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BRIHANMUMBAI MUNICIPAL CORPORATION

No. AC / Estates / / A.E. (I) – II dtd.

Circular No...../2023-24 dtd.

Sub:- Revised guidelines for allowing Additional BUA permissible under Reg. 33(12)(B) of DCPR-2034.

- Ref.:-**
- 1) M.S.A. (I.C. & R) Act, 1971 provisions.
 - 2) Policy guidelines for removal of Bottleneck circular u/no. Ch.E./D.P./19922/ES dtd.20.03.2017.
 - 3) Earlier guidelines circular No. 14/2020-21 dtd. 18/03/2021 for Reg. 33(12)(B) of DCPR-2034.
 - 4) Circular no 23/2022-23 issued u/no. AC / Estates / 07775 / A.E (I)-III dtd. 18.08.2022
 - 5) Circular no. CHE/DP/119/Gen dtd. 06/05/2020
 - 6) MGC / A / 1726 dt.28.04.2023.

PREFACE

The Government of Maharashtra accorded sanction to the Development Control and Promotion Regulation – 2034 for Greater Mumbai on 8th May, 2018 excluding Excluded Part published as EP-1 to EP – 168. Subsequently, a Corrigendum and Addendum was issued on 29th June, 2018 in respect of corrections and additions to the Excluded part. The Excluded Part was sanctioned by State Government vide notification dated 21st Sept. 2018. Subsequently, a corrigendum was issued by State Government on 12th Nov, 2018 in respect of errors and mistakes in the said notification and since then the DCPR 2034 is in force.

I. Applicable DCPR-2034 Provisions in respect of Reg.33(12)(B):

A. Provisions in Reg. 33(12)(B) of DCPR-2034 for tolerated/protected structures

A special provision is made under Reg.33(12)(B) for “Removal and re-accommodation of tolerated / protected structures falling in the alignment of existing road or widening of existing road for which road line has been prescribed or DP Road and re-accommodation of these tolerated / protected structures in the same administrative ward has been proposed for the expeditious removal of bottlenecks and FSI on plot/layout shall be allowed to be exceeded upto 4.00”.

B. Provision in Reg.30(A), Note 12

Provision in Reg. 30(A), Note 12 (after table 12) reads as,
“The Development of plots under combination of various regulations shall be permissible, but the maximum permissible FSI on plot shall not exceed the permissible FSI limit prescribed in respective regulations”.

Based on above provisions of sanctioned DCPR-2034, combination of scheme under Reg.33(12)(B) with any other scheme, with permissible FSI upto 4.00 on net plot area can be allowed.

II. Development under Reg. 33(12)(B) :

As per DCPR-2034, provisions given in para (I) above, development under various regulations viz. Regn. 30, 33(6), 33(7), 33(7)(A), 33(7)(B), 33(24) etc. on plots including that of Municipal Lease Hold plots and Municipal Tenanted Plots can be proposed in combination with Reg. 33(12)(B) and same shall be considered subject to following terms & conditions.

A) General conditions

- i)** The eligibility of affected tolerated structures / protected structures and non-cessed structures falling in the road alignment shall be decided by the Assistant Commissioner of the concerned ward. In case of structure/s is/are cessed structure/s affected by road widening / DP Road, eligibility certificate and NOC from MHADA shall be insisted.
- ii)** Identification of tolerated / protected structures falling in the alignment of existing road, widening of existing road under provisions of MMC Act, 1888 or D.P. road proposed to be rehabilitated under Reg. 33(12)(B), shall be carried out in a manner prescribed below:

a) Priority of road to be undertaken for widening to be prepared

by keeping focus on following issues:-

- i.** Importance of the roads considering traffic conditions in the ward.
- ii.** Status and total no. of existing structure i.e. Tolerated / Protected on the entire stretch of road.
- iii.** Feasibility of redevelopment of built up setback under any other provision of DCPR 2034.
- iv.** List of roads in Comprehensive Mobility Plan prepared by Ch.E. (R&T).
- v.** Widening of Gaothan roads.
- vi.** Collection of relevant D.P. plans, R.L. plans, Tikka Sheet, demarcation plan and Total Station Survey for all roads within their jurisdiction to identify total no. of structure affected.
- vii.** Collect details of ongoing/proposed Slum or Private Redevelopment on the entire stretch of road.
- viii.** The Major portion of structures affected in widening of road which is passing through the slum, it is observed that, large number of slum road are proposed to be widen as per D.P. plan or by prescribing R.L. to the existing roads. As these roads are expected to be developed under Slum Rehabilitation Scheme, the roads passing through the dense slum should not be considered in 'Priority' list.

- b)** Assistant Commissioner of respective ward shall prepare a priority list of (DP roads / RL roads) which are required to be widened, along with list of identified tolerated / protected / non-cessed / cessed structures with name of occupant falling in the road portion as per details mentioned in sr. no. (a) above.

