Sumedh

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 17993 OF 2023

1. **Prestige Estate Projects Ltd,**
a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Falcon House, No. 1, Main Guard Cross Road, Bangalore 560 001.

2. **Faiz Rezwan,**
An adult Indian inhabitant and citizen, and a shareholder of Petitioner No. 1, having his office at Falcon House, No. 1, Main Guard Cross Road, Bangalore 560 001.

...Petitioners

~ versus ~

1. **The State of Maharashtra,**
Through the Principal Secretary, Urban Development Department, Mantralaya, Mumbai 400 021.

SUMEDH NAMDEO SONAWANE

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2. **The Municipal Corporation of Greater Mumbai,**
A municipal corporation constituted under the provisions of the Mumbai Municipal Corporation Act, 1888, having its headquarters at 5, Mahanagarpalika Road, Fort, Mumbai 400 001.

3. **The Commissioner Municipal Corporation of Greater Mumbai,**
The chief executive officer of Respondent No. 2 having its office at 5, Mahanagarpalika Road, Fort, Mumbai 400 001.

4. **The Chief Engineer (Development Plan),**
Municipal Corporation of Greater Mumbai,
An officer of the Municipal Corporation of Greater Mumbai, having his office at 5, Mahanagar Palika Road, Fort Mumbai, 400001.

...Respondents

Appearances

for the petitioner **Dr Milind Sathe, Senior Advocate with Mr Tushad Cooper, Senior Advocate**, *Yash Momaya, Parag Kabadi, Falguni Thakkar, Anshita Sethi i/b DSK Legal.*

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FOR RESPONDENT-MCGM	**Mr Aspi Chinoy, Senior Advocate,** *with Joel Carlos, Pooja Yadav, Rupali Adhate i/b Sunil Sonawane.*
FOR RESPONDENT-STATE	**Mr Abhay Patki, AGP**
PRESENT IN PERSON	**Mr Prashant Lohare,** *Sub Engineer (Building & Proposals Department WS-I).*
	Mr Avinash Pandge, Mr Dnyaneshwar Bandgar, Mr Shahbaz Peerjada, *Sub engineer (Building & Proposals Department WS-I).*

WITH

WRIT PETITION NO. 240 OF 2023

1. **SUGEE TWO DEVELOPERS LLP,** a Limited Liability Partnership Firm, constituted under the provisions of the Limited Liability Partnership Act, 2008, having its office at 3rd Floor, Nirlon House, Dr Annie Besant Road, Worli, Mumbai 400 030.

2. **NITIN VARADKAR,** nominee of Sugee One Developers Private Limited, a Designated Partner of the Petitioner No. 1 having his office at 3rd Floor, Nirlon House, Dr. Annie Besant Road, Worli, Mumbai 400 030.

...PETITIONERS

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~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
Through the Principal Secretary Urban Development Department Mantralaya, Mumbai 400 032.

2. **BRIHANMUMBAI MUNICIPAL CORPORATION,**
a statutory corporation incorporated under the Mumbai Municipal Corporation Act, 1888; having its office at Mahapalika Marg, Mumbai 400 001.

3. **MUNICIPAL COMMISSIONER,**
Brihanmumbai Municipal Corporation, having his office at Mahapalika Marg, Mumbai 400 001.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER	**Dr Abhinav Chandrachud** *with Sanjay Kadam, Sanjeel Kadam, Nitisha Lad, Sayalee Rajpurkar, Soham Salvi i/b Kadam & Co.*
FOR RESPONDENT - STATE	**Mr MA Sayed, AGP.**
FOR RESPONDENT- MCGM	**Mr Joel Carlos** *with Pooja Yadav, Rupali Adhate i/b Sunil Sonawane.*

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WITH

WRIT PETITION NO. 238 OF 2023

1. **Sugee Nine Developers LLP,** a Limited Liability Partnership Firm, constituted under the provisions of the Limited Liability Partnership Act, 2008, having its office at 3rd Floor, Nirlon House, Dr Annie Besant Road, Worli, Mumbai 400 030

2. **Jitendra Rawal,** Nominee/Authorized Signatory the Petitioner No. 1 having his office at 3rd Floor, Nirlon House, Dr Annie Besant Road, Worli, Mumbai 400 030.

...Petitioners

~ versus ~

1. **State of Maharashtra,** Through the Principal Secretary Urban Development Department Mantralaya, Mumbai 400 032.

2. **Brihanmumbai Municipal Corporation,** a statutory corporation incorporated under the Mumbai Municipal Corporation Act, 1888; having its office at Mahapalika Marg, Mumbai 400 001.

3. **Municipal Commissioner,** Brihanmumbai Municipal Corporation, having his office at Mahapalika Marg, Mumbai 400 001.

...Respondents

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APPEARANCES

FOR THE PETITIONER	**Mr Pranit Kulkarni** *with Sanjeel Kadam, Nitisha Lad, Sayalee Rajpurkar, Soham Salvi i/b Kadam & Co.*
FOR RESPONDENT - STATE	**Mr Abhay Patki, Addl GP.**
FOR RESPONDENT-MCGM	**Mr Joel Carlos**, *with Pooja Yadav, Rupali Adhate i/b Sunil Sonawane.*

WITH

WRIT PETITION NO. 1122 OF 2023

1. **SUGEE FIFTEEN DEVELOPERS LLP,**
a Limited Liability Partnership Firm, constituted under the provisions of the Limited Liability Partnership Act, 2008, having its office at 3rd Floor, Nirlon House, Dr Annie Besant Road, Worli, Mumbai 400 030

2. **ANAND B GANDHI,**
Nominee/Authorized Signatory the Designated Partner of the Petitioner No. 1 having his office at 3rd Floor, Nirlon House, Dr Annie Besant Road, Worli, Mumbai 400 030.

...PETITIONERS

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~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
Through the Principal Secretary Urban Development Department Mantralaya, Mumbai 400 032.

2. **BRIHANMUMBAI MUNICIPAL CORPORATION,**
a statutory corporation incorporated under the Mumbai Municipal Corporation Act, 1888; having its office at Mahapalika Marg, Mumbai 400 001.

3. **MUNICIPAL COMMISSIONER,**
Brihanmumbai Municipal Corporation, having his office at Mahapalika Marg, Mumbai 400 001.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER	**Mr Saurish Shetye**, *with Sanjeel Kadam, Nitisha Lad, Sayalee Rajpurkar, Soham Salvi i/b Kadam & Co.*
FOR RESPONDENT - STATE	**Mr Milind More, AGP.**
FOR RESPONDENT-MCGM	**Mr Joel Carlos**, *with Pooja Yadav, Rupali Adhate i/b Sunil Sonawane.*

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WITH

WRIT PETITION (L) NO. 22774 OF 2023

Ankur Premises Developers LLP,
A Limited Liability Partnership formed under the provisions of the Limited Liability Partnership Act, 2008, having its registered office at 8, Chamunda Krupa, Cottage Lane, Santacruz (West), Mumbai 400 054

... Petitioner

~ versus ~

1. **Municipal Corporation of Greater Mumbai, Through the Municipal Commissioner,**
having office at Brihanmumbai Mahanagarpalika Headquarters, Mahapalika Marg, CST, Mumbai 400 001.

2. **Municipal Corporation of Greater Mumbai, Through Assistant Municipal Commissioner,**
H West Ward having office at Brihanmumbai Mahanagarpalika Headquarters, Mahapalika Marg, CST, Mumbai 400 001.

3. **Municipal Corporation of Greater Mumbai, Through**

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Assistant Municipal Commissioner,
H West Ward having office at Brihanmumbai Mahanagarpalika Headquarters, Mahapalika Marg, CST, Mumbai 400 001.

4. **Municipal Corporation Of Greater Mumbai, Through Assistant Engineer,**
(Building & Proposal), H West Ward, having office at Brihanmumbai Mahanagarpalika Headquarters, Mahapalika Marg, CST, Mumbai 400 001.

5. **The State Of Maharashtra, Through The Secretary, Urban Development Department,**
Government of Maharashtra,
6th Floor, Mantralaya, Mumbai. **...Respondents**

Appearances

for the petitioner	**Mr Zubin Behramkamdin, Senior Advocate**, *Nitya Shah, Kinnar Shah i/b Divya Shah Associates.*
for respondent - State	**Mr Abhay Patki, Addl GP.**
for respondent- MCGM	**Mr Atul Rajadhyaksha, Senior Counsel**, *with Joel Carlos, Pooja Yadav, Rupali Adhate i/b Sunil Sonawane.*

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WITH

WRIT PETITION (L) NO. 23049 OF 2023

1. **Relcon Infraprojects ltd,** a company incorporated under the Companies Act, 1956, having its registered at 4th Floor, Relcon House Premises Cooperative Society Ltd, Plot 15/A, M.G. Road, Vile Parle (E), Mumbai 400 057.

2. **Relcon Krisha Realty LLP,** a Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008 having its registered office at 4th Floor, Relcon House Premises Cooperative Society Ltd, Plot 15/A, M.G. Road, Vile Parle (East), Mumbai 400 057.

...Petitioners

~ versus ~

1. **The State of Maharashtra,** through Urban Development Department, Government of Maharashtra, Mantralaya, Madam Cama Road, Hutatma, Rajguru Square, Nariman Point, Mumbai 400032. And through Revenue and Forest through the Government Pleader, High Court (O.S.), Mumbai.

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2. **Municipal Corporation of Greater Mumbai,**
Building Proposal Department (K East Ward), Sangam Cooperative Housing Society Jogeshwari East, Mumbai, Maharashtra 400093.

3. **Ridhi Sidhi Sadan Unit of Shree Ridhi Sidhi Co-Operative Housing Society Ltd,**
a society duly registered under Bombay Co-Operative Societies Act, 1925 having its office at Ridhi Sidhi Sadan Unit of Shree Ridhi Sidhi CHS Ltd, Tejpal Scheme Road No. 2, Vile Parle (East), Mumbai 400 057.

... Respondents

Appearances

for the petitioner	**Mr Cyrus Ardeshir**, *with Aseem Naphade & Akanksha Mishra i/b Shriya Mehta.*
for respondent no. 3	**Mr Sarosh Bharucha**, *with Jamshed Master i/b Rahul Tiwari*
for respondent-MCGM	**Mr Aspi Chinoy, Senior Advocate**, *Joel Carlos, Rupali Adhate, Pooja Yadav i/b Sunil Sonawane.*
For respondent – State	**Mr Abhay Patki, Addl. GP.**

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WRIT PETITION (L) NO. 25945 OF 2023

1. **Mayfair Housing Pvt Ltd,**
1, Mayfair Meridian, Near St. Blaze Church, Ceaser Road, Andheri (West) Mumbai – 400 058.

2. **Nayan Arvind Shah,**
Director of Mayfair Housing Pvt Ltd Having office at 1, Mayfair Meridian, Near St Blaze Church, Ceaser Road, Andheri (West), Mumbai 400 058.

...Petitioners

~ versus ~

1. **State of Maharashtra,**
Urban Development Department Through the office of the Government Pleader (O.S.), High Court, Bombay.

2. **Municipal Corporation of Greater Mumbai,**
A statutory Corporation incorporated under the Provisions of the Mumbai Municipal Corporation Act, 1888, having its office at Mahapalika Building, Mahapalika Marg, Mumbai – 400 001.

3. **Executive Engineer, Building Proposals, 'K' West Ward,**
Municipal Corporation of Greater Mumbai, Through Legal Department, MCGM, Mahapalika Building, Mahapalika Marg, Mumbai 400 001.

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4. **Friendship Co-operative Housing Society Pvt Ltd,**
A Society registered under the provisions of the Maharashtra Co-operative Societies' Act, 1960 Having its office at "Prashant", Dawoodbaug Road, Andheri (West), Mumbai 400 058.

...Respondents

Appearances

for the petitioner	**Mr Pravin Samdani**, *with Mayur Khandeparkar, Subit Chakrabarti, Khushnumah Banerjee i/b Vidhi Partners.*
for respondent no. 4	**Mr Aditya P Shirke** *with Vishal P Shirke.*
for respondent-MCGM	**Mr Joel Carlos** *with Rupali Adhate, Pooja Yadav i/b Sunil Sonawane.*
for respondent - State	**Mrs Jyoti Chavan, AGP.**

WITH

WRIT PETITION (L) NO. 27895 OF 2023

1. **Evershine Builders Private Limited,**
A Company incorporated under the

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provisions of the Companies Act, 1956 and being a company within the meaning of the Companies Act, 2013, having its registered office at 215, 2nd Floor, Veena Beena Shopping Centre, Station Road, Bandra (West), Mumbai – 400 050.

2. **Hira Rajkumar Ludhani,**
an adult, Indian Inhabitant, being the Director and Shareholders of Evershine Builders Pvt Ltd having his office at 215, 2nd Floor, Veena Beena Shopping Centre, Station Road, Bandra (West), Mumbai 400 050.

