

संघर्ष के आठ वर्ष

- सरकार पर जनता की कमान
- विकेंद्रिकरण, सहकारिता, पारदर्शिता, व सुशासन बने देश की पहचान
- बाजारूपन, अश्लीलता व नशे की रोकथाम
- भ्रष्टाचार, कालेधन पर लगाम
- हर युवा को काम, नारी को सम्मान



- तकनीक में स्वदेशी और विदेश नीति में स्वहित व आत्मसम्मान
- शिक्षा, स्वास्थ्य व न्याय सबको एक समान
- किसान को सही दाम, पर्यावरण-संरक्षण का ध्यान
- ध्यान, योग, अध्यात्म को जीवन में प्रमुख स्थान

An Initiative of Maulik Bharat

STRESSED REALTY PROJECT: Problem and Real Solution thru

## Maulik Jan – Samvad

26/9/2021, Sunday, Agrasen Bhawan, Noida, From 2 to 6 PM

Dear Friends,

Maulik Bharat is a NGO working in the area of electoral reforms, good governance, transparency and accountability from the last 8 years. Our NGO is pioneer in exposing corruption in the country as well as in Noida, Greater Noida and YEDA ( Group Housing Scam, Farm House Scam, City Centre Scam etc.) and crusader behind putting Yadav Singh, Ex. Chief Engineer of NOIDA and making DND toll of NOIDA free by way of exposing its corruption and fighting the battle in and outside court.

In India, we the people still have tremendous faith in our democracy and government. Therefore we still consider government jobs as most secured, consider PSU banks as most reliable, similarly we consider government schemes very safe and when it comes to property, any allotment made by any government is considered to be a “gold bond” and is trusted blindly.

Similar trust was placed by lakhs of home buyers on the flats being sold to them by builders across NOIDA & GNOIDA , promised to be built on land allotted to them at subsidized rates and very easy payment plan by NOIDA & GNOIDA. People bought these flats not because they were assured of builders credentials, but they bought because they had unflinching trust in NOIDA and GNOIDA!!

That trust is now broken, public is dis-illusioned, the promised flats are no where to be seen , the charming builder is out of reach of NOIDA, all that remains is stalled building and “cancelled lease deed”. Innocent buyers are cursed by the double burden of Rent and EMI, all their slogans, dharnas, RTIs, petitions have fell on deaf ears, the Babus and Sahibs of NOIDA and GNOIDA are so thick skinned that even the Hon'ble Supreme Courts remark of “Corruption is leaking from Eyes and Nose” failed to sensitize them.

If the public , the home buyers will have to get justice, if a solution to the problem of stalled projects is to be found , if we are to ensure that such bankruptcies do not happen in future, it is high time that we dissect the role of NOIDA/GNOIDA in this grave crisis , understand the deficiencies in the system of NOIDA/GNOIDA and therefore not only find an immediate resolution but also a long lasting systemic revamp and correction be made.

### A. Background

NOIDA, Greater NOIDA and YEIDA (all the three authorities) were constituted under the provisions of UP Industrial Development Act 1976 with a prime objective of promoting and fostering Industrial Development

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in the region of UP abutting Delhi , which we proudly call Gautam Budh Nagar.

Since, the aim was to actually promote industrialization (and not allow land speculation) it made lot of sense for authorities to first notify the entire area, then acquire the land itself, develop the land with basic infrastructure and then allot the same to eligible, capable candidates who can actually develop industries.

Despite shortfalls the process worked well. There were several checks and balances in place, like a fixed time frame to establish a functional unit, allotment of next plot for industry only when the first has been made functional, atleast 30% upfront payment. Similar method were adopted by NOIDA & GNIDA in allotting land to homebuyers for housing purpose, one person was restricted to get allotted only one plot and the entire payment was to be made in maximum of 5 years.

In order to give a boost to housing, NOIDA even embarked on constructing housing flats by itself (to be allotted to public as per same norms as applicable on Residential Plots). However sensing the snail pace of development that can come around if NOIDA remains the only builder, somewhere in late 1990s, NOIDA decided to invite private players to create and develop housing (flats) on mass scale. For the first time NOIDA decided to go "Vertical"

While the initial experiment of inviting builders was more or less successful (due to few number of land parcels allotted, user based nature of realty market, higher upfront payment against land allotment, reasonable allowed FAR, established profiles of the builders), the story took a speculative nature in 2008-2009 when land was allotted in gigantic proportions , to new fly by night builders (on 10% upfront payment , with 8 years payment plan) without any real scrutiny of their financial, technical competence and experience.

