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CNR No.MHCA010002582025

Exh.No.16

THE MAHARASHTRA STATE CO-OPERATIVE APPELLATE COURT,
MUMBAI

(Before Sau. S.S. Sapatnekar, President)

A.O. NO.2 OF 2026

(Arising out of order dated 06/12/2025 passed by Ld Judge, Co-operative Court No.4, Mumbai below Exh.6 in Dispute No.441/2025)

M/s. Vraj Kamman Developers LLP
Having its office at- VRAJ, 2nd floor,
Simran Centre, Parsi Panchayat Road,
Mogra Village, Andheri East,
Mumbai 400 053.

... Appellant
(Orig. Disputant)

VERSUS

Andheri Sheetal Dhara Premises Co-op.
Housing Society Ltd.,
686-B, Bhadrawadi Road,
Andheri (West), Mumbai 400 058.

... Respondent
(Orig. Opponent)

Mr. Sanket Mungale I/b Ms Swapna Khemalapure, Advocate for Appellant.

Ms K.S. Bharucha a/w Mr. Akshay Pawar, Advocates for Respondent.

J U D G M E N T

(6th August, 2026)

1) This appeal is arising out of order passed by the Co-operative Court No.4, Mumbai dated 06/12/2025 below application for getting ad-interim relief at Exh.6 in dispute No.441/2025, whereby the Ld Trial Judge has

rejected the whole application filed by disputant. Original disputant is appellant and original opponent is respondent. For the sake of convenience, parties are hereinafter referred to by their original status in the dispute as disputant and opponent.

2) In brief the facts of the case are as follows :

The disputant is the developer/builder who has undertaken the redevelopment of the property of the opponent society, more particularly, described in Para 1 in the dispute. So also he is member of the opponent society in respect of Flat No.901 holding five shares from Nos 91 to 95. Opponent society is a co-operative housing society registered under the Maharashtra Co-operative Societies Act (hereinafter referred to as the MCS Act).

3) The opponent society had entered into Development Agreement dated 27/07/2018 with the disputant for redevelopment of its own building situated on the property described in Para No.1 of the dispute. The said project of the disputant is registered with Maharashtra Real Estate Regulatory Authority (hereinafter referred to as MahaRERA). The Municipal Corporation of Greater Mumbai (hereinafter referred to as MCGM) sanctioned the plan and issued I.O.D. on 17/10/2019 and commencement certificate was issued on 13/12/2019. The disputant has been in control and is entitled to allot parkings to the respective flat purchasers and original members and as per undertaking with purchasers, issued allotment letters to them in view of the development

agreement. The disputant is not under obligation to provide parkings to each and every flat purchaser.

4) As per the terms and conditions of the Development Agreement, the disputant has agreed to construct and provide the flats to the original members of the society and was entitled to sell remaining flats to the flat purchasers. Accordingly, disputant has sold several flats to various flats purchasers except Flat No.A-901. He has also allotted flats to the original members of the opponent society. In respect of Flat No.A-901 he was admitted as member of the society and share certificate came to be issued in his favour. There are total 58 number of parking spaces (stilt or open spaces) in the said project. Out of said 58 parking spaces disputant has already allotted 52 parking spaces to various purchasers and original members of the opponent society. He has also prepared a list accordingly regarding the allotment of parking spaces. After allotting 52 number of parking spaces, parking spaces bearing Nos.2, 5, 11, 16, 17 and 58 (hereinafter referred to as the suit parking spaces) are still remaining with the disputant which are yet to be allotted. The disputant is in control and possession of the said parking slots. The said parking spaces are highlighted in yellow colour in sanctioned plan attached to the dispute.

5) As per the Circular issued by the MahaRERA, it is prerogative of the disputant being the builder & developer to allot the said parking spaces. Nearabout 29 flat purchasers have neglected to do payments as per the agreement to sell and disputant has taken proper legal action and also filed suit for recovery of the said dues against the purchasers. The opponent has

filed false and frivolous dispute against the disputant with respect to payment of property taxes and leakage of the building. The society has also filed complaint with RERA authority against the disputant. Even the society has not given no objection to the disputant for selling remaining flat No.A-901. Despite of several reminders and requests made by the disputant, the society failed to give said NOC. The proposed buyer has also threatened to cancel the transaction if the NOC is not provided. Thus, the society is harassing the disputant by one way or the other.

