

SOCIAL ASPECT OF MULTIOWNERSHIP FLAT: THE PROBLEMS OF OWNERSHIP

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Abstract

Ownership of flats has become a new issue in our legal system. The basic objective of a legal institution is to uphold the social welfare. Today's legal institution is a product of gradual developments caused by social changes throughout the ages. Multiownership exposes certain issues that are needed to be resolved by a compatible legal system.

In a case study, five multiownership housing areas were investigated. It was observed that there were three types of ownerships that had been adapted for the real estate. They were Co-operative, Condominium and Free-hold ownerships. All these ownership patterns are found inadequate in meeting the needs of the owners. In this paper some of the inadequacies are discussed for further critical evaluation.

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1.1 Background

It is a known fact that the progress in urban housing in our cities particularly in Dhaka is far from satisfactory. The population pressure, shortage of developed land, resource constraints and lack of appropriate policy have resulted in continued haphazard urban growth, uncontrolled sprawl of slums and squatter settlements. In these growing inadequacies urban dwellers specially the fixed income group (the middle and lower middle income group) face a very limited ranges of choices for housing.

It seems now with a low 'affordability' the majority urban families can hardly dream of having a single unit, detached home of their own. How to meet the demand for housing in urban areas is a dilemma shared by the experts, the Government and the users. However, there are many reasons to believe that multiownership flat housing may be considered as a desirable alternative in the present situation.

There is no doubt that the standard of accommodation offered by a flat is much inferior to the separate cottage of detached house. Yet there is a strong demand for it in the main city area. The main forces that caused it may be identified as living close to the working area and service facilities and high land price, scarcity of developed land and prospect of cost savings in building construction. It seems perhaps for the above reasons multistorey flats are being socially accepted as a solution. There are many developers trying to sell flats in the different areas of Dhaka city. Many more are coming up due to the secured nature investment prospects.

The characteristic feature of a flat is that, no single dwelling unit is self sufficient in access, vertical circulation, service facilities and structural identity. These features necessitate the need for greater sociability and preserving certain restriction on some activities that might cause inconveniences to other dwellers. Although rental flat housing more or less gained social acceptance in our cities in the recent years but multi-ownership of flats are just beginning to come out as a fresh issue.

The issue of sharing the common facilities and services impose certain limitation on the rights of the owners. The change in ownership pattern from traditional 'Freehold Estate' to 'Tenancy in Common' or 'Co-ownership' rises certain basic questions regarding all the fundamental rights of 'use', 'exclusion' and 'disposition'. The following discussion will be mainly concerned with the legal problems of multiownership flats.

There has been some works going on in Dhaka city on multiownership flat housing. From a recent study (1) it is found that there are basically two types of multiownership prevailing in the flat housing projects. They are Co-operative housing and Condominium (Table 1-A)

Table(1-A) (2)

The ownership pattern of multiownership flats

Name of the Project	Location	Type of Ownership	Year of Completion	Number of Storey
Siddeshwari Ispahani Housing (new)	Siddeshwari	Condominium	1980	4
Eastern Housing	Siddeshwari	Condominium	1982	5
Aziz Co-operative Housing	Purana Paltan	Co-operative	1985	8
Hasanabad Housing	Moghbazar	Co-operative	1972	3
Hafizabad Housing	New Eskaton	Free hold ownership	1965	3 to 4

Ispahani and Eastern housing projects have condominium type of ownership. The condominiums may be defined as multifamily building which has individual ownership of the single unit and an undivided ownership of the common areas and facilities serving the structure such as halls, stairs, elevators, lobbies, drive ways and so forth (3). Condominium type of ownership is comparatively a very recent concept of ownership. It gives the owner something like 'free hold' ownership status in a 'tenancy in common' type of ownership.

Our legal institutions do not recognize this type of ownership. In united states first condominium was built during 1961 under the section 234 of the Housing Act of 1961 (4).

