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Advocate High Court, Mumbai

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Date : April 16, 2019

To,

Shri. Tarun H. Motta,
M/s. Teearch,
9 Square, Ramdas Sutrale Marg,
Off Chandavarkar Lane,
Borivali (West), Mumbai: 400092.

Ref: Letter dated 07/03/2019 from M/s. TEEARCH seeking my opinion with respect to applicability of Regulations 14 and 15 of the Development Control and Promotion Regulations for Greater Mumbai, 2034 to the Kosamgo Nagar Layout project bearing CTS No. 63/1 to 11 of Village Magathane, Tal: Borivali, Mumbai Suburban District.

Sir,

1. You have sought my opinion about applicability of Regulation Nos. 14 and 15 and provisions of the Development Control and Promotion Regulations for Greater Mumbai, 2034 ("**DCPR 2034**") to the redevelopment proposed to be carried out at Kosamgo Nagar Layout ("**the project**").
2. The queries which are raised in our meeting held on 08.03.2019 and your letter dated 07.03.2019 are summarized as follows:



- 1) *Whether the provisions of Regulation 14(A) of DCPR 2034 are applicable to the redevelopment to be carried out at the Project since ownership of each society in layout is less than 4000 sq. mtrs. Area ?*
- 2) *Whether provisions of Regulation 14(A) will be applicable for the proposal which contemplates merger of all plots of layout for the purpose of better development & proposed further subdivision into sub-plot A, B & C as per DCPR 2034 in view of clarification note (iii) of regulation 14(A) of DCPR 2034?*
- 3) *What is the correct interpretation of the words "original plot" in note (iii) of Regulation 14(A) of the DCPR 2034?*
- 4) *What is the cut-off date to be considered for the original plot as contemplated under note (iii) of Regulation 14(A) of the DCPR 2034?*
- 5) *Whether the provisions of Regulation No. 15 of the DCPR 2034 are applicable to the redevelopment to be carried out at the project when the area of all the existing tenement are less than 80 sq. mtrs.?*
- 6) *Any other points in general.*

3. Before advertng to the said queries, I deem it fit to record that the several documents provided by you for my perusal, have been perused by me, which are as under:

- a) Letter dated 07.03.2019 from M/s. TEEARCH and its enclosure, being Case for Opinion prepared by Mr. Tarun H. Motta (L.S.).
- b) Letter dated 09.05.1980 addressed by MCGM to M/s. Kotasthane & Kotasthane, Architects, in respect of final approved sub-division of land bearing Survey No. 15, Hissa No. 2, Survey No. 16, Survey No. 145, Hissa No. 1 and Survey No. 152 of Village Magathane, Taluka Borivali, Mumbai Suburban District. According to the sanctioned Layout, the land in question was subdivided initially into 2 Sub Plots: Sub Plot-A is admeasuring 20,664 sq. ft. i.e. 1919 sq. mtrs. The sub plot is affected by the proposed 30-M wide Low Level Road and 90-M wide Over Bridge; Sub Plot-B has been divided into 8 different parts viz.,

Sub Plot No.	Area in Sq. Yards	Equivalent to Area in Sq. Mtrs.
1.	1222	1022
2.	1278	1069
3.	1217	1017
4.	1445	1208
5.	1583	1324
6.	1583	1324
7.	2475	2069
8. RG=15% area of Sub Plot-B	2236	1870



Note: Certain portion of Sub Plot B being on the portion on the west of plot Nos. 2 , 3 and 7 shown is covered by proposed DP Road of 44-ft. wide road (13.41 mtr wide). In addition to this, a 30-ft. (9-mtr) wide internal road having access to Sub Plot Nos. 1 to 7 and RG is also provided. Thus, the RG, which is provided is equivalent to 15% of the net area of Sub Plot-B equivalent to 12386 sq. mtrs. and hence, the area of is 1870 sq. mtrs. A perusal of said letter dated 19/05/1980 shows that the same is bearing No. CE/187/LOR and the Layout and Sub Division Plan, which is approved and what is annexed therewith is true copy of the approved plan by BMC Zone-II under Memorandum No. CE/187/LOR dated 07/06/1973.

