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Arvind Goel

Hon. Secretary, Mira Virar City
Shailesh Sanghvi

Ref. No. MCHI/PRES/13-14/051

February 17, 2014

To,
Hon'ble, Shri Prithviraj Chavan
Chief Minister,
Chief Minister's Secretariat,
Govt. of Maharashtra
Mantralaya,
Mumbai - 400 032

मुख्यमंत्री सचिवालय
महाराष्ट्र शासन
मंत्रालय, मुंबई ४०० ०३२
दिनांक 18/2/14

MOST URGENT NEED IMMEDIATE ACTION

Sub : Charging of premium for condoning the open space deficiency arising due to use of fungible compensatory FSI from 100% to 10%.

Respected Sir,

Sir, planning and approvability of the project as per the Development Control Regulation is different than the methodology of charging the premium arising due to condoning the deficiency by use of basic FSI or fungible compensatory FSI or by use of TDR.

This representation is regarding the methodology of charging the premium by the Municipal Corporation of Greater Mumbai on condoning the deficiency arising by use of Fungible Compensatory FSI. Currently, it is at 100% of the Ready Reckoner rates, where as it should be at 10% of the Ready Reckoner rate. As well as to arrive at top percentage of the deficiency arising due to use of Fungible Compensatory FSI, should be based on the total built-up area used for the project divided by the fungible compensatory FSI that is paid for.

Our detailed representation is as follows -

D.C. Regulation for Greater Mumbai 1991 are modified vide Government Notification bearing number CMS/4311/452/CR-58/UD-11 dtd. 6.1.2012.

A concept of Fungible Compensatory FSI (FCFSI) has been introduced for compensating the counting of FSI of the features which were earlier free of FSI such as flower beds, 10% balcony area, elevation etc.

The fungible compensatory FSI is given free for the existing built-up area that is redeveloped i.e. for the Rehab Component and it is granted free.

Fungible compensatory floor Space Index, is permissible as per modified DCR 35(4) not exceeding 35% for residential development and 20% for Industrial/Commercial development, over and above admissible floor Space Index, by charging a premium at the rate of 60%, 80% and 100% of the Stamp

Duty Ready Reckoner Rate for Residential, Industrial and Commercial development respectively.

Provided further that redevelopment under D.C. regulation no. 33(5) and redevelopment proposal of existing buildings in suburbs and extended suburbs by availing TDR, the **fungible compensatory FSI admissible on FSI consumed in existing structure shall be granted without charging premium.**

Provided in case of redevelopment under regulation 33(7), 33(9) & 33(10) excluding clauses no. 3.11 of Appendix -IV of Development Control Regulation 1991, the fungible compensatory FSI admissible on FSI rehabilitation component shall be granted without charging premium

As per existing practice, a premium for condoning the deficiency in open spaces is charged. The premium is 25% of the developed land rate as per RR rate for the Stamp Duty of the corresponding year.

The premium is reduced to 10% of the normal premium if deficiency in open spaces is caused due to use of TDR generated from Rehabilitation Schemes under various provisions of DCR 33(10) of D.C. Regulations for Greater Mumbai - 1991. It is allowed as per the provisions of Appendix VIIB of D.C. Regulations for Greater Mumbai - 1991.

The premium for condoning the deficiency in open spaces caused due to utilization of 0.33 additional FSI is also charged at 10% of the normal premium, as per DCR 32.

Presently, the premium for condoning the open space deficiency caused due to utilization of the Fungible Compensatory FSI is being charged by MCGM at normal premium rates i.e. at 25% of developed land rate RR rate for the Stamp Duty. However, there is no policy guidelines in this respect.

The viability of the development gets negatively affected due to this exorbitant premium for deficiency in open spaces as in some cases this premium is higher than the premium being levied for grant of Fungible Compensatory FSI.

This exorbitant premium amount for deficiency in open spaces is acting as deterrant for utilizing fungible compensatory FSI and is infact hampering redevelopment projects.

