

GUIDELINES FOR COMPULSORY DISCLOSURE SCHEME RELATING TO PENALISATION AND REGULATION OF UNAUTHORISEDLY CONSTRUCTED BUILDINGS AND BUILDINGS CONSTRUCTED IN DEVIATION TO THE SANCTIONED PLAN IN MUNICIPAL AND URBAN DEVELOPMENT AUTHORITY AREAS

1. Introduction:

Andhra Pradesh has experienced rapid growth of urbanization during the last four decades. The urban population has increased from 62 lakhs in 1961 to 205 lakhs in 2001 registering a growth close to 230 percent. As per 2001 census the percentage of population living in urban areas in the state stood at 27.08 compared to 27.78 for the country. Andhra Pradesh is the sixth most major urbanized state in the country. Andhra Pradesh has been making rapid strides in economic development in the recent past. Consequently the migration to urban areas from villages has increased manifold. There is a great spurt in construction activity to meet the increased demand for buildings due to general economic development and migration from rural areas. In this process of development, it is noticed that large number of unauthorized layouts and unauthorized buildings are cropping up in all urban areas.

2. Background:

In order to regulate such type of constructions and to bring them into the main stream of planned development, the Government have already taken measures and brought out Revised Building Rules in the year 2006-2007 wherein effective enforcement systems and mechanisms have been created such as mortgaging 10% of built up area as surety, making Occupancy Certificate mandatory for obtaining electricity and water & sewerage connections, severe penalties for building violations, registration of buildings to be done only as per sanctioned plans etc. While the Revised Building Rules take care of regulating the present and future developments, there is a felt need for finding a pragmatic solution for certain types of constructions in deviation of sanctioned plan or unauthorised constructions that have come up in large numbers over a period of time.

3. Amendments to Municipal Laws:

Government with a view to regulate the unauthorized constructions has come up with a pragmatic solution namely Penalisation of unauthorized constructions and

constructions in deviations of the sanctioned plan in order to help the people to bring unauthorized constructions into planning fold and also to remove the threat or fear of demolition.

It is a one-time opportunity for the public for their benefit to get their unauthorized constructions regulated, To give effect to the above policy relevant Municipal Laws have been amended for this purpose and Statutory Rules have been issued for implementation of Compulsory Disclosure Scheme for Penalisation and Regulation of Unauthorizedly Constructed Buildings and Buildings constructed in deviation to the sanctioned plan.

4. Objectives of Compulsory Disclosure Scheme:

- I. To penalize each and every bulding constructed unauthorisedly or in deviation of the sanctioned plan so as to create deterrence against any such practice.
- II. To bring all the unauthorized constructions into planning fold and to regulate the development in urban areas.
- III. To provide an oppportunity to the owners of the buildings to regulate their unauthorized constructions and deviations made to the sanctioned plan.
- IV. To provide relief to several persons who have purchased buildings without any knowledge about the building regulations.

5. Applicability:

Building Penalisation Scheme (herein after called BPS) envisages the penalization and regulation of certain categories of buildings. The scheme is applicable to the following cases in the jurisdiction of all Municipal Corporations, Municipalities and Urban Development Authorities in A.P

- a) Existing Buildings constructed in violation of the sanctioned plan approved by the competent authority from 1-1-85 till the date of publication of A.P Municipal Laws and Urban areas(Development) (Amendment) Ordinance, 2007in A.P Gazette i.e 15-12-2007
- b) Existing Buildings constructed without obtaining sanction from the competent authority from 1-1-85 till the date of publication of A.P Municipal Laws and Urban areas(Development) (Amendment) Ordinance, 2007in A.P Gazette i.e 15-12-2007

Explanation: Existing Building means a building with a Property Tax Assessment or a Building which has been purchased prior to the date of notification of the Rules by way of a Registered Deed or a Building with roof slab as on date of notification of the rules.

6. BPS is not applicable in the following cases:

- i) Encroachment on Government lands or property belonging to public undertakings.
- ii) Land for which the applicant has no title.
- iii) Surplus land declared under Urban Land Ceiling / Agricultural Land Ceiling / Lands resumed under Andhra Pradesh assigned lands (POT) Act
- iv) Buildings affected under alignment of any road or proposed road under Master Plan / Zonal Development Plan / Road Development Plan or any other public roads / MRTS / BRTS.
- v) Tank bed and Sikham lands.
- vi) Areas covered under G.O. Ms No. 111 MA dated 8-3-1996 (protection of Catchment area of Osmansagar and Himayatsagar lakes).
- vii) Prohibited areas under the Coastal Regulation Zone and such other environmentally restricted zones as may be prescribed.
- viii) Layout open spaces / Master Plan open spaces / Areas earmarked for Recreation Use in Master Plan / Zonal Development Plan;
- ix) Buildings that are not in conformity with land use approved in Master Plan / Zonal Development Plan
- x) Sites under litigation / legal disputes regarding ownership.
- xi) Area reserved for parking in the sanctioned plan / area meant for parking purposes in the building.
- xii) Unauthorized constructions without any building sanction in unapproved/unauthorized layouts, for which prior approval of site/plot under regulation of unapproved / unauthorized layouts rules is required to be obtained. However applications for building penalisation would be accepted if the applicant applies for regulation of the unauthorized site / plot and encloses the acknowledgement to that effect.
- xiii) Penalisation shall not be done for the constructions made within the building line of major roadwidths of 80 feet and above within the limits of Greater Hyderabad Municipal Corporation, Greater Visakhapatnam

Municipal Corporation, Vijayawada Municipal Corporation and roads of 60 feet width and above in rest of the urban areas as per Master Plan / Zonal Development Plan.