- c) Apart from this, another Plan approved by the Dy. Chief Engineer (Western Suburbs), BMC is shown to have been approved on 23/02/1994 subject to compliance of registered terms and conditions of letter bearing No. CE/187/LOR. A perusal of the said Plan shows that it is the plan for the proposed subdivision of Plot Survey No.15 Hissa No. 2, Survey No.16, Survey No. 145 Hissa No.1, Survey No. 52 corresponding to CTS 63, 63/1 to 63/11 off: S.V. Road, Borivali (West). The said Plan shows the area of the main Subplot A as 15610.61 sq. ft. equivalent to 1,450.80 sq. mtrs. and area of Subplot B is admeasuring 1,00,199.27 sq. ft. equivalent to 9,312.20 sq. mtrs. The FSI



calculation is also indicated and on Sub plot-B, the permissible FSI is shown as 1,62,132.97 sq. ft. equivalent to 15,608.12 sq. mtrs.

- d) Property Card for each subdivided plots bearing CTS No. 63/1, 63/2, 63/3, 63/4, 63/5, 63/6, 63/7, 63/8, 63/9, 63/10 and 63/11 prepared by CTSO in the year 1998 of Village Magathane, Taluka Borivali, Mumbai Suburban District. The property register cards:
- CTS NO. 63/4, Plot-1 admeasuring 1056.5 sq. mtrs., in which name of Prajakta CHSL appears as 'Occupant' pursuant to the Sale Deed dated 28/02/1980 in favour of the said Society. It appears that by subsequent Order dated 17/06/1997 passed by the Collector, Mumbai Suburban District the initial area of 1022 sq. mtrs. was corrected as 1056.5 sq. mtrs.
 - CTS NO 63/6, Plot-2 admeasuring 1070.7 sq. mtrs wherein the name of Maghalok CHSL is entered on the basis of Sale Deed and the original area of 1069 sq.mtrs. is corrected as 1070.7 sq. mtrs. on the basis of Order dated 17/06/1997 passed by the Collector, Mumbai Suburban District.
 - CTS NO 63/9, Plot-3 admeasuring 1012.3 sq. mtrs wherein the name of Meenant CHSL is entered on the basis of Sale Deed and the original area of 1012.3 sq.mtrs. is corrected as 1017 sq. mtrs.

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on the basis of Order dated 17/06/1997 passed by the Collector,
Mumbai Suburban District.

- CTS NO 63/11, Plot-4 admeasuring 1208 sq. mtrs wherein the name of Meenant CHSL is entered on the basis of Sale Deed and the original area of 1208 sq. mtrs. is corrected as 1079 sq. mtrs. on the basis of Order dated 17/06/1997 passed by the Collector, Mumbai Suburban District.
- CTS NO 63/7 Plot-5 admeasuring 1324 sq. mtrs wherein the name of Shwctdeepmala CHSL is entered on the basis of Sale Deed and the original area of 1324 sq. mtrs. is corrected as 1296 sq. mtrs. on the basis of Order dated 17/06/1997 passed by the Collector, Mumbai Suburban District.
- CTS NO 63/5 Plot-6 admeasuring 1324 sq. mtrs wherein the name of Smitanjali CHSL is entered on the basis of Sale Deed and the original area of 1324 sq. mtrs. is corrected as 1280.5 sq. mtrs. on the basis of Order dated 17/06/1997 passed by the Collector, Mumbai Suburban District.
- CTS NO 63/2 Plot-7 admeasuring 2348.2 sq. mtrs wherein the name of New Gajant CHSL is entered on the basis of Sale Deed and the original area of 2348.2 sq.mtrs. is corrected as 2347.5 sq.



mtrs. on the basis of Order dated 17/06/1997 passed by the Collector, Mumbai Suburban District

- CTS NO 63/10 - In this P.R. Card, names of Prajakta CHS, Meghalok CHSL, Meenant CHSL, Smitanjali CHSL, Shwetdeepmala CHSL and New Gajant CHSL are entered as Joint Owners / Holders for original area of 1865.2 sq.mtrs. which was subsequently corrected as 1844.8 on the basis of Order dated 17/06/1997 passed by the Collector, Mumbai Suburban District.
- CTS NO 63/8 wherein in the "Other Right" column, it is shown that on account of the land being transferred in the name of MCGM for over bridge and widening of road, the Property Card which was originally cancelled was revived by Order dated 28/06/1997 of the Collector (MSD) and the area was increased from 377.4 sq. mtrs to 464.2 sq. mtrs.
- CTS NO 63/1 - The area of 4034.9 sq. mtrs. shown originally is fixed at 4034.9 sq. mtrs on the basis of Order dated 17/06/1997 passed by the Collector, Mumbai Suburban District and the PR Card was revived with the remark in the Holder Column that "proposed BMC over bridge and widening of road". Copy of the said Survey Plan Revision MR No.9 dated 16/04/2013 indicating the exact location of the above referred City Survey Number.

