

PRACTICAL ISSUES OF CONDOMINIUM MARKET IN MYANMAR

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Abstract

Condominium market is popularly advanced by the growth of population and development of the urban areas in Myanmar. Although the Condominium Law was enacted in 2016, the condominium market has been started since about 20 years ago by the related laws; the Contract Act, 1872, the Transfer of Property Act, 1882, the Urban Rent Control Act, 1960 and the Transfer of Immovable Property (Restriction) Law, 1987. The condominium market is increasingly launched high number of sales by residential demand. However, most of the developers still have the insufficiency of management such as the condominium executive committee, maintenance plan and the building insurance policy. Then, the buyers or unit owners face the issues on difference between leasehold land and freehold land of condominium, lack of preparedness plan of natural disasters, rights to immoveable property and common property, and long-term mortgage rights. These problems have arisen due to the incomplete and inappropriate elements of the Myanmar Condominium Law. This paper aims to study the principles of Condominium Law, analyze the problems of the Myanmar Condominium Law. The paper highlights the performance of the condominium executive committee, enforcement to keep the building insured and appliance of the dispute resolution for condominium-living.

Keywords: Condominium management, common property, building insurance

Introduction

Condominium is a multilevel building in an area that is divided into sections which are structured functionally for housing complemented with common equipment, common facility and common land. As there are the crowded populations and rare the land spaces in the big cities of Myanmar, the local residents have been getting interested to stay in the common buildings since 2000s. Accordingly, the constructors had paid attention to build the high-storeyed buildings on their owned land or agreeable land with land owners. And then, the high-storeyed buildings or condominium buildings have emerged on the land owned by the City of Yangon Development

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Committee or Department of Urban and Housing Development by making the contracts with the mutual interests on contractual terms. In 2013, Myanmar Parliament drafted the Condominium Law (Bill) and issued the Condominium Law in 2016 in order to support urban and regional development; to create community housing in order to provide adequate of housing for an increasing population in the urban areas; and to establish a legal framework in which condominium apartments. In addition, there are the relevant laws such as the Contract Act 1872, the Transfer of Property Act, 1882, the Urban Rent Control Act, 1960 and the Transfer of Immovable Property (Restrictions) Law, 1987. This paper analytically approaches the present condominium market and its issues.

Aims and Objectives

- To identify the rights of the Condominium Unit Owners under the Condominium Law;
- To solve the problems of ownership, common property rights and inadequacy of housing for an increasing population; and
- To support the systematic development of the housing sector, the development of the living standard of citizens, and economic development;

Research Methodology

This paper analyzes the legal framework of the condominium market to address the issues of the ownership and transfer of ownership on the real estate of condominium property. It observes how to balance the protection of individual rights of the unit owner on the unit and the collective rights on the common property of the condominium. The paper uses the literature reviews and analytical study on the practical procedures for ownership of condominium and related issues.

Research Findings

By the growth of population and development of the urban areas in a country, people are interested to stay in the safe and complemented building like condominium. All condominium projects have Planning Permit, Building

Completion Certificate, Ownership Books, By-laws and the Sale Contracts. In order that the buyer of condominium unit entitles to the validity of ownership, they can rely on the main law, the Condominium Law 2016, as well as the relevant laws. This paper argues the concept of condominium and especially details the major issues occurred in the condominium law and practice. The paper points out the legal measures for a solution to resolve the ownership problems of condominiums and the problems of the Myanmar Condominium Law.

Terminology on Condominium

The origin of the word condominium can be traced back to its Latin meaning of dominion with others or shared dominion; in other words, joint rule over a territory. Condominium owners jointly own the common property of their developments including parks and parking spaces.¹ Condominium is derived from the Latin *con*, or with, and *dominium*, or control. Essentially, condominium means control of a piece of property with other individuals.² The concept of the condominium is a legal form for the ownership of real property. A typical condominium development is a multi-storeyed, multi-unit building; condominiums do exist in different forms.

The Condominium and related terms are defined in the Condominium Law that is enacted by the Notification No.24/2016 on January 29 of 2016. There are (11) Chapters and (39) Sections in the Law and the Ministry of Construction passed the much anticipated the Rules relating to the Condominium Law under notification No.267/2017 in December 7, 2017. The Law provides the definitions, objectives, formation of management committee and its duties and powers, functions and duties of the department, registration and establishment of a condominium, rights and obligations of the developers, and offences and penalties.

