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Ref. No. MCHI/PRES/18-19/266

To,
Hon'ble Shri Devendra Fadnavis
Chief Minister
Government of Maharashtra
Mantralaya,
Mumbai - 400032

मुख्यमंत्री कार्यालय
महाराष्ट्र शासन
मंत्रालय, मुंबई - ४०० ०३२
दिनांक ५/५/१९

May 4, 2019

Sub: Constant policy flip-flops in DCPR 2034 leading to undue stress and loss of development potential to Societies and Land Owners

Respected Sir,

The State Government has proposed modification to Sanctioned DCPR 2034 that would deny original FSI benefits to landowners who are willing to handover a part of the plot that comes in the way of road widening or road development. In the past such rights were given in lieu of surrender of road setback by Landowner that was over and above the permissible FSI. Last year, the State Government had amended the DC Rules, permitting the construction rights over and above the Permissible FSI in such cases. However, again, State Government turned back to disincentives landowners affected by road reservation by coming out with propose modification to DCPR 2034.

This is the 3rd time in just over 2 years when the state government has modified its stand on this issue. After the advent of new TDR Policy in Nov 2016, where the FSI compensation for land required for public reservations and road widening was raised; to that effect Municipal Corporation had cleared many proposals for road widening where FSI was given over and above Permissible FSI. But this was halted in January 2018 by way of proposed regulation to cap the FSI over and above the Permissible FSI. Then again in Nov 2018 the State government altered its position acceding to the demands of construction industry to revise rules conferring additional construction over and above Permissible FSI for such cases (road setback) by way of Corrigendum. Again, the State Government reversed their own Corrigendum by proposing a modification to sanctioned provision in 2019 to cap the FSI for road widening/ setback by denying incentive FSI over and above permissible FSI. In other words, the State government has positioned itself that FSI benefits in lieu of road setback can only be administered within the Permissible FSI and not above it. So there was lot of flip-flop between 2016 and 2019 for road setback issue.

The owner who is not affected by road widening will get 100 percent FSI benefit without losing any portion of the land and the Owner who is affected by road widening/ setback would enjoy on the same or less benefit but should suffice with lesser plot of land as some portion of plot affected by setback needs to be handed over to planning authority. In fact, if any landowner is giving away his land or portion of land for the development of the city then such owner should get more FSI as compared to the Owner without any reservation. Such an Owner who handover the plot for the development of the city should not be penalized; On the contrary he should be incentivized. The owner cannot be made to suffer in the name of Public purpose, just because his plot of land is being fasten with road reservation by state government. Certainly, this is not the objective of planned and organised development for implementation of Town Planning under MRTP Act and thus the proposed modification violates Article 14 of the Constitution.

The DP 2034 started with FSI on Gross Plot Area so that the Owners surrendering the land for public purpose get the better FSI as compare to the Owners without reservation. Further, it was proposed that since the Owner is surrendering the land, he is additionally compensated for the same. That was the correct way to compensate the Owners who are surrendering the land for public purpose as per MRTP Act. After 4 years and after suggestions and objections, the final outcome is discrimination and injustice to landowners. Once the propose legislation comes into force, then landowner, with road reservation clamped on it, would get very less incentive once he surrenders the portion of the road reservation to the Planning Authority.

The Additional FSI and TDR benefit on Gross Plot area was always protected for plot affected by reservation even before the advent of DCPR 2034. Additional FSI/TDR was permissible over and above the Permissible FSI for reserved plots. The Planning Committee appointed u/s 28(4) of MRTP Act had recommend better benefits for landowners with reservation as compared to landowners with no reservation and this idea was recommended by Planning Committee, which was reinforced by Municipal Corporation by way of approval through Corporation Resolution. The Planning Committee was totally aware that benefits of what landowner would get without any reservation while developing his plot could not be compared with landowner whose plot is affected by reservation because the latter owner suffers from severance of ownership of plot affected by reservation when he handover the same to Planning authority. So the latter owner should get not only 100 percent FSI on his truncated land but also he should be compensated for severance of ownership of portion affected by reservation. So clamping of reservation on land should be privilege to landowner other than a curse if we compare his benefits with the landowner who is not affected by reservation. Otherwise, the propose modification once comes into force would expose itself to the vice of Article 14 of the Constitution, which provides for Equality before law.

