

Mumbai's New FSI Policy Makes Sense - 1

Do not limit FSI to limit congestion

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Widespread clamor against Mumbai's Draft Development Plan has forced the Government of Maharashtra to order a review. Many people are worried that raising floor space index (FSI) limits will fuel congestion, favor developers and jeopardize an important source of public revenues. They are advocating reversal of the plan's liberal FSI policy. Their opposition is misguided. This first article deals with worries about congestion. The second explains why the policy is not a give-in to developers. The third deals with worries about public revenues.

Mumbai's planners first introduced FSI limits in Mumbai in 1964. The limits regulated the amount of floor area that could be built in various zones of the city. If the FSI in a zone was, say 1.5, then, on any plot in the zone, floor area amounting to one and a half times the area of the plot could be built on it.

In some zones, the FSI limit was set higher than the prevailing norm. This implied that, additional floor area could be added to most buildings in that zone. In other zones, the FSI limit was set lower than the prevailing norm. These zones were thought to have too much floor area. The lower FSI limit implied that, most existing buildings, if torn down, would have to be replaced by ones with less floor area.

Mumbai's planners wanted to regulate floor area to regulate congestion. They wanted to allow more floor area to be built in zones that they thought could take more crowding and decrease floor areas in zones that they thought were too crowded. They believed that controlling floor area could regulate congestion. Was this correct? The simple answer is, no.

Old school planners believed that simply by specifying the amount of floor area that can be built in a zone and simultaneously specifying the amount of floor area that should be consumed per person in that zone, a fixed number of people will live in that zone. They did not realize that for their desired outcome to be achieved, the zone would have to be strictly policed to ensure that people living in the zone were, on average, consuming the specified amount of floor area.

Without effective policing, crowding in an area depends on how many people want to live there, how much floor space they are willing to do with and how much they are willing to pay for it. If the demand of people wanting to live in an area is low, crowding and prices will be low. If the demand rises, and if no floor space is added to the existing amount of floor space, more people buying into the area will raise prices along with crowding.

Rising prices will deter more people from moving in – but only deter. If demand continues to mount, it is also possible that people will learn to make do with less floor space, pay even more for it, and further crowd up the area. Or, if they are desperate, they may even build more floor space illegally, crowd into slums or dwell on pavements.

Without strict policing it is simply not possible to regulate crowding by regulating floor space. When confronted with this conclusion, old school planners justify their actions by conveniently insisting that ‘people should follow the rules’, or that, ‘we are not responsible for policing people’, as if policing of this sort is possible at all.

Not convinced? Imagine that FSI limits are doubled across a city. Imagine that, everyone, incentivized by this policy change, builds atop their buildings and the total amount of floor area in the city doubles. ‘Floor area density’ in the city will double, but for ‘people density’ - crowding – to double the city’s population will also have to double. Will millions be lured to Mumbai simply because FSI has been doubled? Even if FSI is freely available, building new floor area costs money. Free FSI cannot lure people. Nor can restrictive FSI deter them. Limiting floor space, to limit city growth, is akin to limiting food supply to limit population growth. It will only increase deprivation. This is what has happened in Mumbai.

Restrictive FSI limits have sustained an artificial scarcity of floor space, forced people to make do with crowding, driven up property prices, made legal housing unaffordable, fueled the expansion of slums, made life nasty for most Mumbaikars and reduced Mumbai’s productivity. Allowing planners, instead of households and firms, to decide how much and where to build has promoted inefficient use of land and impeded the transformation of land uses in the city.

Scarcity of floor space has also helped sustain the illusion that relaxing FSI limits results in increased congestion. In conditions of scarcity, when FSI limits are relaxed on a plot or in a small area, people will immediately flock there and crowd up the area. Seeing this, it is natural for people to conclude that increasing FSI results in increased crowding. It is unlikely that they will carefully consider how people are likely to behave if the scarcity is dispelled.

In the long run, to ensure that population growth does not congest cities one can only do what all great cities of the world have simultaneously and incrementally done. Ensure availability of rights-of-ways; set minimal building standards with an eye on affordability, enable people to build as densely as they desire, where they desire; enable easy and affordable cross-city transportation, and; enable the city to expand out into the periphery.

It is counter productive to do what Indian cities have historically done. Disregard importance of rights of ways; set unaffordable standards; let planners specify where everyone should live and work; neglect cross-city transportation; restrict growth within cities; discourage peripheral expansion; and hope that villagers will remain in villages.

Mumbai's Draft Plan rejects this old license- permit-raj approach to liberally allow more growth where people naturally want to be. Projects to improve cross-city transportation and to develop peripheral areas are also underway. These moves are all sound, pragmatic, in the right direction and long overdue. They should be whole-heartedly welcomed.

