REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2544 OF 2010

Nahalchand Laloochand Pvt. Ltd. …Appellant

Versus

Panchali Co-operative Housing Society Ltd. …Respondent

WITH

CIVIL APPEAL NO. 2545 OF 2010
CIVIL APPEAL NO. 2546 OF 2010
CIVIL APPEAL NO. 2547 OF 2010
CIVIL APPEAL NO. 2548 OF 2010
CIVIL APPEAL NO. 2449 OF 2010
CIVIL APPEAL NO. 2456 OF 2010

JUDGEMENT

R.M. Lodha, J.

Of these seven appeals which arise from the judgment dated April 25, 2008 passed by the High Court of

Judicature at Bombay (Appellate Jurisdiction), five are at the instance of the original plaintiff and the other two are by the parties, who were not parties to the proceedings before the High Court or the trial court but they are aggrieved by the findings recorded by the High Court as they claim that these findings are affecting their rights.

The facts:

2. Few important questions of law arise in this group of appeals. It will be convenient to formulate the questions after we set out the material facts and the contentions of the parties. The narration of brief facts from S.C. Suit No. 1767 of 2004 will suffice for consideration of these appeals. Nahalchand Laloochand Private Limited is a Private Limited Company. As a promoter, it developd few properties in Anand Nagar, Dahisar (East), Mumbai and entered into agreements for sale of flats with flat purchasers. The flat purchasers are members of Panchali Co-operative Housing Society Ltd. (for short, 'the Society'). The promoter filed a suit before the Bombay City Civil Court, Bombay for permanent injunction restraining the Society

(defendant) from encroaching upon, trespassing and/or in any manner disturbing, obstructing, interfering with its possession in respect of 25 parking spaces in the stilt portion of the building. The promoter set up the case in the plaint that under the agreements for sale it has sold flats in its building and each flat purchaser has right in respect of the flat sold to him and to no other portion. It was averred in the plaint that each flat purchaser has executed a declaration/undertaking in its favour to the effect that stilt parking spaces/open parking spaces shown in the plan exclusively belong to the promoter and that the declarant has no objection to the sale of such spaces by it. The defendant (Society) traversed the claim and set up the plea that the promoter has no right to sell or dispose of spaces in the stilt portion and that the undertakings given by the flat purchasers are not binding being contrary to law and based on such undertakings, the promoter has not acquired any right to sell stilt parking spaces.

3. The parties let in evidence (oral as well as documentary) in support of their respective case.

4. On April 4, 2007, the Presiding Judge, City Civil Court, Greater Bombay dismissed the suit with costs.

5. The promoter preferred first appeal before the High Court which was dismissed on April 25, 2008.

6. For brevity, we shall describe Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 as 'MOFA', Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Etc.) Rules, 1964 as '1964 Rules', Development Control Regulations for Greater Bombay, 1991 as 'DCR', Maharashtra Apartment Ownership Act, 1970 as 'MAOA', The Maharashtra Regional and Town Planning Act, 1966 as 'MRTP Act' and Transfer of Property Act as 'T.P. Act'.

***The summary of findings recording by the High Court*:**

7. While dismissing the appeal, the High Court recorded the following findings :

- The carpet area of any of the 56 flats/tenements in Panchali building is not less than 35 sq. mtrs.

- The parking space either enclosed or unenclosed, covered or open cannot be a ‘building’.

- It is compulsory requirement to provide for parking spaces under DCR.

- It is obligatory on the part of the promoter to follow the DCR. The agreement signed under MOFA between the developer and the flat purchaser must be in conformity with the model form of agreement (Form V) prescribed by the State Government.

- The model agreement does not contemplate the flat purchasers to separately purchase the stilt parking spaces.

- The rights arising from the agreement signed under the MOFA between the promoter and the flat purchasers cannot be diluted by any contract or an undertaking to the contrary. The undertakings contrary to DCR will not be binding either on the flat purchasers or the Society.

- The stilt parking space is a common parking area available and the developer is obliged to provide the same under the DCR when the carpet area of the flat is 350 sq. meters It is not an additional premises/area that he is authorized to sell either to flat purchaser or any outsider. It is part and parcel of the Society building and it cannot be a separate premises available for sale. As soon as the Corporation issues the occupation certificate and the Society is registered, the building as well as the stilt parking spaces, open spaces and all common amenities become the property of the Society.

- The stilt parking spaces cannot be put on sale by the developer as he ceases to have any title on

the same as soon as the occupation certificate is issued by the Corporation and it becomes the property of the society on its registration.

- The stilt parking spaces cannot be termed as 'open/covered garages' and Clause 2 of the Model Agreement—Form V provides for sale of covered/open garage in addition to the flat/shop.

- It is immaterial if the purchase agreement does not include stilt car parking spaces in the common area of amenities. The stilt car parking spaces is part of the common amenities and it cannot be treated to be a separate premises/garage which could be sold by the developer to any of the members of the society or an outsider.

- Under MOFA, the developer's right is restricted to the extent of disposal of flats, shops and/or garages, which means that any premises which is included in the Flat Space Index (FSI) can be sold by the developer/promoter. The stilt parking space is not included in the FSI nor it is assessable for the Corporation taxes.

