



## PARKING POLICY IN CO-OPERATIVE HOUSING SOCIETY

After a society is formed and registered, certain rules and regulations need to be implemented as per bye law. If society not following bye law, member will go to court to get justice. The problem of car parking is ever increasing issue in the city of Mumbai as the number of cars are increasing day by day.

The housing societies are allowed to frame their own parking rules. This is to restrict non members from parking inside the society premises.

A society needs to mark and number the parking space available in society in its common area in a manner that does not inconvenience other members.

The Managing Committee shall make sure that the Members who have been allotted parking by it, use the same for the purpose of parking of their vehicle and not for any other purpose.

Parking allotment is governed by Section 78 of MOFA, based on a first-come, first-served basis for available parking spaces.

Residents seeking stilt parking must formally apply to the society secretary giving details of vehicles and other details as may have been decided by the General Body of the Society.

Only the legal owner of a vehicle can apply for a parking space, and each member of family is restricted to one vehicle per slot. Requests for additional slots are considered annually, subject to availability.

The Managing Committee shall draw the lot for allotment of parking if the demand is more than availability.

Section 84 of MOFA mandates an annual fee for parking slots, finalised during the society's general body meeting.

The member who has been allotted the parking shall be liable to pay the charges to the society irrespective of whether he has parked the vehicle for a particular period or not.

Every member having two wheelers and three wheelers shall have to take prior permission of the committee to park his/her vehicles in the compound of the building of the society. Such member has to pay the charges decided by the General Body for parking such vehicles.

The concept of open parking, stilt, closed garage, covered parking etc. have been given relevant meaning in the law. The most important aspect is that the common areas in the society cannot be sold by the Builder / Developer. Such sale can be challenged by a society.

### Different types of parking

As per Lay-Out-Plan (LOP) as sanctioned by BMC under the Development Control rules (DC rules) and under the Fire Act & rules, following types of Parking are there:

Ø Open Parking – These are uncovered parking spots within the apartment complex premises.

Ø Stilt Parking – These are partially covered parking spots on the ground floor of the apartment complex.

Ø Covered Parking - Fully covered by 3 sides wall and roof on it complete parking structures.





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### WHAT BYE LAWS SAYS ABOUT PARKING

#### Bye Law No 78(a) Policy for allotment of parking slots.

The Society shall in the General Body meeting frame and adopt Parking Rules to regulate the Parking slots, in accordance with the Act and Rules there under

#### Bye Law No 78(b)

The allotment of Parking Space shall be made by the Committee on the basis of "First Come First Served", for available parking slots However the Member shall have no right to sell or transfer the Parking Slot allotted by the Society.

#### Bye Law No 78(c) Restriction of Parking Slots

No Member shall be entitled to utilize more parking slots than that officially allotted to him by the Society.

#### Bye Law No 79. Marking of parking slots

Where any parking slots have been built or open space in the Society's compound is available for parking of cars, the Society shall number and demarcate the stilts and / or the open space in such a way that no inconvenience would be caused to any of the Members of the Society. The Committee shall ensure that the space is used by the Members for the purpose for which it is allotted to them.

#### Bye Law No 80. Eligibility for allotment of parking slots

A Member having a vehicle will be eligible to have parking slot. Normally no Member shall be eligible for being allotted more than one parking slot. The vehicles may be owned by him or allotted to him by his employer, or the firm of which he is the partner or the company of which he is the director. If any parking's lots remain unallotted for want of applicants, additional parking slots may be allotted to such Members who already have a slot allotted to them in normal course. Such allotment of additional parking slots shall be made on year-to-year basis, provided the same are not required by other Members, who have not been allotted even a single parking slot.

#### Bye Law No 81. If more eligible Members and less Parking Slots

In case the number of eligible Members for parking slots is in excess of the available parking slots, then the Managing Committee shall allot parking slots on annual basis by fair and transparent process, in concurrence with the General Body regulations.





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### **Bye Law No 82. Applications for allotment of parking slot**

The Member, desiring to have parking slot, may make an application to the Secretary of the Society giving necessary details. The procedure laid down under the bye-law No. 64 for disposal of applications, shall be followed by the Secretary and the Committee of the Society.

### **Bye Law No 83. Payment of charges for parking of vehicles**

Every Member shall pay the for-parking charges for the number of slots allotted to him / her at such rate as may be decided by the General Body of the Society at its meeting, irrespective of the fact whether he actually parks his vehicle or not.

### **Bye Law No 84. Parking of other vehicles**

Every Member, having a scooter, a motorcycle, or an auto rickshaw shall obtain prior permission of the Committee for parking his vehicle in the compound of the Society and pay the charges fixed by the General Body of the Society at its meeting.

