

PRAVEEN PARDESHI
I. A. S.
Municipal Commissioner



No. : MGC/A/7962
Date : 04/06/2019

To,
The Principal Secretary-I
Urban Development Department
4th floor, Mantralay
Mumbai 400 032

Sub: Redevelopment of Municipal properties reserved for buildable reservation under the provisions of Regulation 33(7) of DCPR 2034.

Sir,

A) The representation is received from PEATA, association of Architects, vide letter dt.20.04.2019 where in it is stated that,

"DCPR 17(3)(b)(4) was under EP 35 under DCPR 2034 published on 8.5.2018, and thereafter modification was sanctioned on 21.09.2018 with changes in certain clauses and but since remaining clauses were not reproduced, it was assumed to be deleted which has resulted in ambiguity. Also to clarify if clause 17(3)(b)(1) is applicable to Municipal tenanted property be cleared.

Sir, we request the department to issue clarification on said provision of 17(3)(b)4 and 17(3)(b)(1) for Municipal tenanted property applicability to be issued to staff concerned who are processing the said file, as in its absence it is causing hardship to tenants and project proponents in absence of clarification".

B) The Substantial Modification Published by Government and Substantial Modification Sanctioned by Government u/s 31 of M.R.T.P.Act 1966 regarding the provisions of the Regulation 17(3)(B) under EP No.35 is enumerated as below:-

Substantial Modification Published by Government under Section 31 of M.R.T.P.Act 1966	Substantial Modification Sanctioned by Government under Section 31 of M.R.T.P.Act 1966
(B)Development of reservation in Reconstruction or redevelopment of cessed buildings in the Island City by Co-operative Housing Societies or of old buildings belonging to the Corporation under Regulation No. 33(7)	Sanctioned as proposed with following modifications.

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<p>(1) Redevelopment/reconstruction in any zone shall be allowed on site without going through the process of change of zone. For the Industrial user, the existing segregating distance shall be maintained from the existing industrial unit.</p>	<p>1) Clause No. (2),(3) & (4) of Sub Regulation 17(3)(B) are modified as below.</p>
<p>(2) Notwithstanding anything contained in these regulations, in case of redevelopment of plot/(s) having cessed structure/s and having reservation in the DP, the land component of the said cessed structure as per Zonal (basic) FSI shall be deemed to have been automatically deleted from reservation. However, reservation area beyond the land component of cessed structure/s shall have to be developed entirely for the intended purpose only.</p> <p>(2) Notwithstanding anything contained in these regulations, in case of redevelopment of plot/(s) having cessed structures/s and having reservation in the DP, the land component of the said cessed structure as per Zonal (basic) FSI shall be deemed to have been automatically deleted from reservation.</p> <p>The reservation area beyond the land component of cessed structures/s may be developed as per provision of Regulation 17(1) under the principle 'Accommodation Reservation' for the intended purposes. Provided that the 25% land component of non-cessed structures as describe in clause 19 of Regulation 33(7) will be eligible for FSI as per Regulation 33(7) only and shall not be eligible for Zonal (basic) FSI."</p>	<p>(2) Notwithstanding anything contained in these regulations, in case of redevelopment of plot/(s) having cessed structures/s and having reservation in the DP, the land component of the said cessed structure as per Zonal (basic) FSI shall be deemed to have been automatically deleted from reservation.</p> <p>The reservation area beyond the land component of cessed structures/s may be developed as per provision of Regulation 17(1) under the principle 'Accommodation Reservation' for the intended purposes.</p>
<p>(3)In case of reconstruction/redevelopment of building of Corporation, for the area of plot having no reservation or having designation of Municipal Housing, then the BUA equal to 25% of such plot area</p>	<p>3)In case of reconstruction/redevelopment of building of Corporation, for the area of plot having no reservation or having designation of Municipal Housing, then the BUA equal to 25% of such plot area as per Zonal</p>

