no response has been received.

On the other hand, in the FY21 filing with RoC, MSL confirmed that it had bought the land "from a private sector bank at an attractive valuation". It also claims of having obtained regulatory approvals. It

Details of Rs 100 cr paid by Northern to Axis Bank (Rs cr)			
Date	Amount	Paid to	Purpose of payment
26.11.2019	1,81,06,440	YEIDA	Outstanding dues
26.11.2019	10,000	YEIDA	Processing fee
26.11.2019	16,73,79,300	YEIDA	Transfer Charges
26.11.2019	3,01,28,274	YEIDA	GST on Transfer Charges
17.12.2019	26,74,179	JAL	Transfer Charges
<b>Sub-Total</b>	<b>21,82,98,193</b>		
07.02.2020	77,17,01,807	Axis Bank	For self @ Rs 72,995/sqm for 10,527 sqm
07.02.2020	1,00,00,000	Govt	TDS
<b>Total</b>	<b>1,00,00,00,000</b>		
07.02.2020	8,36,90,000	Govt of UP	Stamp Duty @5% of Circle Rate of Rs 1,673,793,000 @ Rs 159,000 per sqm
<b>Total</b>	<b>1,08,36,90,000</b>		



claims to develop 7 lakh sq ft of area. The relevant part of the same is reproduced below: -

*“Your company was incorporated on June 24, 2019 and is engaged in the business of Real Estates development. Your Company will house its first project Max Square, Noida, designed to be a IGBC Green Gold and IGBC Health & Wellbeing Gold rated commercial office development (0.7 million square feet) located right on Noida Expressway, Sector 129, Noida. The land (2.6 acre) for this development was purchased by your Company from a private sector bank at an attractive valuation.*

*Your Company has partnered with New York Life Insurance Company ('New York Life'), a corporation established under the laws of New York by entering into a Shareholders' Agreement for investment into the securities of the Company to undertake the construction and development of the land parcel situated at Sector 129, Noida. New York Life has invested INR 68.62 crores into the Company by way of subscription of equity shares and compulsory convertible debentures.*

*The Company has applied and obtained various regulatory approvals for the aforesaid land parcel and has started construction in FY 2021. The construction is going*

*as per schedule and is expected to be delivered by Q4 FY 2023 despite the COVID led lockdowns.*

*Amongst its many unique features and amenities, Max Square houses 10,000 sq ft of urban forest right at its center - a first for any building in Delhi NCR. The Business Development team is in the process of getting ready full digital toolkit for building awareness, marketing and lead generation. The team*



*plans to actively initiate pre-leasing efforts from Q2 FY 2022 onwards.”*

#### **Loan from IndusInd Bank**

MSL also secured a loan facility of Rs 240 crore from IndusInd Bank, branch at 7<sup>th</sup> floor, Hyatt Regency Complex, New Tower Block A, Bhikaji Cama Place, New Delhi. The relevant part of the same its filing in FY21 is reproduced below: -

##### **“ii) IndusInd Bank Term Loan (Secured)**

*The Company has taken secured term loan facility for Rs 24,000 lakhs loan from IndusInd Bank Ltd. Out of*

*this facility the company has drawn Rs 3,050 lakhs till March 31, 2021.*

*i) Primary and collateral security:*

- a. *Exclusive charge on by way of equitable mortgage on project land of 2.6 acre land and building with complete available leasable area of 7 lacs sqft in Max square project, being developed in Sector 129, Noida.*
- b. *First charge by way of*

*assignment / hypothecation over all present and future current assets including lease rental receivables, parking rentals, CAM income, security deposit, sales receivables, any other income generated pertaining to the project.*

- c. *First charge on DSRA, Escrow account maintained with IBL pertaining to rental receivables of the project, wherever maintained, present & future.*
- d. *30 per cent share pledge of Borrower.*
- e. *Minimum security cover*

to be 1.5 times based on market values of the property to be maintained throughout tenure of the facility

- ii) Corporate guarantee of Max Estates Limited and Max Ventures Industries Ltd
- iii) DSRA - 3 months interest to be created
- iv) Borrower to open Escrow account with IBL

v) Tenure of loan: 60 months from the date of first disbursement

#### Repayment terms:

Loan will be payable in bullet instalment at the end of 60<sup>th</sup> month from the date of first disbursement."

The IndusInd Bank did not bother to check whether the

project had got the relevant approvals including acquisition of land by Axis Bank from JIL in March 2017 during the look-back period/ twilight period of Corporate Insolvency Resolution Process (CIRP) of JIL etc and whether it was registered with UP RERA or not. It also did not verify as to why or how Max got the plot of land much cheaper than the market rate from Axis Bank and whether such arrangements were legally tenable or not.

### Scan-A: Extract of agreement between NPSP and Axis Bank at lower rates than market value

आवेदन सं०: 202000743013539

@ Rs 72,995/sqm

Consideration = Rs 100 cr

पट्टाधिकार का अंतरण./विक्रय पत्र Market Value = Rs 167.38 cr

बही सं०: 1

रजिस्ट्रेशन सं०: 2088

वर्ष: 2020

प्रतिफल- 1000000000 स्टाम्प शुल्क- 83690000 बाजारी मूल्य - 1673793000 पंजीकरण शुल्क - 20000 प्रतिनिधिकरण शुल्क - 180 योग : 20180

श्री नोर्थन सोल्यूशन्स लि० द्वारा  
ऋषि राज अधिकृत पदाधिकारी/ प्रतिनिधि,  
पुत्र श्री राज कुमार जैन  
व्यवसाय : अन्य  
निवासी: मकान नम्बर २७ सैकण्ड तल आकाश नीम मार्ग डीएलएफ सिटी फेस-२ गुडगावा



श्री, नोर्थन सोल्यूशन्स लि० द्वारा  
ऋषि राज अधिकृत पदाधिकारी/  
प्रतिनिधि

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05:55:25 PM बजे  
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In year 2020

रजिस्ट्रीकरण अधिकारी के हस्ताक्षर

चौरसेम

उप निबंधक :सदर द्वितीय

गौतम बुद्ध नगर

07/02/2020

दिमा गुप्ता

निबंधक लिपिक





SUB-LEASE DEED

Plot No : Commercial Plot No. C3-E1  
 Project : situated at Sector-129, Jaypee Greens Wish Town, Noida (U.P.)  
 Sale Consideration : Rs.74,00,00,000/-  
 Circle rate per (Sq. mtrs) : Rs.2,11,000/- per (Sq. Mtrs.)  
 Value as per Circle rate : Rs.1,57,95,46,000/-  
 Stamp duty payable : Rs.7,89,77,300/- (As per Circle rate)  
 Stamp duty paid : Rs.7,89,77,300/- (As per Circle rate)  
 Plot Area : 7487.00 Sq. Mtrs.

The Market Value is calculated according to Format- 4(i) part-2 of Circle Rate List dated 01.08.2014, mentioned on Page No.39, Row No.16.  
 Software V- Code: 0137

THIS **SUB-LEASE DEED** is made and entered on this **05<sup>th</sup> day of August, 2015** at **Noida**, District- Gautam Budh Nagar, Uttar Pradesh.

