

L.N. 468 of 2021

**BUILDING AND CONSTRUCTION AUTHORITY ACT
(CAP. 623)**

**Avoidance of Damage to Third Party Property
(Amendment No. 2) Regulations, 2021**

IN EXERCISE of the powers conferred by article 17 of the Building and Construction Authority Act, the Minister responsible for the building industry, after consultation with the Building and Construction Authority Board, has made the following regulations:-

Citation and
commencement.

S.L. 623.06.

1. (1) The title of these regulations is the Avoidance of Damage to Third Party Property (Amendment No. 2) Regulations, 2021 and these regulations shall be read and construed as one with the Avoidance of Damage to Third Party Property Regulations, hereinafter referred to as the "principal regulations".

(2) These regulations shall come into force within two months from their publication in the Gazette.

Amends
regulation 7 of
the principal
regulations.

2. Immediately after sub-regulation (10) of regulation 7 there shall be added the following new sub-regulations:

"(11) (a) Wherever more than fifty percent (50%) of the total number of owners of any one complex which falls within an excavation affected zone as defined in these regulations are in disagreement with the condition reports and, or method statements prepared by the *perit* on behalf of the developer in terms of these regulations, they may elect to engage one *perit* of their choice to review the said condition reports and, or method statements that were prepared by the *perit* on behalf of the developer and may make a claim for disbursement as provided in this sub-regulation.

(b) The amount claimed for disbursement in terms of paragraph (a) shall not exceed five hundred euro (€500) exclusive of VAT for any one complex.

(c) The developer shall deposit a bank guarantee to the Building and Construction Authority equivalent to five hundred euro (€500) exclusive of VAT for each complex situated within the excavation affected zone to make good for any claims made in terms of paragraph (a). No clearance to commence works shall be given by the Building and Construction Authority unless the relative sum is deposited in full.

(d) Any claim made in terms of paragraph (a) by an owner of a complex situated within the excavation affected zone shall be made to the developer and notified to the Building and Construction Authority. Payment by the developer shall be made against an authentic copy of the fiscal receipt issued by the *perit* appointed to review the condition reports and, or method statements. The Building and Construction Authority shall, within two (2) weeks, after the *perit* in charge of the project submits a certification that the works have been completed together with the authentic copy of the fiscal receipts related to the payments done by the developer with respect to all claims, release back to the developer the bank guarantee raised in terms of paragraph (c).

(e) The *perit* appointed to review the condition reports and, or method statements shall not be prohibited from making other independent arrangements with the owner or owners of the complex appointing him or her, for any fees that are considered over and above the said amount.

(f) For the purpose of this sub-regulation, "complex" means any property on one or more levels sharing the same footprint or part thereof and having access onto a street and where more than fifty percent (50%) of the total number of owners elect to commission the same *perit* to review the condition reports and, or method statements that were prepared by the *perit* on behalf of the developer:

Provided that each un-divided co-owned property having independent access within a complex is considered to be owned by one owner for the purpose of computing the total number of owners in paragraph (a).

(12) The commencement of any works of excavation, demolition or construction may take effect only after the Building and Construction Authority provides clearance in writing.

(13) When a stop order issued by the Director is revoked, the resumption of any works of excavation, demolition or construction described in that order may take effect only after the Building and Construction Authority provides clearance in writing."
