

Legal issues regarding apartment ownership in Bangladesh

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APARTMENT ownership means ownership of the physical share of a structure together with a legal share of common ownership to which the physical share belongs and the physical share of a structure and the legal share of a common ownership, which are objects of apartment ownership, cannot be separately transferred, encumbered or bequeathed. In Bangladesh over the last few years, several real estate businesses have been set up to cater for the ever-increasing housing needs; because there is certainly a rising demand in the housing sector and there is a buyer for every type of apartment as well. Besides, the middle-income group is growing and will continue to grow and there is also a demand for low cost housing complexes. Recently, the President of the World Bank Group, Mr. James D. Wolfensohn, signed for the International Finance Corporation (IFC) to become an equity partner together with the Housing Development Finance Corporation (HDFC) of India, in the recently established Delta Brac Housing Finance Company (DBH) in Bangladesh. It will provide a home mortgage loan of up to fifteen years for owner occupied houses and apartments and plans to launch a deposit scheme shortly, particularly for the future prospective homeowners.

As the urban population of Bangladesh, especially its capital city, Dhaka, has experienced explosive growth for over two decades with consequent overcrowding and an acute shortage of housing, housing and the attendant urban infrastructure is required to support adequate living conditions. As a result, a special statute relating to apartment ownership becomes urgent not only to get a guide to the successful ownership and management, choosing between self and third-party management, rent regulations and landlord/tenant relations, insurance, taxes and assessments and building maintenance and repair, but also to improve maintenance and healthy conditions in the apartment for the economically disadvantaged urban population in Bangladesh.

On the other hand, as the complexity of the real estate business intensifies, the need for the special statute of the apartment ownership becomes increasingly urgent. Under the circumstances as stated above, for example, the 'Delhi Apartment Ownership Act' is a welcome piece of legislation. There was a growing need for it arising out of the increasing number of apartments coming up in Delhi and the resultant litigation. The Act sets at rest many issues relating to the rights and obligations of apartment owners, such as the question of inheritance and ownership, the right to common areas and facilities, the restrictions on transfer like sale, mortgage, etc.

Reasons for introducing Apartment Ownership:

- = It aims to alleviate the urgent sociological need for

residential accommodation in Bangladesh by providing a third possibility to satisfy housing needs besides the traditional options of purchasing a house or renting a flat.

- = It provides a hedge against inflation: instead of paying rent, apartment owners use their financial resources for the payment of a mortgage, which increases their financial interest in the apartment.
- = It satisfies the psychological need of the population of Bangladesh for home ownership and to spread the social status associated with home ownership to a larger segment of the population.
- = By linking as large a percentage of the population of Bangladesh as possible to a fixed place of residence it is hoped to achieve political stability in Bangladesh.
- = Finally, it results in a more efficient construction of building and a better utilization of land in Bangladesh.

Reasons why apartment ownership should have a statutory basis in Bangladesh:

Bangladesh is a civil law country. In civil law countries it was necessary to provide a statutory basis for the apartment ownership in order to breach the age-old maxim superficies solo cedit, which did not allow separate ownership of parts of a building. So, in order to flourish, an enabling statute, which provides for the apartment ownership concept must ensure that apartment ownership is recognized as an important interest in real property and that apartment mortgages qualify for institutional investment.

From the above discussion, it is crystal clear that a special statute in relation to the apartment ownership becomes urgent for the people of Bangladesh considering the following aspect:

- = To provide a procedure for the establishment and dissolution of apartment ownership and to secure a uniform pattern of legal documentation.
- = To accommodate existing legal rules and legislation dealing with recording procedures, land-use control, servitudes and security regulation to the special needs of Apartment Ownership.
- = To anticipate possible judicial antagonism involving such matters as limitations on partition and real covenants.

As far as the ownership, management and maintenance are concerned, a special statute in relation to apartment ownership is urgent in Bangladesh. Basically a statute in relation to the apartment ownership should deal with the following matters:

- = Physical share of object of apartment ownership: What is it?
- = Ownership: Who owns what?
- = Maintenance: Who pays for what?
- = Management: How are decisions to be made?