The fungible compensatory FSI as per DCR 35(4) is not independent and is dependent on the source FSI i.e. unless TDR/additional FSI is consumed first, fungible compensatory FSI cannot be granted on the plot.

Therefore, properties of the fungible compensatory FSI will have to be same as that of the source TDR or source FSI as the case may be.

Therefore, it is incumbent on the MCGM to charge 10% of normal premium while granting relaxation for consumption of fungible compensatory FSI as per DCR 35(4) arising out of slum TDR and 0.33 FSI as per DCR 32, since consumption of Slum TDR and additional 0.33 FSI under DCR 32 as benefits

thereto are entitled for relaxation as mentioned in Clause 6.23 of regulation 33(10), Appendix IV.

Under D.C. regulations no.33 (5) and redevelopment proposal of existing buildings in suburbs and extended suburbs by availing TDR, the fungible compensatory FSI admissible on FSI consumed in existing structure shall be granted without charging premium". Thus, no premium is chargeable for consumption of fungible compensatory FSI on rehab FSI.

Total FSI permissible with fungible compensatory FSI in suburbs is 2.70

When the policy of the fungible compensatory FSI was introduced, it was in lieu of compensatory features such as flower bed, balcony area, elevation features and it was taken for granted that the premium that would be arising, would be based on the source of the FSI. It was taken for granted both by the Municipal Corporation of Greater Mumbai, Architect & Developer and the Government that since it is compensatory FSI and chargeable or TDR it would be at 10%. Since this issue has been over looked, the MCGM is taking the most strictest view in charging of the premium.

The Municipal Corporation of Greater Mumbai is saying that because the DCR is silent we are charging at 25% of the Ready Reckoner rate and no reduction of premium at 10% is possible as there is no policy laid down anywhere.

If this continues then the number of projects that shall actually get developed and flats being available both by redevelopment to the existing society members as well as by free sale would dramatically reduce and flat prices are likely to rise manifold.

The MCGM is calculating deficiency in open spaces as follows :-

Example is when Rehab component is there;

| | | |
|--|---|-------------|
| Plot FSI | - | 1.00 |
| Fungible FSI for rehab | - | 0.35 |
| Additional slum TDR /0.33 FSI | - | 1.00 |
| Fungible FSI on slum TDR/0.33 FSI for sale | - | 0.35 |
| Total | - | <u>2.70</u> |

MCGM is calculating deficiency in open spaces as follows :-

Proportionate premium for fungible FSI - $\frac{0.70}{1.70}$ (fungible FSI) = 41.18%
Component for rehab + sale 1.70 (Total additional excluding plot FSI)

So out of the total deficiency created 41.18% is accounted towards deficiency created by use of fungible compensatory FSI.

However the proposed methodology should be as follows :-

| | | |
|------------------------|---|------|
| Plot FSI | - | 1.00 |
| Fungible FSI for rehab | - | 0.35 |

| | | |
|-----------------------------------|---|-------------|
| 0.33 FSI/Slum TDR | - | 1.00 |
| Fungible FSI on slum TDR/0.33 FSI | - | 0.35 |
| Total FSI | - | <u>2.70</u> |

As the total FSI consumed in building is 2.70. The ratio shall be on 2.70 & not on 1.70 FSI

Proportionate premium for fungible FSI component for sale - $\frac{0.35}{2.70} = 12.96\%$
Total FSI 2.70 Say 13%

Hence out of the total deficiency created 13% should be accounted towards deficiency created by use of fungible compensatory FSI and the premium payable should be at 10% of the premium to be charged in case Slum TDR has been used.

