

March 2023



Redevelopment: Consent of 51 to 70% Occupants/Tenants

By a recent order, the Bombay High Court has determined the issue of contemporary importance that 2018 Guidelines issued by the Municipal Corporation for Greater Mumbai (MCGM) for declaring private and municipal buildings as dangerous and unsafe (*C 1 category*) do not require consent of all i.e. 100% tenants/occupants of the building.

Consent of 51% or 70% of the occupants/tenants of the building, as applicable to the proposals made under the relevant regulations Development Control and Promotion Regulation 2034 (DCPR-2034) including buildings which MCGM declares as dilapidated and dangerous is adequate for MCGM to issue a commencement certificate (CC) to the development/redevelopment proposal.

The Court explained that consent of all or 100% tenants/occupants (as set out in clause 1.15 of the Guidelines) is not necessary for issuing the CC due to the following:

- upon majority of the occupants/tenants agreeing to vacate the building and/or agreeing to accept the permanent alternate accommodation (PAA) offer of the owner, which protects their existing occupancy rights, the objections of minority tenants/occupants, for whatever reasons including:
 - minority tenants/occupants not agreeing to the settlement terms; or
 - the PAA (as offered by the owner to the majority tenants / occupants) not befitting the minority tenants/occupants needs; or
 - the minority tenants/occupants not consenting to the terms and conditions of the PAA

would give rise to severe consequences including the entire redevelopment being shelved by a minority/miniscule number of occupants/tenants.

- Sheer opposition on certain issues by few tenants/occupants cannot result in the project being delayed, as this would prejudice the other tenants/occupants of the building, the owners, and other stakeholders.

- Re-development project cannot be put to a halt until 100% of the tenants/occupants consent for redevelopment by accepting a PAA or the tenants/occupants entering into any other arrangement or agreement/settlement with the building owner.
- The following regulations under the DCPR-2034 relating to reconstruction or development require 51% consent of the occupants/tenants:
 - Development / Redevelopment of Housing Schemes of Maharashtra Housing Area Development Authority (MHADA) (Reg 33(5)).
 - Reconstruction or redevelopment of cessed buildings in the Island City by Co-operative Housing Societies or of old buildings belonging to the Corporation (Reg 33(7)).
 - Reconstruction or redevelopment of dilapidated/unsafe existing authorised tenant occupied building in Suburbs and extended Suburbs and existing authorized non-cessed tenant occupied buildings in Mumbai City(Reg 33(7A)).
 - Reconstruction or redevelopment of Cluster(s) of Buildings under Cluster Development Scheme(s) (CDS) (Reg 33(9)).
- Redevelopment for Rehabilitation of Slum Dwellers (Reg 33(10)) stipulates 70% consent of the eligible slum-dwellers.

The order undoubtedly restates a settled position in law that :

- the interest of the minority occupants/tenants cannot be opposed to the interest of the majority occupants/tenants; and
- minority occupants/tenants cannot impose on the owners a delay in commencement of the redevelopment work, resulting in increased project costs, serious prejudice to the owners/developers and above all the majority occupants/tenants.

The order reiterates that redevelopment projects cannot be held hostage to the wishes of a select few occupants/tenants.

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