CREDAI - MCHI

Ref. No. MCHI/PRES/23-25/045
Date: 12/6/2023

To,
Shri Sanjeev Jaiswal (I.A.S.),
Vice President & CEO,
MHADA,
Bandra East, Mumbai

Sub: Problems / Suggestion for processing Redevelopment proposals at MHADA

Respected Sir,

At the outset, let us begin by commending the MHADA department for the admirable job that the department is doing to ensure smooth execution of MHADA schemes. With a view to further promote development of MHADA schemes we would like to bring to you the following issues which requires your intervention:

1. Issues related to levy of premiums

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.

12/6/23

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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.

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).

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) **Demand Notices being the subject matter of various Writ Petitions filed by the Developers / Builders in respect of Development Charges.**

This is to bring to your notice that Writ Petitions heard by the Hon'ble High Court, Bombay and thereafter the High Court was pleased to dismiss all the Writ Petitions on 20th October 2022, however, continued the interim orders in the respective Writ Petitions for a period of four weeks to enable the respective Petitioner to avail the remedy of challenging the said Order before the Hon'ble Supreme Court. It is pertinent to note that the Hon'ble Court was pleased to record that there is no order as to costs.

Accordingly, the few of the Developers / Builders / Societies / Petitioners challenged the Order dated 20th October 2022 by filing Special Leave Petition before the Hon'ble Supreme Court. The Hon'ble Supreme Court on 21st November 2022 was pleased to grant leave in the SLPs filed. However, did not grant stay.

You will appreciate that the various projects are in the process of completion and therefore the additional costs of demand of Development Charges will affect the financial outflow in the project. Hence, it is requested that the Development Charges may be collected / recovered only before the grant of Occupation Certificate. It shall not be out of place to mention here that no interest / penalty possibly be levied while recovering / collecting the Development Charges as there is no default on the part of the Developer / Builder / Society / Petitioner in payment of Development Charges. The Development Charges were not insisted by the Planning Authority / Special Planning Authority under the orders of the Hon'ble Court. You will appreciate that there is no provision either under the MRTP Act or applicable Development Control Regulations or under any other relevant statute to levy any interest / penalty unless the default is committed by the Developer / Builder / Society / Petitioner. You will further appreciate that the court was pleased to refuse the grant of any cost while disposing of the Writ Petitions challenging the levy of Development Charges.

In the circumstances, we as a represented body of the Developers would be grateful for considering the representation and acceding to our request which is not only on behalf of the Developers but also on behalf of the citizens of lower income group and middle income group housing whose projects are nearing completion

c) 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 instalment facility is availed) or direct them to not levy interest on the proportionate amount for which the NOC to C.C. is not granted.**

d) 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 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 to process 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.

e) 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.

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 in anticipation

Yours sincerely,
For **CREDAI-MCHI**

Domnic Romell
President

Dhaval Ajmera
Hon. Secretary