SUMMARY

- 1) Deficiency in condoning open space for proportionate fungible compensatory FSI for rehab shall be free of premium.
- 2) Deficiency in condoning open space for proportionate fungible FSI for sale component shall be with charging premium as per source FSI at ratio of 12.96% on total 2.70 FSI.
- 3) The percentage of charge of premium would be
 - a) If source FSI is slum TDR than at 10%
 - b) If source FSI is 0.33 premium FSI than at 10%
 - c) If General TDR/Road TDR is used than at 100%
- 4) If Rehab Component than 13:87 (0.35/2.70)
- 5) If No Rehab Component only Sale component than 26:74 (0.70/2.70)
- 6) Percentage of premium to be 10% if Slum TDR or 0.33 premium FSI.
- 7) Percentage of premium to be 100% if Road /Garden TDR
- 8) **Planning and approvability for a project is different than methodology adopted by MCGM for calculating the premium**
- 9) Ratio for calculating deficiency should be on the total FSI consumed in the building 2.70
i.e. 0.35/2.70 (in case there is a Rehab Component)
or 0.70/2.70 (in case there is No Rehab Component)

Hence the current methodology adopted by MCGM for calculating the premium payable for condoning the open space deficiency is arbitrary, without any policy and is with the angle of collecting maximum revenue.

Very recently the MCGM has taken a policy decision in this regard (Enclosed herewith). The relevant para of the said policy is reproduced below;

"It needs to be mentioned that specific provisions have been made in Reg. 35 (4) itself for exempting charging of premium for certain specific cases. There is no specific premium in the Reg. 35 (4) for granting any concession in computation of premium for condonation of deficiencies generated due to fungible FSI considered while processing proposal in lieu of utilization of slum TDR/0.33 FSI. Under the circumstances, it will not be possible to consider the system unless such specific provision is made to that effect in the regulation. The aspect will have to be examined by U.D.D. and directions to that effect be issued for appropriate modification in DCR."

As such MCGM also admits that the aspect will have to be examined by U.D.D. and directions to that effect be issued for appropriate modification in DCR.

So MCGM has taken a safe decision, MCGM has taken the most strictest view without actually finalizing a policy or referring to the Government or considering what was the basic purpose for which the fungible compensatory FSI was introduced.

Our Request:

- 1) Ratio for calculating deficiency should be based on the total FSI consumed in the building 2.70
- 2) The ratio to be 0.35/2.70 (in case there is a Rehab Component)
- 3) The ratio to be 0.70/2.70 (in case there is No Rehab Component) and percentage of premium should be 10% i.e. according to the source of the FSI if it is Slum TDR or Premium FSI than 10% and if it is Road / Garden TDR than it should be 100%.
- 4) Sir, necessary directions may please be given to the Municipal Corporation of Greater Mumbai for charging premium as per the above formula.
- 5) Also the MCGM cannot charge twice for the same subject hence we pay premium for using Fungible FSI as well as we pay for the approval of Fungible FSI. This amounts to double taxation, this amounts to double payment and this amounts to double charging.

Thanking you,

Yours faithfully,
For MCHI-CREDAI



Vimal Shah
President

MUNICIPAL CORPORATION OF GREATER MUMBAI

No. CHE/ 9343/DP (M) -dt- 26.12.2013

Sub:-Policy regarding charging premium for granting concessions in open spaces in case of building proposals for utilization of Slum TDR and additional 0.33 FSI under DCR 323 including fungible compensatory FSI.

Ref :-1) MGC/A/8252 dtd. 6.11.2012 (C/3).
2) MGC/G/2234 dtd. 25.6.2013 (C/5).

The references are received from the following in respect of subject matter requesting therein to levy the premium for open space deficiency at 10% rate in case of utilization of additional BUA in lieu of slum TDR and 0.33 FSI.

- 1) Architect Shri B.H. Wadhwa vide letter dtd. 15.9.2012 (C/3).
- 2) Hon'ble M.L.C. Shri Vijay Sawant vide letter dtd. 20.6.2013 (C/5).
- 3) MCHI representation dtd. 1.7.2013 (C/7).
- 4) PEATA's representation dtd. 3.6.2013 (C/21).