***The submissions*:**

8. Mr. Tanmaya Mehta, learned counsel appearing for the promoter—Nahalchand Laloochand Private Limited (appellant) contended that: the stilt parking space being 'garage', as an independent unit is covered by the definition of 'flat' in Section 2(a-1) of MOFA; Section 2(a-1) creates an artificial definition of 'flat' and since in common parlance a

garage would not be considered as a flat, the legislature clarified and explained that the term ‘flat’ means…… and ‘includes a garage’; as long as premises are covered from the roof or which have a covered roof and used for the parking of vehicles, that would qualify as ‘garage’ and since stilt parking spaces are covered parking spaces and form part of the building, they fall within the definition of a ‘garage’; even if stilt parking spaces do not fall within the definition of ‘flat’, they are nevertheless sellable as independent units since right to sell such spaces flows from the bundle of rights associated with ownership of the property and Sections 10 and 11 of MOFA read with Rule 9 of 1964 Rules are not exhaustive of the rights retained by the promoter upon execution of conveyance. Moreover, if stilt parking spaces are treated as ‘common areas’ then the proportionate price for the same would have to be paid by each flat purchaser, irrespective of whether he requires the parking space or not and there may be situations where the number of parking spaces will not be equal to the number of flats and, thus, a person who has paid proportionate price for

the common parking space may find himself without parking space, even though he has paid for the same. Lastly, the learned counsel submitted that in any event the promoter undertakes that the parking spaces shall be sold only to persons purchasing flats within the subject layout, i.e. the purchasers of flats in the seven buildings which form part of the layout and exist in close proximity.

9. Mr. Pravin K. Samdani, learned senior counsel for one of the appellants viz., Maharashtra Chamber of Housing Industry adopted a little different line of argument. He contended that the provisions of MOFA permit a promoter to sell garage/open/covered car parking space along with the flat. His submission is that MOFA does not define the word 'garage' and that word has to be understood and interpreted in accordance with the plain grammatical meaning and not with reference to DCR which have been framed under MRTP Act having different legislative object. As to whether the stilt parking spaces are 'common areas', Mr. Pravin K. Samdani would submit that MOFA does not list out the 'common areas' and

'limited common areas' while MAOA does define these terms and parking spaces thereunder are 'common areas and facilities' unless otherwise provided in the declaration by the owner of the property. Under MOFA, it is for the promoter and under MAOA, the declarant has to prescribe at the outset the 'common areas' and 'limited common areas'. He referred to Sections 3(2)(h), 4(1)(a)(v), 10 and 11 of the MOFA and submitted that the promoter must at the outset indicate the nature of organization (condominium or society or company) that would be formed at the time of sale of flats and on formation of such organization, the promoter joins such organization with a right and power to dispose of remaining flats that would include the remaining unsold open/covered parking space/garage and the organization is transferred unsold open/covered parking spaces only if all the flats have been sold by the promoter. Learned senior counsel would submit that it is wholly irrelevant whether stilt/podium/basement/covered car park attracts FSI or not but the only relevant criterion is whether the promoter has listed it as a part of common area or

not and if he has not done so then it is sellable. If he has listed it, then every flat purchaser is proportionately required to contribute for the same.

10. In the appeal filed by one Chirag M. Vora, Mr. Sunil Gupta, learned senior counsel appeared. He argued that MOFA was enacted and enforced in the year 1963 as a regulatory piece of legislation and barring the few aspects in respect of which MOFA makes specific inroads into the rights of the promoter in the matter of construction, sale, management and transfer of flats, all other aspects of the right of the promoter who enters into contract with the flat purchaser remain unaffected and undisturbed. His submission is that MOFA gives a wide meaning to the word 'flat' so that buildings of all permutations and combinations may be covered within the scope of that Act and keeping in mind both the plain language of Section 2(a-1) as well as the object of that Act, widest meaning to the word 'flat' deserves to be given so that the plain language is satisfied and also the object of the Act is better subserved. He adopted the line of interpretation put forth by Mr.

Tanmaya Mehta that 'garage' includes covered parking spaces and even open parking spaces and is a 'flat' in itself under Section 2(a-1). Relying upon *Barnett & Block* v. *National Parcels Insurance Company Ltd.*[1], learned senior counsel submitted that the minimum requirement of garage is that there should be roof (even if there are no walls) and for the purpose of MOFA, not only a covered parking space like a stilt parking space but also an open parking space is tantamount to 'garage'. According to learned senior counsel the word 'garage' is not to be read simply as another kind of user as contrasted with residence, office, showroom or shop or godown or industry or business rather it has to be read in contrast and juxtaposed against the expression 'set of premises'; it is the alternative to the 'set of premises' and not merely to the different users of the set of premises mentioned in Section 2 (a-1). Mr. Sunil Gupta, learned senior counsel would submit that each stilt parking space as well as each open parking space is a 'flat' in itself de hors the other accommodations amounting to 'flat' under Section 2(a-1) of MOFA. In support of his argument, he relied

