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Ref No: MCHI/PRES/19-20/068

October 31, 2019

To,
Dr. Nitin Kareer (I.A.S.)
Additional Chief Secretary
Urban Development Department
Government of Maharashtra
Mantralaya, Mumbai - 400 032

31/10/19
लिपिक
प्रधान सचिव (नवि-२)
नगरविकास विभाग,
महाराष्ट्र शासन, मंत्रालय,
मुंबई - ४०० ०३२.

Sub: Clarification under Clause 4(3) of DCPR 2034 regarding applicability of Inclusive Housing as per Reg. 15 of DCPR 2034 for the on-going proposals, where Residential Development has partly taken place as per DCR 1991.

Respected Sir,

The provision of Inclusive Housing in Development/Re-development of plots for Residential User was first introduced in 2013 vide Notification issued u/no. TPB-4312/CR-45/2012/ (2)/UD11 dated 08.11.2013. As per the said notification for plot of land admeasuring 4000 sq.m or more to be developed for Housing Scheme, EWS/LIG Housing in the form of tenements were required to be constructed to the extent of 20% of the Basic Zonal FSI.

As per para (4) of the said notification, this provision was applicable prospectively and was not applicable to any Housing scheme or any residential project wherein Commencement Certificate had been issued prior to the date of coming into force of these provisions and was valid on such date. An amendment to the said notification was issued dated 11.09.2014. The provision of applicability was modified vide para 2(e) stating that 'There shall be no obligation to construct affordable housing tenements in accordance with these provisions in any redevelopment project under Regulation 33(5), 33(7), 33(9), 33(10), 33(14), 56(3)(c)(v), 57(4)(c)(v) and also in development of land earmarked to the land owner/developer as per column No.5 of the Table, specified under Regulation 58(1)(b) as well as any Housing Scheme or residential development project wherein owing to the relevant provisions of the Development Control Regulations, more than 20% of the basic zonal FSI is required to be utilised towards construction of residential tenements for the EWS/LIG'

Accordingly, the residential developments were permitted and EWS/LIG as per above provisions were not insisted in cases of on-going proposals where CC was granted prior to 08.11.2013 or Redevelopment undertaken under various schemes as mentioned above.

The Urban Development Department vide their notification u/no. TPB-4317/629/CR-118/2017/DP/UD-11 dated 08.05.2018 accorded sanction to DCPR 2034 u/s 31(1) of MR&TP Act excluding certain modifications. The UDD vide their corrigendum dated 23.10.2018 fixed the date of 13.11.2018 to be the date on which EP shall come into force.

In the said sanctioned DCPR 2034, Clause No. 15 spells about provisions of Inclusive Housing. As per the said notification and amendment proposed on

13.11.2018, in case of Residential Development partially or fully, consisting of plot area admeasuring 4000 sq.m. or more, EWS/LIG housing in the form of tenements of size ranging between carpet area of size 25 to 27.88 sq.m. or as decided by the Housing Department, Govt. of Maharashtra, from time to time shall be constructed atleast to the extent of 20% of the Zonal Basic FSI. As per note (3) of clause 15 of DCPR 2034, *'There shall be no obligation to construct IH tenements in accordance with these provisions in redevelopment project under Regulation No. 33(2),33(3)(A), 33(3)(B), 33(5),33(6),33(7), 33(7)(A), 33(8), 33(9), 33(9)(A), 33(9)(B), 33(10), 33(10)(A), 33(11), 33(20),development under Regulation No 35 and specified under Regulation No.14(B) as well as any Housing scheme or residential development project wherein owing to the relevant provisions of the DCPR, more than 20% of the Zonal (basic) FSI is required to be utilized towards construction of residential EWS/LIG tenements and development of land situated in SDZ as per the regulation no 33(8)'*.

Thus it can be seen that the provision of Inclusive Housing of DCR 1991 is continued in DCPR 2034 with minor changes. However, there is an ambiguity in the minds of the approving Authority i.e. MCGM about implementation of Inclusive Housing provision in the on-going proposals.