6) The society thereafter issued email dated 27/11/2025 to its members for carrying out and framing the parking policy. It is alleged that the society is illegally, fraudulently and in violation of the law is seeking to carry out the parking allotments to its members and also called upon its members to fill in the applications for the same. The issuance of the said email is nothing but an attempt on the part of the society to grab these parkings which in fact belong to disputant. The disputant raised objections to said email by replying the same on the very same day i.e. 27/11/2025. There has been a big panic amongst original members and flat purchasers in respect of allotment of said parking spaces. Hence, to reassure them the disputant sent email to them dated 28/11/2025 indicating that the allotment done by the disputant to the purchasers and the original members shall remain the same. It is alleged that in the agreement to sell of some of the committee members there is a negative clause stating that they have not been allotted / purchased car parking spaces.

7) The society thereafter issued a notice of agenda dated 28/11/2025 for holding special general body meeting. The said agenda was in connection with framing of comprehensive parking policy. The said act of the society is in conflict of the right of the disputant under the Development Agreement dated 27/07/2018 and is an attempt of infringement of his right, title, interest in respect of suit parking spaces. It is alleged that the suit parking spaces referred above cannot be considered as common area of the society and the disputant's right in respect of those parking areas are very well protected under the provisions of RERA Act and under the terms and conditions of the Development Agreement. Hence, the dispute is filed by the disputant in respect of suit parking spaces bearing Nos.2, 5, 11, 16, 17 and 58. The disputant has sought various reliefs in the said dispute in connection with those parking spaces.

8) During the pendency of the said dispute, the disputant has filed application for getting ad-interim relief at Exh.6. In the said application he has reiterated all his contentions in the dispute and prayed that during pendency of the main dispute, the opponent society be restrained by temporary injunction from holding SGBM dated 07/12/2025. So also he prayed that the society be restrained by temporary injunction from allotting the suit parking spaces which are highlighted in yellow colour in sanctioned plan attached to the dispute. He has also prayed that during pendency of the dispute, the society be temporarily restrained from dispossessing the

disputant from the said parking spaces and encroaching upon those parking spaces. It is also prayed that during pendency of the main dispute, the society be restrained by order of temporary injunction from allotting any of the suit spaces to any member of the society. It is also prayed that society be restrained by temporary injunction from changing the allotment of the parking spaces done by the disputant to the purchasers and original members.

9) It appears that the secretary of the society namely Ms. Rama shyam appeared in person in the Trial Court and filed her say in her handwriting at Exh.7. It is contended that the hard copy of the petition for getting interim relief was received by the society at about 11 a.m. on 06/12/2025 and via email after 3 p.m. on 05/12/2025. However, they did not receive the copy of the documents filed by the disputant in hard copy. The society could not download 555 pages of the compilation received by them via email. It is contended that disputant/developer is not issuing formal possession or parking allotment letters to any of the allottees. Conducting a special general body meeting is a democratic right of the society and hence, the same cannot be restrained. The society's case with MahaRERA should be considered and no prayers of the disputant may be considered. The society being handed over by the developer after receipt of O.C. implies that the developer has no right to interfere in the matters related to parking and as such the Court should not entertain any plea of the developer to stop the society from reconfirming parking allotment as per the list provided by the developer and ratified by

MCGM. The suit parking spaces are already allotted to the members of the society who are paying the parking maintenance charges and taxes to the MCGM. On these grounds, the secretary of the society prayed to reject the application. Along with say, the documents relied upon by the society were also produced in the Trial Court.

10) The Ld Trial Judge, after hearing the matter on merits rejected the entire application. Perusal of the Trial Court's order reveal that the Trial Court has only considered the prayer of the disputant restraining the society for conducting the SGBM dated 07/12/2025. However, it is pleased to reject the entire application of the disputant. When I made a query on this aspect to the Ld Advocate for the disputant, he has submitted that in the trial court he has advanced the arguments pressing all his prayers in ad-interim application and he has not in a position to know as to why the Trial Court has not discussed the other prayers made in the ad-interim application. The Ld Advocate for disputant has filed on record affidavit of Mr. Sanjay Jamnadas Chhatrala who is authorised representative of the disputant contending therein that he was personally present before the Trial Court on 06/12/2025 when the matter was argued on ad-interim reliefs. It is also contended in the said affidavit that when the disputant moved the matter for ad-interim reliefs, the Court has orally directed the applicant to file separate application for ad-interim reliefs. Accordingly, the disputant immediately prepared the short ad-interim relief application seeking the urgent ad-interim relief. The matter is extensively