...Petitioners

~ versus ~

1. **The State of Maharashtra,**
through the Principal Secretary, Urban Development Department, having its office at Mantralaya, Fort, Mumbai 400032.

2. **Municipal Corporation of Greater Mumbai,**
a statutory corporation, established under the provisions of the Mumbai Municipal Corporation Act, 1888, having its office at Mahapalika Bhavan, Mahapalika Marg, Mumbai 400 001.

3. **Municipal Commissioner,**
Municipal Corporation of Greater Mumbai, Mahapalika Bhavan, Mahapalika Marg, Mumbai 400 001.

...Respondents

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APPEARANCES

FOR THE PETITIONER	**Mr Simil Purohit**, *with Rubin Vakil, Manish Doshi i/b Vimadalal & Co.*
FOR RESPONDENT-MCGM	**Ms Rupali Adhate**, *with Pooja Yadav i/b Sunil Sonawane.*
FOR RESPONDENT - STATE	**Mr Abhay Patki, Addl. GP.**

CORAM : G.S.Patel & Kamal Khata, JJ.

DATED : 12th, 13th & 16th October 2023

ORAL JUDGMENT (*Per GS Patel J*):-

1. **Rule**. There are Affidavits in Reply and Rejoinder and we have heard counsel in all these Petitions at some length on the questions of law. By consent, rule returnable forthwith.

2. *"What the State Government giveth, the Municipal Corporation taketh away,"* is the complaint of these nine Petitioners, real estate developers one and all, in one voice claiming that they were terribly hard-hit by the lockdown during the Covid-19 pandemic. Money is the developers' oxygen, and during that unanticipated upheaval, developers' oxygen levels plummeted. Perceived the real estate sector to be thus in dire need of resuscitation, the State Government

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afforded developers a substantial rebate in the premium that they would otherwise have had to pay for acquiring 'Additional FSI'. FSI is a well-established concept in planning law in Maharashtra. It is now even defined in the Maharashtra Regional & Town Planning Act, 1966 ("**MRTP Act**"). Simply put, it is the ratio of built area to plot area. If the plot area is 1000 sq mts, and the FSI is 1.00, a developer can construct built-up area or BUA of 1000 sq mts. In the Island City, the FSI is generally 1.33. In the suburbs it is 1.00. But there are important exclusions from computing what is BUA and, therefore, 'free of FSI' — stairwells, lobbies, lift wells and common areas are typically not reckoned towards FSI consumption. In addition, a developer may, under certain statutory provisions, acquire additional FSI — the right to build further, in addition to the inherent 'land FSI' (of 1.33 or 1.00). This additional FSI can be got at a premium, and the premium is divided between various statutory authorities. We refer to this additional-FSI-for-a-premium as 'Premium FSI' in this judgment. During the Covid-19 period, the rebated Premium FSI had to be paid subject to certain conditions under a formal Government Resolution ("**GR**"). It had to be paid fully, though instalments were permitted, within the period defined by that GR. While the GR conferred benefit in the form of a rebate, it also imposed certain obligations.

3. The Petitioners say that they all held at the time when they took the benefit and paid the concessional premium the municipal building permission (always granted in the negative) known as the Intimation Of Disapproval ("**IoD**"). Those IoDs had (and have) a prescribed lifespan of one year. The builders complain that the IoDs lapsed. When they approached the Municipal Corporation of

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Greater Mumbai ("**MCGM**") for a revalidation of the IoDs, they were asked to pay the premium for the additional FSI at the next year's current (non-concessional) rates, although they were offered an adjustment of the amount previously paid.

4. The Petitioners therefore say that this demand for a premium being paid a second time (albeit with an adjustment) is contrary to law and wholly defeats the purpose of the relief-oriented and relief-giving GR in question. Hence these Petitions seeking our intervention under Article 226 of the Constitution of India.

5. The rival submission by Mr Chinoy for the MCGM is based on a close reading of the statute. The premium for the additional FSI is computed on what is called the prevalent ASR or Annual Standard of Rates. In a city like Mumbai, chronically starved of space, ASR rates only move in one direction. Historically, they have never gone down. This means that the premium payable in one year is undoubtedly going to be less than the premium payable in the next year.

6. Mr Chinoy puts his case like this. Premium FSI has to be sought at the time when there is a proposal for development and which leads to the issuance of an IoD. It is not in any sense a bankable commodity. No one can simply purchase Premium FSI without a development or building proposal or building plans and hold on to it for use at some later time. Premium FSI must be included in a building or development proposal. The IoD D from the MCGM is only one level of permission. Another permission is

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required. Though issued by the MCGM, this further permission is in the MCGM's capacity as the Planning Authority under the MRTP Act and that is known as a Commencement Certificate ("**CC**") issued under Section 45 of the MRTP Act. The IoD granted under Section 346 of the Mumbai Municipal Corporation Act 1888 ("**MMC Act**") has a lifespan of one year. In the normal course, a CC has a validity of three years extendable to a fourth, unless otherwise renewed. CC renewals are subject to compliance with statutorily mandated conditions.

7. Now what does this concept of 'time validity' actually mean? Mr Chinoy's explanation is that the IoD simply lapses after a period of one year. That lapsing has certain consequences in law. We will consider these statutory provisions a little later in this judgment but to summarize, his submission is that if the project proponent obtains an IoD and within the one year lifespan of that IoD he does not "commence work" (and which could be by the simple issuance of a CC with nothing more required) then the statute specifically requires that the IoD must be sought afresh as if it was the first application for an IoD as per Section 347(2) of the MMC Act. In other words, an IoD that lapses without commencement of works is a nothingness. It is obliterated in law. A fresh IoD must be issued. In the context of the GR, he therefore explains that if the IoD is accompanied by an application and a payment for premium FSI even at the concessional rate, should the IoD lapse without there being a commencement of work, and an entirely *de novo* IoD be required as if it is the first IoD, then there is no question of the Premium FSI surviving the lapse of the IoD. In that scenario, the project proponent must necessarily seek Premium FSI afresh. But the

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concessional period now having ended, the project proponent must pay the premium at the prevalent ASR although he will be given credit for any payment previously made. What the Petitioners seek, Mr Chinoy contends, is that the benefit having once been obtained can be literally warehoused in perpetuity irrespective of whether the IoD lapses (for want of commencement of work) or not. Even if there is such a lapsing (without commencement of work) and if a fresh IoD is required under the MMC Act, the Petitioners' case seems to be, submits Mr Chinoy, that the Premium FSI will somehow be de-linked from the IoD. It will be set afloat, as it were, to be re-anchored to some future IoD and some future CC — and this will be at that same concessional rate without paying anything further, even though ASR rates have gone up astronomically. In the normal course, i.e., without any concession as was offered during Covid-19 under the GR in question, developers would routinely have to pay — and do pay — the premium annually for each renewal of a lapsed IoD. They are given credit for previous premium payments, but each renewal carries the obligation to pay at the current ASR. There is no reason, he submits, why a developer who obtained a rebate under the GR in question should have any special exemptions or privileges beyond the rebate itself.

8. Thus are the battle lines drawn in this litigation.

9. The facts in each of these cases differ. Consequently, in the next section of this judgment, and before we proceed to address the questions of law outlined earlier, we will of necessity have to deal with the facts and prayers in each case.

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FACTUAL CONSPECTUS —COMMON FACTS:

10. Some facts to this entire saga are common to all. These are not many. It is better to reference them in the beginning.

11. As everyone knows from March 2020 the world as we knew it was turned on its head. Nobody expected COVID-19 or the pandemic or the resultant lockdown. It had many consequences. One of these the almost complete cessation of all construction activity almost everywhere. Cash flow was a problem. The lockdown did not permit attendance on construction sites. Workers at various sites left to return to their villages. Developers had no manpower to continue constructions. Ongoing constructions halted. The Government, mindful of this situation, constituted a special committee under the chairmanship of Mr Deepak Parekh, an eminent personality in banking, finance, business and the housing finance sector. The committee made it recommendations. The objective was to find ways to promote investment flows and economic growth in Maharashtra, which had seen a slowdown since mid–2018, and then to recover from the impact of the Covid-19 outbreak. The Deepak Parekh committee report, a copy of which is at Exhibit "C" to the Prestige Estate Projects Petition, tells us that markets in Mumbai had become uncompetitive. It attributes one of several reasons to high premiums and levies imposed on real estate developers. A startling statistic was that these premiums and demands, and associated Government charges for residential real estate in Mumbai were, and still are, 13 times more expensive for Mumbai than for Delhi. The situation for commercial real estate is

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even worse; Mumbai is 34 times as expensive Delhi. Mumbai thus has some of the most expensive real estate in the world. The report notes that these premiums payable to the Government or the Planning Authority comprised as much as 33% of the sale price of a project. These were prohibitively high. They needed to be rationalised.[1]

12. We pause briefly to note the multiplier matrix that operates in a situation like this. Land prices in Mumbai have always been high. That is because of the notorious scarcity of buildable real estate. The premiums that are charged are a percentage of the land prices at the assessed rates. When the premium is high, the sale price becomes higher. This ultimately and cyclically adds to the cost of land itself. and this cost of land keeps rising, thus making the premium go up, thus making real estate constantly more and more expensive.

13. On 14th January 2021, the State Government came out with a resolution. This was under Section 154 of the MRTP Act. A copy of this in the original in Marathi is at Exhibit "A" at page 51 of the Prestige Estate Petition. It is annexed to every other Petition as well but we will take these documents from the Prestige Petition. There is a translation at Exhibit "A1" from page 55 which we have checked

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1 A recent sectoral study claims that the approval cost in Mumbai is a staggering Rs 54,221 *per square metre*. It is much lower in other metros. *See*: https://timesofindia.indiatimes.com/city/mumbai/developers-in-mumbai-pay-average-rs-54221-per-square-meter-as-approval-costs-to-authorities/articleshow/104019439.cms.

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ourselves. It seems to be reasonably accurate. We do not have an official English translation of that GR.

14. We will need to consider this GR closely. It is the fulcrum of the Petitioners' case. So that there is no ambiguity about it at all, we annex a copy of the translated GR to this order. That will avoid the need to extract the whole of the GR in the body of this judgment.

15. Instead, we proceed to consider the salient aspects of that GR. The introduction notes the COVID situation. There is a reference to the Deepak Parekh Committee. The introduction also notes that the premium for additional FSI is charged as a percentage of the rate of the land in question for the year in question in the annual market value chart put out periodically by the Government.

16. Then follow a series of directions. These are said to be explicitly under Section 154 of the MRTP Act. The directions run like this:

i. There is a 50% rebate in respect of premium to be charged for additional FSI in the area of the Planning Authority namely the MCGM as well as in Regional Schemes. The decision regarding the 50% premium is to be taken by the Planning Authorities subject to following a procedure that is set out immediately next.

ii. Clause A deals with eligibility criteria and sets out the projects or parts of projects eligible for the scheme. It is applicable to current and new projects if the premium is actually deposited until 31st December 2021.

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Further, the concession is applicable only to various premiums under the Development Control and Promotional Regulations ("**DCPR**"). There is no concession for development charges or other administrative factors.

iii. Clause B says that any project proponent who avails of the rebate must, and this is important, pay the entire stamp duty of persons taking up houses, flats or units in the economically weaker section, lower income group, middle income group and higher income group categories. This is clarified to mean that the stamp duty obligation on such purchasers is brought down to zero. This includes those in the higher income group. It is only developers who thus take on the burden of paying 100% of the stamp duty who are eligible for the benefits of the additional/premium FSI rebate of 50%. Such developers must make a declaration and complete a prescribed procedure. That procedure is set out in Clauses I to V below Clause B. There is an undertaking required to be submitted to the Planning Authority that the developer will absorb 100% of the stamp duty obligation. A certificate of the beneficiary customer must be submitted that the full expenditure on stamp duty has in fact been borne by the developer. Then the developer must publish a list of purchasers for whom such stamp duty expenditure is made. A list of participating projects is to be sent to the stamp registration office and finally the projects that take the

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benefits of this concession must continue the benefit of stamp duty until the constructed area for which the benefit has been taken is sold.

iv. Clause C of the GR says that the annual market value rate charge or the annual statement of rates or ASR that to be considered as a base for charging the premium for new power projects or part of new projects should be that which is applicable on 1st April 2020 or that which is prevalent while depositing the premium whichever is higher.

17. This provision of going back to an ASR of 1st April 2020 is made in a GR of 14th January 2021. This tells us that there was very likely, during that COVID period, a perceived reduction in ASR on account of COVID and the lockdown. Therefore this provision for using the previous year's ASR or the one prevalent at the time of making the deposit, whichever was higher.

18. There was some discussion in February 2021 between the State Government and the MCGM about payment in instalments but no controversy arises in that regard. Instalments were permitted. It was ultimately clarified that the entirety of the premium had to be paid during the concessional period, though instalments were permitted in that time-window.

