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Deepak Goradia

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Ajay Ashar

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Shrikant Joshi
Jayesh Shah
Shailesh Puranik
Parag Shah
Sukhranj Nahar

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Dhaval Ajmera

TREASURER
Pritam Chivukula

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Parag Munot
Rajendra Chaturvedi
Rajesh Prajapati
Harshul Savla
Parth Mehta

HON. JT. SECRETARIES
Pratik Patel
Tejas Vyas

JT. TREASURERS
Mukesh Patel

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Rakesh Kanakia
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Ar. Hafeez Contractor
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Rajeev Jain

YOUTHWING CONVENOR
Naman Shah

PROCUREMENT CONVENOR
Nimish Ajmera

WOMEN'S WING CHAIRPERSON
Mona Ajmera

CREDAI-MCHI UNITS
THANE
KALYAN-DOMBIVLI
MIRA VIRAR
RAIGAD
NAVI MUMBAI
PALGHAR BOISAR
BHIWANDI
SHAHAPUR-MURBAD
URAN-DRONAGIRI
ALIBAG
KARJAT-KHALAPUR-KHOPOLI

Ref: MCHI/PRES/22-23/015

Date: 28/1/2022

To

Shri Iqbal Singh Chahal (I.A.S.),
Municipal Commissioner,
Municipal Corporation for Greater Mumbai,
Fort, Mumbai 400 001

Sub: Applicability of notification dated 20th Aug 2019 issued by
Urban development department

Ref: 1) MHADA Circular dated 15th July 2020

2) CREDAI-MCHI letter dated 27th August 2021

Respected Sir,

Your kind attention is requested to the letter of CREDAI-MCHI dated 27th August 2021 with regard to levy of development Cess as provided under regulation 30 sub regulation 7 as per the UDD notification dated 20th August 2019.

In this regard your kind attention is requested to the circular issued by MHADA dated 15th July 2020 where it says that "if the developer obtains offer letter, demand letter of payment of premium for deferment payments and pays the first installment of the premium prior to 19/08/2021, then in such a case the society/ developer will be entitled for the premium as per the policy dated 20/08/2019". The same is annexed herewith as Annexure A.

Sir, the above circular from MHADA clearly mention that if the demand letter of payment premium is generated prior to 19th August 2021, they are entitled for the benefit mentioned under the circular dated 20th Aug 2019, which includes the waiver of development cess.

MCGM and MHADA both being the planning authorities for Mumbai should have common interpretation and implementation of policy circulars. In view of the same as MHADA has considered the benefits of UDD notification dated 20th Aug 2019 to the projects approved until 19th Aug 2021, same must be considered by MCGM as well.

Therefore, CREDAI-MCHI humbly requests MCGM to issue necessary circular in regards to the non-levy of development cess for the projects approved between 20/08/2019 to 19/08/2021. Thanking you for your continuous support.

Your faithfully

For CREDAI-MCHI



Boman Irani
President



Dhaval Ajmera
Hon. Secretary

Maharashtra Chamber of Housing Industry

Maker Bhavan II, 4th Floor, 18, V. Thackersey Marg, New Marine Lines, Mumbai - 400 020.
Tel: 42121421, Fax: 4212 1411/407 Email: secretariat@mchi.net Website: www.mchi.net

Circular

NO. VP & CEO/MHADA/81-7/4. 12020
Date - 15 JUL 2020

Sub : Applicability of Government letter dated 20.08.2019 for installments

Ref : 1) Minutes of Meeting held with Hon'ble Minister Housing held on

21.01.2020

2) Government Letter No. 2020/32 dated 03.02.2020

3) Government Letter No. 2020/95 dated 15.02.2020

4) Minutes of Meeting held with Hon'ble Minister (Housing) on

21.01.2020

5) Govt. Notification dtd. 20.08.2019 & 19.09.2019

The Hon'ble Minister has conducted meetings with various stock holders such as MCHI, CRIDAI, PEATA etc. on 21.01.2020 and directed to MHADA to frame the policy with respect of Govt. notification dtd. 20.08.2019 & 19.09.2019 so that all ongoing projects being also get benefit of this notification.

The matter has been examined in the light of the Government Notification dated 20.08.2019 and 19.09.2019 & Hon'ble Minister Housing's Order as per which the reduction of premium would be applicable to all projects ongoing as well as new undertaken until 19.08.2021.

