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Prakash Baviskar

Ref. No. MCHI/PRES/18-19/154

February 19, 2019

To,  
**Shri Anil Diggikar (I.A.S.)**  
Principal Secretary  
Environment Department  
Govt. of Maharashtra  
217, Annex Bldg., Mantralaya,  
Mumbai : 400 032

*20/2/2019*  
प्रधान मंत्री कार्यालय, मुंबई  
पर्यावरण विभाग, मंत्रालय, मुंबई

Sub. : Consideration of proposals involving violation of EIA notification, 2006 amended till date.

Ref. : Report of the Committee on Assessment for Environmental Damage and Estimation of Remediation Cost, as per the letter by SEIAA, Mumbai, vide no. SEIAA-2018/CR-150/SEIAA, dated 30.01.2009, entitled "An approach for Assessment for Environmental Damage and Estimation of Remediation Costs for Building Construction Projects initiated without obtaining mandatory Environmental Clearance (Violation Case)"

Respected Sir,

With regard to the above said report, we as CREDAI-MCHI the body representing the real estate developers, would like to place our concerns as follows-

1. As mentioned in the Report, the assessment of environmental damages and preparation of remediation plans are highly specialized subject and very much case specific. Also there is no India specific protocol for environment assessment as a part of enforcement strategy and intervention.
2. The report clearly states that the scope of the report is strictly limited to the damage assessment for violation cases as per MoEF & CC Notification dated 14.03.2018, with main focus on the Building and construction projects.
3. The report also takes into account the "Polluters pay Principal", as interpreted by the Supreme Court of India and also the provisions by the National Green Tribunal Act 2010.
4. The methodologies stipulated are for the construction projects, which are in "permissible" area where project is located and these methodologies are to be considered for limited violations in terms of initiating the projects activities without EC.

5. Considering the scenarios for violation of EC regulations by Building Construction and the three aspects in overall damage assessment studies, we would like to represent as follows-
  - i. The projects considered under violation, as mentioned earlier in the report are taken up in “permissible” areas of local municipal body, where in adjacent residential/commercial infrastructure are already in existence, as opposed to “Greenfield” undeveloped lands.
  - ii. The report also admits that such violation projects are as per the local zoning, FSI, Built Up Area, other permissions, etc. which account for the availability of adequate carrying capacity infrastructure to sustain such developments (e.g. roads, railways, storm water drain lines, sewer lines, zoning, etc.).
  - iii. As mentioned in the report, Opportunity cost for early going ahead by starting and commissioning of the projects, the figures (10% on ready Reckoner cost of construction) are taken on “RANDOM” basis. We would like to mention that it does not provide justice or reflect or takes into consideration the actual financial matrix of the project. The words **“the pecuniary benefit of violation and damage to environment is adequately compensated for;”** in paragraph 11 of 14.3.2017 notification have been interpreted by the Committee as “Opportunity cost benefits”, which are beyond the scope of “Environmental costs”.
  - iv. The calculation of cost of remediation plan in the table, at Sr. Nos 1 and 2 actually provides for recurring and non-recurring cost for remediation, which is equal to “Economic benefits in terms of providing environmental measures, accrued due to violation”. The serial No. 3 of the said table, provide for further “Economic benefits accrued due to violation”, which is for the opportunity cost.
  - v. The opportunity cost, for early implementation without EC, only covers the cost of construction saved, due to enhancement in cost during the period of 1 year. (Assuming period required for EC as one year), which is set off by losses due to flats sold one year in advance, as the rate of flats are increasing on yearly basis. Thus as final effect, the opportunity cost, saved, due to implementation of project one year in advance, has hardly any value and even prove negative in some cases.
  - vi. The 10% cost of construction, as “Opportunity cost saved/earned due to early implementation of the project” assumed is on extremely higher side, and can never exceed even 1% of cost of construction and in cases, such saving may turn out to be **NEGATIVE**.

- vii. In all respective laws of compounding of offences, there is always a UPPER-CAP for penalty.
- viii. When such costing details, cannot be quantified on scientific basis, a LUMPSUM cost of Rs 5 Crores can be considered in column 3, where construction is at reasonably advanced stage, and 2.5 Crores, where construction is not at advance stage for projects involving built up area more than 20000 sq mtrs. These values can be downscaled by 50% for projects involving built up area less than 20000 sq mtrs.

We therefore request, to revisit the "Estimation of remediation plan and community resource augmentation plan" as given in paragraph V) of the report to be filled in by project proponent and issue revised guidelines.

Thanking you,

Your sincerely,  
For CREDAI-MCHI



Nayan A. Shah  
President



Bandish Ajmera  
Hon. Secretary



Sanjiv S. Chaudhary MRICS  
Chief Operating Officer