19. On 22nd February 2021, there came a circular from the MCGM setting out the modalities to avail of this 50% rebate at deduction. A copy of this is at Exhibit "B" to the Prestige Estate

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Petition from page 61. This references the GR referred to above as a directive under Section 154 of the MRTP Act. It notes the correspondence in regard to the instalment facility. Then as many as nine separate conditions are imposed. A few of these are important for our purposes. The first of these is that the circular limits its applicability only to premium for additional FSI under DCR 30(A), Table 12; premium for additional FSI under DCR 33; Fungible Compensatory Area under DCR 31(3); and premium for additional FSI under analogous provisions of DCR 1991. The second clause says that the 50% rebate is applicable only to the principal premium amount. No future instalments are permissible. It is clarified the development charges, and other premiums/charges are to be recovered as per the prevailing policy. A clarification is issued in regard to developments that do not require the payment of stamp duty. Formats are specified. Finally, there is a discussion on the request for an extension of the time period. Interestingly, the MCGM seems to indicate that the concession on the premium was also available to those who were said to be defaulters in the past.

20. As the extract quoted above shows, the GR was the Government's effort to 'encourage the construction field' and to provide Government-level rejuvenation of the real estate market.

21. While we are at this stage, a brief look at Section 154 of the MRTP Act may be appropriate. It is a short section that confers controlling power on the State Government to issue periodically such directions or instructions as it thinks necessary to any Regional Board, Planning Authority or Development Authority for

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implementing or effecting Central or State Government programs, policies, projects or for the more efficient administration of the Act or in the larger public interest. The bodies to whom these directions are issued are bound to carry out the directions or instructions within the time if any specified. Sub-clause (2) provides that the decision of the State Government, should there be any dispute between the Boards, Authorities and the State Government, shall be final.

22. On 26th February 2021, the MCGM's Standing Committee passed a resolution approving the grant of concessions as per the GR.

23. It is at this stage that we must note two further exchanges between the MCGM and the State Government. On 23rd November 2022, the MCGM's Chief Engineer raised an issue for clarification in regard to this concessional GR and the matter of reissuance of lapsed IoDs. The submission notes that if there is no material change in the original approval nor any additional concessions sought, a revalidation could be permitted without demanding additional premiums but only on recovering further scrutiny fees. A copy of this is at Exhibit "L" at page 131.

24. On 30th November 2022, the MCGM's Chief Engineer wrote to the Under Secretary in the Urban Development Department. This letter reflects the internal communication and memo of the MCGM. Now both the internal memo and the letter to the Urban Development Department notes the submission and

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representation that there were several cases where a Commencement Certificate or CC could not be issued during the one year pendency or life of the IoD, often for reasons beyond the control of the project proponent. This being a concessional reduction or rebate, and for a limited period of time, and also subject to various conditions (such as the ones we have seen including bearing the entire stamp duty burden and making full payment by a prescribed date), the submission sought a clarification that IoDs could be revalidated without seeking further premium on additional FSI.

25. The internal memo also notes that some zonal offices insisted on the project proponent paying the remaining 50% in accordance with the prevalent ASR, but in the opinion of the Chief Engineer, this was not appropriate as the premium was paid for FSI purchased at the then prevalent rates.

26. The Government replied on 23rd December 2022. It said that an IoD was valid for one year under the MMC Act. The MCGM would be required to consider the IoD if a construction permission was not submitted before the IoD lapsed. The applicable rules were clear. There was therefore no clarification required. In other words, the view of the Government was that there was nothing to clarify.

27. On 16th May 2023, undeterred by the previous response, the Chief Engineer wrote to the Under Secretary, Urban Development Department again (Exhibit "Q" at page 199-200). It noted a

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representation from the Practicing Engineers Architects and Town Planners Association ("**PEATA"**, a quite significant lobby group in matters pertaining to Development Control Regulations). Then it referenced a representation from a Minister of Parliament addressed to the Hon'ble the Chief Minister and Deputy Chief Minister regarding 'hardship' faced by project proponents in getting commencement certificates or CC issued. There was a reference to the 14th January 2021 GR. The letter mentions that several housing societies had availed of the concession to make their development proposals viable and IoDs had been granted to such proposals by recovering the concessional premium. However, some project proponents had been unable to apply for a CC within the validity period of the IoD. There were cases where some members of a society did not cooperate. There were cases where an existing building could not be evacuated within the necessary time frame There were also cases where NOCs from various authorities themselves did not come in time. The important clarification that was sought is at page 200. This is actually the heart of the dispute and we reproduce the contents of this page:

> "However, **some of the project proponent were not able to apply for CC within validity period of IoD due to non compliance of some of the IoD conditions.** In some of the cases of redevelopment projects **due to non co-operation of some members, existing building could not be vacated within time frame and in some cases, due to delay in getting NOC's from various authorities**.
>
> **It is to mention here that, as per aforesaid Govt.. directions, where the project proponent has opted 50% concessions in premiums, in such cases stamp duty has to be paid by developers. As such if IoD issued for such**

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cases is not re-issued, the prospective buyers will be deprived from this benefit. Also, in cases if the project proponents have taken CC, they are eligible for premium concession benefit as per Govt. directives. But it would be unfair to disqualify the project proponent from premium concession benefit who have not been able to fulfil some of the IoD conditions even though they have paid premium as per Govt. directions.

It is pertinent to mention here that direction issued by State Govt. u/s 154 of MRTP Act for allowing 50% concession for FCA, Premium FSI, premium for staircase, lift, lift lobby, OSD was applicable for all Planning Authorities, Town Planning offices in Maharashtra state. The benefit permitted under this notification was applicable for all proposals upto 31.12.2021 irrespective of progress on site. However, for proposals in BMC limit, as per provisions of section 346 of MMC Act, IoD's are issued. Further, as per provisions of section 347(2) of MMC Act, IoD is valid for one year, **within this validity period project proponent has to apply to get CC. However, due to non compliances of some of the IoD conditions, project proponents are unable to take C.C.**

In such cases BMC needs to reissue IoD for projects who availed benefit of 50% premium concession wherein project proponent has already paid premiums as per Govt. directives and where there is no change in the original approval and not involving additional concessions. **However, this needs concurrence of Govt., since some premiums are also shared by Govt & other authorities.**

In view of above, UDD is requested to give concurrence to allow BMC to reissue IoD in aforesaid cases for further period upto 31.12.2023 and continue 50% concession facility as per Govt. directives.

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This letter is issued with the approval of Hon. MC u/no. MGC/A/374 dtd 16.05.2023"

(*Emphasis added*)

28. The response to this came on 8th June 2023 from the State Government. It said that there were two issues: (i) the one-year validity of the IoD under Section 346 of the MMC Act and, (ii) the concession under the GR of 14th January 2021 to proposals for which a Commencement Certificate was not obtained within the year.

29. So far so good. Those were indeed the two questions. The answer however from the State Government was that since the matter of extending the IoD validity period of the IoD was not within the scope of the GR of 14th January 2021 but was an administrative matter that fell within the scope and jurisdiction of the Corporation, it was unclear what clarification was required. Therefore, the answer from the Under Secretary was that the Municipal Commissioner should examine the matter and submit a precise proposal about the need for such concurrence or approval. In other words, faced with a request for a clarification, the State Government said then, as Mr Patki says today, that there was nothing to clarify.

30. No part of our judgment is going to be based on statements that officers of the MCGM may have made in writing while processing a particular permission. The reason is straightforward. Mr Chinoy's submissions have been entirely based on an interpretation of the statute and on law and clearly there is no

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possibility of an estoppel against the statute; certainly not because some officer of the Municipal Corporation took a particular view.

FACTS IN INDIVIDUAL CASES

31. We have been given detailed lists of dates in the different matters in the group. What follows is an abbreviated summation of these events since we will be addressing ourselves to the common questions that arise, and it is only in the Petitions where there are additional aspects to be considered that we will deal with those separately.

WRIT PETITION (L) NO. 17993 OF 2023: PRESTIGE ESTATE PROJECTS LTD & ANR

32. In the Prestige Estate matter, the facts are largely not contentious. On 24th March 2021, members of the Pali Hill Daffodils CHSL (not a party to the Petition) consented to the appointment of Prestige Estate as a developer for redeveloping the Society's premises. These are at Bandra. On 27th August 2021, certain concessions were granted by the Municipal Commissioner to the project. A Development Agreement between Prestige Estate and the Society followed on 30th September 2021. The MCGM issued its IoD, the first of several permissions on 18th October 2021. While obtaining the IoD, Prestige Estate had to pay various amounts to the MCGM, the State Government and other authorities for diverse benefits such as additional FSI, fungible FSI, a premium for

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staircase lift lobby, deficiency in basements, scrutiny fees and so on. These details are not important for our purposes today.

33. On 26th November 2021, Prestige Estate obtained permission to begin shore piling work. This permission was granted by the MCGM. Then Prestige Estate submitted amended plans and these were approved with an amended IoD on 14th January 2022. The amendment contemplated additional floors. At the time of the amended IoD Prestige Estate again paid additional amounts under some of the various heads as noted above.

34. Altogether, Prestige Estate says that availing of the benefits under the GR and the MCGM circular, it has paid a total of Rs.33,07,34,950/- to the State Government, MCGM and other Authorities by 31st December 2021. An additional amount of Rs.6,04,13,700/- has also been paid although this payment was not covered by the GR and the MCGM circular. The total outlay under this head is Rs.39,39,11,494/-.

35. In addition, Prestige Estate says that it has spent Rs.248 crores on various items of development such as approvals, constructions, overheads, cost of land and so on. Besides this, Prestige Estate has paid Rs. 25 crores until the date of the filing of the Petition to members of the Society under various heads such as transit rent, corpus, hardship allowance and so on.

36. By October 2022, the Society's existing building was demolished. Some Permanent Alternative Accommodation

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Agreements ("**PAAA**") were not completed on time. There were other constraints due to site conditions. On 14th October 2022, Prestige Estate applied for a plinth CC. On that date, it also told the MCGM that it had consent for redevelopment from all members of the Society and, in addition, that it had PAAAs from all but three members of the Society. The other issue that seems to have arisen at this time related to an application to dispense with an No Objection Certificate ("**NOC**") from the Superintendent of Gardens. Prestige Estate claimed that there were no trees affected by the proposed project and had therefore sought an exemption. This was apparently noted internally by the MCGM, i.e., that not 100% of the PAAAs were submitted and that the Superintendent of Gardens NOC was not obtained. Yet, on 17th October 2022, the Superintendent Engineer of the MCGM approved the issuance of a plinth CC as sought by Prestige Estate subject to the approval of the Deputy Chief Engineer in regard to the non-submission of the three PAAAs. The NOC from the Superintendent of Gardens was dispensed with.

37. A day later, on 18th October 2022 the Executive Engineer of the MCGM contended that the CC could not be issued. The reason was that the IoD which had been issued, as we have seen, on 18th October 2021 had lapsed after the expiry of its one year lifespan on 17th October 2022.

38. On 3rd November 2022, Prestige Estate sought a fresh IoD and permission to continue the same file number by recovering fresh scrutiny fees before the issue of the revised IoD.

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39. There was no material change in the original approval. No additional concessions were being sought. According to Prestige Estate, an internal note of the MCGM shows that the 50% reduction was allowed to be retained.

40. Further work continued including boundary demarcation remarks, demands for scrutiny fees, tree NOC etc. On 24th January 2023, Prestige Estate wrote to the Municipal Commissioner asking that the IoD be reissued without insisting on an additional premium over and above the 50% reduction that was availed of.

41. We have on record at Exhibit "P" to this Petition at page 195, a note sheet of Prestige Estate's proposal. It records that Prestige Estate had to pay what is described as the "balance premium", i.e., a premium over and about the 50% rebated premium already paid and this apparently is in view of the so called clarification of the State Government — a communication which really says that no clarification is necessary.

42. Then follow the letters of May and June 2023 between the MCGM and the Government and the present Petition came to be filed on 3rd July 2023 seeking the following reliefs:

> "A. that this Hon'ble Court be pleased to order and declare that the benefits conferred under the Government Resolution dated January 14, 2021 and MCGM Circular dated February 22, 2021 and the clarifications thereto have irrevocably vested in Petitioner No. 1 upon Petitioner No. 1 submitting its application for CC on October 14, 2022 and issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order

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directing Respondent Nos. 2 to 4 to forthwith issue CC, and all development permissions for the development of the Property to Petitioner No. 1 in accordance with Government Resolution dated January 14, 2021 and MCGM Circular dated February 22, 2021;

B. that this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order under Article 226 of the Constitution of India calling for the records and proceedings pertaining to the issuance of letters dated December 23, 2022 and June 8, 2023 by the State Government (Exhibit "N" and Exhibit "R" hereto) and after examining the legality, propriety thereof the same be quashed and set aside;

C. that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order directing the Respondents:

(i) to forthwith cancel and/or withdraw the letters dated December 23, 2022 and June 8, 2023 by the State Government (Exhibit "N" and Exhibit "R" hereto);

(ii) to forthwith grant to the Petitioner benefit of 50% rebate in respect of all applications for planning permissions made prior to December 31, 2021 in respect of which payments have been made before December 31, 2021 in terms of Government Resolution dated January 14, 2021 and MCGM Circular dated February 22, 2021.