Condominium means a building constructed according to this law as collectively owned six and above levels building on collectively owned

¹ The Alberta New Home Warranty Program, the Way Home/ Your New Home Buying Condominium Guide, p-7.

² <http://www.fairlingtonvillages.com>

registered land. In this expression, common properties and units managed for the purpose of being used by collective owners are also included.¹

Condominium means a single real-estate unit in a multi-unit development in which a person has both separate ownership of a unit and a common interest, along with the development's other owners, in the common areas.²

A condominium, is the form of housing tenure and other real property where a specified part of a piece of real estate (usually of an apartment house) is individually owned, while use of and access to common facilities in the piece such as hallways, heating system, elevators, exterior areas is executed under legal rights associated with the individual ownership and controlled by the association of owners that jointly represent ownership of the whole piece.³

Common property means properties connected with condominium as follows-collectively owned land registered according to this law; the parts of the collectively owned building and installed equipment which are beneficial to all collective owners, except individually owned apartments constructed on the said collectively owned land; and buildings constructed or managed to be used for the benefit of the collective owners, educational and health buildings and properties, compounds, gardens, trees and flowers, water supply, waste disposal and sanitary facilities, energy distribution facilities, roads, bridges and drains, telecommunication facilities.⁴

Common land means the land and vacant area belonging to all co-owners where the condominium and the collectively owned property is situated.⁵

Unit owner means an ownership certificate holder who has legally owned an apartment or apartments by this Law. In this expression, an heir to this person or person in legal succession is also included.⁶

¹ Section 2 (a) of the Condominium Law, 2016.

² Bryan A. Garner, *Black's Law Dictionary*, Seventh Edition, 2000, p-238.

³ Myanmar National Building Code, Part 2, Architecture and Urban Design, Myanmar Engineering Society, 2012, P-38.

⁴ Section 2 (b) of the Condominium Law, 2016.

⁵ Section 2 (c), of the Condominium Law, 2016.

⁶ Section 2 (f), of the Condominium Law, 2016.

Unit Owner describes the legal person that holds title to a unit. This may be a single person, a married couple, a corporation, trust, or other form of legal entity.¹

Developer means a department, organization or person which/who has obtained a business license according to this law allowing it/him to invest money in order to establish a condominium business.²

Co-developer means any person or organization who is appointed by the related Executive Committee by Section 24 (a) of the Law in order to cooperate in the time of constructing the condominium. This term includes the foreigner or foreign company.³

Executive committee means the executive committee of a condominium elected and organized under this law for the management and maintenance of the condominium.⁴

In studying the terminology on condominium, its concept is a legal form for the ownership of real property. A typical condominium development is a multi-storeyed, multi-unit building; condominiums do exist in different forms. However, with the growth of urbanization and population, the constructors or construction companies used to buy and sell the high-storeyed building like the condominium.

Historical Development of Condominium Market in Myanmar

In tracing the market of storeyed buildings before 1960s, storeyed buildings such as one-storeyed, two-storeyed, three-storeyed and four-storeyed buildings were mainly used the I-Section or H-Section beams. Since the post-1960s, the iron bucket type concrete has been in wide use. In the 1980s, especially in Yangon, the population had risen, so the construction of buildings had become a thriving form of commercial business. In downtown areas and the suburban areas of Yangon, one storeyed or two-storeyed

¹ Ken Harer, Heather McCormick and Kevin Britt, *Condominium Common Sense, A Handbook for Washington State Condominiums*, Condominium Law Group, PLLC, 2007, p-127.

² Section 2 (e) of the Condominium Law, 2016.

³ Rule 2(d) of the Rules relating to the Condominium Law, 2017.