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While preparing the priority list of roads / junctions to be cleared of encroachment / encumbrances, necessity of the same from public point of view shall be considered and approval of Zonal DMC / Jt.MC for this priority list alongwith name of occupant of structures on each road as per format "A-1" and "A-2" shall be obtained. There after Asstt. Commissioner of concerned ward will issue Annexure-II from this priority list only within period of one month. This priority list of road along with name of occupant of affected structure as per format "A-1" and "A-2" and Annexure-II shall be given wide publicity and same shall be displayed on BMC portal and Ward notice board. Assistant Commissioner in coordination with Building Proposal staff to arrange joint meeting with developer of ongoing / proposed development in respective ward for their active participation towards rehabilitation of affected structure from priority list of road to be widened.

Assistant Commissioner of the concerned ward shall ensure that entire stretch of encroachment / encumbrances shall be cleared by shifting and removal of the existing structures as per the eligibility criteria under provisions of regulation and road shall be constructed on site immediately by Asstt. Commissioner of ward.

- c) At a time, only 3 roads from sequence of priority list to be undertaken for widening simultaneously until then no other road should be undertaken for widening / clearing of bottleneck. Out of this 3 roads, if widening of entire stretch of one road is completed then one more road in priority list to be added and at a time it should not be more than 03 roads taken for widening. If there are tolerated and protected structures on same road then both structures to be rehabilitate simultaneously so that entire bottleneck on that road gets cleared completely, however tolerated structures shall be removed first.
- d) Eligible structures not shifted, rehabilitated or accommodated till 01.09.2018 i.e. the date of sanction of DCPR-2034 and still existing on particular road site shall only be considered.
- e) Residential structures existing prior to 17.04.1964 and non-residential structures existing prior to 01.04.1962, shall be treated as tolerated structures. Such structures shall have been reflected in the true extract of Revenue record or to in the Assessment records prior to said datum line. As per Assessment record, if structure is to be declared as tolerated structure, the same should be existing in present form and prior to datum line.
- f) The protected structures as defined in Chapter 1B of M.S.A. (I.C.&R) Act,1971 and order issued there under i.e. at present protected structures existing prior to 01/1/2000 or such other reference date notified by the Govt. from time to time, shall be certified by

Asstt. Commissioner of concerned ward being competent authority under said Act. Eligibility of protected structures for PAP's rehabilitate under Reg. 33(12)(B) is to be as per policy guidelines for removal of Bottlenecks circular u/no. Ch.E. / DP / 19922 / ES dtd. 20/03/2017 shall be followed in toto and amendment circular if any thereafter.

- g)** The provisions of Reg. (33)(12)(B) shall not be applicable to structures where development of plot, where road is affected by such tolerated / protected structures are situated, are proposed to be undertaken or is in progress.
- h)** The Annexure-II of eligible PAP's rehabilitated under Reg. 33(12)(B) to be prepared on RE module (Online PAP system-ZREPAP) as per circular no 23/2022-23 issued u/no. AC/Estates/07775/A.E (I)-III dtd.18.08.2022. Annexure-II to be prepared/issued online system only by A.C. of Concern ward. The details of the same shall be maintained by Asstt. Commissioner of Concerned ward and copy of the same shall be forwarded to Concerned Dy. Ch. Eng. (BP) who should also keep the record of the same. EE (B.P) shall ensure that Annexure - II submitted by A.C. of Concern ward should be from online RE Module and offline Annexure - II shall not be considered. Asstt. Commissioner of ward shall furnish the road set back handing over data to D.P. Department for GIS mapping and concerned E.E. (DP) to ensure compliance for the same.
- i)** Formal NOC & Final NOC along with Annexure-II for eligible PAP's rehabilitated under Reg. 33(12)(B) to be prepared / issued through online RE module by A.C. of concerned Ward and offline NOC shall not be considered by E.E.(B.P).
- j)** Affected structures to be rehabilitated shall not be part of any redevelopment scheme viz 33(10), 33(12)(A) or under any other regulation of DCPR-2034 so as to avoid dual benefit.
- k)** It shall be responsibility of the scheme owner / developer who wishes to seek benefit of Reg. 33(12)(B) to execute tri party registered agreement with the owner of the plot (in case of BMC plot / road, Asst. Commissioner of concerned ward) where such tolerated / protected structures are situated and with the occupiers of such structures in respect of removal of structures falling on road before grant of Commencement Certificate to this component and copy of the same shall be submitted to BMC i.e. to Executive Engineer (Building Proposal) concerned for information and record. Asst. Commissioner of concerned ward shall preserve this record suitably.
- l)** The owner / developer will have to submit advance possession receipt to Executive Engineer (Building Proposal) and Asstt. Commissioner of Concerned ward for handing over of such plot affected by Road line / D.P. Road having built up structures to BMC. The advance possession receipt alongwith formal NOC issued by

Assistant Commissioner of concerned ward shall be submitted before approval of plan by E.E. (BP). The final possession receipt after removal of affected structure along with final NOC of Asstt. Commissioner of concerned ward shall be submitted before C.C. of Sale component of incentive built up area under Reg. 33(12)(B) to be insured by EE (BP).