- e) OC dated 07.06.1983 in respect of Plot No. 1.
- f) OC dated 28.08.1988 in respect of Plot No. 2.
- g) OC dated 07.04.1983 in respect of Plot No. 3.
- h) OC dated 07.06.1983 in respect of Plot No. 4.
- i) OC dated 06.04.1983 in respect of Plot No. 5.
- j) OC dated 20.05.1986 in respect of Plot No. 6.
- k) OC dated 20.05.1986 in respect of Plot No. 7.
- l) Indenture of Conveyance dated 22.02.1979 executed between Jayantilal Parikh and others as the Vendors and Prajakta Co-operative Housing Society Ltd., as the Purchaser in respect of Plot No. 1.
- m) Indenture of Conveyance dated 18.10.1979 executed between Jayantilal Parikh & others as the Vendors and Smeetanjali Co-operative Housing Society Ltd., as Purchaser in respect of Plot No. 6.
- n) Indenture of Conveyance dated 18.10.1979 executed between Jayantilal Parikh & others as the Vendors and Swetdeepmala Co-operative Housing Society Ltd., as Purchaser in respect of Plot No. 5.
- o) Indenture of Conveyance dated 18.10.1979 executed between Jayantilal Parikh & others as the Vendors and Meghalok Co-operative Housing Society Ltd., as Purchaser in respect of Plot No. 2.



- p) Indenture of Conveyance dated 22.02.1980 executed between Jayantilal Parikh and others as the Vendors and New Gajant Co-operative Housing Society Ltd., as Purchaser in respect of Plot No. 7.
- q) Indenture of Conveyance dated 22.02.1980 executed between Jayantilal Parikh and others as the Vendors and Meenant Co-operative Housing Society Ltd., as the Purchaser in respect of Plot Nos. 3 and 4.
4. The important dates and events are as follows:
- (i) 17.07.1964: (1) Jayantilal Lallubhai Parikh, (2) Champaben widow of Lallubhai Premanand Parikh, (3) Sarala Jayantilal Parikh, (4) Divyesh Jayantilal Parikh and (5) Chetan Jayantilal Parikh (Collectively referred to as "Jayantilal Lallubhai Parikh and others") were member Co-parceners of their Hindu Joint Family and were well and sufficiently seized and possessed of and sufficiently entitled to plot of land situate at Village Magathane, Borivali (West) bearing Survey No. 15 Hissa No. 2, Survey No. 16, Survey No. 145, Hissa No. 1 and Survey No. 152 admeasuring about 23045 sq. yards equivalent to 19267.08 sq. m. which was purchased by the said Jayantilal Lallubhai Parikh and others under a registered Deed of Conveyance dated 17.07.1964.

- (ii) 20.01.1972: The plot of land situate at Village Magathane, Borivali (West) bearing Survey No. 15 Hissa No. 2, Survey No. 16, Survey No. 145, Hissa No. 1 and Survey No. 152 admeasuring about 23045 sq. yards equivalent to 19267.08 sq. m. wre partitioned and divided by and between Jayantilal Lallubhai Parikh and others being the members of the Hindu Undivided Family vide registered Deed of Partition dated 20.01.1972.
- (iii) 28.12.1972 - Vide Agreement dated 28.12.1972, (1) Jayantilal Lallubhai Parikh, (2) Champaben widow of Lallubhai Premanand Parikh and (3) Sarla Jayantilal Parikh agreed to sell to M/s. K.M. Patel & Co. their said plots bearing Plot Nos. 1 to 6 admeasuring 13000 sq. yards equivalent to 10599.69 sq. m.
- (iv) 1973: The said Jayantilal Lallubhai Parikh and others made an application to the MCGM for sub-division of the said larger plot of land which was accepted in principle by way of approval of sub division issued by MCGM dated 07/06/1973 under File No. CE/187/LOR.
- (v) 06.08.1973: By letter dated 06.08.1973 addressed by the MCGM to M/s. Kotasthane and Kotasthane, Architects, the sub-division of the plot was sanctioned.