Such humongous was the scale of allotment and ensuing "launch" of projects by these newly minted , thinly funded builders betting on buyers hard earned money to build a stinking fortune for themselves, that NOIDA-Greater NOIDA became the El-dorado of the Property Dealers and Property Speculators. The fact that Land has been "allotted" by NOIDA/GNIDA was a huge assurance in the mind of unsuspecting public, that investors and buyers made a beeline to the tents and makeshift offices of builders and property dealers to "book" flats before they are "sold out". All the tricks of trade, "soft launches" and realty exhibitions were unleashed on the buyers, not to mention the FULL PAGE ADS in national dailies shouting out offer of Free AC and Free TVs was enough to entice the homebuyers, this coupled with offer of "5-6% commission" to "just out of college" property dealer completed the cocktail of greed & thuggery that was flowing right under the "watchful eyes and nose" of NOIDA/GNIDA & YEIDA.

Inevitable happened, the "Kisan" who saw the newly coined dealers and builders whizzing in fancy cars and designer clothes considered himself to be cheated and betrayed and realized that the land acquired from them @ less than Rs 1000 a meter is being re-sold by builders @ more than Rs 25000 persqmts. All hell broke loose, a huge protest against land acquisition ensued, which vibrated and reverberated throughout the length and breath of the nation, NOIDA made headlines, and NOIDA EXT came on the brink of "MOTHER OF INSOLVENCY".

Buyers were on the roads, protests and dharnas everywhere, slogans and processions, the "dream house" became a "distant dream". Although a rag tag compromise between farmers and NOIDA/GNIDA saved the day , an additional compensation of Rs 400 persqmts satiated the farmers, but NOIDA and GNIDA made a killing, they extorted Rs 2000-3000persqmts from the Builders and Retail allottees as "Kisan Compensation"!!!!

But the damage was done, builders with thin finance who were thinly spread collapsed due to "zero period" of almost 2 years, to survive they resorted to selling flats at beaten down rates, coupled with borrowing money at huge interest from Banks and NBFCs alike. The circus started again but the undercurrent was weak.

Finally, the blast happened, NOIDA /GNIDA realty market just collapsed in 2015-16. One after the other big names in realty market defaulted like a contagion. JAYPEE, AMRAPALI, UNITECH became household names for insolvency and heralded an unprecedented wave of default and bankruptcy in NOIDA/GNIDA.

Both the authorities, totally dependent for their survival on payments of instalment (and its interest) from the builders, tottered on bankruptcy as well, they charged interest of 16% and penal interest of 18% on defaults



(when the banking FDR rate was 6% and Prime Lending rate was 11%). Additional FAR was sold to tide over the crisis, leading to creating an even bigger bubble which leaked big time.

Between 2016-2018, hundreds of builders in NOIDA, GNOIDA collapsed and defaulted. The new legislations of RERA (enacted 2016) was seen to be a saviour for the beleaguered home buyer, but the hopes were dashed soon as RERA emerged as a toothless tiger. Thousands of litigations were filed, thousands of frauds of profile fundings, of double sale by builders, of vanishing builders filed the RERA, NCDRC and Consumer Forums. NOIDA saw creation of dozens of associations with an objective to fight for buyers rights and dues!!

Insolvency & Bankruptcy Code -IBC (Enforced from 2017) emerged as the remedy of last resort. As builder after builder went Insolvent (defaulting on Bank loans, Defaulting on NOIDA/GNOIDA payments, Even defaulting on Contractors, brokers) and the construction came to stand still, IBC and NCLT were choked with realty projects of NOIDA/GNOIDA (obviously there were projects referred to insolvency from all over the country, but NOIDA/GNOIDA took the honours).

Buyers continued running from pillar to post, as one project after the other became an NPA, the heat became unbearable for the UP Govt to bear anymore. Novel half baked schemes like “Co-Development”, “Stress Fund of Rs 1000Cr”, “PSP Policy” were announced. This only aggravated the matters, big guns like WAVES, LOTUS, LOGIX became the new poster boys of Insolvency in Noida Realty Market.

Carnage continues even till date, there is no end in sight, no light at the end of the tunnel. Approximately 50-60 builders of NOIDA, GNOIDA are undergoing Insolvency Resolution under IBC, the prime character of the entire drama ie NOIDA & GNOIDA are not even participating in any of these CIRPs(Corporate Insolvency Resolution Process)!!!! They are not participating because they argue that they are the LESSORS (the land lords!!), their right is to extract RENT or to CANCEL the lease!! They are profiteering at the cost of innocent home buyers. NOIDA & GNOIDA has lost its way, they are now the biggest realty company ever created for social objectives, they are the biggest non-profit organization with budget running into tens of thousands of crores, they are the biggest Zamindars, no wonder NOIDA and GNOIDA is the most insensitive, most impractical, most materialistic organisation with ZERO HUMAN FACE and ZERO REALIZATION of its FIDUCIARY responsibility to public, industry, society, common man and national goals. (