7. Exemptions from BPS:

Huts, Semi-permanent houses (other than RCC structure) of single storey in sites up to 100 sq. yards are exempted from the operation of the scheme.

8. Compulsory Submission of applications:

Applications under BPS shall be filed compulsorily in the prescribed form with all enclosures by the owners of the buildings mentioned in Para 5 in the office of the Municipal Corporation / Municipality / Urban Development Authority as the case may be within 60 days from the date of publication of the Rules in question in A.P. Gazette.

9. Who can apply under BPS:

The following persons can apply under BPS:

1. Owner of the building
2. Registered G.P.A. Holder
3. Developer / Builder/ Association who has developmental rights

10. Services of Technical Personnel:

In every Municipality, Municipal Corporation, Urban Development Authority licensed technical personnel will be authorized by the Municipal Commissioner /Vice Chairman as the case may be to assist citizens in filling up the application form and preparation of building and site plan. In addition, the citizens can utilise the services of Registered Architects for filling up the application form and preparation of plans.

11. Prior clearances in certain cases:

Prior clearances are required in the following cases:

1. NOC from Fire Services Department is required in the following cases:
 - a) Residential Buildings with height of 18m and above
 - b) Commercial Buildings with height of above15m

- c) Buildings of Public congregation like schools, cinema theatres, function halls and other assembly buildings on plot area of 500 sq.mts and above or of height above 6mts.
2. NOC from Airport Authority of India for all multi-storied buildings and also sites falling in Air funnel zone.
3. Certificate from Licensed Structural Engineer in case of building with height above 15m.

Note: *The application in such cases shall be submitted along with the penal amount & other documents within the prescribed time. However an additional time period of 3 months will be allowed for submitting the NOCs from Fire Services Department and Airport Authority of India.*

12. Payment of Penalisation charges:

The owner / applicant shall pay the penalization charges as given in Annexure-I and II of the Rules. The penalization charges are levied for the total violated built up area of all floors. The penalization charges include the following:

1. Building permit fee
2. Development charges
3. Betterment charges
4. Other charges

The penalization charges shall be remitted by way of demand draft or bank pay order in favour of the competent authority. After the payment of penalization charges, no other charges will be levied and collected by the Competent Authorities. The penal charges paid are not refundable. However in cases of rejection, penal amount will be refunded after retaining 10% of the penal amount towards scrutiny and processing charges. In case of bonafide error in calculation, the excess amount may be refunded after issue of proceedings.

13. Categories of Penalisation Charges:

Penalisation charges shall be levied under BPS as per the following categories:

- 1) Building permission obtained but deviated from the sanctioned plan wherein the violated built up area is up to 30%.

- 2) Building permission obtained but deviated from the sanctioned plan wherein the violated built up area is more than 30%.
- 3) Buildings constructed without obtaining sanction for the building plan.
- 4) Apartments / Flats constructed in deviation from the sanctioned plan
- 5) Apartments / Flats constructed without sanctioned plan.

The details of the penalisation charges are given in Annexure-I and II of the Rules in question.

Note: Deviation means deviated from the sanctioned plan within the permissible floors. An additional floor constructed would construe violation of the sanctioned plan, i.e., additional construction over and above the sanctioned plan will be treated as unauthorised construction and penalty for this additional floor will be levied as per the relevant category rates.

14. Scrutiny and timeline for disposal of applications:

All the applications received under BPS would be disposed off within 6 months from the last date for receipt of applications.

15. Competent Authorities:

The following are the Competent Authorities for disposal of applications.

1. Municipal Commissioner in the respective areas falling in the Municipal Corporations and Municipalities.
2. Vice-Chairman of Urban Development Authority in case of areas falling outside the Urban Local Bodies in the respective UDA area.

16. Violation after submission of application:

During verification, if it is found that the applicant has constructed further additions or extensions to the existing building, then such application shall be summarily rejected duly forfeiting the entire penal amount and necessary enforcement action shall be taken against the said owner including demolition of the building.

17. Issue of Orders and Occupancy Certificate:

After receipt of the application along with the necessary documents and plans, the Competent Authority shall scrutinize the applications and after carrying out

necessary site inspections shall communicate Proceedings regulating the building constructed in violation of sanctioned plan or regulating the building constructed without obtaining sanction from the competent authority or rejecting the application with in six months from the last date for receipt of the applications under this scheme. Further the proceedings issued will also mention that all earlier proceedings and action of enforcement initiated or contemplated against the said construction are withdrawn.

Occupancy Certificate shall be issued by the Competent Authority in case of approval of the application.

Mere receipt of application or any delay in communication of final orders will not be construed as automatic regulation of unauthorizedly constructed building.

18. Disposal instructions:

Each Application for Building Penalisation shall be maintained as a separate File Year-wise, area-wise and category –wise with distinct number for a period of 10 years (D.Dis disposal).

The Competent Authority shall update their records relating to all buildings and layouts approvals and maintain these Year-wise, area-wise and category –wise, so as to facilitate people to apply for true copy of sanctioned plan under the RTI Act.

19. Appeal:

Any applicant aggrieved by an order passed by the Competent Authority may prefer an appeal to the Appellate Committee constituted by the Government within thirty days from the date of receipt of the order if he has paid the necessary charges and submitted documents as specified in Rule 3 of the Rules in question.

20. Consequences in case of failure to apply:

Where an application for regulating and penalizing the unauthorizedly constructed building has not been made, the following consequences have to be faced :

- a) The unauthorized construction would be treated as continuing offence and exemplary penalty would be levied as per Municipal Laws amended

recently.

- b) A penalty of 25% on Property Tax shall be levied till the unauthorized construction is demolished or regulated.
- c) Other enforcement action including demolition of the building will be initiated.