



Policy of Transferable Development Rights in Rajasthan

H.S. Sancheti

Abstract

The author argues that Transferable Development Rights (TDR) is a planning instrument which is used for providing land development rights to be issued by Local bodies in the form of Certificate. Transferable Development Rights is an attractive proposition for the real estate developers as well and can be very good tool to create public facilities and amenities without acquisition of land. The policy has received very good response in Rajasthan through Affordable Housing Policy, 2009 and is now being implemented in other sectors too.

1. INTRODUCTION

In order to promote planned, Integrated and sustainable Development of urban areas, small and medium towns, and villages by providing the basic infrastructural facilities like sewerage, drainage, water supply, solid waste disposal, affordable housing, mass transportation, recreational centers and all other physical and social urban infrastructure development, etc., Department of Urban Development, Housing and Local Self Government, Government of Rajasthan, has taken a lot of new initiatives during the last two years.

Government of Rajasthan has become the pioneering state in declaring and implementing 'Affordable Housing Policy 2009' with focus on EWS and LIG housing through Public Private Partnerships (PPP). Some of the major initiatives taken up by the Government of Rajasthan in the urban sector are as follows:

- Rajasthan Municipal Act, 2009, a new enactment
- Affordable Housing Policy, 2009 with a focus on EWS and LIG housing through PPP Model
- Slum Redevelopment Policy, 2010 through Public Private Partnership
- Rajasthan Township Policy, 2010
- Building Regulations, 2010 for Jaipur and other towns of Rajasthan
- Master Plans for all towns by 31st March 2011
- Rajasthan Urban Development Fund (RUDF) to provide financial support to urban local bodies
- Policy for Transferable Development Rights (TDR)

This paper will focus on the policy of Transferable Development Rights in detail.

H.S.Sancheti, Chief Town planner, Rajasthan and Director Town Planning Jaipur Development Authority.



2. TRANSFERABLE DEVELOPMENT RIGHTS (TDR)

The Transferable Development Rights will create the major facilities like affordable housing, slum redevelopment, public facilities and amenities, sector roads and parks and open spaces.

TDR is a planning instrument which is used for providing land development rights (permitted to be used on new and existing building) issued by the ULBs in the form of a certificate regulated under the building byelaws or in conjunction with the TDR guidelines framed by state government from time to time. It is an immovable property. TDR certificate shall be issued by ULBs in lieu of land surrendered by the private developer free of cost, free from all encumbrances for development of affordable houses under the state housing policy. Normally FSI is the maximum permissible extent of built area upto which a plot can be developed. The TDR allows a land owner to sell part of his right to develop his own or other land. Once the TDR transaction between private developer and administrative head of a ULB, under prescribed guidelines is completed then the developer or purchaser is entitled to build more than the permissible FSI subject to TDR use guidelines.

Government of Rajasthan shall invite proposals for the construction of affordable houses under State Housing Policy, 2009. In lieu of surrender of private land by the private developer for providing construction of EWS and LIG flats and dwelling units to the local bodies at ceiling prices free of cost. The TDR certificate shall be allotted by the urban local bodies under the guidelines prescribed by the state government. The TDR shall only be given to proposals, which are eligible and finally declared qualified by the Government of Rajasthan in accordance with the norms as prescribed in State Housing Policy, 2009. TDRs will not be generated on existing structures and will be generated only from the prospective affordable housing.

There are a number of legal requirements. The developer shall be eligible and qualify as per norms prescribed in housing policy. The private land owner shall produce all the legal documents to the effect that land belongs to him. In case, the developer has a development agreement with the *khatedar*, then the original land owner shall surrender his land free of cost to the local body showing his interest that land is to be surrendered for the development of affordable housing. The *khatedar* can authorize the developer to act further on his behalf through registered Power of Attorney.