## **(i) Reasons for Debacle**

### **(a) Faulty Planning**

- Masterplans were drafted without any realistic projections of population growth, the population of the tri-city was over estimated by a huge percentage, thereby vast swathes of land were converted into residential, thereby creating shortage of space for Industrial, Institutional, Recreational areas.
- Land for residential housing were allotted at break neck speed, whereas allotments for Industrial and Institutional usage were not done at a commensurate scale, thereby the avenues of employment generation took a back seat, resulting in NOIDA losing out big time to Gurugram
- This resulted in a stunted economic activity, slower population growth and thereby creating a huge inventory over hang, “Ghost Sectors” and stalled projects of unimaginable magnitude
- Official Land Grabbing and Land Speculation was done under the garb of Concept of “Sports City” allotment. Sports City were conceptualised to promote “sports” and were allotted to builders, all of them somehow had fancy only to “golf” as a sport!! Not even one sports facility (apart from Noida Stadium) has been inaugurated in the entire tri-city

### **(b) Faulty Allotment Policies**

- Land allotted @ 10% upfront payment and the balance payment to be made in 8 years. Whereas the builders immediately after getting allotment, launched the projects and collected 30% as booking amount (which was much more than the cost of the entire land in some cases)!!! Thus Noida allotment policies helped create Billionaires out of thin air!!
- Multiple land parcels for residential projects allotted to a single builder!! When an industrialist is not allotted another plot till the time he makes the previous one functional, why were multiple projects allotted to the

same builder when not only has he not completed the first project but also has not even made full payments of the same!! This created builders “too big to fail”, therefore they became parasites on the system and it became the duty of the system to keep these builder alive and healthy at the cost of the common man!!

- The huge deferred payment period of 8 years actually is an incentive for the builder to delay the project and to indulge in land speculation, thereby not only were the projects delayed but also the development of the sector/area was stunted and lagged by years

- There was no scrutiny of the financial strength of the builders. Had that been the case then newly formed SPVs/Companies with just Rs 1Lakhs paid up capital would not have been allotted plots worth 10s of Crores (that too on instalments)

- There was no need to allot parcels of 20-25 acres to a single builder. When it is certain that such a huge parcel cannot be developed by a single builder and that he too will sub-divide the same and sublease to different builders, then why was the same job not done by NOIDA/GNOIDA itself in the first place??!! The idea was to gift the builder “premium” of the plot , so that the system is well oiled and everyone flourishes!!

- There was no scrutiny of the experience and technical capabilities of the builder to whom the plots were allotted

### **(c) Lack of Monitoring Post Allotment**

- NOIDA/GNOIDA did not honour their fiduciary responsibilities. There was ZERO monitoring of the builders and the projects. NOIDA did not realise that people are buying flats because they feel assured that since the land is allotted by NOIDA they are safe, NOIDA did not live upto that trust

- NOIDA/GNOIDA had no system to monitor the cash flow and cash generation of the projects. They failed to create an escrow mechanism wherein a part of sale proceeds will have to be deposited as NOIDA dues

- There was no monitoring of the actual construction on the site, had that been the case, there would not have been cases of 30% construction and 100% bookings

- False promises and faulty information provided by builders / dealers to innocent home buyers was not curtailed by NOIDA/GNOIDA despite they having all the knowledge of the same through the newspaper ads and hoardings.

### **(d) Impractical Approach towards Stress Resolution**

- There are more than 100 stressed housing projects in NOIDA & Greater NOIDA, of which about 50 are languishing at various stages of Resolution proceedings in NCLT. Apart from the cases languishing in NCLT, marquee cases like Amrapali and Unitech are also under the control and command of Hon'ble SC and other legal forums but none has reached a resolution, thanks to the Impractical approach of NOIDA/GNOIDA

- Whatever stressed cases have been referred to NCLT have also not been able to find a resolution due to ignorant, arrogant, impractical attitude and work-culture of NOIDA and GNOIDA

- The entire NOIDA & GNIDA administration has still not been able to come to grasp with the Resolution Mechanism as conceived under IBC. The outdated and outmoded skill set of Noida/GNIDA officials coupled with a second-grade legal team of NOIDA /GNIDA not only lack a coherent vision but also has total lack of understanding of the legal position/rights/mandates/ethos/ethics of IBC under which the stressed housing projects trying to find resolution.

- NOIDA/GNOIDA does not participate in any of the CIRPs. In case they participate, there always arises a confusion as to the category under which NOIDA/GNOIDA should participate!! Whether they are a Financial Creditors or an Operational Creditor is still not settled!!

