

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
AT NEW DELHI**

NC/CC/13/2026

With

NC/IA/1255-1256/2026
(Directions and Exemption)

Pradip Sonavane & Anr. ... Complainant(s)
Versus
DSSD Infrastructure Pvt. Ltd. & Ors. ... Opp. Party (ies)

BEFORE:

**HON'BLE MR. JUSTICE A.P. SAHI, PRESIDENT
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER**

For the Complainant: Mr. Mithil Sampat, Advocate
Ms. Tanisha Sampat, Advocate

PRONOUNCED ON : 18.02.2026

ORDER

JUSTICE A.P. SAHI, PRESIDENT

1. The two complainants before us are husband and wife, who have come up complaining about the deficiencies against the developer/ builder – opposite party no. 1, herein represented by the opposite party nos. 2, 3 & 4 and also the opposite party no. 5, Shree Nandadeep Bhavan Co-operative Housing Society Limited, broadly on two grounds.
2. The deficiency alleged is about a defective parking slot having been provided to the complainants and the Developers acting in violation of the legal provisions of the Maharashtra Ownership of Flats Act, 1963. The second complain is with regard to certain alleged deficiencies regarding the shortage of carpet area and other unauthorised constructions and deviations as entailed in paragraph 35 of the complaint based on an Architect's report dated 28.08.2025. The relief prayed for is for a direction to allot an alternative parking space that is lawfully sanctioned, to cancel the current parking

allotments, with a direction to the society to frame a uniform policy for the same, cancel the second parkings that have been extended to other occupants and finally to award a sum of Rs.26,02,611/- in lieu of the unauthorised sale of 99 sq. ft. of the area. In addition thereto a prayer has been made to provide several documents that have been enlisted in the prayer clause and the society be directed to issue maintenance bills and further provide all the information as enlisted in the prayer clause.

3. The background in which the present complaint has been filed is that the complainants came to know about a redevelopment project named, Shri Nandadeep Bhavan, developed by the opposite party no. 1 for the residents of that society with an authority to sell the flats of the saleable area. The complainants accordingly entered into an Agreement for Sale on 20.12.2013. As per the said agreement and the facts stated, the complainants allege to have paid a sum of Rs.2,89,47,828/- as consideration for the flat. The flat was to be delivered in terms thereof. Clause 3 of the agreement recites the description of the flat as promised bearing no. 701 on the 7th floor of Shri Nandadeep Bhavan, admeasuring 989 sq. ft. This total sale consideration includes the proportionate price of the common areas and facilities appurtenant to the said flat. The amenities to be provided by the Developer are described in annexure-7 along with the description of the premises in the 3rd schedule. The agreement further recites in paragraph 26 about the availability of the common areas and amenities as described in the third schedule. Clause 28 specifies the restrictions placed on the parking space to be allotted to the occupier, whereby the same could not be sold to any third party. Clause 29 further records that the purchaser shall use the basement

parking space only for the purpose of keeping or parking the purchasers' own vehicle and for no other purpose.

4. Parking slot to the complainants was allotted on 14.04.2016, which is extracted herein under:



ANNEXURE - F

(140)

CIN : U45201 MH2007PTC175073

DSD INFRASTRUCTURE PVT. LTD.

Regd Office : 102, Sanghvi Villa, 75 S. V. Road, Mn, Andheri (West), Mumbai - 400 058
Tel.: +91-22-42765000 Fax : +91-22-42765015 www.thodsgroup.com

Date: 14th April 2016

Mr. Pradip Babaram Sonavane and Mrs. Rajshree Pradip Sonavane
501, Milhul Enclave, 1 Wing
Jijamata Nagar, RCF Mahul Road,
Chembur, Mumbai 400074

Re: Allotment of One parking slot in Stack Parking in the Basement level in building to be known as "Nandadeep" situate, lying and being at Plot No 196/B, Goathan Road No 2, Chembur, (East), Mumbai 400 071.

Dear Sir,

Pursuant to Sale Agreement dated 20th December 2013, and as the Purchasers of Flat No. 701 on the 7th Floor of the building known as Nandadeep, we hereby offer to you One parking slot in Stack parking in the Basement level bearing number Carpark 02 for your absolute use and benefit.

The above mentioned parking slot is identified and marked in the plan annexed with the letter.

For DSD INFRASTRUCTURE PVT LTD.

DIRECTOR



OFFICIAL USE ONLY

5. The same was also identified in the map appended along with this which has also been filed along with record as annexure - F. The possession was to be delivered as per the agreement by 2014, but it appears that the complainants came to be offered possession on 31.08.2016 as narrated by them.