[1] [1942] 1 All E.R. 221

upon a decision of this Court in the case of *Municipal Corporation of Greater Bombay* & Ors. v. *Indian Oil Corporation Ltd.*[2]. In the alternative, he submitted that if the stilt parking space or open parking space is not held to be a 'flat' under Section 2 (a-1), still that space/area cannot be treated as part of 'common areas and facilities'. Firstly, he submitted that common areas and facilities do not include garage/parking spaces and such parking spaces remain ungoverned by MOFA. Sections 3 and 4 of MOFA concern with matters pertaining to 'common areas and facilities' but MOFA does not define the meaning of 'common areas and facilities'. Section 3(2)(m)(iii) leaves it to the promoter to disclose to his flat purchaser the nature, extent and description of the common areas and facilities. Section 4, by mentioning a prescribed form of agreement, rather opened the possibilities for the promoter to continue to exercise his traditional and pre-Act right to dispose of such parking spaces according to his choice. The stilt/covered/open parking spaces do not figure as part of the common areas and facilities in any project and remain within

[2] 1991 Suppl. (2) SCC 18

the contractual, legal and fundamental rights of the promoter to dispose of the same in the manner in which he proposes and his customers accept. Section 16 of MOFA does not override this right of a promoter. Secondly, learned senior counsel would submit that the provisions of MOFA must not be made to depend on the provisions of some other enactment just because the subject matter of the two legislations appears to be the same. In this regard, he referred to Maxwell Interpretation of Statutes, 12th Edition, pages 69 to 70 and G.P. Singh on Principles of Statutory Interpretations, 8th edition, pages 150 to 160. He, thus, submitted that for the purposes of understanding the meaning of 'flat' under Section 2(a-1) of MOFA, the provisions of MAOA may be looked at but there would be no justification in understanding the expression, 'flat' defined in MOFA with reference to MRTP Act, DCR, rules related to FSI and the provisions concerning property tax in the Bombay Municipal Corporation Act.

11. On the other hand, Mr. Neeraj Kumar Jain, learned senior counsel and Mr. Umesh Shetty, learned counsel for the Societies stoutly supported the view of the High Court.

***The issues*:**

12. In view of the contentions outlined above, the questions that arise for consideration are : (i) whether stand alone 'garage' or in other words 'garage' as an independent unit by itself 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 aforesaid questions is in the negative, whether stilt parking space/open parking space in such building is part of 'common areas and facilities' and (iv) what are the rights of the promoter vis-à-vis society (of flat purchasers) in respect of open parking space/s / stilt parking space/s.

13. All these questions have to be considered in the light of statutory provisions. At this stage we notice some of the provisions of MOFA. As regards other statutory provisions, we shall refer to them wherever necessary.

***Relevant provisions of MOFA*:**

14. The definition of 'flat' in Section 2(a-1) is most vital and during course of arguments it has been rightly said that meaning of the word 'flat' is the actual fulcrum of MOFA. Section 2(a-1) reads thus:

> "S.2(a-1).- "Flat" means a separate and self-contained set of premises used or intended to be used for residence, or office, show-room or shop or godown or for carrying on any industry or business (and includes a garage), the premises forming part of a building and includes an apartment.
>
> *Explanation*.—Notwithstanding that provision is made for sanitary, washing, bathing or other conveniences as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained."

15. 'Promoter' is defined in Section 2(c) as under :

> "S.2(c).- `Promoter' means a person and includes a partnership firm or a body or association of persons, whether registered or not who constructs or causes to be constructed a block or building of flats, or apartments for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both;"

16. The general liabilities of the promoter are set out in Section 3. To the extent it is relevant to the present case it reads thus :

> "S.3.- (1) Notwithstanding anything in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce, or cause to be given or produced, the information and the documents hereinafter in this section mentioned.
>
> (2) A promoter, who constructs or intends to construct such block or building of flats, shall—
>
> (a) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Attorney-at-law, or by an Advocate of not less than three years standing, and having been duly entered in the Property card or extract of Village Forms VI or VII and XII or any other relevant revenue record;
>
> (b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land;
>
> (c) to (h) …..
>
> (i) not allow persons to enter into possession until a completion certificate where such certificate is required to be given under any law, is duly given by the local authority (and no person shall take possession of a flat until such completion certificate has been duly given by the local authority);

(j) to (l) …..

(m) when the flats are advertised for sale, disclose *inter alia* in the advertisement the following particulars, namely :-

(i) the extent of the carpet area of the flat including the area of the balconies which should be shown separately;

(ii) the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which the instalments thereof may be paid;

(iii) the nature, extent and description of the common areas and facilities;

(iv) the nature, extent and description of limited common areas and facilities, if any.

(n) sell flat on the basis of the carpet area only:

Provided that, the promoter may separately charge for the common areas and facilities in proportion 'to the carpet area of the flat'.

Explanation.—For the purposes of this clause, the carpet area of the flat shall include the area of the balcony of such flat."

