

**S. S. Hussain** I.A.S. (Ex)

Chief Executive Officer

Ref. No.: MCHI/CEO/13-14/255

Date: January 6, 2014

To,  
Shri Ashish Kumar Singh (I.A.S.)  
Principal Secretary to Hon'ble CM,  
Hon'ble Chief Minister's Secretariat  
Government of Maharashtra  
Mantralaya, Mumbai - 400 032.

Sub: Suggestions - Objections for the notice regarding Affordable housing scheme  
No.TPS-1212/79/C.R.60/12/UD-12

Ref: Notice Published by Govt. of Maharashtra, Urban Development Department  
Mantralaya Mumbai-400032 dated 30 November 2013.

Dear

MCHI-CREDAI, formed in 1982, is the most prominent and the only recognized body of Real Estate Developers in Mumbai and MMR. It brings together members dealing in Real Estate Development on one common platform to address various issues facing the Industry.

MCHI-CREDAI has a strong Membership of over 1000 leading Developers in Mumbai and has expanded across MMR, having its own units in Thane, Kalyan -Dombivili, Mira - Virar City, Raigad and Navi Mumbai. The MMRDA's Rental Housing Scheme was envisioned with the noble cause of developing urbanisable areas in MMR, which would be ultimately be allotted to the low -income group.

The Rental Housing Scheme is an ideal scheme which would not only bring a rejuvenated living for the low-income group but it would also usher in infrastructural development across the MMR on a large scale, hence the Rental Housing Scheme has been received with great enthusiasm so as to bring in developmental progress and at the same time benefit the people at large. Rental Housing Scheme was approved by the State Government by notification vide G.R.No. TPS-1208/MMR/CR -393 /08 UD-12 dated 4-11-2008.

A notice bearing no No.TPS-1212/79/C.R.60/12/UD-12 was published on 30<sup>th</sup> November 2013 for Affordable housing scheme.

We suggest that this G.R. should not be applicable to all Rental Housing Schemes which have been granted Locational Clearance by MMRDA before the cut-off date and said

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locational clearance is valid beyond the cut-off date, irrespective of whether Commencement Certificate has been issued by the concerned Planning Authority or not. All such projects should be allowed to be developed as per the provisions of earlier Rental Housing Scheme envisaged under directives issued by the Government vide orders dated 6<sup>th</sup> August, 2008, 25<sup>th</sup> August, 2009, 4<sup>th</sup> November, 2008 and 21<sup>st</sup> August, 2008.

The clauses mentioned in said the Notice dated 30<sup>th</sup> November 2013, and our suggestions to the same, as stated below, will make it amply justifiable as why the essence of the rental housing scheme should be retained and in doing so the public at large will benefit from these rental housing projects which are already in an advanced stage of planning and awaiting clearances for execution. Hence, it is our humble submission to kindly accord the necessary clearance to all such pending Rental Housing Projects- whose locational clearance are valid till and beyond 30<sup>th</sup> November, 2013.

In this regard, we hereby put forth our views, as below:

**Clause No-1-** The Affordable Housing scheme is applicable only on the lands situated within the limits of Urban Local Bodies.

**Suggestions:** i) As there is ample land availability in MMR outside ULB limits where there is a possibility of development of affordable housing & infrastructure; the scheme shall be applicable for these areas.**Clause No-2(i)**

**Suggestion:** i) The scheme shall be permitted not only for residential zone but also for industrial zone where land use conversion from I to R is permitted as per prevalent DCR.

ii) Affordable Housing scheme shall be permitted on Buildable reservation plots with FSI calculations as detailed hereunder in clause Nos. 4-(iii) & (iv).

iii) The scheme shall not be linked to the allowable TDR in that area.

iv) The scheme shall be made applicable where FSI is less than 1

**Clause No-2(iii)**

**Suggestion:** i) In case of contiguous plot, if it gets separated due to reservation, road, and nala etc. development shall be allowed.

ii) In case of subplots one subplot can be utilized for Affordable Housing Component and the other subplot to be allowed to use for Sale component.



