

Office of the Municipal Commissioner,
Thane Municipal Corporation, Thane
No. / TDO/DPIC/428
Date: 07/07/2014

Circular

Sub :- Policy regarding Constructed Amenity TDR

Ref : Circular no. TMC/TDO/DPIC/ADTP/243, dt. 17/05/2014.

A corrigendum is proposed in the circular under reference regarding the constructed amenity TDR policy.

There is provision in appendix "W" vide regulation 6 of DCR; which states that

"When an owner or lessee also develop or constructs amenity on the surrendered plot at his cost subject to such stipulation, as may be prescribed by the Commissioner or the appropriate authority, as the case may be and to their satisfaction and hands over the said developed / constructed/amenity to the commissioner/appropriate authority free of cost, he may be granted by the Commissioner a further DR in the form of FSI equivalent to the area of the construction / development done by him, utilization of which etc. will be subject to the regulations contained in this Appendix."

The said provision of TDR in lieu of constructed /developed amenity allows Owner/developer to claim TDR of equivalent area of developed amenity , may it be Road, garden, park ,play ground, buildings or E.S.R etc. This is definitely not in the interest of TMC; as the cost per sq. feet required to develop different kinds of amenity is much lesser than the cost of permissible TDR per sq. feet in most cases.

When development proposal is submitted following conditions are normally imposed while awarding approval.

- 1) Construction of D.P. road prior to commencement certificate : normally this condition is imposed under the circumstance wherein; without the construction of D.P.Road; access is not available to the proposal. It is in fact need of the developer /owner to construct the D.P. Road for his proposal being approvable.
- 2) Construction of Nala: Sometime there is existence of untrained nala in the layout. Without realigning and construction of nala walls; the development would not be possible. In this case also it is the requirement of developer / owner to realign and construct the nala for his own benefit.
- 3) Development of Garden/P.G./Park etc.: This is often done by Developer / Owner for increasing selling potential of the project.
- 4) Construction of E.S.R : in projects where tenement density is higher than the permissible e.g. Rental housing schemes, Mhada Redevelopment schemes, SRD schemes, Townships or in larger layouts; it is made mandatory to Developer / Owner to construct ESR for their own water supply. Normally such proposal could be rejected on the ground of inadequate water supply. Normally such proposal could be rejected on the ground of inadequate water supply / infrastructure in the vicinity. However developer / owner propose these amenities for his benefit and sale potential.
- 5) Some times TMC also impose conditions to provide certain other amenities in order to make proposal approvable.

It is noticed that many of the developer / owners have taken advantage of above said provisions and claimed the equivalent TDR in lieu of developed amenity under the above provisions and conditions. TMC had denied such TDR; which was challenged in court of law. In certain cases Hon'ble court has set aside decision of TMC and ordered to allow such equivalent TDR as per the provisions in appendix "W". After the decision of the Hon'ble court there is flood of applications for claim of TDR in lieu of so called constructed amenity in the past. Such applications should be decided carefully and expeditiously in view of the orders of the Hon'ble court. While rejecting such application extreme care should be taken to assess the circumstances under which amenity is developed. If necessary such rejection should be vetted by Legal Adviser of TMC.

However there might be some pending application in the past, which might come under the purview of above said provisions of Appendix "W".

The policy is formulated herein under to decide such proposals for granting TDR / DR as per Appendix "W" of D.C. Regulation.

1. Construction Amenity TDR/DR will be only due, in pursuance of Registered Agreement executed in between Applicant and Corporation, work completed as per specification & Completion/Occupation Certificate is granted by the relevant Department as conditions mentioned as per status of work shown as follow:

