

Registration Laws of Housing Developers: A Major Obstacle in Achieving the Goal of Housing for All in Pakistan

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Abstract: *Among other housing developers, the major housing developers are private housing companies and cooperative housing societies, these housing developers can become very effective to achieve the goal of housing for all, but unfortunately, these two have been used to do massive corruption in the housing industry of Pakistan. The major reason is that the legal framework, which is meant to regulate the housing developers, has become an instrument at the hands of housing developers of the housing to commit corruption in the housing industry. These housing developers can become very effective to achieve the goal of housing for all if some suitable amendments are introduced, and the legal framework is strengthened.*

Key Words: Companies Act 2017, Cooperative Housing Societies, Housing for All, Registration Laws

Introduction

The state has a basic obligation to provide a good quality of life to its citizens. The apex court of Pakistan has in a number of cases including Shehla Zia case that the word life cannot be confined to narrower perception of life like vegetables and animal the word life includes all amenities of life which are necessary to spend a decent life which includes housing in it.

Right to housing is also included in the amenities and facilities of life. In order to provide the housing units to all the citizens of Pakistan, there is a need for a strong legal framework to regulate the activities of the housing developers from registration to onward.

As contrary to it, the situation in Pakistan is not satisfactory. In order to provide the housing units to the general public, the legal framework instead of properly regulating the housing developers is undermining the potential of investment in housing industry of Pakistan.

Reasons for the Mushroom Growth of Housing Societies in Pakistan

Due to these reasons, there is a gap between demand and supply of the housing units in Pakistan, the rapid increase in population, no attention on the construction of new housing units, shifting of people from villages to big cities and transformation of living style from joint family to a single-family system.

People prefer to invest in property and real estate because these are treated to be a safe asset for future times. Due to uncertain business conditions and poor and fluctuating performance of the stock markets, now, the focus of the investors is to invest in the housing industry being a safe investment. Under this situation, fake housing projects have been formed in a large number.

These entities, i.e. cooperative housing societies and private housing societies, earned abnormal profits. Due to a serious lacuna in the registration laws, in order to take undue housing projects were launched in bulk, as there was no precondition of land for the registration of the above two entities. So, these two housing developers offered plots to the people to rob them without having any piece of land or by offering plots in excess of the available plots. The target of these developers of housing projects was

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to earn more and more undue profit and to earn money only by taking full advantage of the weak Legal Framework. This process was endemic one, and this process could not be controlled due to loopholes in the legal framework relating to registration of cooperative housing societies and private housing companies.

Lacunas in the Law Relating to Registration of Cooperative Housing Societies

Cooperatives Societies Act 1925 is the relevant law under which cooperative housing societies are registered. Ten persons who are major can form a cooperative housing society. The society can be registered if it has an object to raise funds from its members then the persons forming the society must be residents of the same town or villages. Furthermore, must they must belong to some tribe, class, caste, or occupation and no society which would use the word bank or will conduct banking activity shall be registered under this Act unless, its paid-up capital is 20, 000 or more. The society which seeks registration must use the word limited with its name. [\[Cooperator Societies Act, 1925\]](#).

Another important enactment by which the affairs of the cooperative societies are regulated is Cooperative Societies Rules 1927. As per this enactment, the names of the people desirous of creating a new society along with of the places of residences of the members should be mentioned. The application should also contain the details about the responsibility of the members of the cooperative housing society, the territorial jurisdiction within which the society will function, the purposes of the society, the face value of the shares of the society, debt-equity details and details about the loan raising details about the books of accounts and three copies of the bye-laws. An authorized person on behalf of a society can sign the application for registration if another society is a member of society [\[Cooperative Societies Rules 1927\]](#). A cooperative housing society could be formed, and still, it can be formed without having any piece of land.

On the same line, private housing societies have been registered under the Companies Ordinance 1984 by taking undue advantage of the lacuna in the provisions relating registration of private housing companies.