The State through this propose modification is contemplating to give no compensation for severance of ownership of land which is affected by road widening/development, which is arbitrary, discriminative in nature and violation of Article 300A of the Constitution. The propose modification takes away the portion of the land affected by road setback in the name of Public purpose effecting severance of ownership of plot from the landowner without giving him any adequate compensation for the same. A Good Town Planning can survive only if there is successful implementation of DP and landowner with reservations are induced/ entice to come forward voluntary to surrender their reservation who in lieu expect better FSI/TDR benefits than the landowner with no reservation, while developing the plot.

One factor out of many discriminations is that several projects have being sanctioned between Nov 2016 and 13th Nov 2018 and until now in 2019, where benefit of road setback was given over and above the Permissible FSI and even they won't be affected by reversal once the propose modification comes into force. It is arbitrary and discriminative that some Landowners would take the benefit of road setback by utilizing FSI over and above the permissible FSI and subsequent landowners would be get disincentives and would have to suffer with less FSI in lieu of severance of ownership of plot affected by road reservation. Once the propose legislation comes into force then Landowners affected by road setback would be discouraged to come forward as they are only going to get the less benefit then the Landowner who has no such road setback, if they go for development of their respective plots.

Another aspect of discrimination is that RG with less than 1000 Sq.mtr is excluded from Accommodation reservation; there is no basis for the same. For example: the AR policy says that RG should be minimum 1000 Sq.mtrs; which means Owner having RG of 1100 Sq.mtrs shall retain 330 Sq.mtrs and handover 770 Sq.mtrs but he is entitled to get an FSI on entire plot of 1100 Sq.mtr and over an above 770 Sq.mt. But if the landowner is having less than 1000 Sq.mtr plot then he is not entitle to AR policy and is subject to suffer with no mistake from his side.

Another aspect of discrimination is that for all the reservations in Accommodation policy the Planning authority is allowing over and above the permissible FSI. However, the same benefit is not conferred to road setback and RG less than 1000 Sq.mtrs.

Since all this as above could be adequately challenged before Bombay High Court, once the proposed modification comes into force because as of now the proposed modification do not have any force of the law.

PARAMETER OF JUDICIAL REVIEW OF SUBORDINATE LEGISLATION:

Please refer to State of Tamil Nadu v. P. Krishnamurthy, (2006) 4 SCC 517.

CREDAI-MCHI's PRAYER

Sir, with a very objective view of the various policy stands of the Government and in order to avoid a scenario where one section feels highly discriminated and disadvantaged against, CREDAI-MCHI earnestly request for the following;

1. The Notice TPB-4319/CR-25/2019/UD-11 on 7.3.2019 be immediately stayed. Also, the rule for providing FSI against the road setback handover as approved in DCPR 2034 published on 12.11.2018 be continued.
- (a) In proposed provision, words "within admissible TDR limit" should be replaced by "over and above the permissible FSI as per Column 7 of table 12, on remainder plot".
2. To unilaterally extend the benefits of Accommodation Reservation policy to RG of less than 1000 sq. mtr. as well.

We look forward to your kind consideration and confirmation of acceptance of our above suggestions.

Thanking you,

Your sincerely,
For CREDAI-MCHI


Nayan A. Shah
President


Bandish Ajmera
Hon. Secretary


Sanjiv Chaudhary MRICS
Chief Operating Officer

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


प्रधान सचिव (नवि-१)
नगरविकास विभाग,
महाराष्ट्र शासन, मंत्रालय,
मुंबई - ४०० ०३२.