

FUNGIBLE COMPENSATORY FSI – A STEP TOWARDS TRANSPARENCY

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The Government of Maharashtra issued a Notification on 6 January 2012 bearing No. MH/MR/South-346/2011-13 ("**said Notification**") to amend certain provisions of the Development Control Regulations for Greater Bombay, 1991 ("**DCR**"), which regulates the building activity and developmental work in the areas falling under the jurisdiction of the Municipal Corporation of Greater Mumbai ("**MCGM**").

The Government of Maharashtra vide the said Notification enables Builders/ Developers to avail of compensatory Floor Space Index ("**FSI**") (also referred to as Fungible Compensatory FSI) by paying a certain premium to MCGM. The aim and object of the said Notification is to modify and amend certain provisions of the DCR to bring about greater transparency, to counter malpractices indulged in by certain scrupulous Builders/ Developers and boost developmental activities in the Island city and Suburbs of Mumbai.

CONCEPT OF FUNGIBLE COMPENSATORY FSI

The Floor Space Index is defined in the DCR as "the quotient of the ratio of the combined gross floor area of all floors, excepting certain areas specifically exempted under the DCR, to the total area of the plot, viz.:

$$\text{FSI} = \frac{\text{Total covered area on all floors}}{\text{Plot area}}$$

Simply put, FSI is the ratio that determines how much can be built on a plot. It is clear from the above definition of FSI that certain areas are specifically excluded from the computation of FSI, which means these are "Free of FSI" areas.

Prior to the said Notification, areas covered by balconies, flower beds, individual terraces, ducts, voids, niches, refuge area, new or additional lifts, staircases, swimming pools, fitness centres in Cooperative Housing Societies, sun decks, clubhouse, ornamental projections etc., were not included while computing FSI. Thus, these areas were known as "Free of FSI".

It is pertinent to note that the carpet area of a flat is the net useable area or the habitable area of the flat. In other words, the carpet area is the area of a flat, which can be covered by carpeting from wall to wall. The Built Up area of a flat is the gross area of the flat i.e. the carpet area together with the area covered by

wall thickness and ducts. The Super Built Up area, as per the current trend, is the saleable area of a flat, which includes the Carpet area, Built Up area and common spaces/ amenities and ornamental features. Thus, Super Built Up areas also includes areas that are non habitable for consumers.

Although certain areas as mentioned above were "Free of FSI", the same were included in computing area of a flat by Builders/ Developers and sold to the consumers at a market price under the garb of Super Built Up area or Useable area or Saleable area of a flat, or by whatever name given. These areas, under the name of Super Built Up area or Useable area or Saleable area, were included in the area of the flat while selling the same to the consumer.

Section 4 of the Maharashtra Ownership of Flats Act, 1963 ("**MOFA**") makes it mandatory for Builders/ Developers to mention the carpet area of a flat in any agreement of sale to be executed with prospective flat purchasers.

Hence in an attempt to put a final halt against these practices, the said Notification provides that these areas shall no longer be exempted from the computation of FSI and shall no longer be available as "Free of FSI" areas.

In order to compensate for the loss of "Free of FSI" areas, Builders/Developers may now avail of Fungible Compensatory FSI, which may be used like regular FSI. Fungible FSI is made available to Builders/Developers to the extent of 35% for Residential projects and 20% for Industrial and Commercial projects on payment of premium. The premium to be paid by Builders/ Developers is calculated at the rate of 60% for Residential projects, 80% for Industrial projects and 100% for Commercial projects at the prevailing Ready Reckoner Rates ("**RR Rates**").

Thus, the said Notification is a step towards curtailing malpractices propagated by Builders/ Developers by envisaging a compact plan where all areas are included for the computation of FSI and a cap of 35% is fixed (in case of residential projects) so that there is no room for the Builders /Developers to manipulate the rules by creating excess non-habitable areas and overcharging consumers. Fungible Compensatory FSI may also be used to construct larger dwelling units and/or to construct additional dwelling units. Hence, it may be used in the same manner as regular FSI.

However, it should be noted that projects that are already approved would not be affected by the said Notification issued by the Government of Maharashtra.

It is pertinent to note that there is no clarity as far as the application of Fungible Compensatory FSI is concerned for construction in areas falling under Coastal Regulation Zones ("**CRZ**"). However, MCGM has requested the State Government to pass necessary notification(s)/ guidelines so as to make Fungible Compensatory FSI applicable to CRZ areas also.

PROTECTION PROVIDED IN CASES OF REDEVELOPMENT

In cases of redevelopment of properties, the Fungible Compensatory FSI admissible on the rehabilitation component shall be granted to Builders/ Developers without charging premium. In order to protect the interest of existing tenants/ occupants, the said Notification clearly states that Fungible Compensatory FSI admissible on the rehabilitation component cannot be transferred to the free sale component. Such Fungible Compensatory FSI can only be used to give additional area, over and above the eligible area, to existing tenants/occupants. Thus, in a residential redevelopment project, Builders/

Developers will have to provide an additional 35% i.e. 105 sq ft to the existing tenants/ occupants. This benefits many families in the city where 300 sq ft of space is the minimum area made available by Builders/ Developer in redevelopment projects. Builders/ Developers would be free to use "Transfer of Development Right" (TDR) option in addition to the Fungible Compensatory FSI subject to the relevant permissions and sanctions obtained from MCGM.

Thus, the provisions in the said Notification prevent Builders/ Developers from misusing the Fungible Compensatory FSI availed by them for the rehabilitation component by extracting additional profits to the detriment of existing tenants/ occupants. This will encourage occupants of cessed buildings to opt for redevelopment, hence benefiting a large number of families in the city.

IMPACT:

More Transparency in the system: The "Free of FSI" areas are now included in the computation of FSI, thus bringing in greater transparency. Builders/ Developers will have to pay a premium for availing Fungible Compensatory FSI. This will curb Builders/ Developers from making exorbitant profits at the cost of consumers.

Faster Clearance of Projects: The said Notification will result in faster clearance of plans, approvals and projects. The discretionary powers given to authorities will come to an end and there will be more consistency by providing a level playing field to all Builders/ Developers.

Advantage to consumers: The said Notification will enable consumers to calculate the total area of the flat/ unit sold to them and the exact price they pay for such area.

Conclusion:

The said Notification is a step towards greater transparency and will benefit home buyers as well as provide a level playing field for all Builders/ Developers, which will boost redevelopment and infrastructure projects in a city where shortage of homes and urban development is a growing concern, however, the practical implementation of the said Notification and whether it results in overall development of the city is yet to be seen.

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