Before that condominiums were extensively used in Puerto Rico and Brazil.

From the Table (2-A) the Aziz Co-operative and Hasanabad are Co-operative Housing. In legal sense the Co-operative home owner is a stock holder that allows him to occupy a certain unit and the land and building is usually held by a Co-operative organization.

The Co-operative type of ownership is being practised in our country under the Co-operative Societies Act 1940. There were around 76 Co-operative housing societies in 1976 registered in Dhaka District. All of them acts as developers

1. Khairul Enam, M. Arch. thesis. The sharing problems of multiownership flats 1984.
2. Ibid
3. Glenn H Beyer, Housing and Society P. 272
4. Ibid

rather than financing institution that advances loan for housing to their members. These societies are basically profit making institutions. Most of the members of Aziz Co-operative and Hasanabad Co-operatives are from rich business communities, who can afford to pay upto Tk. 6,75,000 for a 1600 sq ft flat (1981). There has been also some public institutional effort (HSD) to popularise multiownership flats. Two schemes have been executed so far on an experimental basis. They are joint ownership of flats (4 persons per 5 khata plot) and hire purchase built flats (550 sft and 850 sft units). The projects are located in Mirpur, Mohammadpur and Kallanpur area. The hire purchase projects had good responses and were leased to the aspired owners. But the joint owners of the plot schemes have failed to show any initiative towards flat construction.

The multiownership or Co-operative housing have had some success in a number of European nations. The basic scheme involves Corporate or group ownership of the property. The property may be a flat or a tract of land with plots for single family units with permanent lease hold occupancy. Housing Co-operatives for families of modest income have been successful in a limited number of cases, where they have been sponsored by union groups, with Social and Economic homogeneity.(5) The countries like Sweden, Denmark, Norway, United States and Chile have shown some progress in multiownership ventures. Most of them have modified their respective legal institutions to allow property 'liquidity', and housing finance. To meet the housing problems of middle and lower income group, the non-profit strategies of Co-operative Societies have been found to be most profitably utilized. Direct Government involvement in the protection of lower interest rate for housing finance have also added as bonus to the Co-operative ventures.(6)

2.1 Observations on Legal Scene

The multiownership housing is a new element in our Urban Landscape. A marked shift from detached ownership housing to multiownership housing both in public and private sector have been observed in recent years. Ownership is usually described as a bundle of rights. In the present situation of urban development the institution of property does not permit an individual absolute and unlimited rights in land use. Those rights may be exclusive but as it is observed that society has reserved certain right such as, Taxation, 'Zoning', 'Sub-division restrictions' and other control over the right of use. Thus the bundle of rights from the owners' side has been reduced as the concept of social obligation has expanded.

The real estate ownership may take a number of norms. The rights comprising the complete bundle make up full ownership (Free hold estate) (7). Single right or smaller groups of rights may be distributed or shared by some persons to make

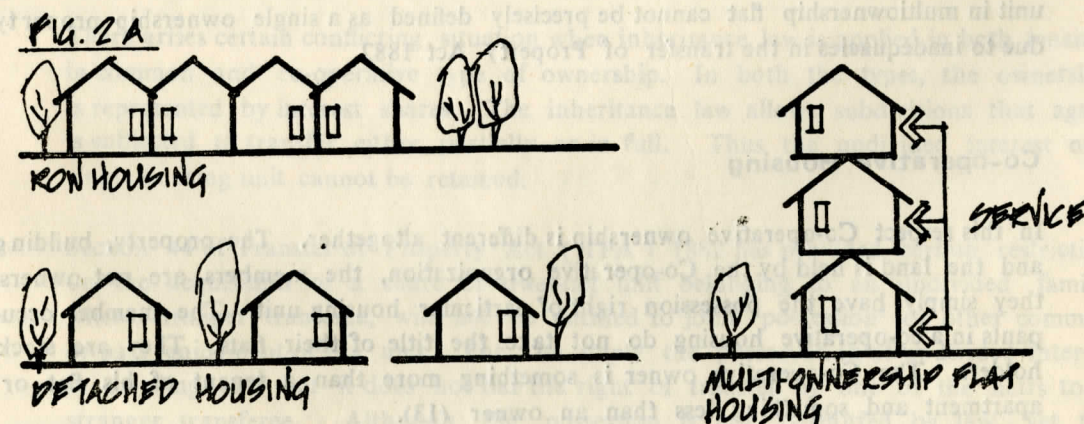
5. Ratcliff U. Richard. Urban land Economics.
6. Glenn. H Beyer, Housing Society.
7. Transfer of Property Act 1882