**BY AND AMONGST**


**JAYPEE INFRATECH LIMITED [PAN- AABCJ9042R]**, a Company duly incorporated and validly existing under

**GULSHAN HOMES AND INFRASTRUCTURE PRIVATE LIMITED [PAN- AADCT7050K]**, a Company duly incorporated and validly existing under the provisions of the Companies Act, 1956 and having its registered office at: 121, Hargobind Enclave, Delhi-110092, India (hereinafter referred to as the "**Sub-Lessee**" or the "**Third Party**"), which expression or term shall, unless excluded by or repugnant to the context or meaning hereof, be deemed to include its legal heirs, executors, successors and legal representatives acting through its Authorized Signatory **Mr. Ran Singh Shekhawat**, S/o. Late Mr. Bihari Singh Shekhawat, having office at 121, Hargobind Enclave, Delhi-110092 (who has been duly authorized) to execute this **Sub-Lease Deed** on behalf of the **Sub-Lessee**.

For Gulshan Homes And Infrastructure Pvt. Ltd.



  
 Authorised Signatory

  
 Authorised Signatory



## Industrial Plot No.1, Sector 90, Noida

**Ineligible firm CBS with tainted promoter was allotted prime IT & ITeS Park land by Mayawati govt. In turn CBS gave away more than 75 pc of the project to Bhutani Infra, the promoters continue flouting all lease deed norms**

**O**n September 3, 2007, the Noida Authority allotted an industrial Plot No. 01, Sector 90, Noida to CBS International Projects Ltd (CBS) for the establishment of an information

technology (IT) and IT enabled services (ITeS) Park under the Industrial Land Service Investment Policy 2004 of the government of Uttar Pradesh. This was followed by execution of a 90-year lease deed on May 26, 2008.

On the date of allocation, the

shareholders of CBS were R.S. Resource Management Consulting Pvt Ltd (RSR) and Carnoustie Management Pvt Ltd (CMP), in equal ratio. The shareholding remained the same till August 12, 2015. Since August 13, 2015, CBS has been in the hands of Noida





based Rastogi family (see table-1 at pg 28).

The original subscribers of RSR were Sanjay Kumar Sinha with 9,000 shares and Randeep Waraich with 1,000 shares. However, on June 22, 2007, CMP was allotted 10,000 shares. That means, on the date of allotment, RSR was an associate company of CMP. On June 6, 2015 CMP handed over the business of RSR to Jaydev Infratech Pvt Ltd and it continues with them till the last known data available on ministry of corporate affairs (MCA) web site. Its directors are Seema Rani

and Ahilya Devi. RSR never had paid up capital of more than Rs 2 lakh since its incorporation (see table-2 at pg 29).

CMP's original promoters are Rajesh Malik and Randeep Waraich. On the date of application, this company had just issued 10,000 shares of Rs 10 each. That is a capital of just Rs 1 lakh. Just before the execution of lease deed, the two promoters allocated to themselves 10 lakh shares each as bonus. Two days later, on March 29, 2008 Unitech was issued 5.10 lakh shares at Rs 1,000 each, which means they paid Rs 51

crores to get 25 per cent stake, whereas, the promoters paid just Rs 1 lakh to get 75 per cent. Over a period of time, CMP kept issuing fresh shares of Rs 10 for Rs 1,500 each, while Rajesh Malik and Randeep Waraich were made another bulk allotment on February 9, 2011 through bonus shares (see table-3 at pg 30-31).

### Lease Deed Conditions

As part of the lease deed for Plot No.1 at Sector 90, one lakh square meter land was leased out for Rs 52.77 crores, out of which Rs 17.10 crores was paid upfront, and the balance was to be paid in 16 half-yearly installments with 11 per cent interest rate. The last installment was to be paid by December 31, 2015. In addition, 2,949 sqm land was also given on 90-year lease for Rs 2.31 crore, full premium paid upfront, plus Rs 50 lakh one-time lease rent.

The land was allotted on the following conditions: -

- The plot was leased to CBS on "as is where is" basis.
- It will be used only for the development of IT / ITES Park. No change was permissible for any reason whatsoever.
- Ground coverage allowed is 30 per cent and FAR of 200. FAR is restricted to following cap: IT/ITES 75 per cent; Residential 10 per cent; Commercial 10 per cent; Institutional facilities 5 per cent.
- No change in shareholding was permitted till the completion of IT/ITES Park.
- Change in shareholding was allowed only after the completion of the project on payment of 10 per cent proportionate transfer charges at the prevailing rate on the date of transfer.
- Any action for transfer of the plot without prior written permission of Noida Authority shall render the lease deed null and void.
- CBS cannot cause sub division of plot.
- For misrepresentation of facts,

**Table-1: Shareholders of CBS International Projects Pvt Ltd**

Name of shareholder	No. of equity shares	%
22.03.2007 to 13.06.2007		
Hemant Kumar, Mumbai	5,000	50%
Shubhendu Tewari, Mumbai	5,000	50%
14.06.2007 to 12.08.2015		
R.S. Resource Management Consulting Pvt Ltd	33,000	50%
Carnoustie Management Pvt Ltd	23,000	50%
	10,000	
13.08.2015 onwards		
Sanjay Rastogi	32,999	50%
Rajesh Malik, nominee of Carnoustie Management (India) Pvt Ltd (25.06.2015)	1	0%
Meenu Rastogi	23,000	35%
Ishan Rastogi and Vasu Rastogi (jointly)	10,000	15%
As on 31.03.2016 and continues		
Sanjay Rastogi	1,640,100	35%
Meenu Rastogi	1,640,100	35%
Ishan Rastogi	702,900	15%
Vasu Rastogi	702,900	15%
Rastogi family r/o K-302, Pearl Gateway Tower, Sec -44, Noida		

- i. the lease deed shall be terminated.
- The policy allowed project proponents to avail exemption in payment of Stamp Duty and Registration Charges, but they were required to complete the project in a time bound manner. For this, the following milestones / deadlines were specified: -
- ☐ Obtain approval of development plan in 18 months from the date of lease deed.
  - ☐ Complete 40 per cent of the covered area in 3 years from the date of possession.
  - ☐ Complete 100 per cent of the covered area in 5 years from the date of possession.
  - ☐ Extension will be given

only in exceptional cases. In that case, CBS must pay Stamp Duty and Registration Charges with 18 per cent interest from the lease deed date. In addition, 4 per cent of premium per year is also payable as extension charges.

The relevant clauses of the lease deed are given in box-A at pg 40 to 42. There are multiple violations of the lease deed right from the date of allotment of land.

#### **Violation-1: Undue favour in allotment of industrial plot**

In the Performance Audit report on the functioning of Noida Authority (12/2021), the Comptroller and Auditor General (CAG) has stated that in their application, CBS had claimed to be a consortium of three companies: Burchill VDM (BVDM), Carnoustie Management Pvt Ltd (CMP) and R.S. Resource Management Consulting Pvt Ltd (RSR). However, on verification, it was found that BVDM was never a part of CBS, it was actually owned by CMP and RSR on the date of the application i.e. August 6, 2007.

