

CHE/DP/8

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MUNICIPAL CORPORATION OF GREATER MUMBAI

No. CHE/33T/DPB/PWS-24-22/06/11

Sub: Policy guidelines for grant of 25% addl. FSI under provisions of Regulation 33(1) amended up to date.

The Regulation 33(1) of DCR 1991 provides for grant of FSI benefit in lieu of surrender of land affected by proposed DP roads / new roads, as well as land affected by road setbacks handed over to MCGM, free of cost and free from all encumbrances.

The State Government in U.D. Department has recently sanctioned the modified Regulation No. 33(1) of D.C.R. 1991 on 17.06.2010. The modified provision is reproduced below:

"The Commissioner may permit additional FSI on 100 percent of the area required for road widening or for construction of new roads proposed under the development plan or those proposed under the Mumbai Municipal Corporation Act, 1888, excluding areas of internal means of access, if the owner (including the lessee) of such land surrenders such land for road widening or new road construction without claiming any compensation in lieu thereof and hands over the same to the Corporation free of encumbrances and after the owner or lessee has leveled the land to the surrounding ground level and after he has constructed a 1.5 mt. high compound wall leaving the setback area (or at a height stipulated by the Commissioner) with a gate at the cost of the owner, and to the satisfaction of the Commissioner.

When an owner or lessee or Power of Attorney Holder / Authority Holder also develops or constructs the road on the surrendered land at his cost subject to such stipulations as may be prescribed by the Commissioner to his satisfaction and hands over the said developed/constructed road to the Commissioner free of cost, he may be granted by the Commissioner additional FSI equal to 25% of the area of this construction / development done by him. (This modification will not apply in cases where road FSI is utilized and also full occupation certificate is granted.)

Such 100% FSI on land so surrendered to the Corporation and/or FSI towards road area constructed will be utilizable on the remainder of the land upto a limit of 40% in respect of plots situated in Mumbai City and 80% in respect of plots situated in the suburbs and extended suburbs of the area of the plot remaining after such surrender and the balance FSI remaining thereafter shall be allowed to be utilized as a Development Right in accordance with regulations governing Transfer of Development Rights (TDRs) in Appendix VII or the full FSI of land surrendered to the Corporation may be allowed to be used as Development Right in accordance with the Regulations governing Transfer of Development Rights (TDRs) in Appendix VII. Thereafter the road land shall be transferred in the City survey records in the name of the Corporation and shall vest in becoming part of public street as defined in sub-section (3) of section 288 of the Mumbai Municipal Corporation Act, 1888."

The MCGM has been receiving requests from owners/ developers etc for grant of Add FSI to the extent of 25% of the area of road/ setback land in lieu of construction of the road/ setback

Some of the issues that have been raised regarding the applicability of this modified regulatory provisions need to be suitably clarified so that proposals can be processed by finalising the procedure in this respect. The main issues are enumerated below:

1) Applicability of Regulation in large layout on prorata basis:

The applicability of the regulatory provision would depend on whether the Road FSI is utilised or not; and also whether the occupation is granted or otherwise. In the case of large layouts, it is not possible to distribute the road FSI utilisation on the basis of individual buildings approved in the layout. As regards granting of occupation certificate by Building proposal section, the same is granted on the basis of Building File and its No. In case of large layouts, it would therefore be very difficult to correlate the utilisation of the extent of road FSI in each building file and the buildings for which occupation is not yet issued.

The Applicability of the regulation in large layouts where developed road is already handed over in the past and benefit of road is claimed and occupation is granted to some of the buildings need to be clearly spelt. In such cases it is not clear whether 25% addl FSI of the entire road area handed over can be granted or whether 25% addl FSI of the road area can be claimed only in the proportion of built up area of those buildings for which occupation certificate is not yet granted.

For this purpose the term 'and also' in the sentence "This modification will not apply in cases where road FSI is utilized and also full occupation certificate is granted" suggests that the utilisation of road FSI and grant of full occupation are to be considered together while scrutinising the applicability of the regulation. Since occupation certificate is granted to individual buildings by considering a building as a unit having a specific file number then the term full occupation certificate refers to status of the individual building based on the relevant building file rather than entire layout. In such cases, the advantage of 25% road FSI for handing over constructed road would have to be examined on prorata basis.

In such case the advantage may be considered in the proportion as under:

(BUA in sqmts of the buildings for which full OC is granted from that subdivided pockets on which road FSI is consumed as per approved layout / building plans prior to 17/6/10)

Road FSI utilisation

Ratio "R" =

(Full potential of sub divided plot (inclusive of admissible TDR as on 17/6/2010) of the particular subdivided plot in which road FSI is consumed.



