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DSK Legal Knowledge Center

Update on

- **Miscellaneous Updates**

MISCELLANEOUS UPDATES

Real Estate

The recent judgment delivered by the Hon'ble Supreme Court of India on August 31, 2010 (unreported) (CIVIL APPEAL NO. 2544 to 2499 and 2456 OF 2010) ¹ will have a significant impact on pricing policies of real estate developers.

The question before the court was whether the developer is entitled to sell stilt car parking spaces as independent units under the provisions of The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("**MOFA**") and other applicable laws

and rules in this regard. The Court has given its ruling on the following questions.

- (i) Whether a stand alone 'garage' as an independent unit by itself is a 'flat' within the meaning of Section 2(a-1) of MOFA;

It has been held that a stand alone garage is not an independent unit by itself and it is not 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';

¹ Nahalchand Laloochand Pvt. Ltd. v/s Panchali Co-operative Housing Society Ltd.

It has been held that stilt parking space/open parking space of a building cannot be treated as a 'garage', since a 'garage' as contemplated in Section 2(a-1) of MOFA is a structure with a roof and walls on three sides.

- (iii) Whether stilt parking space/open parking space in such building is part of 'common areas and facilities'

The Court has answered this in the affirmative and held that the list of common areas and facilities described in Section 3 (f) of MOFA and otherwise is not exhaustive and there is no justifiable reason to exclude parking areas (open to the sky or stilted portions) from the purview of MOFA.

However, the Court has also observed that "..... 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 a price for the common areas and facilities from each flat purchaser in proportion to the carpet area of the flat".

- (iv) What are the rights of the Promoter vis-à-vis the society of flat purchasers in respect of open parking space/s / stilt parking space/s.

It has been held the Promoter/ Developer has no right to sell 'open parking space/stilt parking space' as the open parking space/stilt parking space is a part of the common areas and facilities.

The Promoter has no right to sell any portion of building which is not a 'flat' within the meaning of Section 2(a-1).

This judgment may have impact on following:

The Promoter/ Builders may start charging to all the prospective buyers for parking areas irrespective of their requirement.

The existing understanding for exclusive parking use between the flat owners and the Promoter/ Builder may lose its sanctity.

For more information please refer to

<http://judis.nic.in/supremecourt/helddis3.aspx>

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