

For consideration of Shri Kamal Nath
Hon'ble Minister of Commerce & Industry
Government of India
(On behalf of PHD Chamber of Commerce and Industry)

OFFICE OF UDM

Dy. No. 1231

Date 29/3/12

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MCD 2021 Review
29/3
KCC (uo)

Suggestion for consideration in the Midterm Review of Master Plan - Delhi 2021
(On behalf of PHD Chamber of Commerce and Industry)

Subject : Master Plan Delhi 2021 – Regularisation of Individual Floors in Apartment Buildings / Allowing of Freehold Status for such Floors sold by Builders on a Power of Attorney basis

It is a well recognized fact that hundreds of Apartment Buildings have been built on individual plots developed by DDA in various House Building Co-Operative Societies. Regrettably the Delhi Apartment Act, though passed by Parliament subsequently Gazetted and Notified has not been implemented and Builders have been having a field day constructing Flats and selling them to prospective House Owners on Power of Attorney, more often than not with changes from sanctioned plans and without obtaining valid Completion Certificates etc. Recognising this both the Hon'ble High Court and Supreme Court have therefore ruled that regularization of such Flats should be done by the Municipal Authorities with condonation fees as appropriate taking into account various concessions in FAR and Municipal Bye-Laws announced from time to time prior to and particularly in Master Plan 2021 itself. Based on the aforesaid rulings of the Hon'ble Courts of Justice, MCD did give an opportunity for self regularization vide a Public Notice in August, 2007 (Copy enclosed, marked Enclosure A1). However this did not apply to third floors which were under review by the Supreme Court notwithstanding the fact that third floors were already allowed on 80 foot roads and above.

Subsequently however MCD policy was again changed in January, 2009 adding various invidious conditions which more or less brought regularization to a standstill (Copy enclosed, marked Enclosure A2). More recently, in July 2011 the Chief Engineer MCD came out with a Public Notice giving "Draft Guidelines for Floor wise Sanction/Regularisation" and asked for public comments (Copy enclosed, marked Enclosure A3). The Guidelines are perfectly in order except that they have concluded by saying that individual floors will only be regularized starting from "ground floors upward" which totally negates the intent of the Hon'ble Court's Orders to allow individual floors to be regularized independently of the others. Only building stability should be ensured along with prescribed FAR limits/Bye-Laws subject to condonation to the extent applicable. Such Guidelines for Regularisation of individual Floors/Flats as finally adopted should be included in Master Plan 2021.

Further most importantly in a very large number of cases the Land is still Leasehold and as a corollary of the above Regularisation policy, conversion from Leasehold to Freehold should also be allowed for individual Floors/Flats, as is applicable for DDA built residential flats. This is particularly relevant in view of the Hon'ble High Court of Delhi's recent judgement declaring that Power of Attorney Holdings did not legally confer ownership/clear title status.

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The above suggestion had already been submitted by the PHD Chamber to DDA in response to Public Notice dated 4.10.2011 and was to be considered at the Second Meeting of the Management Action Group "Enforcement & Monitoring" held on 28.12.2011 . However although the subject came up for discussion and Mr.D.K.Kapur on behalf of the PHD Chamber of Commerce And Industry requested clear policy announcements for Regularisation of Individual Floors/Apartments in line with FAR norms already incorporated in the Master Plan, as well as an accepted procedure for conversion of such Floors/Apartments to freehold status . However no decisions in this regard were minuted and a detailed review is absolutely necessary with clear cut norms/procedures accepted by both DDA as well as MCD.



MUNICIPAL CORPORATION OF DELHI

PUBLIC NOTICE

12/8/07

COMPLIANCE BY OWNERS OF GROUND, FIRST AND SECOND FLOORS TO THE PROVISIONS OF MPD-2021

There are a large number of residential plots where floors have been sold to different persons either through registered sale deed or power of attorney. In such cases, it is not always possible to regularize all floors of a building together as all owners of the building may not come forward to regularize. To facilitate regularization, now each individual owner of a floor can apply for regularization on self-assessment basis to MCD.

