

S. S. Hussain I.A.S. (Ex)

Chief Executive Officer

Ref. No. MCHI/CEO/15-16/299

April 28, 2016

Sub: Representations with regard to the Notification dated 28th January, 2016 bearing no. TPS-1813/3037/CR-122/MCORP/12/UD-13 dt.28/01/2016.**Ref:** Our Ltrs. bearing Nos. MCHI/PRES/15-16/215 dtd. March 22, 2016 and MCHI/PRES/15-16/226 dtd. April 5, 2016

Dear

Please refer to our above letters submitted to the Government of Maharashtra regarding proposed TDR Policy for MMR Area under MR & TP Act. (Copies enclosed)

MCHI-CREDAI would like to gently remind and request the Urban Development Department to consider our requests mentioned in both the letters. It may avoid time loss and unnecessary litigations against the regulations!

Awaiting for your valuable cooperation in this regard.

Yours



(S. S. Hussain)

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

Encl: As above

8
28/4/16
Urban Development Deptt
Mantralaya, Mumbai - 400 032

PRESIDENT
Dharmesh Jain

IMMEDIATE PAST PRESIDENT
Vimal Shah

PRESIDENT-ELECT
Mayur Shah

VICE PRESIDENTS
Nayan Shah
Deepak Goradia
Boman R. Irani
Harish Patel

HON. SECRETARY
Nainesh Shah

HON. TREASURER
Sukhraj Nahar

CEO
S. Shahzad Hussain
I.A.S. (Retd.)

SPECIAL PROJECTS
Bandish Ajmera
Rasesh Kanakia
Parag Munot

HON. JOINT SECRETARIES
Sandeep Runwal
Lakshman Bhagtani

JOINT TREASURER
Mukesh Patel

CO-ORDINATORS
Jagdish Ahuja
Pujit Aggarwal
Domnic Romell

COMMITTEE MEMBERS
Jayesh Shah
Nayan Bheda
Sanjay Chhabria
Shailesh Sanghvi
Tejas Vyas
Jitendra Jain
Deepak Gundecha

INVITEE MEMBERS
Sandeep Raheja
Munish Doshi
Navin Makhija
Rushank Shah
Pratik Patel
Rajeev Jain
Diipesh Bhagtani
Dhaval Ajmera
Shyamal Mody
Nikunj Sanghavi
Digant Parekh
Shailesh Puranik

PAST PRESIDENTS
Paras Gundecha
Pravin Doshi
Mohar Deshmukh
Mofatraj Munot
Rajini S. Ajmera
Late G. L. Raheja
Late Lalit Gandhi
Late Babubhai Majethia

MCHI-CREDAI UNITS
PRESIDENT, THANE
Ajay Ashar

PRESIDENT, KALYAN-DOMBIVLI
Praful Shah

PRESIDENT, MIRA VIRAR CITY
Ashit Shah

PRESIDENT, RAIGAD
Vilas Kothari

PRESIDENT, NAVI MUMBAI
Prakash Baviskar

Ref. No. MCHI/PRES/15-16/215

March 22, 2016

To,
Hon'ble Shri Devendra Fadnavis
Chief Minister
Government of Maharashtra,
Mantralaya,
Mumbai - 400 032.

मुख्यमंत्री सचिवालय
महाराष्ट्र शासन
मंत्रालय, मुंबई ४०० ०३२
२२/३/१६

Sub: Representations with regard to the Notification dated 28th January, 2016 bearing no. TPS-1813/3067/CR-122/MCORP/12/UD-13 dt.28/01/2016.