The Inclusive Housing is otherwise required to be provided in the plot of land admeasuring 4000 sq.m. or more undertaking Residential Development or Development due to conversion of Industrial to Residential zone. MCGM is insisting Inclusive Housing component on the balance Development on pro-rata basis which is not as per the provisions and spirit of the regulation. As such the clarification is required for the on-going proposals in (I) purely Residential zone and (II) Industrial zone converted to Residential zone.

I) **On-going proposals in purely Residential Zone -**

The MCGM is insisting proportionate Inclusive Housing component on the balance development to be carried out as per DCPR 2034. However, in case of on-going proposals where CC was granted in the proposal prior to 08th November 2013 or redevelopment is undertaken under various provisions of DCR as mentioned in the said notification, IH was not insisted. The same should be continued for the said on-going proposals for the following reasons-

- i. When IH was not insisted for the on-going proposals having CC prior to 08.11.2013 considering the commitment and difficulty in implementation of the said provision in the on-going proposal, the same cannot be now insisted under DCPR 2034 for the same reasons.
- ii. IH component is to be worked out on Basic Zonal FSI. In cases of on-going proposals where the Basic Zonal FSI has already been utilised, the question of insisting IH component on Zonal Basic FSI does not arise.
- iii. The buildings, layouts are disclosed in RERA. As such the IH component if insisted now which was not anticipated earlier

would require amendments and hence attract litigations in on-going proposals.

II) **On-going proposals in Industrial zone converted to Residential zone-**
 The on-going proposals where I to R is sanctioned as per DCR 1991 are either reflected as (i) Industrial Zone in DP 2034 or (ii) Residential Zone in DP 2034 taking the cognizance of I to R already granted. In these cases also, MCGM is insisting IH component on balance development. As such the clarification is required in case of following categories for the on-going proposals where I to R is sanctioned as per DCR 1991, IOD is granted and is still valid :-

i) On-going proposals where I to R is granted as per DCR 1991, IOD is issued and the same is valid till date and the Zone is reflected as Industrial Zone in DP 2034 -

These cases fall under the category to be developed as per note 12 of notification dated 08.05.2018. As per note (12), 'Where the I to R/C proposal is sanctioned by Corporation but still the land under such proposal is shown in Industrial Zone, then notwithstanding to that, separate permission for I to R/C shall not be required and no any procedure to that effect is necessary.' It is clear from the said note that revised I to R is not required though the plot is shown in Industrial Zone in DP 2034 and the conditions of I to R granted earlier would govern. The provision of Inclusive Housing was neither obligatory for I to R approved earlier under Regulation 56 & 57 of DCR 1991 as per modified clause 2(e) of notification dated 11.09.2014 mentioned above nor the same is obligatory now as per note (3) of clause 15 of DCPR 2034 mentioned above.

ii) On-going proposals where I to R is granted as per DCR 1991, IOD is issued and the same is valid till date and the Zone is reflected as Residential Zone in DP 2034 -

The said proposals are required to be dealt with as per note (21) and (12) of notification dated 08.05.2016. As per note (21), 'Where layouts are approved and IOD is granted prior to 27th May 2016, which are valid, then the proposals of 1991 DP on such land shall prevail over proposal under 2034 DP'. Further as per clause (12), 'Where the I to R/C proposal is sanctioned by Corporation but still the land under such proposal is shown in Industrial Zone, then notwithstanding to that, separate permission for I to R/C shall not be required and no any procedure to that effect is necessary.' As such, as per note (21), though the plots are reflected in Residential Zone in DP 2034, the plots will be treated in Industrial Zone and as per note (12), no new I to R permission is required for these plots. The conditions of earlier I to R would govern and the provision of Inclusive Housing would not be obligatory since the permission for I to R is granted under 56 or 57 of DCR 1991 as per modified clause 2(e) of notification dated 11.09.2014 mentioned above. Further, these plots are placed in Residential zone in DP 2034 merely to take cognizance of already approved I to R prior to DP 2034. Hence, IH

cannot be required to be provided now considering the plots in residential zone.

We request you to kindly issue necessary clarification under 4(3) of DCPR 2034 for the on-going proposals in case of Residential Development and in case of I to R development for implementation of provision of Inclusive Housing on above grounds.

Thanking You,

Yours sincerely,
For CREDAI-MCHI



Nayan Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv S. Chaudhary MRICS
Chief Operating Officer