### **Legal position under MOFA 1963 as interpreted by Supreme Court.**

A Bench of Justices R M Lodha and A K Patnaik in a judgement rejected the argument of a real estate development company that they are entitled to sell garages/stilt parking areas as separate flats to owners who intend to use it as parking facilities. "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 organization. The only right remains with the promoter is to sell unsold flats.

"It is, thus, clear that the promoter has no right to sell stilt parking or open parking spaces as these are neither flat nor appurtenant or attachment to a flat, Justice Lodha writing the judgement said. The apex court passed the judgement while dismissing the appeal of the promoter Nahalchand Laloochand Pvt Ltd challenging the Bombay High Court's ruling that under the MOFA (Maharashtra Ownership Flats Act) a builder cannot sell parking slots in the stilt area as independent flats or garage.

### **Indian Registration Act 1908 & Transfer of Property Act, 1882**

As per the provisions of the Indian Registration Act 1908 and Section 54 of the Transfer of Property Act, 1882, if any immovable property having value of Rs.100 is intended to be sold, the agreement has to be compulsorily registered.





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### What RERA ACT Says

- i. Open parking areas are provided free of FSI.
- ii. Promoters are not entitled to sell / allot open parking areas for monetary consideration.
- iii. Open parking areas, garage and covered Parking space should be specifically marked and numbered at the real estate project site in accordance and as per approved / sanctioned plans and tagged to the apartment to which it is allotted; and iv. Garage and/or covered parking space when sold/ allotted for monetary consideration, the type, numbers and size as well as the place where such garage or covered parking space is situated should be mentioned in the Agreement for Sale being entered into and the plan showing the exact location / allotment along with the particulars as aforesaid should be annexed to the Agreement for Sale.

**# Parking: Whether can be sold or not? And whether owners can claim exclusive right or not!**

**Before RERA: The stand, as per the judgment by the Supreme Court, was that parking could not be sold. That is overruled by RERA Act now.**

**After RERA Act 2016 and Maharera Rules. Covered Parking can be sold or allotted by the builder. The condition is that such sale or allotment should be a part of the agreement to sale.**

**Open Parking Space cannot be sold by the builder and no member can claim exclusive rights on open parking spaces!**

**Open Parking Space is defined in Sub Clause (iii) of Clause (n) of Section 2 of the RERA Act.**

**Covered Parking Space is defined in Clause (j) of sub rule (1) of Rule 2 of the Maharera Rules 2017.**

**The directions to this effect has been issued again in Circular 36/2021 of Maharera dated 30/07/2021.**

**Hence, all parking sold, allotted, before the Maharera Act and Rules actually belongs to the society!**

### Apartment Acts

**The Apartment Acts in various states, such as Maharashtra and Delhi, allow the Managing Committee of a housing society to establish their own car parking rules. Once a housing society is registered, it becomes the owner of all common spaces and parking spots, according to the "Apartment Act" in most states. The developer or builder must hand over the property once the municipal corporation issues an Occupation Certificate in the society's name. Therefore, purchasing common parking spots separately is not allowed.**





## PARKING POLICY IN CO-OPERATIVE HOUSING SOCIETY

### ROLE OF HOUSING SOCIETY IN PARKING ARRANGEMENT

The Housing Society plays a crucial role in the efficient arrangement of parking spaces, considering it as an administrative function. The Managing Committee (MC), acting through the General Body, holds the authority to allocate parking spaces to registered members, including family and associate members. To ensure transparency and adherence to ownership criteria, the MC should collect relevant documents from the proposed allottee, verifying that the vehicle is owned by the member, their family, or the associated company. MC is responsible for maintaining a Parking Register and obtaining an undertaking from the allottee regarding ownership. Furthermore, it should establish an annual review process, allowing for the possible reassignment of parking slots based on set guidelines outlined in the "Parking Policy" adopted during the Annual General Meeting (AGM). This policy can be subject to periodic review and updates at subsequent AGMs, incorporating feedback from the members.

In cases where a flat is owned by a Limited Company, the Housing Society should require an authority letter from the company specifying the allotment of the flat to the individual, along with details regarding their relationship with the company, such as being an employee, director, consultant, etc.

According to Bye-law No. 81, a member may become eligible for a second/third stilt/parking space if it remains unallotted due to a lack of applicants. Bye-law No. 82 addresses situations where the number of eligible members' vehicles exceeds the available parking space/stilts. In such cases, the managing committee is empowered to allocate parking spaces/stilts through a yearly lottery system, ensuring a fair and transparent process.

