

MUNICIPAL CORPORATION OF GREATER MUMBAI

CHE/23227/DP/Gen. dt. 21/11/17

Sub: Applicability of D.C. Regn. 1991 for buildings approved as per D.C. Regn. prior to 06.01.2012

1. The Government in UDD department has sanctioned a modification to the D.C. Regulation 1991 under section 37 (1aa) (c) of MRTP Act 1966 dated 06.01.2012. Vide said modification, a new additional regulation 35(4) and amendments in other regulations are incorporated. As per the said D.C. Regulation 35(4), notwithstanding anything contained in the D.C. Regulations 32, 33 and 34, the Commissioner may, by special permission, permit fungible compensatory floor space index, not exceeding 35% for residential development and 20% for Industrial / Commercial development, over and above admissible floor space index, by charging a premium at the rate of 60%, 80% and 100% of the Stamp Duty Ready Reckoner rate, for residential, industrial and commercial development respectively. This regulation shall be applicable in respect of buildings to be constructed / reconstructed only. As per the explanatory note to the D.C. Regulation 35 (4), where IOD / IOA have been granted but building is not completed, this regulation shall apply at the option of owner/ developer.
2. After publication of above sanctioned modification, a circular under no. CHE/22276/DP/GEN dated 12.01.2012 is issued by MCGM regarding procedure to be followed for its implementation. In the said circular various guidelines were prescribed for implementation of modified D.C. Regulation sanctioned dated 06.01.2012. One of the procedure/guideline to be followed for ongoing proposal is as follows.

Sr.No.	Status	Procedure to be followed
3.	I.O.D. is issued and it is proposed to change the foot print/plinth of the approved, building in the proposed amended plans.	Even though I.O.D. is obtained then these modified regulations will apply for the entire work.

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3. A further clarifactory circular was issued under no. Ch.Eng/22276/DP/GEN dated 30.01.2012. The relevant Clause No.2a and 2b of said circular are reproduced as under.

2a) Internal changes without affecting the approved existing footprint will be permitted and will not be considered as amendment for making applicability of modified D.C. Regulations, if FSI on each floor does not vary.

2b) Minor variation in dimension of the footprints may be permitted provided the approved FSI on each floor does not vary and the deficiency in open space does not exceed.

4. The issue of applicability of modified D.C. Regulation 35 (4) dt. 6.1.12 to earlier approved cases vis-a-vis amendment to the foot print of the building was discussed in the second meeting of Technical Advisory Committee TAC held on 8.8.2014. As per the recommendation of the said TAC, the guidelines were circulated under no. Ch.Eng./DP/TAC-02/23357/GEN dated 28.11.2014. As per the clause no.2 of the said guidelines, in case of the amendment/ occupation permission, if variation in the floor plate area is not more than 5%, then the same was to be allowed without making modified D.C. Regulation 35 (4) applicable. Further, if the entire building is constructed as per approved plan and if some elevation features/ area are constructed beyond approval plan, such cases may be considered for regularising the area by taking into consideration FSI available and corresponding proportionate fungible FSI so that amendment or O.C.C. can be processed.

5. Subsequently, policy guidelines were approved by Hon. M.C. under no. MCP/6394 dt. 29.11.2016 in this respect. As per the same, in case of proposals for buildings approved prior to 06.01.2012 and / or occupation permission granted (full or part) for those buildings, if owner comes forward by utilizing FSI for counting (fully or partly) the features permitted free FSI as per the then prevailing D.C. Regulation, the same may be allowed by counting into F.S.I. from the balance potential without making applicable Fungible F.S.I. to the entire floor of the building and the same may be allowed without construing it to be change in footprint.

6. Many proposals are approved with certain features such as flower bed, pergolas, chajjas, nitches etc. and other concessions free of FSI as per the