it a multiownership (Tenancy in Common) (8). The rights and privileges may be shared by two or more persons under a number of possible arrangements, Co-operative (9), Tenancy in Common (10), Joint Tenancy (11) and Condominium (12). Broadly, ownership may be noted to consist of the 'right of use' 'right of exclusion' and the 'right of disposition'. The right of use and the right of exclusion are the basis of the right to 'possession', the right of possession is linked but distinct from ownership and it is an attribute of ownership.

2.2 The Property Identity of Multiownership

The multiownership may be distinguished from the row and detached (Fig. 2-A) ownership housing in terms of land use and relation of structure to the ground. The two latter types housing possess exclusive right of land on which the structure is built. The distribution or division of exclusive rights may be made by subdividing land. Hence the title of land bears the property right of its holder. In terms of land use the property can be said to be held in severalty. The common walls in row housing may be termed as property walls segregating the two consecutive properties with 'Concurrent' interest of two parties. Each unit with its respective plot may be considered as total property of individual owners.

Here the land and building is considered as a integrated whole identifiable by the title of land in the 'deed'. The building does not have separate entity without the land to support it. According to condition of the relationship between structure and land the type of housing may be called 'Independent' with access and approach facilities.



8. Ibid
9. Co-operative Societies Act 1940
10. The Transfer of Property Act 1882
11. Ibid
12. Western concept of multiownership. Our legal institution does not recognize it as a form of ownership.

The development of our legal institution in the present form have resulted in response to above relationship of land and structure. The title of land is the key factor in the identification of property right of building on it. Land is easier to subdivide with proper identification thus the legal institution considers only the land ownership as the basis of all real estate properties. When the property could not be divided for practical reasons to preserve the exclusiveness then according to legal provisions 'tenancy in common' type of ownership is created where property right is preserved in terms of proportionate share of investment.

The problem is not the land ownership but the space above the piece of land. If the land building relationship in case of multiownership housing is observed it will be clear that upper floor units cannot be linked directly (like row and detached units) with the land so as to identify it as integrated whole. Moreover all the dwelling units occupy the same land thereby generate the need for vertical subdivision of space above the land. The legal institution can only go upto subdivision of land in terms of share (Tenancy in Common) and do not have any provision for vertical subdivision, like first 11' from ground owns by 'X' second 11' by 'Y' and so on. For this reason 'condominium', where the owner takes the title of the flat do not have any legal basis in our country.

Further, it may be seen that the upper floor housing units are supported by lower floor units that framed in a structural system. Any major change of supporting walls or columns in a single unit will damage the whole structure. Similarly any alternation in the utility lines may effect the total service system of the structure. The exclusive rights from structural and utility point of view, that are enjoyed in row and detached units might not be attained by multiownership housing. However it is clear now that under the existing legal terms (Tenancy in Common) dwelling unit in multiownership flat cannot be precisely defined as a single ownership property due to inadequacies in the transfer of Property Act 1882.

Co-operative Housing

In this respect Co-operative ownership is different altogether. The property, building and the land is held by the Co-operative organization, the members are not owners, they simply have the possession right of particular housing unit. The member occupants in a co-operative housing do not take the title of their flats. They are stock holders. The Co-operative owner is something more than a tenant of his flat or apartment and something less than an owner (13).