- m)** The Concerned Executive Engineer, Building Proposal shall ensure that rehab tenement of tolerated / protected structure is to be earmarked on the approved plan.
- n)** The protected structures failing in the alignment of Road/D.P. Road as notified by Govt. time to time and certified by competent authority shall eligible for rehabilitation carpet area of 27.88 Sq.mtr in case of Residential/ Residential cum Commercial occupants and in case of Commercial occupants, existing area or 20.90 Sq.mtr, whichever is less shall be provided as per clause (o) of Reg. 33(12)(B) of DCPR 2034.
- o)** All the provisions of Reg. 33(12)(B) of DCPR-2034 such as Rehab carpet area, Tripartite registered agreement, etc. shall be strictly adhered to. The name of the occupant of structures as per formal NOC issued by Asstt. Commissioner of concerned ward and in tripartite registered agreement (between owner of plot, Developer & occupant of Structure) & in Permanent Alternate Accommodation registered agreement (Between developer and occupant of structure) should be same which shall be ensured by EE (BP) / AC of the Concerned ward before granting OC of Rehab component under Reg. 33 (12) (B). The rehab flat number with carpet area allotted to occupant of the structure shall be mentioned in Tripartite registered agreement / Permanent Alternate Accommodation registered agreement.
- p)** The occupants so rehabilitated as per regulation 33(12) (B) of DCPR-2034 shall become the member of Co-Operative Housing Society on plot under redevelopment/development & there will be no further liability with BMC. Accordingly the clause shall be included in the tripartite agreement suitably.
- q)** That detail inventory of Built up set back with name of occupant of affected structures of all road included in priority list of road shall be submitted in format attached at Appendix "A-1" and "A-2".
- r)** The priority list shall be given wide publicity, it is very important to make the occupant of the enlisted structures aware about the proposed road widening plan as per provision of Reg. 33(12)(B) of

DCPR 2034. It is also required to sensitize such occupiers about the opportunity of their rehabilitation within the same ward. The 'draft letter' is annexed as Appendix- 'B'.

- s) A monthly report shall be submitted by AC/DMC to zonal AMC's giving details about actual implementation of the scheme in format attached as Appendix - 'C'.
- t) Model Draft of the tripartite agreement for Rehab tenements allotment under Reg. 33(12)(B) shall be got prepared / verified from Law Officer.

B) Additional conditions for Municipal Lease Hold / Tenanted plots

- i) In case of lease hold plots NOC of Estate dept. from revenue point of view towards recovery of One Time Premium for utilisation of additional Built up Area under Reg. 33(12) (B) of DCPR -2034 shall be obtained before granting commencement certificate by EE(BP).
- ii) In case of development of Municipal Lease Hold plots / Tenanted Plots under combination of Reg. 33(7), 33(7)(A), 33(24), along with Reg. 33(12) (B) of DCPR-2034, the permissible FSI on plot as per Reg. 33(7), 33(7)(A), 33(24) etc. shall be consumed first and there after it shall be allowed to exceed the permissible FSI limit to the extent of 4.0 applicable for regulation 33(12) (B) of DCPR-2034 on net plot area to be ensured by EE (B.P.) of Concerned ward. In case of redevelopment of Municipal tenanted properties, Provisional NOC of Estate department for allowing Additional Built Up area under regulation 33(12) (B) shall be obtained before approval of plan by EE (BP) & NOC of Estate dept. from revenue point of view towards recovery of One Time Premium shall be obtained before granting commencement certificate by EE(BP).
- iii) In cases of Municipal Leased hold plots, this additional FSI under regulation 33(12)(B) (Rehab + Incentive) shall be considered at par with additional FSI like Premium FSI, TDR, Fungible Compensatory Area and same policy for recovery of One Time Premium will be applicable i.e. premium at the rate of 5% (for Residential use) and 10% for (non-residential use) of Stamp Duty Ready Reckoner rate of developed land on date of actual payment.
- iv) In cases of Redevelopment of Municipal tenanted plots being land owning authority, the additional FSI under Reg. 33(12)(B), (Rehab + Incentive) shall be considered by recovering of one time premium as per policy to be prepared & approved by Improvement Committee & Corporation. However till the policy to be approved, OTP for additional FSI under Reg. 33(12)(B) for Municipal Tenanted Plots to be recovered at par with leased hold plots as per sr. No. iii) above and difference of OTP if any will be recovered before granting NOC to full

OC for sale component as per policy approved by Corporation and necessary registered undertaking to that effect will be insisted from developer before granting CC.

- v) Lease Rent at Re.1/- per sq.mt on entire additional BUA of Rehab plus Incentive Sale including fungible FSI, if any, as per prevailing policy, amended from time to time will be applicable in both the cases of Municipal tenanted plot& Leased plots.

This revised circular will be effective from date of approval of Hon'ble M.C. This circular will supersede other circulars in respect of Reg. 33(12)(B) issued earlier.

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