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Prakash Baviskar

Ref. No. MCHI/PRES/18-19/220

March 16, 2019

To,

Shri Ajoy Mehta (I.A.S.)

Municipal Commissioner,

Municipal Corporation of Greater Mumbai

Mumbai - 400 001



Sub : Levy of Development Cess under Regulation 30 sub regulation 7 and Development Charges

Respected Sirs,

The DC Regulation 30 Sub regulation 7 has been introduced in the DCPR 2034 for levying of Development cess at the rate of 100% of the development charge for built up area over and above the Zonal (basic) FSI / Protected built up area whichever is higher (excluding fungible compensatory area). The Development Cess is levied in addition to the development charges levied as per Sec.124 of MRTP Act 1966. Further the development cess is not payable in cases where development cess and/or offside infrastructure charges is proposed under the specific regulation.

Reference is also requested to the Sec.124A of MRTP Act 1966, inter alia provides the following:

124A. Levy of Development Charges

(1) Subject to the provisions of this Act, the Planning Authority or the Development Authority (hereinafter in this Chapter collectively referred to as " the Authority "), shall levy within the area of its jurisdiction development charge on the institution of use or change of use of any land or building, or development of any land or building, for which permission is required under this Act, at the rates specified by or under the provisions of this Chapter :

Sec.124 (B) inter alia provides the following :

124B. Classification of user of lands and buildings, rates of development charge and procedure for levy thereof

(1) (a) For the purposes of assessing the development charge, the user of land and building shall be classified under the following categories, namely : -

- (i) Industrial ;*
- (ii) Commercial;*
- (iii) Residential;*
- (iv) Institutional.*

(b) In classifying the user of land and building under any of the categories mentioned in clause (a), the predominant purpose for which such land and building is used shall be the basis for such classification.

(2) On and from the date of commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 2010, development charge shall be levied and collected by the Authority at the rates specified in column (4) of the Second Schedule; and the Authority may, subject to the other provisions of this Chapter, enhance, from time to time, the rate specified in column (4) of the Second Schedule and levy the development charge at such enhanced rate :

Provided that, the Authority may, subject to the other provisions of this Chapter, reduce, from time to time, the enhanced rate and levy development charge at such reduced rate, so however that in no case the rate shall be reduced below the rate specified in column (4) of the Second Schedule.

(2A) Notwithstanding anything contained in sub-section(1), when the Maharashtra Industrial Development Corporation is the Special Planning Authority deemed to have been appointed as such under sub-section (1A) of section 40, for a notified area under its jurisdiction as provided in the said sub-section (1A), it shall be lawful for such Planning Authority to levy within such notified area, the development charges at such rate which may be lower than the rates specified by or under the provisions of this Chapter, as it may fix, from time to time.]

(3) The Authority, before enhancing or reducing the rate and levying the development charge at such rate shall observe the following preliminary procedure, namely : –

(a) the Authority shall, by a resolution passed at a special meeting, approve the regulations prescribing the rates of the development charge proposed to be levied by it;

(b) when such a resolution is passed, the Authority shall take further action to obtain the previous sanction of the State Government to the regulations.

As per the Second Schedule of the Sec.124B

Serial No.	Areas	Nature and Particulars of Development	Rate at which development charge to be levied (in rupees per square meters)
(1)	(2)	(3)	(4)
1.	Areas under the Jurisdiction of the Municipal Corporations constituted or deemed to have been constituted under the Mumbai Municipal Corporations Act, 1949 and the City of Nagpur Corporation Act 1948, the Municipal Councils constituted under the Maharashtra Municipal Councils	(a) Development of land for residential or institutional use, not involving any building or construction operations (b) Development of land for residential or	0.5 per cent of the rates of developed land mentioned in the Annual Statement of Rates prepared under the Bombay Stamp (Determination of true Market Value of Property) Rules, 1995 made under the Bombay Stamp Act, 1958 (hereinafter in this Schedule, referred to as "the Stamp Duty Ready Reckoner").

	<p><i>Nagar Panchayats and Industrial Townships Act, 1965; and Special Planning Authorities and New Town Development Authorities constituted under this Act.</i></p>	<p><i>institutional use involving only Building or construction operations :-</i></p> <p><i>(i) Where development charge under Clause (a) has been paid;</i></p> <p><i>(ii) Where development charge under clause (a) is not required to be paid as the land has been developed before the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1992</i></p> <p><i>(c) Development of land for residential or institutional use, also involving building or construction operations :</i></p> <p><i>(i) for development</i></p>	<p><i>2.00 per cent of the rates of developed land mentioned in the Stamp Duty Ready Reckoner;</i></p> <p><i>2.00 per cent of the rates for developed land mentioned in the Stamp Duty Ready Reckoner;</i></p> <p><i>0.5 per cent of the rates of developed land mentioned in the Stamp Duty Ready Reckoner;</i></p>
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From the above it is clear that development charges are payable for development of land. Reference is now requested to the Table 12 of the DCPR 2034, as per the Table 12 the Zonal FSI for plot situated in Island City of Mumbai is 1.33 and whereas the Zonal FSI for suburban Mumbai is 1.00. Reference is now requested to Reg.30 Sub Reg.7 of the DCPR 2034, which provides for the following :

A Development cess at the rate of 100% of Development charge, for BUA over and above

the Zonal (basic) FSI / Protected BUA whichever is higher (excluding fungible compensatory area) in accordance with the Time Schedule for such payment as may be laid down by the Commissioner, MCGM shall be paid. This development cess shall not be applicable to BUA to be handed over to MCGM/Appropriate authority & BUA which are excluded from FSI computation. This Development cess shall be in addition to development charges levied as per section 124 of MR&TP Act 1966. This development cess shall not be applicable for proposals of Govt. /MCGM executed departmentally.

The payment of Development cess as detailed above will not be payable in cases where development cess is proposed under Regulation no 33(3), 33(3)(A), 33(3)(B), 33(5), 33(7), 33(7)(A), 33(9), 33(9)(B), 33(10), 33(11) and for development where the payment of off-site infrastructure charges/development cess is applicable and for these Regulations development cess/off-site infrastructure charges shall be payable as described in the concerned Regulations.

From a cogent reading of the above provisions it is clear that Development charges are to be paid for the FSI upto the zonal FSI and development cess is to be paid for FSI in excess of the Zonal FSI. It is submitted that there is no provision either in the MRTP or the DCPR to charge development charges on area constructed beyond the Zonal FSI and for such areas an amount equivalent is required to be paid as development cess as provided in Regulation 30 sub reg.7. However, it is understood that the Building Proposal Department even after the introduction of the DCPR 2034 and the provision to charge Development Cess has been introduced in Reg. 30 Sub Reg 7 continue to charge development charges on area in excess of the Zonal FSI and also on Fungible FSI. It is submitted that development cess is not permitted to be charged on Fungible FSI. In view of the above it is submitted that necessary directions be issued to the MCGM to forthwith stop collecting development charges on any area permitted in excess of Zonal FSI and/or Fungible FSI as clearly provided in Regulation 30 sub reg.7 of the DCPR 2034.

Your indulgence in this matter will assist our members in developing their projects without the hassle of double jeopardy.

Thanking you,

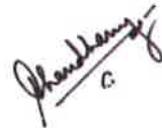
Your sincerely,
For CREDAI-MCHI



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv Chaudhary MRICS
Chief Operating Officer