<p>as per Zonal (basic) FSI in the form of tenements of size as decided by commissioner shall be made available to MCGM and the developer/ owner shall be entitled to BUA in lieu of cost of construction against handing over of built up amenity as per Note (d) of Regulation 17(1) in-case-of-above.</p>	<p>(basic) FSI in the form of tenements of size or premium as may be decided by the Municipal Commissioner in lieu of said tenements shall be made available to MCGM and the developer shall be entitled to BUA in lieu of cost of construction against handing over of built up amenity as per Note (d) of Regulation 17(1).</p>
<p>(4) Notwithstanding anything contained in any of these Regulations reconstruction/redevelopment of buildings of Corporation existing prior to 30.09.1969, falling under reservation contemplated in Development Plan shall be permitted as under</p> <p>(i) Any plot/layout having area under non-buildable/open space reservations admeasuring up to 500 sq. m shall be cleared by shifting the existing tenants from that site.</p> <p>(ii) Where the area of site having non-buildable/open space reservation/Cemetery, is more than 500 sq. m & if the land component of existing structures is more than or equal to 67% 70% such sites may be allowed for the redevelopment subject to condition that the ground area of the land so used shall not be more than 67% 70% of the reservation and leaving 33% 30% rendered clear thereafter for the reservation. If the land component of existing structures is less than 67% 70% such sites may be allowed for the redevelopment subject to condition that the ground area of the land so used shall not be more than land component of existing structures and leaving balance reservation land rendered clear thereafter for the reservation.</p> <p>(iii) Existing structures on lands reserved for Municipal School (RE 1.1)/ Primary and Secondary School (RE1.2) or a Higher Education (RE2.1) may be developed subject to the following:</p> <p>(a) In case of land reserved for Municipal</p>	<p>(4) Notwithstanding anything contained in any of these Regulations reconstruction/ redevelopment of buildings of Corporation existing prior to 30.09.1969, falling under reservation in Development Plan shall be permitted as under</p> <p>(i) Any plot/layout having area under non-buildable/open space reservations admeasuring up to 500 sq. m shall be cleared by shifting the existing tenants from that site.</p> <p>(ii) Where the area of site having non-buildable/open space reservation / Cemetery, is more than 500 sq. m & if the land component of existing structures is more than or equal to 65% such sites may be allowed for the redevelopment subject to condition that the ground area of the land so used shall not be more than 65% of the reservation and leaving 35% rendered clear thereafter for the reservation. If the land component of existing structures is less than 65% such sites may be allowed for the redevelopment subject to condition that the ground area of the land so used shall not be more than land component of existing structures and leaving balance reservation land rendered clear thereafter for the reservation.</p>

School (RE 1.1), Primary and Secondary School (RE1.2) in the DP, a building for accommodating such number of students as may be decided by the Municipal Commissioner, but in any case, for not less than 500 students, shall be constructed. The BUA occupied by the constructed building shall be excluded for the purpose of FSI computation. Thereafter, the land may be allowed to be redeveloped with the full permissible FSI of the plot according to this Regulation.

(b) In the case of lands affected by reservation of a Higher Education (RE2.1) in the DP, a building for accommodating such number of students as may be decided by the Municipal Commissioner, but in any case for not less than 800 students, shall be constructed. The BUA occupied by the constructed building shall be excluded for the purpose of FSI computation. Thereafter the land may be allowed to be redeveloped with full permissible FSI of the plot according to this Regulation.

(iv) In case of the plot reserved for the Parking Lot, ~~100%~~ 125% BUA as per Zonal (basic) FSI of such reserved area shall be constructed.

(v) Existing structures on lands reserved for Rehabilitation & Resettlement (RR 2.1) shall be treated as sites for development of such structures and shall be allowed for redevelopment according to this Regulation.

For other buildable reservations excluding (ii), (iii), (iv) & (v) above and reservations as reflected in the table no 4 of Regulation No 17(1), BUA equal to 25 percent of the area under that reservation in that plot, shall be constructed.

