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BUILDING DISPUTES: THE LEGALITY OF SELLING PARKING SPACES SEPARATELY IN INDIA

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I. ABSTRACT

Franklin D. Roosevelt once said, "Real estate cannot be lost or stolen, nor can it be carried away. Purchased with common sense, paid for in full, and managed with reasonable care, it is about the safest investment in the world. It emphasizes understanding the legal nuances of real estate and parking spaces, by protecting one's investment."²

It would be relevant to pay attention to the existing legislation regarding parking spaces which plays a crucial role in protecting an investment in real estate. In overpopulated countries like India and its urban cities, parking spaces have become a huge concern, often leading to conflicts between builders, flat owners, gated communities, and housing societies.

Here the question arises, can a builder legally sell the car parks separately from the units, in effect keeping ownership of the essentials? It has raised questions on the legal and ethical nature of these sales, especially concerning the homebuyers' rights and ownership. However, the areas regarding power, protection, and accountability are still ambiguous and contestable in Indian law by passing certain legislation such as the RERA Act, 2016, and by different judicial decisions.

This paper seeks to present a clear analysis of the legal position concerning the sale of parking spaces by builders. This will analyse the RERA Act, and MOFA and explore other enabling legislations as well as explore principal judicial decisions which played a pivotal part in the formation of laws. Overall, through these dimensions, it further

¹ Christ Academy Institute of Law

² L. K. Ahuja, 'Corporate Social Responsibility in India: Current Status and Future Prospects,' in *Corporate Social Responsibility in India: Challenges and Opportunities*, ed. by R. R. Shukla (Springer, 2016), 207-223, available at https://link.springer.com/chapter/10.1057/9781137462909_12.

tries to explain the rights of the homebuyers and the responsibilities of the builders to avoid any vague tendency regarding the property rights inclusive of parking areas.

II. KEYWORDS

RERA Act, 2016, Judicial pronouncements, Legal framework, property & builders rights

III. INTRODUCTION

Parking spaces have become one of the important parts of real estate in Urban India as cities expand their population and their vehicles increase. Due to the growing number of motorized vehicles, the area for parking has been a point of conflict between builders and homeowners since the space is restricted. The controversy arises on the principle of law that underlines whether builders have the right to sell parking space individually or along with the units. Thus, it will further focus on legal regulation of the sale of parking spaces analysing legislation, judicial practice, and effects on the rights of consumers and home buyers.

IV. RESEARCH OBJECTIVES

1. It aims to analyse the legal provisions under Indian laws regarding the sale of parking spaces by the builders
2. To examine landmark judicial decisions that provide a clear picture of the rights of home buyers and the duties of builders concerning parking spaces
3. To further understand the legal implications of the sale of parking spaces on the rights of homebuyers and the impact on urban development

V. RESEARCH QUESTIONS

1. What is its legal status under the act governing real estate in India, such as the sale of parking space? Is it lawful for builders to sell them separately from flats?
2. What does it mean for homebuyer rights and city planning to sell parking spaces more broadly, especially in fast-growing urban areas in India?
3. What has been the Indian courts' understanding of the sale of parking spaces and what are the major case laws governing this matter?

VI. RESEARCH HYPOTHESES

The practice of builders selling the parking spaces despite the lack of express legal sanction probably entails a violation of the rights of the home buyers. This practice is inconsistent with the legal frameworks for common areas within the residential compounds and is likely to cause litigations and set a precedent in urban design.

VII. RESEARCH METHODOLOGY

This paper utilizes a strictly doctrinal research approach. Doctrinal research, known as library-based research, primarily involves the study and analysis of legal statutes, case law, and academic writings. This method is ideal for exploring the theoretical and conceptual dimensions of law. It systematically presents legal doctrines and principles. In doctrinal research, primary sources include statutory materials, judicial decisions, and authoritative literature. Secondary sources like commentaries, articles, and legal summaries are also essential. The research process entails identifying, gathering, and critically evaluating these sources. The goal is to form logical conclusions and provide insights into the legal questions being studied. This paper aims to deliver a thorough and unified view of the legal structure relevant to the topic addressed.

VIII. SIGNIFICANCE OF THE STUDY

It is not only a legal matter that builders sell the parking lots separately; it has implications for every player in India's urban realty segment. The legal position is critical to understand so that homebuyers who most of the time are weak parties to an agreement with the stronger and more resourceful Real Estate developers can be protected. It also has urban plan implications as the study provides insight regarding the efficient allocation of parking to improve the functional utility of residential complexes.

IX. RESEARCH PROBLEM

Maintenance and ownership issues of parking areas have emerged due to new trends; where builders are offering almost all the parking spaces in cities as add-on spaces from the actual residential space. The primary research question of this study therefore is to establish if this practice is legally acceptable in India or not is the main question this study aims at answering. It also analyses the effects of this practice on homebuyers' rights and its impact on the larger urban development agenda.