Deficiency and Repugnancy in the Provisions of Private Housing Companies

In order to form a private housing company, it is mandatory to file copies of the MOA and AOP of the new company along with the declaration by a lawyer or member of Institute of Chartered Accountants of Pakistan that all the conditions required for the formation of a company have been fulfilled and the purposes of the proposed company are clear, and there is no ambiguity in the object clause of memorandum of association. On submission of all these details, a company can be registered by the registrar of the province in the territorial jurisdiction of whom the registered office of the proposed company is situated. If the registrar is satisfied after reading the memorandum and articles of association that company is being formed for a lawful purpose, he will issue a certificate of registration of private housing company which would be conclusive proof of the registration of a private housing company [\[Companies Ordinance 1984\]](#).

Another enactment relating to the formation and registration of the companies is companies general provisions and forms rules 1985. Under section 30 of this Act, MOA and AOA of the proposed company must be stamped as per law and attested by a lawyer as per law. After doing this process, the application should be submitted in the office of the registrar for the registration of the proposed company [\[Nazeer, 2012\]](#).

The crux of the above-mentioned discussion is that a company can be formed without having any piece of land A housing company without having any piece of land could be incorporated under Companies Ordinance 1984 and Companies Rules 1985. Private housing companies and cooperative hosing societies had been taking full advantage of the above-mentioned deficiency in the registration provisions of housing societies. Once these housing societies were registered, these societies sold plots to the general public without having any piece of land or by selling more plots than available plots under cover of registration certificates which were a source of satisfaction for the investors and general public.

These housing developers in the shape of cooperative housing societies and private housing companies after getting registration certificates from the relevant authorities deceived the general

public by using the undue advantage of these registration certificates. As most of the people are illiterate in Pakistan and they do not know the technicalities, so, by relying on this registration certificate being issued by the relevant authorities, they invested their hard-earned money in these housing societies. In this way, massive frauds were done in the housing and real estate sector of Pakistan. The thing that helped these housing developers to do this wrong was the registration certificates being issued by the relevant authorities without having any piece of land.

These housing societies used these registration certificates as proof of the genuineness of the housing society to deceive the general public. So, there is a need to change the provisions relating to registration of housing developers in such a manner that nobody can deceive the general public by taking undue advantage of a weakness in the legal framework. Here another relevant question arises whether there is a need for change/amendment in the present legal framework relating to registration of private housing companies or there should be a new self-contained law for this purpose? It has been discussed in the next heading.

Whether the Registration of Private Housing Companies under the Companies Act 2017 is Constitutional or Unconstitutional?

A new enactment under the name and style of the Companies Act 2017 has been introduced in which the mode of formation of a new company has been prescribed according to which 3 or more than 3 persons who have joined hands to start a new company for an object which is not against the law may form a public limited company by signing the copies of MOA and AOA of the new company. In the same way, 2 or more than 2 persons by signing MOA and AOA of the proposed company may form a private company [[A.S Arieen, 2018](#)].

A new section has been introduced to deal with the matters of real estate companies. Subject to other provisions of the law relating to real estate companies, no real estate company can invite advances from the general public unless and until it has obtained approvals and all NOCs required to be obtained from the relevant authorities of the local and provincial Governments, no housing scheme can be advertised without getting the permission of the local authority in whose territorial jurisdiction the housing society is situated and the permission of Securities and Exchange Commission of Pakistan (SECP).

It cannot sale any housing unit without the permission of the development authority and SECP, as it is primarily the responsibility of the provincial Government and Local Government concerned to regulate all the affairs of the private housing company so in order to enable the relevant authority to do so SECP shall provide all the necessary information and documents to the relevant regulatory authority [[Companies Act 2017](#)].

Constitution of 1973 is the basic and fundamental law of Pakistan, and it is not only a law but a touchstone to check the validity of other laws. Any law or any section of other law for the time being enforced if it is against any article of the Constitution is null and void to the extent of repugnancy.

