

AJOY MEHTA

I. A. S.
Municipal Commissioner



बृहन्मुंबई महानगरपालिका

No. : 1110/8348

Date : 20.5.2017

Subject:- Provision of the amnesty scheme for grant of Occupation to the Buildings which have been occupied without obtaining the required Occupation Certificate.

Ref: Letter from Under Secretary, UDD under number CMS/TPB-4304/274/UD- 11 dated 23.08.2004

Dear Dr.Kareer,

Vide above reference while processing the proposals for grant of occupation certificate to buildings constructed/occupied prior to 25.03.1991 under amnesty scheme Urban Development Department had given following directives;

1. In cases where P.R. Card in words is not submitted, occupation be granted without insisting area in words.
2. As regards removal of encroachment on R.G., the same shall not be insisted and occupation certificate shall be granted with a condition that loading of T.D.R. on such building will be allowed only after encroachment on R.G. is removed and R.G. is developed.
3. In case of building where occupation certificate is not granted for non-handing over of land under setback / D.P. Road and transfer of ownership in favour of M.C.G.M., occupation certificate should be granted by taking over setback /D.P. Road along with encumbrances from the society of the occupants. Setback can be cleared of the encumbrances by rehabilitating the occupants of the encumbered structures elsewhere by implementing suitable scheme by S.R.A.
4. In cases of building where flats to be handed over to Govt. nominees as per U.L.C. condition, occupation should be granted to the such buildings and MCGM shall compile list of such proposals for sending the same to State Govt. for taking up the matter with U.L.C. department for taking action against the concerned Developer.
5. In cases where occupation is held up for non demolition of existing structures

proposed to be demolished as per approved plan, occupation certificate shall be granted without insisting for demolition of existing structures subject to condition that whenever such building comes forward for utilization of T.D.R., the same shall be considered only after demolition of such structure/s.

6. In cases where occupation is being not granted because the N.O.C. issued by Civil Aviation authority for required height of building is not being revalidated up to date, the occupation to such buildings shall be granted without insisting up to date revalidation of N.O.C. In cases where in N.O.C. from Civil Aviation authority is not obtained for required height / additional height, MCGM to prepare list of such proposals and forward the same to U.D. Department, Govt. of Maharashtra for necessary decision to be taken at joint meeting between Civil Aviation Authority, State Govt. and M.C.G.M.

7. In cases where occupation certificate is not granted on account of non submission of N.O.C. from MHADA, occupation to such buildings shall be granted and MCGM should prepare a list of such proposals for sending the same to U.D. Department for taking up the matter with MHADA.

It was also mentioned in the said letter that compliance of other conditions like payment of premiums, penalty, revalidation fees, handing over of galas, NOC from CFO, NOC of Estate department etc. may be dealt with at MCGM level.

Moreover, the section 259A, 299 & 353A of MMC act, was temporarily amended for this amnesty scheme; vide Govt Gazette dated 12.05.2008, for the limited period of 3 years from the date of its publication to enable society to appoint licensed plumber for certifying the plumbing work carried out by earlier plumber (section 259A), owner of said land or building shall mean co operative housing society /federation of co operative housing society registered under the Maharashtra Co operative Societies Act,1960 or any condominium or a company incorporated under the Companies Act,1956 with limited liability(section 299), society/federation/ condominium to appoint architect/licensed surveyor(section 353 A) respectively.

Now in view of various representations received, it is now proposed to revive the amnesty scheme. It is to be stated here that Regulation related to Fungible *compensatory FSI came into effect on 06.01.2012 and whereby additional FSI in the form of fungible compensatory BUA has been granted. Hence in order extend the benefits to maximum societies occupied without the requisite occupation certificate it is

proposed to increase the earlier datum period from 25.03.1991 to 06.01.2012.

It was observed that, in the past very few Societies came forward to avail benefit of earlier amnesty scheme, for various reasons & also due to amendment in respective Section of MMC Act, for a limited period of three years. It is to be stated here that amnesty scheme earlier approved was for the buildings which were constructed/occupied prior to 25.03.1991 which means that buildings must have been approved/constructed without utilisation of additional FSI on payment of premium, TDR etc. As such acts like construction carried out beyond approved plan can be regularised/any structures to be demolished as per the approved plan/demolition of structures on layout RG/setback/DP Roads could have been insisted before allowing utilisation of additional FSI on payment of premium, TDR etc.

However on extension of datum period of 25.03.1991 to 06.01.2012, this office may come across with the proposals wherein work could have been carried out beyond approved plans/ structures to be demolished as per the approved plan are not demolished/structures on layout RG/setback/DP Roads may not be demolished but where plans have been approved with the utilisation of additional FSI on payment of premium, TDR etc. Thus creating situation wherein the compliances which have been waived by UDD in their earlier letter dated 23.08.2004 may be required to be insisted from the concerned society now only while processing the proposal of grant of occupation certificate under amnesty scheme.