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Mumbai's New FSI Policy Makes Sense - 2

Liberalize policy instead of granting exemptions and concessions

Widespread clamor against Mumbai's Draft Development Plan has forced the Government of Maharashtra to order a review. Many people are worried that raising FSI limits will fuel congestion, favor developers and jeopardize an important source of public revenues. They are advocating reversal of the plan's liberal FSI policy. Their opposition is misguided. An earlier article dealt with worries about congestion. This one explains why the policy is not a give-in to developers. The one following will deal with worries about public revenues.

When first specified, floor space index (FSI) limits, in most zones of Mumbai, were higher than the prevailing norm. The floor area of most existing buildings was lower than what was allowed by law. As a consequence, the FSI was an unobtrusive and innocuous technical specification. Soon however, on account of mounting demand for floor space and the restriction on how much floor space could be added, which is what FSI limits specified, a floor space scarcity emerged. With time, as demand continued to mount and nothing was done to ease supply, scarcity also mounted.

Mounting floor space scarcity started driving up property prices to higher and higher levels. Now, the FSI limit took on financial significance. Plot owners and real estate developers started seeing it as a valuable entitlement that could yield vast profits. They realized that, if they could get away with building more than the FSI limit prescribed, they could reap windfall profits.

Once the benefits of breaking the law appeared to be high enough to warrant the risks involved, developers started illegally building more than was permitted - in connivance with authorities or in brazen contempt of the law. Others, who were not so daring, encouraged their architects to help them stretch the law.

Stretching the law meant maximizing use of architectural features such as lift lobbies, balconies, weather shades and parking spaces. As per policy, such elements were exempt when calculating the floor area of a building to ascertain the building's compliance to FSI limits. Later, once permits had been obtained, they could be modified for use as habitable floor space. This was a perverse but effective way of breaching FSI limits since consumers, desperate for more floor space, were willing to buy such elements as floor space.

Soon, wizard like 'FSI architects' emerged. Using the above design approach, and with a little help from unscrupulous authorities, their design strategies could double or even triple floor space of a building. Floor space in buildings using such design strategies could be sold cheaper forcing everyone else to follow suit.

Over the years, government has attempted to counter illegal construction and architectural stretching of the law by demolishing unauthorized construction,

| penalizing offenders but allowing use of unauthorized constructions or, by more precisely codifying building byelaws.

Demolishing unauthorized buildings to more strictly enforce FSI policy has only had limited success in stopping people from breaking the laws since mounting scarcity and sky rocketing property prices have continually pegged up the gains to be made from breaking the law.

Levying a fine on offenders, but allowing use of unauthorized construction on grounds of hardship, has had even less success. Perversely, it has only led to government having to systematize the condoning of building violations against levy of penalties. Mumbai earned over Rs. 380 crores from the levy of such penalties in 2014-15.

The strategy of tightening building byelaws, by more precisely specifying which architectural elements are exempt when calculating floor area of a building and when they are exempt, has had also not worked. Attempts to thwart the use of popular quasi-legal, FSI breaching architectural design strategies, have had to reckon with the possibility that suddenly disallowing use of design strategies that have become the norm, and that consumers, landowners and developers have factored into their sale and purchase prices can trigger off a cascade of defaults. Not wanting to risk a serious market disruption, attempts to better codify FSI policy have only ended up legalizing use of quasi-legal architectural design strategies by charging fees for their use.

Granting concessions to the market in this way, by systematically condoning violations and allowing use of FSI limit breaching architectural design strategies upon payment of fees, has had three poor consequences. First, it has made FSI policy a tangle of complications. Today, it is comprehensible only to entrenched developers and architects familiar with current minutiae and interpretations. By giving unfair advantage to entrenched players, complicated policy has limited competition and harmed consumers. Since every building's design is site and program specific, increasing complexity has also made the task of administering FSI policy exponentially more discretionary, difficult and prone to corruption.

Second, this way of granting concessions to the market has reduced architectural practice in Mumbai 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. This has immeasurably impoverished Mumbai's architecture and diminished architectural practice.

Third, this way of granting concessions to the market has gradually increased what can be lawfully built in practice without explicitly raising FSI limits. As a consequence, today, where, for example, an innocent reading suggest that the FSI limit is 1.3, it may well be possible that actually one can lawfully build up to an FSI of over 5! Perhaps, this is why many people do not understand that proposed increases in FSI are not as large as they appear to be.

Instead of making hidden concessions to the market, Mumbai's planners have chosen to explicitly increase FSI limits, retract many exemptions and to simplify FSI policy. More importantly, by increasing FSI limits even above today's de facto limits, they have chosen to dispel the scarcity of development rights and strike at the root cause of widespread illegal building and corruption. Their strategy promises to simplify enforcement, improve compliance and refocus Mumbai's architects on more worthwhile pursuits. Mumbai's new FSI policy is no giveaway to its developers. It should be wholeheartedly welcomed.