17. Section 4 of MOFA mandates that promoter before accepting advance payment or deposit shall enter into an agreement with the prospective flat purchaser and such agreement shall be registered. It provides as follows:

"S.4.- (1) Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats all or some of which are to be taken or are taken on ownership basis, shall, before, he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent of the sale price enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under the Registration Act, 1908" and such agreement shall be in the prescribed form.

(1A) The agreement to be prescribed under sub-section (1) shall contain *inter alia* the particulars as specified in clause (a); and to such agreement there shall be attached the copies of the documents specified in clause (b)—

(a) particulars—

(i) if the building is to be constructed, the liability of the promoter to construct it according to the plans and specifications approved by the local authority where such approval is required under any law for the time being in force;

(ii) to (v) …..

(vi) the nature, extent and description of limited common areas and facilities;

(vii) the nature, extent and description of limited common areas and facilities, if any;

(viii) percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold;

(ix) statement of the use for which the flat is intended and restriction on its use, if any;

(x) percentage of undivided interests in the limited common areas and facilities, if any, appertaining to the flat agreed to be sold;

(b) ….. ”

18. Section 10 casts duty upon the promoter to take steps for formation of co-operative society or company, as the case may be. The said provision reads as follows :

> “S.10.- (1) As soon as a minimum number of persons required to form a Co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organization of persons who take the flats as a co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be, of a company. Nothing in this section shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act.
>
> **Provided that**, if the promoter fails within the prescribed period to submit an application to the Registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960, the Competent Authority may, upon receiving an application from the persons who have taken flats from the said promoter, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society :

Provided further that, no such direction to register any society under the preceding proviso shall be given to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar, by the Competent Authority without first verifying authenticity of the applicants' request and giving the concerned promoter a reasonable opportunity of being heard."

19. There is also obligation cast upon promoter to execute the documents of title and convey to the co-operative society or the company or an association of flat purchasers/apartment owners, right, title and interest in the land and building by virtue of Section 11 which reads thus:

"S.11.- (1) A promoter shall take all necessary steps to complete his title and convey to the organization of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid, or to an association of flat takers or apartment owners his right, title and interest in the land and building, and execute all relevant documents therefore in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

2. It shall be the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub-section (1).

> 3. If the promoter fails to execute the conveyance in favour of the co-operative society formed under Section 10 or, as the case may be, the company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such co-operative society or, as the case may be, the company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.
>
> (4) …..
>
> (5) …..”

20. Section 16 of MOFA provides that the provisions contained therein are in addition to the provisions of the T. P. Act and shall take effect notwithstanding anything to the contrary contained in the contract.

Re: question nos. (i) and (ii):

(A) What is `flat'?

21. For proper consideration of questions (i) and (ii) as afore-referred, it is of considerable importance to ascertain the import and meaning of the term ‘flat’ defined in Section 2(a-1) of

MOFA. Rather the answer to the questions presented for consideration must squarely or substantially depend on what is a 'flat'. Justice G.P. Singh in the 'Principles of Statutory Interpretation' (12th edition, 2010) says that the object of a definition of a term is to avoid the necessity of frequent repetitions in describing all the subject matter to which that word or expression so defined is intended to apply. In other words, the definition clause is inserted for the purpose of defining particular subject-matter dealt with and it helps in revealing the legislative meaning. However, the definitive clause may itself require interpretation because of ambiguity or lack of clarity in its language. In the 'Construction of Statutes' by Earl T. Crawford (1989 reprint) at page 362, the following statement is made: "…….the interpretation clause will control in the absence of anything else in the act opposing the interpretation fixed by the clause. Nor should the interpretation clause be given any wider meaning than is absolutely necessary. In other words, it should be subjected to a strict construction."

22. The definition of term ‘flat’ in MOFA at the time of its enactment was this: ‘flat’ means a separate and self-contained set of premises used or intended to be used for residence, or office, showroom or shop or godown (and includes a garage), the premises forming part of a building. By Maharashtra Act No. 15 of 1971, the definition of ‘flat’ got amended and the words ‘and includes an apartment’ were inserted after the word `building’. Thereafter by Maharashtra Act 36 of 1986, the words ‘or for carrying on any industry or business’ were inserted after the word ‘godown’ and before the bracketed portion `(and includes a garage)’.

23. Before we analyze Section 2(a-1), if we ask what the term ‘flat’ means, apart from the statutory definition, the reply must be that though it has no uniform meaning but in its natural and ordinary meaning, ‘flat’ is a self contained set of premises structurally divided and separately owned for dwelling. Concise Oxford English Dictionary (10th edition, revised) explains `flat’ —a set of rooms comprising an individual place of residence within a larger building.

24. Webster Comprehensive Dictionary; International edition (Vol. 1) explains 'flat'— 1. a set of rooms on one floor, for the occupancy of a family; apartment. 2. A house containing such flats.

25. In Stroud's Judicial Dictionary (5th edition, Vol. 2), a reference has been made to the observations of Somervell L.J, in *Murgatroyd v. Tresarden*, 63 T.L.R. 62 and it is stated; the natural meaning of the word 'flat' is a separate self-contained dwelling.