argued by both the parties and appellant has prayed all the reliefs as sought in the said ad-interim relief application. Thus, the contents of the said affidavit reveal that the Ld Advocate for disputant has argued the matter at length pressing all the reliefs in the application. However, the Trial Court appears to have considered only one relief of restraining the society from holding the SGBM on 07/12/2025 and surprisingly rejected the entire application for getting ad-interim reliefs. Hence, it is necessary to adjudicate the matter on merit afresh.

11) After appearance in this appeal, the society appeared through Advocate and filed a detailed reply along with documents at Exh.8. The said reply is filed by the secretary of the society namely Dr. Rama Shyam. It is contended that the MCGM issued occupation certificate on 16/04/2024 to the developer. Subsequently the disputant physically handed over the daily management and administration of the redeveloped building of the opponent society. By operation of statutory law under Maharashtra Ownership Flats Act, 1963 (MOFA) and the Real Estate (Regulation and Development) Act, 2016, the disputant's proprietary and possessory rights over the common areas including all unallotted open and stilt parking spaces stood absolutely extinguished. The disputant is stopped by his own conduct from claiming any right over the parking slots as the disputant had himself made allotments via emails and registers. Email issued by the disputant dated 08/10/2024 reveals that they have already allotted parking spaces. On 25/10/2024 disputant

physically allotted parking stickers to the members of the society and entries are made in the register. Thereafter in the month of October itself, the society provided the list of parking stickers and the names of the members to the MCGM for tax assessment. As per the said register, the parking Slot No.2 belongs to the disputant whereas the remaining suit parking slots bearing Nos.5, 11, 16, 17 and 58 belong to the society. The Assessment and Collection Department of the MCGM (K-West Ward) has officially ratified these specific parking slots as appurtenant to the respective members' flats and levied special notices u/s 162(2) and 216(B) of the BMC Act.

12) It is alleged that parking No.5 is assessed for Flat No.A-202 owned by Mr. Gaurav & Mrs. Neha Joshi; parking No.11 is assessed for Flat No.B-201 owned by Manisha Purohit; Parking No.16 is assessed for Flat No.B-703 owned by Mrs. Rachana & Mr. Amit Chachad; and parking No.17 is assessed for flat No.B-702 owned by Mrs. Gladys & Mr. Hansel Creado. The disputant's assertion of ownership over the said slots which are legally assessed and taxed in the name of the individual society members by MCGM is a mockery of municipal records. The society has continuously exercised the administrative control over the said parking slots. By letter dated 10/02/2025 and subsequent reminder on 05/03/2025 addressed to Assistant Assessor and Collector, K/West Ward, Mumbai, the society's ex-secretary formally requested the amendments to the property tax bills. The said letter has highlighted the discrepancies between old parking numbers and new

parking assignments to ensure municipal records reflect the correct allocations. The Hon'ble Supreme Court of India in case of Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd. observed that stilt and open parking spaces are “common areas and facilities” and cannot be sold or retained by developer as independent units.

13) It is alleged that disputant has suppressed the material facts from the Court. The disputant is illegally attempting to convert common scooter zones into private car parking. The disputant has not constructed a stack over parking slot No.58 and failed to install the mechanical stack elevator. The Trial Court has rightly exercised its discretion while refusing ad-interim reliefs. On these grounds, it has prayed to dismiss the appeal.