D. That this Hon'ble Court be pleased to order and declare that the benefits conferred under the Government Resolution dated January 14, 2021 and MCGM Circular dated February 22, 2021 and the clarifications thereto

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[Exhibits "A", "B" and "C (colly)"] have vested in Petitioner No. 1 to the extent the same stand paid for on or before December 31,2021;

E. Consequently, this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order, or direction calling for the records leading to the demand by MCGM for additional amount from Petitioner No. 1 on basis of letters dated December 23, 2022 and June 8, 2023 by the State Government (Exhibit "N" and Exhibit "R" hereto), and after considering and examining the validity, propriety, and legality thereof, quash and set aside the same;

F. Consequently, this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing Respondent Nos. 2 to 4 to issue IOD, CC, and all development permissions for the development of the Property to Petitioner No. 1 in accordance with Government Resolution dated January 14, 2021 and MCGM Circular dated February 22, 2021 and the clarifications thereto [Exhibits "A", "B" and "C(colly)"] to the extent the same stand paid for on or before December 31,2021;"

43. WRIT PETITION NO. 240 OF 2023: SUGEE TWO DEVELOPERS LLP

44. In this case, Sugee Two Developers LLP **("Sugee Two")** owns a property in the Girgaon Division at Bangadwadi. This is known as the Guru Niwas and the Dadarkar Building. Sugee Two has undertaken redevelopment of this property under DCR 33(7),

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pertaining to cessed buildings. There are 58 tenants/occupants of the property. All are to be reaccommodated in the rehab building rehab wing proposed to be reconstructed.

45. On 6th May 2019, Sugee Two obtained an IoD. The Mumbai Building Repairs and Reconstruction Board ("**MBRRB**") approved the redevelopment scheme and issued its NOC on 10th May 2018 (revised on 2nd August 2019 and later re-validated on 29th September 2022).

46. Sugee Two submitted amended plans under DCPR 2034 and a fresh IoD was issued on 12th February 2021. Between 11th August 2021 and 27th December 2021, Sugee Two paid various amounts to the MCGM at the discounted rates under the GR in question. Amended plans were submitted and approved sometime in August 2021. A short while later, two Writ Petitions were filed by an occupant that came to be dismissed by this Court on 14th September 2021.

47. 11th February 2022 is the date on which Sugee Two's IoD lapsed. Then on 16th March 2022, MCGM re-issued the IoD when Sugee Two applied for a re-validation without changing its amended plans or seeking any additional concessions. At that time, the MCGM did not demand any balance premium. By April 2022, the structures were demolished. On 11th October 2022 Sugee Two applied for a CC.

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48. This remained pending and on 23rd November 2022 the Chief Engineer (Development Plan) sought the Commissioner's approval to a proposal to re-validate Sugee Two's lapsed IoD by recovering only the scrutiny fee. Interestingly this was on the basis that the recovery should be limited to the scrutiny fee since there was no material change in approval or the proposed construction i.e., no additional construction was proposed.

49. On 12th January 2023, Sugee Two filed this Petition in this Court. An order came to be made on 25th January 2023 issuing notice to the Respondents. On 9th March 2023 Sugee Two agreed in writing to pay the additional premium but on a without prejudice basis. It did so and paid the additional amount of Rs.1,67,54,565/- but without prejudice to its rights and contentions. On 10th April 2023 this Court allowed the Petition to be amended.

50. The prayers in the Petition as amended are:

> "(a) this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India *inter alia* ordering and declaring that the BMC's policy of levying, demanding and recovering differential premiums for revalidation or reissuance of lapsed IoD as mentioned in UD Department's letter dated 23rd December, 2022 (being Exhibit "F" hereto) does not apply to the Petitioner's proposal bearing File No. CHE/CTY/4245/D/337(NEW)/337/1/Amend; and the BMC's demand on the Petitioners for payment of any balance or differential premium is illegal, unlawful and not maintainable;

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(b) this Hon'ble Court may be pleased to issue writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India *inter alia* ordering and directing the BMC to grant CC and all further permissions including OC for the Petitioners' redevelopment scheme on the property bearing C.S No. 1278 & 1279 of Girgaon Division situated at Bangadwadi, Girgaon, Mumbai 400 004 without levying, demanding and recovering any amount of money towards the balance 50% amount of premiums as per the current SDRR rate as a condition precedent for granting CC and further permissions;

(b-1) this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India *inter alia* ordering and directing BMC to refund to the Petitioner No. 1 a sum of Rs. 1,67,54,565/- (Rupees One Crore Sixty-Seven Lakh Fifty-Four Thousand Five Hundred & Sixty-Five Only) paid towards the balance 50% amount of premiums as per the current SDRR rate, together with simple interest thereon @ 18% p.a.;"

WRIT PETITION NO. 238 OF 2023: SUGEE NINE DEVELOPERS LLP

51. This pertains to a property known as 'Sukrut' at Veer Savarkar Marg, Dadar (West), Final Plot No. 758 of Town Planning Scheme ("**TPS**")-IV of the Mahim Division. Sugee Nine Developers LLP ("**Sugee Nine**") owns the property and is developing it. In April 2018, the MBRRB approved the redevelopment scheme. It involved re-accommodating twelve tenants. On 10th August 2021 the MCGM approved Sugee Nine's

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proposal for the proposed construction and issued an IoD. That IoD had as many as 54 conditions to be met within a year. Sugee Nine took advantage of the 50% discount scheme and between August and December 2021 paid a discounted premium of Rs.84,52,700/-.

52. The IoD that the Sugee Nine held lapsed on 9th August 2022. It did not have a Commencement Certificate or a CC by this date.

53. In December 2022 Sugee Nine demolished the old building on the suit property. It then applied for a re-issuance of its IoD without any changes to its approved plans. It was met with the MCGM demand for payment of the balance 50% of the premium. This was an amount computed at Rs.1,45,08,500/. Sugee Nine filed the Present Petition on 13th January 2023. On 15th March 2023 Sugee Nine by its letter to the Executive Engineer agreed to pay the balance 50% on a 'without prejudice basis', and it did so a day later by making payment of an amount of Rs.1,45,08,500/- (towards open space deficiency premium and fungible premium). Today Sugee Nine holds an IoD and a CC. Its prayers at page 43 of the Petition include a prayer for refund. That prayer was added by an amendment. Prayer clauses (a), (b) and (b-1) read as follows:

> "(a) this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India *inter alia* ordering and declaring that the BMC's policy of levying, demanding and recovering differential premiums for revalidation or reissuance of lapsed IoD as mentioned in UD Department's letter dated 23rd December, 2022 (being Exhibit "F" hereto) does not apply to the Petitioner's proposal bearing File No.

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CHE/CTY/4176/G/N/337(NEW)1/Amend; and the BMC's demand on the Petitioners for payment of any balance or differential premium is illegal, unlawful and not maintainable;

(b) this Hon'ble Court may be pleased to issue writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India *inter alia* ordering and directing the BMC to reissue IoD and grant all further permissions including OC for the Petitioners' redevelopment scheme on the property bearing F.P. No. 758 of TPS-IV of Mahim Division known as "Sukrut" situated at Veer Savarkar Marg, Dadar (West), Mumbai 400 028 without levying, demanding and recovering any amount of money towards the balance 50% amount of premiums as per the current SDRR rate as a condition precedent for reissuing IoD and for granting all further permissions including OC;

(b-1) this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India *inter alia* ordering and directing the BMC to refund to the Petitioner No. 1 a sum of Rs. 1,45,08,500/- (Rupees One Crore Forty Five Lakh Eight Thousand & Five Hundred Only) paid towards the balance 50% amount of premiums as per the current SDRR rate, together with simple interest thereon @ 18% p.a.;"

WRIT PETITION NO. 1122 OF 2023: SUGEE FIFTEEN DEVELOPERS LLP:

54. Sugee Fifteen Developers LLP ('**Sugee Fifteen**') is developing a property known as 'Nabashruti' on Plot No 166-B of the CS No 149B/10 of the Dadar Matunga Estate in the Matunga

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Division. This is at Khareghat Road, Hindu Colony, Dadar (East). This development is also under DCR 33(7) in the context of cessed buildings and requires the rehabilitation of eight occupants/tenants. The MBRRB approved the redevelopment scheme on 19th July 2019. Sugee Fifteen obtained an IoD on 8th October 2019. It also took advantage of the 50% discount scheme.

55. On 3rd May 2021, Sugee Fifteen submitted amended plans and obtained a fresh IoD. On 28th July 2021 Sugee Fifteen submitted further amended plans and this was at the time when the discount scheme was in operation. Sugee Fifteen paid an amount of Rs. 54,37,800/- towards 'Fungible Area premium' in August 2021 and in December 2021 an amount of Rs.15,63,950/- towards 'Open Space Deficiency Premium'.

56. Here again Sugee Fifteen was told that it would have to pay the 50% balance premium aggregating to Rs 1,24,00,450/- since its re-issued IoD had lapsed.

57. The present Petition was filed on 17th January 2023 for the following reliefs:

> "(a) this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India *inter alia* ordering and declaring that the BMC's policy of levying, demanding and recovering differential premiums for revalidation or reissuance of lapsed IoD as mentioned in UD Department's letter dated 23rd December, 2022 (being Exhibit "F" hereto) does not apply to the Petitioner's proposal bearing File No. P-

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18922/2019/(149B/10)/F/North/337/1/Amend; and the BMC's demand on the Petitioners for payment of any balance or differential premium is illegal, unlawful and not maintainable;

(b) this Hon'ble Court may be pleased to issue writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India *inter alia* ordering and directing the BMC to reissue IoD and grant all further permissions including OC for the Petitioners' redevelopment scheme on the property bearing . Plot No. 166-B of the Dadar Matunga Estate, CS No. 149B/10 of Matunga Division known as "Nabashruti" situated at Khareghat Road, Hindu Colony, Dadar (East), Mumbai 400 014 without levying, demanding and recovering any amount of money towards the balance 50% amount of premiums as per the current SDRR rate as a condition precedent for reissuing IoD and for granting all further permissions including OC;"

WRIT PETITION (L) NO. 22774 OF 2023: ANKUR DEVELOPERS LLP

58. Ankur Premises Developers LLP ('**Ankur Premises**') holds development rights for an approximately 598 sq mts property at CTS No G/397/3 at Santacruz (West). This is the property of the Santacruz Prem Sagar CHSL. These development rights were granted to Ankur Premises on 31st July 2016. It was not until February 2019 that a supplemental agreement came to be executed. The consent of one member remained. That was obtained only in February 2019. On 12th February 2020, a second supplemental agreement was executed and all members of the society joined in the execution of that agreement.

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59. Ankur Premises took the benefit of the amnesty scheme and paid the discounted rate sometime in August 2021.

60. As is not atypical in these matters, there were then further controversies. Demolition of the existing structure could not proceed. Ankur Premises had an IoD of 18th August 2021 and this was clearly valid only until 17th August 2022. Ankur Premises sought revalidation of its IoD.

61. We will pass over the more intricate details of the correspondence that went on and note that it was not until October–November 2022 that members of the Society vacated their premises and delivered possession.

62. Ankur Premises has been paying or says it has been paying transit rent since then. Ankur Premises' IoD has lapsed. For a revalidation, the MCGM demand is that it must pay the balance premium computed at current ASR rates.

63. Hence this Petition on 18th August 2023 for the following reliefs:

> "a) This Hon'ble Court be pleased to issue a writ in the nature of mandamus or any other writ or order or direction directing the respondents to adhere and implement the amnesty scheme issued by Respondents vide Circulars dated 22nd February, 2021 and 5th March, 2021 (Exhibit A and B);
>
> b) This Hon'ble Court be pleased to issue a writ in the nature of mandamus or any other writ or order or direction

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directing the Respondents to renew and revalidate the IoD dated 18th August, 2021 (Exhibit C) on payment of the said Payments for Revalidation of IoD by the Petitioner without demanding additional premium amounting to Rs.2,15,91,065/- (Rupees Two Crores Fifteen Lakhs Ninety One Thousand and Sixty Five Only);

c) That this Hon'ble Court be pleased to issue a writ of certiorari or any other writ, order or direction calling for the records and files of the case and after going into the legality and validity of the decision conveyed by the Respondent No.4 vide clarification dated 23rd December, 2022 (Exhibit K), quash and set aside the decision i.e. demand fresh premium for renewal/ revalidation of IoD;

d) In the alternative of prayer (c) it may be clarified that the said clarification letter dated 23rd December, 2022 (Exhibit K) is not applicable to the present case of the petitioner.

e) That this Hon'ble Court be pleased to issue a writ of certiorari or any other writ, order or direction calling for the records and files of the case and after going into the legality and validity of the decision conveyed by the Respondents vide Letter dated 28th February, 2023 (Exhibit T) quash and set aside the communication;"

WRIT PETITION NO. 23049 OF 2023: RELCON INFRAPROJECTS LTD

64. The Ridhi Sidhi Sadan unit of Shri Ridhi Sidhi CHSL owns land of 2113.70 sq mts at Tejpal Scheme Road No 2 and 3, Vile Parle (East). There stood a building of ground plus three floors on this land with 32 residential flats.