It is to be stated here that as per Regulation No 35(4) of DCR 1991 notwithstanding anything contained in the D. C. Regulations 32, 33 & 34, the Commissioner may, by special permission, permit fungible compensatory FSI, not exceeding 35% for residential development, and 20% for Industrial/Commercial development, over and above admissible FSI, by charging a premium at the rate of 60% 80% and 100% of the Stamp Duty Ready Recknar Rate, for Residential, Industrial and Commercial development respectively. Moreover the Fungible FSI is available as regular FSI. Further Planning Committee has recommended Fungible FSI of 35% for Industrial/Commercial development, over and above admissible FSI, by charging a *premium at the rate of 60% of ASR (for FSI 1). As such buildings which are falling under this amnesty scheme can avail the benefit of Fungible FSI in order to regularise unauthorised constructions if any have been carried out. It is also felt that in addition to

temporary amendment to section 259A, 299 & 353A of MMC act, temporary amendment to section 44/69 of MR&TP Act 1966 is required to be made so that the housing societies will be eligible to appoint Architect, to make various applications, for Occupation Certificate and can avail the benefit of Fungible Compensatory FSI. As per the explanatory note below Regulation No 35(4) benefit of Fungible Compensatory FSI can be availed by buildings which are not complete. As such buildings which do not have occupation certificates can be treated as non completed buildings in order to grant benefits of Fungible Compensatory FSI for regularising construction carried out without approval, enclosure of elevation features etc.

As such direction of UDD is required while dealing with such types of proposals. Moreover concurrence is required from Urban Development Department for processing the proposals with extension of datum line from 25.03.1991 to 06.01.2012.

In view of above views/remarks of MCGM while formulating present amnesty scheme, on the guidelines which were formulated earlier vide notification dated 23.08.2004 while processing the amnesty scheme for buildings occupied prior to 06.01.2012 are tabulated as detailed below.

Sr. No.	Guidelines formulated earlier vide notification dated 23.08.2004	Remarks of MCGM
1	In cases where P.R. Card in words is not submitted, occupation be granted without insisting area in words.	Earlier directives of not insisting P R Card in words may be continued in the proposed amnesty scheme and MCGM may prepare a list of such proposals for sending the same to U.D. Department for taking up the matter with Collector.
2	As regards removal of encroachment on R.G., the same shall not be insisted and occupation certificate shall be granted with a condition that loading of T.D.R. on such building will be allowed only after encroachment on R.G. is removed and R.G. is developed.	In case of development where Additional FSI on payment of premium/TDR has not been utilised and FSI consumed is within the plot potential, removal of encroachment on R.G., may not be insisted and occupation certificate may be granted with a condition that loading of Additional FSI on payment of premium/T.D.R. on such building will be allowed only after encroachment on R.G. is removed and R.G. is developed. In case of development where Additional FSI on payment of premium/TDR has been utilised, removal of encroachment on R.G. may be insisted before grant of occupation certificate.

3	<p>In case of building where occupation certificate is not granted for non-handing over of land under setback / D.P. Road and transfer of ownership in favour of M.C.G.M., occupation certificate should be granted by taking over setback /D.P. Road along with encumbrances from the society of the occupants. Setback can be cleared of the encumbrances by rehabilitating the occupants of the encumbered structures elsewhere by implementing suitable scheme by S.R.A.</p>	<p>i) (A) Additional FSI on payment premium/TDR has been utilised</p> <p>ii) (i) In case where setback/DP Road is handed over and ownership has been transferred/not transferred in the name of MCGM, occupation certificate may be granted.</p> <p>iii) (ii) In case where setback/DP Road is not handed over but the said portion of land is free of encumbrances, setback/DP Road may be taken over after amending the MMC Act and occupation certificate may be granted.</p> <p>iv) (iii) In case where setback/DP Road is not handed over but the said portion of land is with encumbrances, setback/DP Road may be taken over only after removal of encumbrances and occupation certificate may then only be granted.</p> <p>v) (B) Additional FSI on payment premium/TDR has not been utilised</p> <p>vi) Removal of encroachment on D road/setback may not be insisted and occupation certificate may be granted with condition that loading of Additional FSI on payment of premium/T.D.R. on such building will be allowed only after encroachment on DP road/setback is removed and D road/setback is handed over.</p> <p>vii) MCGM may prepare a list of such proposals(as detailed in "A" "B" above) and sending the same to U.D. Department for taking up the matter with Collector for transferring the ownership in the name of MCGM.</p>
4	<p>In cases of building where flats to be handed over to Govt. nominees as per U.L.C. condition, occupation should be granted to the such buildings and MCGM shall compile list of such proposals for sending the same to State Govt. for taking up the matter with U.L.C. department for taking action against the concerned Developer.</p>	<p>Occupation to flats other than flats to be handed over to Government nominees will be granted and MCGM shall compile list of such proposals for sending the same to State Government for taking up the matter with U.L.C. department for taking action against the concerned Developer.</p>
*5	<p>In cases where occupation is held up for non demolition of existing structures proposed to be demolished as per approved plan, occupation certificate shall be granted without insisting for</p>	<p>viii) (A) Additional FSI on payment premium/TDR has been utilised</p> <p>ix) In cases where occupation is held up for non demolition of existing structures proposed to be demolished as per approved</p>