Respected Sirs,

1. We are a Society registered under the Societies Registration Act, 1860 and under the Bombay Public Trust Act, 1950. We are a recognized association having as our members, various firms and/or companies engaged in the business of development and redevelopment of immovable properties, who provide the majority of the housing *inter alia* in the city of Mumbai. We strive to work towards creating and raising awareness among the general public with regard to real estate and construction industry and other allied activities, while providing them with detailed information and advising them on new developments in and around Mumbai and the Mumbai Metropolitan Region.
2. We are making this representation to your good offices with regard to the above referred Notification dated 28th January, 2016 whereby the Regulations for Grant of Transferable Development Rights ("TDR") are deemed to be incorporated in the Development Control Regulations of the various Municipal Corporations as enlisted in Annexure A thereof.
3. The said Notification has created an inequitable state of affairs with regard to utilisation of TDR, which was generated even prior to the notification, in as much as the said Notification states that utilisation of all TDR (whether generated prior to the publication of the draft regulations or after such publication) would be regulated by the new regulations.
4. In order to enable your goodselves to appreciate the matter in its entirety and proper perspective, we are setting out hereinbelow in a nutshell the relevant and germane facts of the matter as have transpired thus far:
 - (a) The Government of Maharashtra, through the Urban Development Department had issued a Notice dated 30th April, 2015 bearing no. TPS-1813/3067/CR-492/MCORP/13/UD-13 ("the **Objection-Suggestion Notice**") under Section 37 (1 AA) (a) of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act") for inviting objections and suggestions to the proposed modifications to the Development Control Regulations of various planning authorities regarding incorporation of a comprehensive revised regulation in respect of *Transferable Development Rights and Accommodation Principle*.

- (b) Clause 6.00 of Appendix B to the Objection-Suggestion Notice viz. Draft Regulations for Grant of Transferable Development Rights, titled as "*Effect of the Regulation*" provided as follows:

"6.00) EFFECT OF THIS REGULATION:-

- i. *Provision of these regulations shall not be applicable where TDR has been generated prior to the publication of these regulations under the Maharashtra Regional and Town Planning Act, 1966. Utilisation of such TDR shall be allowed as per the prevailing regulations.*
- ii. *Notwithstanding anything mentioned in these Regulations Special Provisions mentioned in the existing Transferable Development Rights regulations of the respective Planning Authority which are not covered under these regulations shall continue to prevail unless otherwise specified.*
- iii. *These Regulations shall come into effect only after the final sanction of the Government"*

- (c) Subsequently, after inviting objections and suggestions and considering the same, the Government of Maharashtra, through the Urban Development Department had issued a Notification dated 28th January, 2016 bearing no. TPS-1813/3067/CR-122/MCORP/ 12/UD-13 dt.28/01/2016 ("**the Amendment Notification**") under Section 37 (1 AA) (c) of the MRTP Act, 1966. Thus vide this Amendment Notification, the provisions as contained in Annexure B thereof - Regulations for Grant of Transferable Development Rights, are deemed to be incorporated in the Development Control Regulations of the various Municipal Corporations as enlisted in Annexure A thereof.

- (d) Clause 8.00 of Annexure B to the Amendment Notification titled as "*Effect of the Regulation*" reads as follows:

"8.0) EFFECT OF THIS REGULATION:-

- i. *Provision of Generation of TDR from these regulations shall not be applicable where DRC has been issued prior to publication of these regulations However Utilization of such TDR shall be allowed as per these regulations only.*
- ii. *These Regulations shall come into effect from publication of this Notification in Official Gazette."*

- (e) Thus, it is evident from the aforesaid that there is a major shift on effectiveness/applicability of the Regulations, between the draft regulations that were published along with the Objection-Suggestion Notice and the final regulations that have been brought into force by virtue of the Amendment Notification under Section 37 (1 AA) (c) of the MRTP Act, 1966.

- (f) In essence, when the Objection-Suggestion Notice was published, it was clarified that the new regulations will not affect the utilisation of any TDR which was already generated prior to the regulations being published. However, in the Amendment Notification no such exception was carved out with respect to any TDR that was generated prior to the publication of the regulations.