If land is subjected to following, the surrender of land shall not be accepted for affordable housing project and hence allotment of TDR shall not be effected:

- If land belongs to *Mandir*, *Devsthan*, public trust, *Waqf* Board, any religious and charitable trust;



- If land falling under any river, *nalla*, pond, well, *bawri*, lake or any water catchment area or any other water body;
- If land which is under acquisition process or land on which the state government or ULBs have already planned or are planning any scheme or project, in such cases the state government shall be competent to take appropriate decision; and
- If land falling under ecological zone, park, open space, truck or bus terminal for any other public utilities and amenities service area as per Master Development Plan, the state government shall be competent to take an appropriate decision.

The owner will have to demarcate the land proposed for affordable housing project. The owners shall have to surrender land free of cost to ULBs and to construct 1.5 m high compound wall along the periphery of proposed area for construction of affordable houses subject to norms of State Housing Policy, 2009. At the time of processing of file for 90-B/CLU/approval of layout plan, no scrutiny fee shall be paid by the developer. The advertisement charges for inviting public objections to verify the ownership of land and objections against change of land use (if not in conformity with the Master Plan) shall be paid by the developer.

2.1 General Procedure for Obtaining Transferable Development Right Certificate

Step - I: The owner(s) shall apply in writing in the prescribed form and submit the same to administrative head of the concerned Urban Local Bodies (ULBs).

Step - II: Legal / revenue clearance of land from the concerned authorized officer is required. Town planning report and approval of building plan by the Building Plan Approval Committee constituted at ULB level. The ULBs shall be bound to release the approval of map within 30 days of receiving of 'in Principal Clearance' from state government. There will be no need of receiving the CLU clearance from government irrespective of the area of land. The ULBs shall be fully authorized to deal with the project approval specifically related with 90-B/Change of Land use / approval of layout plan under single window system proposed to be setup at the level of urban local bodies. In case the ULBs are not able to release the building plan / maps approval within 30 days, the developer may proceed to start the construction at site with immediate effect. The projects, which have an area more than 10.00 acre shall be permitted to start their construction within the planning norms even after getting 'in Principal Clearance' from the state government. In such cases the building plan shall specifically be certified by a qualified and registered architect as defined in Clause - 18 of JDA Building Byelaws 2000 or any relevant building byelaws.

Step - III: After getting 'in Principal Clearance' from the state government and acceptance of land surrendered by the developer and after clearance of public



objections, the administrative head of a local body shall execute an agreement (The format of which is to be finalized separately) with the developer regarding allotment of TDR certificate. The TDR shall be released to the developer as under:

- The TDR shall be calculated on the total plot area being reserved for affordable housing project including EWS / LIG subject to the norms as prescribed in housing policy;
- The upper ceiling of the TDR shall be 1.5 times of the total project area. The developer shall be allowed to have a double of the permissible FSI and shall be bound to consume the maximum FSI on the proposed project site keeping in view of the planning norms. The unutilized FSI shall be taken as TDR, which shall not be more than 1.5 times of the total project area; and
- The TDR certificate shall be issued in a phased manner by the administrative head of a ULB to the developer:
 - After completion of the RCC structure including brick masonry work up to top roof - 25 percent;
 - After completion of all brick work, plasters, sanitary, electrical, flooring, doors and windows, ventilator, paint, staircase, common area facilities and other items as approved in DPR complete in all respect for all EWS /LIG /MIG-A flats - 25 percent; and
 - After receiving of completion certificate - 50 percent

Development Rights Certificate (TDRs) will be issued by the administrative head of ULB. They will state, in figures and in words, the FSI credit in square meters of the built up area to which the owner of leases of such land is entitled, the place and user zone in which the TDRs are earned.

2.2 General Terms and Conditions

Transferable Development Rights Certificate will be issued only in the name of individuals, limited companies, statutory corporations or institutions, registered trusts and not in names of partnership firms, nominees, agents or any other such persons. If the property stands in the name of partnership firms, TDR shall be issued in the name of present partners and not in the name of partnership firm. The transfer and utilization of TDR in favor of NRI and Foreign Nationals will be subject to rules and regulations of the Reserve Bank of India.