14) The appellant has assailed the order of the Trial Court on various grounds. It is contended that the impugned order is illegal, bad in law. The Court has not applied its mind while passing the order and it is against the settled principle of law. The Trial Court has failed to consider that the disputant is alone having discretion to deal with allot and distribute the parking spaces. The buyers are prosecuting their case before RERA and as such SGBM ought not have been held on 07/12/2025. The opponent society is a redevelopment project and parking spaces for all the original members have been secured under the Development Agreement dated 27/07/2018. The flat purchasers have not chosen to purchase parkings and the same have been specifically recorded in their agreements to sell. The agenda of SGBM dated

07/12/2025 was the outcome of ill-intention motives at the hands of committee members of the society. The Ld Trial Judge has failed to consider that the disputant has complied with all the provisions of RERA and DCPR 2034. He has allotted parkings to the members of the society as part of his obligations under the Development Agreement. The disputant is not under obligation to provide parking to each and every purchaser as per the agreement. As all the units in the building are not sold out, he is entitled to hold suit parkings in question. As per the circulars issued by MahaRERA, it is his prerogative to allot the suit parking spaces. The Lower Court failed to appreciate that the interference of the opponent society with suit parking allotment is a clear violation of contractual document and on these grounds, he prayed to allow the appeal.

15) Following points arise for my consideration and my findings with reasons thereto are as under :-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Does prima-facie case lie in favour of disputant/appellant ?	... In the Negative
2.	Does balance of convenience lie in favour of disputant/appellant ?	... In the Negative
3.	To whom irreparable loss will be caused if injunction is granted as prayed ?	... To opponent society
4.	Whether interference is called for into the impugned order of the Ld Trial Court ?	... In the Negative
5.	What order ?	... As per final order

REASONS

16) Heard the Ld Advocates for the appellant/disputant and the respondent/opponent.

17) Ld Advocate for the disputant submitted that the building of the society has underwent redevelopment and the said work of redevelopment was entrusted to the disputant who is a builder and member of the society in respect of Flat No.901. He submitted that as per the development agreement, disputant has allotted 28 car parking spaces to members and in all there are 58 car parking spaces. The suit car parkings i.e. parking space Nos.2, 5, 11, 16, 17 and 58 which are stilt parkings are owned and possessed by disputant. As per the clauses of development agreement dated 27/07/2018 the disputant is having authority to sell the remaining parking spaces after allotting parking slots to the members of the society. The Ld Advocate relied upon circulars issued by RERA. He also referred the definition of 'common area' given in Section 2(n) of the RERA Act, Rule No.2(j) of RERA Rules. According to him, Rule 2(j) of the RERA Act is in respect of covered parking space. Under the circular issued by RERA, the developer has right to sell covered parking and accordingly the disputant has right over the parking space Nos.2, 5, 11, 16, 17 and 58. He also submitted that the society is unnecessarily harassing disputant and even it has withheld the NOC in respect of Flat No.901 which is still unsold. Due to withholding of NOC of the flat of the disputant, the disputant is unable to sell out the flat. He submitted that the society should

honour the obligations of contract i.e. development agreement and has no right to convene a meeting and to formulate the parking policy in respect of suit parking spaces. The Ld Advocate for the disputant relied upon the conditions in the agreement relating to the allotment of the parking spaces.

18) He fairly conceded that prayer (a) in the interim application i.e. restraining opponent society from holding SGBM dated 07/12/2025 has now become infructuous. According to him, disputant is not sure about the resolution, if any, passed in the said meeting as the copy is not provided to the disputant. The Ld Advocate has pressed his prayers in Column No.(c), (d) and (e) in the interim application. He submitted that the Trial Court has wrongly rejected the interim application and prayed to allow the appeal and grant prayers (c), (d) and (e) in the interim application.

19) Per contra, the Ld Advocate for opponent submitted that after getting occupation certificate from MCGM, the disputant has handed over the building of the society on 16/04/2024 and after that all the rights of the disputant in respect of parking slots have come to an end. She submitted that once the possession is handed over to the society, all the common spaces vest in the society. The developer has even entered into conveyance with the society. She submitted that thereafter in the year 2026, after two years of handing over of possession and conveyance, the disputant has approached the Court by suppressing material facts. She submitted that one flat bearing No.901 is in the name of developer and parking slot NO.2 is allotted to the

