

# GAPS IN EXISTING APARTMENT OWNERSHIP LAW OF SRI LANKA

K.D.M.S. Udayangani<sup>\*</sup>, Vijitha Disaratna, N.N. Wimalasena, Udara Ranasinghe and  
N.M. Pilanawithana

Department of Building Economics, University of Moratuwa, Sri Lanka

## ABSTRACT

*The concept of condominium has gradually increased as a solution for the housing demand in Sri Lanka through the past few decades. With the development of the condominium sector Condominium Management Authority of Sri Lanka was established as the governing body of both the private and public condominiums in country. The Apartment Ownership Law (AOL) was enacted as the regulation for the condominiums by Act No 11 of 1973. The Apartment Ownership Law has amended several times up to its last amendment in 2003.*

*According to many writers there are many issues raised in the condominium sector and the provisions provided in the AOL are not enough to solve those issues in several situations. Furthermore, lack of research could be found about the gaps in Apartment Ownership Law of Sri Lanka. Therefore, this research study was conducted in order to find the gaps which exist in the Apartment Ownership Law of Sri Lanka.*

*A comprehensive literature survey was carried out to find the theoretical background and Interview survey was carried out through experienced professionals in condominium sector as well as legal sector. According to the findings of the research there are gaps in provisions relating to many areas such as compulsory registration of condominium, common properties use and enjoyment, scattered housing properties, mixed development condominiums, developers obligations and sub management corporations. Finally, suggestions were made to rectify the identified gaps in AOL.*

**Key words:** Apartment Ownership Law; Condominiums; Gaps; Sri Lanka.

## 1. INTRODUCTION

The living condition of people affect to their health, work and lives. The condition of living and its requirements have increased during the past years. Housing facility is one of factor that affect to the living condition of the people. The housing facilities have improved to modern housing facilities from the shelter (Tao, 2015). When cities are developed, large number of population migrates to the cities for different purposes such as education, employment and better living (Perera, 1996). Colombo, the capital city of Sri Lanka has boom in the development of condominiums in past few years (Wijeyeweere, 2015). Urbanization of the cities increase the general demand for the housing (Ariyawansa and Udayanthika, 2012). The urbanisation has created the scarcity of the lands in cities and the cities are built up rapidly. As a result of urbanization, residential developments have become high rise buildings and high density residential buildings (Sirmans, Sirmans, & Turnbull, 1999).

The condominium concept was practiced in ancient Roman Empire, the citizens lived in individual houses at the center of the city and the common facilities were shared in common. This concept enabled safer and more secure environment for living (Edirimane, 2010). The word “condominium” means the joint ownership or control which is derived from the Latin (Zarin and Bujang, 1999). The Latin word “condominium” express the two characteristics of the condominium living. They are individuality and commonality. The condominium owner is entitled to the freehold title of his condominium unit as well as he enjoys the other common elements which are belong to the condominium property by sharing among other condominium unit owners also, such

---

<sup>\*</sup>Corresponding Author: E-mail - kdmsudayangani.fm@gmail.com

as corridors, landscaped gardens, car parks, roof, escalators, lifts and other elements that is not belong to a specific condominium unit (Edirimane, 2010).

According to Edirimane (2015), after introducing Apartment Ownership Law in 1973, it was amended a few times. Those amendments introduced provisions for the areas that had not addressed by the initial regulations. However still there are many areas which have not addressed by the Apartment Ownership Law. Further she stated that there are no regulations to address some provisions of the law that are relating to condominiums. As well as it makes difficulties to take actions by the regulator. According to many authors there are many areas that the current AOL of Sri Lanka does not address or insufficiently address. Therefore, rectifying the gaps of Apartment Ownership Law is necessary to fulfil the requirements of the necessity of condominium law. Therefore, to fulfil this requirement studies about the gaps in Apartment Ownership Law and recommendations to overcome those gaps is necessary.