(EP-35)

From the above sanctioned provision the Clause No.4 of Regulation 17(3)(B) is modified while sanctioning the substantial modification and Sub Clause iii to vi of Clause No.4 of Regulation 17(3)(B) is deleted as per the notification. The deleted Clauses were dealing with the development of Municipal tenanted plots reserved for various buildable reservations.

In absence of the said clause the provisions of Regulation 17(1) are applicable which is reproduced as below:-

"17 (1) Development of Reserved land for Public Purposes

Reservations which shall be exclusively developed by the MCGM or the Appropriate Authority (acquired by way of monetary compensation or TDR or any other means), or by owner, wherever permissible, entirely for the intended purpose are described in Table Nos. 4 & 5 with appropriate conditions or allow owner to develop under Accommodation Reservation (AR) subject to conditions mentioned below & further as described in Table No.5".

From the above clause it can be seen that, the land under the various buildable reservation belonging to MCGM or appropriate Authority are to be developed for intended purposes by themselves only.

C) The various proposals on Municipal tenanted properties are explained below:

1. ICR/ CR is approved.
2. LOI is issued and IOD not issued (part Capitalized Value paid)
3. IOD/ CC is valid
4. Proposal for additional FSI as per DCPR 2034, for the approved proposals as per DCR 1991.

D) The provisions of regulation of DCPR 2034 are reproduced as below:-

I) Provision 9(5)

*"(5) **Validity of development permission:** The development permission granted in the past shall be governed by the provision of section 48 of the MR&TP Act, 1966.*

Where development has commenced as per the development permission/IOD issued prior to publication of these Regulations, the CC shall be issued or revalidated till completion of development in accordance with the plans/ approved, in respect of the said IOD including minor amendments thereof as per the then Regulations".

II) Provision 9(6)

*"(6) **Applicability to partially completed works:***

- (a) *For works where IOD/IOA has been issued or for ongoing partially completed works, started with due permission before these Regulations have come into force, the developer/owner may continue to complete the said works in accordance with the conditions under which*

permission stood granted. However, the period of the development permission granted shall not exceed that specified in section 48 of the MR&TP Act, 1966 or at the option of owner/developer, the proposal can be converted as per DCPR-2034 in toto.

- (b) In case of such plots or layouts that started with due permission before DCPR 2034 have come into force, and if the owner /developer, at his option, thereafter seeks further development of plot/layout/buildings as per DCPR 2034, then the provision of DCPR 2034 shall apply to the **balance** development. The development potential of such entire plot shall be computed as per DCPR 2034 from which the sanctioned FSI of buildings/part of buildings which are proposed to be retained as per approved plan, as per then Regulations, shall be deducted to arrive at the balance development potential of such plot or layout".

III) Provision 11 of 33(10)

"11. Conversion of Old Project into New Project:

11.1 Provision of the Regulation 9 (6) shall be applicable.

Provided further that Projects, where LOI has been granted, shall be treated as per the DCR provisions existing on the date of LOI. In case such a project comes up for revised LOI or change of developer or any other change, including recording and resubmission without change in slum boundary, prevailing DCR provisions shall apply. Provided further that for clubbing of schemes or amalgamation of schemes being sought and for schemes that have been sanctioned under different regulations (earlier as well as current one), FSI calculations shall apply as per the DCR regulations as on LOI dates of different schemes.

11.2 Exceptions Schemes approved prior to coming into force of these Regulation:

- 1) The slum rehab schemes where LOI has been issued by SRA prior to the date of coming into force of these Regulations and which is valid may continue to be governed by the regulation applicable prior to these Regulations.
- 2) Wherever the S.R. Scheme sanctioned by CEO (SRA) is under progress on reservations as per sanctioned scheme, shall be valid & continue".

IV) Provision 17(1) (20)(v)

In cases ,where permission for development under accommodation reservation principle is already granted as per earlier regulations, the same shall continue to be valid as per provisions of regulations 1991.

