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CREDAI - MCHI

Ref. No. MCHI/PRES/22-23/173
Date: 02/5/2022

To,
Shri Anil Diggikar (I.A.S.)
Vice President
MHADA
Bandra East, Mumbai

2/5/2022

<u>Sub: Problems / Suggestion for processing Redevelopment proposals at MHADA</u>

Respected Sir,

At the outset, let us begin by commending you and your entire office for the admirable job that you have done during the difficult period to ensure that the MHADA schemes were not derailed due to the extraneous factors like the pandemic and the resulting financial crunch in the market. The timely action and measures taken by you have been like life support to the developers.

With a view to further facilitate development we would like to bring to you the following issues which requires your intervention:

1. **<u>Issues related to levy of premiums</u>**

a) Under DCPR 33(5), MHADA has prescribed the minimum area for rehabilitation and the said area is based on the existing rehabilitation area or minimum area, MHADA has further provided for incentive incrementalarea i.e. to say if the layout is larger than the rehabilitation tenement size is also larger.
However,while computing the premium payable in respect of FSI to be paid to MHADA, MHADA is only deducting the existing built up area and not the actual rehabilitation area for e.g. if the existing tenement size 150 sq.ft and the minimum prescribed rehab area is 376 sq. ft. MHADA demands payment for the 226 sq.ft. area difference as a premium from the developer/society. It is respectfully submitted that the rehabilitation area is prescribed by the Government and to charge for the rehabilitation area is completely contrary to the spirit of the regulation.

In view of the same, it is submitted that MHADA should deduct the actual rehab area and charge premium only for the area available for sale.

b) The Fungible Compensatory Area for Redevelopment under 33(5) as provided under Regulation 31(3) of DCPR 2034 allows without charging premium is to the extent of 35 sq.mtrs. for EWS/LIG category.
Regulation 31(3) of DCPR 2034 says *'In case of redevelopment under regulation 33(5), 33(6) & 33(7) (B) of the Regulation the fungible compensatory FSI area admissible on existing BUA shall be granted without charging premium. Provided further that in case of redevelopment schemes of EWS/LIG category under Regulation 33(5) where rehab entitlement not exceeding 35 sq mt, then fungible compensatory area on such rehab entitlement shall be granted without charging premium'.*

However, the SPA MHADA is granting free fungible FSI only to the extent of 35% on the existing BUA (as per lease deed or area certified by REE, MHADA).
In view of the same, it is submitted that entire fungible compensatory FSI on the rehab component not exceeding 35 sq mt shall be granted without charging premiums.

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c) The rehab entitlement under Regulation 33(5) of DCPR 2034 is determined by the State Government from time to time. As per Regulation 33(5) of DCPR 2034 the redevelopment of MIG/HIG has now been permitted for the tenements having area up to 80sq mt.

However, the Fungible Compensatory Area without charging premium has been restricted to Redevelopment of Schemes of EWS and LIG category only and to the extent of the rehab entitlement not exceeding 35 sq mt (as mentioned in earlier clause). The aforesaid restrictions under Regulation 31(3) isunreasonable and there is no correlation between exclusion of the category under MIG and HIG since the rehab entitlement for these categories have been determined by the Government which is up to80 sq. mtrs.

In view of the above, we propose the following modification in Regulation 31(3) of DCPR 2034 as under:

31(3) as per Existing DCPR 2034	Proposed Modification
Provided further that in case of redevelopment schemes of EWS/ LIG categoryunder Regulation 33(5) where rehab entitlement not exceeding 35 sq. mtrs. then fungible compensatory area on such rehab entitlement shall be granted without charging premium.	Provided further that in case of redevelopment schemes of EWS/ LIG / MIG category under Regulation 33(5) where rehabentitlement has been determined by the Government under these regulations, then fungible compensatory area on such rehabentitlement shall be granted without charging premium.

2. **Issue related to Revenue**

a) MHADA vide letter dated 27th June 2019 has requested the Revenue Department to charge nominal stampduty of Rs. 1000/- in respect of redevelopment project undertaken on MHADA land.