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- then prevailing D.C. Regulation 1991 prior to 6.1.12. Many such buildings approved as per earlier D.C. Regulation are completed/ occupied or at various stages of construction. The developers/ architects are enquiring and showing their willingness to take certain user/ features which are misused or prone to be misused in future, by counting fully/ partly in FSI from the balance FSI potential of the plot and its corresponding fungible FSI.
7. Many representations are ~~being~~ received from MCHI/ PEATA to formulate revised policy about applicability of modified D.C. Regulation dated 6.1.12 to the already approved buildings which are approved as per D.C. Regulation prior to 6.1.12. It is represented that after construction of building with certain features/ users which are allowed free of FSI as per earlier D.C. Regulation prior to 6.1.12, they are likely to be misused by the purchasers who may not be aware of such features being granted free of FSI by MCGM and its implications for misusing them.
 8. There are various complaints ~~being~~ received by the ward for enclosing /misusing various such features and the actions are initiated by the ward office against the purchasers for such misuse.
 9. The developers/ MCHI/ PEATA has informed that the various additional FSIs are now available for utilisation in view of various recent modifications to D.C. Regulation 1991 such as allowing TDR based on width of abutting road, increasing FSI for I.T. parks, enhancement of FSI under D.C. Regulation 33 (7) increase in permissible FSI due to applicability of modified CRZ notification dated 6.1.2011 etc. The developers are willing to forego certain concessions/ features which were/are allowed free of FSI as per earlier D.C. Regulation so as to avoid its likely misuse by the purchasers and the consequent litigation. However, it is represented that the existing policy guidelines for applicability of D.C. Regulation dated 6.1.12 are discouraging their efforts to streamline the proposals by counting free of FSI areas/ features as the same are based on restricting foot print of the building up to 5% variation for consumption of fungible FSI and the fungible FSI is not being permitted on building/ part of buildings where occupation is granted.
 10. Government of Maharashtra vide notification dated 7.10.17 has modified MRT&P Act 1966. As per the same certain rules have been framed (called the

Maharashtra Town Planning (compounded structure) rules, 2017). Those rules are applicable to unauthorised developments carried out on or before 31.12.2015. This provision is incorporated to regularise the unauthorised development subject to stipulations specified therein.

11. One such case of allowing fungible FSI under D.C. Regulation 35 (4) for regularization of part of the existing buildings in which occupation permission is granted, was referred to Sr. Counsel/ Law officer of MCGM for seeking their opinion on following issues –

- i) Whether balance potential and admissible F.C. FSI on balance potential can be allowed in building when OCC is granted & now elevation features / free of FSI features are proposed to be converted into habitable use, which may or may not involve construction in view of provision in D.C. Regn. 35(4) that the said regulations are applicable in respect of building to be constructed only.

Sr. Counsel/ Law Officer have given his opinion which is summarised as under:-

- a. Definition of Construction- The creation of something new, as distinguished from the repairs or improvement of something already existing.
- b. The definition of 'building' as provided under DCR 2(11) and Section 2(s) of MMC Act and the definition of 'building operations' is very wide and thus, the term 'construction of building' has to invariably apply to all the components which are included under the definition of building.
- c. The definition 'development' provided under section 2(7) of the MRTP Act and definition of 'building operations' being very wide, is not merely restricted to cases of new construction/erection of building and apart from other components, also takes change of user within its sweep.
- d. Section 44 of the MRTP Act and Section 347 of the MMC Act mandating permission for development from the Planning Authority do not make a reference to the term 'construction' or 'reconstruction' of new building and are thus, not restricted to cases of

construction/erection of new building and are applicable to all additions/alterations to the existing building amounting to development of building as envisaged under the aforementioned statutory provisions.

- e. Development of building is not confined only to cases of construction of new buildings and also applies to all categories of changes/ additions/ alterations even to the existing building which amount to 'development' for which permission from the Planning Authority is essential.
- f. In the present case, where permissible FSI has not been exhausted for construction of the building which is complete now, the Developer is entitled to utilise balance potential 0.5 FSI in the existing building under the DCR by applying for further development permission as postulated under the MRTP Act/ MMC Act and the proposal for further development shall be processed as per the prevailing DCR.
- g. The sub-queries are answered in view of the facts of the present case since here, the development of existing building by utilizing balance 0.5 FSI potential which was not consumed earlier and therefore, DCR 35(4) is applicable to proposal for further development in the form of balance potential and thus, the opinion cannot be of general application and applicability of DCR 35(4) has to be adjudged on the basis of facts and circumstances of each case.

12. The opinions from the then Ld. Advocate General on query from MCGM and from Hon'ble Judge of Supreme Court (Retd.) Justice B.N. Srikrishna on query from private persons are also received for applicability of DCR 35(4) regarding Fungible FSI in case of building where part occupation is granted.
(Copies attached)

13. As per the above said circulars regarding making D.C. Regn. 35(4) dated 06.01.2012 applicable to the buildings which are approved as per earlier D.C. Regn. prior to 06.01.2012 and which are completed or at various stages of construction, are proving to be restrictive and thereby leading to litigations, it

is necessary to draw a supplementary circular in view of above circumstances, particularly, in light of legal opinion and the Govt. notification published on 07.10.2017 about rules for compounding structures.