The issue was also discussed with MCHI, PEATA members and main content of their submission on subject matter are as under :-

- a) As per Clause 6.22 of Appendix IV-A of DCR 1991 all relaxations outlined hereinabove shall be given to the rehabilitation component and also to the composite buildings in the project. Premium shall not be charged for all or any of the relaxations given hereinabove, or for any other mentioned in DCR 35(2)(C).
- b) Further, as per Regn. No. 33(10) (Slum TDR), Appendix IV, Clause 6.23, "Relaxation for the free sale component: Relaxation contained in Sub Regulation No. 6.13, 6.14, 6.18, 6.19, 6.20 above as well as other necessary relaxation shall be given to the free sale components, on payment of 20% of the normal premium, for Dharavi redevelopment project."
- c) Slum TDR is a sale component of S.R. Scheme which one cannot or does not wish to utilize in S.R. Scheme and can be utilized outside S.R. Scheme by issuing Slum DRC. As per clause No. 17 of Appendix VII-B for issue of slum TDR, wherever TDR arising out of S.R. Scheme project is received, the relaxation as required shall be given for utilization of such slum TDR on the same basis as free sale component in the Slum Rehabilitation Project (C/47).
- d) As per 6 of 33(5) of DCR 1991 for redevelopment of MHADA's land in sub wards Notwithstanding any thing contained in these regulations, the relaxations incorporated in 33(10) of these regulations shall apply for Housing Schemes under these regulations for tenements under EWS/LIG & MIG categories. However, the front open space shall not be less than 3.60 mt.

- e) As per Clause 8 of Appendix-III for 33(7) for redevelopment in City area.
"Relaxation in building and other requirements for rehabilitation :- Not withstanding anything contained in these regulation, the relaxations incorporated in Regulation 33(10) of these regulations shall apply (No further relaxation shall be applicable).
- f) As per Clause 12 of Column (1) of Table 14 of DCR 32 for additional 0.33 FSI "The relaxation of premium i.e. 10% of normal premium shall be charged while condoning deficiencies in open spaces (as applicable for case of Slum TDR". (C/)
- g) The provisions of 35(4) of DCR 1991 related to grant of fungible compensatory FSI on existing structure in respect of City and Suburbs which is reproduced below :

Provided in case of redevelopment under Regulation 33(7), 33(9) and 33(10) excluding Clause No. 3.11 of Appendix IV of Development Control Regulation 1991, the fungible compensatory FSI admissible on rehabilitation component shall be granted without charging premium.

Provide further that redevelopment under D.C. Regulations No. 33(5) and redevelopment proposal of existing buildings in suburbs and extended suburbs by availing TDR, the fungible compensatory FSI admissible on FSI consumed in existing structure shall be granted without charging premium.

- h) The fungible compensatory FSI permissible as per DCR 35(4) is an additional FSI, dependent on the source FSI i.e. unless TDR/additional 0.33 FSI is consumed first, fungible compensatory FSI cannot be granted on the plot. Further, no premium on fungible compensatory FSI (FCFSI) is applicable on authentic existing built up area.

In view of above, it is requested to charge the premium for open space deficiency occurred due to utilization of additional BUA of FCFSI over the slum TDR, 0.33 FSI, of which open space deficiencies premium are charged at 10% of normal premium (i.e. 10% on 25% of prevailing SDRR).

II) The remarks are as under :-

- 1) The provision of 35(4) for utilization of FCFSI is newly introduced by modification in DCR 1991 on 6.1.2012.
- 2) Accordingly, the FCFSI may be utilized by paying premium as under.

For residential 35% of permissible BUA at 60% rate of prevailing SDRR.

For commercial user 20% of permissible BUA at 100% rate of prevailing SDRR.

For industrial use at 20% of permissible BUA at 80% rate of prevailing SDRR.

AOBP
for imm.
circulation
Mack
7/7/61
Eng. (B.P.)

AOBP
for imm.
circulation
Mack
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Eng. (B.P.)