#### **Rajesh Malik – Mayawati Govt connection**

Introducing Rajesh Malik: While working in Sahara, he came very close to Shashank Shekhar Singh, who served as Uttar Pradesh's cabinet secretary in Mayawati government for five years. He died on June 12, 2013 and is survived by his wife and two daughters. He was not an officer from IAS cadre but was given important assignments by successive chief ministers. He was a man who called the shots during the Mayawati regime. In fact, the post of cabinet secretary, which was often described as unconstitutional, was especially created by Mayawati in 2007 for him. He was given an extension in 2010 for two years. However, he took premature retirement after Mayawati

lost elections in March 2012. Earlier, when Mayawati assumed office for the third time in 2002, she had made Mr Singh, the state's industrial development commissioner. He also remained ex-officio chairman of Noida and Greater Noida.

On October 4, 2021, the enforcement directorate (ED) had arrested Mr Malik and Unitech's founder Ramesh Chandra, his daughter-in-law Preeti Chandra in the Rs 2,000 crore money laundering matter. ED's money laundering case is based on a number of FIRs filed by Delhi Police Economic Offences Wing and CBI on complaints filed by homebuyers against the Unitech Group and its

promoters. The ED filed a criminal case under various sections of the PMLA in 2021 against the Unitech Group and its promoters over allegations that the owners - Sanjay Chandra and Ajay Chandra - illegally diverted over Rs 2,000 crore to Cyprus and the Cayman Islands.

It had also carried out raids in this case on March 4, 2021 at 35 locations of the Shivalik Group, Trikar Group, Unitech Group and Carnoustie Group in Mumbai and the national capital region. The ED had said that the total proceeds of crime detected in this case stands at Rs 7,638 crore and it has attached properties worth Rs 673 crore till now as part of this investigation.



## Project is still under construction

*Tower-D*

*Tower-E*



*Proposed sky walk connecting tower-A, B & C*

*Photographs taken on June 15, 2022 of Plot No. 01, Sector 90, Noida*

<b>Table-2: No. of equity shares of Rs 10 each of R.S. Resource Management Consulting Pvt Ltd (Inc on 07.05.2004); Changed name on 07.06.2010 to Carnoustie Tech Pvt Ltd; Reverted back to original name on 21.06.2013</b>						
<b>Name</b>	<b>Address</b>	<b>7.5.2004</b>	<b>22.6.2007</b>	<b>FY10</b>	<b>31.3.2015</b>	<b>6.6.2015 #</b>
Sanjay Kumar Sinha	703, Joaquim S, Palm Avenue, Kewani Pada, Amboli, Andheri (West), Mumbai 400102	9,000	-	-	-	-
Randeep Waraich	302, Jai Jagdamba Apart, Eduljee Road, Cherai, Thane-400601	1,000	-	5,000	5,000	-
Jaydev Infratech Pvt Ltd	1st floor, Omaxe Arcade, Greater Noida 201310		-	-	6,000	15,000
Ashok Kumar (Also Director of Jaydev)	H-217, Alpha-II, Greater Noida-201306		-	-	-	5,000
Carnoustie Management (India) Pvt Ltd *	326, Master Mind-1, Royal Palm Aarey Colony, Goregaon (East), Mumbai-400090		10,000	10,000	4,000	-
Rajesh Malik	B-1/415, Janak Puri, New Delhi-110058		-	5,000	5,000	-
<b>Total</b>		<b>10,000</b>	<b>10,000</b>	<b>20,000</b>	<b>20,000</b>	<b>20,000</b>
* Changed name on 3.3.2015 from Carnoustie Management Pvt Ltd that was incorporated on 4.9.2006; # Same till FY20 last known data on MCA web site						

Further, the name of BVDM, an Australian company, was added to present a rosy picture of its financial health in order to qualify for allotment of the plot. In this regard, the relevant extracts of the state government policy are reproduced in box-B at pg 42.

Before issuing allotment letter, Noida Authority should have verified these facts, but for some reasons, it shut its eyes. This resulted in allotment of a precious industrial plot worth Rs 52.77 crore to an ineligible newly incorporated applicant who in turn sold it to Unitech and others at premium.

The CAG brought to the attention of the Noida Authority the above misrepresentation of facts by CBS to obtain the plot, however the lease has not been

determined/ terminated. As per the terms of lease deed the entire money paid by them also should have been forfeited. Clause (III a) of the lease deed states that if the allotment of plot or lease is obtained by suppression of any fact or mis-representation or mis-statement etc, the lease of land may be determined, entire money paid by lessee be forfeited and possession of demised plot be taken over.

#### **Violation-2: Change in Constitution of CBS**

The lease deed executed by the Noida Authority with CBS provided that no change in constitution of lessee was permissible before completion of the project. However, tables 1 to 3 show that there were multiple

changes in the shareholding (CIS) of lessee (CBS) before completion of the project. As per the provisions of the lease deed, the Noida Authority should have levied penalty on the lessee (CBS) for making changes in the shareholding of CBS, but it has not done it so far. CAG has determined CIS charges payable by CBS as Rs 2.64 crores.

#### **Violation-3: Sub-division to Bhutani Group**

As per the lease deed executed by the Noida Authority with CBS on May 30, 2008, the lessee shall not assign, relinquish, sub-let, transfer or part with the possession of any portion of demised land and/or create third party rights and building thereon except with prior written permission of

**Table-3: No. of shares of Rs 10 each and shareholders of CBS**

Sl	Name of Shareholders	Total	Class	%	28.8.2006	15.3.2007	27.3.2008	29.3.2008	17.3.2009
1	Rajesh Malik , S/o Ram Lal Malik (Occupation: Service)	7,020,000	A	42.33	5,000	5,000	1,000,000		
2	Randeep Waraich, S/o Chattarpal Singh Waraich; Occupation: Consultant	7,020,000	A	42.33	5,000	5,000	1,000,000		
3	Unitech Ltd	2,237,030	B	13.49				510,000	
4	Stupa Consulting Pvt Ltd	28,333	B	0.18					
5	Carnoustie Consulting Pvt Ltd	13,833	A	0.08					
6	Omkar Realtors & Developers Pvt Ltd	36,666	B	0.22					16,666
7	Shivalik Ventures Pvt Ltd	66,666	B	0.40					
8	Carnoustie Security Pvt Ltd	20,000	A	0.12					
9	Arvinder Singh	3,333	B	0.02					
10	DLF Home Developers Ltd	40,000	B	0.24					
11	Bravo Builders Pvt Ltd	100,000	B	0.60					
12	Sanjay Rastogi *	-	B						3,333
13	Bikanervala Real Estates Pvt Ltd #	-	B						28,333
	<b>Total</b>	<b>16,585,861</b>		<b>100</b>	<b>10,000</b>	<b>10,000</b>	<b>2,000,000</b>	<b>510,000</b>	<b>16,666</b>
	Face Value of Rs 10 + Premium				10	10	10	1,000	1,000
	<b>Total in Rs crore</b>				<b>0.01</b>	<b>0.01</b>	<b>2.00</b>	<b>51.00</b>	<b>1.66</b>
	* Sold to Carnoustie Consulting								
	# Sold to Stupa								
	Class-A = With voting rights; Class-B = Without voting rights								



lessor.

