

Ref no. MCHI/PRES/19-20/110

13th January, 2020

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Mayur Shah

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Deepak Goradia

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Harish Patel
Nainesh Shah
Domnic Romell

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Sukhraj Nahar

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Bandish Ajmera

TREASURER
Mukesh Patel

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Sandeep Raheja
Jayesh Shah
Sanjay Chhabria
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Sandeep Runwal
Shailesh G. Puranik
Dhaval Ajmera
Pratik Patel

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Munish Doshi

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Late Lalit Gandhi
Late Babubhai Majethia

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Deepak Mehta

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Ashit Shah

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Kiran Bagad

PRESIDENT, NAVI MUMBAI
Prakash Baviskar

To,
Hon'ble Dr Jitendra Satish Awhad
Minister for Housing
Govt. of Maharashtra
Mantralaya, Mumbai - 400032

Handwritten signature
21/01/2020
मिनिस्टर
श्री. गृहनिर्माण यांचे कार्यालय
महाराष्ट्र शासन
मंत्रालय, मुंबई ४०० ०३२

Sub : Handover of Surplus Area to MHADA under DC Regulation 33(7) r/w Surplus Area as required under the Third Schedule Sec.130-1(3) of The Maharashtra Housing and Area Development Act (MHADA) 1976

Respected Sir,

1) As you are aware under the Bombay Rent Control Act 1942, the rent in respect of premises was frozen and as a result thereof, such buildings became dilapidated with efflux of time. To ensure that all such buildings existing prior to 1969 are repaired as and when required, the Government of Maharashtra introduced a provision to levy and collect repair cess from all occupants of such buildings by introducing Sec.82 in the MHADA Act. Under Sec.82, the Municipal Commissioner of the Municipal Corporation of Greater Mumbai (MCGM) was inter alia empowered to recover the amount of cess levied under the Act and make the same available to the MBR&R Board of MHADA to enable MBR&R Board of MHADA to repair all such cessed building as and when the same are required to be repaired.

2) To encourage reconstruction and redevelopment of all such cessed buildings in the Island city, the Government of Maharashtra introduced Sub Regulation 33(7) in the DC Regulation 1991. The sub regulation 33(7) reads as follows :

33(7): Reconstruction or redevelopment of cessed buildings in the Island City by Co-operative Housing Societies or of old buildings belonging to the Corporation or of old buildings belonging to the Police Department. [For reconstruction/redevelopment to be undertaken by Co-operative Housing Societies of existing tenants or by Co-op Housing Societies of landlords and/or occupiers of cessed buildings existing prior to 30/9/1969 in Island City, which attract to provisions of MHADA Act 1976 and for reconstruction/redevelopment of the buildings of Corporation, the Floor Space Index shall be 3.00 on the gross plot area or the FSI required for rehabilitation of existing tenants plus incentive FSI as specified in Appendix III whichever is more.

3) The Appendix III to the sub regulation 33(7) inter alia reads as follows :
4. The tenements in the reconstructed building shall be allotted by the landlord/occupants co-operative housing society to the occupiers as per list certified by the Mumbai Repair and Reconstruction Board. The prescribed percentage of the surplus built up area as provided in the Table in the

Third Schedule of the Maharashtra Housing and Area Development Act, 1976 shall be made available to the Mumbai Repairs and Reconstruction Board for accommodating the occupants in transit camps or cessed buildings which cannot be reconstructed on payment of an amount as may be prescribed under MHADA Act, 1976 [Provided that the area equivalent to the market value (The market value shall be as per the ready - Reckoner rate of that year) of area admissible as per the prescribed percentage of built up area can be made available within the same municipal ward of MCGM]

- 4) The Third Schedule of the MHADA Act inter alia reads as follows :

THIRD SCHEDULE
[See section 130-1(3)]

In building reconstructed for mixed use i.e. residential and commercial		In building reconstructed for residential use	
Surplus Area (1)	Built up area to be reserved (2)	Surplus Area (3)	Built-up area to be reserved (4)
Upto 40 per cent	.. Nil	Upto 50 per cent	Nil
Upto 45 per cent	.. 5 per cent	Upto 55 per cent	5 per cent
Upto 55 per cent	.. 10 per cent	Upto 65 per cent	10 per cent
Upto 60 per cent	.. 15 per cent	Upto 70 per cent	15 per cent
Upto 65 per cent	.. 20 per cent	Upto 75 per cent	20 per cent
Upto 70 per cent	.. 25 per cent	Upto 80 per cent	25 per cent
Upto 80 per cent	.. 30 per cent	Upto 90 per cent	30 per cent
Upto 85 per cent	.. 35 per cent	Upto 95 per cent	35 per cent
Upto 90 per cent	.. 40 per cent	Upto 95 per cent	40 per cent
Above 90 per cent	.. 50 per cent		