14. The issue was discussed with the officers of B.P. & D.P. Department and various stake holders such as Architects/ Licensed Surveyors / Developers etc. as well as professional bodies such as PEATA / MCHI / NAREDECO etc. The matter is also discussed with Hon'ble M.C. Thus following guidelines are proposed.
- 15.a) In case of building proposals approved as per D.C. Regulation prior to 06.01.2012 and / or occupation permission granted (Part or Full), if the owner / developer / Co-op. Hsg. society comes forward to count (partly or Fully) certain features or users permitted free of FSI as per D.C. Regulations prior to 06/01/2012, the same may be allowed by counting such features (Fully or partly) from the balance / additional FSI potential along with fungible FSI proportionate to balance / additional FSI without making applicable D. C. Regulations modified as on 06/01/2012 to entire floor_s of the building. The same may be allowed without construing it to be change in foot print.

However, vertical extension/ additional construction in the existing building and/or horizontal extension in the form of separate wing may be allowed from balance / additional FSI potential plus fungible FSI proportionate to balance / additional FSI potential by applying D. C. Regulations prevailing on the date of granting approval to such amended plans to such vertical extension / additional construction and/or horizontal extension in the form of separate wing.

The owner /developer/ CHS of buildings where plans are approved as per D.C. Regulation prior to 06/01/2012 and who have opted for counting earlier free of FSI features partly or fully in balance / additional FSI potential without construing it as change in footprint and without making D.C. Regulation dtd. 06.01.2012 applicable as per the earlier circulars dtd. 28.11.2014, 29.11.2016 and 15.03.2017 can exercise his option for consideration of proposal as per present policy guidelines and the fungible FSI on said area counted as per said circulars shall also be allowed on that area irrespective whether OC is granted or otherwise.

- b) In case of building proposals approved as per D.C. Regulation prior to 06.01.2012 and / or occupation permission granted (Part), if the owner / developer / Co-op. Hsg. society comes forward to convert entire building as per D. C. Regulations modified as on 06/01/2012, the same may be allowed by applying D.C. regulation prevailing on the date of granting approval to such amended plans for entire FSI potential i.e. FSI potential already used in earlier approved plans along with balance / additional FSI potential plus permissible fungible FSI on entire FSI potential i.e. FSI potential already used in earlier approved plans along with balance /available FSI potential.
- c) For ongoing building proposals approved prior to 06/01/2012, for the already approved floors of such buildings option (a) above will be permissible. However, additional floors those may be proposed beyond earlier approved floors from balance / additional FSI potential plus Fungible FSI proportionate to balance / additional FSI potential will have to be as per provisions of modifications to DCR 1991, if any i.e. as per D.C. regulation prevailing on the date of granting approval to such amended plans.

16. Process of proposal:

- a) The amendments in proposed plans as per options ¹⁵ a), b) & c) above which involve utilisation of fungible FSI on balance / additional potential shall be approved only with the sanction of the Municipal Commissioner.
- b) The specific structural stability certificate from the appointed Registered Structural Engineer for the addition/alteration/extension to be carried out/ to be regularized shall be insisted.
- c) The NOC from Society shall be insisted where ever applicable.
- d) On approval of above policy guidelines, the earlier policy circulars issued in this respect shall be amended and superseded to that effect.
- e) It shall be responsibility of the developer/ owner/ society for dispute/ litigation arises, if any, MCGM & its officers shall not be party for the same. The Indemnity bond indemnifying MCGM & its officers from any dispute / litigation arising shall have to be submitted while submitting the proposal as per these guidelines.

f) The Fungible Compensatory FSI shall not be entitled on BUA for which the plans are approved as per old Regulation prior to 06.01.2012 & are proposed to retain the same.

17. Following are the likely benefits of proposed policy guidelines –

- No. of tenements will not increase in the case of counting free of FSI features and thus there will not be additional occupant load / tenement density even after utilisation of FSI.
- Additional revenue will get generated from premium for additional FSI, if any and for fungible FSI thereof
- The litigations and consequent actions on the end users due to misuse of such features will get reduced substantially and there will be relief to the end users
- The disproportionate diversion of resources of MCGM will be reduced to deal with relatively small misuse of certain parts of buildings considering them as unauthorised construction.

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