However, CBS entered into agreement with a company called Parmesh Construction Company Ltd (Bhutani Group) for the development of the same project. In 2017, Bhutani group had registered four commercial projects Alphathum Phase I-IV with UP RERA on the same plot of land.

However, none of the companies – CBS and Bhutani – have disclosed the content of the agreement between them for the development of project in the above manner. They were required to submit/ upload any registered development, collaboration/ joint development agreement on the website of UP RERA in accordance with the UP Real Estate (Regulation and Develop-

ment) Agreement for sale/lease Rules 2018 notified by Government of UP, Housing and Town Planning Department Notification No.1673/Eight-3-18-65 Vividh/16 dated October 17, 2018.

UP RERA has kept its eyes closed on this issue. It is strange that it registered the project in 2017, but raised the basic / fundamental question on Bhutani group only on December 10, 2019, the reply to which was submitted by them, the relevant part of the same is reproduced below: -

*We are in receipt of your letter dated December 10, 2019 seeking clarification.*

1. With regard to your query No. 1 it is to put on record that Parmesh Construction Company Ltd is a venture of Bhutani Group,

*therefore the Promoter is Parmesh Construction Company Ltd which is developing Alphathum.*

2. With regard to your query No. 2 it is clarified that CBS International Projects Pvt Ltd is the owner of land on which Alphathum project is being developed by Parmesh Construction Company Limited. Being the land owning company, the maps were therefore sanctioned in the name of CBS International Projects Pvt Ltd.

Further, even after above clarifications, strangely UP RERA has not ensured that a copy of the registered development/ joint

**Carnoustie Management (India) Pvt Ltd as on 31.03.2020**

	24.8.2009	2.1.2010	2.1.2010	9.6.2010	9.10.2010	9.2.2011	9.2.2011	24.3.2011	21.12.2011	31.3.2012
		2,500,000				3,510,000				
		2,500,000				3,510,000				
	224,963		76,667	52,000	140,000		553,333	512,667		167,400
										10,500
6			20,000							
	66,666									
					10,000	10,000				
					3,333					
									40,000	
									100,000	
3										
3										
6	291,629	5,000,000	96,667	52,000	153,333	7,030,000	553,333	512,667	140,000	177,900
0	1,500	10	1,500	1,500	1,500	10	1,500	1,500	1,500	1,500
7	43.74	5.00	14.50	7.80	23.00	7.03	83.00	76.90	21.00	26.69
		Bonus				Bonus				
		Bonus shares issued have been shown in yellow background								



It is bizarre to observe registration of two real estate projects of two different promoters for one tower. While one project is registered for lower floors up to third/fourth floors, the other project is registered for higher floors (3<sup>rd</sup>/4<sup>th</sup> to 27<sup>th</sup> floor) on the same Tower/Block in name of another promoter. This has happened not for one tower but for as many as three towers i.e. six real estate projects have been registered by two promoters for 3 Towers/Blocks. Further these projects were registered on July 31, 2017, August 4, 2017, and August 15, 2017 by UP RERA, though the revised sanction plan was approved by the Noida Authority on September 18, 2017. It is therefore apparent that all these projects were registered based on the original sanction plan approved on July 14, 2014. Incidentally, none of the Towers/Blocks in the original sanction plan was allowed up to 27<sup>th</sup> floor. In the original sanction plan, construction of Tower A (G+23), Tower B (G+6), Tower C (G+6), Tower D (G+6), Tower E (G+3) & Tower F (GF only) was only allowed. It was therefore not clear as to how the Project Alphathum I-IV were registered in August 2017 up to 27<sup>th</sup> floor in each project.

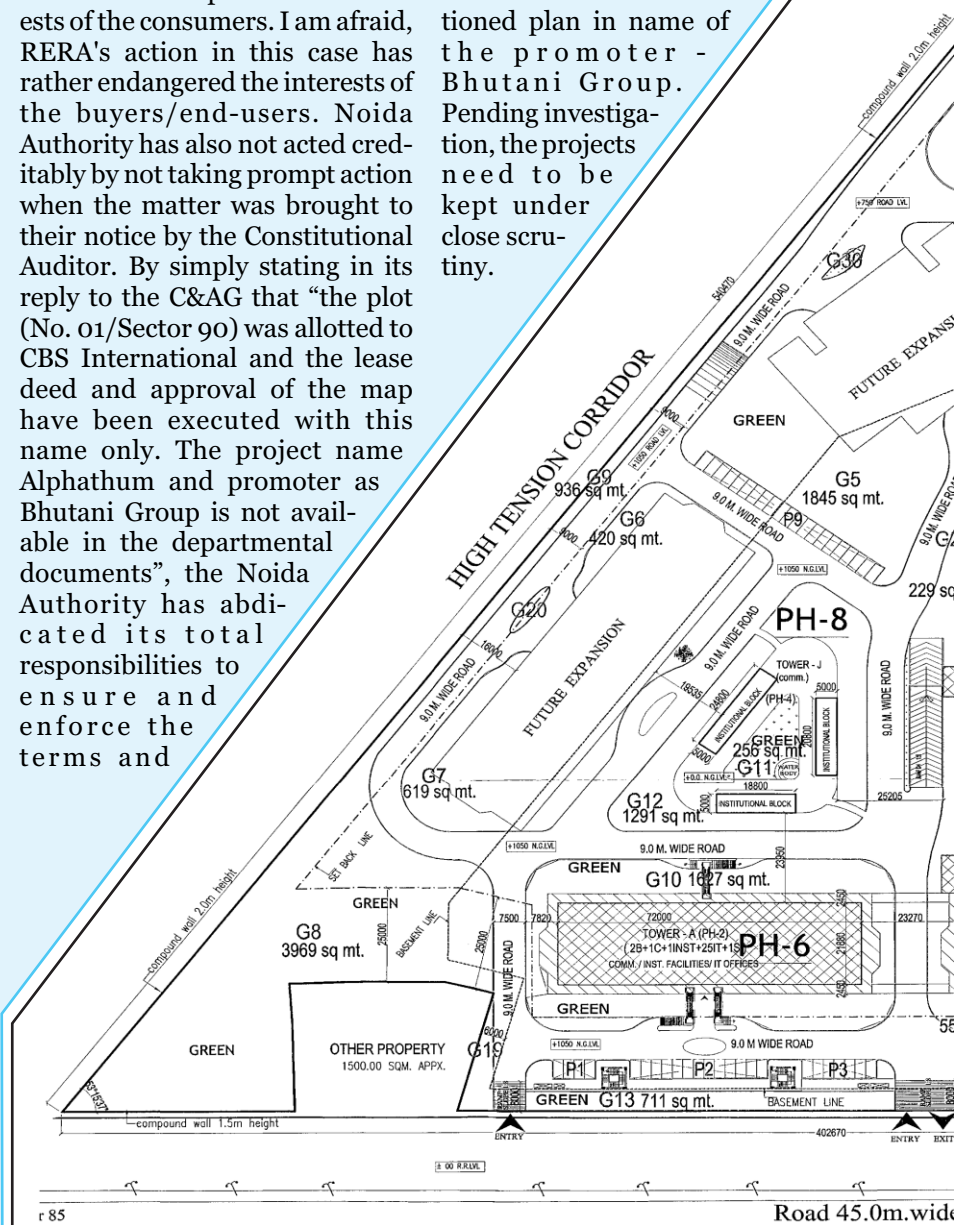
RERA Act 2016 has enjoined upon the promoters to submit a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorized by the promoter, stating that he has a legal title to the

land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person. Bhutani Group has however not provided and UP RERA has not obtained “legally valid documents with authentication of such title by the CBS” before registration of four real estate projects namely Alphathum Phase I-IV in gross violation of the original sanctioned plan and revised sanctioned plan issued by the Noida Authority.