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65. On 11th December 2014, the society and Relcon Infraprojects Ltd. ('**Relcon Infraprojects**') entered into a Development Agreement. Nothing of significance seems to have happened for our purposes until the rebate scheme.

66. Relcon Infraprojects' says that in August 2021 it paid Rs. 2,58,33,500/- to the MCGM as premium under the GR and the MCGM circular and another amount of Rs. 73,65,500/- to the State Government towards the premium.

67. Relcon Infraprojects' IoD is dated 15th August 2021.

68. On 29th November 2021., a supplementary agreement came to be executed between Relcon Infraprojects, Relcon Krisha Realty LLP and the society. In December 2021, Relcon Infraprojects sought to amend its plan by constructing a residential building of four wings with five common basement parking floors, stilts for stack parking plus six upper floors.

69. On 22nd December 2021, the MCGM sanctioned these amended plans. This was still in the amnesty or rebate period and Relcon Infraprojects therefore paid a premium of Rs. 2,06,19,200/-. Of this amount, Rs. 20,96,000/- was paid to the State Government and the remainder to the MCGM.

70. Came 2022, and with it disputes between some dissenting member of the society and Relcon Infraprojects. This led to the filing of an Arbitration Petition (L) No. 12317 of 2022. Five minority

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dissenting members obstructed redevelopment. It was not until 15th July 2022 that an order was passed by this Court compelling these five members to deliver possession of their respective flats to Relcon Infraprojects.

71. On 29th July 2022, Relcon Infraprojects made a representation to the MCGM setting out some of these facts and requesting the issuance of a fresh IoD since its IoD was about to expire on 15th August 2022. By another letter of the same date, Relcon Infraprojects pointed out that it could not obtain the CC pursuant to the IoD because of these few dissenting members and for which Relcon Infraprojects had to approach the High Court.

72. There is a reference again here to, two internal note sheets of 8th and 10th August 2022 prepared by MCGM officers. These are undoubtedly favourable to Relcon Infraprojects. But consistent with his arguments, Mr Chinoy maintains that they matter not a whit.

73. On 30th August 2022, Relcon Infraprojects paid a scrutiny fee, and a development cess to MCGM. The total amount paid was thus Rs. 18,03,000/-. This was for re-validating or re-issuing the IoD.

74. In the meantime, two of the five minority dissenting members filed an appeal.

75. Now we come to what Mr Ardeshir for Relcon Infraprojects says distinguishes his case from all the others. On 3rd October 2022,

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a re-validated IoD was indeed issued by the MCGM to Relcon Infraprojects. On 6th October 2022, the Appeals Court recorded the statement of the two dissenting members that they would deliver possession. That possession was obtained on 14th October 2022.

76. It is in this background that on 19th December 2022, Relcon Infraprojects' architect wrote to the MCGM for a CC. On 12th January 2023, Relcon Infraprojects' architect wrote to the Municipal Commissioner pointing out that it had obtained a revised IoD on 3rd October 2022 by paying the scrutiny fee and development charges then demanded. Yet the CC had not been granted. Reference was made to the High Court proceedings. An identical letter was sent to the Chief Engineer of the MCGM. A reminder followed on 19th January 2023 and again on 3rd April 2023. Here again there is a reference to an internal note of the MCGM of 16th May 2023.

77. On 7th July 2023, the MCGM wrote to the Relcon Infraprojects calling upon it to pay the balance premium for the IoD that was issued on 3rd October 2023.As far as we are aware, it has only just recently lapsed again on 3rd October 2023.

78. This Petition came to be filed on 14th August 2023. Mr Ardeshir's submission, therefore, is that having once issued or re-issued the IoD without insisting on payment of what we have throughout described as the balance premium, it is now not open to the MCGM to say that this balance premium is required to be paid against the IoD. There is no concept of payment of a premium

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against the CC. The IoD was in fact issued. A premium is sought only at the time of issuance of the IoD. If the IoD itself had been re-issued without a demand, it cannot subsequently be raised.

79. The reliefs in the Relcon Infraprojects Petition are therefore slightly different from the others. The two principal prayers read thus:

> "a. That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction under Article 226 of the Constitution to hold and declare that **(i)** the impugned communication dated 23.12.2022 bearing No. TPB-4322/Pra.Kra.129/2022/Navi-11 (Exhibit AG hereto), **(ii)** the impugned communication dated 08.06.2023 bearing No. TPB – 4322/Pra.Kra.129/2022/Navi-11 (Exhibit AD hereto) and **(iii)** the impugned communication dated 07.07.2023 (Exhibit AE hereto) are arbitrary, illegal, capricious and bad in law and this Hon'ble Court be pleased to quash and/or set aside the same;
>
> b. That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of Mandamus or any other writ order or direction under Article 226 of the Constitution directing Respondent No.2 to continue processing the file bearing No. P-5761/2020(723 A and 723 B)/P/S Ward/PAHADI GOREGAON-W including granting Commencement Certificates and all further approvals, permissions and sanctions to the Petitioners in respect of the subject land without demanding any payment towards premium;"

80. We note that there is a typographical error in the file number. The correct file No is CHE/WS/2051/K/E/337 (New).

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WRIT PETITION (L) NO. 25945 OF 2023: MAYFAIR HOUSING PVT LTD:

81. On CTS Nos 59 and 63 at Village Andheri on a plot of approximately 2967 sq mts, there once stood a building known as 'Prashant' consisting of two wings and 46 flats. That building was several decades old. On 6th September 2021, the society, known as the 'Friendship Co-operative Housing Society Pvt Ltd', Respondent No 4, having previously resolved to redevelop the building, approved the final offer submitted by Mayfair Housing Pvt Ltd ('**Mayfair Housing**'). This proposal was eventually passed in a general body meeting on 8th December 2021. The vote was unanimous.

82. On 31st December 2021, Mayfair Housing obtained an IoD for this redevelopment project. On 22nd October 2022, within the one year lifespan of the original IoD, Mayfair Housing issued a notice to the society demanding vacant possession. It did not have it at that time. The society in turn issued a notice to a solitary obstructionist.

83. On 18th November 2022, Mayfair Housing obtained an amended IoD sanctioning modified plans.

84. This also is a case where development was stalled because of an obstruction, this time by one occupant. This led to Mayfair Housing filing a Commercial Arbitration Petition (L) No 672 of 2023 on 6th January 2023 before this Court. On 3rd March 2023,

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this Court disposed of the Arbitration Petition directing the individual dissenter to deliver possession on the schedule indicated by the Court. It was only on 12th June 2023 that Mayfair Housing received vacant possession of the project site. The existing buildings were demolished on 14th August 2023.

85. On 18th August 2023, Mayfair Housing submitted an application for a CC. This was rejected on 6th September 2023 and it is this rejection that is impugned in the present Petition filed on 15th September 2023 for the following reliefs:

> "a) this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ or order or direction in the nature of Certiorari under Article 226 of the Constitution of India, thereby calling for the records and proceedings in respect of the Impugned Communications dated 23rd December 2022 and 8th June 2023 issued by the Respondent No.1 (*at Exhibits E & F-1)* and after going through the legality, validity and propriety thereof, be pleased to quash and set aside the same;
>
> b) this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ or order or direction in the nature of Certiorari under Article 226 of the Constitution of India, thereby calling for the records and proceedings in respect of the Impugned Rejection dated 6th September 2023 issued by the Respondent No. 3 (*at Exhibit V*) and after going through the legality, validity and propriety thereof, be pleased to quash and set aside the same;
>
> c) this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction in the nature of Mandamus under Article 226 of the Constitution of India, thereby directing the Respondent

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Nos.1 to 3, not to insist upon any further payment towards premiums already paid under the 'Concession Scheme' and issue further building permission in accordance with law;"

WRIT PETITION (L) NO. 27895 OF 2023: EVERSHINE BUILDERS PVT LTD

86. The Shree Trimurti CHSL owns property at CTS No 625/12 of Village Bandra-G, TPS II. The land is about 1729 sq mts. at South Avenue, 17th Road, Khar (West). There was a structure on this of ground and five upper floors with 17 flats. On 6th February 2018, the society entered into a Development Agreement with Evershine Builders. In June 2019 Evershine Builders submitted an application to the MCGM for the construction of a high rise residential tower. It paid the applicable scrutiny fees, infrastructure, improvement charges, development charges etc.

87. On 4th January 2020 Evershine Builders obtained an IoD.

88. On 31st August 2020, Evershine Builders had to file Suit No 81 of 2021 against several non-cooperating members of the society demanding vacant and peaceful possession. On 24th September 2020, these members filed a Counter Suit No 136 of 2021 for a declaration that the Development Agreement was void and not binding on them.

89. Evershine Builders' IoD lapsed on 3rd January 2021.

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90. In June 2021, Evershine Builders submitted an application for an amended IoD for constructing Wing A and Wing B, basement, stilts, three podium levels, and the first to 10th floors (and, presumably, all the other 'necessities' of urban life in Mumbai such as swimming pools, gymnasiums, jogging tracks etc.) Evershine Builders' application had several proposals for additional FSI including fungible FSI and slum TDR.

91. By this time the rebate policy was in place. The MCGM computed various amounts to be paid and in August 2021, Evershine Builders paid these amounts which, by a rough reckoning comes to about Rs 10.75 crores.

92. In accordance with the terms of the GR, Evershine Builders also submitted an undertaking to continue to bear the entire stamp duty liability. The fresh IoD was issued on 11th August 2021.

93. On 1st July 2022, MCGM issued a notice seeking eviction of occupants from the property in question. This notice was challenged by the non-cooperating members before the Bombay City Civil Court which granted a stay on 16th July 2022. Ultimately, the Notice of Motion for stay came to be dismissed by the Bombay City Civil Court only on 25th November 2022. By this time, the second IoD had also lapsed. In the meantime, the non-cooperating members came up in an Appeal from Order No 1098 of 2022 against the 25th November 2022 order of the Bombay City Civil Court.

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94. That Appeal from Order was ultimately dismissed but only very recently on 14th September 2023. In the meantime, Evershine Builders has been told that it must now pay the balance premium if it wishes a revalidation of its IoD.

95. On 6th October 2023, Evershine Builders filed this Writ Petition seeking the following reliefs:

> "(a) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for records pertaining to the impugned letter dated 23rd December 2022 (being Exhibit J hereto) issued by the Respondent No. 1 and after examining the legality and validity thereof be pleased to quash and set aside the same;
>
> (b) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction restraining the Respondents from demanding any amount as premium for additional FSI of 797.96 sq. mtrs, fungible compensatory FSI for 820.85 sq. mtrs., Staircase premium area 807.72 sq. mtrs and open space deficiency of 1052.56 sq. mtrs. in respect of the said Property being Plot No. K-69/78, bearing CTS No. 625/ 12 of Village Bandra-G, TPS-II, admeasuring 1729.10 sq. mtrs, lying, being and situate at South Avenue, 17th Road, Khar (West), Mumbai 400052, while reissuing / revalidating the Intimation of Disapproval dated 11th August 2021."

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STATUTORY PROVISIONS

96. We will be required to consider three separate statutes namely the MRTP Act, the MMC Act and the DCPR 2034, a subordinate legislation under the MRTP Act.

97. For our purposes, we are concerned not with Chapters II or III of the MRTP Act which deal with Regional Plans and Development Plans but with Chapter IV that runs from Sections 43 to 58 and deals with the control of development and the use of land included in Development Plans. Section 43 itself sets out restrictions on the development of land. Broadly stated, it says that after the declaration of intention to prepare a Development Plan (Chapter III, Section 23) or after the date on which a notification specifying any undeveloped area as a notified area or any area designated as a site for a new town is published in the Official Gazette none can institute or change the use of any land, nor carry out any development of land without the written permission of the Planning Authority.

98. Immediately, this takes us back to the definition of "development" in Section 2(7) of the MRTP Act. This is a very wide and inclusive definition of land and reads as follows:

> "2(7) "development" with its grammatical variation **means** the carrying out of buildings, engineering, mining or other operations in or over or under, land or the making of any material change, in any building or land or in the use of any building or land or any material or structural change in any heritage building or its precinct **and includes**

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> **demolition of any existing building structure or erection or part of such building, structure of erection; and reclamation, redevelopment and lay-out and sub-division of any land**; and "to develop" shall be construed accordingly;"
>
> (*Emphasis added*)

99. While on this, we note the definition of a 'Planning Authority' under Section 2(19).

> "2(19) "Planning Authority" means a local authority; and includes,—
>
> (a) a Special Planning Authority constituted or appointed or deemed to have been appointed under section 40;
>
> (b) in respect of the slum rehabilitation area declared under section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed under section 3A of the said Act;"

100. Section 43 deals with restrictions on development of land. It has a proviso for certain types of works for which no such permission is necessary.

