

**MANAGING COMMITTEE
2023-2025**

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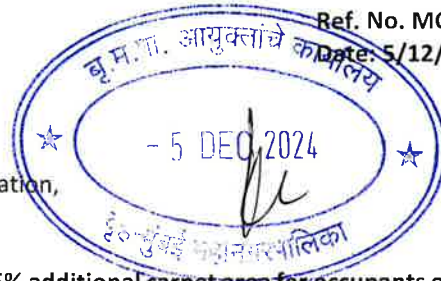
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PROCUREMENT CONVENOR
Nimish Ajmera

WOMEN'S WING CHAIRPERSON
Jesal Shah

CREDAI - MCHI



Ref. No. MCHI/PRES/24-25/163

Date: 5/12/2024

To,
Dr. Bhushan Gagrani (I.A.S.),
Municipal Commissioner,
Brihanmumbai Municipal Corporation,
Fort, Mumbai - 400 0001

Sub: Eligibility of 5%, 8% & 15% additional carpet area for occupants of existing authorized non-cessed structures falling within land component of 45% of the plot area and permitting incentive in respect of the Rehab Component of such authorized non-cessed structures in redevelopment of cessed properties under Reg. 33(7) of DCPR-2034.

Ref: 1. Letter of the then Hon'ble Municipal Commissioner u/No. MCP/1795 dated 04/03/2020.
2. Letter of Chief Engineer (DP) u/No. ChE/DP/12663/Gen dated 06/09/2021
3. CREDAI-MCHI's letter bearing Ref. No. MCHI/PRES/22-23/053 dtd. 09/02/2022

Respected Sir,

This has reference to the above mentioned letter of the then Municipal Commissioner dated 04/03/2020, whereby query has been raised regarding allowing benefit of additional 5%, 8% & 15% (as the case may be) to occupants of existing authorized non-cessed structures, for area within 25% of plot area as mentioned in Clause 18 of the then prevailing Regulation 33(7)(18) of DCPR 2034 with incentive thereon and further whether to treat the area of non-cessed structure beyond 25% of plot area as rehab component, as per Clause 18 of the then prevailing Regulation 33(7) of DCPR 2034 which stipulates that the provision of clause 2 of regulation 33(7) are applicable to non-cessed occupiers. Subsequently, after sanctioning of modifications in Reg. 33(7) vide Government Notification dated 08/07/2021, the Chief Engineer (DP) by his letter dated 06/09/2021, has requested the Government to clarify on the above queries and also requested to clarify whether incentive on Rehab Component of non-cessed structures can be granted.

CREDAI-MCHI vide its letter dated 09/02/2022, referred above, have submitted its suggestions to the then Municipal Commissioner, Shri Iqbal Singh Chahal (I.A.S.), and sought clarification in 33(7) to allow incentive on the area exceeding 120 sq.mt. along with additional BUA of 5% to existing Non Residential tenants which are to be converted from Non Residential (NR) to Residential (R), as per original user due to hardship in planning. (Copy attached)

We would like to respectfully submit that on the one hand, it is mandated upon the Developer to provide Rehabilitation Tenements as per Clause-2 of Regulation 33(7) to the occupants of non-cessed structures at par with occupants of cessed structures and on the other hand, BMC is not granting incentive on Rehab Component of non-cessed structures which is causing hardship to the owners/developers.

With reference to the above, we would like to invite kind attention to the provisions of following Regulations (i.e. Clause 5 read with Clauses 1(b), 2 & 19 of Reg. 33(7)) regarding permissibility of incentive BUA for FSI required for rehabilitation of occupants of non-cessed buildings/ structures as explained below and request your goodselves to allow the same.

1. Relevant Provisions of Reg. 33(7) of DCPR 2034 are reproduced below for ready reference:

(i) **Clause-1(b) of Reg. 33(7)** reads as: "All the eligible occupants of cessed and non-cessed building/ structures (existing prior to 30.09.1969) certified by MBRRB, existing on the plot having cessed building only, shall be re-accommodated in the redeveloped building."