- (g) Thus, there is a major amendment and change between (a) the draft regulations that were published along with the Objection-Suggestion Notice and (b) the final regulations that were published along with the Amendment Notification. This shift in the applicability/effectiveness provisions, completely changes the nature of the regulations that were published along with the Objection-Suggestion Notice.
 - (h) Several parties, who were already holding TDR that was generated prior to the issuance of the Objection-Suggestion Notice may not have objected to the provisions of the Objection-Suggestion Notice, since such parties were assured by virtue of the exception carved out in Clause 6.00 of the draft regulations (published along with the Objection-Suggestion Notice), that their rights to utilise the TDR (that was already generated prior to publication of the draft regulations), would not be prejudiced even on the coming into force of the draft regulations.
 - (i) However, now in view of the complete change in the effectiveness provision viz. Clause 8.00 of the final regulations (published along with the Amendment Notification), such parties who had not initially thought it fit not to object and had thus not objected to the draft regulations (published along with the Objection-Suggestion Notice), are now adversely affected.
 - (j) In the circumstances, the change in the effectiveness provision between the draft and final regulations as aforesaid, is a major amendment and adversely affects the rights of the various parties who were holding TDR which was issued prior to the publication of the draft regulations, since now the utilisation of such TDR also is sought to be regulated by the new regulations. As aforesaid, relying on Clause 6 of the draft regulations, such parties did not even raise/file any objections at the time of publication of the Objection-Suggestion Notice.
 - (k) Such a major modification between the draft regulations and final regulations is not in accordance with the spirit of the provisions of Section 37 (1AA) of the MRTP Act.
5. In effect, by adopting a such a paradigm shift and incorporation of a fundamental change in the draft regulations and the final regulations, the entire process of inviting suggestions and objections as mandated under Section 37 (1AA) of the MRTP Act is by-passed and is rendered nugatory and the final regulations published along with the Amendment Notification under Section 37 (1AA) (c) dated 28th January, 2016, would become amenable to challenge, if any parties file writ petitions challenging the same. Apart from being in contravention the letter and spirit of the provisions of the MRTP Act, the said Amendment Notification is thus completely illegal, arbitrary and would be liable to be set aside by the Hon'ble Courts if the same is challenged by filing of a Writ Petition.
6. It may be pertinent to note in this connection, that in the past also where the development control regulations have been amended by resorting to the provisions of Section 37 (1AA) of the MRTP Act, the rights or entitlements that were accrued in the past were protected in as much as the exercise or beneficial utilisation of such accrued entitlements were permitted to be continued in accordance with the development control regulations prevailing at the time of the accrual of such rights and not as per the amended development control regulations. For example, when the concept

of compensatory fungible floor space index was introduced by amendment to Regulations 35 (4) of the Development Control Regulations for Greater Mumbai, 1991 on 6th January, 2012 by Notification bearing G.N.No.CMS.4311/462/CR-58/2011/UD-11, it was clarified in the Explanatory Note (i) to the amended Regulation 35 (4) that "*Where IOD/IOA has been granted but building is not completed, this regulation shall apply only at the option of owner/developer*". Thus, the applicability of the new regulations regarding compensatory fungible floor space index was optional at the discretion of the owners/developers.

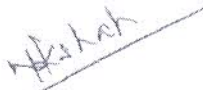
7. In the circumstances, we hereby sincerely and earnestly request and urge your good self that in view of the aforesaid position in law, kindly reconsider the final regulations published along with the Amendment Notification and by adopting a legally tenable and pragmatic approach, issue necessary directions/clarifications to the concerned departments to take steps for carrying out the requisite amendment to Clause 8.00 of the final regulations and bring the same in line with the draft regulations that were initially published along with the Objection-Suggestion Notice.
8. We respectfully submit that, by your considering this request and acting on the basis of the above referred representation, the same will avoid a lot of unnecessary litigation and challenges to the final regulations (as introduced vide Amendment Notification), failing which we apprehend that several parties will file proceedings/writ petitions challenging the final regulations published along with the Amendment Notification.

Thanking you,

Yours Sincerely,
For MCHI-CREDAI



Dharmesh Jain
President



Nainesh Shah
Hon. Secretary



S. S. Hussain (Retd. I.A.S)
C.E.O.

CC To:

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

22.5.16

Mantralaya
Urban
32

PRESIDENT
Dharmesh Jain

IMMEDIATE PAST PRESIDENT
Vimal Shah

PRESIDENT-ELECT
Mayur Shah

VICE PRESIDENTS
Nayan Shah
Deepak Goradia
Boman R. Irani
Harish Patel

HON. SECRETARY
Nainesh Shah

HON. TREASURER
Sukhraj Nahar

CEO
S. Shahzad Hussain
I.A.S. (Retd.)