The submission is based on the fact that in case of MHADA land, MHADA is the owner of the land whereas the Society is the lessee. The developer is only acting as a contractor as the developer does not become the owner or lesseeof the land and therefore charging of stamp duty based on market value price is counterproductive to the process of redevelopment. Request of MHADA was based on the fact that vide Notification date 20th June 2019, the Revenue Department has notified that in respect of MCGM land undertaken for redevelopment,nominal stamp duty of Rs. 1000/- will be levied.

There has been no response from the Revenue Departmentin this regard. In view thereof it is requested that the Housing Department & MHADA to take up this issuewith the Revenue Department and issue notification on the same line of MCGM for charging nominal stampduty in respect of redevelopment on MHADA land.

3. **Parity between various regulations wherein MHADA is the sanctioning Authority.**

Vide notification bearing TPB-4320/107/CR-72/2020/Part-I/UD-11 the incentive FSI for schemes under Regulation 33(7) & 33(9) have been revised to make it more conducive to development and as such make them viable. Whereas the incentive FSI under 33(7) has been increased from 50% to ranging from 75-100% depending upon the LR/RC ratio and number of plots. Similarly, the incentive FSI has increased ranging from 85% to 130% depending upon the LR/RC and size of the plot. The incentive FSI for 33(5) also needs to be brought in parity with Regulation 33(7) and 33(9) as the characteristics of development for these regulations are similar. The incentive table B for Regulation 33(5) should be as follows:

Basic Ratio (LR/RC)	Incentive (As % of Admissible Rehabilitation Area)			
	For 0.4 Ha upto 1 Ha	More than 1 Ha upto 5 Ha	More than 5 Ha upto 10 Ha	For more than 10 Ha
Above 6.0	85%	90%	95%	100%
Above 4 and upto 6	95%	100%	105%	110%
Above 2.00 and upto 4	105%	110%	115%	120%
Upto 2	115%	120%	125%	130%

4. **Schedule for payment of MHADA Premium in 10:10:80 scheme.**

The Real Estate Industry has been through a lot of turmoil in the last decade which has been exaggerated by the Pandemic. For survival and revival of the Industry it is imperative that the premiums are correlated to the stage of construction and incoming flow of the Developer so that projects are not stalled due to want of liquidity. In light of the same it is imperative that the schedule of payment of Premium in lieu of MHADA share as per clause 2.1 (c) of regulation 33(5) and as per option provided vide UD notification bearing no TPB-4321/CR-79/2021/UD-11 dated 18th August 2021 for the additional 1 FSI over and above 3 FSI should be in 10:10:80 format. (10% at the time of sanctioning the sale FSI in lieu of MHADA share, Further 10% at the time issuance of CC for such FSI and 80% at the time of OC).

5. **Issues related to operations and approvals**

a) Approval of concessions in Building Proposal Department

Approval of concessions in Building Proposal Department
It is a common practice followed in the SPA of MHADA to approve the concessions of the proposals on the basis of FSI approved by the REE department of MHADA which is contradictory to the practice followed in the SPA of MCGM wherein the concessions of proposals are approved on the anticipated full potential of the plot and then IOA is granted to the proposals in stages by the Building Proposal Offices of MCGM as and when applied by the project proponents.
This creates a hassle for the project proponents and also leads to the duplication of the same steps to apply for concessions each and every time there is a change in the BUA in the offer letter issued by the REE department, which in turn results in the reduction of efficiency of the Special Planning Authority of MHADA. **Thus, we hereby request you to permit the application of concession approvals of the proposals on the full potential of the plot as per the layout of MHADA and as per policy applicable from time to time. This will help the SPA of MHADA to be in line with the Ease of Doing Business Policy of the Government.**

