

## Why Mumbai Should Embrace MCGM's New FSI Policy

Mumbai's Draft Development Plan - 2034 admits that the city's FSI Policy, in its present form, does not work. It admits that, over the past decades, the policy has caused more problems than it has solved. Therefore, MCG has proposed a new FSI Policy. The new policy rejects: statism, central planning, the reliance on artificially created scarcities to raise resources, the culture of obtrusive bureaucratic control and, ideological policymaking. It is based on a new liberal paradigm. It sees an important role for both, planning as well as markets and therefore, both, the government as well as the private sector. It favors simplicity in place of opaque complexity. It favors growth in place of deprivation. It is pragmatic instead of being ideological. This shift to a liberal paradigm is long overdue. The new FSI Policy is a step in the right direction and Mumbai should wholeheartedly embrace it.

Those who are critical should carefully read the justification for the new policy in the Draft Plan. It is based on insightful and critical historical analysis. It is well reasoned, theoretically grounded, substantiated empirically and well presented. Rarely does one see urban policy formulated and presented in this manner. Read with a receptive mind it should convince any critic.

Skeptics who are wondering whether the policy can work in India should examine Ahmedabad's experience. The liberal reforms proposed for Mumbai were adopted in Ahmedabad in 2002. They were very successful. As a consequence, two years ago, Ahmedabad adopted a second round of more far-reaching reforms. Yes, it is true that Mumbai and Ahmedabad are very different. However, whether in New York, Mumbai or Ahmedabad, urban land markets and real estate development function similarly. Therefore, regardless of size, there is much to learn from one another. Mumbai, better get on with it!

Let me explain more carefully what I mean. FSI Policy, as the Draft Plan report explains, was first introduced in Mumbai in 1964. The policy divided the city into various zones and specified an FSI, floor space index, for every zone. It was meant to specify the amount of floor area that could be built on any plot in the zone, as a proportion (FSI) of the plot area. This way of controlling building size was meant to be liberal; it specified how much could be built, without prescribing how it should be built.

The objective of the FSI Policy was to control congestion. In Nariman Point Reclamation, where land prices were high, an FSI of 4.5 was prescribed. For areas around Worli, Dadar and Sion, the FSI was 1.33. This was higher than the prevailing building norm. Though most existing buildings there were already built to an FSI of 1.00 an additional third was allowed because it was believed that these areas could afford to be more crowded. In already developed areas, like Colaba and Marine Drive the prevailing norm of 2.45 was maintained. In some areas such as Kalbadevi, Girgaon and Mandvi, which were already built to an FSI of 3.00, but were seen as being congested, an FSI of 1.66 was specified.

The objective of specifying a lower FSI seems to have been 'decongestion'. The policy wanted to ensure that when buildings in these areas were redeveloped, the new buildings built there would be smaller than the ones they replaced.

This policy had many positive features. For example, FSI specified across the city was not uniform. It varied considerably and took into consideration peculiarities of each area – not only buildings, but also land and property prices in the area. The policy was liberal and growth oriented. In some areas more FSI was allowed than the prevailing norm. However, despite these positive features, the policy was fundamentally flawed. It was based on the wishful belief that by restricting FSI one can actually control congestion. This belief confounds policymaking even today.

Can restricting FSI control congestion? Many people confuse and conflate the 'density of buildings' - which is the amount of floor space in an area - with the 'density of people' – which is the number of people in an area. But note, the two are not the same. Any link between the two it is incidental and weak. Think about it: a policy that restricts how much floor space can be built in an area, restrict the amount of floor space in the area. It does not restrict the number of people living in the area. If the demand to live in the area is low, the density of people in the area and the attendant congestion will be low. With increasing demand more people will crowd into the area. This will, both, drive up the price of floor space in the area, and increase congestion. To restrict the number of people in an area, one has to create effective barriers to entry into the area, and then, police the area to ensure that no more people are living there than is allowed by law. When demand mounts significantly, it is simply not possible to control congestion by using FSI restrictions.

Here is another way to think about it. Imagine that the FSI limit is doubled all across Mumbai and that everyone builds more floor space so as to double the density of floor space across all areas of Mumbai. For the density of people to double, Mumbai would have to also double its population. Do you think that millions more will be lured into Mumbai simply because more floor space is now available?