As per Fourth Schedule of the fundamental law, housing is purely a provincial subject and provinces enjoy complete autonomy to regulate all the affairs of the housing industry from the start (registration) till the end (winding up) and Federal Government has nothing to do with it. Another provision which is pertinent to mention here is the item number 31 of the Federal legislative list of the Fourth Schedule; generally, corporations are under the purview jurisdiction of the Federal Government, but those corporations which are owned or which are controlled by a Province and which are carrying on business only to the extent of territorial jurisdiction of a single province shall be the exclusive domain of the province in which that company is operating.

Similarly, those cooperative societies and corporations the objects of which are confined to a single province shall be the domain of the provinces, but if these corporations are doing business beyond the territorial jurisdiction of the province, then Federal Government would regulate it. Corporations, whether trading or not if confined to a single province shall be the domain of the Provincial Governments and if operating beyond the territorial jurisdiction shall be the domain of the Federal Government.

Under the new enactment, an attempt has been made to claim/extend jurisdiction over the affairs of the housing companies operating in the provinces although it is against the letter and spirit of the

fundamental law of Pakistan. The primary purpose of introducing section 456 in the Companies Act 2017 is to earn more and more revenue for the Federal Government even if it (Section 456) is against the fundamental law of the country.

Due to such like provisions, there is no clear line of jurisdiction among the three layers of the Government. Land mafias and housing developers have taken undue advantage due to shifting of responsibilities by the three levels of the Governments in case of frauds and malpractices in the housing industry. Now, it is the time to realize that housing is exclusively a domain of the provinces so the provincial Governments should exercise complete authority over all the activities of the housing companies from the formation till winding up of the housing companies. Due to this unconstitutional provision (section 456 of Companies Act 2017) the Government of Pakistan instead of earning revenue is losing more revenue due to frauds, malpractices, lack of check and balance and due to absence of a clear-cut line of jurisdiction among the three levels of Governments, i.e. Federal, Provincial and Local Governments

Steps Needed to be Taken to Strengthen the Legal Framework Regarding Registration of Housing Companies

In order to modify and strengthen the legal framework of the housing industry, many factors must be kept in view. That such legal framework should be designed which is not against the fundamental law of Pakistan, which is the supreme and fundamental law of the country, such framework should be designed which can stop the malpractices, frauds and such legal framework should be designed which can prove helpful to achieve the goal of housing for all.

Need for Formulation of a New Enactment for Housing Companies by Each Provincial Government

The current practice is that there is one federal level law, i.e. The Companies Act 2017, which is regulating all the affairs of the housing companies situated in all the provinces of the country. This provision, i.e. Section 456, is in conflict with the Fourth Schedule of the fundamental law of Pakistan. Another problem with his provision is that if a housing company is registered under the Companies Act 2017, which is a federal level law the Federal Government or the department concerned, i.e. SECP has no mechanism to check the malpractices and frauds being committed by these housing companies. This registration law should be deleted and replaced by the Housing Companies Registration Acts at each provincial level.

Condition of Ownership of Land before Registration of Housing Companies Under the Provincial Housing Companies Act

The present registration law (Companies Act 2017) should be deleted, and it should be replaced by the Housing Companies Registration Act at each provincial level. The precondition of some land for housing companies and cooperative housing societies must be incorporated in the registration laws to stop the practice of cheating the general public by collecting money under cover of the registration certificate and without owning land for the housing society.

Before discussing the issue of introducing an amendment in the registration provisions, it is very important to look at this matter from many angles as it is not an easier decision. If an amendment is suggested to impose a precondition of land before the grant of registration certificate by the registrar, there are many repercussions of this decision. One positive aspect of this condition is that this amendment would enable only genuine and serious housing companies to apply for registration and only those companies which own land and are serious about doing housing activity would be able to get registration certificates. But another question which is attached to this discussion is what should be the percentage of land for getting registration certificate?

The registration laws are very lenient with respect to the formation of new housing companies. The condition of ownership of land before filing an application for registration can be helpful to promote only genuine housing companies. Next step is to decide the quantum of ownership of land for the registration

of housing companies, whether it should be 80 % of the total land of the housing society as stipulated by the Punjab Private Site Regulations 2005 [[Punjab private site regulation 2005](#)].