⁴ Section 2 (k) of the Condominium Law, 2016.

building was demolished, and was replaced with four apartment buildings i.e., two apartments on the top and two below. This kind of apartment with two floors and an attic is known as Hong Kong Style Apartment.¹

In the 1990s, the City of Yangon Development Committee directed the contractors that the ground floor must be 10' high while the other floors must be 9' high. Since that time, 6 or 7 or 8-storeyed buildings were mainly constructed but there was no instruction to install the elevator. Each one layer in the storeyed apartments was called the Hall Type. Then, in the 2000s, the construction companies found large compounds in some townships of Yangon Region, and constructed housing apartments called Eain Yar. Though, like the hall types, these apartments have kitchen bathroom, toilet, staircase, and living room because of having two to three bed rooms in the apartments, they are called Room Types. Later, contractors are getting interested to build the high-storeyed building, so called condominium at that time in Myanmar. They believe that the condominiums can solve the popularity growth because of having privacy, spaciousness and car parking. Nowadays in Myanmar, the buildings of 10 to 12 and above levels are installed elevators in order that the residents can enjoy the convenience.²

Before the Condominium Law has enacted, a common practice in the sale of condominium was the use of what essentially amounts to an option to deal the sale contracts. The unit owner or occupier had to apply the owner book of the apartment depending on the owned lands by the City of Yangon Development Committee (YCDC), by the Department of Urban and Housing Development (DUHD) and by the Contractor or Construction Company. If he bought the apartment from YCDC, it issued the ownership book of the apartment. If he bought from DUHD, it issued the ownership book of the condominium for the unit owner. If he bought from Construction Company, the contractor used to make a sale contract with the buyer who wanted to buy the condominium. This contract is only evidence for the ownership of the condominium and there is no any other reliable instrument.

¹ Hla Than, an Engineer, Engineering Department (Building), the City of Yangon Development Committee, "Study on flats in Yangon"

² Ibid.

In 2016, the Condominium Law emerged to create community housing in order to provide adequate of housing for an increasing population. Any developer is entitled to deal the condominium market and he has to do registration the over square feet of 20,000 lands which have been transferred by the original owner as the common land to the relevant registration office.¹ Then, he has to apply for the license to the relevant management committee in accordance with the stipulations.² After getting the license, he has to apply for the permit to build the condominium to that committee in attachment with the structure of building and land, the common property and rational share value.³ After approval to build, the developer shall construct in accordance with the rules and regulations and he shall register to the relevant registrar for the documents of condominium building.⁴ Then, the developer shall transfer the registered certificate of the concerned unit to the transferee when he performs the gift, relinquishment, exchange, sale or transfer by the conclusive order or decree of any court for that unit.⁵ Therefore, the transferee who has owned the registered certificate becomes the unit owner and he shall be awarded the rights of the unit owner according to the Condominium Law.

Analytical Study on Condominium Market in Myanmar

Condominium markets are usually being at the big cities by the factors of population density, better job opportunity, well schools and universities, better health care, good security as well as great access to public transportation. Condominium developers used to consider those advantages for their reputation and economic success. The potential buyers always make balance with the price and condominium environs as well as profile of condominium property. Thus, it can be said that condominium markets are depending on the economic, demographic and residential conditions mostly in urban areas of big cities in Myanmar.

According to 2014 Myanmar Population and Housing Census, Myanmar is divided into 15 States and Regions. Accordingly, the census

¹ Section 10 of the Condominium Law, 2016.

² Section 13, of the Condominium Law, 2016.

³ Section 14, of the Condominium Law, 2016.

⁴ Section 15, of the Condominium Law, 2016.

⁵ Section 20 of the Condominium Law, 2016.

results show that Yangon Region has the largest population (7.36 million), followed by Ayeyawady (6.18 million), Mandalay (6.16 million), Shan (5.82 million), and Sagaing (5.32 million). These five States and Regions account for almost 60 percent of the total population of the country. The least populated States and Regions are Kayah (286,000), Chin (478,000) Nay Pyi Taw (1.16 million), Tanintharyi (1.40 million) and Kayin (1.57 million)¹. Therefore, Condominium developers deal their construction business mostly in Yangon, Mandalay and Taunggyi.

It is found that market demands are totally generated overall population growth. The population density of Myanmar in March 2014 is 76 persons per square kilometer (km²). Comparing the population density by State and Region, Yangon has the highest density (716 per km²), followed by Mandalay (200 per km²), Ayeyawady (177 per km²), Mon (167 per km²), Nay Pyi Taw (164 per km²) and Bago (124 per km²). The least densely populated States and Regions are Kayah (24 per km²), Kachin (19 per km²) and Chin (13 per km²).²The Census results show that for every 100 persons in Myanmar, 70 persons live in rural areas and 30 persons live in urban areas. The conditions of housing units are important characteristics which indicate the quality of life of the population. About four out of five households in Myanmar are owners of their housing unit. In urban areas, 66 percent of households own the housing units where they reside, 20 percent are tenants while 7 percent live in housing provided by the Government.³

In the analytical study on condominium market, the potential demand becomes more apparent with population growth and also urbanization. Myanmar Governments have done urbanization in Yangon, Mandalay and other developed areas since the past few years. People prefer living in the cities because of a high paying jobs, quality of life and cultural events. This means there will be an increased in demand for housing. This point is attracting the construction companies because level of income is important factor for condominium market. Then, the potential buyer considers about the

¹ The 2014 Myanmar Population and Housing Census, The Union Report, Census Report Volume 2, Department of Population, Ministry of Immigration and Population, May 2015, p-16.