No doubt, there is an upper limit to the number of people that can be squeezed onto a limited amount of floor space. Therefore, it can be argued that to control congestion in Mumbai, one should limit the total amount of floor space in the city to such a low level, that it makes it is physically impossible for more than a certain number of people to live there. The absurdity of this approach can be easily seen. What you would say to someone who told you that the best way to control population in India is to restrict food production to such a low level that it is physically impossible for more and a certain number of people to stay alive! Can deprivation ever be morally acceptable as public policy?

In the long run, the only way to ensure that population growth does not result in congestion is to do what all great cities of the world have done. Incrementally and in parallel, do the following: build good quality and affordable cross-city transportation; enable people to build as densely as needed in downtowns,

particularly along transportation corridors, and; enable the city to expand out into the periphery. It is senseless to do what Indian cities have done: restrict growth within cities; neglect cross-city transportation; discourage peripheral expansion; and hope that villagers will remain in villages.

Mumbai's new Draft Plan rejects this old approach. It admits that restricting FSI to low levels has not worked in controlling congestion. Restrictions have only created and sustained a severe scarcity of development rights and floor space. This has driven up property prices, made formal housing unaffordable, needlessly fueled the expansion of slums, made life crowded and nasty for most Mumbaikars and, reduced Mumbai's productivity.

In view of this, the Draft Plan proposes to increase FSI across the city. It ensures that the gross unutilized FSI available across the entire city is much higher than at present. It allows more growth along transportation corridors and nodes. It also proposes to improve cross-city transportation. Plans to develop the peripheral areas are also afoot. All of these are moves in the correct direction. One hopes that, the next time round, even traditional method that the Draft Plan uses - of 'guesstimating' demand to determine how much FSI to supply - will also be abandoned; in favor of an approach that uses the market to ascertain demand. But, this is a mere quibble. The Draft Plans proposals are sound pragmatic, in the right direction and long overdue. They will improve living conditions in Mumbai and they should be whole-heartedly welcomed.

Those who are skeptical of arguments should study Ahmedabad's experience. There, in 2002, the gross unutilized FSI was practically doubled. In 2014, it was doubled once again. FSI limits were tripled in the Central Business District and doubled along transportation corridors. This liberalization did not increase congestion and the city flourishes. Hyderabad has a similar story to tell. A city does not suddenly double, in terms of buildings or in terms of population, simply because FSI is doubled.

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In Ahmedabad, liberalizing FSI Policy, as Mumbai's new Draft Plan proposes to do has increased compliance to building regulations and unshackled and improved the city's architecture. How can liberalization increase compliance? To understand this one has to go back in history.

When FSI limits were first assigned to different area of Mumbai, limits were set higher than current demand. The 'FSI' were merely an innocuous and unobtrusive technical specification. Soon however, on account of mounting demand for floor space and restriction on supply, a scarcity of floor space emerged. Since FSI limits remained static and demand continued to mount, scarcity also mounted. This started driving up the prices of property to higher and higher levels. FSI now seemed to be a lot more than merely a technical specification. It took on financial significance and appeared to plot owners (and

developers) to be more and more like a valuable private entitlement – an entitlement that could yield vast wealth.

Developers realized that, if one could get away with building more than what the FSI permitted, one could reap windfall profits. As can be expected, once the benefits of breaking the law appeared to be high enough to warrant the risks involved in breaking the law, many developers connived with unscrupulous authorities to build more than was allowed by law. Others encouraged their architects to stretch the law. They encouraged them to creatively maximize the use of some architectural features such as lift lobbies, balconies and weather shade. Such elements were lawfully exempt when calculating the FSI of a building but, later on, after building permits were obtained, they could be modified for use as floor space and consumers were willing to buy such elements as floor space. This was a perverse way of designing and selling buildings but it was a very effective and a quasi-legal way of breaching FSI limits and expanding profits. Soon, wizard like 'FSI architects' emerged. Using the above approach, they could design buildings so perversely that the floor space in their buildings was twice or even three times the allowable amount.

It has always been obvious that widespread illegal and quasi-legal overbuilding fuels corruption and undermines the rule of law. To address this problem, over the years, a number of attempts have been made to crack down on illegal construction and to tighten laws by trying to precisely codify which architectural elements are exempt and which are not, and, under which conditions they are exempt and when they are not. However, each attempt to plug loopholes has had to reckon with the facts of limited enforcement capacity, mounting scarcity of floor space and skyrocketing property prices. Therefore, in reality, over the years, every attempt to plug loopholes has actually only been a way of making concessions to the market and, to justify the concessions, every time, some new fee of charge has had to be levied. As a consequence, over the years, ad hoc, bureaucratically driven and piecemeal policy decisions have only served to make FSI Policy a tangle of complications.

