
REGULATION 33(9) AT THE CROSSROADS: THE ARTERIAL ROAD PROVISO AND THE UNRESOLVED CONTIGUITY QUESTION

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I. Introduction

[1] Cluster redevelopment is the principal instrument through which Mumbai renews its ageing residential stock. The mechanism is codified in Regulation 33(9) of the Development Control and Promotion Regulations 2034 (DCPR 2034, reg 33(9)), which operates by treating multiple plots as a single unit and permitting reconstruction at an enhanced floor space index (FSI). The regulatory framework rests on two foundational spatial conditions: access from a public road of prescribed width, and boundaries defined by physical features such as roads and railway lines.

[2] A notification issued on 9 July 2021 modified the regulation significantly, introducing what this article terms the arterial road proviso (Government of Maharashtra 2021). Under the amended text, a scheme accessed by a narrower road qualifies for cluster status if an arterial road lies within approximately 500 metres. The proviso was designed to unlock stalled redevelopment in pocket areas where access constraints, rather than physical unsuitability, had prevented scheme formation.

[3] In relaxing access, however, the amendment left a consequential silence. The regulation does not address whether the proviso affects the boundary requirement, and no court has yet construed either the proviso or the contiguity requirement as independent questions. The leading authority on the regulation, *Lakhani Housing Corporation Pvt. Ltd. v. State of Maharashtra* [2025] INSC 489, resolves only the question of jurisdiction and locus, leaving the interpretive gap unaddressed (*Lakhani Housing Corporation Pvt. Ltd. v. State of Maharashtra* 2025).

[4] This article maps that gap. Section II explains the regulatory framework and the 2021 amendment. Section III identifies the contiguity question and its practical stakes. Section IV

proposes a principled construction grounded in statutory text and regulatory design.

II. The Regulatory Framework and the 2021 Amendment

[5] Prior to the 2021 amendment, Regulation 33(9) imposed twin spatial requirements on cluster schemes. First, plots must adjoin a public road meeting a minimum prescribed width — typically 30 metres for residential zones. Second, the cluster must be bounded by physical demarcators — roads, railway lines, or waterbodies — defining its perimeter with administrative certainty (DCPR 2034, reg 33(9)). These two conditions served distinct regulatory purposes: confirming access to development potential and establishing clear spatial boundaries for scheme administration.

[6] The 9 July 2021 amendment modified Table A slabs and FSI ratios, but its most significant substantive change was the arterial road access clause. Under the modified provision, a scheme reached by a road narrower than the prescribed standard may nonetheless qualify for cluster designation if an arterial road — defined at a minimum width of 45 metres — exists within 500 metres of the scheme (Government of Maharashtra 2021). The evident legislative intent was to remove artificial access constraints on redevelopment in urban pockets otherwise surrounded by metropolitan-grade infrastructure.

[7] The interface between road-width prescriptions and FSI entitlements has received prior judicial consideration. In *MCGM v. Kohinoor CTNL Infrastructure Co. Ltd.*, the Bombay High Court confirmed that road-width prescriptions within redevelopment regulations are substantive conditions and that FSI entitlement is calibrated to access capacity (*MCGM v. Kohinoor CTNL Infrastructure Co. Ltd.*). The 2021 proviso constitutes a deliberate legislative departure from this standard in defined circumstances, providing the contextual backdrop against which it must be construed.

[8] The amendment is entirely silent on boundary treatment. No provision in the amended regulation addresses whether the access relaxation carries implications for the contiguity or demarcation requirements. It is this silence that generates the central interpretive problem this article addresses.

III. The Contiguity Question and Its Practical Stakes

[9] The contiguity question arises in its sharpest form where an arterial road physically

bisects the plots intended to form a cluster scheme. If contiguity is a rigid, unalterable condition, such a road breaks the cluster and the developer must treat the bisected parcels as separate plots under DCPR 2034, each subject to individual FSI limits and independent redevelopment constraints. The aggregate reconstruction area declines, and with it the rehab carpet area and the financial viability of the scheme.

[10] Administrative practice is inconsistent. Consent computation under Regulation 33(9) — itself contested following *Abdul Rehman Shaikh v. State of Maharashtra* [2024] (Bombay HC, April), where the Bombay High Court was required to clarify the method of calculating tenant consent across a cluster — has proceeded on variable assumptions about which plots may be grouped (*Abdul Rehman Shaikh v. State of Maharashtra* 2024). Some authorities permit non-contiguous clustering where the site lies within 500 metres of an arterial road; others maintain contiguity as an invariant condition.

[11] The financial consequences are material. TDR awards and compensation calculations are sensitive to scheme area and the FSI applied, as established in related challenges before the Bombay High Court in *Kukreja Construction Co. v. State of Maharashtra* and *Godrej & Boyce Manufacturing Co. Ltd. v. State of Maharashtra* (*Kukreja Construction Co. v. State of Maharashtra*; *Godrej & Boyce Manufacturing Co. Ltd. v. State of Maharashtra*). Uncertainty about scheme boundaries upstream carries cascading consequences for all downstream financial determinations.

IV. Proposed Construction and Rationale

[12] The regulation should be read to confine the arterial road proviso to its textual scope: access relaxation alone. The proviso permits schemes accessed by narrower roads where an arterial road lies proximate. It does not relax the boundary requirement. Contiguity remains the structural spine of the cluster definition — parcels must adjoin, and an intervening arterial road, by definition a physical demarcating feature under the regulation, breaks contiguity and prevents single-cluster designation (DCPR 2034, reg 33(9)).

[13] Three reasons support this construction. First, the amendment's text targets access specifically and contains no express or implied language relaxing boundary conditions. Second, the boundary requirement serves a distinct regulatory function — administrative transparency in scheme delineation and title verification — that the access relaxation does not affect

(Government of Maharashtra 2021). Third, the policy objective of the proviso is fully served by relaxing access standards alone; there is no corresponding legislative purpose to permit non-contiguous clustering. The leading authority's silence on the contiguity question is therefore not permissive but simply unreachd (*Lakhani Housing Corporation Pvt. Ltd. v. State of Maharashtra* 2025).

[14] This construction produces a workable, internally consistent regulatory scheme. Schemes in access-constrained pockets benefit from the proviso's relaxation. Schemes bisected by roads are not artificially aggregated, preserving the regulatory rationale for demarcation requirements. The two conditions — access and boundary — operate independently, each serving its own regulatory purpose.

V. Conclusion

[15] The absence of judicial authority on the arterial road proviso and the contiguity requirement reflects a gap in the jurisprudence, not in the regulation itself. Properly read, the proviso relaxes access while contiguity remains a separately operative, invariant boundary condition (*Lakhani Housing Corporation Pvt. Ltd. v. State of Maharashtra* 2025). Administrators and developers should adopt this construction to resolve current inconsistencies in municipal determinations and align administrative practice with the regulation's text and design. Judicial settlement of the question — when it arrives — should confirm what the text already implies.

Bibliography

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