The specimen signature or thumb impression in application for grant of TDR shall have to be attested by a Magistrate or Notary Public under his official seal. In respect of property held jointly by several persons, the administrative heads of ULBs shall issue only one certificate and delivery of TDR to one of the



several joint holders as may be decided by joint holders and they will then be required to make an application duly signed by all and the same shall be treated as sufficient delivery to all such holders. TDR shall be issued under the seal of the administrative heads of ULBs and under signature of the administrative heads of ULBs.

The administrative head of a ULB may reject the application for grant of TDR in the following circumstances:

- If any dues payable by the owner of the property to the state government or municipal corporation prior to the date of submission of the project, then the administrative head can withhold issue of TDR unless all the dues are paid by owner(s); and
- If the property so handed over to the ULBs and TDR is requested by fraudulent means, then the administrative head of a ULB may reject the claim of grant of TDR.

The utilization of TDR shall be in multiples of 50.00 sq m only except the last remainder. Any request of the transfer or utilization of TDR other than in multiples of 50.00 sq m shall not be considered by the administrative head of ULBs. The TDR shall be revalidated in the multiple of 5 years subject to payment of 2 percent amount (i.e. 2 percent of actual valuation of TDR value on the basis of prevailing DLC rate of the area from where TDR is generated) as revalidation fees. On full utilization of the TDR, the TDR certificate shall not be returned to the TDR holders and administrative heads of ULBs shall retain the TDR after cancelling the same. A TDR will be issued only on the satisfactory compliance of the conditions prescribed in the guidelines.

In case the application is under Power of Attorney or by limited companies, corporate bodies of registered societies and trust, the relevant power of attorney or relevant resolution of authority to make application or request for transfer, together with certified true copy of the Memorandum of Article or Association and/or byelaws should accompany the application, utilization form or transfer form. The TDR shall be utilized in various receiving zones over and above the prescribed norms of FSI, subject to the guidelines of use of TDR as given in Building Byelaws proposed to be issued by the government.

The utilization of TDR in favor of an NRI and foreign national will be subject to rules and regulations of the Reserve Bank of India. The specimen signatures and thumb impressions in the application of utilization form shall be attested by Magistrate or Notary Public under his official seal. The registered holders of the TDR shall not mortgage, pawn, pledge, hypothecate or create any charge or claim on the TDR. The local bodies will not recognize any application or claim for transfer of TDR on the basis of any charge created on the TDR. The TDR will also not be split on the basis of any charge created on the TDR.



In case of TDR is defaced, lost or destroyed and sufficient proof thereof is submitted to the administrative head of a ULB, the same may be replaced on payment of charges as may be decided by the administrative head and on such form if any and on submitting the necessary undertaking, indemnity bond, investigating evidence or other such documents, by giving advertisement in papers, etc; as the Administrative Head of the ULB may think fit.

The utilization of TDR shall be considered as under: The transferee(s) TDR holder(s) intended to utilize the TDR shall have to submit the proof showing that the plans on the land situated in a Receiving zone are approvable by the competent building plan approval committee, utilizing the entire permissible FSI, and additional TDR as per guidelines of use of TDR. For each request to utilize the TDR, separate utilization form shall have to be submitted to the administrative heads of ULBs. The prescribed utilization form requesting the administrative heads of ULBs to utilize the TDR shall be valid only for six months.

In certain circumstances, development potential of a plot of land may be separated from the land itself and may be made available to the owner of land in the form Transferable Development Rights (TDR). These rights may be made available and be subject to the Guidelines, prescribed. The owner or lessee of a plot a land which is surrendered for affordable housing project in accordance with State Housing Policy, 2009 shall be eligible for the award of Transferable Development Right (TDRs) in the form of Floor Space Index to the extent and on the conditions set out below, such award will entitle the owner of the land to FSI in the form of transferable Development Right Certificate (TDR) which he may use himself or transfer to any other person. The TDR shall be subjected to an upper ceiling of 1.5 and in no case the allotment of TDR shall exceed 1.5 times of area gross plot area.