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**Clause No-4(i)**

**Suggestion:**

- (i) Layout RG (recreational open space) mentioned in this clause needs to be the same -10% as mentioned in the 5 (ii).
- (ii) The permissible FSI should be upto 4 on Gross plot area including mandatory layout recreational open space, amenity space (as applicable for plots having more than 2 Ha or concessional amenity space similar to Rental Housing Scheme on I to R plots as per Govt. Order No.CMS/TPS-1209/16/CR-144/09/UD-12) and area under road widening/reservations.
- (iii) For AHS on Buildable Reservation plots, the total permissible FSI shall not exceed 4 and the balance Built-up area after deducting the area to be handed over to ULB against development of Reservation at prescribed percentage of zonal FSI as per prevalent DCR will be utilised for AH component and Sale Component in the proportion 1:3 on 1/4<sup>th</sup> and 3/4<sup>th</sup> part of net plot (excluding plot utilised for area to be handed over to ULB) respectively.
- iv) For AHS on Parking Reservation plots, the total permissible FSI shall not exceed 4. The FSI shall be utilised for AH component and Sale Component in the proportion 1:3 on 1/4<sup>th</sup> and 3/4<sup>th</sup> part of net plot respectively. Developed parking area (free of FSI) equivalent to the area of the reservation plot shall be handed over to the ULB free of cost, without reducing the parking spaces to be provided for the Scheme.

**Clause No-5(ii)**

**Suggestion:**

The word amenity space shall be replaced by recreational open space.

**Clause No 6-**

**Suggestion:**

It should be clarified that the Off-site Infrastructure Charges will be calculated at the rate of 5% of the Annual Statement Rates for Land Cost.

**Clause No-7-**

**Suggestion:**

The release of FSI under the scheme shall be as per SRA norms in MCGM. We suggest that the release of FSI shall not be in stages. The occupation certificate of sale building shall be after the

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handing over of 25% land and completed affordable housing component buildings with occupation Certificate.

**Clause No-10**

**Suggestion**

- i) We suggest the existing Rental housing scheme regulations shall be made applicable to utilize the permissible FSI in best possible manner.
- ii) As per the rental housing scheme order no--Appendix A- Clause (IV)-9(a) Front and marginal open space: We suggest-in case of buildings having height more than 24 mts the minimum marginal open space shall be 7.5 m.
- iii) The Height of the building shall be allowed as per special township scheme.

**Clause No-11-**

**Suggestion:**

The words "and commencement certificate has been issued by the concerned Planning Authority" should be deleted.

Commencement Certificate for Rental Housing Schemes can be obtained only after obtaining approvals from 4 different authorities viz.

- (i) MMRDA for Locational Clearance, for plans and layouts of RH component, for final NOC for CC.
- (ii) Environment Dept. Govt. of Maharashtra for Environmental Clearance. (with an average time: 18 to 24 months).
- (iii) Approval of Building Proposal from ULB including CFO NOC and NOCs from other department. (average time: 9 to 12 months)
- (iv) NA permission from District Collector. (average time: 6 to 9 months)

Due to large number of building proposals in MMR submitted for Environmental clearance, there was a waiting period of almost 2-3 years. Hence a new appraisal committee was formed by the Government on 26-6-2012 as SEAC II for appraisal of projects in MMR. However, subsequently, the Chairman of the said Committee resigned and the Committee was not functional for a period of

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approx. 4 months. Hence, many Rental Housing Scheme projects have not yet received Environmental Clearance because of this delay.

Thus, the total effective time for the approval of Commencement Certificate takes approximately 33 months after initiation of the process.

**Concept of Development Permission / Commencement Certificate**

(A) Although, Section 45 provides that permission shall be contained in the Commencement Certificate (CC), by reading of entire scheme of the Act and DC Regulations, not only Mumbai but other planning Authorities, IOD / IOA is required to be treated as CC.