The physical share of an object of apartment ownership is a delimited dwelling or non-residential premises and parts of the structure thereto, which enable separate use and which can be altered, removed or added without violating common ownership or rights of other apartment owners and without altering the external form of the structure. A part of a garage with an apartment marking may also be part of a physical share of an object of apartment ownership. Structure or parts thereof, or equipment necessary for the life of a structure, for ensuring safety or for common use by the apartment owners are not physical shares of an object of apartment ownership even if they are situated within the boundaries of a physical share of the object of apartment ownership.



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In Bangladesh the Transfer of Property Act and Registration Act deal ownership in a manner, which is broadly satisfactory; but regarding apartment ownership it requires clarification and improvement because the approach of the apartment ownership must be accessible and clear to resolve uncertainties for the anticipation of future development.

For as long as ownership is tied to maintenance, it is often resorted to in titles. Although the maintenance of the apartment is regulated on the concept of common interest

and by the deed of sale, as there is no law in relation to the apartment ownership, there arises various disputes, e.g. who maintains the roof of the apartment to the extent required to provide shelter? Or who maintains the external walls and any other parts thereof of the apartment to the extent required to providing shelter?

As there is no law on the apartment ownership, there is no particular scheme for management and decision making in Bangladesh. If the roof is leaking, it must be repaired by those responsible for its repair- an obligation enforceable, if need be, by court action. And if the walls are failing, they too must be repaired. But repair i.e. confined to these particular cases, and can be demanded only where matters have deteriorated to the point where support or shelter is at risk. As there is no law on the apartment ownership in Bangladesh, maintenance and management mainly depend on voluntary act or unanimous agreement, which usually gives and raise various disputes in the country.

The author is currently doing his PhD from School of Law, University of Aberdeen, Scotland.

LAW update

UN calls for clone ban

The United Nations has called on countries to ban all forms of human cloning "incompatible with human dignity." The American religious right claims victory, but others say the declaration is the result of political manoeuvring influenced by pressure from the United States.



The politicization of science policy in the United States has become a contentious issue in the past several years, with groups like the Union of Concerned Scientists criticizing the Bush administration for favoring political interests over scientific results. Now, that trend seems to be making international inroads.

Nations including Singapore, South Korea, Belgium and the United Kingdom blasted the declaration by the divided U.N. committee, calling it political posturing.

Organizers of the annual meeting of the American Association for the Advancement of Science devoted nine hours of seminars plus a press conference to what they say is increasing influence of political interests on science policy. Politics in America, they say, have inappropriately influenced not only stem cell research and cloning science, but also reports on climate change, endangered species policies, fisheries energy and many others.

"In the scientific communities in other countries we are ridiculed," said Kurt Gottfried, chairman of the Union of Concerned Scientists, in an interview. "It has certainly lowered our prestige across the world."

U.S. delegates to the United Nations supported a treaty to ban all cloning starting in 2002. After nearly two years of negotiations, the U.N. shelved attempts to agree on a treaty and instead delegates opposed to cloning pushed for a non-binding declaration as a compromise.

The United States is becoming notorious in the eyes of other countries, Gottfried said, as a nation that has allowed ideology to become a premise for science. That perception is sure to have harmful repercussions on the American science community, he said. Scientists are already leaving the country and graduate students are less uninterested in studying in the United States, he said. When government agencies allow special interests to overshadow science in policy making, the credibility and influence of the agencies themselves are undermined, Gottfried said during a seminar.

"The real danger is that these agencies could be harmed in the long run," he said. "This is an oversight issue and Congress should really be handling it."

Source: Wired News

FACT file

Iraqi women: need for protective measures

Iraqi women must have an active role in shaping the future of their country. A report by Amnesty International says, Iraqi authorities must take effective measures to protect women and to change discriminatory legislation that encourages violence against them.

Women and girls in Iraq live in fear of violence. The current lack of security has forced many women out of public life and constitutes a major obstacle to the advancement of their rights. Since the 2003 war, armed groups have targeted and killed several female political leaders and women's rights activists. The report Iraq: Decades of suffering - Now women deserve better documents how women and girls in Iraq have been targeted directly, because they were women, and how they suffered disproportionately through decades of government repression and armed conflict.