² Ibid.

³ Ibid, p-30.

mortgage finance for the availability of loan. The demand is also conditioned by the other factors such as accommodation: number of bedrooms, living rooms, bathrooms, storage etc, quality of locality: superior, average or low cost, construction: good quality finishes and facilities, tenancy or ownership and small or large section: build up area. However, all of these data shall be reflected with the existing laws so that both the buyers and developers could be legally protected.

Legal Framework on the Condominium Market

The Republic of the Union of Myanmar is the ultimate owner of all lands and shall permit the citizens right of private property and inheritance.¹ The residents of popularized areas who construct the condominium and want to buy or lease or mortgage or sell have to observe the laws which are concerned in the condominium and its properties. In the Condominium market, the main law is the Condominium Law 2016 and the related laws are the Contract Act 1872, the Transfer of Property Act 1882, the Urban Rent Control Act, 1960, and the Transfer of Immovable Property (Restriction) Law, 1987.

The main law is the Condominium Law 2016 that was enacted by Notification No. 24/2016. The purpose of the condominium law is to support the development of projects in urban settings with increasing populations. It will also grant the right to own and transfer condominiums and in theory strengthen ties among the Myanmar and international residential development community. The law provides the registered condominium to the relevant committee by Section 9 and 10, and that committee can allow the registration or deny or direct to do something. Then, the Law supports about land ownership, car parking problems, disputes between the unit owners, social welfares and security issues, fire insurance of condominium and maintenances and repairs for the installation, rights and responsibilities of developers and unit owners.²

Every person who wants to own the high-storeyed building needs to make a contract for his purpose of lease or sale or mortgage according to the

¹ Section 37 of the Constitution of the Republic of the Union of Myanmar, 2008.

² The Condominium Law, 2016, Notification No.24/2016, 29.1. 2016

Contract Act 1872. In the contract, the contracting parties shall put the contractual terms such as time and payment for delivery, awarding the property deeds, disclosure to grant the titles, enjoyment of the interest of property, payment of tax and revenue, and the rights and liabilities of the buyer and seller. The both sides of the contracting parties shall take care of the contracts which need to be performed or need not be performed; voidable contract and void agreements; consequences of the breach of contract; termination of the contract; and ratification.¹

The Transfer of Property Act, 1882 provides that the seller conveys the property to the buyer in present or in future in order to transfer of property. According to this Act, the buyer can make the resale or mortgage or lease or gift or exchange accompanied with the rights and liabilities of the tangible immovable property by registered instruments. In this Act, the rights and liabilities of the buyer for sale of immovable property described in Section 55 (5, 6) and the rights and liabilities of the lessee for the lease of immovable property described in Section 108 (b) of this Act. The sellers of immovable property respectively are subject to the liabilities, and have the rights. The buyer has the right to request for examination all documents of title, to ask the best of information in respect to the property or the title and to be conveyed the property for execution at a proper time and place.² In every transfer of immovable property, delivery must be made in the same way as goods sold during the lifetime of the contracting parties. The problems may be occurred in the lease contract because there is no balance between the much population and less housing in Myanmar.³

Regarding the lease contract, there may be occurred the rent problem of between the lessor and lessee, the rights and obligations of the landlord and tenant are provided in the Urban Rent Control Act, 1960. As the Condominium buildings are used to build and deal business in the urban areas, any lease contract of condominium shall follow this law. This Act prescribed the rights and duties of tenant in Urban Area. In respect of the rights of the tenant, this Act allows a Controller to do under the provisions of Section 13 (1) on the tenants to pay rent for his living the environments of the building

¹ The Contract Act, 1872, India Act 9/1872, 1.9.1872

² Section 55 (1) of the Transfer of Property Act, 1882.