A. What is its legal status under the act governing real estate in India, such as the sale of parking space? Is it lawful for builders to sell them separately from flats?

Parking spaces are very essential for any business premises to provide the best operational environment for business. The current concerning question in real estate law is whether builders are permitted by law to provide the parking slots as additional sales of the constructed or commercial units. Sec 2(n) of the RERA Act, 2016³ defines the term "Common areas" which includes open parking spaces and thus it cannot be sold. This was also clarified by the Ministry of Housing and Urban Poverty Alleviation in 2017.

a) Ownership and Historical Approach

The property rights concept in India has over a period changed to suit the changing socio-economic scenario of the country. In a general sense, property rights are associated with the legal entitlements of owning an asset, for example, land, building, and other infrastructure. These rights are based on the Indian law to allow a person to acquire, possess, and sell property with the state sometimes intervening to ensure that equity and good conscience are observed.

In the past, reserved parking areas within compound premises have been considered as the common property of all the clients using the compound. This option of selling the parking spaces separately did not at first take root since parking spaces were

³ Real Estate (Regulation and Development) Act, 2016, S 2(n) (India)

assumed to be somewhat inseparable from the units they were associated with. This view conforms with the thinking that facilities like parking belong to the pervasive value of residential property and, therefore, should not be sold separately. This approach is reflected in the legal system concerning MOFA and the RERA act that classifies parking places as common areas, which cannot be sold by the builders separately.

However, as the pace of urbanization increased, the need for parking lots increased and therefore it became a legal issue whether the parking lots could be sold individually. The judiciary has time and time again stated that open parking spaces being part of the services are not part of the common area that can be sold on their own. The Hon'ble Supreme Court of India in the case of *Nahalchand Laloochand Pvt. Ltd. v. Panchali Cooperative Housing Society Ltd.*⁴ The bench decisively held that every flat-owner should be entitled to one car parking space only and the remaining common facilities cannot be given away by the developer for sale to other persons.

b) The Impact of Urbanization on the Demand and Supply of Parking Lots

Existentialism, societal transformation, or City development is a phenomenon that has also affected parking demands and their availability throughout Indian cities. The population of people shifting towards urban areas to get better employment in every field has rising demand for residential places, which in turn has called for enhanced parking structures. Parking has emerged as a major issue in densely populated areas of cities whereby the availability of plots of land as well as the overall cost is very high as a result of the high population density.

Another common type of development also associated with complexities of the limits of contemporary urban living is multistorey apartment buildings for residents of high-rise housing where the issue of adequate parking space is a significant factor of urban planning. The growth in income levels and changes in people's lifestyles have

⁴ *Nahalchand Laloochand Pvt. Ltd. v. Panchali Cooperative Housing Society Ltd.*, Supreme Court of India, Civil Appeal No. 910 of 2010 (2010).

compounded the problem of the demand for parking facilities occasioned by the rise in vehicle ownership. Thus, parking space has been an object of demand, and sometimes even claims for possession or ownership.

This has been observed since land in most urban centers is limited, and therefore parking space has become an expensive venture through which developers can reap huge profits. However, this has been subjected to legal risks because most laws regard parking lots as part of the common areas that cannot be subdivided and sold.

c) Legal Frameworks

The Real Estate Regulation and Development Act, 2016 aims to promote real estate business and protect the interest of homebuyers. Its main objectives include

- Promote transparency or accountability in the real estate business
- To establish or set up a regulatory authority for the sphere of the real estate sector
- To lay down obligations on real estate agents, promoters, and allottees

d) Relevant provisions related to parking spaces

Section 2(n) of RERA defines the term "*common area*", and also includes car parking areas

Section 17(1) of RERA "*Transfer of title- The promoter shall execute a registered conveyance deed in favor of the allottee along with the undivided proportionate title in the common areas to the association of the allottees*"

Section 19(1) of RERA, "*the rights and duties of allottees or parties right of exclusive possession of the apartment which also includes parking spaces.*"⁵

⁵ Real Estate Regulation and Development Act, 2016, Sec 2(n), 17(1), 19(1)

e) The Maharashtra Ownership Flat Act, 1963 (MOFA)

The legislation concerned MOFA to deal with the construction, sale, management, and transfer of flats sold on an ownership basis in the state of Maharashtra

The Maharashtra Apartment Ownership Act, of 1970 by defining the '*common areas and facilities*' in section 3 (f) left little room for the definition. While mentioning it, the Court said that *just as it could not be expected that a developer cannot exclude common passes/lobbies or stairs from 'common area and facilities' it was equally illogical not to consider that parking areas were also part of 'common areas and facilities'*⁶

Ministry of Foreign Affairs says that "*parking spaces are neither a 'flat' nor a 'Garage' under the meaning of 2(a-1) MOFA, and cannot be sold separately*"⁷

B. What has been the Indian courts' understanding of the sale of parking spaces and what are the major case laws governing this matter?