Status of Work or application	Action to be taken by Department	
Whenever order specifies less than equivalent TDR and order is accepted by owner.	Proposal may scrutinised as per the accepted order by Applicant.	
In case where Occupation Certificate is awarded for full project, as approved at the time of Construction of Amenity, and in case of non-application for grant of construction TDR before Court Order.	Application to be rejected.	
In case where Occupation Certificate is awarded for part project, as approved at the time of Construction of Amenity and in case of non- application for grant of construction TDR before Court Order.	TDR application to be considered on pro-rata basis of completed project after considering interest of occupiers entered in registered agreements executed between Developer and Occupiers, in the manner mentioned	
	<u>Handed over</u> <u>Developed Amenity</u>	Application to be rejected.
	Completed before One Year of application.	Application to be rejected
<u>Not Handed Over but completed with conditions as follows:</u>	If Commencement Certificate is issued with the condition to develop such Amenity	TDR application to be considered.
	If Commencement Certificate is issued without any condition to develop such Amenity.	TDR application to be rejected.
	If work has not been started	TDR application to be rejected. Modify Commencement Certificate if needed.
<u>Not completed within One year of Application</u>	If work has been started	TDR application to be considered if Commencement Certificate is issued with condition to develop amenity and to be rejected if there no such condition imposed in C.C.

	After completion of project and granting Occupation Certificate	TDR application to be rejected.
<u>Applications for TDR as per App. W for constructed Amenity before any court order</u>	Before completion of project and granting Occupation Certificate.	a) Application to be considered if order of the Commissioner is subsisting and Commencement Certificate is issued with condition to develop amenity.
		b) Application to be rejected, if no condition is imposed for development of amenity in Commencement Certificate.

Following additional guidelines are issued for dealing with such applications;

1. No such application is to be entertained for the amenity constructed prior to 29th December, 1997 as the basic provision for *granting* TDR in lieu of amenity is introduced on this date.
2. No application shall be entertained for any cost paid by Owner/Developer for development of amenity.
3. Hence forth condition to construct any amenity shall not be imposed without the prior permission of Commissioner. If such conditions are to be imposed as per the provisions of D.C.Regulations; it has to be brought on record that Developer/Owner is constructing/developing the said amenity for proposal to be approvable under DCR and further registered undertaking to that effect shall be taken from developer / owner on record, prior to giving any approval.
4. For applications pursuant to the orders of Hon'ble court and before the date of Notification of modification in appendix 'W', i.e. before /12/2013 :
 - a) All such past and future applications claiming construction TDR received by any departments of TMC along with relevant files shall be forwarded to D.P.Cell of Town Development department for disposal.
 - b) TDD should initially scrutinize the applications in view of the circumstances in which the amenity is constructed, whether such condition was indeed imposed for requirement of TMC or applicant had developed the amenity of this own for his proposal being approvable under DCR. If developer / owner has constructed amenity of his own for such reasons; then the application should be rejected with specific reasons recorded therein. For giving rejection opinion of LA should be taken.
 - c) Copy of other such applications shall be immediately forwarded to CE or relevant department for assessment and extent of amenity constructed by the applicant, status of amenity at the time of application, requirement of up gradation of the amenity as per required specifications / standards. CE should finalised standards of all types of amenity for which TDR is sought and ask the applicant to up grade/ restore such amenity within specified period. After owner / developer complete the requirement as specified by CE / relevant department; he should submit completion certificate from CE or relevant department of TMC and hand over such Amenity to Estate Department. Completion certificate is to be issued by CE, stating the area of amenity, specifications of constructed amenity. Further defect liability period (DLP) for O & M of the said amenity shall be prescribed by the CE / relevant department and it is to be recorded in the agreement format. Premium for defect liability may be recovered by the applicant at the time of issuing completion certificate. While finalizing the specifications and standards for the development/ up gradation of amenity; CE / relevant department should ensure that; the amenity shall be developed/ up graded as per the latest technology with highest standards.

in case of development of Roads, provisions shall be made for ducts/ chambers for laying of all kind of future services.

- d) After receiving completion certificate from CE; TDD shall release the TDR in proportion and in phases of the defect liability period with the approval of Commissioner. For every phase NOC of CE/ Relevant Department is to be ensured.
- e) TDD should check the status of such proposals; whether completed and third party interest by way of occupants/society/provisions of deems conveyance is created by the applicant. In such cases permissibility of awarding TDR to applicant shall be checked in view of deem conveyance, requirement of consent of occupiers etc.
- f) Henceforth the development of amenity other than those required for proposals to be approvable as per the provisions of D.C.R (e.g.- DCR clause-43,47,etc.shall be taken up or proposed as per proposed modification of regulation "6" off appendix "W"

The said directives will come in force from date of this circular.


Municipal Commissioner,
Thane Municipal Corporation, Thane