Now, benefit of excess coverage will be given to individual owner, proportionately to the existing covered area within the permissible building envelope on each floor as per MPD-2021. These modalities will be applicable in respect of owners seeking regularization of ground, first and second floors.

No regularization in respect of third floor and above floors will be permissible presently.

Procedure:

- Applicants are to ensure that following documents are submitted along with application:-
 - Two sets of plan of existing construction of the floor(s) on which flat is/are located, duly signed by owner and registered Architect.
 - Copy of ownership documents self-attested.
 - Structural stability certificate of Structural Engineer.
 - Certificate of registered Architect that total covered area on that particular floor is within the proportionate permissible building envelope as per MPD-2021.
 - An Indemnity Bond to the effect that the Corporation shall be kept harmless in case of any dispute of the title or otherwise.
 - Three sets of photographs taken from different angles.
- Calculate the charges to be paid for Betterment Levy / Additional FAR Charges and Penalty / Compounding Charges / Special Compounding Charges in Self-assessment basis as per DDA Notification dated 20.11.2006 as indicated below:-

Rates in Rs. Per Sq. mtr.

S. No.	Purpose	A & B Colonies	C & D Colonies	E, F & G Colonies in plots of more than 750 Sqm	E, F & G Colonies in plots up to 50 Sqm
1.	New Construction	3500/-	1400/-	700/-	490/-
2.	Regularization of Unauthorised Construction				
(a)	Additional Coverage within sanctioned height	4020/-	1610/-	805/-	564/-
(b)	Additional Coverage above sanctioned but within permissible height (as per 23.7.98)	4375/-	1750/-	875/-	613/-
(c)	Additional Coverage beyond permissible height as per 23.07.1998 but within 15 metres	4900/-	1960/-	980/-	686/-

C. A copy of plan duly stamped for regularization will be handed over to the applicant across the table without any site verification.

However, MCD reserves its right for verification of the correctness of the documents submitted according to construction as existing and for claiming the shortfall in the amount calculated on the basis of self-assessment.

For any further information / clarification, Executive Engineer (Bldg.) of the respective zone or E.E. (Bldg.) HQ at Town Hall can be contacted.

Sd/-

Addl. Commissioner (Engg.)

ISSUED BY DIRECTORATE OF PRESS & INFORMATION, MCD

ENCLOSURE

MUNICIPAL CORPORATION OF DELHI
OFFICE OF THE ADDL COMMISSIONER (ENGG.)
Town Hall, Chandni Chowk, Delhi - 1100 06

ENCLOSURE (2 Pages)

No. 04/ Addl. Com. Engrg. Div.

Dated 19-01-2009

CIRCULAR

This is in supersession of the earlier circular Nos. PSC/CO-172/2006 dated 05.12.2006 issued by the Commissioner, MCD and D/145/SE(Bldg.)HQ/07 dated 21.08.2007 regarding the floor-wise sanctioning of the building plans and floor-wise regularization respectively.

The Single Bench of Hon'ble High Court of Delhi vide its orders dated 23.05.2005 in WPC No. 3280/2004 titled as "Smt. Usha Devi Sharma Vs Commissioner, MCD & Ors." held that since the Bye-laws envisage separate ownership in property of different dwelling units, there is no requirement in the bye-laws that building plan applications ought to be signed by all the co-owners. Further, the views of the Hon'ble High Court of Delhi were confirmed by the Hon'ble Supreme Court of India in SLP(C) CC No. 5679/2005.

In compliance of the above said orders of Hon'ble Supreme Court, the floor-wise sanction was started by MCD as per orders of the Commissioner circulated vide No. PSC/CO-172/2006 dt. 5.12.2006. Subsequently, floor-wise regularization scheme was also introduced vide circular No. D/115/S.E.(B)HQ/2007 dt. 21.08.07. During the course of time, it has been observed that a number of serious ambiguities and peculiar problems are being faced while processing the cases of floor-wise sanctioning as well as regularizing of the properties.