Four issues are worth noting. First, as soon as some exceptions were codified and some concessions were granted, the amount of floor space that could be lawfully built, in practice, diverged and became higher than what was transparently prescribed by the FSI limit. As more 'exceptions' were codified and more concessions were granted, the difference between the two only ratcheted up. More importantly, the amount that could be built in practice varied from plot to plot, even when the FSI limit for the plots was the same. Obviously, this made the FSI policy even more difficult to enforce and helped further entrench corruption.

Second, over time FSI policy became so complicated that only insiders who were familiar with current minutiae and interpretations could understand it. Since this stifled competition it served insiders very well. They developed a stake in the complicated system.

Third, most lay people simply do not understand that even today, what is lawfully buildable in practice is much higher than what is specified in law. Perhaps, this is why they do not understand that the increases proposed by the new FSI Policy are not so large! They just make explicit what is today hidden from view.

Fourth, and perhaps most tragically, over the years, such complicated policy reduced architecture to becoming a perverse game of maximizing floor space by focusing on and exploiting bureaucratically defined opportunities and exemptions, while negotiating a maze of complicated building regulations. Ask architects; they will tell you about the extent to which this has impoverished Mumbai's architecture and perverted architectural practice.

Actually, instead of trying to bureaucratically enforce the law, government should have, long ago, dispelled the severe scarcity that was fuelling the illegal and quasi-legal overbuilding, by liberalizing and simplifying FSI policy. Trying to stop people from stretching the law and overbuilding has never worked. Thankfully, the new FSI Policy recognizes this. The liberalization that it proposes and more particularly, the simplifications that it proposes will improve compliance, simplify enforcement and unshackle Mumbai's architecture. Those who are skeptical should ask around in Ahmedabad. Liberalization and simplification have automatically increased compliance and refocused architects on more worthwhile objectives.

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One more question needs to be addressed. If the proposed reforms make so much sense, why were they so long in the coming? Did not anybody see merit in them earlier? To answer these questions we need to once again go back in history and understand why FSI became politicized.

In 1969, the Bombay Building Repairs and Reconstruction Board was constituted to repair poorly maintained rent controlled buildings that owners had chosen to neglect. It immediately became clear that the Board could not reconstruct many of the buildings that it was supposed to, because it could not accommodate all the existing tenants in the reconstructed building; the 1964 FSI Policy stipulated a lower FSI than was consumed by the existing buildings. To get around this problem, an exception was made for the Board. It was permitted 2.4 times the allowable FSI. This first exception opened up the policy to more modifications. Over time it became common practice to selectively relax FSI restrictions to achieve social objectives, or to achieve other objectives by calling them social objectives. The list of buildings that can make use of incentives is today long and includes schools, hospital and even star hotels and IT and ITES businesses! Regardless of this the view that FSI can be used to solve social problems has become well entrenched. A simultaneous development has been that charging for the exceptions and concessions, discussed earlier, has also started yielding more and more revenues. On account of both of these developments, FSI, which

started life as an innocuous technical specification and later became a valuable private entitlement has over the years has also come to be seen as a precious public resource, not to be freely dispensed.

This has completely politicized talk about FSI Policy and pitted well-meaning people against one another. Anyone suggesting that the FSI regime should be liberalized can now easily be tarred black as being secretly interested in enriching developers at the expense of the public exchequer. Sincere but misguided people, arguing for stricter control and for charging a high price for a precious public resource, appear to be civic minded and upright!

Everyone seems to conveniently forget three facts. First, that FSI can be a precious public resource only to the extent that its scarcity is artificially maintained, and, that this scarcity, by depriving a majority of Mumbai's residents of decent living space, imposes a very high social costs. Second, that, ultimately, it is new property buyers not developers who pay the high price for costly FSI. It is nothing but a hidden tax on them, not on developers. Third, that lowering the price of FSI coupled with liberal provision of it can generate the same amount of resources as providing less, maintaining a scarcity and charging high.

Since many years, it has become impossible to have a dispassionate and rational discussion of FSI Policy. This is why a fundamentally flawed policy has stayed in place for many decades. MCGM planners and officials could easily have taken the more expedient way out and proposed business as usual. Instead they have taken a courageous stand. By proposing to liberalize and simplify Mumbai's FSI Policy they have decided to tackle the problem at its root. Their policy will go a long way in transforming Mumbai for the better. Mumbaikars should be proud of this change and wholeheartedly embrace it.

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