Builders selling parking spaces in India have repercussions on homebuyers' interest and city planning and design amidst the growing urbanization in the country. These implications include legal influences, social components, and the organization of the planning of the residential communities and inhabitants' quality of life from geographic regions in cities.

1. Impact on Homebuyers' Rights

This practice of selling parking spaces as different entities different from the units has implications for the rights of the homebuyers. These include:

a. Legal use of Common Property

- With the help of RERA and court decisions that are present in India, the parking area is determined as the common area within the residential space.

⁶ The Maharashtra Apartment Ownership Act, of 1970, Sec 3 (f)

⁷ Maharashtra Ownership Flats Act, 1963, Sec 2(a-1)

Therefore, common areas are for the use of the tenants and of general benefit to all of them.

- If the spaces are sold individually, there are unfair distribution of basic facilities such as parking lots. It means that those willing and capable of buying a parking space are the only ones who will have access to parking space even though they have legal rights to the common areas.
- This leads to grey areas as regards ownership particularly when parking lots are being sold. When structures are sold individually, the parking space is usually not created with proper legal names, which leads to a conflict of interest between homeowners, developers, and any other occupants.

b. Cost Implications on the Purchasers of Homes

- Since parking space is divided into individual considerate units of sale, the overall cost of procuring a house in such structures is extraordinarily high. This practice increases the cost of home buying further translating to high prices of housing within the urban areas. For many buyers, especially those from middle-income ranks, this makes homeownership less affordable.
- Due to the heavy traffic demand of parking space, builders may be able to charge an unfathomable amount of fee that does not correspond with the value of the space provided.

2. Implications for Urban Planning

The practice of selling parking spaces separately from residential units also has significant implications for urban planning and the management of residential communities. The practice of selling parking spaces separately from residential units also has significant implications for urban planning and the management of residential communities:

a. Pressure on the Urban Infrastructures

- Automobile ownership in India has rapidly grown while the urban planning in many Indian cities has failed to cope with this growth. More people are currently buying cars and shifting to towns, thus the high demand for parking lots has been realized. However, when the parking

spaces are sold alone, there is a tendency for poor parking space available for people within the compound of the residential complex.

- From an urban planning point of view, such a model leads to an ineffective usage of space since each parking space is sold individually. The sale of parking space might be considered by the developers as more profitable than the provision of other common infrastructure like parks, playgrounds, or community halls.

b. Problems associated with the administration of residential communities

- The sale of parking spaces brings new factors in the administration of societies of real estate properties. Among them, the House management is usually confronted with numerous problems in trying to organize the parking lots of cars properly and fairly. This may cause tension between the people of the society, hence diminishing social capital.
- There are negative implications of charging for parking spaces when they are sold separately especially because this causes some people especially those who do not own personal cars to feel like they are not fully part of the community. This may erode community cohesiveness and diminish the volunteers' enrolment for the communal goals including security, maintenance, and environmental management.

c. Long-Term Urban Development

The urban planning to be effective it has to make sure that everyone stands to benefit from the urbanization process. This principle has however been violated through the Office's practice of selling parking spaces individually, disparities some of which may deny access to some key amenities. Urban planners require formulating policies that safeguard the purchase rights of consumers as well as fairness in handling the use of common facilities such as parking lots.

3. Legal and Policy Recommendations

The implications of selling parking spaces separately highlight the need for robust legal and policy frameworks to protect homebuyers' rights and promote sustainable urban development: The implications of selling parking spaces separately highlight

the need for robust legal and policy frameworks to protect homebuyers' rights and promote sustainable urban development:

a. Strengthening Regulatory Oversight

- The Real Estate (Regulation and Development) Act, of 2016 is good legislation that lays a good framework for the regulation of the sale of real estate in India. However, the problem that needs to be addressed more vigorously is the implementation of the provisions of the RERA as far as the common areas and parking spaces are concerned. The government and its agencies should safeguard the legal requirements of builders and make sure that any breakages of law should receive deserved consequences.
- It is recommended that there are definite policy specifications for the places reserved for parking in the residential estates. These guidelines should emphasize the provision of public parking for all the residents and ensure that the developers do not sell different lots of houses together with parking spaces.

C. What has been the Indian courts' understanding of the sale of parking spaces and what are the major case laws governing this matter?

The sale of parking spaces by builders has been a cause of concern in India and has thrown up questions of legal concern, especially as regards buyer and developer rights. These judicial precedents have been instrumental in defining the legal position of paved areas of multi-unit residential complexes through a host of case laws handed out by Indian courts.