One of the prime objectives of the RERA is to protect the interests of the consumers. I am afraid, RERA's action in this case has rather endangered the interests of the buyers/end-users. Noida Authority has also not acted creditably by not taking prompt action when the matter was brought to their notice by the Constitutional Auditor. By simply stating in its reply to the C&AG that “the plot (No. 01/Sector 90) was allotted to CBS International and the lease deed and approval of the map have been executed with this name only. The project name Alphathum and promoter as Bhutani Group is not available in the departmental documents”, the Noida Authority has abdicated its total responsibilities to ensure and enforce the terms and

conditions of letter of allotment, Brochure, lease deed etc. It is high time that the state government and Noida Authority take immediate action without any further delay so as to restore the confidence of the people in the governance system.

UP RERA should also order a High-Level committee to investigate as to how four projects of Bhutani Group were registered without submission of “legally valid land documents duly authenticated by the owner of the land and duly approved by Lessor / Noida Authority” and without issue of a sanctioned plan in name of the promoter - Bhutani Group. Pending investigation, the projects need to be kept under close scrutiny.







development/ collaboration agreement is uploaded on the website of UP RERA for the benefits of the end users.

On the UP RERA web site, Bhutani group has simply attached a draft of the Buyers Agreement (end-user), the relevant part of which is reproduced below: -

4. The Applicant(s) has satisfied himself/ herself that Parmesh Construction Company Limited, a Company regis-

tered under the Companies Act 1956, having its Registered Office at Plot No. 3 & 4, 2<sup>nd</sup> floor, A-Block Market, Savitri Bhavan, Delhi-110092, is developing and constructing 1,02,949 Sq. Mt. area under an Agreement with CBS International Pvt Ltd, a company registered under the companies Act 1956, having its registered office at 326 Master Mind-I, Royal Palm, Aarey Colony,

Goregaon (East), Mumbai-400 090 ("Lessee"), situated at ("Said Land") and is sufficiently entitled to develop, sell and deal with the said Project proposed to be constructed on the said land in respect of which Noida Authority, (the "Lessor"), has executed Lease Deed in favour of CBS International Private Limited vide lease dated May 30, 2008 as registered with Sub Registrar, Noida. The

**Scan-A: Extract of Lease Deed dated May 30, 2008 between Noida Authority and CBS**

(x) The lessee shall not assign, relinquish, sublet, transfer or part with the possession of any portion of the demised plot and or create third party rights and building thereon except with prior written permission of the lessor. In the event, any permission for transfer, assignment, mortgage or subletting of the demised plot or building constructed thereon or for both is being granted by the lessor, then the same shall be subject to such terms and conditions which may be imposed by the lessor in its discretion. The transferee, assignee or mortgage, tenant shall be bound by all the terms and conditions of this lease deed and the answerable to the lessor in all respects thereof.

Provided always that the lessee or transferee or permitted assignee, relinquish, mortgage, sublet or transfer the demised plot and building thereon as a whole the said terms after prior and written permission of the lessor and it will deliver at its own expense to the lessor or at the lessor's officer attested copy of the assignment, relinquishment, mortgage sub letting or transfer deed together with notice thereof within a month after the same shall have been duly registered under the Indian Registration Act or any other law relating to the such registration and for the time being in force.



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नोडा



Lessee has authorised the Company, to develop/construct the said Project on the said land and to sell, market, deal, negotiate, sign and execute Agreement, Sub-Lease Deed etc. with the Applicant(s)/ prospective purchasers/ buyers at the rates and Terms and Condi-

tions to be determined in its sole discretion and also to receive all payments and issue receipts thereof in its own name.

5. The Applicant(s) represents & acknowledges that he/ she has inspected the relevant documents/ papers and as carried out due diligence and

is fully satisfied with the Right, Title and Interest of the Owners/ Company to the Said Land and has understood all limitations and obligations of the Lessee/ Company /Contractor/Broker in respect thereof. The Applicant(s) undertakes not to hereinafter raise objections with respect

**Table-4: Projects registered by UP RERA on Plot No.01 of Sector 90, Noida**

Tower / Block	CBS (Noida World One)					Bhutani (Alphathum)				
	Ph	UP-RERA-PRJ	Type	Floors	Sqm	Ph	UP-RERA-PRJ	Type	Floors	Sqm
A	1	7409	Commercial	GF-2F	1,529	3	10097	Commercial	3F-27F	9,171
B	2	7380	Commercial	GF-2F	1,436	1	7301	Commercial	3F-27F	10,614
C	3	7184	Commercial	GF-3F	1,769	2	7376	Commercial	4F- 27F	8,618
D	7	7467	Commercial	GF-22F	3,089					
E	6	11643	Residential		4,000	4	10115	Commercial	GF- 27F	9,749
		<b>Total</b>			<b>11,823</b>					<b>38,152</b>

**Scan-B: Excerpts from revised sanctioned plan approved by Noida Authority on Sept 18, 2017**

**COMBINE FLOOR WISE AREA CHART OF ALL TOWERS**

(1 of 5)

TOWERS	FLOORS	SERVICE	RESIDENTIAL	INSTITUTIONAL FACILITIES	COMMERCIAL	IT/ITES	TOTAL FAR	NON FAR
ALL TOWERS	GROUND FLOOR	704.31	0.00	2312.03	12283.39	1558.99	16154.41	0.00
	1ST FLOOR	890.25	0.00	7924.98	3055.87	1524.01	12504.86	0.00
	2ND FLOOR	776.42	721.45	0.00	2664.48	5907.40	9293.33	0.00
	3RD FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	4TH FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	5TH FLOOR	587.33	721.45	0.00	0.00	5906.40	6627.85	0.00
	6TH FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	7TH FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	8th FLOOR	587.33	721.45	0.00	0.00	5906.40	6627.85	0.00
	9th FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	10th FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	11th FLOOR	587.33	721.45	0.00	0.00	5906.40	6627.85	0.00
	SERVICE FLOOR-1	0.00	0.00	0.00	0.00	0.00	0.00	6418.44
	12th FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	13th FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	14th FLOOR	587.33	721.45	0.00	0.00	5906.40	6627.85	0.00
	15th FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	16th FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	17th FLOOR	587.33	721.45	0.00	0.00	5906.40	6627.85	0.00
	18th FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	19th FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	20th FLOOR	587.33	721.45	0.00	0.00	5906.40	6627.85	0.00
	21th FLOOR	587.33	708.20	0.00	0.00	5906.40	6614.60	0.00
	22th FLOOR	512.04	0.00	0.00	0.00	5906.40	5906.40	0.00
	23 th FLOOR	512.04	0.00	0.00	0.00	5906.40	5906.40	0.00
	24 th FLOOR	512.04	0.00	0.00	0.00	5906.40	5906.40	0.00
	25 th FLOOR	512.04	0.00	0.00	0.00	5906.40	5906.40	0.00
	26 th FLOOR	512.04	0.00	0.00	0.00	5906.40	5906.40	0.00
	TERRACE SERVICES	2479.80	0.00	0.00	0.00	0.00	0.00	0.00
	BASEMENT 1ST FLOOR	2951.80	0.00	0.00	2079.64	0.00	2079.64	52710.262
	BASEMENT 2ND FLOOR	4700.14	0.00	0.00	0.00	0.00	0.00	53041.560
	GRAND TOTAL	26222.186	14256.75	10237.01	20083.38	150744.00	195321.140	112170.26
TOTAL BUILT UP AREA ( SERVICES + FAR + NON FAR )						=	333713.59	

