

No. F-24026/7/17/263
Government of India,
Ministry of Housing & Urban Affairs,
Land & Development Office,
Nirman Bhavan, New Delhi.

Dated: 29.01.2021

OFFICER ORDER No.2/2021

Subject : Issues concerning 'C' type tenements - Regarding

Whereas the Government has been receiving representations from RWAs and various individuals seeking intervention of the Govt. to address the issues concerning 'C' type tenements and provide relief.

2. Whereas the matter has been examined and issues which need consideration and resolution are:

- (I) Grant of roof right to first floor lessee.
- (II) Extending benefits of 350 FAR to 'C' type tenements as per MPD, 2021.
- (III) to continue with calculation of misuse/occupation charges by treating the individual 'C' type unit containing ground and first floor as a plot with total permissible FAR of 350 and charge commercial rates on 100 FAR for ground floor of 'C'-type tenements.
- (IV) To allot small parcel of common land in front of lavatory block as a separate plot.
- (V) To allow payment of misuse/occupation and other charges by lessee in instalments with penal interest.

3. Whereas the matter has been considered and It is pointed out that the Government, as a lessor, had executed Lease and Conveyance Deed in respect of double storeyed 'C'-type buildings in various rehabilitation colonies in Delhi.

4. Whereas the first issue which needs consideration and resolution is grant of roof rights and regularisation of construction beyond first storey in 'C' type tenement.

5. Whereas it is pertinent to point out that as per schedule D of the Deed the land under the superstructure measuring about 255.75 or 288 sq.ft. is charged 50:50 to ground floor and first floor. The lease deed is silent on the issue of right to terrace.

6. Whereas the Transfer of Property Act, 1882, hereinafter referred to as T.P. Act, which generally governs the relationship of landlord and tenant, stipulates that where a single storeyed house is let out it is presumed that its roof is a part of the demised premises. Whereas the T.P. Act. does not provide any such rights of terrace and the air space above for tenants of various different parts of demised premises of a multi-storeyed building to also ipso facto and without any lease or letting thereof become tenants also of the terrace or of the air space above it.

7. Keeping in view the ground situation and legal provisions the Government, being owner of the roof rights, and it is within its ambit to grant roof rights to the first floor lessee or his successor in interest purchaser or present occupant with valid documents, has decided

to grant roof rights to the first floor lessee or his successor in interest, purchaser or present occupant with valid documents

8. Whereas the second issue which needs consideration and resolution is extending benefit of 350 FAR to 'C' type tenements as per MPD, 2021. The Master Plan for Delhi, 2021 in Table 4.3: uses/use activities permitted in used premises under Chapter 4.0 Shelter has stipulated that **pre 1962 plotted double storeyed flats shall be treated as residential plots**. As per MPD 2021, the FAR available to plot below 100 sq.mtrs. is 350 with 4 permissible dwelling units. The maximum ground coverage available is 90%. The land beneath 'C' type tenement is approximate 51-53 sq.mtrs .

9. Whereas the facility has been extended to 'A'-type tenement but not to 'C'-type tenements, as the whole block consisting of 64 tenements is treated as a whole plot as per Section 2 of the Lease Deed which is reproduced as under:

"AND WHEREAS the Government has built a double storeyed building consisting of...64...tenements (...X... On ground floor and...Y...on upper floor with common passage and staircases for going to the upper floor) and a lavatory block in the corner as shown on the plan annexed to these presents on plot No...Z...situated in...A...Colony."

10. Whereas it has been decided to extend benefit of FAR as per provisions of Master Plan 2021 by treating individual first floor and ground floor of the block as a plot by making necessary amendments in Section 2 of the lease deed. The benefit of additional FAR will be extended to the first floor lessee with a proviso that the construction above first storey will be as per Standard Building Plan (SBP) prepared by L&DO and regularized by the local body with a certificate from lessee, or his successor-in-interest, or vendee, or purchaser or present occupant with valid documents that the building is structurally safe. The onus will be on the lessee and local body that all structural and planning norms are adhered to.