## **2. SRI LANKAN CONDOMINIUM SECTOR**

Urban livings in Sri Lanka have increased rapidly and Colombo has highest population among other urban areas of the country. The Colombo has rapid growth in housing development in past two decades as the commercial capital city of Sri Lanka. This has been undergone with both the vertical and horizontal housing because of the population growth (Senaratne, Zainudeen, & Weddikkara, 2006). The residential condominiums can be subdivided in to luxury condominiums, semi luxury condominiums and utility condominiums. The luxury condominiums have developed mainly focusing on the expatriate families and the Sri Lankan professionals who live in abroad, semi luxury condominiums for the need based market and it is popular among migrant workers. The utility condominiums are developed by the government for the benefit of government workers, low income earners and the shanty dwellers (Wijeyeweere, 2004).

### **2.1. APARTMENT OWNERSHIP LAW OF SRI LANKA**

In Sri Lanka, the condominium Properties are regulated by the Apartment Ownership Law. The condominium Property Act No: 12 of 1970 was introduced and then thereafter Apartment Ownership Law (AOL) No: 11 of 1973 was subsequently introduced replacing the Condominium Property Act. This law is introduced for the purpose of registering the condominium properties and the transferring ownership of the developed condominium properties. Further AOL was amended several times according to the prevailing situations of those times in condominium sector of the country. Those amendments can be identified as follows,

- Apartment Ownership (Amended) Act No 45 of 1982
- Apartment Ownership (Special Provisions) Act No. 4 of 1999
- Apartment Ownership (Special Provisions) Act No 27 of 2002
- Apartment Ownership (Amended) Act No 39 of 2003

Apartment Ownership Act No: 39 of 2003 is used as the last amendment for AOL in Sri Lanka.

### **2.2. ISSUES IN CONDOMINIUM SECTOR**

The condominium management is one of the most critical factors that should be in place in order to maintain proper condominium practices. There are many issues that are relating to the condominiums such as maintenance issues, developers issues, unauthorized construction, non-registrations and disputes of neighbors. According to the Central Bank of Sri Lanka (2007) poor maintenance that were carried out for the urban housing schemes have become a burden to the government. There are increasing number of condominiums that are constructed in Sri Lanka as a result of increasing demand in the housing market. These constructions are going to be affected for maintenance problems in the condominiums which can be occur as a result of the faults in design, construction and building maintenance practices.

According to De Alwis (2010) there are some developers who delay the setting up of the management corporation of condominium unit owners. Within this period there is no proper audit accounts and also the collecting of management fees from the unit owners. Further he stated that there are disputes between developers and Management Corporations mostly present in several areas. The other issues is the unauthorized constructions in condominium facilities. These constructions can occur in many ways such

as encroaching common areas such as open spaces in ground and public circulation places and replacing existing elements ignoring the aesthetic appearance (Mirihaigalle, 2008). These unauthorized constructions have been a burden for governing proper condominium properties. As a result of these constructions government faced many difficulties when carry out maintenance for the common elements in government condominiums (Naalir, 2010).

Therefore, it is vital to consider whether the provisions of law is sufficient to address the issues arise in condominiums. There are several kinds of issues that necessitates the proper management of condominiums in Sri Lanka and they can be categorized as the problems that are encountered by unit owners or problems relating to the owners, issues relating to facilities management and issues relating to the developers.

### **3. RESEARCH METHODOLOGY**

A background study was carried out to identify the research problem and aim and objectives were established to identify the Sri Lankan condominium sector and gaps in apartment ownership law. Under the qualitative research approach, this study was conducted through a semi structured interview survey with the individuals whom related to condominium sector. These interviews were carry out with a sample of respondents that have been selected in order to collect data. The sample of respondents were selected by using Snow Ball sampling method and interviewers were selected from Government Authority Representatives, Lawyers, Condominium Managers and Condominium Developers.