to the Lessee/ Company /Contractor's Right/ Title/ Interest in the Said Land and rights to sell and develop the Project.

The above shows that Bhutani group has entered into a development arrangement with CBS, which is not permissible under the provisions of lease deed without approval of the Noida Authority. Further they have not submitted the registered Development/ Joint Development/ Collaboration agreement with the Noida Authority, as required under the terms and conditions of the lease deed (see scan-A at pg 34).

In response to the draft report of the CAG, the Noida Authority had submitted that the project name Alphathum and the promoter Bhutani Group was not available on its records. The Authority also did not take any action even after the Constitu-



Scan-B (2 of 5)

TOWERS	FLOORS	SERVICE	RESIDENTIAL	INSTITUTIONAL FACILITIES	COMMERCIAL	IT/ITES	TOTAL FAR
TOWER-B (G+26 FLOOR)	GROUND FLOOR	99.33	0.00	0.00	1668.389	0.00	1668.389
	1ST FLOOR	128.01	0.00	0.00	1527.770	0.00	1527.770
	2ND FLOOR	128.01	0.00	0.00	0.00	1477.60	1477.60
	3RD FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	4TH FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	5TH FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	6TH FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	7TH FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	8th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	9th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	10th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	11th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	SERVICE FLOOR						
	12th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	13th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	14th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	15th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	16th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	17th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	18th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	19th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	20th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	21th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	22 th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	23 th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	24 th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	25 th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	26 th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	MMRM/CONNECT.BRDE	853.335					0.00
	TOTAL	4280.93	0.00	0.00	3196.16	36916.00	40112.16





tional Authority brought it to their attention the apparent irregularities being committed by the promoters. This inaction on the part of the Authority is likely to cause irreparable damage to the end-users at the time of subleasing of the commercial spaces in the Project.

#### Violation-4: Change in usage

As per the lease deed (Clause II a) executed by the Noida Authority with CBS on May 30, 2008 for industrial plot stipulated that *“lessee shall use the plot for setting up of IT/ITES only and for no other project. No change in project is permissible for any reasons whatsoever.”* Further, as per the lease deed, the allottee (CBS) was required to develop a minimum of 75 per cent of the area for IT and ITes services/facilities, while commercial area was capped at 10 per cent. The balance area was capped at 10

per cent for residential and 5 per cent for institutional facilities. But they are developing all the towers as commercial ones, while one is residential.

The Noida World One project allotted to CBS has multiple phases 1 to 8 corresponding to different towers. UP RERA has registered its five phases (4 commercial and 1 residential): phase 1 is called tower-B, phase 2 (tower-C), phase-3 (tower-D), phase-6 (tower-A), and phase-7 is tower-F. On the other hand, Bhutani Group has registered four commercial projects with UP RERA namely Alphathum numbered as phase 1 to 4 overlapping the area on the same plot of land.

As of now, a total of nine projects have been registered by UP RERA for this plot (table-4 at pg 35).

As is evident from the table-4, for Tower-A to Tower-C, lower floors are being developed by CBS,

Scan-B (3 of 5)

TOWERS	FLOORS	SERVICE	RESIDENTIAL	INSTITUTIONAL FACILITIES	COMMERCIAL	IT/ITES	TOTAL FAR
TOWER-C (G+26 FLOOR)	GROUND FLOOR	99.86	0.00	0.00	1582.610	0.00	1582.610
	1ST FLOOR	128.01	0.00	0.00	1528.095	0.00	1528.095
	2ND FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	3RD FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	4TH FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	5TH FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	6TH FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	7TH FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	8th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	9th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	10th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	11th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	SERVICE FLOOR						
	12th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	13th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	14th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	15th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	16th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	17th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	18th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	19th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	20th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	21th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	22 th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	23 th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	24 th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	25 th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	26 th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	MUMTY/MCH/WATER TANK	392.70					0.00
	<b>TOTAL</b>	<b>3820.82</b>	<b>0.00</b>	<b>0.00</b>	<b>3110.71</b>	<b>36915.00</b>	<b>40025.71</b>

while upper floors are being developed by Bhutani Group. Tower-D is being entirely developed by CBS. While Tower-E is being fully developed by Bhutani Group.

### Extension charges paid?

The project is still under construction, though the Noida Authority in January 2021 gave completion certificate for two towers. The lease deed disclosed that CBS has paid Stamp duty of Rs 5.38 crores and the interest of Rs 4.20 crores on September 13, 2012 for failing to complete the project in stipulated time. However, there is no disclosure whether it has paid extension charges at the rate of 4 per cent of the premium for each year of extension, which is required to be paid as per terms of the lease deed.

### Violation-5: Projects registration by UP RERA in perfunctory manner

UP RERA has miserably failed in performing its duties. It has failed on multiple fronts.

One, it is also not understood as to how UP RERA has registered



the projects Alphathum Phase I-IV when the promoters Bhutani Group did not have valid legal rights on the land as required under the section 4 (2) (I) of Real Estate (Regulation and Development) Act 2016.

Two, it failed to take note of the terms and conditions of lease deed of the industrial plot that was solely meant for IT/ ITES Park only. It instead registered eight commercial projects and one residential project being developed by two different promoters on the same plot of land, leased to CBS by the Noida Authority.

Three, the sanctioned plan

uploaded by two promoters was also the same, which was originally approved by the Noida Authority in July 2014 for five projects (Noida World One Phase I-V) of CBS which provided for construction of Tower A (G+23), Tower B (G+6), Tower C (G+6), Tower D (G+6), Tower E (G+3) and Tower F (GF only).