disputant in respect of the said flat. The disputant is having duly accepted as developer as well as member of the society. The disputant himself has allotted parking slots to the members prior to two years and has even distributed parking stickers. She further submitted that opponent society has produced photographs of the members holding parking stickers. In parking slot No.58, the developer i.e. disputant is under obligation to construct cantilever, however, he has not done so. The Ld Advocate referred the municipal assessment record produced in the paper book and submitted that the society has intimated the municipal corporation the names of the members and parking slots allotted and except parking slot No.2, other parking slots i.e. parking slot Nos.5, 11, 16, 17 and 58 were already allotted to the members of the society. She has referred the extract of the parking register wherein the names of members along with allotted parkings are reflecting. She submitted that in view of the case of Nahalchand Laloochand Vs. Panchali Co-operative Housing Society Ltd., the disputant cannot claim ownership over the parking slots and being the common amenities of the society, it is for the society to formulate the policy in respect of the said parking slots. She submitted that there is absolutely no document on record to show that suit parking slots belong to the disputant. RERA circular relied upon by the disputant is overruled by another circular. She drew attention of this Court towards the rejoinder of the disputant and submitted that according to the disputant, parking spaces were allotted temporarily by him. The said stand of

the disputant is false. She supported the order of the Ld Trial Judge and prayed to dismiss the appeal.

20) In rejoinder, the Ld Advocate for the disputant submitted that except the extract of parking register, there is no corroborating resolution of the society for allotting parking spaces to its members. According to him, dispute is between member and the society and it is touching the business of the society and hence, Section 91 of the MCS Act attracts and the Court has jurisdiction to try the dispute.

As to Point Nos.1 to 3 :

21) The scope of appeal against the order passed by the Trial Judge below interim relief application is very limited. If the Trial Court has exercised its discretion judiciously, then interference in the said order is not called for. Hence, it is necessary to see whether the Ld Trial Court has exercised its discretion judiciously while rejecting the ad-interim application filed by the disputant.

22) The disputant is claiming his right over in all 5 suit parking slots i.e. 2, 5, 11, 16, 17 and 58, on the basis of the development agreement. Admittedly the disputant is member of the society in respect of Flat No.901 which is an unsold flat. So as to attract Section 91 of the MCS Act, a dispute requires to fulfil two conditions. The dispute, so as to fall within the purview of Section 91 of the MCS act, needs to satisfy two tests. The dispute must be touching the constitution, elections of the committee or its officers, conduct of general

meetings, management or business of the society. The parties to the dispute must be a society, its officers, members, past members or a person/persons claiming through such past or present members. Hence, in this case, it is necessary to see whether the present dispute in hand satisfies these two conditions.

23) In the present dispute, the disputant who is a developer, is not enforcing his rights against society in respect of his Flat No.901, but he is enforcing his rights under the development agreement. In Para No. 12 of the dispute, he has specifically contended that “As on the date the disputant still has six number of parking spaces i.e. suit parkings which are yet to be allotted and which are in possession and control of the disputant”. In Para No.13 he has contended that “As per circulars issued by MahaRERA, it is prerogative of the disputant being the builder and member to allot the parking spaces as shown in the sanctioned plan.”

24) While arguing the matter, the Ld Advocate for the disputant relied upon Para No.5 (vi) of the Development Agreement. By relying upon the said para, he submitted that in view of the said clause of the development agreement, the disputant is under obligation to provide one open/stilt parking in tower car parking/podium parking compulsory to each existing 28 members. The said clause reads as follows :

“vi. The developer shall firstly provide for 01 open/stilt/parking in tower car parking/podium parking compulsorily to each existing 28 members of flat i.e. in all not more than 28 car parkings. The

developer is also at liberty to allot/sell remaining car parking to the new purchaser/member. No car parking will be allotted/sold to any person who is not a purchaser of the flats from the developer. It is hereby clarified that the type, place and location of the car parking shall be as may be determined by the developer in its sole discretion.”

So also the disputant relied upon clause No.11(iv) and (a) which reads as follows :

“iv. The developer shall be entitled to sell/allot//dispose of etc. all the ‘Sale Areas’ along with car parking spaces in the proposed new construction (hereinafter to be collectively referred to as “the Developer’s Sale Component”) for which the developer shall have the following rights:

a) The developer shall proceed with the agreement for sale of “The Developer’s Sale Component” premises to any third party;

The developer shall, at its own account and risk, allot, cancel allotment of, re-a lot, sell or otherwise deal with the Sale Areas and parking spaces comprising of the Developer’s Sale Component in favour of flat purchaser to enter into agreement, allotment letter/letter of reservation or such other writings or documents in its own name. Agreements in respect of the premises sold by the developers shall be registered with the concerned office of the Sub-Registrar of Assurances and the requisite Stamp Duty and Registration charges shall be paid by the new incoming member/proposed flat purchaser and/or developer and they shall immediately become the member of the society. In the event of non completion of this redevelopment project, the society the new allottees will not be made members in the society as provided in Clause.”