### **4. CURRENT PRACTICE OF SRI LANKAN CONDOMINIUM SECTOR**

The Sri Lankan condominium sector had a rapid development in recent years. The condominiums that exists in the industry can be divided into two categories according to their developer. The first one is private sector which have developed condominiums by non-government organizations comes under this sector.

The other one is public sector which have developed condominiums by the government, comes under this category. Apart from this classification there are three main condominium types that have identified by the respondents. They can identify as High Luxury Condominiums, Middle Income Condominiums and Low Income Condominiums. This classification mainly focused on the facilities provided by those condominiums.

From Colombo to beginning of the Gampaha area is identified as most suitable area for development of condominiums and with the upcoming condominiums in Colombo there are nearly 8000 luxury apartment units in the Colombo area. With this increasing luxury apartment units supply, They should be attract the foreigners to invest in these properties in order to minimize the negative effects that can have by oversupply of the condominiums. The most of the upcoming developments are mixed development condominiums in the country. When consider about the middle income and lower income condominiums government involve to developing them and government placed more concern on lower income condominiums than middle income condominiums. There are many private sector developers who are engaged with the middle income condominium property development. There are many issues faced by the condominium sector currently in Sri Lanka. Unauthorized constructions are major issue that most of government as well as private condominiums have faced.

These unauthorized constructions are a threat to building appearance and also to the safety of the occupants. When concern about the others issues, the number of issues and nature of the issues have been changed through time to time. When it comes to present situation these issues have changed more when compared with the past. One of the issue that is mainly faced in the condominium sector is neighbours' disputes. There are several kind of disputes that are raised by the neighbours. There are maintenance problems in the low-income condominium facilities due to the lack of support of the community for the maintenance activities and most of the low income condominiums does not have active management corporations to manage the condominium property. There are issues relating to the common elements uses such as parking facilities. There are many condominiums which have not proper parking facilities for the unit owners. When there is inadequate parking facilities disputes are raised within the unit owners.

When consider about the practice of the apartment ownership law, 76.90% of respondents stated that the apartment ownership law is not practiced properly and 15.40% stated that the law is in ordinary practiced. The

rest of 7.70% said that the law is practiced properly. However, all sated that the Apartment Ownership Law should be amended to fulfill the current requirements in the industry.

## **5. IDENTIFIED GAPS AND SUGGESTIONS TO IMPROVE THE AOL**

### **5.1. *COMPULSORY REGISTRATION OF CONDOMINIUMS UNDER AOL***

In Sri Lankan apartment ownership law, there are many areas that should amended to fulfill the current requirements in the industry. Several areas that should be included in the apartment ownership act necessarily in order to maintain proper condominium sector have been identified. The respondents have mentioned that thus Apartment Ownership Law made provisions to register the condominiums. It does not mention that the registration of the condominium is compulsory. Therefore, non-registration of condominiums caused many problems when involving the authority for their disputes. Therefore, compulsory registration is necessary to include in AOL.

### **5.2. *PROVISIONS FOR MIXED DEVELOPMENT CONDOMINIUMS***

There are many mixed developments which are upcoming in the industry. There are few luxury mixed development condominiums in Colombo and in time to come there will be more mixed development condominium properties within the Colombo with current development of the country. Mixed development can be identified as condominiums which are used for both the residential and commercial purpose. Hence this kind of building consists with different kind of spaces in same premises, there should be proper governing rules for these properties. When consider about the purpose of using the spaces there is uncertainty that these premises can use one law or there needs to be separate laws for each kind of space.

Therefore, mixed development condominiums should have proper governing rules. These mixed developments come under the condominium concept though there are no special provisions relating to the mixed development condominiums in Apartment Ownership Law. When consider about the current development of these condominium properties it is necessary to have such provisions relating to the mixed development condominiums to ensure proper practices and legal background for those condominiums. Therefore, having provisions for mixed development condominiums in the AOL is necessary.

