

EXPLAINER

The controversy around parking spaces

How will the Supreme Court ruling that promoters have no right to sell 'stilt parking spaces' impact consumers?

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The story so far: The question of whether stilt parking slots are equivalent of “garage area” and use of the areas allocated for these by promoters for other purposes have been a recurring issue recently. Some years back, the Supreme Court in *Nahalchand Laloochand & Co. Ltd. vs Panchali Co-operative Housing Society Ltd.*, dismissed the appeal of the promoter, Nahalchand Laloochand Pvt Ltd, challenging the Bombay High Court ruling that under the MOFA (Maharashtra Ownership Flats Act), a builder cannot sell parking slots in the stilt area as independent flats or a garage. The Apex Court decided the four major contentions in the case (i) whether a stand-alone ‘garage’ is a ‘flat’ within the meaning of Section 2(a-1) of MOFA; (ii) whether stilt parking space/open parking space of a building regulated by MOFA is a ‘garage’; (iii) if the answer to the aforesaid questions is in the negative, then the question was whether stilt parking spaces/open parking spaces in such a building are part of ‘common areas and facilities’ and (iv) what are the rights of the promoter vis-à-vis the society (of flat

What constitutes a ‘flat’ under MOFA?

Section 2(a-1) of MOFA defines a “flat” as a separate and self-contained set of premises used or intended to be used for residence, or office, show-room etc. for carrying on any industry or business (and includes a garage), the premises forming part of a building and includes an apartment. It means that even if there is a sanitary, washing, or bathing facility shared between two sets of premises, each set of premises is deemed to be separate.

What did the Court rule?

The Court, interpreting the phrase – ‘and includes garage’ – said that it must be read with the ‘set of premises’ and not with the uses. It also observed that the statutory definition of ‘flat’ should be interpreted taking into consideration the legislature’s intent and the statute’s context. If ‘garage’ (or a garage by itself) was intended by the legislature to be a ‘flat’ within the meaning of Section 2(a-1), it could have been conveniently conveyed by use of the expression ‘or garage’ after the word ‘business’ in the same breath. The bracketed phrase is rather indicative of the legislative intention to include a ‘garage’ as an accessory or attachment to a flat which satisfies the ingredients of Section 2(a-1).



are not garages. It said that the term ‘garage’ has not been defined in MOFA and therefore, the SC interpreted the term ‘garage’ as used in Section 2(a-1) in a general sense, or as a flat purchaser of ordinary prudence would think of that term. A ‘garage’ is a place having a roof and walls on three sides. It does not include an unenclosed or uncovered parking space. It means the words ‘covered/open garage’ cannot override the true meaning of the term ‘garage’ in Section 2(a-1). As a matter of fact, none of the provisions of MOFA regards ‘open garage’ as connoting a ‘flat’ or an appurtenant/attachment to a flat. It would be impossible for an ordinary person to think that buying an open-to-sky flat with space for parking

could not be described as a garage.

With regard to the third contention, are stilt parking spaces part of the common area or facility?

The Supreme Court questioned the view taken by the High Court. The Supreme Court took the definition under Section 3(f) of MOFA which defines ‘common areas and facilities’. The Court expressed the view that in case the open/stilt parking space is treated as part of ‘common areas’, every flat purchaser will have to bear the proportionate cost for the same although he may not be interested in such a parking space. Moreover, it is not necessary that all flat purchasers must actually use all ‘common areas’ and facilities. Third, the relevant test is whether such part of the building is normally in common use. The Court, however, relied on the same viewpoint that an open-to-the-sky parking area or stilted portion usable as parking space is not a ‘garage’ and therefore, not sellable independently as a flat or along with a flat.

The MOFA mandates the promoter to describe ‘common areas and facilities’ in the advertisement. If a promoter does not fully disclose the common areas and facilities he does so at his own peril. Stilt

and agreement with the flat purchaser.

What are the rights of a promoter vis-à-vis the society with respect to stilt parking spaces?

It was argued that the right of the promoter to dispose of the stilt parking space is a matter falling within the domain of the promoter’s contractual, legal and fundamental right. The Supreme Court said that this argument cannot be accepted as it had already denied this contention that ‘stilt parking space’ is not covered by the term ‘garage’ much less a ‘flat’ and that it is part of ‘common areas’. In its opinion, the SC found that MOFA restricts the rights of the promoter in a building or block being constructed for the purpose of providing apartments. The promoter has no right to sell any portion of a building which is not a ‘flat’ within the meaning of Section 2(a-1). The promoter has no right to sell ‘stilt parking spaces’ as these are neither ‘flats’ nor appurtenant/accessory or attachment to a ‘flat’. The resulting judgment rejected all the four contentions and arguments of a real estate development company that was going to sell garages/stilt parking areas as separate flats to owners who intend to use it as parking facilities.

THE GIST

■ The Supreme Court in *Nahalchand Laloochand & Co. Ltd. vs Panchali Co-operative Housing Society Ltd.*, dismissed the appeal, challenging the Bombay High Court ruling that under the MOFA (Maharashtra Ownership Flats Act), a builder cannot sell parking slots in the stilt area as flats or garages.

■ The SC determined that stilt parking spaces are not garages. It said that the term ‘garage’ has not been defined in MOFA and therefore, the SC interpreted the term ‘garage’ as used in Section 2(a-1) in a general sense. A ‘garage’ is a place having a roof and walls on three sides. It does not include an unenclosed or uncovered parking space.

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