SPECIAL PROJECTS
Bandish Ajmera
Rasesh Kanakia
Parag Munot

HON. JOINT SECRETARIES
Sandeep Runwal
Lakshman Bhagtani

JOINT TREASURER
Mukesh Patel

CO-ORDINATORS
Jagdish Ahuja
Pujit Aggarwal
Domnic Romell

COMMITTEE MEMBERS
Jayesh Shah
Nayan Bheda
Sanjay Chhabria
Shailesh Sanghvi
Tejas Vyas
Jitendra Jain
Deepak Gundecha

INVITEE MEMBERS
Sandeep Raheja
Munish Doshi
Navin Makhija
Rushank Shah
Pratik Patel
Rajeev Jain
Diipesh Bhagtani
Dhaval Ajmera
Shyamal Mody
Nikunj Sanghavi
Digant Parekh
Shailesh Puranik

PAST PRESIDENTS
Paras Gundecha
Pravin Doshi
Mohan Deshmukh
Mofatraj Munot
Rajini S. Ajmera
Late G. L. Raheja
Late Lalit Gandhi
Late Babubhai Majethia

MCHI-CREDAI UNITS
PRESIDENT, THANE
Ajay Ashar

PRESIDENT, KALYAN-DOMBIVLI
Praful Shah

PRESIDENT, MIRA VIRAR CITY
Ashit Shah

PRESIDENT, RAIGAD
Vilas Kothari

PRESIDENT, NAVI MUMBAI
Prakash Baviskar

Ref. No. MCHI/PRES/15-16/226

April 5, 2016

To,
Hon'ble Shri Devendra Fadnavis
Chief Minister
Government of Maharashtra,
Mantralaya,
Mumbai 400 032

मुख्यमंत्री सचिवालय
महाराष्ट्र शासन
मंत्रालय, मुंबई ४०० ०३२
दिनांक ०४/०४/१६

Sub: Representations with regard to the Notification dated 28th January, 2016 bearing no. TPS-1813/3067/CR-122/MCORP/12/UD-13 dt.28/01/2016.

Respected Sirs,


1. We are a Society registered under the Societies Registration Act, 1860 and under the Bombay Public Trust Act, 1950. We are a recognized association having as our members, various firms and/or companies engaged in the business of development and redevelopment of immovable properties, who provide the majority of the housing *inter alia* in the city of Mumbai. We strive to work towards creating and raising awareness among the general public with regard to real estate and construction industry and other allied activities, while providing them with detailed information and advising them on new developments in and around Mumbai and the Mumbai Metropolitan Region.
2. We are making this representation to your good offices with regard to the above referred Notification dated 28th January, 2016 whereby the Regulations for Grant of Transferable Development Rights ("TDR") are deemed to be incorporated in the Development Control Regulations of the various Municipal Corporations as enlisted in Annexure A thereof.
3. In order to enable your good selves to appreciate the matter in its entirety and proper perspective, please find attached a copy of the Annexure B of the said notification reproduced in its entirety with our concerns and suggestions mentioned below each clause.
4. In the circumstances, we hereby sincerely and earnestly request and urge your good self to kindly reconsider the final regulations published along with the Amendment Notification and by adopting a pragmatic approach, issue necessary directions/clarifications to the concerned departments to take steps for carrying out the requisite amendment to the appropriate clauses of the final regulations.

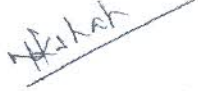
MCHI - CREDAI

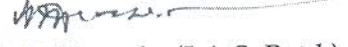
5. We respectfully submit that, by your considering this request and acting on the basis of the above referred representation, the same will avoid a lot of unnecessary litigation and challenges to the final regulations (as introduced vide Amendment Notification), failing which we apprehend that several parties will file proceedings/writ petitions challenging the final regulations published along with the Amendment Notification.

Yours Sincerely,

For MCHI-CREDAI


Dharmesh Jain
President


Nainesh Shah
Hon. Secretary


S. S. Hussain (I.A.S. Retd.)
C.E.O.