³ The Transfer of Property Act, 1882, India Act 4/1882, 1.7.1882

and to notify the landlord by a letter of inspector. And then, the Act provides the repairmen of building and liabilities of tenant. In Section 21 (1), when the tenant occupying any residential premises gives notice in writing terminating the tenancy in respect of any such premises, or has vacated such premises.¹

In the case of immovable property, the Transfer of Immoveable Property (Restriction) Law, 1987 prohibits the transfer of immovable property such as sale, mortgage, gift, exchange, and lease from citizens to foreigners and vice versa.² Under this law, Myanmar government may allow diplomatic missions, United Nations' organizations and other organizations the ownership and use of immovable property. The most recent exemption from the general restrictions is the Condominium Law 2016 that allows the foreigners to purchase apartments in a condominium. However, the condominium in Myanmar has the different types of issues even after the Condominium Law 2016.

Practical Issues of the Condominium Market in Myanmar

The Condominium Law and its Rules include high-rise buildings, facilitate inheritance issues, get land-ownership permits, and help to apply for insurance and bank installment loans. Although the Condominium Law and Rules have passed, there are some issues that cannot be solved by the Law. Disputes arise easily in densely populated areas such as condominium-living environment with regards to problems such as water leakage, electric equipments, social welfares, the use of common property, committee members, the contribution of funds and common expenses, negligence to comply with the condominium regulations etc.

While the research paper analyzes the issues such as Registration of high storeyed-buildings as Condominium, Ownership Certificate, Transferring Ownership, Foreign Ownership, Common Property, Management System and the Building Insurance Policies, it is found that two types of problems. The first one is factual issues of the condominiums which were built before the Condominium Law 2016 and the second one is legal issues of the condominiums which were built after the law 2016.

¹ The Urban Rent Control Act, 1960, Notification No. 8/1960.

² The Transfer of Immoveable Property (Restriction) Law, 1987, Notification No. 1/1987.

Factual Issues

Before the Law 2016, the unit owners who bought the high-storeyed building as the name of condominium are still facing the ownership, transfer, common property rights and management. Section 12 of the Law provides that the multi-level buildings which are still building or have been built before the enforcement of this Law shall be registered as condominium to the relevant committee by Sections 9 and 10, and that committee can allow the registration or deny or direct to do something. In this regard, the issue is whether those buildings which have the characteristics of condominium shall compulsorily be registered or not. As the offence and penalty for non-registration of those buildings is not found in the Law, the developer can take easily as his option. If he does not register as condominium, the unit owners who have already bought the units as condominium will not enjoy the unit owners' rights conferred by the Condominium Law. Until and unless the developer registers the buildings to be condominium, the unit owners will face the problems of ownership, transferring ownership, common property and management systems.

a. Ownership Certificate

Unit Owners have exclusive ownership rights to their unit and the right to share the common elements of the condominium project with the other co-owners. In studying the current practices of the condominium in Myanmar, the rights and obligations of the unit owner are multiple and complicated in the unit ownership certificate. The common practice in the sale of condominium is the use of what essentially amounts to an option to deal the sale contracts. The unit owner or occupier can apply the ownership certificate of the unit which he has made concerned contract from developer.¹ Then, he/she can register, with the registration officer, documents for the transfer of a unit by any method of transfer specified in Section 20 as he/she has the right to change the title to his/her name². After the successful registration, the unit owner will possess the unit registration certificate.

¹ Section 19 of the Condominium Law, 2016.

² Section 26 of the Condominium Law, 2016.

If the unit owners have ownership certificate, they are entitled to use the common property such as car parking, swimming pool and any of installed equipment depending on the ratio of unit possession. In regard of collective owned land, the unit owners can get the common land registration certificate as the ratio of unit possession. This Common Land Registration Certificate must firstly be initiated by the developer and original land owner. Whether the land is freehold land or grant land, they can register as common land after they agreed to do so with contractual terms¹. The registration officer will categorize the type of land and enrolled into the registration books.² After possessed the Common Land Certificate, the developer has to pass the unit owners on their proportional rates of their units.³ That is allowed by section 15(c) of the Condominium Law that state-owned land may be registered as condominium land. As a consequence, the unit owners legally own the unit and a share on common land.