Four, on September 18, 2017 the Noida Authority approved the revised sanctioned plan of CBS that made a provision for Tower A (G+26), Tower B (G+26), Tower C (G+26), Tower D (G+21), Tower E (G+26), Tower F (GF), Tower J (GF+2F). The Bhutani Group has

### Scan-B (4 of 5)

TOWERS	FLOORS	SERVICE	RESIDENTIAL	INSTITUTIONAL FACILITIES	COMMERCIAL	IT/ITES	TOTAL FAR
TOWER-D (G+21 FLOOR)	GROUND FLOOR	52.870	0.00	1251.85	0.00	0.00	1251.85
	1ST FLOOR	67.950	0.00	1218.09	0.00	0.00	1218.09
	2ND FLOOR	75.290	721.45	0.00	0.00	0.00	721.45
	3RD FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	4TH FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	5TH FLOOR	75.290	721.45	0.00	0.00	0.00	721.45
	6TH FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	7TH FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	8th FLOOR	75.290	721.45	0.00	0.00	0.00	721.45
	9th FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	10th FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	11th FLOOR	75.290	721.45	0.00	0.00	0.00	721.45
	12th FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	13th FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	14th FLOOR	75.290	721.45	0.00	0.00	0.00	721.45
	15th FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	16th FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	17th FLOOR	75.290	721.45	0.00	0.00	0.00	721.45
	18th FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	19th FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	20th FLOOR	75.290	721.45	0.00	0.00	0.00	721.45
	21th FLOOR	75.290	708.20	0.00	0.00	0.00	708.20
	MINUTY/MCH/WATER TANK	160.463					0.00
	TOTAL	1787.08	14256.75	2469.94	0.00	0.00	16726.69



also uploaded the same revised sanctioned plan to claim the approval of their four projects Alphathum Phase I-IV.

Five, the Bhutani Group has claimed construction of 38,125 sqm (9,171 sqm on 3<sup>rd</sup> to 27<sup>th</sup> floor in Tower-A; 10,614 sqm on 3<sup>rd</sup> to 27<sup>th</sup> floor in Tower-B; 8,618 sqm on 4<sup>th</sup> to 27<sup>th</sup> floor in Tower-C; and 9,749 sqm on GF to 27<sup>th</sup> Floor in Tower-E) as commercial area under its four projects Alphathum I-IV. But the Noida Authority had approved the maximum permissible area of 20,083.58 sqm for commercial use to be constructed on the GF to 2<sup>nd</sup> floors and basement 1<sup>st</sup> floor only, in the revised sanction plan (see scan-B “All Floors” at pg 35).

Six, it is important to note that while UP RERA has registered the commercial Alphathum Phase IV project (Tower-E) for development of 9,749 sqm area for commercial usage on GF to 27<sup>th</sup>,

the revised sanctioned plan approved by the Noida Authority did not make any provision for commercial area in Tower-E. Further, UP RERA has registered the commercial project Noida World One Phase III for development of 3,089 sqm on GF to 22<sup>nd</sup> floor in Tower-D, for commercial usage, though there was no provision for commercial area in Tower-D in the revised sanctioned plan (see scan-B “Tower-D” at pg 38 & “Tower-E” at pg 39).

Seven, strangely the inspection team of UP RERA that scrutinised the project site in December 2021 did not find any discrepancies. The Planning wing of Noida Authority issued completion certificate for Towers B & C but did not report any violation of the sanctioned plan approved by the Noida Authority in terms of its end usage and land ownership (see scan-B “Tower-B” at pg 36 & “Tower-C” at pg 37).

Eight, the completion certificate issued in favour of CBS on January 12, 2021 by the Noida Authority, as uploaded on the UP RERA web site by both promoters, are completely blurred and unreadable. It looks like a deliberate attempt to conceal something. On close examination of the original sanctioned plan approved on July 14, 2014, revised sanctioned plan approved on September 18, 2017 and the completion certificate issued by the Noida Authority with the details of nine projects uploaded by two promoters on the UP RERA website, wide variation in construction of commercial area was observed in flagrant violation of approved plan.

Nine, the revised sanctioned plan approved by Noida Authority provided for use of 9.75 per cent of the sanctioned FAR (195,321 sqm) i.e. area of 20,083 sqm for commercial use only while both

Scan-B (5 of 5)

TOWERS	FLOORS	SERVICE	RESIDENTIAL	INSTITUTIONAL FACILITIES	COMMERCIAL	IT/ITES	TOTAL FAR
TOWER-E (G+26 FLOOR)	GROUND FLOOR	93.03	0.00	0.00	0.00	1558.99	1558.99
	1ST FLOOR	128.01	0.00	0.00	0.00	1524.01	1524.01
	2ND FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	3RD FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	4TH FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	5TH FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	6TH FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	7TH FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	8th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	9th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	10th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	11th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	SERVICE FLOOR						
	12th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	13th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	14th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	15th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	16th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	17th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	18th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	19th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	20th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	21th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	22th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	23th FLOOR	128.01	0.00	0.00	0.00	1476.60	1476.60
	24th floor	128.01	0.00	0.00	0.00	1476.60	1476.60
	25th floor	128.01	0.00	0.00	0.00	1476.60	1476.60
	26th floor	128.01	0.00	0.00	0.00	1476.60	1476.60
	MUMTY/MCH/WATER TANK	392.70					
	TOTAL	3813.99	0.00	0.00	0.00	39998.00	39998.00



promoters had claimed construction of commercial areas of 45,975 sqm in eight commercial projects as per the details uploaded by them on UP RERA website. However, in completion certificate for two Towers (Tower B & C), Noida Authority appears to have reconciled the areas constructed for commercial use with that of the approved plan, data uploaded by both promoters on UP RERA provided a distinctly different picture.

As per the data uploaded on UP

RERA website, CBS had claimed construction of 3,205 sqm under Noida World One Phase I & II project for commercial usage on Ground floor to 3<sup>rd</sup> floor (4 floors) in Tower-C and on Ground floor to 2<sup>nd</sup> floor (3 Floors) in Tower-B whereas Bhutani Group has claimed construction of 19,232 sqm under Alphathum Phase I & II project for commercial usage on 4<sup>th</sup> floor to 27<sup>th</sup> Floor in Tower-C and on 3<sup>rd</sup> floor to 27<sup>th</sup> floor in Tower-B.

Incidentally, as per the

approved revised sanctioned plan, entire commercial area of 6,307 sqm was allowed for construction on GF/FF (two floors) in Tower B and GF/FF (two floors) in Tower-C. These major discrepancies require urgent investigation by the state government, immediate remedial action and fixation of responsibilities on the defaulting agencies and officials.

UP RERA, CBS, and Bhutani Group have not answered to the queries raised by us on the above issues.

#### Box-A: Relevant extracts of Lease Deed dated May 26, 2008 executed on May 30, 2008

##### I. Now the lease deed witnesses as follows:

1 (a) That in consideration of:

- (i) Total premium of Rs 52,76,95,064 (50,96,00,000 + 1,80,95,064 additional premium of land) towards the land premium calculated @ Rs 5,096 per sq. mtrs out of which Rs 15,28,80,000 + Rs 1,80,95,064 i.e. total Rs

17,09,75,064 has been paid by the lessee to the lessor ... and balance Rs 35,67,20,000 shall be paid to the lessor in sixteen half yearly equal instalment alongwith interest @ 11 per cent per annum compounded half yearly.

- (ii) In addition to the premium of plot, annual lease rent @ 2.5 per cent of the total premium would be payable in

advance. The lease rent is payable from the due date intimated for execution of legal documents. The Authority will be empowered to enhance the annual lease rent on expiry of every 10 years from the date of execution of the lease deed and/or possession whichever is earlier, by an amount not exceeding 50 per cent of



the actual lease rent payable at the time of such enhancement.