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Mumbai's New FSI Policy Makes Sense - 3

Use FSI charges to mitigate impacts and build infrastructure not to hide subsidies

Widespread clamor against Mumbai's Draft Development Plan has forced the Government of Maharashtra to order a review. Many people, worried that raising FSI limits will fuel congestion, favor developers and jeopardize an important source of public revenues, are advocating reversal of the plan's liberal FSI policy. Their opposition is misguided. The first article in this series dealt with worries about congestion. The second explained why the policy is not a give-in to developers. This one deals with worries about endangering a precious source of public revenues.

When Mumbai's planners first introduced FSI policy in 1964, in some zones the FSI limit was set lower than the prevailing norm. This meant that following the policy's coming into force, the floor area of many buildings in those zones exceeded the allowable limit. Of course, owners were not immediately required to reduce the floor area of their buildings. However it was expected that if and when they tore down their buildings, they would replace them with smaller buildings. This was wishful policy making. In the face of mounting demand and rising property prices would anyone tear down more floor space and replace it with less? The policy had to be soon modified.

In 1969, the Bombay Building Repairs and Reconstruction Board was constituted to repair or rebuild, poorly maintained rent controlled buildings that owners had chosen to neglect. It immediately became clear that the Board could not reconstruct many of its buildings because restrictive FSI limits required those buildings to be replaced by smaller ones, and, it was impossible to accommodate all the existing tenants in the new smaller buildings. To get around this problem, an exception was made for the Board by permitting it 2.4 times the allowable FSI.

This first exception was essentially a rollback – a concession granted to address a problem created by a policy that ran counter to the dynamics of demand and supply. Over the years, as demand for floor space outstripped supply – which FSI policy restricted from expanding - the need for granting concessions also grew. Instead of comprehensively overhauling FSI policy, the government went in for more piecemeal rollbacks.

Today, incentive (additional) FSI is granted, for many social causes. For example, for the redevelopment of slums, providing free houses to slum and chawl dwellers, redevelopment of cessed buildings, and for building schools and hospitals. It is also granted to those who want to build 'star hotels' or facilities for IT/ITES firms since this is seen as promoting economic growth and tourism. The list includes 22 items.

Whatever be the effectiveness of such grants in promoting public objectives, the long history of granting concessions for social causes has certainly well established the view, that grant of additional FSI is an important, fiscally costless instrument for addressing challenging social and economic development issues.

Alongside this, the view that FSI is a precious public commodity not to be freely dispensed has also become firmly established because, over the years, FSI related charges have come to yield vast public revenues. The list of FSI related charges includes charges levied for grant of additional FSI, charges for using permitted architectural design strategies for breaching FSI limits and charges for condoning violation of building regulations. The Draft Development Plan reports that the total income from FSI related charges was Rs. 1011 crores in 2010-11. In 2014 it had grown to Rs. 3674 crores. It is no wonder that government is wary of trifling with FSI policy. It does not want to jeopardize a rich source of public revenues.

In the public sphere, the transformation of FSI policy into an instrument for social development and conversion of FSI into a precious public commodity has completely politicized talk about FSI and pitted well-meaning people against one another. Anyone arguing for liberalizing FSI policy because of its pernicious effects can 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 high FSI charges can portray themselves as being upright and civic minded. But they forget five facts.

First, FSI can fetch a high price and be a rich source of revenues only to the extent that its scarcity is maintained by keeping FSI limits low. But remember, low FSI limits also impose a heavy social cost. They unjustifiably restrict supply of floor space, force people to make do with crowding, drive up property prices, make legal housing unaffordable and fuel the expansion of slums.

Second, a restrictive FSI regime, combined with a high level of unsatisfied floor space demand, encourages illegal building, fuels corruption and undermines the rule of law. It also reduces architecture to a perverse game of maximizing floor space by exploiting bureaucratically defined opportunities and exemptions.

Third, allowing planners to decide where and how much floor space to build, instead of letting firms and households do this, promotes inefficient use of land. It also impedes transformation of land uses and stops a city from responding to economic changes.

Fourth, it is property buyers not developers who ultimately pay the high price for costly FSI. By levying high charges for FSI government is levying a hidden tax on buyers of new property. It is they who are paying for the subsidies that government gives to the poor. This burden should be better distributed.

Fifth, liberalizing FSI limits and levying a flat low charge for all floor space that is constructed across the city can expand construction activity and generate sufficient revenues to build the infrastructure necessary to support the

expansion. Charges should be thought of as fees and not as a land tax. Maintaining a scarcity and charging high is a perverse way of keeping revenues 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 have decided to tackle the problem at its root. Mumbaikars should be proud of this and should wholeheartedly embrace the new policy.

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Bimal Patel, Architect & Urban Planner
President, CEPT University & Director, HCP Design, Planning and Management
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architect.planner@gmail.com