

Real estate could be exempted from central environmental rules

Urban ministry changes rule before public consultation by environment ministry

Following the NDA government's "Ease of Business" mantra, the environment ministry has proposed that the entire construction sector could be exempted from mandatory environmental clearances if states impose pre-specified and standard green conditions under their building bye-laws.

But, even before the environment ministry carries out mandatory public consultation and notifies these proposed changes, the urban development ministry has already amended its model Building bye-laws public announcing the relaxation for the construction industry.

It has asked the states to adopt the model bye-laws to avoid the mandatory environmental clearances. Taking cue, the Delhi Development Authority has adopted these amended building bye-laws without awaiting a final notification of the changes by the environment ministry.

Business Standard reviewed documents that show the two ministries consulted repeatedly to decide that the changes would be made to ease the business for the entire real estate and construction industry though the environment ministry's draft said the purpose of the changes was to provide houses to the weaker section under the 'Housing For All' scheme.

It was decided between the two that if the states impose a standard list of environmental conditions under the building bye-laws then the environment ministry will exempt the buildings in the state from following the more detailed environmental conditions and clearance norms under the Environment Protection Act, 1986.

Subsequent to the internal agreement, the Union urban development ministry put out the amended building bye-laws on March 18, 2016 for states to adopt. Delhi Development Authority, which is controlled by the urban development ministry took the lead and on March 22, 2016 proposed the amendments to its bye-laws for the city.

The law requires that environment ministry first consult public before making changes to the environmental clearance processes. The ministry put out the draft notification for mandatory public consultation on April 29, 2016 – more than a month after the urban development ministry had already incorporated the ease of regulations for construction sector that the environment ministry was yet to propose.

The decision of the NDA government also comes after a spate of judgments by NGT and the Supreme Court against illegal construction in violation of environmental norms. In some cases fine in the range of Rs 50-100 crores have been imposed by the court and tribunals for such violations.

The urban development ministry did not respond to queries from Business Standard.

The environment ministry in a detailed response to queries said the changes to the regulations, “Will not only go a long way in easing the procedure for doing business without compromising environment conditions, it would also instil a spirit of competition among the states.”

Business Standard asked if the urban development ministry’s amendments to model building bye-laws presented a fait accompli for environment ministry and the subsequent public consultations had been rendered useless. The ministry said, Ministry of Urban Development is co-ordinating on streamlining the building permission. It was a consensus among the participating departments. The (public) comments have come and department will carefully consider all of them before reaching at any conclusion. Comments of public, stakeholders and ministries are useful in finalizing the notification, so it cannot be called redundant.”

Documents show that the urban development minister, Venkaiah Naidu wrote to his then counterpart in February 2016, noting, “It is hoped that this will immensely help the real estate business as landmark step in Ease of Doing Business... This will also facilitate in improving the country’s ranking in Ease of Doing Business, which is dream of our Honourable Prime Minister to make efforts for bringing the country in top 50 rank in the World.”

The environment ministry’s notification in April 2016 noted, “The Central government is working for ensuring Ease of Doing Responsible Business.” The notification also said that the rules were being amended to streamline permissions which is important “for providing house and for this purpose the scheme of Housing for all by 2022 with an objective of making available of affordable housing to weaker section in urban area has ambitious target.”

But the exemption would be available not only for weaker section housing but for all kind of real estate projects including malls, entertainment centres and commercial buildings. When queried why all real estate and construction was being exempted if the purpose was only to ease the generation of housing for poor, the environment ministry said, “This point has been raised in several comments received. Ministry will keep this in view while finalizing the notification.”

The urban development ministry shared the draft of the model bye-laws with the environment ministry. The environment ministry had two key suggestions to make. It told the urban development ministry instead of writing “dispense with environment clearances” in one part of the bye-laws, the urban development ministry should say, “Integrate the environment clearance with building permissions”. It also said that the heading of the chapter in the building byelaws should use the phrase “integration of environmental clearance conditions with building permissions” in place of “delegation of environmental clearance to local authorities.” The changes were incorporated. The sub-chapter delegating powers to local authorities was consequently called, “Requirement for climate resilient construction”.

The environment ministry justified the changes saying existing clearances, given by state level authorities, cover construction projects over 20,000 square metres and the proposed building bye-law route would cover buildings above 5,000 square metres. Therefore, the ministry said a larger section of the construction sector would eventually get covered.

The demand for relaxation for the real estate industry has been repeatedly made since 2009. But the ministry had till mid-2015 held the view that with large amount of the building stock yet to come up in India it is essential to keep a tab on the overall impact of the sector on the environment.

Yet, the existing norms for real estate have always been kept easier than that for polluting industry. Over the past four years-time bound clearance process was also put in place and the states told to enhance the number of expert bodies that clear the projects, if necessary.

In India, unlike in many developed parts of the world, city master plans under the state authorities are not prepared based on environmental carrying capacity studies and common lands such as catchment of water bodies have often been converted to real estate causing problems such as flooding in Chennai and Mumbai. The ministry responded to comments on this fact to say, “The urban areas of Municipal Corporations or Development Authorities have Master Plans, concept of Zoning and land use. This broadly takes care of major environmental features. The standard, objectively monitorable environmental guidelines in larger section of buildings will have more positive impact on environment.”

Legal experts, such as Ritwick Dutta, have said exempting the sector from provisions of the central Environment Protection Act would also imply that the industry cannot be taken to National Green Tribunal in case of any environmental damage. The ministry in response has said that would not be the case.

PROPOSED NORMS FOR EASE OF REAL-ESTATE BUSINESS

- If states put pre-fixed standard environmental conditions under bye-laws, then builders would not require prior clearance under strict central environment law
- Three categories of construction and building, based on size to be cleared by local authorities. Larger projects to have slightly more detailed standard pre-conditions than smaller buildings
- Evaluation of impact on environment and location of project left to district authorities under state laws

(Business Standard)