"Iraqi authorities must introduce concrete measures to protect women," said Abdel Salam Sidahmed, Director of the Middle East and North Africa Programme at Amnesty International. "They must send a clear message that violence against women will not be tolerated by investigating all allegations of abuse against women and by bringing those responsible to justice, no matter what their affiliation."

Three wars and more than a decade of economic sanctions have been particularly damaging to Iraqi women. Under the government of Saddam Hussain, they were subjected to gender-specific abuses, including rape and other forms of sexual violence, or else targeted as political activists, relatives of activists or members of certain ethnic or religious groups.

The report demonstrates how gender discrimination in Iraqi laws contributes to the persistence of violence against women. Many women remain at risk of death or injury from male relatives if they are accused of behaviour held to have brought dishonour on the family.

"Iraqi authorities must review discriminatory legislation against women and bring it into line with international human rights standards. Most importantly, they must ensure that the new constitution and all Iraqi legislation contain prohibitions to redress all forms of discrimination and gender-based violence against women," said Abdel Salam Sidahmed.

A number of Iraqi women have been taken



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hostage by armed groups, some of them in connection with political demands. Women of non-Iraqi origin have also been held as hostages, often in an attempt to force a withdrawal of foreign troops from Iraq. They have been beaten and threatened with execution, and at least one of them, Margaret Hassan, has reportedly been killed. Italian journalist Guiliana Sgreni was kidnapped by an armed group earlier this month. On 16 February 2005 a videotape was circulated showing her in distress appealing for the withdrawal of Italian troops in Iraq. Amnesty International has repeatedly called on armed groups to immediately end the violence against women, including harassment, death threats, violent attacks, kidnapping and killing.

Amnesty International equally calls on the US-led multinational forces to improve safeguards for women in detention and investigate promptly all allegations of violence against women, including sexual attacks by their forces or other agents.

Women's rights organisations in Iraq have repeatedly called for measures to be taken in order to stop violence and to end discrimination against women. In recent years, numerous non-governmental organisations (NGOs) and other bodies working for women's rights have been formed, including groups that focus on the protection of women from violence. Women's rights activists are often faced with threats and assaults from the families of the women they support.

It calls for women to be at the heart of the political decision-making process in Iraq, particularly when dealing with issues directly pertaining to women. It calls on for women to be represented at all levels to protect women's interests. Women in the next government and the elected National Assembly must take the lead in ensuring that Iraqi legislation and future amendments are in total harmony with international standards.

Source: Amnesty International.

UN declares level 1 warning in Dhaka

The United Nations (UN) has announced a level-1 security warning in Bangladesh for its officials asking them to inform the Dhaka office before making a visit to the country, said UN officials. The phase-1 security warning has been issued amidst a level-2 warning already imposed for Cox's Bazar since October 28 last year. UN officials said the latest security warning was issued after a meeting of the UN organisations in Dhaka that took stock of the security situation in the country.

"Phase-1 warning means a pre-cautionary measure. Our officials who will come to Bangladesh from outside will have to take prior clearance from a designated officer for UN security in Dhaka," said a senior UN official, preferring anonymity. "The warning has been issued considering the present security situation prevailing in Bangladesh," said the foreign-origin official. The decision was taken in the wake of a number of bomb attacks across the country. *BD news, February 22.*

Unocal president, director exempted from personal court appearance

The High Court (HC) exempted Unocal Bangladesh Chapter's President Andrew L Sawthorp and Legal Director Chye Koh from personal appearance before the court in a contempt of court case filed by Maxwell Engineering Ltd. A division bench comprising Justice MA Matin and Justice AFM Abdur Rahman also fixed February 28 for hearing on the rule earlier issued by the High Court. After hearing the petition filed by Maxwell Engineering Works Ltd, the HC on February 5 had issued a rule on Andrew L Sawthorp and Chye Koh to show cause why proceeding for contempt of court against them should not be drawn. The court had also directed them to appear in person before it on February 22. On Tuesday, they appeared before the court and sought exemption from personal appearance before the court. *The Daily Star, February 23.*

Govt bans JMJB, JMB, Galib arrested

Waking up to the militants' threat, the government at last banned Islamist outfits Jagrata Muslim Janata, Bangladesh (JMJB) and Jama'atul Mujahideen Bangladesh (JMB) accusing them of a series of bomb attacks and killings to create anarchy. The ban following a persistent denial by the government of the existence of JMJB throughout last year coincided, arrest of Dr Muhammad Asadullah Al Galib, chief of another Islamist militant outfit Ahle Hadith Andolon Bangladesh (Ahab), with three of his top associates in Rajshahi. Three JMB operatives in Gaibandha and two in Rangpur and two JMJB activists in Rajshahi were also arrested in the belated crackdown on Islamist militants, particularly in the North.