25) A bare perusal of the said clause reveals that disputant is under obligation to provide 28 parking slots either stilt or open to 28 members of the society. It is the contention of the disputant that he has provided said parkings and he is claiming his rights over remaining parking slots under the said clause of the development agreement. It is not the case of disputant that society is now causing obstruction to his parking slot i.e. slot No.2. The opponent society has admitted in its reply that parking slot No.2 only belongs to the disputant as it is in respect of unsold flat No.901. The disputant in the present dispute is not enforcing his any right arising out of his status as member of the society in respect of parking slot No.2, but he is claiming his rights over other parking slots under development agreement. Under such facts, the present dispute is between the member and society, but is not touching the business of the society. As such, in my humble opinion, Section 91 of the MCS Act does not attract in this case. Though the disputant society has not disputed the jurisdiction of Co-operative Court, being a law point, I have discussed the said aspect in detail.

26) In the case between Smita Ambalal Patel & Ors. Vs. Dr. Harshad N. Pandya (deceased through LRs) & Ors. In Writ Petition No.6922 of 2021 with interim Application No.15703 of 2023 with Interim Application No.14197 OF 2023, in Para No.26 Hon'ble Parent High Court has observed that "*In conclusion, when the right claimed by the disputant arises directly from the society's byelaws, resolutions and conditions applicable only to members, the*

dispute must be treated as one arising in his capacity as a member. The cause of action, therefore, lies within the scope of Section 91 of the Maharashtra Co-operative Societies Act.”

In the present case in hand, the right claimed by the disputant neither arises directly from the society's byelaws, resolutions and conditions applicable only to members. But it arises from the development agreement entered into between the disputant and the opponent society. Even the cause of action, therefore, lies beyond the scope of Section 91 of the MCS Act.

27) Now I would like to discuss the merits of the case. The disputant in this case has failed to produce on record any documentary evidence prima-facie to show that the suit parkings fall under the saleable area. The opponent society has produced on record several emails of the members and letter of the member namely Minal Kapasi dated 18/01/2025 who were demanding the parking letters of their respective flats. Such members are Shri Sujit Pote, Masood Akhtar Shaikh, Adish Bisarya. From the said emails and correspondence, it is seen that though the disputant has promised to give them parking allotment letters, disputant has failed to abide by his said conditions and the members are requesting committee members of the society to do the needful and issue parking letters to them. Hence, it appears that the society has decided to satisfy the unrest of its members by adopting a parking policy and for the said purpose, it has issued the agenda notice of SGBM to be held on 07/12/2025. The disputant, being one of the members of the society, also

received the said notice. The opponent society has produced the copy of list of parking allotment to the members of the society which was forwarded to Tax Assistant Collector and Assessment of Collection Department of MCGM. In the said list, parking No.2 appears to be allotted to Flat No.901 of disputant; parking No.5 is allotted to Flat No.A-202 owned by Mr. Gaurav Manoj Joshi and Mrs. Neha Gaurav Joshi; Parking slot No.11 is allotted to Flat No.201 owned by Manisha Purohit; Parking slot No.16 is allotted to Flat No.703 owned by Rachana Amit Chachad and Mr. Amit Laxmikant Chachad; Parking No.17 is allotted to Flat No.702 owned by Mrs. Hansel John Creado and Gladys Hansel Creado, Parking slot No.58 in name of disputant and is reserved for cantilever. It is seen that even the MCGM on the basis of the said list has issued letters to the aforesaid members and levied tax to the respective flats and parking areas. The said letters are also produced on record by the opponent society. The said letters appears to have issued in the month of February 2025. Thus, prima-facie it appears that only parking slot No.2 belongs to the unsold flat of the disputant and rest of the suit parkings appears to have been allotted to members of the society.