- 5) The amount of Surplus Area required to be handed over at the time of re-development to MHADA is calculated as per the above Schedule and provided for in the NOC that is issued by MHADA to the NOC Holder.
- 6) As per practice, the Surplus Area is required to be handed over to MHADA before completing the entire re-development. To that effect, MHADA and the NOC Holder also enter into and register a Surplus Area Agreement.

- 7) As per DC Regulation 33(7), the Surplus Area can be given in situ or can be given on any other alternate plot in the same ward. Hence, the projects which are required to handover Surplus Area to MHADA can be put in two buckets. One, where the Surplus Area is required to be handed over in the same plot and the second, where the Surplus Area is required to be handed over on another plot in the same ward.
- 8) In cases where the Surplus Area is required to be handed over on the same plot, again there can be three situations. One where the redevelopment is completed ie: the sale building is completed and only the Surplus Area is to be constructed and handed over, second situation where neither the sale building nor the Surplus Area is completed and third situation where sale building and rehabilitation building is completed and surplus area has been sold by the developer fraudulently.
- 9) It has come to the notice of MHADA that despite the completion of re-development projects, the NOC Holders had failed to provide the Surplus Area to MHADA as per the NOC. Hence, on 15th October 2012, the Housing Department directed MHADA to levy and recover penalty from the NOC holders who had not handed over the Surplus Area to MHADA. Copy of order dated 15th October 2012 enclosed as Annexure -1.
- 10) It has been observed that in the last 7 years, this order dated 15th October 2012 has been implemented indiscriminately, such that the penalty has also been recovered from such NOC Holders whose project are still ongoing. This is neither the intent of DC Regulation 33(7) and neither can it be the intent of the order dated 15th October 2012.
- 11) It is respectfully submitted that penalty can be resolved only in cases where Surplus Area required to be handed over is sold and now the developer is making alternate arrangement of providing the surplus area in another plot in accordance with the 15th October 2012, directive. However, MHADA has travelled beyond the order of the Government and levied penalty to even ongoing projects where sale, rehab and surplus areas are still under construction.
- 12) However, it is respectfully submitted for consideration that in cases where the re-development is not completed and is ongoing, ie: where balance FSI is available for consumption and all the sale buildings and rehabilitation buildings are not completed, then in such a case, the obligation of the NOC holder to handover the Surplus Area to MHADA and the right of MHADA to recover such Surplus Area from the NOC Holder has not fructified. In such a case, the order dated 15th October 2012 issued by the Housing Department cannot be imposed on such NOC Holder. In cases where the re-development is ongoing, it is the primary obligation of the NOC Holder to first ensure that the original tenants are first rehoused and their rehabilitation building is first constructed. Hence, the NOC Holder puts in its entire effort to first construct and complete the Rehab Building. Since the Rehab Building is the priority as it directly affects the dis-housed families, the Surplus Area to be handed over to MHADA should only be aligned with the construction and completion of the sale buildings equivalent to the Built Up area of the Surplus Area that is required to be handed over to MHADA. In a scheme of re-development the primary object is to rehouse the original tenants and for that the NOC holder generates funds from the sale building. This is the essence of re-development. MHADA may take further sufficient safeguards in the nature of a registered undertaking from the NOC

Holder that prior to application for Occupation Certificate twice the Built Up Area in the last of sale building on the plot for which NOC is granted, the NOC Holder will have completed the construction of the Surplus Area and OC for the same would also have been applied for.

- 13) It is therefore respectfully submitted that the Government ought to issue necessary clarifications and orders to exempt the ongoing re-developments where all the sale and rehab buildings are not completed and balance sale FSI is available for consumption and where the NOC Holder has not yet handed over the Surplus Area to MHADA from the ambit of the order dated 15th October 2012.

Thanking you,

Yours faithfully,
For CREDAI-MCHI



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary