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Prakash Baviskar

Ref. No. : MCHI/PRES/17-18/138

January 30, 2018

To,
Shri Sanjay Banait
Dy. Director of Town Planning
Greater Mumbai
ENSA Hutments, E-Block,
Azad Maidan, Mahapalika Marg,
Mumbai - 400 001


31/1/18
उपसंचालक, नगर रचना,
बृहन्मुंबई यादें शिपिक

Sub: Proposed modification to DC Regulation 32 of DCR for Greater Mumbai, 1991 u/s 37(1AA) bearing no. TPB 4316/CR-237/2016/UD-11

Ref: (1) Modification in Reg.No.32 of DCR 1991 by Urban Development Department u/No. TPB 4316/CR-237/2016/UD-11 dt.08.01.2018
(2) Notification dt. 16.11.2016
(3) Clarification issued by Ch.E.(DP) dt. 10.01.2018

Respected Sir,

The Urban Development Department has issued draft Notification u/s. 37(1AA) modifying Reg.No.32 of D.C.R. 1991 u/No.TPB 4316/CR-237/2016/UD-11 dt.08.01.2018, wherein the additional 0.50 FSI is proposed to be permitted in Island City.

A. Grant of FSI of Road Area

As per the said amendment, a new Sub-Clause (c) is proposed to be added in Table No.14 of Reg.No.32. In the said Sub-Clause (c), total maximum permissible limit of building potential in terms of F.S.I. is given for Island City as well as for Suburb/Extended Suburb. The formula adopted is Basic + T.D.R. + additional F.S.I. on payment of premium and the quantum of T.D.R. permissible is varying depending on the road width.

The M.C.G.M. has immediately issued a Policy Circular in this regard wherein, it is instructed to all Building Proposal Staff to apply stringent of the draft Notification issued u/s.37 (1AA) dt.08.01.2018 and provision of D.C.R. 1991. Since, in the draft Notification issued u/s 37 (1AA) of M.R.&T.P. Act, the F.S.I. of Road area is not mentioned, the Building Proposal Department has stopped granting the F.S.I. of Road area as per the modification Regulation no.34 of D.C.R. 1991 dt.16.11.2016.

Sir, in this regard, we would like to bring your kind attention to the following:

1. Clause No.5.4.1 of the earlier modification in Reg.No.34 of D.C.R. 1991 dt.16.11.2016 clearly states that:

"Notwithstanding anything contained in any regulations, the total maximum permissible built-up area and utilization of Transferable Development Rights (TDR) on receiving plot shall be subject to road width, as prescribed below."

2. Note (iii) of clause no.5.4.1 of the earlier modification in Reg.No.34 of D.C.R. 1991 dt.16.11.2016 states that:

"FSI loading limit on such plot (Maximum Building Potential) shall be the basic FSI + TDR + Additional FSI on payment of premium if any + Road widening FSI of very said plot if any."

3. The recent draft Notification dt.08.01.2018 is amendment to the Regulation no.32 of D.C.R. 1991, wherein it is proposed to grant additional FSI by payment of premium in Island City as well as in Suburb/Extended Suburbs.

4. The explanation in Clause No.4.1.1 regarding T.D.R. of surrendered land states that:

"Above entitlement may also be applicable to the compensation paid in form of FSI to the owner to be utilised on unaffected part of same land parcel and in such cases the procedure of DRC shall not be insisted."

5. The proposed modification is in Regulation no.32 of D.C.R. 1991. As such, even if stringent is to be applied, the stringent of provision of Regulation no.32 as per sanctioned D.C.R. 1991 and proposed modification will have to be applied. Regulation no.32 of D.C.R. 1991 is a separate regulation and will have to be applied separately and stringent provision of draft modification in Regulation No. 32 and sanctioned Regulation No. 34 cannot be made applicable.

6. Thus, the Govt. has proposed modification of D.C. Regulation:

D.C. Reg. No. 32 – talks about basic FSI including premium F.S.I.

D.C. Reg. No. 33 – talks about Additional F.S.I.

D.C. Reg. No. 34 – talks about permissible T.D.R.

7. By Notification dt. 08.01.2018, Govt. has not proposed any modification in D.C. Regulation No. 34, amendment in Notification dt. 16.11.2016 and has not cancelled the provision of 5.4.1.

From the above, it can be seen that the earlier modification in Regulation No. 34 of D.C.R. 1991 dt.16.11.2016 overrules the draft Notification dt.08.01.2018, modifying Regulation No. 32 as the clause no.5.4.1 of earlier Notification dt.16.11.2016 is "NOTWITHSTANDING ANYTHING CONTAINED IN ANY REGULATION" which prevails upon the draft Notification dt.08.01.2018.

The same is not acceptable to us.

In view of above, we request you to (i) kindly clarify and add "To permit the maximum potential of land as per the clause no.5.4.1 of sanctioned modification in Regulation no.34 dt.16.11.2016 i.e. maximum permissible built up area = "Basic FSI + permissible TDR as per Road width + Additional FSI on payment of premium if any + Road widening FSI of very said plot if any (one time/two time), as the case may be" and (ii) clarification issued by M.C.G.M. dt. 10.01.2018 applying stringent of DCR 34 and 32 is arbitrary and without confirmation from the U.D. Dept.

We therefore kindly request you to issue a clarification clarifying that the maximum potential of the plot under reference shall be worked out as per clause 5.4.1 of the Notification dt. 16.11.2016 and the Govt. has no intention to reduce the F.S.I. as per Notification under section 32 dt. 08.01.2018.

B. Prorata TDR/Premium FSI for non-cessed buildings with present FSI of more than 1.33

The above proposed modification is applicable to DCR 32, Table 14, Clause 1(A) and in which connection we may mention as under.

1. There are a large number of non cessed buildings in the Island City which were constructed prior to 1967 DCR, where the existing FSI of the buildings is more than the present Zonal FSI of 1.33 and which may require redevelopment looking at the present age of the building.
2. The said regulation permits the use of additional FSI of 0.5 only for development under DCR 32 and hence such buildings cannot come forward for redevelopment under the present regulation.
3. In this connection we may suggest as follows:
 - a. For existing non-cessed buildings where the present FSI is more than 1.33 which is the Basic/Normal permissible FSI, the maximum TDR as permissible under Table 14 for Island City may be allowed to be increased pro-rata to the existing FSI vis-à-vis the Basic/Normal FSI of 1.33 by relaxing the Total

Maximum Limit of building potential in terms of FSI as per Regulation 32, Table 14, Clause 1(A) accordingly.

- b. The additional FSI of 0.50 on payment of premium as per DCR 32, Table 14, Clause 1(A) in Island City would continue to be permitted over and above the existing FSI of the pro-rata TDR loading as per 3a above.

- c. For example :

If the authorized existing BUA of the non-cessed building is 2.0 and the same is fronting a road width of more than 30 mtrs., then in that event

- i. The maximum TDR as permissible as per Regulation 32, Table 14, Clause 1(A) for the Island City should be 1.0 and on pro-rata basis, and such pro-rata TDR as may applicable as per the road width.
- ii. Over and above c(i) Additional FSI of 0.50 on Payment of Premium shall be permissible for the said proposal.
- iii. Thus for the above example the Total Maximum Limit of building potential in terms of FSI shall be

Plot Fronting Road Width	Existing BUA/ FSI of non-cessed building which is 1.33 or more	TDR	Additional FSI of Payment of Premium	#Total Permissible FSI (in the instant case)
*30 mtr. and above	2.0	*1.0	0.5	3.50

*The TDR can be provided on pro-rata basis with regards to road width as is the case where existing BUA / Zonal FSI is 1.33

#The Total Permissible FSI as is the case in other DCR redevelopment schemes namely 33(7), 33(9), etc. shall be the function of the Existing BUA plus 50% Incentive on pro-rata basis like Zonal FSI 1.33 : TDR 0.67

4. The above suggestion is extremely important as there are large no. buildings in South Mumbai which have been constructed prior to the inception of 1967 DCR and Zonal FSI of 1.33 therein. These buildings constructed as per

building provisions prior to 1967 have higher existing BUA and thus require pro-rata TDR for viability of undertaking the redevelopment of these buildings. It is very important to note that these buildings are older than the buildings made with FSI of 1.33 under provisions 1967/1991 DCRs and much more in need of redevelopment in terms of priority.

5. The said modification may also be made applicable to all proposals under DCR 32 and DCR 33 (only for any non-cessed buildings having existing FSI more than the Basic/Normal FSI), like DCR 33(6) and other such DCRs as may be applicable for redevelopment of old, dilapidated and dangerous non-cessed buildings.

6. Further, additional/incentive FSI as may be permissible under DC Regulation 33, like PPL, must be allowed to be utilized in combination with this DCR, as currently permissible.

Accordingly, the proposed provision under Regulation 32, Table 14, Clause 1(A) may suitably be modified.

This may be treated as a suggestion / objection under the MRTP Act and are within the statutory period of 1 month as per the published notification dtd. 8th January 2018. Further we may kindly be given a hearing as per the statutory provisions of the MRTP Act to explain the above contention.

Thanking you,

Yours faithfully,
For CREDAI-MCHI



Mayur Shah
President



Domnic Romell
Hon. Secretary



S. S. Hussain, I.A.S. (Retd.)
Chief Executive Officer