101. Continuing in this schema, the MRTP Act then tells us in Section 44 how an application for permission for development is to be made. Unless otherwise provided by rules made in that regard, any person who intends to carry out development on any land must apply in writing to the Planning Authority for permission in a

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prescribed form with such particulars and attaching such documents as may be stipulated. This restriction or this requirement does not apply to a Central or State Government or a Local Authority. The proviso to sub-section 1 tells us that no such permission is necessary for demolition of an existing structure, erection or building a part thereof in compliance with a statutory notice from a Planning Authority or a Housing or Area Development Board, the Repairs and Reconstruction Board or the Slum Improvement Board. We are not concerned with sub-section (2).

102. Section 45 then deals with the grant or refusal of permissions. This is the permission that is commonly known as the CC. It is best to reproduce Section 45 in its entirety:

> "**45. Grant or refusal of permission**
>
> (1) On receipt of an application under section 44 the Planning Authority may, subject to the provisions of this Act, by order in writing—
>
> (i) grant the permission, unconditionally;
>
> (ii) grant the permission, subject to such general or special conditions as it may impose with the previous approval of the State Government ; or
>
> (iii) refuse the permission.
>
> **(2) Any permission granted under sub-section (1) with or without conditions shall be contained in a commencement certificate in the prescribed form.**
>
> (3) Every order granting permission subject to conditions, or refusing permission shall state the grounds for imposing such conditions or for such refusal.

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(4) Every order under sub-section (1) shall be communicated to the applicant in the manner prescribed by regulations.

(5) If the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within sixty days from the date of receipt of his application, or within sixty days from the date of receipt of reply from the applicant in respect of any requisition made by the Planning Authority, whichever is later, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of sixty days:

Provided that, the development proposal, for which the permission was applied for, is strictly in conformity with the requirements of all the relevant. Development Control Regulations framed under this Act or bye-laws or regulations framed in this behalf under any law for the time being in force and the same in no way violates either the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under this Act:

Provided further that, any development carried out in pursuance of such deemed permission which is in contravention of the provisions of the first proviso, shall be deemed to be an unauthorised development for the purposes of sections 52 to 57.

(6) The Planning Authority shall, within one month from the date of issue of commencement certificate, forward duly authenticated copies of such certificate and the sanctioned building or development plans to the Collector concerned."

(*Emphasis added*)

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103. The only other Section that we must refer to is the lapsing provision that is in Section 48. This is necessary because we will need to juxtapose it with a similar lapsing provision relating to IoDs under the MRTP Act. Section 48 reads thus:

> "**48. Lapse of permission**
>
> **Every permission for development granted or deemed to be granted under section 45 or granted under section 47 shall remain in force for a period of one year from the date of receipt of such grant, and thereafter it shall lapse**:
>
> *Provided* that, the Planning Authority, may, on application made to it extend such period from year to year; but such extended period shall in no case exceed three years:
>
> ***Provided further*** **that, if the development is not completed up to plinth level or where there is no plinth, up to upper level of basement or stilt, as the case may be, within the period of one year or extended period, under the first proviso, it shall be necessary for the applicant to make application for fresh permission.**"
>
> (*Emphasis added*)

104. The second proviso speaks of development up to the plinth or upper level of basement or stilt. As we shall presently see, there are allied provisions under the DCPR 2034 regarding commencement of work in relation to the plinth.

105. The MCGM is undoubtedly the Planning Authority but it does not operate only under the MRTP Act. It does that as well, but it is also controlled and regulated by a dedicated statute namely, the

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MMC Act. We are concerned here with Chapter XII captioned 'Building Regulations' of the MMC Act.

106. It may be more convenient to proceed here from Section 342 to 347. Section 342 is part of the sub-division of Chapter XII that deals with notices regarding execution of works not amounting to the erection of a building. Section 342 also deals with notices to be given to the Commissioner of intention to make additions etc., or a change of user to a building. Those details need not detain us at present. Section 345 tells us when building or work may be proceeded with. This has reference to Section 342, and Section 337 (notice to be given to the Commissioner of intention to erect a building), Section 338 (permitting the Commissioner to require plans and other documents to be furnished), Section 340 (again regarding additional information) and Section 343 (plans and additional information).

107. What Section 345 tells us is that there exists a deeming provision. It works like this. If, within 30 days of the receipt of any notice under Section 337 or Section 342 or of the plan of other information called for in Sections 338, 340 and 343, the Commissioner does not in writing communicate his disapproval of the building or work proposed, then the project proponent may at any time but within one year from the date of delivery of the notice proceed with that building or work. Of course, there is a positive element too i.e., where the Commissioner approves the work in the question. But the work being done cannot contravene the provisions of the Act.

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108. Obviously, Section 345 operates in a particular field i.e., one of permission to commence work. But Section 347, captioned 'When work may be commenced' operates slightly differently. The captions of the two Sections need to be carefully parsed. Section 347 is central to Mr. Chinoy's case and we set it out fully below.

> "**347. When work may be commenced**
>
> (1) No person shall commence to erect any building or to execute any such work as is described in section 342—
>
> (a) until he has given notice of his intention as hereinbefore required to erect such building or execute such work and the Commissioner has either intimated his approval of such building or work or failed to intimate his disapproval thereof within the period prescribed in this behalf in section 345 or 346;
>
> (aa) until he has given notice to municipal city engineer of the proposed date of commencement. Where the commencement does not take place within seven clear days of the date so notified, the notice shall be deemed not to have been given;
>
> (b) after the expiry of the period of one year prescribed in sections 345 and 346 respectively, for proceeding with the same.
>
> **(2) If a person, who is entitled under section 345 or 346 to proceed with any building or work, fails so to do within the period of one year prescribed in the said sections, respectively, for proceeding with the same he may at any subsequent time give a fresh notice of his intention to erect such building or execute such work, and thereupon the provisions hereinbefore contained**

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> **shall apply as if such fresh notice were a first notice of such person's intention**.
>
> (*Emphasis added*)

109. Analysing this section Mr Chinoy states that it runs in a defined time sequence. It begins with a prohibition. None can commence the construction of any building or execute any work as described in section 342 unless there is a notice of intention to erect the building or commence work and the Commissioner has either intimated his approval or failed to do so under Section 345 that we have just seen and until that project proponent has given notice to the Municipal City Engineer of the proposed date of commencement. Sub-clause (b) of sub-section (1) then says that no person can commence the erection of any building or the execution of work after the expiry of one year period prescribed in Section 345 and 346 for proceeding with this.

110. Now Section 347 is the section under which an IoD is issued. As the name suggests, it is an Intimation Of Disapproval (IoD). Permissions are granted but always in the negative (and this makes for very curious reading of that permission). But sub-clause (2) of Section 347 mentioned above tells us what happens when a person otherwise entitled to proceed with the building of work does not do so within that one year. It says that in that situation the project proponent is entitled to give a fresh notice, the emphasis being on the word 'fresh', of his intention to erect such a building or to execute such work i.e., the very work for which permission was granted, which was not done and which permission lapsed after one

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year. Then comes the all important words that Mr Chinoy has been at some pains to emphasize:

> and thereupon the provisions herein before contained shall apply as if such fresh notice were a 'first notice' … .

111. Now Mr Chinoy's submission is relentlessly and perhaps even brutally simple. Once the IoD lapses, he submits, a 'fresh notice' *as if it was a first notice* must be given. The earlier notice is simply wiped out. It stands obliterated. It is entirely effaced and of no consequence. The required notice under Section 347 has to be given *de novo* as if it is the first ever such notice.

112. Consequently, and following this logic, anything that attaches to the IoD, whether it be a benefit or otherwise, lapses with the lapsing of the IoD. There is no concept, Mr Chinoy submits, of a benefit that can be obtained only with the IoD of being detached, de-linked or un-anchored from the IoD and somehow set adrift, only to be brought back to safe harbour at some later stage on a fresh IoD.

113. No other reading is possible, he submits. In particular, Section 347(2) does not tell us when such a fresh notice (as if it were a first notice) must be made. It does not have to be made immediately or within a week or a month or a year. It could even be made after ten years. It is therefore inconceivable, in his submission, that a benefit that was obtained in one year could literally be 'banked' for later use; kept, so to speak, in a 'safe deposit FSI vault' for later deployment and use at some convenient future time.

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114. What the GR thus required was, and he submits this is clear from the 'non-clarification clarification' of the State Government, that everything that the IoD required had to be done within a year, had to be done within that year particularly commencement of work. If work commenced within the one year period i.e., on the obtaining of a CC, then the benefits that were obtained on the IoD would obviously continue. The IoD could then be re-issued on payment of scrutiny fees. Of course if there were other material changes or additions and additional benefits sought then those would have to be paid for at the then prevalent rates at the time of the later IoD.

115. Mr Chinoy submits that the GR does not operate to amend Section 347. It operates within Section 347. It provides a concession. That concession must be obtained within the year of that GR i.e., by 31st December 2021. But that necessarily posits that everything that the IoD required had to also be done within the lifespan of the IoD.

116. He clarifies that additional FSI cannot be separately sought without there being a development proposal i.e., the submission of building plans and a proposal to show how the additional FSI is to be used in that project. Further amendments are immaterial. The premium that is to be paid is for the additional FSI that is to be incorporated in that proposal. It is thus necessary that within that period of one year of the IoD lifespan work must be shown to have commenced.

117. There is no ambiguity about what "*commencement of work*" means. It is the stand of the MCGM that *commencement of work* does

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not mean doing a token activity on site such as a ground breaking ceremony or anything as trivial as that. Read with Sections 43, 44 and 45 of the MRTP Act, it is clear that no work can commence without a CC issued under Section 45. Therefore, it is the issuance of a CC that is required within that one year period.

118. While on this aspect of the matter, Mr Chinoy invites our attention first to some provisions of the DCPR 2034. Commencement of work is specifically a subject under DCR 10(6). This says that the development permission/CC shall remain valid for four years in the aggregate but must be renewed before the expiring of one year from the date of its issue. This is consistent with the MRTP Act. Then commencement is defined for the purpose of this Regulation in a table in DCR 10(6) for different types of work. For building work including additions and alterations, commencement means up to plinth level or where there is no plinth up to the upper level of lower basement or stilt as the case may be.

119. DCR 30 is the first Regulation in Part V of the DCPR 2034. This deals with the FSI. Sub-regulation 1 sets out the Floor Space Indices or FSI in residential, commercial and industrial zones across the city. The definition of FSI and its formula is provided in the DCPR itself and this is not in controversy either. It is also now included in the MRTP Act itself. In particular, sub-regulation 6 of DCR 30 speaks of the premium to be charged on additional FSI on payment of a premium and there is a reference to Column 5 of Table 12. Table 12 does not actually set out the premium but sets out the additional FSI. Now the premium under DCR 30(6) is payable for

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the built-up area at the rate of 50% of the land rates as per the ASR for FSI of 1.

120. DCR 2(61) defines FSI as the quotient of the ratio of the combined gross floor area of all floors except those exempted under the regulations to the gross area of the plot. This tells us that if the FSI is known and the gross plot area is known, the maximum permissible built-up area can be arithmetically computed. This is exactly the same definition we find in Section 2(13A) of the MRTP Act.

121. The premium is to be divvied up between State Government, MCGM, Maharashtra State Road Development Corporation Limited ("**MSRDC**") and the Dharavi Authority equally.

122. The proviso tells us that the utilization of additional FSI on payment of the premium and TDR is optional. It may be utilized in a sequential manner subject to the FSI limits in Table 12. It is non-transferable. Additional FSI on paying of a premium can be granted only when it is sought i.e., applied for. The payment of a premium on an application and on payment of the premium. Unlike TDR, the additional premium is to be used *in situ* on the plot where the project is.

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IS ADDITIONAL FSI/PREMIUM FSI 'PROPERTY' OR 'AN ENTITLEMENT'?

123. Dr Chandrachud among others has contended that once the premium is paid, the additional FSI is the species of property. It becomes the ownership of the land owner or the project proponent, as the case may be. It is true that it has to be paid for but then that is equally true of any land that is being purchased or of any TDR that is being purchased. The fact that TDR can, as it were, float across the city is not a material point of distinction as to the question of the nature of additional FSI. For all intents and purposes it is 'property' and is not a mere 'entitlement'. It is true, he submits, that the additional FSI is not inherent in the land. The inherent or basic zonal FSI is defined by the DCPR, 1.33 in the Island City and 1.00 in the suburbs. This is additional FSI. A land owner may or may not chose to avail of it. The fact that the land owner needs to avail of it at the time of a building proposal also does not alter its character as property of ownership.

