

MUNICIPAL CORPORATION OF GREATER MUMBAI

No. Ch.E./DP/24463/Gen. Dtd. 18/01/2024

Office of the **19 JAN 2024**
Chief Engineer (Dev.Plan),
5th Floor Annexe Bldg.,
Municipal Head Office,
Mahapalika Marg, Fort,
Mumbai 400 001

To,
Under Secretary, UD-11,
Govt. of Maharashtra,
Mantralay, Mumbai – 400 032

Sub: Removal and Re-accommodation of tolerated/ protected structures falling in alignment of roads under Reg. 33(12) (B) of DCPR-2034

Ref: TPB/4323/164/2023/UD-11 dtd 28.04.2023

Reference is requested to representation from CREDAI-MCHI dt 24.04.2023 addressed to Additional Chief Secretary U D [1] Dept., GoM on above subject matter.

The said representation is reproduced as under,

"considering the provision of Regulation 33(12)(B) of DCPR 2034; after rehabilitation of occupants of such structure/s by developer in ongoing development/redevelopment scheme/s by obtaining requisite permissions, there is no bar or restriction or any timeframe in the Regulation for transferring the rehabilitation premises by rehabilitated occupants to any third person.

The main purpose of this Regulation is to develop the DP Roads or Road widening by removal of existing authorized /tolerated/protected structures in the alignment through private developers without acquisition of land avoiding financial burden to the BMC. Hence, this is the option made available through DCPR provisions for acquiring land for DP Road and Road widening.

On re-accommodating the said occupants in new building by clearing the existing structures and taking over of possession by the BMC, it is not the concern of BMC about the further transfer/sale/transaction of the allotted tenement to any third person.

Hence, the occupancy / ownership of such structures can be transferred by the occupants prior to or after rehabilitation/ allotment as well as post rehabilitation/ possession of tenement under Regulation 33(12)(B) of DCPR 2034.

In absence of any specific provision of DCPR 2034 in this Regulation of 33(12) like other Regulations such as 33(10), 33(7) etc., it is clear that the said restriction is irrelevant in this Regulation due to reasons as mentioned above. However, BMC is not taking any decision on the issue. We are very clear that the said restrictions are irrelevant in the Regulation 33(12)(B) of DCPR 2034."

CREDAI-MCHI, in their above referred representation, has stated that restriction for transferring the rehabilitation premises by rehabilitated occupants to any third person is irrelevant due to the reasons mentioned in their letter.

Further, there are many proposals being received from Power of Attorney holders of such allotted tenements for amalgamation of tenements under development vide Reg. No. 33(12)B.

In view of above, legal opinion of Senior Advocate, Shri Milind Sathe was sought and Senior Advocate, Shri Milind Sathe has opined point wise on each query raised by Legal dept. as follows-

(1) *Whether the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act) regarding restriction of transfer of tenements / ownership rights are applicable to Project Affected Person Tenements ('PAP') under Regulation 33(12) (B)?*

Ans. In the negative. The schemes under the Slum Act, operate under the Slum Act and DCPR and both have express prohibition on transfer of rehab tenement for a specified period under the provisions

Section 3E of Slum Act and Clause 33(10)(1.18) and the same is not applicable to projects under DCPR 33 (12)(B).

(2) After completing the process of taking over possession of protected structures under Regulation 33(12)(B) and after demolition of the structure and after execution of a Tripartite Agreement (between the Developer, PAP and the Corporation) and after execution of Permanent Alternate Accommodation Agreement (between the Developer and the PAP) for rehabilitation of the PAP in the new building constructed by the Developer, whether the PAP can sell / transfer / assign, the benefits and rights and interest in the PAAA, to third party before grant of Occupation Certificate ('OC') to the tenement under DCPR 33(12)(B)?

Ans. In the affirmative. The DCPR 33(12)(B) only requires that the project proponent should ensure demolition of affecting structures and handover advance possession of the land to the Corporation and rehabilitate the occupiers of offending structures which is done under clause (m) of that DCPR, by executing a Tripartite Agreement between Developer, Corporation and the occupier, as well as by entering into Permanent Alternate Accommodation Agreement with such occupier. Upon these compliances, the Corporation can grant Commencement Certificate for incentive FSI. There is no restriction on transfer of tenements either before or after the grant of Occupation Certificate for the building in which rehab tenements are located.

(3) Whether, after purchase / assignment of rights / interest in the PAAA, from such PAP to the Developer / Third Party, can the Developer / Third Party amalgamate such units with adjoining units if the units are in the same or in different names and would the Querist be required to sanction / approve such plans showing amalgamation of such units into a single / bigger flat / unit before grant of Occupation Certificate?

Ans. In the affirmative. There is no restriction either expressly or by necessary implication in the provisions of DCPR 33(12)(B) on amalgamation of the rehab units granted to the occupants of protected / tolerated structures. The Querist however would have to process and consider the application for amalgamation in accordance with the applicable general DC Regulations and statutory provisions.

4) Generally.

Ans. I have nothing further to add.

It is to state here that the main purpose of this regulation is to develop the DP Roads or Road widening by removal of existing authorized/tolerated/protected structures in the alignment through private developers without acquisition of land thus avoiding financial burden to the BMC. Thus, the scheme of 33(12)B is in larger public interest where BMC gets road lands clear of the encumbrances free of cost.

In view of above and opinion of Sr. Advocate, UDD is requested to give clarification on the points raised by CREDAI-MCHI vide their above referred letter dtd 24.04.2023 and the queries answered by Sr. Advocate in this matter.

This letter is issued as per M.C.'s approval u/no. MCP/2229 dtd 16.01.2024.

Yours faithfully,

(S.H. Rathod)
Chief Engineer
(Development Plan)

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