11. Whereas in the MPD, 2021, four dwelling units are permissible in plot upto 100 sq. mts. with 350 FAR. The total area of tenement comes to 51 to 53 sq.m. The Lease Deed allows for transfer or assignment of the demised property with the condition that subsequent to the first transfer for assignment the Govt. shall also have the right to revise the ground rent and recover other charges, if any. Therefore, the assignee or the lessee is at liberty to transfer or assign the complete built-up unit, and it will not be treated as sub-division, which is prohibited in the Lease Deed. As a corollary, the transferee will have undivided share in the 50 % of land beneath the super structure in proportion to his share.

12. Whereas the third issue which needs consideration and resolution is levying misuse/occupational and other charges. The leases of 'C' type tenements are residential and as per extant policy, L&DO levies misuse/occupation charges, if the property is used for commercial purposes. These charges are not a function of whether the property abuts commercial or mixed land use street earmarked by a local body, in pursuance of power conferred on them by the Master Plan. The misuse/occupation and damage charges are calculated by this office after taking into consideration commercial land rate based on 150 FAR. The office of L&DO uses the following formula to calculate misuse charges:

$$(\text{Misuse area} \times \text{Plot area}/\text{total permissible FAR (Commercial rates based on 150 FAR - residential rates)}) \times 25/400)$$

13. Whereas the 'C'-type tenements are Government Built Properties, and the benefit of additional FAR will be available only to the first floor lessee or his successor-in-interest or purchaser or vendee. The ground floor tenements will not be able to avail additional FAR.

Only facility available to them is to expand on rear and front side of their tenement as per Standard Building Plan (SBP) prepared by L&DO and approved by the local body. As ground floor tenement will be able to avail only 100 FAR with no scope for vertical expansion therefore to provide relief to ground floor lessee or his successor-in-interest or purchaser or vendee, L&DO has decided to calculate misuse/occupation charges by treating the plot with total permissible FAR of 350 and charge commercial rates on 100 FAR basis for calculation of misuse/occupation charges of ground floor of 'C'-type tenements.

14. Whereas the fourth issue which needs consideration and resolution is allotment of common land in front of lavatory block. In the layout plan the small parcel of common land in front of lavatory block has neither been marked as a tot-lot land nor shown as a green area, and has been encroached upon. These small parcels of common land cannot be put to any productive use by the Government, therefore, this area needs to be protected by bringing it within the purview of planning regulations. Therefore, it has been decided to treat these small parcels of common land as an independent plot, in addition to 17.6 ft. x 10.9 ft. already allotted from the lavatory block, which will either be allotted to corner tenement lessee or his successor in interest, vendee, purchaser or present occupant with valid documents subject to available ground conditions and with a proviso that it will be responsibility of the prospective lessee to safeguard and manage common land including toilet block. The Building Plan for the aforesaid area will be prepared by L&DO and regularised by local body. Each tenement holder has 1/16 share in the land in the area underneath each lavatory block. Therefore, the corner plot lessee has to pay 15/16th share of the land cost as per rates fixed by L&DO.

15. Whereas the fifth issue which needs consideration and resolution is to extend facility for payment of misuse/occupation and other charges by lessee in instalments. The Government has been receiving representations from the lessees requesting to allow payment of misuse/occupation and other charges in instalments. The matter has been considered and it has been decided to extend facility to the lessee/owners of 'C' type tenements to make payment of misuse/occupation and other charges in quarterly instalments running for 24 months with 10% penal interest per annum. As a measure of abundant precaution, the tenement holder will be asked to give an affidavit that he/she will pay the demanded amount within stipulated time frame and supplementary lease deed will be executed on receipt of first instalment.

16. The order will have prospective effect and its stipulations will not affect already settled cases. The Standing Operating Procedures (SOP) to implement the stipulations of the Order are being issued separately.

This issues with the approval of Hon'ble MoS (I/C), HUA.


(S.K. Babbar)
Dy. Land & Development Officer

To

1. PS to Hon'ble Mos (I/C), HUA
2. PSO to Secretary, MoHUA
3. PPS to JS (A,L&E)
4. All Officers/Sections.
5. Guard File/CDN
- ✓ 6. NIC to upload on the website
7. The Commissioner, SDMC, EDMC & North MCD
8. The Chairperson, NDMC
9. PS to L&DO