- (vi) 24.07.1975: Vide Agreement for sale dated 24.07.1975, K.M. Patel & Co. agreed to sell Plot No. 7 admeasuring 2658 sq. yards equivalent to 2222 sq. m. to A.L. Mahimkar.
- (vii) 1979-1980: After sub-division was sanctioned, vide various Deeds of Conveyance enumerated in paragraph no. 3(l) to 3(q) above, the land was conveyed in favour of six Co-operative Housing Societies in the following manner:

Sr. No.	Name of CHS	Plot No.	Area (sq. m.)
1.	Prajakta CHS Ltd.	1	1404.10
2.	Meghalok CHS Ltd.	2	1457
3.	Meenant CHS Ltd.	3 & 4	3057
4.	Swetdeepmala CHS Ltd.	5	1818
5.	Smitanjali CHS Ltd.	6	1818.69
6.	New Gajant CHS Ltd.	7	3052.44

- (viii) 28.02.1980: As per the approved sub-division of the plot, separate property cards were issued for each of the sub-divided plots.
- (ix) 09.05.1980: Letter addressed by the MCGM accepting proposal for sub-division of land bearing S.No.15, H.No.2, S.No.16,

S.No.145, H.No.1 and S.No. 152 of Village Magathane, Borivali West

- (x) 23.02.1994: After DCR 1991 came into force, the plot layout was amended as per Regulation 21 of the DCR 1991 and internal access road was provided as per Regulation 22 of the DCR 1991 and recreational ground/space was provided as per Regulation 23 of DCR 1991.
- (xi) 17.06.1997: As the layout was further amended on 23.02.1994, pursuant to the Order of Collector-MSD dated 17/06/1997 whereby the areas were corrected and the revised Property Cards were issued by the City Survey Office pursuant to Order of Collector-MSD dated 17/06/1997.
- (xii) 1982-1986: The six co-operative housing societies mentioned in clause 4(vii) above, as owners of their respective sub-divided plots, constructed or caused to be constructed residential buildings and received separate Occupancy Certificates as detailed in para 3 (e) to 3 (k) above
- (xiii) The adjoining plot of the plot in question is affected by adjoining 90 ft. over bridge and 60 ft. DP road.
- (xiv) The Querists wish to carry out redevelopment of the plot in question.

5. The relevant statutory provisions of the Development Control Regulations framed by the Municipal Corporation of Greater Mumbai and which are finally approved by the Government of Maharashtra in its Urban Development Department u/s. 31 of Maharashtra Regional & Town Planning Act, 1966, which are applicable to the facts of present case are as follows:

- i. Regulation 2(IV)(10) of the DCPR 2034 defines the word "Amenity Space" to mean a statutory space provided in any layout/plot to be used for any of the amenities/utilities specified in the regulations.
- ii. Regulation 14 of the DCPR 2034 is as under:

"14. Amenities

A) In Plots/lay-outs of the land admeasuring 4000 sq. m or more:

In case of development of land admeasuring 4000 sq. m and more (excluding the area under Road set back/DP Road) in Residential and Commercial Zones, amenity areas as specified below shall be fronting, a public road or shall be provided with a perpetual independent right of way. Such amenity area shall be exclusive of area under perpetual independent right of way and shall be handed over to MCGM.



(i) *Development of plots with area 4,000 sq. m and more and up to 10,000 sq. m shall require handing over 5% of plot area to MCGM as POS.*

(ii) *Developments of plot with area exceeding 10,000 sq. m shall require handing over of 500 sq. m plus 10% of plot area in excess of 10000 sq. m to MCGM as amenity. 50% of such amenity shall be used exclusively for POS and the balance 50% shall be used for provision of such amenities as education, health, social and other amenities as approved with the special permission of the Commissioner. In determining the amenity, the Commissioner shall give due regard to amenity deficits in the ward.*

(iii) *Such amenities or facilities (i) and (ii) above shall be deemed to be designations or reservations in the DP thereafter.*

Provided further that, in cases where DP has provided any reservation on the plot under development excluding the D P Road / Road set back, the following criteria would be applicable:

a) *If the area under DP reservation to be handed over to MCGM (excluding the DP Road/Road set back) is less than the required area of amenity as per this Regulation, then only the additional area required shall be provided for amenity.*