To resolve such problems, it has been decided that the following steps shall be taken in to account for floor-wise sanctioning and regularization of the properties :

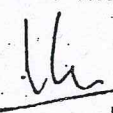
1. Structural Safety Certificate of the existing complete building including ground floor is to be taken into account. Whenever, any Structural Engineer visits the building, a representative of the MCD must be present. However, it would be the responsibility of the Structural Engineer to certify structural stability / safety of the building. An affidavit from the owners and Structural Engineer should be submitted jointly stating that structural safety has been given after visiting the site personally. Date and time of the visit should also mention in the affidavit. Structural design of the existing and proposed building should also be submitted by structural engineer.
2. Notice to the owners of other existing floors in the building should be given for any objection and also to know if there is any dispute or infringement of rights among owners of different floors. If no clearance / objection is not given within 15 days, it would be construed that they have nothing to say in this regard and the Corporation.

can proceed further to take decision with respect to sanctioning / regularization of the building in accordance to law. An affidavit from the applicant stating that there is no court case pending in any of the court with respect to unauthorized construction/ ownership/ misuse or any other violation of the Master Plan or building Bye-laws regarding this property shall also be taken from the owner.

3. Regularization as well as sanction of building plan of the floor should be permitted from the lower floor first i.e. from ground floor and after ground floor the subsequent upper floor.
4. The distribution of permissible FAR by different owners should be as per legal rights of each owner including ownership right over the land.

No self-assessment scheme be valid for regularization of floor.

The application and the other documents submitted for the sanctioning/regularization of the building plan are to be duly signed by the owner of the said building / portion. As far as the ownership is concerned, the signature of the owner of particular floor for which the application is filed is to be taken only and for this purpose (ownership) the signature of the owners of other part of the building may not be insisted upon.


Addl. Commissioner (E-eg.)

Distribution :

1. All Zonal Deputy Commissioners.
2. Engineer-in-Chief.
3. Chief Town Planner.
4. All Zonal Suptdg. Engineers. *Scatt*
5. All Executive Engineers (Bldg.).
6. Director (Press & Information)

Copy for information :

1. Secy. To Commissioner.
2. All Addl. Commissioners.
3. Addl. Commissioner (Slum & JJ)
4. Chief Vigilance Officer.

Copy also for information.

1. Mayor.
2. Deputy Mayor.
3. Chairman, Standing Committee.
4. Leader of the House.
5. Leader of the Opposition.

MUNICIPAL CORPORATION OF DELHI**PUBLIC NOTICE**

Draft guidelines have been prepared for the floor-wise sanction of building plan in residential plots in light of the directions of Hon'ble High Court of Delhi issued in WP(C) No. 3280/2004 in the court case titled as Smt. Usha Devi Sharma Vs. Commissioner MCD & Ors and other similar matters.

The draft guidelines for floor-wise sanction of building plans are published to get suggestion if, any from the general public. The draft guidelines are available on MCD website www.mcdonline.gov.in. Any person having any objection /suggestion with respect to proposed policy/guidelines may file the same in writing giving their name and address with the Chief Engineer (Building), MCD 8th Floor, E-Wing, Civic Centre, J.L.N. Marg, New Delhi-110002 within a period of 30 days from the date of this notice.

CHIEF ENGINEER (BLDG.)
MUNICIPAL CORPORATION OF DELHI

DRAFT GUIDELINES FOR FLOORWISE SANCTION / REGULARIZATION

In suppression of all the previous policies / guidelines issued through Office Orders/ Circulars, the following draft policy shall be adopted for floor-wise sanction of building plan /regularization of existing building(s).