### High Court & SC Judgment on sell of Parking Space by Builder

Parking space is explicitly excluded from FSI calculations and is considered the property of the society. This perspective is reinforced by the Bombay High Court ruling in "Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-Operative Housing Society Limited", which asserts that builders lack the entitlement to sell parking spaces outside the consumed FSI. The Supreme Court has affirmed this stance, emphasizing that builders have no right to sell any car parking space.

The rationale behind this is rooted in the fact that when a flat purchaser acquires a flat, they are essentially contributing to the common areas and amenities, including the parking area. Every member is regarded as a pro-rata owner of common space, which encompasses parking spaces. The High Court further clarifies that open spaces or areas within stilts for parking cannot be sold by the builder. Even if residents provide undertakings relinquishing claims to open spaces, it is not considered binding. The space within stilts, regardless of enclosure, is deemed open space, as the builder does not pay separate property tax for it.







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While RERA addresses covered parking spaces, the rules do not explicitly include provisions for open parking. Consequently, developers are fully entitled to sell covered parking if it is part of registered sale agreement but not open parking or stilt parking.

The Supreme Court's observation underscores that promoters have no right to sell any portion of the building that does not qualify as a flat within the statutory definition. The entire land and building must be conveyed to the housing society. The only remaining right for the promoter is to sell unsold flats. It is important to note that the cost of parking for residential and commercial units is typically included indirectly in rent or purchase prices, rather than being a separate charge.

In essence, the Supreme Court's position does not necessarily rule out the option of buying and selling parking separately as real estate. However, the court has emphasized that the unbundling of parking spaces from the overall property is not permissible, and the entirety of the land and building must be conveyed to the housing society. What if the Builder/Developer has already sold Parking space/slot?

In situations where Builders/Developers have already sold parking spaces/slots, especially in premium areas like South Mumbai, Bandra & Juhu where parking slot costs range from Rs.5-50 lakhs, certain legal provisions and judgments come into play. According to Section 78 of MOFA, the Managing Committee is mandated to allot parking spaces/slots on a 'First Come First Served' basis for unsold and available parking spaces.

A crucial precedent was set by the Maharashtra State Consumer Disputes Redressal Commission in a judgment stating that Cooperative Housing Societies have the authority to redistribute parking spaces sold and allotted by the Developer after adopting suitable bye-laws. The Commission emphasized that the allotment of parking space is within the purview of the Housing Society, rejecting the Developer's contention. This reaffirms the established legal position that Developers cannot sell or allot any parking space considered part of the common amenities of the Housing Society. Even the Supreme Court has explicitly ruled that Developers cannot sell open spaces and stilt car parking areas within the buildings they promote.

The law stipulates that Builders must provide a specific number of parking spaces in proportion to the number of flats in the building. However, the crucial legal restriction is that Builders are not permitted to sell parking spaces outside the FSI consumed, as affirmed by the Bombay High Court and subsequently confirmed by the Supreme Court. This legal framework ensures that the allocation and management of parking spaces remain under the jurisdiction of the Housing Society, preventing unauthorized sales or allocations by the Developer.





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### ENFORCEMENT OF RULES & REGULATION FOR PARKING

#### PENALTIES FOR NON-COMPLIANCE

One of the most effective ways to enforce car parking rules is to impose penalties for non-compliance. The society can issue fines to residents who violate parking rules, such as parking in a non-designated area or parking in a way that blocks other vehicles. The amount of the fine can be determined by the society's managing committee, taking into account the severity of the violation. The fines collected can be used for the maintenance of the society or for any other welfare activity for the society members.

#### DISPUTE RESOLUTION MECHANISMS

Disputes related to car parking can arise between residents or between the residents and the society's managing committee. In such cases, it is essential to have a dispute resolution mechanism in place. The society's managing committee can appoint a grievance redressal committee that can resolve disputes related to car parking in a fair and transparent manner. This committee can include members from different sections of the society to ensure that the decision-making process is unbiased and just.

#### COMMUNICATION OF RULES AND REGULATIONS POLICY TO MEMBERS

Clear communication of car parking rules and regulations is crucial to ensure compliance. The society's managing committee can communicate the parking rules and regulations through notice boards, emails, or WhatsApp groups. They can also conduct awareness campaigns to educate the residents on the importance of following parking rules and regulations. Providing clear signage and markings to designate parking areas can also be helpful in ensuring compliance.

#### REGULAR MONITORING AND ENFORCEMENT

Regular monitoring and enforcement of car parking rules are critical to ensure compliance. The society's managing committee can appoint a security guard or a parking attendant to monitor the parking areas and ensure that residents comply with the rules. The security guard or parking attendant can also report violations to the managing committee, which can take necessary actions to enforce the rules.

By following these mechanisms, cooperative housing societies in Maharashtra can ensure compliance with parking rules and regulations and create a safe and secure environment for all residents.