V) Condition no.21 of Notification no TPB/4317/629/CR-118/2017/ DP UD-11 dt.08.05.2018

Where layouts are approved and IOD granted prior to 27th May 2016

(i.e. date of publication of D.P. under section 26 of MRTP) which are valid then

the proposals of 1991 D.P. on such land shall prevail over 2034 D.P.

E) In view of above provisions of DCPR-2034, it is proposed to deal with the proposals of redevelopment of Municipal tenanted properties on land reserved for various buildable reservation as specified below:-

1. Ongoing works as per DCR 1991.

Such proposals can be processed as the provisions of Regulation 9(5) & 9(6) of DCPR 2034. The redevelopment scheme proposals where IOD/ CC is granted fully or partly and valid, in such cases the scheme FSI as sanctioned as per DCR 1991 and the reservations considered as per SRDP 1991 shall continue to be valid.

If there is balance potential in the scheme which is yet to be approved, then development of buildings for such balance potential will attract the provisions of DCPR 2034, within sanctioned FSI without considering the Reservations / Designation if any shown in DP 2034, without considering the reservations/designations if any shown in D.P. 2034.

2. Proposal for additional FSI as per DCPR 2034, for the approved proposals as per DCR 1991.

If the scheme is approved with the sanctioned FSI as per DCR 1991 and reservations / designation as per SRDP 1991 and now the developer seek further development with permissible FSI available as per DCPR 2034 on the Municipal tenanted properties, reserved for various buildable/ non buildable reservations then the development, in such cases balance potential of the scheme will attract the provisions of DCPR 2034, without considering the reservations / Designation if any shown in DP 2034 as per the provision 17(1) note (20)(v) read with Regulation 9(5) & Policy note no.21 of Notification no TPB/4317/629/CR-118/2017/ DP UD-11 dt.08.05.2018-MCGM Estate Deptt. policy, then prevailing at the time of sanction of Corporation Resolution(CR) approved while sanctioning FSI as per DCR1991 will continue to apply for such additional FSI(with relevant updation of such policies prior to 12.11.2018 i.e date of sanction of DCPR-2034.)

3. LOI is issued, Capitalized Value paid (partly/fully), as per provisions of DCR 1991 and IOD/ CC not granted.

The provisions of Regulation 9(5) are described above; such proposals do not fit in any category of the Regulations of DCPR 2034 to grant development permission/ IOD. The MCGM as a Statutory Body and owner have approved the

proposal of redevelopment scheme on Municipal tenanted properties on land reserved for various buildable reservations, needs to be honored.

It is to be mentioned that, the validity of the ongoing S.R. Scheme proposal are considered on the basis of LOI issued prior to coming into force of DCPR 2034, as per provisions 11 of 33(10) DCPR 2034 and it is felt that the same criteria needs to be made applicable for the redevelopment scheme of Municipal tenanted properties where the LOI is issued as per DCR 1991 and valid.

Under the circumstances, it is proposed to seek the directives under 154 of MRTP Act from Govt. in UDD to continue such proposals to be governed by the Regulation applicable on date of issue of LOI for smooth implementation.

4. ICR/ CR is approved but no LOI is issued previously for the redevelopment scheme.

Such proposals will attract the provisions of DCPR 2034 and therefore, the proposals will have to be revised accordingly. As such, in order to honour the commitment of MCGM, it is proposed to seek the directives under 154 of MR&TP Act from Govt. in UDD to continue the such proposals to be governed by the regulation applicable on date of sanction of Corporation Resolution(CR) However, such CR shall not be prior to 27th May 2016 (i.e. date of publication of D.P. under section 26 of MRTP) and not later than 12.11.2018(i.e. a day before date of sanction of DCPR-2034)

5. Sanction of E.P. 35 ; PEATA representation.

In view of deletion of provision 17(3)(B)(4) (iii) to (vi) of DCPR-2034, the Municipal tenanted properties on the land reserved for the buildable reservations will have to be developed for intended purpose only, as per provision 17(1) of DCPR-2034.