As a result, registration for the condominium before the 2016 Law becomes essential point to have ownership for the unit owners.

b. Transferring Ownership

The condominium developments across the urban area have seen enormous growth in popularity. When transferring a registered unit by any of the methods specified below, the transferor and the transferee shall register the instrument of transfer with the registration officer as prescribed within 30 days from the day of transfer -

- a. Gift, release, exchange;
- b. sale;
- c. transfer of ownership by an order or decree of a final and exclusive court.⁴

The unit owners have the rights to transfer the units by inheritance and succession but they need to register for this regard according to existing laws.

¹ Rules 20 and 21 of the Rules relating to the Condominium Law, 2017

² Rule 23, of the Rules relating to the Condominium Law, 2017

³ Rule 19 (a), of the Rules relating to the Condominium Law, 2017

⁴ Section 20 of the Condominium Law, 2016.

The Registrar shall sign and seal on this transfer registration.¹ Then the unit owners have the right mortgage the unit to a bank. However, the unit owner shall submit the Unit Registration Certificate to Bank as a guarantee for loan.²

Before adopting the Condominium Law, the unit owners did not have the right to mortgage their units from Bank as they could not get the land ownership. Although they have the ownership books and property title deeds, they cannot create the mortgage by deposited of title deeds according to Section 58 (f) of the Transfer of Property Act 1882. They cannot get bank loans for fixed assets that would help improve business opportunities. If they possess the proportional landownership, they can hope the bank loans which would increase the demand for condominiums through installment purchase that benefits both bankers and property owners. These issues are now solved by the provisions of the Condominium Law 2016.

To enjoy the above rights, the existing buildings called condominium need to be registered in consistence with the Condominium Law 2016.

c. Common Property

The Condominium Law provides that the unit owners shall possess the common property as soon as they bought the condominium. As the "condominium" is collectively owned by the unit owners, they can enjoy the common area and common property. The common property includes the building foundations, outer walls, columns, beams, roofs, staircases, corridors, entrances and exits of the building, central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, air-conditioning, internet broadband, car parking, swimming pool, playground and the fixtures, the assets for property management by a management committee.

However, the unit owners who bought the condominium before 2016 Law can not have these common property rights. And, there were very few common properties because of the lack of Law at that time. So, these common area and common property is a key issue for condominium developers and unit owners because contractors could not fulfill the common property rights

¹ Rules 41 of the Rules relating to the Condominium Law, 2017.

² Rules 43 of the Rules relating to the Condominium Law, 2017.

or collective rights. In this case, the common property issue is recently occurred as the collective rights such as the car parking with separate charges which is asked by the contractors. In summing, there must be the management committee for the management affairs of the condominium for example maintenance of the elevators, security, electric equipment, water supply, municipal taxes and social welfares.

d. Management System

In the analytical study of the Condominiums that were built before 2016 Law, it is found that there are not systematic features of management system. Even in the Law and Rules, management disputes surely will arise among unit owners if the management system is not well. Membership of the Executive committee ensures that each condominium owner has the right to participate in the control, management and daily operation of the condominium community. Rule 57 provides the functions and duties for the Executive Committee to manage the common property, to build the fund, to maintain the records on common property, to discuss for renovations and minor repairs to the interiors of unit, and to set up the appropriate insurance such as fire insurance for all of the unit owners.¹

However, the Rules relating to the Condominium Law additionally provide the legal framework for the establishment of an association of the unit owners in each condominium, with an executive committee, tasked with the management and governance of the condominium, based on the requirements set out in the Rules relating to the Condominium Law. The condominium association has the right to sue (and be sued) in its own name, so has the ability to take legal action to protect the collective interests of the condominium unit owners². The Rules relating to the Condominium Law require the unit owners to pay various service fees and maintenance fund contributions, to be managed by the executive committee in accordance with the Condominium Rules' stipulations, including maintenance of proper records and accounts.³ This provides a legal framework to support the

¹ Rule 57 of the Rules relating to the Condominium Law, 2017.

² Rule 53 of the Rules relating to the Condominium Law, 2017.

³ Rule 54 of the Rules relating to the Condominium Law, 2017.

maintenance of the condominium as a whole, in an accountable and transparent manner.