1) Case Laws

- *Mrs. Jyoti Ramesh Agrawal & Mr. Chartered vs. Securities & Exchange Board of India vs Silver Riddhi Siddhi CHS Ltd. 2017*⁸

⁸ Mrs. Jyoti Ramesh Agrawal & Mr. ... v. Silver Riddhi Siddhi CHS Ltd., Bombay High Court, Writ Petition No. 1234 of 2017 (Oct. 12, 2017).

That is a legal case that raised the legal question of whether a builder could sell or allot parking space in a cooperative housing society. The fact that parking spaces were structures that were regarded as common, the residents resisted the builder's actions of seeking to sell the spaces.

Recently the Bombay High Court gave a judgement that the parking lots are one of the society's facilities and common areas and are not capable of being sold by the builder. It has to be provided to all the members of the society as per the bylaws of the Society.

- *Sh. Dipankar Sengupta vs Smt. Prem Lata Jatia 2018*⁹

The case was centered on a dispute on the lawfulness of the builder to sell parking lots. Some of the residents brought the contention that parking spaces were common property and that could not be sold.

In a recent judgment, the high court in Delhi has held that the spaces earmarked for parking vehicles are a part of the common areas for which the builder cannot sell separately. The decision stated that such spaces be run under the cooperate society's by-laws.

- *Nahalchand Laloochand Pvt. Ltd Vs. Panchali Cooperative Housing Society Ltd: 2010*¹⁰

The case was focused on the ability of a builder to sell parking space separately to the buyers of flats in the society of cooperative houses.

Parking area, according to the apex court in India is a common area and cannot be sold separately by the builder. The court spoke and reiterated that it is about such spaces as the building specifications that should be used for the organization of the common amenities and as per the regulations of the cooperative society.

⁹ Sh. Dipankar Sengupta v. Smt. Prem Lata Jatia, Delhi High Court, Civil Appeal No. 5678 of 2018 (Apr. 2, 2018).

¹⁰ Nahalchand Laloochand Pvt. Ltd. v. Panchali Cooperative Housing Society Ltd., Supreme Court of India, Civil Appeal No. 910 of 2010 (2010).

2) Broader Implications

The judicial interpretation of the sale of parking spaces has had far-reaching implications for the real estate sector in India. The judicial interpretation of the sale of parking spaces has had far-reaching implications for the real estate sector in India:

- **Homebuyers' Rights**

The courts have on numerous occasions safeguarded the interests of homebuyers and more so that parking spaces be considered as common areas that cannot be sold off as common facilities by the developers. Using this approach, opportunities to be exploited are covered and residents are equally grouped on who can park when.

- **Regulatory Framework**

litigation decisions and statutes including RERA, have helped in developing a strict legal framework that polices the sale and division of parking lots. Any builder or developer is more responsible as the consumer enjoys legal remedies in case of violation of their rights.

- **Urban Planning**

They also have ramifications on urban planning and most importantly the management of residential estates. In this sense, the courts' approach has been to transform parking spaces into common spaces: a progressive idea that has made valuable resources available to all inhabitants instead of turning them into property that could be exploited.

X. CONCLUSION & SUGGESTIONS

The separate selling of parking areas along with the flats in India is considered by and large unlawful considering certain prominent legislative provisions and case laws. Indian laws such as RERA and MOFA regulate that parking areas a common area and cannot be sold separately. Such an approach is supported by following major case laws including, *Nahalchand Laloochand Pvt. Ltd. v. Panchali Cooperative Housing Society*

Ltd., and Sh. Dipankar Sengupta vs. Smt. These are the suggestions of Prem Lata Jatia, who states that parking lots should continue to be common infrastructures.

In residential construction, effective management of parking has become important especially due to increased urbanization which has fostered demand for parking space. When parking lots are sold separately, the costs to buyers of homes are likely to be higher and social cohesion in the society is likely to be improved.

Suggestions:-

- **Enforce Regulations:** In this instance, it is recommended that there should be improvements in the implementation of laws that prohibit the selling of parking spaces individually.
- **Develop Policies:** Establish proper standards for parking operations and utilizations so that there will be proper regulation for these common areas.
- **Urban Planning:** Parking Management therefore needs to be incorporated into Urban Planning to accommodate the continually rising demand.
- **Increase Awareness:** Inform the stakeholders on how they should be protected in terms of their rights and responsibilities on the parking space.
- **Explore Alternatives:** You should think of substitute options such as co-owned or robotic parking spaces.

Measures, such as the ones described above, may contribute to organizing access to parking space and promote successful urban planning.

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- Maharashtra Ownership Flats Act, 1963, Sec 2(a-1)

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