Subject to the Guideline 20(A), where a plot of land is surrendered free of cost for affordable housing project in accordance with the State Housing Policy, 2009, the owner will be eligible for Transferable Development Rights (DRS) to the extent stipulated in Housing Policy, 2009. Transferable Development Rights (TDR) will be granted to an owner or lease, which are eligible to surrender subjected to Clause 3 of Chapter 1. The built-up area for the purpose of FSI credit in the form of a TDR shall be equal to the gross area of the plot surrendered under affordable housing policy and will proportionately, increase or decrease according to the permissible FSI of the zone where from the TDR has originated.

It is important to note that after surrendering of agriculture or non-agriculture land for affordable housing project, the status of land on which TDR is to be generated will stand as residential. Hence, at the time of calculation of TDR on the basis of DLC rate, a comparison of DLC residential rates of area from



where TDR is generated and residential DLC rates of TDR receiving area shall be compared to calculate the proportionate transfer of TDR. The TDR generated from any area and proportionate TDR proposed to be transferred in any eligible receiving zone shall be subject to residential use only. In order to make the TDR more live, such TDR could be used for commercial purpose subject to the fact that the developer or lesser shall deposit the conversion charges equivalent to 40 percent of the residential reserved rates of the receiving zone.

The TDR receiving plot should satisfy the following minimum requirement:

- There shall be no change on the front-set back of the receiving plot;
- Receiving plot must satisfy the additional parking requirements proposed to be generated in proportion to the additional TDR. Additional parking requirement shall be worked out in accordance with the JDA (Jaipur Region) Building Byelaws, 2000;
- Receiving plot should satisfy the minimum fire movement requirements as specified in JDA (Jaipur Region) Building Byelaws, 2000; and
- Receiving plot shall be eligible to receive a maximum TDR, equivalent to 80 percent of permissible FSI in accordance with JDA (Jaipur Region) Building Byelaws, 2000.

The movement of TDR from the generated zone to receiving zone shall be in proportion to the prevailing DLC rates of the concerned area as specified by the revenue authority, government or semi government body. The TDR shall be subject to proportionate increase or decrease in connection with DLC rate. For example, if the project area from where TDR is generated have residential DLC rate as 2,000 per sqm and the receiving zone has residential DLC rate of Rs.20,000 per sq m, then the proportionate TDR to be transferred shall be Rs.20,000 i.e. 1/10th of the total TDR generated subject to upper ceiling of 1.5 times of gross plot area under affordable project housing.

If a holder of TDR intends to transfer it to any other person, he will submit the TDR to the administrative head of the urban local body with an appropriate application for an endorsement of the new holder's name i.e. transferee on the said certificate. It is important to note that without such an endorsement by the administrative head of the urban local body, the transfer shall not be valid and the certificate will be available for use only by the earlier original holder.

A holder of TDR who desires to use the FSI credit certificate on a particular plot of land shall attach to his application for development permission valid TDRs to the extent required. TDR shall not be valid for use on receivable plots in the areas listed below, (identified as No TDR Zone A). These are:



- Areas included in the walled city area as specified in the master development plan of a city or town;
- All congested areas and notified slums within the limits of ULBs;
- Restricted areas notified by the concerned urban local bodies or state government;
- On plots for housing schemes of slum dwellers for which additional FSI is permissible;
- Areas where the permissible FSI is less than or equivalent to 1;
- Plots which are authorized by the ULBs; and
- Street and areas on which the height is restricted as per concerned building byelaws in force.

3. CONCLUSIONS

The policy of Transferable Development Rights is an attractive proposition for the real estate developers and can be very good tool to create public facilities and amenities without acquisition of land. The policy has received very good response through Affordable Housing Policy, 2009 and is now being implemented in other sectors also.

ITPI PUBLICATIONS

Reader Volumes (Rs. 100/- each)

Advanced Transportation Planning
City and Metropolitan Planning and Design
Development Management
Ecology and Resource Development
Environmental Impact Assessment
Environmental Planning and Design
History of Human Settlements
Housing
Land Economics
Network and Services
Planning Legislation and Professional Practice
Planning Techniques
Planning Theory
Project Formulation and Appraisal
Regional Planning and Development (Part -I)
Social Formation and Changes
Statistics and Population Studies
Transportation Planning
Village Planning and Rural Development