(iii) The lessee has deposited Rs 2,30,71,206 as full premium and one time lease rent of Rs 49,76,143 for additional area of 2,949 sqmtrs.

(iv) And the covenants set out in this lease deed and to be performed by the lessee:

The lessor hereby demises and leases unto the lessee the plot No. 001 situated at Sector - 90 in NOIDA..., contained by measurement of 1,02,949 sqmtrs...

And the lessee shall hold the demised plot with its appurtenances unto lease for the terms of 90 years commencing from actual date of execution of lease deed...

(b) If the lessee fails to deposit anyone or more of the instalments with interest by the dates specified above **further interest on defaulted amount** for delayed period shall be charged @ 14 per cent per annum compounded every half yearly on the defaulted amount for the defaulted period.

(c) In the event the lessee fails to deposit the lease rent on time interest @ 14 per cent shall be charged on the defaulted amount for the defaulted period.

## **II. The lessee hereby unconditionally and unequivocally agrees that:**

(a) **The lessee shall use the plot for the setting up of IT / ITES only and for no other project. No change in project is permissible for any reason whatsoever.**

(g) The plot is allotted and leased on 'As is where is basis'.

(l) The lessee shall at their own cost construct a building on

the demised plot as per floor area ratio (FAR) as applicable in accordance with the prescribed bye laws, the sanctioned plan and building regulations. A maximum of 30 per cent Ground Coverage and a total 200 FAR is permissible. 75 per cent area of total FAR would be permitted for IT/ITES and remaining 25 per cent would be permitted for institutional facilities/ residential/ Commercial with a further condition that not more than 10 per cent of total FAR would be permitted for residential use. The commercial use also would not be permitted of more than 10 per cent of total FAR. Maximum of 5 per cent of maximum permitted FAR be allowed to be used as facilities.

The Lessee may be allowed to rent out the space as per requirement of IT/ITES for boosting the private STPs/IT Park in the field of IT.

(p) The lessee shall complete the construction and obtain occupancy certificate from the building cell department within the validity period of the approved building plans and put the same in operation as per schedule set out hereunder. The lessee unequivocally agrees that in view of the fact that they are availing the benefit of exemption of payment of stamp duty and registration charges in respect of this lease deed, the period within which construction is to commence and be completed shall stand confined to the period as prescribed by the said G.O. No. KNO5-305/11-2005-500 (136) 2003 Dt: 19.01.2005; 3014/76-6-05/500(40)/2000 Dated: 19.12.2005; and 2168/78-2-2005/46 IT/2005 dated: 30.12.2005. Accordingly, the

**lessee shall obtain approval of Development plan within 18 months from the date of registration of Lease Deed from the concerned department of the Lessor and complete construction of 40 per cent of the total permissible covered area on the allotted plot within 3 years from the date of handing over of possession and shall have to complete whole construction within five years from the date of handing over of possession.** The lessee has been made aware of and unconditionally agrees that since exemption from payment of Stamp Duty and registration charges is being availed of, no extension of time for completion of the project as per schedule prescribed by the aforesaid GOs is permissible.

(q) The lessee further agrees that in the event the lessee is unable to adhere to the time schedule set out above and is desirous of extension, then in that event, while claiming extension, they **shall have to pay stamp duty and registration charges together with interest 18 per cent from the date of execution of the lease deed** till actual date of payment. Extension may be granted in **exceptional circumstances** by the lessor on such terms and conditions as the lessor may prescribe, including but not limited to **payment of extension charges at the rate of 4 per cent of the premium for each year of extension** and payable on pro-rata monthly basis. The rate of extension charges may be revised from time to time and the revised rate would be binding on the

lessee. **In the event of extension not being granted, cancellation may be effected and the lease deed revoked.** In such event, forfeiture of the premium and the lease rent paid may be affected in accordance with the Policy of the lessor in vogue on the date of cancellation as aforesaid.

- (u) That the lessee shall use the demised plot only for the construction IT/PARK/ITES according to the plan approved by the lessor and in accordance with the building regulations and directions formulated under the provisioned of U.P. Industrial Area Development Act 1976 and for no other purpose without prior written consent of the Lessor and subject to such terms & conditions as the lessor may impose....
- (v) In the event the lessee is desirous of effecting **change in constitution after the completion of the project** the lessee shall pay proportionate transfer charges @ **10 per cent of the** prevailing rate of allotment as on the date of transfer. All cost and expenses arising out of execution of instruments, including preparation, stamping and registration of transfer deed shall be borne by the lessee. The lessee / transferee shall also be liable to pay all other taxes, duties, if any, charge-

able by any other governmental authority.

- (w) **The lessee shall not be permitted to transfer the demised plot before making the unit functional and building constructed thereupon.** However, at the discretion of CEO the transfer may be permitted after making the unit functional and building constructed thereupon on such terms and conditions as the lessor may impose including but not limited to levy of transfer charges as prevailing at that time of transfer such transfer charges shall be paid to the lessor. At present, the transfer charges are 10 per cent of the prevailing rate of allotment on the date of transfer of the plot. However, the rate of transfer charges is liable to be revised upward by the CEO of the lessor or any person authorized by him in this regard. Upon transfer, the extension charges, if paid, by the Lessor are neither refundable nor adjustable. **Any action or purported action done by the lessee for transfer of the plot without prior written permission of the lessor shall be deemed to be null and void, ab initio.** The decision of Chairman / Chief Executive Officer for all purpose will be final and binding on the lessee.
- (y) The lessee shall not cause

any sub division of the demised plot thereof.

**(III) It is further agreed by and between the lessor and the lessee that:**

- (a) That if it is found that the allotment or the lease has been obtained by **suppression of any fact or misrepresentation, misstatement or fraud** or if there has been, in the opinion of the lessor, any breach of the condition of the lease or if the lessee does not abide by the terms and conditions of the lease deed the **lease may be determined** and the entire money paid by the lessee will be forfeited and the possession of the demised plot and the structure raised thereon, unless removed by the lessee within the time specified in the notice by the lessor may be taken over by the lessor and lessee will not be entitled to any compensation.
- (l) **Any inaction, relaxation or concession whatsoever granted by the lessor to the lessee shall not constitute a condonation of the breach of the terms and conditions of this lease deed nor constitute a waiver of the rights of the lessor to take action against the lessee for such breach of the terms and conditions including for determination of the lease deed and resumption of site.**

#### Box-B: Extracts of "The Industrial and Service Sector Investment Policy 2004" by Govt of UP

##### 8.9 Development of High-tech Townships

Detailed policy has been declared separately. The important points are as follows: -

8.9.1 It is proposed that for promoting development of such townships in the private sector, involving a minimum investment of Rs 750 crores (during the five

year timeframe) and a land area of 1500 acres for each project, there should be special investment package which include the following: -

8.9.2 Reputed and experienced developer companies shall be invited to avail this package. The Developer Company shall be selected on the basis of its financial capacity, technical

capability, experience and concept with pre-feasibility Report in accordance with predetermined criterion and laid down procedure. To avail this package, the Developer Company must have a minimum annual turnover of Rs 100 crore for the last three years.