6. The complainants themselves have admitted that since the complainant no. 1 was abroad on account of his professional engagement, the premises was rented out, but the complainants are now residing in it after 2024.
7. From the aforesaid narration it is evident that the possession had been taken in 2016 itself. There is one clause of the agreement which needs to be referred at this stage, namely, clause 40 which is in effect a lookout/ defect liability clause which is extracted herein under:

"40. The Purchasers shall check all the amenities in the said Flat before taking possession of the same. Thereafter, the Purchasers shall have no claim against the Developers in respect of the same and the Purchasers shall not be entitled to that the work was not out and/or completed and/or being out in accordance with the plans, specification, and/or this agreement. Provided that, if within the statutory period as prescribed under M.O.F.A within 3 years from the date of handing over the said Flat to the Purchasers, the Purchasers brings to the notice of the Developers any material or structural defect in the said Flat or the material used therein (usual wear and tear excepted, Act of God or Force majeure and contributory negligence excepted) then, whenever possible such material or structural defects shall be rectified by the Developers at their own cost. Provided if such changes/defects in the said Flat or in the buildings are due to neglect or due to act of omission or commission on the part of any of the Purchasers in the said New Building, the Developers shall not be liable for the same."

8. It is in this background that the complainants after 10 years of taking possession have now come up in the year 2026 by filing this complaint, and for the purpose of limitation as contemplated under Section 69 of the

Consumer Protection Act, 2019, have made the following averments in paragraph 45, which are extracted herein under:

"45. LIMITATION: The Complainants abovenamed do herewith humbly state and submit that the Complaint is within limitation and there is no delay, and limitation for the various causes of action is explained as under:

*a. For Complainant's **request to allot another parking** (and request to rectify the illegal parking allotment), **the cause of action arose on the date of mishap/incident, i.e. on 15/01/2025.** In any case, an illegality (i.e. violation of statutory obligations under Bye-Laws of Society) is a **continuous cause of action** (under Section 22 of Limitation Act) and cause of action begins afresh for each day of non-compliance*

*b. For Complainant's other remaining requests to Society (like providing the various documents), the cause of action arose on 22/05/2025, i.e. on **date of Complainant's Legal Notice** sent through Adv. Mithil Vinod Sampat (Annexure - 'K')*

*c. **For 99 square feet excess mention** by Builder, the cause of action arose **when the Architect Report dated 28/08/2025 (Annexure-'O') was prepared (i.e. when it came to the knowledge of the Complainants)**, or at the very earliest, when the Architect visited the premises on 21/07/2025. In any case, non-compliance of statutory obligations is a continuous cause of action (under Section 22 of Limitation Act), i.e. non-compliance of Section 3(2)(n) of Maharashtra Ownership of Flats Act, 1963 which says that "A promoter who constructs or intends to construct such block or building of flats, shall sell flats on the basis of carpet area only", and when an incorrect area is mentioned for carpet area, the said provision is not complied with.*

*d. For other obligations of the Builder, **the causes of action** (which are non-compliance of statutory obligations) **arose on 22/05/2025 when the Complainants sent Legal Notice** (Annexure - 'K')*

e. The Complainants are relying on Judgment dated 27/10/2025 of the Hon'ble Kerala High Court at Ernakulam in RFA No. 79 of 2013 (V. Chandran versus Aliamma George and Others) where it was held that when the breach is a continuing one, limitation began to run from the date on which the breach ceased, and Section 22 of Limitation Act is relied upon stating that every moment the breach is continued, a fresh period of limitation commenced, and limitation would begin to run from the date of cessation of the breach."

9. The averments made in the complaint are about the parking space being absolutely inconvenient for being negotiated and that the same was noticed to be defective as there was an uncovered manhole. The complainants have also stated that they intended to buy a bigger luxury vehicle as such the said parking space would not in any way be convenient for the complainants and in spite of this request having been made to the opposite party no. 5, Society, neither the Society did anything nor the Developer has responded to the same. It is also urged that the Society has completely refused to entertain any such request.
10. The complainants have also relied on a report of the architect which they have obtained privately on 28.08.2025, to base their claim in respect of the deficits in the carpet area of the flat and the other alleged deficiencies which have been narrated in paragraph 35.
11. Apart from this as already noted above the prayer clause also makes a request demanding certain documents from the Society.

12. The counsel for the complainants has also tendered written submissions as well as three judgments and a circular of the Registrar of Cooperative Societies that has been received in this Commission on 16.02.2026 through diary no. 4014. This attempt has been made after the orders have been reserved previously on 11.02.2026, but nonetheless we have perused the same. The judgments cited are on the merits of the claim, whereas the issue at the outset is of limitation and hence the said judgments and the circular are of no avail for the said purpose.
13. The first issue is as to whether the complaint could be entertained in respect of the grievances raised, if it crosses the threshold of the bar of limitation. In our considered opinion the agreement is of 2013 and the possession was taken over in 2016 and the premises was also statedly rented out. Clause 40 of the agreement categorically gives a window period for raising any complaints regarding constructions even that period has expired long back. The complainants seem to have returned back to reside in the premises in 2024 and then they have made certain discoveries in 2005, which they allege to be deficiencies. The cause of action on the facts as pleaded had clearly arisen when they had taken possession way back in the year 2016 and no complaint whatsoever was made to the Developer about any shortage in area or about any incorrect parking space having been provided. In effect the property seems to have been rented out and now when the complainants have come to reside therein, they wanted the adjustments to be made keeping in view their present needs. The allegations about the other deviations against the Developer all existed when the possession was handed over. The Society, namely, the opposite party no. 5 is in existence since 2021.

