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Ref. No. : MCHI/PRES/14-15/070

November 17, 2014

To,
Shri Sanjay Kurve
Deputy Director,
Town Planning Department,
Mumbai - 400 001

Sub: - Proposed modification to DCR 35(4).

Ref: - Notice issued under no. TPB 4313/962-CR-44/2014/UD-11 Dt. 9th Sept 2014.

Respected Sir,

With reference to above mentioned subject matter & above referred notice issued by U.D. Department Government of Maharashtra and published in "The Economic Times Of India "on 1st Nov. 2014, we would like to submit our suggestions as below.

The proposed modification:-

The Explanatory note (i) to Regulation 35(4) of the Development Control Regulations for Greater Mumbai, 1991 is proposed to be replaced as follows:-

"(i) If an IOD /IOA has already been granted in respect of a building, which is under construction and not complete on the date of coming in to force of this regulation, then at the option of the owner / developer, this regulation shall not apply to subsequent amendments to the IOD /IOA and to the sanctioned plans, to the extent such amendments provide for additional development in relation to such building.

Existing provision:-

DC Regulation 35(4):-

Compensatory Floor Space Index (FSI):-

"Notwithstanding anything contained in D C regulations -----
----- shall be applicable in respect of the building to be constructed or reconstructed only."

Explanatory Note:-

- i. Where IOD/IOA has been granted but building is not completed, this regulation shall apply only at the option of owner/developer.

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Suggestions:-

1. To start with, it needs to be categorically stated in the proposed modified regulation that building not completed means where full occupation certificate/BCC is not granted by MCGM.
2. Based on this provision, the planning authority is not enforcing the applicability of fungible FSI concept to already sanctioned projects.

However, if such sanctioned plans are requested to be amended for any reason, even for minor changes in the sanctioned FSI, the planning authority are insisting applicability of fungible FSI concept which is causing great hardship to hundreds of building proposals.

While executing the construction of any building as per sanctioned plans, due to site constraints, practical consideration requirements & requests of the probable purchasers the plans are required to be amended.

Even certain policy changes by related utility departments, CFO as well as court orders compel the requisite amendments.

It is to mention that for redevelopment of old dilapidated buildings, the norms for minimum rehabilitation areas were changed and respective changes in permissible FSI was declared to be changed which took lot of time for Government to finalize the regulation & subsequently to act upon the finalized regulation.

Hence, the owner/developers have commenced the redevelopment of such buildings in past i.e. prior to DCR modification dated 6th January 2012 with full anticipation to load such legitimate increase in FSI on the same buildings, whenever approved thereafter.

Hence, such amendments with additional FSI are imperative in already sanctioned plans for such redevelopment buildings.

On similar lines the buildings plans were approved and construction started with anticipation to load TDR potential, additional FSI for educational, medical, I.T. office as well as for building with public parking scheme.

In all such cases; subsequent amendments to already sanctioned plans was/is unavoidable.

Hence, for all such buildings while further amending plans due to above reasons, the fungible FSI concept shall not be insisted, it may be optional.

It is to further state that this proposed modification deals about applicability of DCR 35(4) i.e. fungible FSI to already sanctioned plans.

The fungible FSI concept i.e. compensatory FSI permissible as per DCR 35(4) has been introduced to limit the extent of certain buildings features. As such it is related with modification of other related regulations such as 35(2), 35(3), 36, 38 etc. By virtue of this modification, the option of availing fungible FSI while amending already sanctioned plans is given to owner/developer.

If any owner/developer opt for non applicability of DCR 35(4) i.e. fungible FSI for amendments in sanctioned plans then various features such as balcony, flower bed, parking spaces in excess of required parking spaces etc. approved earlier free of FSI as per regulations prior to 6th January 2012 will have to be continued as free of FSI. For this when DCR 35(4) is considered non applicable for amending plans already sanctioned prior to 6th January 2012, the provisions of DCR 35(2), 35(3), 38 etc. also need to be made non-applicable. Otherwise owner who will opt by virtue of this modification for non-applicability of fungible FSI, will not get fungible FSI but due to applicability of DCR 35(2), 35(3), 36, 38 etc. he will be required to count balcony, flowerbed, earlier given parking spaces in excess of DCR requirement into FSI leading to further complications.

As such for those building proposal opting for non applicability of DCR 35(4), the regulations as modified on 6th Jan 2012 also cannot be made applicable i.e. for such projects regulations prevailing prior to 6th Jan 2012 will have to be made applicable.

Taking into consideration all these aspects, we suggest that the proposed modification shall be as below.

“If an IOD/IOA has already been granted in respect of a building, which may be under construction and not completed i.e. full occupation certificate/BCC is not granted on, 06.01.12, the date of coming into force of this regulation, then at the option of the owner/developer, the regulations prevailing prior to 6th January 2012 shall be applicable to all subsequent amendments to the IOD/IOA including addition and alterations to sanctioned plans, to the extent such amendments provide

for additional development in relation to such building by utilizing earlier approved / available / additional FSI".

It is requested to take in to consideration these suggestions while finalizing the proposed modification. It is also requested to give us time for hearing in the matter.

Thank you.

Yours Faithfully,
For MCHI-CREDAI



Vimal Shah
President