

# STRATAGE UPDATES



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**Case:** In this update, we have examined the ruling of the Supreme Court of India (“**Court**”) pronounced on January 11, 2022 ([available here](#)), in *Samruddhi Co-op. Housing Society v. Mumbai Mahalaxmi Construction Pvt. Ltd.*

## Real Estate Update

### Failure to Obtain Occupancy Certificate by Builder Amounts to ‘Deficiency in Service’ Under The Consumer Protection Act, 1986

**Factual Background:** Samruddhi Co-op Housing Society (“**Appellant Society**”) is a cooperative housing society under the Maharashtra Cooperative Societies Act, 1960. Mumbai Mahalaxmi Construction Private Limited (“**Developer**”), was the developer of Wings A and B of the premises. The Developer, had failed to obtain the occupancy certificate from the municipal authorities. As a result, the members of the Appellant Society had to pay property tax and water charges at a significantly higher rate.

**NCDRC Order:** The National Consumer Disputes Redressal Commission (“**NCDRC**”) by its order dated 3<sup>rd</sup> December 2018 (“**NCDRC Order**”) dismissed the Appellant Society’s complaint under the Consumer Protection Act, 1986 (“**Act**”), seeking a reimbursement of the extra charges paid to the authorities and observed that: (i) the complaint should have been filed within two years of the cause of action *i.e. when the Appellant Society made efforts to obtain electricity and water connections*, the same is barred by limitation under Section 24A of the Act; (ii) no relief was sought by the Appellant Society for obtaining the occupancy certificate; and (iii) since the complaint was filed for refund of excess amount paid to the municipal authorities and not to the Developer, the Appellant Society would not fall under the definition of ‘consumer’ under Section 2(1)(d) of the Act.

*This Update is meant for general information and shall not be deemed to be a legal advice or opinion. This Update is neither intended to be an advertisement or solicitation.*

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## *Real Estate Update*

### *Failure to Obtain Occupancy Certificate by Builder Amounts to 'Deficiency in Service' Under The Consumer Protection Act, 1986*

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### *Decision of the Supreme Court:*

The Supreme Court allowed the Appellant Society's appeal against the NCDRC Order, and directed the NCDRC to decide the merits of the dispute keeping in mind the observations of the Court. The Court made the following observations:

***Limitation:*** The two year limitation period under Section 24A of the Act has to be read in conjunction with Section 22 of the Limitation Act, 1963, which states that, for a continuing breach, a new period of limitation begins to run at each moment the breach continues. As per Sections 3 and 6 of the Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963, a Builder has an obligation to provide the occupancy certificate to the flat owners and pay the relevant charges till the time the property is transferred to the flat owners. Rejecting the complaint as being barred by limitation when there is a repeated demand for higher taxes is a narrow view and not in consonance with the welfare objectives of the Act.

***Maintainability:*** The failure of the Respondent to obtain an occupancy certificate amounts to a deficiency in service under Section 2(1)(g) of the Act. Members of the Appellant Society are consumers under Section 2(1)(d) of the Act and have the right to pray for compensation as a recompense for the Respondent's deficiency in service.