26. In Words and Phrases, Permanent Edition, (West Publishing Company), Vol. 17, while dealing with the term `flat' generally, it is stated :

> "The word 'flat' has no technical, legal meaning, so that a court can pronounce absolutely one way or the other. A building is a 'flat' or not, and, where the testimony is conflicting, the question is one of fact".

27. Advanced Law Lexicon by P. Ramanatha Aiyar (3rd edition, 2005) explains the term 'flat', in the following way – `in the ordinary use of the term a flat is a self-contained set of rooms, structurally divided and separately owned or let from

the rest of a building, which for the most part consists of other flats separated in like manner'.

28. Reverting back to the definition of the term 'flat' under Section 2(a-1), for a 'flat' within the meaning of this definition clause, the set of premises has to be a separate and self-contained that forms part of the building which is used or intended to be used for residence or office, showroom or shop or godown or for carrying on industry or business. Separateness of one premises from another premises physically and also in use or intended use for one of the uses specified in the definition clause containing the necessary facilities for self-contained accommodation is *sine qua non* for a unit being covered by the definition of 'flat' occurring in Section 2(a-1) which includes an 'apartment'. In other words, it must be a separate unit conforming to the description capable of being used for one of these purposes—namely, residence, office, showroom, shop, godown or for industrial or business purposes. Alternative uses in Section 2(a-1) do expand the ordinary meaning of the term 'flat' but nevertheless such

premises that form part of building must be separate and self-contained. A set of premises is called self-contained if it has the following basic amenities available: (a) sanitary; (b) washing, bathing and (c) other conveniences (cooking etc.) for the use of its occupant/s although as provided in the explanation appended to Section 2(a-1) such provision may be common to two or more sets of premises. The nature of construction and user are important features of this definition clause. A unit or accommodation to fit in the definition of 'flat' must meet twin-test namely: (i) self contained test and (ii) user test. The other predominant characteristic is that it must form part of a building. Crucially, for the relevant premises to be 'flat':

- It must be a separate and self contained premises;
- It must form part of building;
- It must be used or intended to be used for any of the uses namely—residence, office, showroom, shop, godown or for carrying on any industry or business.

29. In the discussion made above, we have not referred to the bracketed portion namely - '(and includes a garage)' so far. What is the meaning and significance of this bracketed portion? On technical linguistic basis, the bracketed phrase can only attach to the word preceding it. That may not be happy construction nor such construction by reading bracketed portion '(and includes a garage)' with the preceding word 'business' appropriately reflects the meaning of the phrase. The scope of the bracketed phrase has to be seen in the context of the definition given to the word 'flat' which is true indication of intent of the legislature. It was suggested by learned senior counsel and counsel for the promoters that the phrase 'and includes a garage' must be read with the 'set of premises' and not with the user. This does not appear to be a correct reading of the expression. We are not persuaded to accept such construction. We think that statutory definition of 'flat' must be construed keeping in view the intent of the legislature and the context of the statute and, seen thus, the phrase, 'and includes a garage' in the bracket does not bring in 'garage' by itself within the

meaning of word ‘flat’. If stand alone `garage’ (or a garage by itself) were intended by the legislature to be a ‘flat’ within the meaning of Section 2(a-1), that could have been conveniently conveyed by use of the expression ‘or garage’ after the word ‘business’ in the same breath as preceding uses. The bracketed phrase is rather indicative of the legislative intention to include a ‘garage’ as appurtenant or attachment to a flat which satisfies the ingredients of Section 2(a-1). To this extent Mr. Pravin K. Samdani is right in his submission. It is clear to us that stand alone ‘garage’ or in other words ‘garage’ as an independent unit by itself is not a ‘flat’ within the meaning of Section 2(a-1) and we answer question (i) in the negative. The judgment of *Bombay High Court in Dr. K.R. Agarwal Vs. Balkrishna*[3] to the extent the expression ‘or garage’ has been read after the word ‘godown’ in para 5 (clause 2) of the report does not state the correct legal position in what we have already said above.

(B) Whether stilt parking space is a garage?

[3] AIR 1972 Bombay 343

30. The next question is, whether stilt parking space in a building regulated by MOFA is a ‘garage’. The term ‘garage’ has not been defined in MOFA and, therefore, we need to first find out what is the extent and scope of that term in Section 2(a-1). The general term ‘garage’ is appropriated in English from the French language and means ‘keeping under cover’ or ‘a place for keeping’ of wagons as well as automobiles. Concise Oxford English Dictionary (10th edition, revised) explains ‘garage’— **1** a building for housing a motor vehicle or vehicles. **2** an establishment which sells fuel or which repairs and sells motor vehicles.

31. Webster Comprehensive Dictionary, International edition (Vol. 1) explains the word ‘garage’—a building in which motor vehicles are stored and cared for.

32. Words and Phrases, Permanent Edition, (West Publishing Company), Vol. 17, states that ‘garage’ generally is a station in which motorcars can be sheltered, stored, repaired, cleaned, and made ready for use; it is also place for private storage for motorcars; stable for motor cars.