Or it should be ninety percent land of the total land required for housing scheme as prescribed by Section 9 of sub-Section (h) [1] of the Punjab Private Housing Schemes and Land Subdivision Rules, 2010.

There is a need to strike a balance between these two options (no condition of ownership of land or eighty or ninety percent ownership of land before registration) in the better interest of the housing industry.

Whether a High Percentage of Ownership of Land is Compatible with the Goal of Housing for All or Not?

The provision of eighty percent or ninety percent ownership of land by a private housing company or cooperative housing society before its registration is not good. It is not good due to a number of reasons which are important if the Government of Pakistan is serious about achieving the goal of housing for all as envisaged by the UN-Habitat agenda. Following are the important reasons for it.

Housing as a Top Priority Industry

First of all, the housing industry is called the mother of all industries due to its beneficial effects for the overall economy of the country. Housing activity helps in employment generation; housing activities boost the economy. Due to housing activity, forty allied industries are engaged, and job creation at a large scale for skilled and non-skilled labor is possible [[National Housing Policy 2001](#)].

Low-cost housing for low-income groups contributes to poverty alleviation in the country. Low-cost housing is also called a welfare-oriented activity for the country. Housing and construction industries are the most important industries as these trigger economic activities in the forty supporting industries. Housing and construction sector has been notified as to the most important industry, and it is included in "C" Category among the industries.

Thus, the condition of ownership of eighty percent land prescribed in the PPSR 2005 and condition of ninety percent ownership of land under the Punjab Private Housing Schemes and Land Sub Division Rules 2010, is against the national policy of the Government of Pakistan as MTFD 2005-2010, is prepared after consultation of all the provincial Governments, so the condition of eighty percent or ninety percent ownership of land before granting permission is a deviation from the mainstream policy.

Encouragement of Private Sector to Share the Burden of Government of Pakistan to Achieve the Goal of Housing for All

This condition of 80 % or 90% ownership of land before the start of private housing society is also not appropriate as the private sector has been given an important role in the progress of housing industry of Pakistan and this thing can be inferred from the explicit reference in the preamble of the L. A Act 1894, which talks about the acquisition of land for the companies to perform works of public purpose [[The Land Acquisition Act 1894](#)].

UN-Habitat agenda private sector has been recognized as an important instrument to provide housing units. The private sector is a key player in the provision of housing units.

It is beyond the financial resources of the Government alone to achieve the goal of housing for all. Even if the entire current annual public sector development budget is spent on housing activity by leaving no money for other sector even than the goal of housing for all cannot be achieved by the Government without the help of the private sector. This necessitates putting in place a legal framework which encourages and facilitates private sector. Financing in the housing industry of Pakistan by the private sector and then a strict regulatory Legal Framework by the Government of Pakistan is the good approach.

If the land is being acquired for a public purpose, it does not matter that the authorities of the Government are acquiring this piece of land on behalf of a company. If the objects of the company helped

to promote the national economy it would be considered as an acquisition of land for a public purpose ([Ramesh Agarwal Vs Land Collector Patna](#)).

Land acquired by the company for the construction of a building is for a public purpose if it would be beneficial for the general public; such acquisition of land is for a public purpose ([Ramesh Chand Vs State of U.P.](#)). Construction of residential accommodation for defense and civilian personal by the cooperative housing society is an acquisition of land for a public purpose ([Province of West Pakistan Vs Bashir Muhammad Khan](#)).

The point to be noted in the above cases is that the present law of companies came into force in 1984 and the above-mentioned case was decided by the Lahore High Court in the 1983 and that time company's Act 1913 was applicable under that Act the word company included cooperative society in its definition of a company. So, land acquired under the Land Acquisition Act 1894 for a cooperative housing society is also a public purpose.

Notification issued for the acquisition of land cannot be declared under section four of the Land Acquisition Act 1894 if the land is being acquired for a private company for doing housing activity which is clearly mentioned in the notification ([R.L Arora Ram Ditta Mal Vs State of Uttar Pradesh](#)).