28) The opponent society has produced on record the photographs of its members along with parking stickers. After perusal of the said photographs, it appears that the disputant i.e. Vraj Developers has even issued parking stickers of parking slot No.5, 11, 16, 17 and photograph of parking slot No.58. Pertinent to note that in the rejoinder filed by the disputant at Exh.9, disputant

has contended that the Vraj One parking sticker distribution- 28/10/2024 is merely the distribution of temporary stickers strictly for the purpose of access/vehicle identification/temporary ingress and egress only which the society itself did not consider formal allotment letters. The said say of the disputant in its rejoinder falsifies its own case of holding unallotted suit parking spaces. Pertinent to note that the disputant has not mentioned the so-called temporary arrangement of parking by distribution of parking stickers in the dispute and has suppressed the said material fact from the Court. When the opponent society produced photographs of parking stickers, the said contention of temporary allotment saw the day of light for the first time in the rejoinder of the disputant.

29) The opponent society has produced on record the various letters of allotment of parking spaces to its members. It appears that in consonance with its resolution of parking management policy passed in SGBM dated 07/12/2025, the society has allotted parking slots including the suit parkings to its various members and intimated them accordingly vide written letters.

30) As already pointed out, as the members have not issued any written document regarding allotment of parkings, the society appears to have called the SGBM and passed a resolution regarding parking policy. Vide agenda No.1, society resolved that-

“a. The general Body hereby formally adopts the “Parking Management Policy”. This policy shall serve as the official framework for parking management and will come into effect from

8th December 2025. Based on the applications submitted by the members and in accordance with the Development Agreement, the general body is empowering the Managing Committee to scrutinize and reconfirm the Brihanmumbai Municipal Corporation (BMC) ratified parking slots in the society. One parking slot may be allotted per flat, subject to availability. The slot is for the use of the resident of the allotted flat or the tenant of that flat only.

“b. Based on the Maharashtra Cooperative Societies (MCS) Act 1960, the Model Byelaws of Cooperative Housing Societies, and the Maharashtra Cooperative Societies (Amendment) Act, 2013, together, and Supreme Court Judgment in the 2010-11 Nahalchand Laloochand Pvt. Ltd. Vs Panchali Cooperative Housing Society case, Allotment of parking space is an administrative function. The Managing Committee is hereby authorized to take all necessary administrative actions for the smooth implementation of the Parking Management Policy. This includes, but is not limited to, demarcating parking lines, issuing vehicle stickers, maintaining records, enforcing penalties, and addressing any operational issues that arise. The developer has no right or purpose to interfere into matters of parking allotment.”

Even as per byelaw No.78, the society is responsible to frame the parking policy and hence, no fault lies with the society if it has taken up a SGBM for the said purpose and adopted parking policy.

31) It is a fact that under Section 17 of the Real Estate (Regulation & development) Act, 2016, the promoter is under obligation to execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or

the competent authority as the case may be in a real estate project. However, in this case, as already pointed out, it appears that disputant who is developer/promoter has already allotted parking slots to the members of the society. There is absolutely no documentary evidence to show that the suit parkings fall under the saleable areas authorising disputant to retain its interest over them. As such the prima-facie case as well as balance of convenience does not lie in favour of disputant. Accordingly I answer Point Nos.1 and 2 in the negative.

32) If the temporary injunction as prayed will be granted to the disputant, then it will amount to granting the disputant the rights in respect of parking slots of members of the society and creating interest and rights of the disputant in respect of suit parkings, though it has failed to prove that these parking slots fall under saleable area, causing irreparable loss to the society. Hence, I answer said point in favour of opponent society.

As to Point No.4 :

33) Though the Trial Court has only discussed the point of restraining opponent society for holding SGBM on 07/12/2025, finally it has dismissed the interim application of disputant in toto impliedly thereby rejecting all the reliefs. Hence, interference is not called for in the said order. Accordingly, I answer said point in the negative.

34) As a result, I proceed to pass following order :-

ORDER

1. Appeal is dismissed with costs.
2. The order passed the Ld Trial Judge, Co-operative Court No.4, Mumbai dated 06/12/2025 below application for getting ad-interim relief filed by the disputants at Exh.6 in Dispute No.441/2025 is hereby confirmed.

Mumbai
6th August, 2026

(Sau. S.S. Sapatnekar)
President,
Mh.State Co-operative Appellate Court,
Mumbai

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED
JUDGMENT /ORDER.”

06.08.2026
UPLOAD DATE

(D.D. Desai)
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	Sau S.S. Sapatnekar (C.R. No.1) President
Date of pronouncement of Judgment/Order	06.08.2026
Order signed by P.O. on	06.08.2026
Order uploaded on	06.08.2026