

Reference decision of Central Information Commission (CIC) on Appeal No. CIC/LS/A2010/001051-DS. Facts about decision of the Hon'ble High Court of Bombay and subsequent decision of the Hon'ble Supreme Court on appeal in the same case.

Decision of the Hon'ble High Court

"IN THE HIGH COURT OF JUDICATURE AT BOMBAY APPELLATE JURISDICTION"
FIRST APPEAL NO. 2182 OF 2007

Nahalchand Lalochand Pvt. Ltd. Appellant
Vs. Respondent
Panchali Coop Housing Societv Ltd.

Mr. F E Devitre, Sr. Advocate with Ms. Raiani Iver, Sr. Advocate with Mrs. Venkatesh Dhond, Mr Vineet B. Naik i/bv M/s P:rakash and Company for Mr. G N Salunke with Mrs. S R Sharma for respondent.

"Under the 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 FSI can be sold by the developer / promoter. The area of the stilt parking space is not included in the FSI nor is it assessible for Corporation taxes Hence disposal of three with parking spaces by the developer even before the occupation certificate was issued by the Corporation or thereafter is per se illegal and that by itself cannot be a reason for the developer to contend that these stilt parking spaces are its property which could be transferred by sale notwithstanding the undertakings executed by the flat purchasers

In the premises I am satisfied that the well reasoned judgement and order passed by the learned iudge of the City Civil Court, Greater Mumbai does not call for interference in the appeal and the same is required to be in fact confirmed. Hence this appeal must fail

The same is hereby dismissed with cost. Interim order

Decision of the Hon'ble Supreme Court

"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. 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 promoters 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'

In view of the above, it is not at all necessary to deal with the factual submissions advanced by Mr.

Tanmava Mehta. Having regard to the answer to question

(iv), the finding of the High Court that undertakings are neither binding on the flat purchasers the society also warrants no interference.

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

The above information is provided on the CGEWHO website in compliance to the order of the CIC, RTI.