33. The DCR define two expressions 'garage-private' and 'garage-public' in Regulations 2(47) and 2(48) respectively. According to these Regulations, 'garage-private' means a building or a portion thereof designed and used for the parking of vehicles and 'garage-public' means a building or portion thereof designed other than as a private garage, operated for gain, designed and/or used for repairing, serving, hiring, selling or storing or parking motor-driven or other vehicles. In our view, we must give to the word 'garage' occurring in Section 2(a-1) a meaning that general public or for that matter a flat purchaser of ordinary prudence would give to that word or understand by that word. Learned senior counsel Mr. Sunil Gupta referred to *Barnett and Block*[1] wherein Atkinson, J. stated as follows:

> "Now what is a garage? No evidence was given to suggest or prove that the word "garage" in the trade had got any special meaning, and it was agreed to take four dictionary definitions set out in the agreed statement of facts. The four definitions were these. From the SHORTER OXFORD DICTIONARY: "A building for the storage or refitting of motor vehicles." From the NEW CENTURY DICTIONARY : "A building for sheltering, cleaning or repairing motor vehicles. To put or keep in a garage." From the NEW STANDARD DICTIONARY: "A building for stabling or storing of motor vehicles of all

> kinds." From NUTTAL'S STANDARD DICTIONARY : "A storehouse for motor vehicles." Those are four definitions from leading dictionaries all containing at any rate one word in common, and that is "building." As there is no evidence as to how the general public understand the word "garage," I suppose one is entitled to use one's own knowledge. I am inclined to think that ordinary man in the street does regard a garage as connoting some sort of a building; how far he would go I do not know. I do not know whether he would think that there should be a wall all round it, or whether it would be sufficient if there were three sides walled in and a roof. I have one in mind where there is a row of sheds without any protection in front, which are commonly spoken of as "garages," but I am going to apply here the test suggested by counsel for the insured. He said "A garage is a place where one can get reasonable protection and shelter for a car." Can I say that you are getting reasonable protection and shelter for a car, if there is nothing to protect the car from above – if there is no roof of any sort? I think the ordinary man, as counsel for the insurers suggested, who took a house with a garage, if he came and found merely an open shed without any roof, would think he had been swindled, however high the walls might be. I cannot think that one is entitled to say that it is adequate or reasonable protection or shelter if there is no roof; but this is worse than that, though I agree that the walls are very good here. Wherever you put a car in this yard, in addition to there being no shelter from above, there will be no shelter on two sides. That seems to me to be really conclusive."

He, thus, submitted that even a place with merely a roof may well be a 'garage'. By placing reliance on condition No. 2 in Form V of 1964 Rules, learned senior counsel submitted that

for the purposes of MOFA, even an open parking space is tantamount to a 'garage'.

34. The relevant portion of condition No. 2, Form V appended to 1964 Rules reads as under:

> "2. The Flat Purchaser hereby agrees to purchase from the Promoter and the Promoter hereby agrees to sell to the Flat Purchaser one flat No. ……. of the Type ……. of carpet area admeasuring ……. sq. meters (which is inclusive of the area of balconies) on ……. floor as shown in the Floor plan thereof hereto annexed and marked Annexures D/Shop No. ……. /covered/open Garage No. ……. in the ……. Building (hereinafter referred to as "the Flat") for the price of Rs. ……. including Rs. ……. being the proportionate price of the common areas and facilities appurtenant to the premises, the nature extent and description of the common/limited common areas and facilities/limited common areas and facilities which are more particularly described in the Second Schedule hereunder written. The Flat Purchasers hereby agrees to pay to that Promoter balance amount of purchase price of Rs. ……. (Rupees ……. ……) having been paid to the Promoter on or before the execution of his agreement in the following manner."

35. We do not perceive any force in the argument that open parking space tantamounts to a 'garage' within the meaning of Section 2(a-1) read with condition No. 2 Form V of 1964 Rules. Can a person buying a flat for residence or one of the uses mentioned in Section 2(a-1) really think that open to

the sky or open space for parking motor vehicles is a garage? We do not think so. The word 'garage' may not have uniform connotation but definitely every space for parking motor vehicles is not a garage. A roofless erection could not be described a garage. What is contemplated by a 'garage' in Section 2(a-1) is a place having a roof and walls on three sides. It does not include an unenclosed or uncovered parking space. It is true that in condition No. 2, Form V the words 'covered/open garage' have been used but, in our view, the word 'open' used in the Model Form V cannot override the true meaning of term 'garage' in Section 2(a-1). As a matter of fact, none of the provisions of MOFA regards 'open garage' connoting 'flat' or an appurtenant/attachment to a flat. We do not think undue importance should be given to word 'open' which has loosely been used in condition No. 2, Form V. The true meaning of the term 'garage' in Section 2(a-1), we think, is not affected by a Model Form V appended to the 1964 Rules.