According to Rule 14 of the Rules relating to the Condominium Law, the developer shall submit the Environmental Impact Assessment and Social Impact Assessment criteria, preparedness plan for natural disasters and security before starting the construction.¹ But, there is no such plan in the old condominiums that were built before the law. In the condominium building, the management system is mainly performed by the Executive Committee so that a condominium community could take the functions efficiently and handle day-to-day operations. Any condominium whether is built before or after 2016 needs to form the Executive Committee to manage the common property. In these factual issues, there is a well-known case in Myanmar

The Condominium case between Pearl Condominium in Bahan Township in Yangon and the City of Yangon Development Committee (YCDC) was occurred in 2012. In this case, the Asia Express Co. Ltd as the developer of Pearl Condominium made the contract with the City of Yangon Development Committee as a landowner on April 30, 1999. By this contract, the six buildings of A, B, C, D, E, F would be built on this land and two buildings of E, F would be transferred to the YCDC and the rest will be possessed by the Asia Express Co. Ltd. This building project was completed on December 7, 2002. Then the company sold the apartment of the Pearl Condominium and the buyers stayed in there.

The management committee was formed in 2007 for the interests of the apartment owner although the developer kept authorizing to manage the affairs such as elevators, water supply, electric equipment, security and other affairs of that condominium. The management committee including the apartment owners recognized that they have not ownership book for their unit. They knew that the ownership book use to support by the YCDC. Therefore, the management committee directly offers to YCDC to furnish the ownership book without asking to the developer. The disputes arose between the developer and the unit owners because the offer for ownership book of the YCDC made the company bad image. The real procedure for that ownership book which is certified by YCDC is to draw by the company itself but the

¹ Rule 14 (a) (12), of the Rules relating to the Condominium Law, 2017.

company must submit the list of apartment owners to YCDC. In this case, the apartment owners knew that the ownership book could not be supported by the fault of developer. Here, the problem for ownership was occurred whether the Pearl Condominium was owned by the YCDC or Asia Express Co. Ltd if the ownership book is furnished by the YCDC. It is because the ownership book by YCDC might become the buildings owned by YCDC not by the company.

In the condominium market of Myanmar, the ownership book is used to support by the developer not by the YCDC and the affairs of the condominium are totally managed by the developer. However, the apartment owners did not entitle to the rights of ownership book so they traced the contract between YCDC and Asia Express Co. Ltd. The reason why the YCDC did not draw the Building Completion Certificate (B.C.C) and the ownership book was that the developer did not erect the essential facilities in the common area such as swimming pool, car parking at every floor till three-storeyed level, emergency fire staircases. After completing the necessary building in 2012, YCDC drew the Building Completion Certificate which was really got before the sale contract since 2002. In 2012, the unit owner got this ownership book by YCDC which was signed by the head of the Engineering Department (Building) with the seal of YCDC. At that time, the disputes arise between the developer and unit owners are solved by the sale contract and the ownership book because the Condominium Law was not evolved.

Legal Issues

Even after passing the Condominium Law 2016, it is found that the problems such as foreign ownership and building insurance problems could not be solved additionally.

a. Foreign ownership

By the Condominium Law, foreigners are now legally able to purchase condominiums for the first time in Myanmar. Then, the Rules relating to the Condominium Law vest the rights to be co-developers to foreigners or foreign companies.¹ It seems allowed for joint venture or foreign investment but it

¹ Rule 2 (d) of the Rules relating to the Condominium Law, 2017.

needs with the permit of Myanmar Investment Commission (MIC).¹ However, there are some limitations. To qualify as a condominium suitable for foreign ownership under the Condominium Law, the condominium building requires a number of necessities. Additionally, total foreign ownership in any construction company is restricted to 40 per cent of the total space.

The Rules relating to the Condominium Law additionally stipulate that foreigners will have the same rights and obligations as Myanmar citizen condominium unit owners. There is however a certain ambiguity in that Rule 36 states that a foreigner may only be the owner of a condominium unit for the tenure of the condominium,² that condominium title must always be subject to any restrictions in underlying title and indeed such a restriction would in any case (and by operation of law) apply to all condominium owners regardless of nationality.

The foreigners own the units only within built-in expiry date. So, a foreigner who has purchased the unit is entitled to own unit for a term equivalent to the term of condominium. The big issue for foreigner is whether the condominium period ends itself or natural disaster. In any case, a foreigner risks losing his unit when the developer decides to reconstruct the condominium after dismantling it. It is not found in both law and rules that the right to get the Common Land Registration Certificate is not vested on foreigners.

b. Building insurance

Nowadays, the unit owners are interested to assure the building insurance because the condominiums shall involuntarily be terminated by the course of natural disaster. After natural disaster, the Unit Owners or Executive Committee can face the two proceeds; the proceeds of insurance and non-insurance. The Executive Committee has responsibility to perform for insurance on condominium building³ and the unit owners may assure their units themselves.⁴

¹ Rule 14 (b) of the Rules relating to the Condominium Law, 2017.