### **5.3. *PROVISIONS FOR SUB MANAGEMENT CORPORATIONS***

The mixed developments are complex developments and there should be an effective management corporation to manage the property. Mixed development condominium management is critical due to their complexity. Therefore proper managing practices should be in place. The Management Corporation of the condominium is liable for getting decisions relating to the management of the property. Therefore, Management Corporation should have established in a manner that the corporation can perform more effectively and efficiently. There are many countries which have introduced new concepts and features to the Management Corporations of the condominiums. These concepts were introduced in order to obtain effectiveness of the Management Corporations and on the other hand they have introduced to deal with specific interests which are relating to the mega condominium buildings.

On the purpose of that multi-tiered management corporation can be used. The management corporations which have subsidiary management corporations within the main management corporation for legal and operational aspects separately is ideal for the mixed development. All the subsidiary management corporations operate under the supervision of the main management corporation. Therefore, main management corporation will remain the overall charge of the condominium. This kind of management corporation structure is necessary for the mix development condominium and current AOL does not consist with such provisions. Therefore, it is necessary to have such provisions in the AOL.

### **5.4. *PROVISIONS FOR SCATTERED HOUSING PROPERTIES***

The scattered housing or cluster housing is housing concept that is existing in Sri Lankan housing market. These houses or properties share the common facilities of the properties. They can be identified as swimming pools, gardens, clubhouse, car parks and community halls. The facilities are used in common by all the house

owners and as a result of that house owners have rights on the common facilities in the premises. Though they use common facilities in common, the housing units may be detached from each or semi-detached. Therefore, the housing units and common facilities are scattered within one area. These kinds of developments do not come under the concept of condominium. These housing should have a governing body to govern the common properties. There is no such governing body, in that circumstance common facilities can be governed by the AOL. Therefore, these types of houses should be come under the AOL to have proper management of their common properties. Therefore, provisions for scattered housing should be necessarily include in the law.

#### **5.5. PROVISIONS FOR COLLECTING MANAGEMENT FUND BASED ON USE OF COMMON PROPERTIES**

The management corporation collects funds from unit owners to maintain the condominium property. In many situations, the same amount or an amount based on the share value of the unit, funds have been collected from the unit owners for management fund. There is right to use the common properties equally for the unit owners of the condominium. The usage of common properties may differ from the unit owners to another. In such cases, there should be a formula to calculate the amount of contribution for the management fund rather than calculating it according to the share value of the unit. On that perspective, the apartment ownership law should provide necessary provisions to adopt this method for Sri Lankan condominiums. Therefore, the apartment ownership act can be introduced a flexible formula for the contribution of management fund of the condominium property.

#### **5.6. PROVISIONS FOR PROPER TENANCY PRACTICES IN CONDOMINIUMS**

Another area which the law provisions does not exists is the tenancy of the condominium units. In many situations condominium buyer tends to buy condominiums as an investment method. The buyers who had bought the condominium units as investment, rented them to another party in many occasions for certain time period which can be a shorter period or longer period. In such situations, the management of the condominium property faced several issues relating to these tenancy. The management corporation may not aware of the tenancy of particular tenant and the owner of the unit also may not take actions to inform about the tenancy to the management. It will raise issues such as tenants may not be aware of the regulations of the condominium, such as how to react in emergency and other practices of the condominium. Therefore, the tenancy which is not formed in proper manner may become burden for the management of the condominium. Therefore, sufficient provisions relating to the tenancy of the condominium units should be included in the law to have proper condominium industry.

#### **5.7. PROVISIONS RELATING TO DEVELOPERS OF CONDOMINIUMS**

Condominium developers are also important for the development of the industry as well as owners. The AOL included provisions relating to the owners only. It does not included provisions relating to developers. Therefore, it is important to include provisions which makes developers more liable for their activities.