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BHIWANDI | PALGHAR BOISAR | SHAHAPUR-MURBAD | URAN-DRONAGIRI |
VASAI VIRAR | ALIBAG | KARIJAT-KHALAPUR-KHOPOLI | YOUTH NMR

- (ii) **Clause 2 of Reg. 33(7)** reads as: "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.m (1292 sq. ft.) as provided in the MHAD 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. m (1292sq. ft.) the cost of construction for the area over and above 120 sq. m 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. m (300 sq.ft.). For purpose of rehabilitation existing "Carpet area"/rehabilitation "carpet area" means the net usable floor area within a tenement excluding that covered by the walls or any other areas specifically exempted from floor space index computation as per then/prevaling Regulation but including the areas of balcony if allowed free of FSI as per then Regulation."
- (iii) **Clause 19 of Reg. 33(7)** reads as: "Non-Deduction of non-cessed Structure area in the scheme of 33(7) for FSI purpose: In case of mix of the structure i.e. cessed & non cessed structure and if the area of non cessed structure existing prior to 30/9/69, area of land component under non-cessed structure works out upto a limit of 45% of plot area, then FSI shall be considered on total plot area. If this area exceeds 45% of the total area, then area above 45% shall be deducted from plot area. FSI for deducted area shall be as per Regulation No 30 and the FSI for the remaining plot area shall be as per 33(7). **Provision of clause no 2 above shall be made applicable to non-cessed occupier.** Provided that the 45% land component of non-cessed structures will be eligible for FSI as per Regulation 33(7) only."
- (iv) **Clause 5 of Reg. 33(7)** reads as:
The FSI for rehabilitation of existing tenants/occupiers in a reconstructed building and incentive FSI that will be available shall be as under:

(a) In the case of redevelopment of cessed building existing prior to 30/9/1969 undertaken by landlord or Co-operative societies of landlord and Co-operative Housing Societies of landlord / occupiers, the total FSI shall be 3.00 of the gross plot area or the FSI required for rehabilitation of existing occupiers plus 50% incentive FSI whichever is more and the occupier shall be eligible for 5% additional rehab Carpet area as per serial No. 2 above subject to maximum limit. The incentive FSI admissible against the FSI required for rehabilitation shall be based on the ratio (hereinafter referred to as Basic Ratio) of Land Rate (LR), in Rs./sq.m., of the lands as per the ASR and Rate of Construction (RC)* in Rs./sq.m., applicable to the area as per the ASR and shall be given as per the Table below:

Basic Ratio (LR/RC)	Incentive (as % of admissible Rehab Area)		
	For Single Plot	For Composite redevelopment of	
		Two to Five plots	Six or more plots
1	2	3	4
Above 6	75	85	90
Above 4 & upto 6	78	88	95
Upto 4	80	90	100

Table

Clause 5(b) of the said Reg. 33(7) provides that eligible occupier in redevelopment scheme of 2 or more plots and that of 6 or more plots shall be eligible for additional 8% & 15% rehab carpet area respectively.

2. From the above provisions of Reg.33(7) of DCPR-2034, it is seen as under:

- (i) **Clause-1(b) of Reg. 33(7)** mandates that all the eligible occupants of **non-cessed building/ structures (existing prior to 30.09.1969) certified by MBRRB, existing on the plot having cessed building only, shall be re-accommodated in the redeveloped building.**
- Clause-2 of the said Reg. 33(7) stipulates that Rehabilitation Tenements of minimum carpet area of 27.88 Sq.Mtr. and/or maximum 120 Sq.Mtr. shall be provided to the occupant of Residential unit and occupier of Non-residential unit shall be provided area equal to that occupied in the old building. Further, Clauses 5(a) & 5(b) also provide that eligible occupier in redevelopment scheme of single plot, 2 or more plots and 6 or more plots shall be eligible for additional 5%, 8% & 15% rehab carpet area respectively. "**Eligible Occupiers**" have been defined in **Clause 1(b)** and includes occupants of both cessed and **non-cessed** structures.