Proportionate Road FSI of 25% allowable for distribution in such layout will be as under:

$$PR (25\% \text{ addl road FSI}) = (1-R) \times (\text{area of road proposed to be consumed in that subdivided plot}) \times 0.25$$

It is needless to emphasise that this proportionate 25% road FSI shall be available for utilisation on the remainder land within the layout as per the limits stipulated in the provisions of modified Reg 33(1) and can be utilised in any of the subdivided pockets irrespective of the status of utilisation of captive Road FSI, subject to adhering the maximum cap as specified in the regulation, on subdivided plots.

The EEBP shall verify the status of occupation certificate of buildings in each layout/subdivided plots and ascertain the proportionate road FSI availability based on the above guidelines in such large layouts and grant 25% addl FSI in such layout with the sanction of Ch.E. D.P.

II) C.C. for 25% Addl FSI to be allowed only after completion of the road in all respects:

The Commencement Certificate for addl FSI to the extent of 25% shall be granted only after the owner complies with the following:

- a. The road/ setback area shall be constructed by the owner/ developer as per the Municipal specifications and handed over to MCGM free of cost and free from all encumbrances. The completion certificate from the roads deptt shall be furnished and conditions if any shall be complied with.
- b. Where the width of the road is more than 60 ft., concrete road needs to be constructed. The cement concrete road should not be constructed in piecemeal manner, and hence the same will be undertaken by M.C.G.M. in one stretch as and when required. In such cases, the Owner/Developer has to construct the Road in Asphalt and agree to pay the difference in cost of construction of Asphalt and Concrete as per the Road Department schedule of rates and also agree to comply with the conditions laid down herein, then, in such cases, he would be eligible to avail such 25% Additional F.S.I./T.D.R. in lieu of constructed amenity.
- c. The completion certificate from the S.W.D. shall be furnished and conditions if any shall be complied with.
- d. The remarks of the traffic deptt in respect of payment of pro-rata cost of streetlight shall be furnished and conditions if any shall be complied with.

- e. The pro-rata charges for laying of sewer lines and water lines as per the remarks obtained from the respective Departments shall be paid and copy of the receipts furnished
- f. EEBP shall ascertain the compliance of all the above and thereafter grant the C.C. to add 25% FSI after recording all the facts with the sanction of zonal Dy Ch.E. BP

III) Grant of 25% addl FSI to be allowed only in cases where the road is constructed by owner/ developer payment of prorata charges in lieu of constructing the road not to be held eligible for additional 25% FSI:

The regulation allows for such addl 25% FSI only if the construction of the amenity is undertaken by the owner/ developer.

In view of the above, the owner / developer will be allowed to claim the benefit of 25% addl FSI in lieu of construction of the road only in case where the road/^{SWD} constructed by the owner/ developer provided all the components stated in para 2 is complied with.

In case where the owner/ developer has paid prorata cost of construction of road/SWD etc, as per the present policy in force then the owner/developer shall not be entitled to claim 25% additional FSI.

However in all such cases, the owner / developer shall comply with the condition of levelling/ filling alongwith construction of compound wall and gate as stipulated in Regulation 33(1), to the satisfaction of the Municipal commissioner.

IV) Cases where only setback land or D.P.Road land is proposed to be surrendered:

(There are two categories under which these can be classified)

(a) Cases where D.P.Road land is proposed to be surrendered:

(i) As far as possible the land fully under D.P.road shall be got developed through the owner / developer in lieu of FSI and 25% additional FSI and E.E.B.P. shall ensure that the building proposal is processed accordingly by complying with the requirement as in this policy.

(ii) In certain cases due to site condition, especially in case where for any D.P.road stretch, the link is not established at the upstream or down stream level of the D.P.road land or if M.C.G.M. has proposed to construct the D.P.road at a later date, the land under the D.P.road belonging to the owner/developer is only taken over in lieu of FSI of the land. The owner does not then become entitled to claim 25% addl. FSI.

(iii) It needs to be mentioned here that the amended regulation 33(1) provides an option to the owner/ developer in respect of handing over of built up area of road. It is therefore necessary that in case the owner/developer does not desire to avail the additional benefit of 25% of the road FSI in lieu of constructed amenity, the owner/ developer shall specifically indicate the same in their proposal.

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(iv) In the cases indicated at sr.no. (ii) and (iii) above, as provided in the regulation, the owner or lessee shall level the land to the surrounding ground level and construct a 1.5 mt. high compound wall leaving the setback area (or at a height stipulated by the Commissioner) with a gate at the cost of the owner to the satisfaction of the Commissioner.