2.3 Property Transfer

It is seen that the ownership right in multiownership development have two distinct types, the Tenancy in Common and Co-operative. Most of the ownership of private

developer built projects falls into Tenancy in Common category. The legal formalities are that in the event of property transfer all the other co-owners are required to give official witness, because they have concurrent interest on the whole property. This, is often very difficult to organize because of absentee co-owner and the complications resulted due to inheritance.

This is a serious disadvantage of multiownership property that makes it an 'illiquid' investment.

Similar problems are there in Co-operative ownerships. Restrictions are there due to section 153 of Co-operative Societies Rules 1942, related to the transfer of shares (Property). A member of a co-operative society cannot directly dispose of his share without going through elaborate formalities of auction conducted by the office of the Co-operative Society. The auction will take place provided the interest on the transferable share is cleared by the nominees and the mortgage bank. The process may require long time before any settlement could be derived.

Unless simpler methods could be found out for the property transfer the multiownership will remain in the less priority list of the prospective home owners.

2.4 Inheritance

The rules of Islamic law is applicable in our country regarding the inheritance by the legal heirs. According to the law any property, if case arises, could be subdivided among the heirs, in a proportion as provided by the Islamic law of Inheritance (14).

There arises certain conflicting situation when inheritance law is applied in both tenancy in common and co-operative type of ownership. In both the types, the ownership is represented by interest shares. The inheritance law allows subdivisions that again is subjected to transfer either partially or in full. Thus the undivided interest of a single housing unit cannot be retained.

Section 44 of Transfer of Property Act (TPA) 1882 has provided certain restriction on the acquisition of a share of dwelling unit belonging to an undivided family, where stranger transferee, will not be entitled to joint 'possession' or other common or part enjoyment of the unit. The law imply the preservation of undivided interest in dwelling unit but it does not bar the right of transfer by one of the heirs to a stranger transferee. Although the possession is not permitted by law, yet the claim on the sold part of the property remains and that may create a social problem.

13. Lewis M. Isaacs, Jr 'To Buy or Not to Buy :
That is the question what is a Co-operative Apartment? The Record of the Association of Bar of the City of New York. Vol 13 No. 4 April 1958, P. 207
14. Ghazi Shamsur Rahman, Islamic Law 1981.

Inheritance in Co-operative form of ownership is performed through nomination. Section 103 of Co-operative Societies Rules 1942 refers that all the members will nominate their nominees who will inherit the undivided interest of the respective shares. In this case Islamic Law of inheritance is in direct conflict with the Co-operative law.

It is necessary to retain the undivided interest of a housing unit. The legal formalities becomes less complicated when inheritance is executed through nomination.

2.5 Legal Instrument and its Implication upon the Transfer of Property

The transfer of multiownership (Tenancy in Common) may be performed by legal instruments 'Sale' and 'Lease'. The two instruments have differences regarding certain rights both from the side of seller and buyer. The property transferred by sale produces ownership right of 'free hold estate', while lease produces 'lease hold estate' that may be for a period or in perpetuity.

In broader context it may be observed that conditions of sale do not allow any future interest on the part of seller while in lease certain right of the lessor may be preserved through mutual agreement of lessor and leasee.

Building insurance securing the investment are not practised in our country. In case of fire, flood or any other manmade or natural calamities if the multiownership property partly or totally damaged and becomes unfit for use, without insurance security all the investment incurred may be lost. For security reasons, for all the parties, the lease, lessor and the financing institution, the building insurance may be made mandatory.

3.1 Summary of Discussion and Conclusion

The western countries who have successfully used multiownership or Co-operative form as system of housing 'delivery' have in some way solved the problem of property liquidity, housing finance and property transfer through new legislative measures reforming the existing legal frame works to accommodate the changed social needs. Our legal institution of property transfer is outdated and cannot meet the present social needs. It has been pointed out that 'Tenancy in Common' type of ownership fails to define the flat ownership in a multiownership development.