124. Mr Chinoy takes serious exception to this formulation. If it is property, he submits, it must be marketable and must be tradable. Additional or premium FSI is not. It has no market value. It can only be utilized *in situ*. The premium is not in any sense a purchase price. It is a fee paid to the MCGM for the grant of an additional FSI which would otherwise not be available. No other person can utilize the additional FSI obtained by a developer for a particular plot of land. Nor can the additional FSI be set free to be utilized on some other project or some other land. Consequently, in Mr Chinoy's

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submission, the additional FSI is nothing more than a concession. It is no different from saying that for a premium the available FSI is relaxed from 1.33 to let us say 2 or 2.33. This is by no means 'an additional property'. On the other hand, TDR is a purchasable and freely marketable commodity. It usually takes the form of a Development Rights Certificate. There is no compulsion to use that TDR. It can simply be sold and monetised.

125. We believe Mr Chinoy is correct in this submission. It does not appear to us to be reasonable to suggest that the concessional FSI granted by DCR 30(6) is of the same nature as TDR and is the property right of the kind that would be protected by Article 300-A of the Constitution of India.

126. We understand the reason why the argument is canvassed by some of the Petitioners because the submission is that by refusing to renew the IoD and to continue the additional FSI obtained at a premium there is a form of expropriation of property without compensation. That seems to us to be too extreme a proposition to accept. TDR is described as a 'right'. That right is a right to property. Additional FSI is simply an entitlement or a permission to load more built-up area on a project and to do so for a fee.

127. In fact, if we look a little more closely at some of the facts that we have narrated above, it seems that under the DCPR 2034 there is almost nothing that the MCGM as a Planning Authority will not allow to be relaxed for a fee. Open space deficiencies can be cured on payment of a fee, never mind that these open spaces are required

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for general health and well-being of those people for whom these projects are apparently being undertaken.

128. We cannot accept the argument by Dr Chandrachud.

THE 'BANKABILITY' OF ADDITIONAL FSI

129. The reason this argument is taken is because of a formulation that Dr Sathe for Prestige Estate advanced at the beginning, i.e., what he described as the 'bankability' of additional FSI. His submission, as we have understood it, is that the additional FSI is in no way and in no sense limited in time (even leaving aside any concessional period). It is, as DCR 30(6) shows, project-specific. It has to be used for that project on that site. It cannot be marketed, and it cannot be sold elsewhere. It cannot be traded, but there is no requirement that a project proponent must use it within the year or even that he must begin using it within the year. Dr Sathe suggests that in fact additional FSI need not be obtained at the time of the initial IoD but can be obtained at any point later when it is proposed to be used.

130. This is a more than somewhat confusing argument. We should have thought that, *ceteris paribus*, if an IoD is obtained, then presumably work must start within the lifespan of the IoD. Starting or commencing work means the CC is obtained — because no development can commence without a CC, and that is axiomatic. There is no in-built right to amend a plan to then load on additional FSI at a later stage. Consequently, it must follow that if an

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application for additional FSI is to be made it must be made at the time when the proposal is submitted.

131. It is true that plans may be amended but there is no guarantee that every amended plan will necessarily be approved with its amendments. Indeed, this is why we believe that Dr Sathe's submission is not correctly placed.

132. Let us take one example: that of an IoD being obtained and plans being submitted without additional FSI. Work may or may not have commenced. At a later stage, an amendment is proposed, this time with additional FSI. There is absolutely no assurance that the amended proposal will be accepted or allowed or that the additional FSI will be allowed to be utilised because it then applies to amended plans that are themselves subject to further approval. It would be extremely risky and perhaps even foolhardy for any developer to proceed on a speculation that a later amended plan with additional FSI was bound to be allowed. This is why those developers will seek the additional FSI as indeed every one of these Petitioners before us has done at the time of applying for the IoDs.

133. We also believe that Mr Chinoy is correct that the word 'bankability' is just a nice and glossy word for 'hoarding'. What would otherwise happen is that knowing that premium is payable on ASR, a rate that only keeps increasing, developers would cheerfully obtain additional FSI in one year and then simply hoard it for use in a later year when the ASR rate is much higher, thus avoiding a need to pay an increased premium. The submission that Mr Chinoy

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makes is that any other interpretation would lead to a situation where developers would simply 'bank' premium FSI by paying for it once and then use it at a time when the ASR rates are much higher without having to pay the differential in premium.

134. We believe Dr Sathe's submission is too broadly placed to merit acceptance. The additional FSI cannot be obtained *de hors* an IoD. There is no concept that we can tell of simply going shopping for premium or additional FSI or of any person without an IoD purchasing and thus banking additional FSI. If that be so, there is no question of individual developers not being required to pay the differential premium on revalidation of the IoD.

135. The argument on bankability of an additional FSI de-linked from an IoD is therefore not one that we are prepared to accept.

THE GR OF 2021

136. With this, we now return to the GR in question. A few things are notable about this GR. We may summarise these as follows:

i. the benefit of the GR is a reduction by 50% of the premium payable.

ii. The GR's validity is only for one year until 31st December 2021.

iii. The reduced premium must be paid in full (either as a one time payment or in instalments) by the end of that period.

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137. The purpose of the GR was to provide a fillip to the real estate sector at a time when it was perceived to be in the doldrums. The GR came not abruptly, but six months after the receipt of an expert report commissioned by the State Government from the Deepak Parekh Committee.

138. We do not have the recommendations and we are not concerned with those but the GR itself makes it clear that it was not a one sided benefit-only proposal. Tied to this 50% rebate was the corresponding 100% imposition of the stamp duty liability on the developers. Submitting an undertaking of that liability was *obligatory*. The entire stamp duty for the full range from economically weaker sections to high income groups had to be borne 100% by the project proponent. The participating projects had to be so noted with the stamp registration office. Lists of customers for whom stamp duty obligations had to be taken over were to be provided.

139. Now this seems to us to make it clear that while on the one hand there was a benefit to the developers by reducing the premiums for the premium on additional FSI, there was also an attempt to ease the burden on *consumers* i.e., flat purchasers. The idea does not seem to have been to give developers a one-sided bonanza in the form of a rebate.

140. We must note that the report itself had found that the rates for residential properties in Mumbai were uncompetitive. The levies in Mumbai were 13 times more expensive than Delhi for home

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buyers and 34 times more expensive in commercial real estate. These premiums accounted for one-third of the sale price. They were prohibitively high. They needed to be rationalised.

141. We have already looked at the correspondence that ensued between the MCGM and the State Government. But as Mr Chinoy correctly points out, that takes us nowhere. Whatever view individual officers may have had at the level of the MCGM this cannot affect a question of interpretation of the statute.

142. His submission is that Section 347 and especially Section 347(2) are unambiguous. If the submission of the Petitioners is to be accepted, it would mean that the GR carves out an exception to Section 347(1)(b) and specifically to Section 347(2), i.e., for those projects that participated in the rebate or concession scheme Section 347(2) would have to be held to be inapplicable.

143. It is correct that without a valid IoD, there can be no CC. Without a CC, no work can commence. Unless work commences, there can be no utilisation of the FSI. It necessarily follows therefore, that part of the terms of the IoD, and this is Mr Chinoy's and Mr Rajadhyaksha's submission, requires the payment of the differential in additional FSI premium every time the IoD is sought to be revalidated, the premium is computed as a percentage of the ASR as prevalent at the time of issuance of the IoD. The percentage itself may not vary unless there is a revision in the rules. To take a simple example, if the ASR in Year 1 is Rs 100 and the premium is chargeable at 10%, then Rs 10 would be the amount payable as the

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premium. If the IoD lapses and is to be revalidated, in the next year, assuming that the ASR is now Rs 150 and the percentage remains at 10%, the premium payable would be Rs 15. But the developer would get credit for the Rs 10 already paid and would be required to pay the differential of Rs 5.

144. Another aspect of the matter that has appeared in these papers seems to us to be an argument founded in equity. It runs like this. Very often, developers are unable to obtain CCs entirely for reasons out of their control. Sometimes, as we have seen in at least one case, the delay is on the part of the MCGM itself. The MCGM wears many hats in this development, planning and permission giving process. It only takes one officer to withhold or delay a required NOC with a resultant lapsing of an otherwise valid IoD compelling the developer to pay the differential premium in the following year. There are other situations with the same effect. For instance, and our Courts are certainly no strangers to this, projects are delayed by objections taken by society members or other people who have a claim. In the factual narrative that we have seen above, there is at least one case of arbitration proceedings having to be known, and another or perhaps two more of litigations in this Court in the form of Writ Petitions or Civil Suits. These have no predictable time frame to conclusion. They may run into months and even years and they are completely outside the cyclical renewal and revalidation of IoDs.

145. It is for this reason that Mr Chinoy submits that what happens in a 'normal' situation i.e., at a time when there is no question of a

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concession must also necessarily apply to the present situation where there is a concession granted but has to be availed of within one year.

146. We expect that it would be difficult to formulate a proposition that could with sufficient accuracy cover every one of the possible resultant cases where a project is delayed and a CC cannot be obtained within the one year lifespan of an IoD. But such are the perils and vicissitudes of development and all real estate projects.

147. The answer that the Petitioners seek is, therefore, not to be found either in the concept of bankability or in a case-to-case situation of delays caused by various factors. Indeed, that is not even the canvas of the Petitions before us. Every single one of these Petitions seeks only one thing — the implementation of the GR dated 14th January 2021. It is to that we direct our attention, as we believe we must. There is no larger principle or proposition that we are called upon to decide in this matter. The MCGM circular is one that follows from the GR. It is not independent of it. It cannot control the GR. Indeed, the correspondence that we have seen indicates that the MCGM was not seeking a clarification in regard to its own circular, obviously, but was addressing itself to the import of the GR of 14th January 2021.

148. There are certain provisions of this GR that merit a re-visit. We leave aside the impetus behind the GR. For better or for worse, it is what it is. The GR recognises that the premium for additional FSI must be charged as a percentage of the annual market value or

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annual statement of rates or ASR as prescribed. It then says that the Government's opinion was that, and these words are now important—

> necessary to give a rebate in the premium being charged for the additional FSI as per the recommendations of the Deepak Parekh Committee and that this should be done on an urgent basis.

149. This rebate was not said to be limited in time. Then the GR goes on to say that the Government has taken a decision about the rebate rate and pegged it at 50%. After this there are the directions. The first of these directions, as we have seen, sets out the rebate and then says it is subject to a procedure that is set out below. Direction 2 only says that the decision is to be taken by the Planning Authorities. Clause A speaks of eligibility.

150. It is Clause B that now a conditionality to avail of the rebate. This has been consistently glossed over by the MCGM throughout. This liability is in relation to the stamp duty. It mandates that any developer who wishes to avail of the rebate must, as an attached condition, pay the stamp duty of purchasers of units in various categories and these range across the full spectrum from economically weaker sections to high income groups. This is clarified in Clause B to mean that the stamp duty liability of the purchasers is brought down to zero. Then Clause B goes on to say that it is

> only those developers who do so i.e., assume the entirety of the burden of the stamp duty who get **the benefit of the said scheme**

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This scheme is the rebate in question.

151. Clauses I, II, III, IV and V are sub-clauses to Clause B. Clause I requires participating developers to submit an undertaking to the MCGM to pay the full stamp duty of all purchasers. That is not all. The developers must then get a certificate from each flat purchaser confirming that the developer is bearing the stamp duty burden in full. Even that is not the end of it. The developer must publish a list of those purchasers for whom the developer has assumed the 100% liability. There is a further fail-safe provided by the Government. This full list of the projects in the scheme must go through the Municipal Commissioners to the stamp registration office for information and must also be published.

152. Then comes the all important Clause V which we take the liberty, at the cost of repetition, of setting out again:

> "V. The projects taking benefit of these concessions will **have to continue the benefit of stamp duty till the construction area for which benefit has been taken is sold.**"
>
> (*Emphasis added*)

153. Now this is probably the crucial clause for our purposes. Every single project that benefits from the concessions in the GR in question must continue to absorb the stamp duty burden until that area for which the benefit has been obtained has been sold.

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154. The Marathi equivalent is to be found at page 53.

> "V. या सवलतींचा लाभ घेणा–या प्रकल्पांना, लाभ घेतलेल्या बांधकाम क्षेत्राची विक्री होईपर्यंत मुद्रांक शुल्क सवलतींचा लाभ चालू ठेवावा लागेल."

The translation is accurate.

155. Now let us consider what happens if Mr Chinoy's formulation is to be accepted. After one year, the IoD lapses. According to him, with it goes the additional FSI benefit until and unless the IoD is re-validated by paying the premium differential.

156. We posed the question what would happen to the stamp duty undertaking given and required to be maintained until the construction for which it was obtained was sold. The answer suggested was that if the benefit no longer applied then the condition attached to it would also not be binding.

157. We find nothing in the GR to support this construction or interpretation. The condition of stamp duty is not itself conditional, i.e., it is not dependent on any other event happening or not happening. That liability is absolute and is a *pre-condition* and an *ongoing condition* to obtaining the rebate.

