

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3223 OF 2020

DLF LTD.

Appellant(s)

VERSUS

NARENDER GUPTA & ORS.

Respondent(s)

ORDER

This appeal under Section 23 of the Consumer Protection Act, 1985 is directed against the final judgment and order dated 20.01.2020 passed by the National Consumer Disputes Redressal Commission, New Delhi (“the National Commission”, for short) in Consumer Case No.1036 of 2018.

The only issue raised for our consideration is with regard to the correctness of the decision of the National Commission insofar as it directed refund of amount deposited by the present respondents towards parking charges. The instant order is, therefore, confined to this issue.

Relying on the decision of this Court in *Nahalchand Laloochand Private Limited. vs. Panchali Cooperative Housing Society Limited*<sup>1</sup>, it was submitted inter alia on behalf of respondent No.1 in aforesaid

<sup>1</sup> (2010)9 SCC 536;

consumer case that the car parking areas were part of “common facility” and as such the appellant was not entitled to any charges towards car parking.

The issue was considered by the National Commission as under:-

“29. In *Nahalchand Laloochand case*, though it was passed in the context of Maharashtra Ownership of Flats Act (MOFA), 1963, the ratio in that judgment has to be considered in the present case, as the Court in that case has examined the Clause in relation to parking and clearly discussed issues with respect to whether stand-alone garage provided by the Builder as an independent unit by itself was a flat; if slit parking spaces and/or open parking space of a building regulated by MOFA is a garage; whether such a parking in such a building is part of ‘common areas and facilities.’

30. It is clear that the Hon’ble Supreme Court in the afore-noted judgment has stated that car parking falls within the definition of common areas and facilities; open to the sky parking or stilted portion used as parking space is not a garage and not saleable independently as a flat or along with flat. In *Nahalchand Laloochand case* the Hon’ble Apex Court observed that if the Developer does not fully disclose the details of the common areas and facilities and does not include the car parking charges, he does so at his own peril. It was also noted that stand-alone parking spaces would not cease to be a part of common areas only because the Developer has not detailed the same as such in the advertisement or agreement with the flat purchasers.

... ..

32. Section 3(f) defines common areas and facilities unless otherwise provided in the declaration of lawful amendments as follows:-

“(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 ways, fire escapes and entrances and exits of the buildings;
- (3) the basements, cellars, yards, gardens, parking area and storage spaces;

- (4) the premises for the lodging of janitors or persons employed for management of the property;
- (5) Installation 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 existing maintenance and safety or normally in common use,”

33. The contention of the learned Counsel appearing for DLF Limited that the relevant judgment to be considered in the present case is the judgment of the Supreme Court in *DLF versus Manmohan Lowe* (2014) 12 SCC 231 wherein the Hon’ble Supreme Court has differentiated the judgment of the case of *Nahalchand Laloochand* (supra) and held that it was applicable in the context of MOFA and not to Haryana, is unsustainable. The perusal of the judgment relied upon by the learned Counsel deals with the aspect of ownership rights of the flat owners versus the colonizer regarding ‘community and commercial facilities’ like schools, hospitals, shops, community centres, etc. The learned Counsel appearing for the Complainants submitted that the Supreme Court has observed in *Manmohan Lowe* (Supra) that *Nahalchand Laloochand* case was delivered in the context of MOFA, in which case the Supreme Court was required to examine as to whether a “stilt parking” can be considered to be a “garage” under the definition of “flat” under MOFA. Therefore, the observations made by the Hon’ble Supreme Court in *Manmohan Lowe* (Supra) was with respect to community and commercial facilities and its ownership right and has nothing to do with stilt parking and hence we are of the considered view that the facts of *Manmohan Lowe* do not apply to this case.

34. IA No. 15287 of 2020 was preferred by the Complainant seeking to file some additional documents which was taken on record. Annexure C-6 is a copy of reply by the DTCP on the question and Question & Answer of 9 & 10 of the same is reproduced as hereunder:-

Q:9. Whether the open car parking being (illegible) though shown in the drawings but falling under FAR arise of the total scheme, can it be sold by the colonizer/builder.

Ans. No.

Q.10 Whether basement car parkings are saleable as per Director Town and Country Planning, if yes, the certified copy of the order may be produced.

Ans. No.”

The National Commission thus directed that the amount deposited by the respondents herein be refunded with interest @ 8% per annum.

The correctness of said decision is presently under challenge.