In one of the proposal on Municipal tenanted properties, bearing C.S. no. 1/2000 and 2002, Byculla division in E ward, Dy Director (TP) Greater Mumbai has given the following clarification U/no. उसनर / वृमुं / parking lot / 121 dtd 13.02.2019. The last para related with development of RR 1.5 (Municipal Hosing) of the said letter is reproduced as below :

त्याच बरोबर सदर जागेवर Municipal Housing (MH) या आरक्षणामुळे Accommodation Reservation या तत्वावर विकासाबाबत वस्तुतः शासनाच्या दि २१.०९.२०१८ च्या अधिसूचनेतील तरतुदी ही खालीलप्रमाणे आहे.

Regulation No. as per RDDP-2034	Provision of regulation as u/s 26 of MR&TP Act,1966	Provision of regulation as submitted u/s 30 of MR&TP Act,1966	Substantial modification published by the Govt.u/s 31(1) of MR&TP Act,1966	Substantial modification sanctioned by the Govt.u/s 31(1) of MR&TP Act.
19 22	RR1.5	Municipal Housing	Municipal Housing/ Municipal Facilities, Rehabilitation of PAPS	1 or 3, in case of 3 a) X = 50 b) Y = 40

त्यानुसार Municipal Housing (MH) या आरक्षणाकरिता आरक्षित क्षेत्राच्या ४० टक्के भूखंड क्षेत्रवर Zonal FSI च्या ५०% बांधकाम क्षेत्र बृहन्मुंबई महानगरपालिकेला हस्तांतरित करण्याची तरतुद आहे परंतु सदर बाब ही जागा खाजगी मालकीची असेल तर लागू होईल. जागा महानगरपालिकेच्या मालकीची असेल तर त्यामध्ये Corporation सदर आरक्षण पूर्णपणे स्वतः अथवा appropriate Agency मार्फत करू शकते”

PEATA has represented that as per sanctioned EP-35, sub clauses (iii) to (vi) of 17(3)(B)(4) are not reflected -

There are number of Municipal tenanted plots on which buildable reservations are shown in DP-2034. Therefore, if these sub-clauses (iii) to (vi) of 17(3)(B)(4) of DCPR-2034 are considered to be deleted, then the development of such reserved municipal tenanted plots will attract the provision of 17(1) of DCPR-2034 and required to be developed for the intended purpose.

Under the circumstances, the in situ rehabilitation of existing tenants /occupants will not be possible. It is pertinent to note that, as per the sanctioned provision of 17(3)(B)(4)(ii) of DCPR-2034, in-situ rehabilitation is permissible on non buildable reservation.

It is therefore, felt that the similar provision needs to be made available for the buildable reservations and hence the sub-clause (iii) to (vi) of 17(3)(B)(4) of DCPR-2034 as mentioned in the substantial modification published by Govt. under EP-35 needs to be restored.

In view of the same, it is proposed to request Principal Secretary to restore the sub-clause (iii) to (vi) of 17(3)(B)(4) of DCPR-2034 as mentioned in the substantial modification published by Govt. under EP-35.

The proposals mentioned at Sr.No. 1 & 2 above are considered as per the note mentioned below the Provision 9(6) of DCPR 2034 which is reproduced as "For smooth implementation and removal of difficulties in transitional proposals, the Municipal Commissioner may formulate a policy."

The Principal Secretary, Urban Development-I is here by requested to

- 1) Issue the Directives u/s 154 of MRTP Act 1966 in respect of Sr.No.3 and 4 of paragraph 'E' as stated above.
- 2) Examine and arrange to restore the sub-clause (iii) to (vi) of 17(3)(B)(4) of DCPR-2034 as mentioned in the substantial modification published by Govt. under EP-35 and as explained in sr.no.5 of paragraph 'E' as stated above.

Yours faithfully

Pravesh Pardeshi

Municipal Commissioner

24/10/19