- b) *If the area under DP reservation to be handed over to MCGM (excluding the DP Road/Road set back) is more than the required area of amenity as per this Regulation, then the provision for amenity shall not be necessary.*
- c) *Such amenity shall not be deducted from the plot for the calculation of FSI permissible on the balance plot.*
- d) *These areas will be in addition to the Layout Recreational Open Space (LOS) as required under Regulation No. 27.*
- e) *The minimum dimension of any side of such amenity shall not be less than 7.5 m and if the average width of such amenity is less than 16.6 m, the length thereof shall not exceed 2.1/2 times the average width.*

Note:

- (i) *No amenity plot will be carved out of any land entirely reserved for public purpose.*
- (ii) *In case of redevelopment under 33(7), 33(7)(A), 33(10) amenity as per this Regulation shall be reduced to 35%.*
- (iii) *In case of amalgamation of plots, no amenity shall be required for the original plot having area less than 4000 sq. mt. However, if area of such amalgamated plots is more than 20000 sq. mt. then the amenity as per this Regulation shall apply."*



Originally as per sanctioned DCPR 2034 published by Notification dated 08/05/2018, only Note No.(i) was provided. However, by subsequent Corrigendum dated 12/11/2018, Note (ii) and (iii) were added.

iii. *Relevant portion of Regulation 15 of the DCPR 2034 is as under:*

“15. Inclusive Housing (IH)

In case of any residential development partially or fully consisting of subdivision/amalgamation/layout or single plot of land having gross plot area admeasuring 4000 sq. m. or more (excluding the area under Road set back / DP Road / designation/ reservation) shall have the provision of IH as described below:...”

iv. There is a further specific provision in Reg. No. 15, namely proviso to DCR 15(2), note(3) which states:

“Provided that there shall be no obligation to construct IH tenements in the redevelopment project of any Co-operative Housing Society / Federation of Societies / Association / Condominium / Apartment Owners’ Association in which the carpet area of all existing individual residential tenements does not exceed 80 sq. mts.”

“Provided further that, if existing carpet area of some of the residential tenements, in Co-operative Housing Society / Federation of Societies / Association / Condominium / Apartment Owners’ Association is more

than 80 sq. mtrs., then the obligation to hand over the BUA in the form of IH tenements/plot area would be proportionate to the ratio of BUA of such tenement having carpet area more than 80 sq. m and existing BUA, otherwise required as per this Regulation considering plot area."

6. From the case for opinion, in paragraph 6 & 8, it is stated thus:

"6. In the layout plans submitted to the authority involves following amendments since Occupation Certificate to the various Buildings has been issued by the Corporation between the years 1982 to 1986 and the subdivided plots were conveyed to each owner prior to DCR 1991 and DCPR 2034 and as each Society is an independent Housing Society by itself till today, and now that the societies have come forward for Redevelopment of the entire property with mutual understanding between them with a view to have a planned development as proposed in plans submitted to MCGM for approval with following arrangements:

(a) The area of R.G. has been allotted to all plots A,B,C,D adm. 1844.8 sq. mts. bearing C.T.S. No. 63/10 which was allotted to all 6 plots jointly is included in their deed of conveyance as per table at point No.3 above. In the said Deed, the area of each Society apportionment has been mentioned.

(b) The D.P. Road including overbridge area totally adm. 3041.50 sq. mts. is also apportioned to the 6 Society. However, the area claimed in O.C.

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plans approved by MCGM is 2956.19 sq. mtrs. and same is proposed to be claimed as per Chart given below:

Sr. No.	Name of CHS	D.P. Road claimed as per Agreement in Sq.Mtrs.	D.P.. Road claimed as per O.C. in Sq. Mtrs.	Plot Nos.	CTS No.
1.	New Gajant CHSL	766.00	703.00	7	63/2
2.	Prajakta CHSL.	408.50	408.80	1	63/4
3.	Smitanjali CHSL	141.00	138.00	6	63/5
4.	Swetdeepmala CHSL	532.00	529.60	5	63/7
5.	Meghalok CHSL.	302.00	300.00	2	63/6
6	Meenant CHSL.	892.00	876.79	3 & 4	63/9 63/11
Total:		3041.50	2956.19		

8. The area of Internal Road along with the Layout R.G adm. 3433.00 sq. mts. was also allotted and included in their sale deed itself as per table at point 3.to the 6 plot holders as per the Sale Deed . The Chart showing the distribution of area of Internal Road and R.G. is reproduced here:

Sr. No.	CTS No.	Plot Nos.	Name of CHS	Area allotted under Internal	Area allotted under R.G. Sq. Mtrs.

