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Date: 9.2.2022

To,  
**Shri Iqbal Singh Chahal (I.A.S.),**  
Municipal Commissioner,  
Municipal Corporation of Greater Mumbai,  
Fort, Mumbai – 400 001



**Sub: Clarification in 33(7), to allow incentive on the area exceeding 120 sq.mt. along with additional BUA of 5% to existing Non Residential (NR) tenants which are to be converted from Non Residential (NR) to Residential (R), as per original user due to hardship in planning.**

Respected Sir,

With reference to above, in many schemes of redevelopment under 33(7) which are high density schemes, due to open space requirement, RG requirement, new staircase lift planning and parking requirement, hardship is created on ground level to provide for all Non Residential (NR) users – commercial space on ground, and max on first floor and beyond that commercial user can't carry out business on upper level, and in such cases due to hardship in planning constraint, they accept residential user on upper floor, albeit any FSI or min area benefit to be granted to them and same is accepted as per original user approved by MHADA.

Further as per clause (5) of Reg. 33(7), they are eligible for 5% additional area rehab carpet area as per serial no 2 of Reg. 33(7) subject to maximum limit. As per ref 33(7) Clause no 2 reads as below "Each occupant shall be rehabilitated and given the carpet area occupied by him for residential purpose in the old building subject to the minimum fixed carpet area of 27.88 sq. m (300 sq. ft.) and/or maximum carpet area upto 120 sq.mt (1292 sq. ft.) as provided in the MHADA Act, 1976. In case of non- residential occupier, the area to be given in the reconstructed building will be equivalent to the area occupied in the old building. Provided that if carpet area for residential purpose exceeds 120 sq. mt (1292 sq. ft.) the cost of Construction for the area over and above 120 sq. mt. shall be paid by tenant/occupant to the developer. The cost of construction shall be as per ASR of that year. However, the carpet area exceeding 120 sq. m (1292 sq. ft.) shall be considered for rehab FSI but shall not be considered for incentive FSI. Provided further that each eligible residential cum commercial occupant shall be entitled to a tenement of minimum carpet area of 27.88 sq. mt. (300 sq. ft.)."

There are cases where these Non Residential (NR) users having large existing area (more than 120 sq. mt.) which cannot be proposed on lower floors and if relocated on higher floors then shopping user will not be beneficial to them. Hence, tenants have been proposed as Rehab Residential user due to hardship on upper floors. NOC from MBRRB for changing the user of tenement from Non Residential (NR) to Residential (R) and Splitting of Area is always insisted before issue of IOD.

As per above mentioned proviso of Reg. 33(7), incentive is not given on the area exceeding 120 sq.mt. for residential tenants. However, in these cases, the proposed residential tenants are actually in place of Non Residential (NR) user of rehab due to hardship in planning as explained above and requested to consider area beyond 120smt for incentive purpose and 5% additional BUA as well considering the tenants at par with NR as per original user.

**Maharashtra Chamber of Housing Industry**

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Further it is to be mentioned, that if any existing Non Residential (NR) user of less than 27.88 sq.mt. and Change of user is proposed, the smaller Non Residential (NR) Tenement is not entitled for 27.88 sq.mt. as required for residence user and original user is considered for FSI calculation and therefore keeping same in mind that if original user is assumed for provision of FSI for smaller tenement same should be applicable to larger tenement of NR rule applicable shall be same

Sir, we request to issue clarification policy to all incentive benefit as well as additional 5%/8%/15% as per proviso of clause 5 of 33(7) of DCPR 2034 as per original user certified by MBRRB, and treat change of user for Residential (R) as hardship due to planning constraint only, and therefore FSI and other benefit be considered as per original Non Residential (NR) user as its been the practice in the past.

Thanking you

Yours faithfully,  
**For CREDAI-MCHI**



**Boman Irani**  
President



**Dhaval Ajmera**  
Secretary

CC:

**Shri Atul Kulkarni**  
Chief Engineer (D.P)  
Municipal Corporation of Greater Mumbai,  
Fort, Mumbai – 400 001



9/2/2022