Therefore effectively even if the society /developer obtains offer letter, Demand letter of payment of premium for deferment payments and pays the first installment of the premium prior to 19.08.2021 then in such a case the society /developer will be entitled for the premium as per the rate of notification dtd. 20.08.2019 and interest shall be levied for deferment payment of the premium as per the policy dtd. 19.09.2019. This shall not be applicable for defaulter in paying premium as per installments given in the future.

The time to time orders issued by U.D.D.-I/Govt. of Maharashtra in respect of Rate of premium will be binding and this circular will be stand cancelled. CO/MB and Dy. Ch. (BP) is directed to implement the same forthwith.

VP & CEO/MHADA

Chief Officer /Mumbai Board.

Dy. Ch. (BP) /A

Ref. No. MCHI/PRES/20-21/293

August 27, 2021

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Deepak Goradia
IMMEDIATE PAST PRESIDENT
Nayan A. Shah

PRESIDENT-ELECT
Boman Irani

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Mayur Shah
Dharmesh Jain
Vyomesh Shah
Paras Gundecha
Pravin Doshi
Mohan Deshmukh

Mofatraj Munot
Rajnikant Ajmera
Late G. L. Raheja
Late Lalit Gandhi
Late Babubhai Majethia

CREDAI-MCHI UNITS

PRESIDENT, THANE
Ajay Ashar

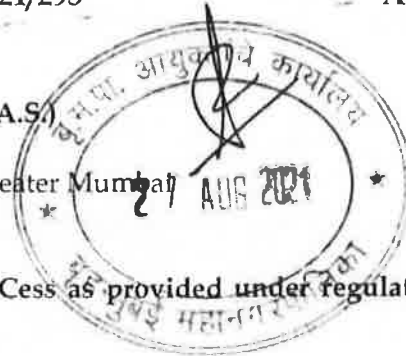
PRESIDENT, KALYAN DOMBIVLI
Shrikant Shitole

PRESIDENT, MIRA VIRAR CITY
Ashit Shah

PRESIDENT, RAIGAD
Kiran Bagad

PRESIDENT, NAVI MUMBAI
Vijay Lakhani

To,
Shri Iqbal Singh Chahal (I.A.S.)
Municipal Commissioner
Municipal corporation of Greater Mumbai
Mumbai



Sub: Levy of Development Cess as provided under regulation 30 sub regulation 7 of the DCPR 2034

Respected Sir,

With regard to above mentioned subject we would like to highlight that DCPR 2034 provides for levy of Development Cess under Regulation 30 Sub Regulation 7. The relevant provision is reproduced hereunder:

7. 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.

The MCGM vide Circular CHE/DP/110/Gen dated 30-01-2020 allowed payment of development cess as per installments provided therein. The same is reproduced as under:

Stage of work	% Amount to be recovered
I - IOD	30%
II - Before Plinth CC	30%
III - Before full CC of sale component	20%
IV - Before O.C. to sale building (Part or full)	20%

The Government of Maharashtra vide Notification No. TPB-4319/189/CR-123/2019/UD-11 dated August 20, 2019 inter alia suspended the levy of development cess as provided under Regulation 30 sub regulation 7 for a period of 2 years. The relevant portion of the notification is as under :

The Development Cess under Regulation 30 and under various sub-regulation of Regulation 33 i.e. Regulation 33(3)(A)(3), 33(3)(B)(1)(iv)(c)(i), 33(4)(2), 33(5)(5)(a), 33(7)(14), 33(7)(A)(15), 33(8)(D)(i), 33(8)(II)(4)(g), 33(9)(10), 33(9)(22)(b), 33(9)(B)(7) and other provisions of DCPR-2034 if any, wherein there is a provision in respect of Development Cess, shall not be recovered for the period of two years from the date of this order.

The question that arises is at what stage the liability to pay the development cess as contained in Regulation 30 sub-regulation 7 is crystallized and what would be the effect of the 20th August 2019 notification, in respect of projects that have been undertaken prior to 20th August 2019 when the levy of development cess under Regulation 30 Sub Regulation 7 was in force.