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				Road in Sq.Mtrs.	
1.	63/2	7	New Gajant CHSL	360.00	472.00
2.	63/4	1	Prajakta CHSL	166.00	217.00
3.	63/5	6	Smitanjali CHSL.	213.00	281.00
4.	63/7	5	Swetdeepmala CHSL.	213.00	281.00
5.	63/6	2	Meghalok CHSL	172.00	226.00
6	63/9 63/11	3 & 4	Meenant CIISL	360.00	472.00
Total:				1484.00	1949.00

PROPOSED LAYOUT : (i) The 4 plot holders of Buildings plot No. 1,5,6,7 (Sub Plot A) area adm. 8114.40 sq.mts. have come forward for joint development.
(ii) Plot holders of Building plot 2 (sub Plot B) area adm. 1467 sq. mts. have come forward for separate development.(iii) and Plot holders of Building plot No. 3 & 4 (sub Plot C) area adm. 3057 sq.mts. come forward for separate development

7. Upon perusal of the documents referred to above and the law governing the present query, my opinion is as under:

(i) As regards query nos. 1 and 2, the mandatory provisions of Regulation No. 14(A) of the DPCR 2034 apply only in cases where the plot

development of land proposed to be developed is more than 4000 sq. m. In the present situation, a perusal of the areas of each plot of land, in the layout duly sanctioned by competent authority viz. plot no. 1 to plot no. 7, indicates that plot area of individual owner/s is less than 4000 sq. m. Therefore, in my opinion in so far as redevelopment of Plot 2 owned by Meghalok CHSL is concerned, the area inclusive of RG and internal road is 1467 sq. mtrs and since the said plot No.2 is being separately developed, in my opinion, the provisions of Regulation No. 14(A) of the DCPR 2034 are not applicable for the redevelopment of the said plot.

- (ii) Similar will be the case in respect of the redevelopment of plot Nos. 3 and 4 (proposed plot C) in the individual land layout proposed to be submitted for sanction and sought to be sanctioned) since total area of both the plots would be 3057 sq. mtrs., in my opinion again DCR 14(A) and 15 of the DCPR 2034 will not be applicable.
- (iii) Further a perusal of note (iii) of Regulation 14(A) and 15 of the DCPR, 2034 indicates that no amenity as prescribed under Regulation 14(A) will be required where the area of the Amalgamated Plots for better development is less than 20,000 sq. meters. Now the question which has been considered in respect of the proposal of redevelopment of the plot Nos. 1 and 5 to 7, (proposed plot No.(A) in the individual land



layout proposed to be submitted for sanction and sought to be sanctioned) the said area is going to be 8114.40 sq. mtrs. In this situation, DCR 14(A), which was originally sanctioned on 08/05/2018, which did not have Notes (ii) and (iii), redevelopment of such plot would attract DCR 14(A) in as much as the area exceeding 4000 sq. mtrs. However, on account of the Corrigendum of 12/11/2018 and addition of Note (iii) , which is quoted hereinabove, the said DCR 14(A) will not apply since even after the amalgamation and sub division, the area proposed to be subdivided plot (d) will be much less than 20000 sq mtrs. In addition to this, even the area of original plots which are proposed to be amalgamated viz., Plot Nos. 1 to 7 was each less than 4000 sq. mtrs. You have proposed to amalgamate the said plot Nos. 1 to 7 for better development and further subdivide into sub plot A, B, & C. In the present case, even if all the existing plots are amalgamated and a composite redevelopment is carried out, total area of such amalgamated plot will be approximately 12,641 sq. meters and therefore both on account of this fact and on account of the fact that individual areas of each existing plot is less than 4000 sq. mtrs., no amenity space is required to be reserved under Regulation 14(A) of the DCPR, 2034.



(iv) With respect to query no. 3 relating to true and correct interpretation of the words "**original plot**" appearing in note (iii) of Regulation 14(A), the said words mean the original plot as on 18/05/2018 i.e. the date on which DCPR 2034 was sanctioned by Government. In the present case the term "original plot" will mean Plot Nos. 1 to 7 individually and separately with definite boundaries prior to coming in to the force of sanctioned DCPR 2034. Therefore provisions of Regulation 14(A) will apply only in cases of subdivision of land of individual owner/s holding the land above 4000 sq. mtrs. on the date of coming into force of the sanctioned DCPR 2034.