36. The question then is as to whether the stilted portion or stilt area of a building is a garage under MOFA. A

stilt area is a space above the ground and below the first floor having columns that support the first floor and the building. It may be usable as a parking space but we do not think that for the purposes of MOFA, such portion could be treated as garage. It was argued that the test accepted by Atkinson, J. in *Barnett & Block*[1]–that a garage is a place where one can get reasonable protection and shelter for a car—is satisfied by stilt car parking space and such space is a garage. We are unable to agree. The test accepted by Atkinson, J. in Barnett and Block[1] also does not support this argument. Even as per that test a place having roof but offering no shelter or protection on two sides cannot be a garage. It is worth repeating what Atkinson,J. said, `….I am inclined to think that the ordinary man in the street does regard a garage as connoting some sort of building; how far he would go I do not know. I do not know whether he would think that there should be a wall all round it, or whether it would be sufficient if there were three sides walled in and a roof. I have one in mind where there is row of sheds without any protection in front, which are commonly spoken of

as “garages”.’ Atkinson,J. applied the test of `reasonable protection and shelter for car’ as was suggested by the counsel for the insurer while construing the term `garage’ in a policy of insurance. For the purposes of MOFA, and particularly Section 2(a-1), the term ‘garage’ must be considered as would be understood by a flat purchaser and such person would contemplate garage which has a roof and wall on three sides. Our answer to question No. (ii) is, therefore, no.

Re: question no. (iii) – Whether stilt parking spaces are part of `common areas and facilities’?

37. The High Court has held that the stilt car parking spaces are part of the common amenities. Is the High Court right in its view? MOFA does not define nor it explains ‘common areas and facilities’ though the said phrase is used at various places in that Act. Mr. Pravin K. Samdani, learned senior counsel for Maharashtra Chamber of Housing Industry submitted that following could be termed as part of the ‘common areas’:

- 15% Recreation Ground (RG) Area;

- Recreational facilities and/or club house on above RG Areas;
- Society Office;
- Security guards cabin;
- Common passage/lobbies;
- Stair case;
- Lift;
- Terraces over the roof of the building;
- Landings on each floor;
- Columns and beams of the building
- Playgrounds, if any.

According to him, the following could be part of 'Limited Common Areas':

- Separate lift attached to a particular flat and/or certain number of flats;
- Terrace attached to a flat;
- Servants toilet on each floor, meant for the user of the flats on that particular floor;

The aforesaid list as suggested by the learned senior counsel, in our opinion, is not exhaustive. It may not be out of place to refer to Section 3(f) of MAOA which defines 'common areas and facilities' as follows:

> "3(f) "common areas and facilities", unless otherwise provided in the Declaration or lawful amendments, thereto means—
>
> (1) the land on which the building is located;

(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair-ways, fire-escapes and entrances and exits of t he buildings;

(3) the basements, cellars, yards, gardens, parking areas and storage spaces;

(4) the premises for the lodging of janitors or persons employed for the management of the property;

(5) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(7) such community and commercial facilities as may be provided for in the Declaration; and

(8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;"

It is true that interpretation clause or legislative definition in a particular statute is meant for the purposes of that statute only and such legislative definition should not control other statutes but the parts of the property stated in clauses (2), (3) and (6) of Section 3(f) as part of 'common areas and facilities' for the purposes of MAOA are what is generally understood by the expression 'common areas and facilities'. This is fortified by the

fact that the areas which according to the learned senior counsel could be termed as ‘common areas’ in a building regulated by MOFA are substantially included in aforenoticed clauses of Section 3(f) of MAOA. Looking to the scheme and object of MOFA, and there being no indication to the contrary, we find no justifiable reason to exclude parking areas (open to the sky or stilted portion) from the purview of ‘common areas and facilities’ under MOFA.

38. It was argued that under MOFA it is for the promoter to prescribe and define at the outset the ‘common areas’ and unless it is so done by the promoter, the parking area cannot be termed as part of ‘common areas’. We are quite unable to accept this submission. Can a promoter take common passage/lobbies or say stair case or RG area out of purview of `common areas and facilities’ by not prescribing or defining the same in the `common areas’? If the answer to this question is in negative, which it has to be, this argument must fail. It was also submitted that by treating open/stilt parking space as part of ‘common areas’, every flat purchaser will have to bear

proportionate cost for the same although he may not be interested in such parking space at all. We do not think such consideration is relevant for the consideration of term ‘common areas and facilities’ in MOFA. It is not necessary that all flat purchasers must actually use ‘common areas and facilities’ in its entirety. The relevant test is whether such part of the building is normally in common use. Then it was submitted that if a parking space is sold to a flat purchaser, it is to the exclusion of other flat purchasers and, therefore, logically also it cannot be part of ‘common areas’. This submission is founded on assumption that parking space (open/covered) is a ‘garage’ and sellable along with the flat. We have, however, held in our discussion above that open to the sky parking area or stilted portion usable as parking space is not ‘garage’ within the meaning of Section 2(a-1) and, therefore, not sellable independently as a flat or along with a flat. As a matter of fact, insofar as the promoter is concerned, he is not put to any prejudice financially by treating open parking space/stilt parking space as part of ‘common areas’ since he is entitled to charge