- NOIDA /GNOIDA is not only impractical in opposing the application of 8% interest rate as directed by Hon'ble SC, but is also adamant to take a haircut on its due interest / penal interest (something it is never likely to recover)

- Rather than being receptive to the pain of homebuyers in a stalled project, NOIDA/GNOIDA aggravates the matter by cancelling the lease of the land, thereby closing all doors for any resolution to be hammered out by any agency



- NOIDA/GNOIDA never become part of any Committee of Creditors, therefore it is never a part of solution , but is always seen as a problem in every resolution process.

This has made NOIDA /GNIDA not only as a laughing stock in various CIRP proceedings but also has resulted in NONE of the projects finding solutions due to un-necessary hurdles and confusion created by NOIDA/GNIDA.

## **B. Immediate Solution to the MESS**

### **(a) Stress Identification**

Come out (immediately) with a list of stressed projects

- One which are undergoing CIRP (resolution under IBC)
  - Who have surrendered land under PSP and still have been unable to deliver flats
  - Who have defaulted on NOIDA payments and not paid anything since last 2 years
  - Projects having huge complaints in RERA
  - Projects where mortgage permission has been issued by NOIDA/GNIDA for a loan of more than Rs 30Cr
- Such lists must be shared with the bankers/allottees of the project which are appearing in this stressed list.

Such lists must be released every 3 months

**(b)** NOIDA /GNIDA should create a BASE RESOLUTION PLAN for all these stressed projects. Rather than just resorting to “Cancelling” the land , NOIDA/GNIDA should come up with a resolution itself , so that it may also see and understand whether there is a possibility to retrieve/recover the defaulted amount from the stressed project. This understanding will enable NOIDA/GNIDA to change its attitude and stance in many of the Stressed cases and may be these cases may see the light of resolution. Participation of the respective home buyer body / Builder (if available) /RERA must be invited to hammer out the BASE PLAN.

**(c)** NOIDA/GNIDA should play a proactive role just like an ASSET RECONSTRUCTION ORGANISATION and must make this as its permanent fixture, because the land that NOIDA/GNIDA allots to the builders is actually allotted on liberal terms so that the end-users , the common man , get a benefit of prices. The common man also invests in these projects because somewhere in the back of his mind he feels protected by the feeling of NOIDA/GNIDA being the watchdog!!

**(d)** NOIDA/GNOIDA must create a “Stress Resolution Fund” which should be used to provide the immediate interim / bridge funding for projects which are facing temporary cash flow mismanagement

**(e)** NOIDA/GNOIDA must have few qualified Resolution professionals in its legal team , it must formulate a uniform strategy to participate in the CIRP of all companies who have un-delivered builder projects in Noida /Gnoida.

**(f)** In cases , where NOIDA/GNOIDA has cancelled the lease, the same be restored without any restoration charges

**(g)** Transfer Charges on all kind of “Change in shareholdings” and “change in constitution” of companies undergoing CIRPs be waived off, thereby making the resolution of stressed projects a bit easier and feasible

**(h)** Cases where the entire permissible Ground Coverage has not been consumed be allowed to avail additional FARs (commercial) at concessional rates , so that the projects become viable again

**(i) Cases where the lessee has entered into a JDA with another company and the project is stalled either because Lessee has become bankrupt or because the developer is insolvent must be dealt with practical view point :-**

- Firstly JDA be recognised and applicable sub-lease be executed on deferred stamp duty payment basis
- Land dues of that particular portion of land be calculated by taking into account the actual payments made by the JDA towards land dues.

**(j)** Amnesty /waiver of compounding fees to be granted to projects wherein RWA or Flat Owners Association has taken control and the Registration of flats still not possible due to pending issue of occupation

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certificate

- (k) NOIDA/GNIDA must accept the Hon'ble SC verdict of application of 8% Interest retrospectively without murmur and pave the way for financial viability of stressed projects
- (l) Waiver of "Late Construction Penalty" on all stressed projects undergoing CIRP
- (m) Cases where NOIDA has cancelled the Lease deed, it must create mechanism to compensate the victimized home buyers from the enhanced land value that NOIDA/GNIDA will realize by fresh allotment.
- (n) Waiver of Transfer charges on sale of flats / shops of stressed projects. Even pre-registry transfer of such flats and shops be allowed for a designated period.
- (o) Close working relationship of NOIDA/GNIDA, Financial Institutions and UPRERA is a must!!
- (p) Therefore it is fiduciary responsibility of NOIDA/GNIDA to not only resolve the present stressed projects but also to create a mechanism wherein the projects which gets stressed in future are attended too immediately without any loss to any stakeholder.

Lets us all engage our minds to throw up more suggestions and out of box ideas to mitigate the gigantic problem of Stressed Real estate , let us all join hands and hammer out a workable and practical mechanism of resolution of the stressed projects , which may endure and prevent recurrence of such stressed situations in future

**Yours Sincerely**

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