	<p>demolition of existing structure subject to condition that whenever such building comes forward for utilization of T.D.R., the same shall be considered only after demolition of such structure/s.</p>	<p>plan, occupation certificate maybe granted only on demolition of existing structures proposed to be demolished. x) (B) Additional FSI on payment of premium/TDR has not been utilised xi) Occupation certificate may be granted without insisting for demolition of existing structure subject to condition that whenever such building comes forward for utilization of Additional FSI on payment of premium/T.D.R., the same shall be considered only after demolition of such structure/s.</p>
6	<p>In cases where occupation is being not granted because the N.O.C. issued by Civil Aviation authority for required height of building is not being revalidated up to date, the occupation to such buildings shall be granted without insisting up to date revalidation of N.O.C. In cases where in N.O.C. from Civil Aviation authority is not obtained for required height / additional height, MCGM to prepare list of such proposals and forward the same to U.D. Department, Govt. of Maharashtra for necessary decision to be taken at joint meeting between Civil Aviation Authority, State Govt. and M.C.G.M.</p>	<p>In view of various court cases and in view of Colour Coded Zoning Maps (CCZM) published by Airport Authority, occupation may not be granted unless fresh NOC is submitted from Airport Authority if the height of building for which occupation has been sought is not permissible as per CCZM. At the same time MCGM can prepare list of such proposals and forward the same to U.D. Department, Govt. of Maharashtra for necessary decision to be taken at joint meeting between Civil Aviation Authority, State Govt. and M.C.G.M.</p>
7	<p>In cases where occupation certificate is not granted on account of non submission of N.O.C. from MHADA, occupation to such buildings shall be granted and MCGM should prepare a list of such proposals for sending the same to U.D. Department for taking up the matter with MHADA.</p>	<p>In respect of proposals processed under Regulation No 33(5) and 33(7) before grant of Occupation certificate, it is required to be ensured that all the existing occupants as certified by MHADA are rehabilitated and whether any surplus built up area required to be handed over to MHADA is handed over or otherwise. Hence NOC from MHADA is required to be obtained while grant of Occupation certificate. At the same time MCGM may prepare a list of such proposals wherein NOC from MHADA is not submitted for grant of Occupation certificate for sending the same to U.D. Department for taking up the matter with MHADA.</p>

In addition to above it is felt that if the building for which the occupation certificate has been sought is part of approved layout and work is in progress in the said layout for construction of other buildings, then occupation certificate shall not be granted under the amnesty scheme even if the ownership/development rights of said

C-164

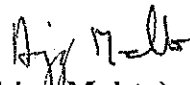
layout is transferred to other person. The occupation to already occupied building shall be granted by insisting compliances of all the requisite requirements to be complied with, before allowing development on the remaining plot. If layout is developed entirely as per the then prevailing regulations, then in such layout occupation certificate may be granted under this amnesty scheme subject to above tabulated conditions.

In view of above, direction is requested from Urban Development Department on

1. To extend the datum line for processing the proposals under amnesty scheme from 25.03.1991 to 06.01.2012;
2. Guidelines issued earlier as per Govt.'s directives u/no. CMS/TPB-4304/274/UD-11 dated 23.08.2004 may be modified as tabulated above while processing the amnesty scheme in respect of buildings which are occupied prior to 06.01.2012.
3. To amend sections like 259A, 299 & 353A of MMC act once again and to amend section 44/69 of MR&TP Act 1966, for the period of five years in initial phase & to empower Municipal Commissioner to amend these sections for further period of 3 years to make the housing societies eligible to appoint Architect, to make various applications and to avail benefit of Fungible compensatory FSI for Occupation Certificate, in absence of the developer / original owner of the plot.

On receipt of direction, the scheme will be submitted to Standing Committee/Corporation for their approval.

Your Sincerely,


(Ajoy) Mehta

Dr.Nitin Kareer
Principal Secretary - I,
Urban Development Deptt.,
Government of Maharashtra
Mantralaya,
Mumbai - 400 032