price for the common areas and facilities from each flat purchaser in proportion to the carpet area of the flat. MOFA mandates the promoter to describe 'common areas and facilities' in the advertisement as well as the 'agreement' with the flat purchaser and the promoter is also required to indicate the price of the flat including the proportionate price of the 'common areas and facilities'. If a promoter does not fully disclose the common areas and facilities he does so at his own peril. Stilt parking spaces would not cease to be part of common areas and facilities merely because the promoter has not described the same as such in the advertisement and agreement with the flat purchaser. Although there is some merit in the contention of the appellant that High Court erred in placing reliance on the two aspects—namely, that the area of stilt parking space is not included in the FSI and such area is not assessable to the corporation taxes - in reaching the conclusion that stilt parking space is part of 'common areas' but in our view even if these two aspects are excluded, in what we have discussed above stilt parking space/open parking space

of a building regulated by MOFA is nothing but a part of 'common areas' and, accordingly, we answer question no. (iii) in the affirmative.

Re: question no. (iv) – what are the rights of a promoter vis-à-vis society in respect of stilt parking spaces?

39. We have now come to the last question namely—what are the rights of a promoter vis-à-vis society (of flat purchasers) in respect of stilt parking space/s. 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 and such right is not affected. This argument is founded on the premise, firstly, that stilt parking space is a 'flat' by itself within the meaning of Section 2(a-1) and in the alternative that it is not part of 'common areas'. But we have already held that 'stilt parking space' is not covered by the term 'garage' much less a 'flat' and that it is part of 'common areas'. As a necessary corollary to the answers given by us to question nos. (i) to (iii), it must be held that stilt parking space/s being part of 'common areas' of the building developed by the promoter, the only right that the

promoter has, is to charge the cost thereof in proportion to the carpet area of the flat from each flat purchaser. Such stilt parking space being neither 'flat' under Section 2(a-1) nor 'garage' within the meaning of that provision is not sellable at all.

40. MOFA was enacted by the Maharashtra Legislature as it was found that builders/developers/promoters were indulging in malpractices in the sale and transfer of flats and the flat purchasers were being exploited. The effect of MOFA may be summarized as follows. First, every promoter who constructs or intends to construct block or building of flats in the area to which MOFA applies has to strictly adhere to the provisions contained therein, i.e., inter alia, he has to make full and true disclosure of the nature of his title to the land on which the flats are constructed and also make disclosure in respect of the extent of the carpet area of the flat and the nature, extent and description of the common areas and facilities when the flats are advertised for sale. Secondly, the particulars which are set out in Section 4(1A) (a) (i) to (x) have

to be incorporated in the agreement with the flat purchaser. Thirdly, the promoter has to apply to the Registrar for registration of the organization (co-operative society or company or condominium) as soon as minimum number of persons required to form such organization have taken flats. As regards unsold flats, the promoter has to join such organization although his right to dispose of unsold flats remains unaffected. Fourthly, and more importantly, the promoter has to take all necessary steps to complete his title and convey to the organization his right, title and interest in the land and building and execute all relevant documents accordingly. It was argued by Mr. Tanmaya Mehta, learned counsel for the promoter that in view of the provisions of MOFA, Section 6 of T.P. Act and Article 300A of the Constitution, the right of the promoter to transfer parking spaces is not at all restricted. Relying upon the decisions of this Court in *ICICI Bank Ltd.* v. *SIDCO Leathers Ltd. & Ors..*[4], *Karnataka State Financial Corporation* v. *N. Narasimahaiah & Ors.*[5] and *Bhikhubhai Vithlabhai Patel & Ors.,*

[4] (2006) 10 SCC 452
[5] (2008) 5 SCC 176

v. *State of Gujarat & Anr.*[6], he submitted that the provisions contained in MOFA must be construed strictly and there is no provision either express or by necessary implication in MOFA restricting the sale of stilt or open parking spaces. Mr. Sunil Gupta also argued that promoter continues to have contractual, legal and fundamental right to dispose of the stilt/open parking space in the manner in which he proposes and his consumers accept. We think this argument does not bear detailed examination. Suffice it to say that if the argument of learned senior counsel and counsel for promoter is accepted, the mischief with which MOFA is obviously intended to deal with would remain unabated and flat purchasers would continue to be exploited indirectly by the promoters. In our opinion, MOFA does restrict the rights of the promoter in the block or building constructed for flats or to be constructed for flats to which that Act applies. The promoter has no right to sell any portion of such building which is not 'flat' within the meaning of Section 2(a-1) and the entire land and building has to be conveyed to the organisation; the only right remains with the

[6] (2008) 4 SCC 144

promoter is to sell unsold flats. It is, thus, clear that the promoter has no right to sell 'stilt parking spaces' as these are neither 'flat' nor appurtenant or attachment to a 'flat'.

41. In view of the above, it is not at all necessary to deal with the factual submissions advanced by Mr. Tanmaya Mehta. Having regard to the answer to question no. (iv), the finding of the High Court that undertakings are neither binding on the flat purchasers nor the society also warrants no interference.

42. These appeals, accordingly, fail and are dismissed with no order as to costs.

……..J
(R. M. Lodha)

…..……..J
(A. K. Patnaik)

New Delhi.
August 31, 2010.