The cases of floor-wise sanction or regularization shall be entertained on case-to-case basis on merit after ensuring compliance of provisions of Building Bye-Laws-1983, Master Plan-2021, Zoning Regulations and statutory clearances / NOC(s) from concerned department(s). The signature of owner(s) of other portion(s) of the building shall not be insisted upon in view of the orders / directions of Hon'ble High Court of Delhi in W.P.(C) No.3280/2004 in the matter of "*Smt. Usha Devi Sharma Vs Commissioner MCD and Anrs*"

The following broader guidelines shall be followed to deal with floor-wise sanction / regularization.

Structural Safety

It shall be mandatory on the part of the applicant seeking floor-wise sanction/ regularization to submit structural safety certificate for the building as a whole in the manner as defined in Building Bye-Laws. An affidavit of structural engineer shall be submitted in this regard stating therein that existing building has been personally inspected by him/her before evaluating the structural safety. In case, any dispute arises relating to sanction of plan on the pretext of structural safety, it would be the responsibility of applicant to submit structural safety certificate from any of the following agencies or from the agency as shall be ordered by the Authority:

1. Indian Institute of Technology (IIT), Delhi
2. Central Building Research Institute (CBRI), Roorkee
3. Rail India Technical and Economic Services Ltd. (RITES), Delhi.
4. National Council for Cement & Building Material, 34 KM Stone, Delhi Mathura Road, Faridabad (Haryana)
5. Indian Institute of Technology (IIT), Roorkee.

The expenses so incurred, in this regard, shall be borne by the applicant. The applicant shall submit an affidavit in this regard.

Distribution of FAR

The distribution of permissible FAR, including ownership right over the land shall be determined as per ownership documents of the applicant.

Impact on internal services like water, electricity, drainage, sewage

Reliance shall be made on rights of services as defined in the ownership documents of the applicant. The ownership documents need to define the right to make construction on a floor and to lay the internal services like water, electricity, drainage, sewage and use of common services etc. If such rights are not defined specifically, the applicant shall take care of existing / proposed services. The applicant shall also indemnify the Corporation in the event of any loss or damage /dispute caused to the existing floors or adjoining building (s) on account of the construction sanctioned by MCD as well as services either in the course of its construction or even thereafter and also against any claim of any concern thereto.

Lift

The proposal of new lift shall not be allowed, as it infringes the right of owner(s) of existing floor(s) in terms of ground coverage / FAR. However, if the existing building has the provision of lift with due sanction, the applicant can seek the extension of this benefit provided the right and privacy of other floor(s) owners should not be infringed.

Parking Provisions

The applicant shall ensure provision of parking as per MPD-2021 within the premises. The proposal with deficient parking provision as per MPD-2021 shall not be allowed to be entertained and such cases shall be liable to be rejected. That in case the applicant intends to avail benefit of additional FAR arising / available as per MPD-2021, the applicant would ensure provision of parking within the premises and submit an undertaking to this effect.

Compliance of the Building Bye-Laws as per MPD-2021

It is mandatory on the part of the applicant / architect to ensure that the proposal is in accordance with the relevant provisions of Building Bye-laws/ MPD-2021. The proposals not adhering to the relevant provisions of Building Bye-laws/ MPD-2021 shall be liable to be rejected.

OTHER MEASURES

The sanction of building plan for additional floor shall be considered only after ensuring that construction of existing floors has been done with due sanction / regularized and the same adheres to the sanction/ regularization plan. In case of deviations against sanctioned plan or if the existing construction has come up without getting the building plan sanctioned, necessary steps shall be initiated to get the non-compoundable deviations rectified / demolished if any,

and regularization of compoundable construction. The same procedure shall be followed in case of regularization of floor(s).

The applicant shall file an undertaking in the shape of an affidavit and also indemnify MCD against any liability in case of any dispute due to sanction of plan.

Regularization as well as sanction of building plan of the floor shall be permitted from the lower floor first i.e. from ground floor onwards. However, no new sanction of lower floor(s) in an existing building shall be allowed under this policy.