The absence of proper definition of 'right of ownership' in multiownership development and lack of legal recognition in the building subdivision without corresponding land subdivision may be pointed out as the key issue responsible for the problem in property transfer. All these more importantly effects the financing aspect of development.

3.2 The Suggested Modification in the 'Tenancy in Common' Form of Flat ownership

When the individual ownership in multiownership property cannot be defined precisely then the legal institution may recognise it and define it accordingly. This will enable the individual ownership to sense the property (Dwelling Unit) as an independent asset and that may be used for hypothecation or mortgage collateral.

There may be legal provisions which will simplify the existing formalities required in the transfer of multiownership property and thereby ensure the liquidity of the property similar to that of other home ownership properties.

The provisions may be made to allow financing agencies to advance loan to an individual for the purchase of built flats as well as for construction.

There is a need for mandatory building insurance policy that may be enforced to safe-guard the interest of financing institutions as well as that of occupant owners.

3.3 The Co-operatives

Much of the legal problems of multiownership are resolved in co-operative development, through the involvement of the organization. It is an well accepted form of multiownership development. The success of a co-operative project apart from the financial issues are significantly dependent on the proper management, group homogeneity and objective of the organization. These aspects are usually developed and formulated in the Co-operative by-laws in a setup as provided by the legal institution. The performance of the Co-operatives are controlled, regulated and motivated by the by-laws.

The Co-operative Societies Act 1940 has provided the basic format for the development of Co-operative Housing Societies in our country. The Act was introduced to promote agricultural Societies for increased production and economic benefits with a basic objective to make profit. In most of the Co-operative Society Projects, the reflection of this profit motivation have been found to be in practice. A non-profit objectivity have been observed to be successfully utilised in other countries for Co-operative development that primarily included lower income housing (15).

Apart from the objectives there are other confusions prevailing in the Act. Those are unspecified qualification (16) of key persons in-charges of the management, elaborate auction (17) procedures for property transfer, limitation on 'fund procurement' (18) from non-member sources and absence of provisions for 'mortgage security' (19)

15. Khairul Enam, M. Arch. Thesis
16. Section 35, Co-operative Societies Rules (CSR) 1942, P. 17
17. Section 153 CSR 1942
18. Section 67 and 68, CSR 1942
19. Khairul Enam M. Arch. Thesis

All these considered to have negative effect on the progress in Co-operative housing.

However, it may be said that Co-operative Societies Act 1940 is not appropriate for the nature of Co-operative Societies that required for the middle and lower middle income group.

3.4 Suggested Modifications

When middle and lower middle income group is considered as the target population it may become important enough to regulate the activities of Co-operative Societies in a more precise manner so that most of the Co-operative Societies have non-profit motives. The interested housing Co-operatives may be supplied with pre-determined by-laws prepared with certain flexibility only to insert special interest that would not conflict with the non-profit objectives

The time consuming and laborious process of property transfer formalities imposed by the Act may greatly reduce the social acceptance of co-operative housing as an object of asset, real estate and economic security. Efforts may be given to simplify the process of property transfer. It is felt that the total formalities of property transfer may remain under societies, control so as to discourage any acquisition of personal benefits from the open market situation at the cost of societies non-profit objectives,

There may be certain restriction on the transfer of a dwelling unit to a complete stranger non-member. The prospective buyer should be among the members of the co-operative society. The dwellers of the respective building block may be given the option to choose their new neighbours.

Proper importance may be given in specifying the qualifications of elected members in the management committee and the association of professional expertise whose services might be required in anticipation of large projects. By ensuring proper management and expertise services in societies projects an indirect security of better performances may thus be extended to financing institutions and the future owner members.

There may be provisions for mortgage insurance that would enable the societies to receive deposits from both members and non-members and loan from financing institution without showing land holdings as Security.

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