(v) As far as the question regarding Inclusive Housing (IH) and applicability of Regulation No. 15 of the DCPR 2034 which are reproduced above is concerned, in my opinion, it will be necessary to carefully analyze the said DCR 15 which provides for Inclusive Housing. The said DCR provides that in case of any residential development, "*Partially or fully consisting of sub division / amalgamation / layout or single plot of land having gross plot area admeasuring 4000 sq. mtr. or more*" the provision of DCR 15(IH) shall be made applicable. The owner/developer is given two options. Under DCR 15(1) tenements of Economically Weaker Section (EWS) / Low Income Group (LIG) of minimum 20% of the plot area (excluding the area under Road set back



/ D.P. Road/ existing amenity / reservation) is to handed over to MCGM free of cost. The FSI of the plot handed over to MCGM will be allowed to be utilized on the remaining plot. Sub clauses (b) to (d) of DCR 15(1) deal with the procedure for such handing over and use of FSI / TDR, etc. The second option is provided in DCR 15(2), which provides that EWS/LIG Housing in the form of tenements of size ranging between carpet area as decided by the Housing Department, Government of Maharashtra, from time to time, shall be constructed at least to the extent of 20% of the Zonal (basic) FSI. Such housing shall preferably be in separate wing / building. It is provided that the built up area (BUA) of the IH tenements constructed under the scheme shall not be counted towards FSI and such built up area shall be allowed over and above the permissible BUA. The other provisions of 15(2) are about the procedure regarding the grant of location of the IH tenements, FSI calculations i.e. 20% of the Zonal (basic), etc. with which we are not concerned. There are 3 notes appended to DCR 15(2) followed by proviso. In my opinion, the said proviso is not a proviso either to the Sub Regulation 2 or the Notes under DCR 15(2) or Note 3 in DCR 15(2), but the proviso is essentially a proviso for the entire DCR 15. Even if it assumed that the said Proviso is a proviso only to DCR 15(2); even then, there is no difficulty since the Owner / Developer even otherwise have

liberty to choose either option viz., DCR 15(1) to handover 20% area to MCGM or 15(2) to construct IH tenements. Hence, if 2nd option under DCR 15(2) is chosen, the Proviso will apply in any case. It is now necessary to carefully consider what is the said proviso, which is already quoted hereinabove. The proviso excludes all the applicability of DCR 15 and an obligation to construct IH tenements in the redevelopment project of any Co-operative Housing Society, etc., is waived, in which the carpet area of all existing individual residential tenements does not exceed 80 sq. mtrs. Hence, in my opinion, since area of each individual plot/s being plot No. 2 after amalgamation and subdivision to be marked as sub plot No.B and plot Nos. 3 and 4 to be marked as sub plot-C in the proposed amalgamation and sub division, would admeasure less than 4000 sq. m. prior to and even after the sanction of DCPR 2034, the provisions of Regulation No. 15 are not applicable in respect of the said plot Nos. 2 and 3 + 4 at all.

(vi) Now in so far as the sub plot No. A proposed to be formed after amalgamating the original plot Nos. 1 and 5 to 7 are concerned, the area would be 8114.40 sq. mtrs. and certainly exceeds 4000 sq. mtrs. I am not aware as to whether the 4 societies owning the plot Nos. 1, 5, 6 and 7 wish to retain their juristic identity as a separate co-operative housing societies or wish to get themselves amalgamated into one



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society u/s. 17 of Maharashtra Cooperative Societies Act, 1960. However, in the present case, since it is stated that areas of existing tenements in buildings of all the four societies coming together for redevelopment is less than 80 sq. mtrs. in each building then, as provided in the proviso to the Reg. No. 15 the said Provision of DCPR - 2034, Regulation No. 15 will not be applicable and there would be no need to provide for any Inclusive Housing (IH) tenements.

8. I have nothing more to add. However, I suggest that while submitting the proposal for amalgamation and subdivision into 3 sub plots A, B and C as referred above, care should be taken by the architect to submit a detailed explanatory note as to why DCR 14 and 15 of DCPR 2034 are not attracted.

Yours Sincerely,



Girish Godbole
Advocate High Court