Although newspapers in the last few days have revealed a long track of militant links and activities of Rajshahi University Arabic teacher Galib, police arrested him under Section 54. *Prothom Alo, February 24.*

UN HR agency asks govt for information on grenade attacks

The UN High Commissioner for Human Rights has asked Bangladesh government to furnish information regarding the assassination of former finance minister Shah AMS Kibria and grenade attack on Sheikh Hasina's rally that killed 22 people, including Awami Mahila League leader Ivy Rahman. The UN agency also called upon the government to provide information about "police excesses on demonstrators" rallying in different parts of the country to protest the killing of Awami League politicians and on journalists covering the protests.

Its request came in a letter dated February 3 and addressed to the permanent representative of Bangladesh to the UN offices in Geneva, a copy of which was made available in Dhaka. In the communiqué, issued by Ambeyi Ligabo, special rapporteur of the Promotion and Protection of the Right to Freedom of Opinion and Expression in the office of the UN High Commissioner for Human Rights, the agency asked for details of the inquiries, judicial or other procedures undertaken and reports thereof. *UNB, February 24.*

Plans for additional High Court bench to try extremists

Prime Minister Khaleda Zia instructed the home ministry and the intelligence agencies to root out the Islamist militants, their hideouts and subversive activities. She also decided in principle to set up an additional bench at the High Court to ensure speedy trial of cases on subversive acts, highly placed sources said. Khaleda held several rounds of meetings with officials of home ministry, police and intelligence agencies and asked them to take strong actions against all activities in the name of jihad. The prime minister said those who have been creating anarchy in the name of religion are the enemies of the nation and the country, adding all of them will be punished. These extremists must not be bailed out, she told police officials during a meeting at the International Conference Centre at the Prime Minister's Office (PMO). *The Daily Star, February 25.*

LAW news

U.N. Refugee chief resigns under pressure

After months of criticism, secretary-general Kofi Annan decided that U.N. refugee chief Ruud Lubbers had to go because of the growing controversy over allegations that the former Dutch prime minister had sexually harassed female staffers.

Lubbers didn't go easily. He resigned but proclaimed his innocence, saying he felt insulted and accusing Annan of giving in to "media pressure."

At a meeting with Annan, U.N. diplomats said the secretary-general offered the U.N. High Commissioner for Refugees two choices - resign or face suspension and charges of breaking U.N. rules.

Allegations first surfaced last year that he had made unwanted sexual advances toward a female employee, identified in media reports as an American. But it was only recently the British newspaper The Independent published the first detailed description of her allegations and statements from four other women who didn't file official complaints but claimed Lubbers sexually harassed them.

As the United Nations struggles to improve its image in the face of scandals over the U.N. oil-for-food program and sexual abuse by U.N. peacekeepers in Congo, diplomats said Annan decided that Lubbers had become a liability - but he was also a fighter.

U.N. lawyers then started preparing charges against him, U.N. diplomats said on condition of anonymity. Apparently knowing what was coming, Lubbers, 65, decided to resign before being suspended.

The UNHCR's chief spokesman, Ron Redmond, told The Associated Press that Lubbers had "poured his heart and soul into this job over the last four years." "He's one of the hardest-working people I have ever seen, and what a lot of people don't know is that he has done it all for free. He has refused to take a salary."

Redmond said Lubbers returned his paycheck to the agency and paid his own travel and other expenses. "Each year over the past four years he has given UNHCR about \$300,000," Redmond said.

"It's an extremely sad day for the high commissioner and for UNHCR," Redmond said. The turmoil was "really difficult for any organization to go through. The high commissioner realizes that, too."

Source: The Guardian (London)/Associated Press

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