(v) EEBP shall on receipt of proposal as ^{indicated} amended under (ii) or (iii) inform the DP deptt, Roads deptt and the SWD deptt and respective Ward office regarding the proposal so that as and when possession of the levelled land is taken over by DP deptt and handed over to the respective Ward, the roads deptt and the SWD deptt shall initiate action for the construction of the road and SWD on the land so surrendered to MCGM expeditiously. The Ward office shall protect the land till the road is constructed by MCGM.

(b) Cases where only setback land falling under regular line of the existing road is proposed to be surrendered.

i) As far as possible, in case where owner/ developer is developing a plot by claiming the benefit of FSI ^{in lieu} of surrendering of setback land falling in the R.L. of existing road, then effort shall be made to ensure that the owner / developer also develops the setback land and merges the same to the existing road in lieu of 25% addl. FSI benefit. E.E.B.P. shall ensure that the building proposed is processed accordingly by complying with the requirements of this policy circular. This is primarily intended ^{because} that setback strips which are surrendered in-promerger-read are vulnerable to encroachment unless taken over in a developed state.

ii) However, the amended regulation do provide an option to the owner / developer to hand over only land under setback after levelling the same & construction of compound wall etc. If under unavoidable circumstances, the owner / developer desires to ^{exercise} execute this option then the same may be considered.

iii) In such cases as provided in the regulation, the owner or lessee shall level the land to the surrounding ground level and construct a 1.5 mt. high compound wall leaving the setback area (or at a height stipulated by the Commissioner) with a gate at the cost of the owner to the satisfaction of the Commissioner.

iv) EEBP shall on receipt of such a proposal inform the DP deptt, Roads deptt and the SWD deptt and respective Ward office regarding the proposal so that as and when possession of the levelled land is taken over by DP deptt and handed over to the respective Ward, the roads deptt and the SWD deptt shall initiate action for the construction of the road and SWD on the land so surrendered to MCGM expeditiously. The Ward office shall protect the land till the road is constructed by MCGM.

v) In both the mentioned cases mentioned in Sr.no ^(iv) (a) and ^(iv) (b) EEBP shall not insist on recovery of any pro-rata charges from the owner/ developer towards construction of Road, S.W.D., streetlight, ^{laying} of sewer line and water line etc.

vi) The E.E.(D.P.)/The Asstt. Commissioner of respective Ward, shall take over the D.P. road land in Category (a) ^{any} in Category (b) setback land without insisting upon the

construction of road and without insisting on Completion Certificates as mentioned in para 2 as the owner / developer is only eligible for FSI of the setback land and is not interested in claiming 25% addl FSI in lieu of constructed amenity.
vii) EEBP shall verify whether the possession receipt and PR card are in MCGM's name before granting CC for equivalent FSI of the road setback.

V) Addl FSI not to be granted if road /setback land / d.P.Roads/ls constructed by MCGM:

In cases where the road / setback is already constructed by MCGM along with SWD and street lights, the owner is not eligible to claim 25% addl FSI even if the land affected by road is formally handed over to MCGM by the owner at a later date in lieu of FSI benefit. The owner does not have to pay the expenditure incurred by MCGM. In such cases, E.E.(B.P.) shall not insist on recovery of Pro-rata charges from the owner/ developer towards construction of road, SWD, Street lights, laying of sewer lines and water mains while granting FSI benefit for such lands.

The Asslt. Commissioner of respective ward/ D.P. department shall formally take over the land under setback land without insisting on pro-rata charges of the construction of the road, SWD, Street light etc.

A ~~possession~~ undertaking shall also be obtained from the owner/ developer stating that they shall not at any point of time claim additional 25% FSI in lieu of construction of the road.

7) All the staff working under BP/ DP deptt are requested to take note of the aforesaid policy guideline and take necessary action accordingly while processing the proposals received for grant of additional 25% road FSI in lieu of constructed amenity under Regulation 33(1) of DCR 1991

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M.C.

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- Ch.E.D.P.
- DY.Ch.E.D.P.(I/II)
- DY.Ch.E.B.P.(CITY)/ES/WS - I/II / DY.Ch.E.P.P.P.)
- E.E.(P) TO DIR (ES&P)/E.E.(P) TO Ch.E.D.P. / O.S.D. to M.C.
- E.E.D.P. (CITY)/E.E.D.P.(WS) (P&R) (H&K) /E.E.D.P.(ES)
- E.E.B.P.(CITY)(I)(II)(III)/E.E.B.P. (E.S.) I/II / E.E.B.P.
- E.E.B.P. (W.S.) (H&K/E)(K/W&P)(R)/E.E.T.P.(VARIATION)
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