- (i) That the definition of development in Section 2(7) reads as follows:  
*"development" with its grammatical variation means the carrying out of buildings, engineering, mining or other operations in or over or under, land or the making of any material change, in any building or land or in the use of any building or land or any material or structural change in any heritage building or its precinct and includes demolition of any existing building structure or erection or part of such building, structure of erection; and reclamation, redevelopment and lay out and sub-division of any land; and "to develop" shall be construed accordingly;*

**It thus, includes demolition also.**

The IOD / IOA provides for various conditions which are to be complied with, before further constructions proceeds. This includes demolition of existing structure. Regulations 4, 5 of Mumbai DCR provide for procedure for development permission and procedure during construction in the Form of CC.

- (ii) In Appendix XIII, XIV, XV, XVI, XVII of DCR for Mumbai the IOD is referred to as "development permission".  
Therefore, the draft notification should not be made applicable where the CC has been issued but it should be extended to projects which have received development permission in the Form of IOD / IOA.

(B) In view of the above, the applicability of the proposed modification should only be prospective to the projects undertaken henceforth. The projects



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which have locational clearance as well as IOD / IOA should be treated as ongoing projects. Even principles enunciated in Section 51 of the MRTP Act would apply. A planning permission cannot be revoked if the development relates to carrying out of any building or other operation which have substantially progressed or have been completed. Applying these tests, projects with locational clearance, with IOD / IOA should be treated as projects with substantial operations completed.

(C) Due to large number of building proposals in MMR submitted for Environmental clearance, there was a waiting period of almost 3 years. Hence a new appraisal committee was formed by the Government on 26-6-2012 as SEAC II for appraisal of projects in MMR. Many Rental Housing Scheme projects have not yet received Environmental Clearance because of this delay.

- (i) Approval of Commencement Certificate takes approximately 36 to 42 months after initiation of the process.
- ii) It is to be noted that once on the basis of in principle permission in the form of locational clearance is granted to a Developer by MMRDA, Developer spends substantial amount in furtherance of the said project on the basis of the permission granted by MMRDA and therefore, it is not permissible for the government to stop the said Rental Scheme to the project at least with respect to those parties in whose case locational clearance has been granted, as the Developer has changed his position by spending substantial amount, the government is debarred from stopping our project on the grounds of doctrine of promissory estoppels.
- iii) We state that once the locational clearance is granted by virtue of legitimate expectation that the statutory authority would permit Developer to proceed with the project and the Developer spends substantial time money and energy in the project and therefore even by virtue of legitimate expectation and even as per the doctrine of legitimate expectation, the government cannot stop the rental scheme with respect to the project where locational clearance has been granted.
- iv) Even if the new scheme as proposed is allowed, the same should be with the prospective effect and all the schemes in which the locational clearance granted by the MMRDA should be allowed to be proceeded

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with as per the original Rental Housing Scheme and in point no 11 the word "and Commencement certificate has been issued by the concerned planning authority before the aforesaid cutoff date" should be deleted.

- v) We would like to look forward to your decision to keep active the Rental Housing Scheme in its original form and to maintain its applicability to all cases where the Locational Clearance has been granted under the purview of the Rental Housing Scheme, as aforementioned. Your enlightened decision will enliven the hopes of many projects which will ultimately bring in joyous living to the deserved group of people.

We at MCHI-CREDAI would like to re-iterate and look forward to your decision to keep active the Rental Housing Scheme and to maintain its applicability to all cases where the Locational Clearance has been granted under the purview of the Rental Housing Scheme.

Yours



(S. S. Hussain)

**Shri Ashish Kumar Singh (I.A.S.)**  
Principal Secretary to Hon'ble CM,  
Hon'ble Chief Minister's Secretariat  
Government of Maharashtra  
Mantralaya, Mumbai - 400 032.

*Recd original  
Prashant  
07/01/2014*

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मुख्यमंत्री सचिवालय