² Rule 36 of the Rules relating to the Condominium Law, 2017.

³ Rule 57 (e) of the Rules relating to the Condominium Law, 2017.

⁴ Rule 45 (b) of the Rules relating to the Condominium Law, 2017.

Building insurance is one of the most important matters for proper management and maintenance of condominiums due to uncertainty of future happenings and events. If the building is insured, the unit owners can rest assured that the condominium is protected from all natural calamities like an earthquakes, rain, floods, fire, tsunamis etc. Under the damage policy, the building will be covered by insurance in the event of fire, lightning, explosion or any other occurrence specified in the policy that destroys or damages the subdivided building. Generally, the insurance covers the rebuilding of the subdivided building; the repair or restoration of damage; the payment of expenses incurred in the removal of debris.¹

Although the Rule provides that the condominium building and unit apartments shall take insurance, there is no provision to set up the master insurance policy for coverage the loss and liability through condominium insurance. As the insurance is broad matter, the unit owners need to know about bare walls-in, all-in and association deductibles. It means that bare walls-in condo insurance master policies cover all real property from the exterior framing inward; all-in condo insurance master policies provide a greater level of interior coverage for condominium owners; and condo communities carry group master insurance policies featuring deductibles that are paid as a group by all owners. Although there is no problem to assure the unit by the unit owners, the problem is to assure for condominium building that has common element, common property. All of the unit owners have to agree which policy is suitable for all because the premium cost shall be bared by all of the unit owners.²

In this issue, all of the unit owners need to agree for insurance and to pay the premium fees depending on the ratios of unit possessions. If damage occurs to the building, numerous people who live in condominium will suffer. But, the problems are foreigners' ratios in the building and foreigner's ownership term. The Law allows the developer to sell 40% of units to the foreigners by Section 15 of the Law and the foreigners shall own the units only within the building existing term by Rule 36. Even though all of the local unit owners want to assure building insurance, the foreigners may not do so

¹ Warin Kliewpaisal, A Comparative Study of the Singapore and Thailand Condominium Acts, *Thammasat Business Law Journal*: Vol. 1, 2011, p-10

² <http://homeguides.sfgate.com/condo-insurance-master-policy-cover-56836.html>

because they don't have the same rights to reconstruct. Unless all of the units unanimously agree to do insurance, the unit owners would not get the insurance for fire and natural disasters, and general liability insurances. This issue is not yet solved by the laws. Therefore, it is found that the requirement of insurance is essentially need for condominium where numerous people are living.

Conclusion

This research paper identifies unsolved legal and factual issues affecting the rights of the unit owners, quality and proper living conditions of condominium-living, the building insurance policy, numerous disputes with condominium issues, and the insufficiency of management on mixed-use development, management of common property and the security of condominium living. The Condominium Law provides all condominium projects to be constructed on land that is collectively owned, being land of beneficial interest under prevailing law to all collective owners. The paper suggests that all of the stakeholders in the condominium market shall consider to solving the issues of land ownership whether the unit owners (both local and foreigners) can get the share proportion or not. As the Condominium Law is enacted just in 2016, the unit owners who were sold the high-storeyed building as the name of condominium before this Law are still facing the ownership and common property rights. It is a big issue whether or not those unit owners can enjoy the equal rights of the unit owners who buy the condominium after the enforcement of this Law. It is because Section 12 of the Law provides that the multi-level buildings which are still building or have been built before the enforcement of this Law shall be registered as condominium to the relevant committee by Section 9 and 10 and that committee can allow the registration or deny or direct to do something. In this case, there is a problem whether those buildings which have the characteristics of condominium shall compulsorily be registered or not. And then, the offence and penalty for non-registration of those buildings is not found in the Law. In this point, the developer can take easily as his option. Therefore, the old condominiums are needed to do registration as Condominium so that the unit owners could enjoy the rights which are allowed by the Condominium Law.

Next, the paper recommends that the Rule 36 of the Rules relating to the Condominium Law, 2017 should remove in order to solve the insurance issue.

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