- (ii) Further, Clause-19 of the said Reg. 33(7) provides that **Provision of Clause-2 of Reg. 33(7) shall also be made applicable to non-cessed occupier in cases where the non-cess plot under redevelopment is upto 45% of the total plot under redevelopment under Reg. 33(7).**
- (iii) Clause-5(a) of the said Reg. 33(7) stipulates that the Developer is entitled for **incentive FSI on the "FSI Required for Rehabilitation"**.
- (iv) From (i) to (iii) above, it is amply clear that the **Eligible Occupier** of non-cessed structure is also eligible for Rehabilitation Tenements as per the said Clause 2 r/w Clause 5(a) & 5(b) and the built-up area of the said Rehabilitation Tenements shall also form part of the **"FSI Required for Rehabilitation"**. Consequently, as per (iv) above, the developer is entitled to incentive FSI on the said **FSI Required for Rehabilitation of Eligible Occupiers** of Non-Cessed structures.

We would like to submit that Clause 1(b) of regulation 33(7) mandates to provide rehabilitation area to the occupants of non-cessed structures at par with the occupants of cessed structures. Therefore, regulation does not discriminate between cessed and non-cessed structures for the purpose of their Rehabilitation in lieu of their existing premises as certified by MHADA and also granting incentive FSI on the Rehabilitation Area provided to occupants of cessed and non-cessed structures.

We would like to submit that under the redevelopment scheme like that under Reg. 33(7), incentive area is provided to cross subsidize the cost of Rehabilitation of eligible occupants. Accordingly, Regulation provides incentive area for the cross subsidization of the rehabilitation of eligible occupants of non-cessed structures as well without any discrimination.

In view of the above, we would like to request your good selves to issue necessary directions to the Building Proposal Department for:

1. granting additional 5%, 8% & 15% rehab carpet area (as the case may be) to the Eligible Occupiers of non-cessed structures (existing prior to 30.09.1969) in cases where the non-cess plot under redevelopment is upto 45% of the total plot under redevelopment under Reg. 33(7) as per the provisions of Clauses 1(b), 5(a), 5(b) & 19 of Reg. 33(7) of DCPR-2034.
2. granting incentive FSI on the Rehabilitation Component of Eligible Occupiers of such Non-Cessed structures (including additional 5%, 8% & 15% carpet area) as per the provisions of Clause 5 read with Clauses 1(b), 2 & 19 of Reg. 33(7) of DCPR-2034.

Thanking you,

Yours sincerely,
For CREDAI-MCHI

Domnic Romell
President

Dhaval Ajmera
Hon. Secretary

PRESIDENT
Boman Irani

IMMEDIATE PAST PRESIDENT
Deepak Goradia

PRESIDENT-ELECT
Ajay Ashar

VICE PRESIDENTS
Domnic Romell
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HON. SECRETARY
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Rajesh Prajapati
Harshul Savla
Parth Mehta

HON. JT. SECRETARIES
Pratik Patel
Tejas Vyas

JT. TREASURERS
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Gurminder Singh Seera
Munish Doshi
Nishant Agarwal
Cherag Ramakrishnan
Azim F. Tapia
Jayesh C. Shah
Shailesh Sanghvi
Sunny Bijlani
Binitha Dalal
Sahil Parikh
Nikunj Sanghavi
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YOUTHWING CONVENOR
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Nimish Ajmera

WOMEN'S WING CHAIRPERSON
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CREDAI-MCHI UNITS
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NAVI MUMBAI
PALGHAR BOISAR
BHIWANDI
SHAHAPUR-MURBAD
URAN-DRONAGIRI
AUBAG
KARIAT-KHALAPUR-KHOPOLI

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.

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

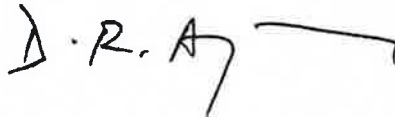
Sir, we request to issue clarification policy to all incentive benefit as well as additional 5%/8%/15% as per proviso of clause 5 of 33(7) of DCPR 2034 as per original user certified by MBRRB, and treat change of user for Residential (R) as hardship due to planning constraint only, and therefore FSI 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