#### **5.8. PROVISIONS RELATING TO COMMON PROPERTIES USE AND ENJOYMENT, PROPER PARKING FACILITIES AND OTHER AREAS**

The law consists with provisions not to interfere with another owner's common element usage or enjoyment but the AOL does not consists specific provisions regarding the usage and enjoyment of common properties. Moreover, there was not clearly mentioned provisions relating to the parking facilities of a condominium and there are areas which does not clearly or sufficiently addressed by Sri Lankan AOL such as building appearance and keeping pets in the condominium units. Therefore, these kinds of areas should be included in the law to have a proper condominium industry.

### **6. CONCLUSIONS**

The condominium industry of Sri Lanka has been developed rapidly for the past few decades and in present it has become more rapidly developed. Both private and the public sectors are actively involved with the development of condominium properties in the country. The demand for the condominiums has increased as well as the supply have gone up. There are issues relating to condominiums including maintenance issues,

developers' issues, unauthorized construction, non-registrations and disputes of neighbours. As a major industry it is necessary to have proper governing rules and regulations for betterment of the industry. The Sri Lankan condominium sector is governed by Apartment Ownership Law which was enacted in 1973. The Apartment Ownership Law was enacted to govern the condominiums in the country and it was amended few times according to the requirement of the industry. Though there were amendments to the AOL with the rapid development of the industry it is necessary to update the AOL incorporating with the new requirement of the industry.

In order to identify those requirements, it is necessary to identify gaps exist in Apartment Ownership Law. There are several areas that should improve in the AOL including compulsory registration of condominiums under AOL, provisions for mixed development condominiums, provisions for sub management corporations, provisions for scattered housing properties, provisions for collecting management fund based on use of common properties, provisions for proper tenancy practices in condominiums, provisions relating to developers of condominiums, provisions relating to common properties use and enjoyment, provision for proper parking facilities, provisions relating to other areas. Therefore, the AOL should be amended to rectify the identified and this study may support to provide knowledge about suggestions to update AOL in Sri Lanka.

## 7. REFERENCES

- Ariyawansa, R. G. and Udayanthika, A. G., 2012. Living in high-rise: An analysis of demand for condominium properties in Colombo. *International Journal of Sociology and Anthropology*, 4(1). 31-37
- Central Bank of Sri Lanka, 2007. *Annual Report of Central Bank of Sri Lanka*, Colombo: s.n.
- De Alwis, K. A., 2010. *How high-rise apartment owners are taken for a ride tricks developers play*. The Island, 14 June.
- Edirimane, A., 2010. Understanding the concept of condominiums. 3rd ed. Ceylon Printers Ltd: Colombo.
- Edirimane, A., 2015. *What ails the condominium industry in Sri Lanka*. The Sunday Times, 08 March.
- Mirihagalle, L., 2008. *Unauthorized alterations in condominium housing in Sri Lanka*, s.l.: s.n.
- Naalir, M., 2010. *Facelift for NHDA apartments*. Sunday Observer, 21 March.
- Perera, A. L., 1996. *Some Land Planning and Land Development Issues in Sri Lanka*. 1st ed. s.l.: Perera, A. L. (1996). Some Land Planning and Land Development Department of Town and Country Planning, University of Moratuwa.
- Senaratne, S., Zainudeen, N. and Weddikkara, C., 2006. Factors affecting condominium development in Sri Lanka. *Built Environment Sri Lanka*, 7(1). 23-28
- Sirmans, G. S., Sirmans, C. F. and Turnbull, G. K., 1999. Prices, incentives and choice of management form. *Regional Science and Urban Economics*, 29(2). 173-195
- Tao, L.W., 2015. Living conditions—The key issue of housing development in Beijing Fengtai District. *HBRC Journal*, 11(1), pp.136-142.
- Wijeyeweere, C. A., 2004. *Condominium development, management and the condominium law*. Daily News, 31 August.
- Wijeyeweere, C. A., 2015. *Condominium development management and the condominium law*. Condominium News Bulletin Magazine. 31 August 2004
- Zarin, H. A. and Bujang, A. A., 1999. *Factors influencing demand for condominium in Johor Bahru, Malaysia*. Kuala Lumpur.