We do not have any such material to demonstrate that the Society had raised any such dispute against the Builders.

14. It is therefore evident that it is almost after 13 years of the agreement and after 10 years of the taking over of possession that the present complaint has been framed alleging deficiencies on the part of the Developer and subsequently on the Society, the opposite party no. 5 as well. In our assessment on the basis of the pleadings on record and the material, the present complaint is clearly barred by the provisions of Section 69 of the Consumer Protection Act, 2019, the same is extracted herein under:

"69. (1) The District Commission, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Commission, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the District Commission or the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.

15. We may further appoint out that these provisions are almost *pari materia* to Section 24-A of the 1986 Act which came up for interpretation before the Apex Court in the case of *SBI v. B.S. Agriculture Industries (I), (2009) 5 SCC 121*, where the Apex Court has observed as under:

"11. *Section 24-A of the Act, 1986 prescribes limitation period for admission of a complaint by the consumer for thus:*

"24-A. Limitation period.—(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay."

It would be seen from the aforesaid provision that it is peremptory in nature and requires the consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The consumer forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. The expression, "shall not admit a complaint" occurring in Section 24-A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within the limitation period prescribed thereunder.

12. *As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the*

consumer forum to take notice of Section 24-A and give effect to it. If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside.

13. *In Union of India v. British India Corpn. Ltd. [(2003) 9 SCC 505] while dealing with an aspect of limitation for an application for refund prescribed in the Business Profits Tax Act, 1947 this Court held that the question of limitation was a mandate to the forum and, irrespective of the fact whether it was raised or not, the forum must consider and apply it.*

14. *In HUDA v. B.K. Sood [(2006) 1 SCC 164] this Court while dealing with the same provision viz. Section 24-A of the Act, 1986 held : (SCC pp. 167-68, paras 10-12)*

"10. Section 24-A of the Consumer Protection Act, 1986 (referred to as 'the Act' hereafter) expressly casts a duty on the Commission admitting a complaint, to dismiss a complaint unless the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that the complainant had sufficient cause for not filing the complaint within the period of two years from the date on which the cause of action had arisen.

11. The section debars any fora set up under the Act, admitting a complaint unless the complaint is filed within two years from the date of which the cause of action has arisen. Neither the National Commission nor had the State Commission considered the preliminary objections raised by the appellant that the claim of the respondent was barred by time. According to the complaint filed by the respondent, the cause of action arose when, according to the respondent, possession was received of the booth site and it was allegedly found that an area less than the

area advertised had been given. This happened in January 1987. Furthermore, the bhatties which were alleged to have caused loss and damage to the respondent, as stated in the complaint, had been installed before 1989 and removed in 1994. The complaint before the State Commission was filed by the respondent in 1997, ten years after the taking of possession, eight years after the cause of alleged damage commenced and three years after that cause ceased. There was not even any prayer by the respondent in his complaint for condoning the delay.

12. Therefore, the claim of the respondent on the basis of the allegations contained in the complaint was clearly barred by limitation as the two year period prescribed by Section 24-A of the Act had expired much before the complaint was admitted by the State Commission. This finding is sufficient for allowing the appeal."

15. In a recent case of Gannmani Anasuya v. Parvatini Amarendra Chowdhary [(2007) 10 SCC 296] this Court highlighted with reference to Section 3 of the Limitation Act that it is for the court to determine the question as to whether the suit is barred by limitation or not irrespective of the fact that as to whether such a plea has been raised by the parties; such a jurisdictional fact need not be even pleaded."

16. We find on the facts of the present case that the aforesaid legal position is squarely applicable and the complaint cannot be entertained being barred by limitation. There is no sufficient cause pleaded or shown for the delay.
17. On the other hand the claim is of a continuing cause. We may point out that a continuing cause of action as explained by the Apex Court in the case of Samruddhi Coop. Housing Society Limited Vs. Mumbai Mahalaxmi Construction Private Limited, (2022) 4 SCC 103, is not attracted in the present case at all and the ratio thereof does not come to the aid of the complainants.

The injury and the cause of action due to the act of the Developer/ Builder had occurred, if any, as alleged, way back in 2016, when the possession had been taken and cannot be unendingly treated as a continuing cause. The Society came into existence in 2021 and in such circumstances any grievance to be raised now in the year 2026 is clearly barred by time.

18. We may further observe that even though the claims which have been raised and the reliefs prayed for are also otherwise not entertainable, but we would confine the dismissal of this complaint on the ground of being barred by limitation as reasoned out hereinabove. The complaint is accordingly dismissed.

Sd/-

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(A.P. SAHI, J.)
PRESIDENT

Sd/-

.....
(BHARATKUMAR PANDYA)
MEMBER

Brahm/VM/Court-1/CAV