b) Issuance of C.C. corresponding only to the premiums paid

- As per the resolution dated 11.07.2017, the payment of premiums payable towards the additional FSI availed through the offer letter issued by the Resident Executive Engineer can be made in the form of 4 instalments. This can be done subject to the condition that the NOC will be issued for full FSI for which IOD can be issued however C.C. will be restricted for proportionate BUA for which the payment is made.
- MCGM circular dated 17.09.2019 and UDD vide letter dated 19.09.2022 issued that with regard to the payment is paid in instalment then C.C. equivalent to 10% of approved BUA will be restricted or if the area of the topmost floor is more than 10% of approved BUA then the C.C. of the topmost floor will be restricted. Similarly, MHADA also issued a circular on 11.12.2019.
- In view of the above policies and resolutions, it can be seen that both the authorities MCGM and MHADA allot FSI for the development of projects. In case of MCGM, they allot additional FSI and Fungible FSI for development and in case of MHADA, the allotment of additional FSI is done by the REE Department and the allotment of Fungible FSI is done by the SPA Department of MHADA. However, there is a clear dissimilarity in the grant of C.C. in REE Department of MHADA as against the methodology practiced in SPA Department of MHADA, MCGM and GoM for the cases where the payment is done in the form of instalments.
- It should be noted that the REE Department is granting NOC for the entire area for approval of IOD on payment of 1st instalment, however restricting the C.C. to the extent of 25% only and then they levy interest on the entire balance outstanding payment for which no NOC for C.C. has been granted beyond 25% which is unfair.
- This practice also causes inconvenience for the project proponents as they have to go through the long and tedious process of obtaining NOC and then obtain the C.C., each and every time the payment of instalment of additional FSI is made. This leads to an increase in the time taken for obtaining the approvals which causes delay in the execution process. It is only appropriate to levy the interest, if the NOC is granted for entire FSI and NOC to C.C. to the extent of 90% as allowed by MCGM, SPA Dept. of MHADA and GoM.

- **In view of above, we hereby request you to either direct the REE Department to grant NOC to C.C. for the entire approved BUA (by restricting 10% of BUA for which the installment facility is availed) or direct them to not levy interest on the proportionate amount for which the NOC to C.C. is not granted.**

c) **Dy. Registrar's NOC and Consent Verification at Division offices of MHADA**
On submission of Redevelopment proposal to MHADA, Executive Engineer of respective division verifies the Individual Consents given by members. This is further verified at the office of Dy. CE office and finally the proposal is sent to REE Department for processing file for processing of proposal.

The Developer is also asked to obtain NOC from Dy. Registrar, MHADA by following process of 79A of MCS Act, 1960, which includes the verification of Consents given by members. This is a repetition of process and leads to duplicity of work at the offices of MHADA. Furthermore, Dy. Registrar NOC is not asked by MCGM for processing proposals. Moreover, there are several High Court judgements stating that process of 79A is directory in nature and not mandatory.

Hence, we request MHADA to insist either the office of Dy. Registrar, MHADA or Executive Engineer, Division offices of MHADA to undertake the Consent verification process, so that duplicity of work is avoided.

d) **Grant of phase wise OC**
As MHADA projects involve construction of Rehab buildings and Sale buildings in Phase wise manner, occupation certificate based on the percentage of premium paid should be granted. For e.g., if 50% premium is paid then 50% occupation certificate must be granted. In such case, there should be no link to the handover of rehab unit to the existing members of the society.

e) **Issue of Tri-partite Agreement**

Tri-partitie Agreements are currently required to be executed and registered between Society, MHADA and Developer after execution/registration of the DA between the Society, Developer and Members. This is duplication of documents and creates confusion in the case of any potential litigation in future. Furthermore, the legal department will be stressed with a plethora of litigations as any minor dispute between the society or developer or members will implead MHADA as party in the litigation, which would put tremendous pressure on the legal department of MHADA to comply with the proceedings of all such trivial litigations, which may or may not seek any relief against MHADA.

In view of above, the requisite clauses of the Tri-partite can be obtained from Developer or Society vide an Undertaking which can be duly registered in favour of VP & CEO, MHADA.

f) **Challenges in raising bank financing for MHADA Redevelopment Project.**
Several financial institutions would ask for NOC from MHADA for creation of charge on the Development Rights obtained by the Developer in Development Agreement executed and registered between the Society, Developer and Member post execution of Tri-partite Agreement between Society, Developer and MHADA.
In view of above, the requisite NOCs should be granted to Developer after obtaining request from Developer by REE Department MHADA.

g) **Issue of lease deed / supplemental lease deed**
The execution of lease deed / supplemental lease deed takes a long time and practically goes to 6-7 departments of MHDA before such lease deed is executed by MHADA in favour of the society.

In view of above, MHADA should set up single window system for execution of lease deed or supplemental lease deeds so that the time involved is reduced.

We hope that our request will be considered positively and immediate instruction will be given to the respective department on the same.

Thanking you

Yours faithfully,
For CREDAI-MCHI

Boman Irani
President

Dhaval Ajmera
Hon. Secretary