Mr. Pinaki Misra, learned Senior Advocate appearing for the appellant has invited our attention to subsequent decisions rendered by this Court in *Wing Commander Arifur Rahman Khan and Aleya Sultana and Ors. vs. DLF Southern Homes Private Limited<sup>2</sup> and DLF Homes Developers Ltd. (Earlier known DLF Home Developers Limited and Another vs. Capital Greens Flat Buyers Association and Others.*<sup>3</sup>

While distinguishing the decision in *Nahalchand* it was observed by this Court in *Arifur Rahman Khan* as under:

“66. The appellants seek a refund of an amount of Rs 2.25 lakhs collected from each buyer towards car parking. The submission is that under Section 3(f) of the Karnataka Apartment Ownership Act, 1972 (“the KAO Act”), common areas and facilities include parking areas. According to the appellants, the flat buyers had already paid for the super area in terms of Clause 1.6 of ABA including common areas and facilities which would be deemed to include car parking under the KAO Act. The relevant portion of Clause 1.6 is extracted below:

“1.6. The allottee agrees that the total price of the said apartment is calculated on the basis of its super area only (as indicated in Clause 1.1) *except the parking space*, additional car parking space which are based on fixed

<sup>2</sup> (2020) 16 SCC 512

<sup>3</sup> (2021) 5 SCC 537

valuation....”

(emphasis supplied)

67. We are unable to accede to the above submission. The ABA contained a break-up of the total price of the apartment. Parking charges for exclusive use of earmarked parking spaces were separately included in the break-up. The parking charges were revealed to the flat buyers in the brochure. The charges recovered are in terms of the agreement.

68. The decision of this Court in *Nahalchand Laloochand (P) Ltd. v. Panchali Coop. Housing Society Ltd.*<sup>1</sup> turned on the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 as explained in the subsequent decision of this Court in *DLF Ltd. v. Manmohan Lowe*<sup>4</sup>. The demand of parking charges is in terms of the ABA and hence it is not possible to accede to the submission that there was a deficiency of service under this head.”

In said case, similar prayer made on behalf of the Apartment Holders for refund of charges paid towards Parking Spaces was accepted by the National Commission but said decision of the National Commission was set aside by this Court.

Subsequently, a Bench of three Judges of this Court in **Capital Greens Flat Buyers’ Association** case reiterated the decision in *Rifur Rahman Khan* and the view taken by the National Commission regarding refund of charges towards Parking Spaces was not approved.

The decision of this Court in *Nahalchand* was in the context of the provisions of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, whereas the

44 DLF Ltd. v. Manmohan Lowe, (2014) 12 SCC 231 :

subsequent decisions in *Arifur Rahman Khan and Capital Greens Flat Buyers Association* were in the context of the provision of the Karnataka Apartment Ownership Act, 1972 and in the context of the construction project in Delhi.

Since the subsequent decisions in *Arifur Rahman Khan and Capital Greens Flat Buyers Association* cases have distinguished the law laid down in *Nahalchand* case and the provisions of the Karnataka Act as well as the law relating to the project in Delhi are identical to the provisions of the Haryana Act that we are presently concerned with, the controversy in the instant case stands fully covered by the decisions of this Court in *Arifur Rahman Khan and Capital Greens Flat Buyers Association*.

We, therefore, allow this appeal limited to the extent of “Charges towards common area parking” and set aside the decision of the National Commission on the point, without any order as to costs.

.....J.  
(UDAY UMESH LALIT)

.....J.  
(S. RAVINDRA BHAT)

.....J.  
(BELA M. TRIVEDI)

New Delhi,  
October 28, 2021.

ITEM NO.12

COURT NO.2

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3223/2020

DLF LTD.

Appellant(s)

VERSUS

NARENDER GUPTA &amp; ORS.

Respondent(s)

(FOR ADMISSION and IA No.94284/2020-STAY APPLICATION.  
IA No. 108130/2020 -ERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES)

Date : 28-10-2021 These matters were called on for hearing today.  
CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT  
HON'BLE MR. JUSTICE S. RAVINDRA BHAT  
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Appellant(s)

Mr. Pinaki Mishra, Sr. Adv.  
Ms. Ruby Singh Ahuja, Adv.  
Ms. Seema Sundd, Adv.  
Ms. Kritika Sachdeva, Adv.  
Mr. Pravin Bahadur, Adv.  
Mr. Shravan Sahwney, Adv.  
Mr. Rituraj Srivatava, Adv.  
Mr. Aditya P.N. Singh, Adv.  
Mr. Alabhya Dhamija, Adv.  
Mr. Anmol Jassal, Adv.  
Mr. Shravan Sahney, Adv.  
Ms. Garima Singh, Adv.  
Mr. Snehil Srivastava, Adv.  
Mr. Abhishek S., Adv.  
M/s. Karanjawala & Co., AOR

For Respondent(s)

Mr. Yashraj Singh Deora, AOR  
Ms. Sonal Mashankar, Adv.  
Ms. Prakriti Roy, Adv.

Mr. Rishi Kumar Singh Gautam, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(INDU MARWAH)  
COURT MASTER (SH)

(VIRENDER SINGH)  
BRANCH OFFICER

(SIGNED ORDER IS PLACED ON THE FILE)