158. Indeed, the answer is logically self-defeating. The rebate is tied root and branch to the demand that the developer must absorb the full stamp duty liability. If the stamp duty liability goes, for whatever reason, then *so must the entitlement to the 50% rebate*. In other words, if the stamp duty liability goes, then, logically, so must

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the benefit and the developer ought to have been asked to pay 100% premium even in the rebate period year. But that is not the case the MCGM advances before us.

159. Everything points to the contrary. As we have seen, this was a specific one-off rebate for a limited period of time in certain peculiar circumstances that obtained country-wide and affected many sectors, this one being only one of them. The GR does not contemplate a case merely of conferring a benefit. It also imposes in parallel a burden. That is of the assumption by the developer of the entirety of the stamp duty. That is clearly, under conditions B-I to B-V literally locked in *for all time to come till the end of the project*. Indeed it would be difficult to conceive of a situation where, having given an undertaking, obtained a certificate from a flat purchaser or a unit purchaser, submitted a list to the Government, that project being included in a list in the stamp office and condition B-V being in operation, a developer could conceivably go and tell a flat purchaser that since the IoD had lapsed the developer was no longer bound by the commitment to bear the entire stamp duty. That could never be.

160. To read it as Mr Chinoy suggests would be to read out the provisions of Clause B-V of the GR entirely. Indeed, it would mean that Clauses B-I to B-V would have to be read as non-existent and would have to be deleted.

161. We believe the concerns of the MCGM that this would open a Pandora's box and that in year after year people would simply refuse

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to pay their additional premium is entirely misplaced. The concession is a one-off concession. It applies only to projects, and we are not really bothered whether there was one project or several hundred, which being eligible, obtained the benefit by paying the full amount of the premium of the rebated premium in that year and also undertook to absorb the stamp duty liability. The rebate granted cannot possibly be made illusory.

162. If the argument by the MCGM is to be accepted, then the resultant situation would be that the so called rebate would be all but wiped out and in addition the developers would necessarily have to continue to bear 100% of the stamp duty burden. That could not have been the intention of the GR at all.

163. It follows, therefore, that the additional FSI by paying the rebated premium would necessarily have to continue without being required to pay additional premium until completion of the project so long as the undertaking to pay stamp duty continued. The two go hand in hand. They cannot be separated. This applies only to those projects that took the benefit of the GR and abided by its conditions.

164. This is the only method we have of harmonising the requirements of Section 347 and the GR which, as we have noted, is not merely the conferment of a benefit but is a benefit with a corresponding or mirroring obligation at the same time.

165. It is of no consequence when, for instance under the RERA law, a flat may legitimately be sold. The only question to be decided

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is whether the IoD is liable to be revalidated without insisting on payment of additional premium for those developers who, being eligible, participated in the rebate scheme.

166. We hold, in the facts and circumstances that have been set out above, and on a correct interpretation of the GR that these IoDs are liable to be revalidated and Commencement Certificates may in the normal course be issued without a requirement to pay an additional or differential premium provided the conditions in the GR are fully met (including payment of the full amount of the premium within the time stipulated, submission of the undertakings etc.).

167. To conclude, we may consider once again the 8th June 2023 communication from the Maharashtra Government. It seems to us that the Government has correctly set out that the 14th June 2021 GR had already lapsed and there was no question of continuing its benefit in successive years. But this only meant that its rebate policy was confined to that year in question. It is for this reason that the Government concluded by saying that it was unclear as to under which provisions any concession was sought to be continued. The State Government asked for a more precise proposal.

168. Correctly read, the Government communication did not seek to extend the 14th January 2021 circular beyond its expiry date of 31st December 2021. But this necessarily meant that within that period the GR was valid and subsisting and all its conditions had to be met for its benefits to be availed of.

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169. Consequently, the only fair reading of this GR is, while insisting on the fulfilment of the conditions, to maintain the continuance of the benefit that it confers. Any other reading of the GR would render it entirely illusory and even meaningless especially in the long run. No such concession is available after the period of the GR. It is not being suggested that in the normal course revalidated or renewed IoDs will be exempt from payment of the differential premiums or premium if any.

170. We dispose of all these Petitions by directing the MCGM to revalidate or renew the IoDs in question without insisting upon payment of an additional or differential premium but only in respect of those developers/projects that have met the conditions of the 14th January 2021 GR.

171. The Petitions are disposed off in these terms. There will be no order as to costs.

172. Mr Chinoy requests for a stay of this order on the basis that there are others who have paid the differential premium although they were participants in the rebate scheme. That is not a ground to stay the operation of this order. Any stay would result in a further delay in revalidation. Apart from the impact on developers, a delay in revalidation affects third party flat purchasers and, perhaps most importantly, those awaiting rehabilitation because without a revalidated IoD, there can be no CC and no further work on site.

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173. In any case, the fact that the MCGM has to make a refund is immaterial to the question of interpretation of the GR and the relevant statutes. It is hardly plausible to suggest that just because the MCGM will have to make significant refunds, therefore the GR should be interpreted in an incorrect manner.

174. The application is refused.

175. In all cases where the application for a CC has been rejected on this ground i.e., for demand for additional premium, the MCGM is directed to issue the CC subject to other compliances.

176. In Sugee Two Developers LLP and Sugee Nine Developers LLP, the developers have paid the amount, as we have noted, on a without prejudice basis. In view of our decision, they are entitled to a refund.

177. At Mr Chinoy's request, this order for a refund is stayed for the period of six weeks from the date this order is uploaded (and which may take a little while given its length).

(Kamal Khata, J) **(G. S. Patel, J)**

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Exhibit A-1

55

English translation of original document in Marathi

Maharashtra Regional & Town Planning Act 1966

Directions under Section 154 for granting rebate to be granted in premium being charged on account of additional Floor Space Index as per the prevailing Development Control & Promotion Regulations.

GOVERNMENT OF MAHARASHTRA
Urban Development Department
Mantralaya, Mumbai 400032

Government Resolution No.: TPS-1820/A.N.27/Pra.Kra.80/20/Navi-13
Date: 14.01.2021

Introduction: Taking an overall view of the Covid-19 Virus peril and the pandemic declared by the World Health Organization and on the background of the lockdown declared from time to time in the State which also has brought severe recession in financial and industrial progress on the international level; the State Government is taking various measures to bring forth the financial improvements. As a part of this, efforts are being taken at the Government level for rejuvenation of the real estate market. Therefore, it has become necessary to encourage construction field to reestablish. In this connection, Dipak Parekh Committee has given certain recommendations.

The premium charged while sanctioning additional FSI is calculated by the Planning Authority as per the percentage prescribed by the Government. This premium comprises of certain proportion of share between the Government and the Planning Authority. And the premium charged in the Regional Scheme area is charged by the branch offices of the Town Planning Department / District Collector as per the percentage prescribed by the Government. The premium for additional F.S.I. is to be

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charged as per the percentage of rate of the concerned land of the concerned year in the Annual Market Value Chart, as prescribed by the Government. Therefore, the Government is of the opinion that it is necessary to give rebate in the premium being charged for the additional F.S.I. as per the recommendations of Parekh Committee and that the said decision should be implemented on urgent basis. Further, as per the provisions in the prevailing Development Control & Promotion Regulations, apart from the additional F.S.I. the planning authorities and other authorities charge premium for other factors also. The Government is now of the opinion to give instructions to all the planning authorities as well as to other authorities to take decision regarding granting 50% (fifty percent) rebate in the premium being charged, at the level of the planning authorities / other authorities.

Therefore, following directions are being given to all the planning authorities / all branch offices of Town Planning Department/ All District Collectors / other Authorities under Section 154 of Maharashtra Regional & Town Planning Act 1966:

DIRECTIONS

1. 50% (fifty percent) rebate should be given in respect of the premium to be charged for additional F.S.I. in the area of Planning Authority as well as in the area of Regional Schemes as per the prevailing Development Control & Promotion Regulations. Following procedure should be adopted while implementing the same.

2. Further, the decision about granting 50% (fifty percent) rebate in the premium charged for the factors other than the additional F.S.I. (e.g. staircase, passages, for granting concessions, change in division etc.)

NOTARY ★ GOVT. OF INDIA ★ IQBAL U. R. QURESHI Greater Mumbai Reg. No. 15072 Exp. Dt. 29 Dec. 2024

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by the Planning Authorities as well as other Authorities, should be taken by the Planning Authorities / Other Authorities. While implementing the same, following procedure (A, B and C) should be adopted.

A) Following projects / part of the projects will be eligible for this scheme.

(i) Current projects and new projects: Rebate of 50% (fifty percent) on the premium to be actually deposited upto 31.12.2021 will be given on such projects.

(ii) This concession will be applicable only for all types of premiums to be charged as per Development Control & Promotion Regulations and will not be applicable for Development Charges or for other administrative factors.

B) Developers who will avail the rebate for the projects or the part of the projects, will pay the stamp duty of clients taking the houses / flats / commercial-industrial etc. units in the EWS/LIG/MIG/HIG categories (means they will bring the stamp duty of the clients to zero) and such developers only will get the benefit of the said scheme and it will be necessary for such developers to make an open declaration and complete the following procedure.

I. The concerned developers desiring to participate in this scheme shall have to submit an undertaking to the Planning Authority that they will be paying full stamp duty of the customers for the projects.
The Developers shall submit the certificate of the beneficiary customer that the full expenditure of the stamp duty in such project has been borne by the developers.

NOTARY
IQBAL U. R. QURESHI
Greater Mumbai
Reg. No. 16072
Exp. Dt.
29 Dec. 2024
GOVT. OF INDIA

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III The Developers shall publish the list of the customers for whom they have made the expenditure of their full stamp duty.

IV List of the projects participating in this scheme will be sent to the Stamp Registration Office through Municipal Commissioners / Chief officers of Municipal Councils or Naragpanchayats / District Collectors / Planning Authorities, for information and will also be published on the website of the concerned authority.

V The projects taking benefit of these concessions will have to continue the benefit of stamp duty till the construction area for which benefit has been taken is sold.

C) The Annual Market Value Rate Chart (Annual Statemnt of Rates – ASR) which will be considered as a base for charging the premium for the new projects or part of the new projects on which fresh premium assessment is to be done should be –

i) one, which is applicable on 01.04.2020

or

ii) one, which is prevailing while depositing the premium

whichever is more and accordingly the assessment should be done taking such Annual Statement of Rates – ASR.

Help and guidance will be taken when necessary by co-coordinating with MAHARERA for effective implementation of the said scheme.

These directions will come into force with immediate effect.

By the order and in the name of Governor of Maharashtra.

NOTARY ★ INDIA ★ GOVT. OF
Iqbal U. R. QURESHI
Greater Mumbai
Reg. No. 16972
Exp. Dt.
29 Dec. 2024

Sd/-
(N.R. Shende)
Jt. Secretary, Government of Maharashtra

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To,

1) Director, Town Planning, Maharashtra State, Pune
2) All Jt. Divisional Directors, Town Planning
3) all Divisional Commissioners
4) All District Collectors
5) Commissioners, all Municipal Commissioners
6) Metropolitan Commissioners, All Metropolitan Region Devellopment Authorities
7) All Special Planning Authorities
8) Chief Executive Officer, Kolhapur Urban Area Development Authority, Kolhapur
9) all Navanagar Development Authorities
10) Asst. Director, Town Planning / Town Planner, Town Planning & Valuation Department, All Branches.
11) Cchief Executic Officers, All Zilha Parishads
12) Addl. secretary, NVI-11-30, Section Officer, Navi-9-12, Town Development Department, Mantralaya, Mumbai.
13) Chief Officer (All Municipal Councils / Nagarpanchayats)
14) Section Officer (Navi-29), urban Development Department,
/-The enclosed directions may be published on the website of this Department.
15) Section Officer, Information & Technology Dept., Mantralaya, Mumbai.
/-The enclosed directions may be published on the website of this Department.
16) Selection File, Desk (Navi-13)

Copy to:

1. Principal Secretary to Hon'ble Chief Minister, Mantralaya, Mumbai
2. Secretary to Hon'ble Dy. Chief Minister, Mantralaya, Mumbai.
3. Private Secretary to Hon'ble Minister, Urban Development.
4. Private Secretary to Hon'ble Minister for State, Urban Development, Mantrlaya, Mumbai.
5. Hon'ble Opposition Party Leader, Legislative Council/Assembly, Maharashtra Legislative Assembly.

NOTARY
IQBAL U. R. QURESHI
Greater Mumbai
Reg. No. 16572
Exp. Dt.
29 Dec. 2024
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6. Hon'ble Vice Speaker, Maharsashtra Legislative Council, Secretariat, Mumbai
7. Hon'ble Vice Chriaman, Maharashtra Assembly, Secretariat, Mumbai
8. Principal Secretary (Navi-1), Urban Development Dept., Mantralaya, Mumbai.
9. Director (Town Planning) & Jt. Secretary, Urban Development Dept., Mantralaya, Mumbai.

NOTARY GOVT. OF INDIA
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