The grant of development permission commences with the grant of IOD by the MCGM to the developer. At the stage of IOD the developer is required to pay all the charges and the IOD crystallizes the **built up area** in favour of the developer. These charges inter alia include Fungible Compensatory Area charges, additional FSI charges, etc. The IOD is accompanied by a plan which contains the proforma of the built up area permitted in the project. A bare reading of the Regulation 30 Sub-Regulation 7 clearly states that the development cess is to be levied for **built up area** over and above zonal FSI (excluding fungible compensatory area).

The provision to allow payment of the development cess in installments empowers the Municipal Commissioner to provide a facility to the developer to pay the development cess in installments and is with the view to mitigate the developer's financial burden. However, as the built up area is crystallized upon the grant of the IOD accompanied with plan, the liability to pay the development cess and the amount of development cess gets crystallized upon the grant of the IOD. This is fortified further by the fact that even though the MC allows the payment of development cess in installments, the amount of the development cess payable is crystallized as on the date of the issue of the IOD/plans and further even if there is a change in the ready reckoner subsequently the developer pays the amount as crystallized on the date of the IOD.

The question now arises is what would be the effect of the Notification No. TPB-4319/189/CR-123/2019/UD-11 dated August 20, 2019 in respect of the projects that have been approved prior to 2019 as such projects were susceptible to the levy of development cess as on the date of its IOD/plan approval. The circular no. CHE/DP/110/Gen dated 2019-2020 was issued 30/01/2020 i.e. subsequent to the Notification No. TPB-4319/189/CR-123/2019/UD-11 dated August 20, 2019 and hence insofar as projects that were approved prior to 20th August 2019, the development charges ought to have been levied and collected upon the issuance of the IOD/plans. The MCGM circular dated 30/01/2020 was issued in the period when the levy of development cess was already suspended and therefore it would be logical to conclude that this circular was issued in respect of projects approved prior to 20th August 2019, otherwise at that juncture there was no need to do so.

However, it appears that development cess though required to be levied and collected on the issuance of IOD was not collected even in installments as per MCGM circular dated 30/01/2020 for projects where IOD was issued prior to 20th August 2019. It also further appears that pursuant to the Notification No. TPB-4319/189/CR-123/2019/UD-11 dated August 20, 2019, the Municipal Officers without any direction from the Municipal Commissioner did not levy development cess even to the projects which were approved prior to 20th August 2019.

The question which arises therefore is whether the MCGM ought to have levied the development cess to such projects which have been approved prior to 20th August 2019 or not and whether the MCGM can levy development charges to projects which have been approved between the window period of 20th August 2019 until 19th August 2021 i.e. 2 years when the levy of development charges was suspended vide Notification No. TPB-4319/189/CR-123/2019/UD-11 dated August 20, 2019.

It is to be noted that the projects that were approved prior to 20th August 2019 were also availing benefit of payment in installments for premium of fungible area, premium FSI, etc. These instalments were spread over 5 years and some of these instalments were due within this window period of 2 years i.e. 19th August 2019 until 20th August 2021. It appears that the demand note for fungible area, additional area, etc. that were issued prior to 19th August 2019 were not given the benefit of reduction of the fungible area, additional area, etc. as was provided in the Notification No. TPB-4319/189/CR-123/2019/UD-11 dated August 20, 2019 and based on the same analogy it would be beyond reasonable construction to allow the projects approved prior to 20th August 2019, the exemption for payment of development cess as provided in the Notification No. TPB-4319/189/CR-123/2019/UD-11 dated August 20, 2019.

CREDAI-MCHI Prayers:

- 1) This view is fortified from the fact that when there is any levy imposed by the Government and unless the notification so clearly provides any subsequent reduction of the levy is prospective in nature. Therefore, not to levy development cess to projects approved prior to 20th August 2019 would be an improper construction of the regulation and thus beyond the scope of Notification No. TPB-4319/189/CR-123/2019/UD-11 dated August 20, 2019.
- 2) Also, the projects approved within the window period of 2 year's i.e. between 20th August 2019 until 19th August 2021 would be entitled to avail the benefit of no development cess being levied in toto.

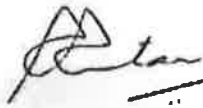
We humbly request to please consider our above submission and necessary instructions be sent to the concerned department at the earliest.

Thanking you for your continuous support.

For CREDAI-MCHI



Deepak Goradia
President



Pritam Chivukula
Hon. Secretary