When land is being acquired for a private company by the Government, it is an acquisition for a public purpose which is to be performed by the private company ([Notesa Asariv Vs State of Madras](#)). The decision of the provincial Government shall be final with respect to the acquisition of land for a private housing company ([R.L Arora Vs State of Uttar Pradesh](#)). If the land is needed for the construction of housing units to a company, the detailed procedure in part VII of the Act needs not to be followed ([Bhawat Dayal and others Vs Union of India](#)). The current practice is that there is a condition of eighty percent ownership of land as prescribed by section 5(q) of Punjab private site registrations 2005 and ninety percent ownership under the Rules of 2010 and to deposit the hundred percent site development plan makes the housing society an owner of hundred percent land. (Punjab private site regulation 2005). This provision makes the housing society owner of the ten percent land which is still to be acquired under the Act of 1894, but which is included in the site development plan of the housing scheme. After getting approval of the housing scheme when the housing developers proceed to acquire this twenty percent land the price of this twenty percent land is dictated by the owners of this ten percent land in collusion with the officials of revenue department ([Muhammad Younas Vs Ashiq Hussain](#)). This rule is against the intent of the legislature of the Act of 1894, which encourages the companies and private sector to undertake public purpose, including housing.

The condition of ninety percent ownership of land is also against the ground realities in Pakistan. Generally the members of the cooperative society are financially weak people. Due to very limited resources, the members of the cooperative housing society cannot afford to purchase land for their housing units in posh housing societies. So, the last option for these poor people is to have their housing unit through a cooperative housing society. The condition of ninety percent ownership of land would not help them to do housing activity after the formation of cooperative housing societies.

As members of the cooperative housing society cannot raise so many funds from their own resources to purchase the land for the cooperative housing society in one go. The condition of ninety percent ownership of land before getting approval is inequitable as it will only encourage members with adequate financial means to form housing societies and discourage underprivileged classes to form housing societies.

Last, but not least the condition of ninety percent ownership of land before granting approval is also against the spirit of the MTDF 2005-10 passed by the planning commission after detailed homework by taking on board all the provincial Governments of Pakistan.

A Separate Law for the Registration of Housing Companies and Cooperative Housing Societies Why Necessary?

Two solutions can be offered for this problem; new self-contained law may be enacted for the registration of housing companies plus cooperative housing societies to deal all the matters of the housing societies situated in all the (separate law for each province) provinces, another solution may be to have a separate law for the registration of housing companies and cooperative housing societies for each province.

Due to the limitation imposed by the Constitution, the second option is more appropriate and suitable. This would help each province to prescribe a precondition of ownership of land for registration of housing companies and cooperative housing societies by keeping in view the local conditions and development priority of each province as each province has its own development propriety due to its specific geographic, economic and social differences in comparison with other provinces. So, each province should modify the Cooperative Societies Act 1925, and Cooperative Societies Rules 1927 by imposing the condition of ownership of land according to its local conditions, and same procedure should be followed in the case of housing companies.

The Condition of Ninety Percent Ownership of Land before Registration Causes to Acquire Land on High Rates

The condition of ninety percent ownership of land as prescribed by the Punjab Private Housing Schemes and Land Sub Division Rules 2010 and condition of eighty percent ownership of land as per Punjab Private Site Regulations 2005 is compulsory to apply for sanction of the housing society.

Before the grant of NOC for the housing society by the development, authority is not suitable. As officials of Revenue department are empowered under the Registration Act 1908 to change in land use from agriculture to industrial, commercial or housing purpose. As a result of it when information leaks out that housing society is being launched in the particular area the inhabitant of the adjoining lands changes the nature of their lands from agriculture to commercial to take more money from the housing developers.

The owners of the adjoining lands do it in connivance with revenue officials,' i.e. with the help of Patwaris (a lower rank officer of the revenue department who is the custodian of all land record). When NOC to launch a housing, scheme is granted to the developers, and they proceed to acquire the remaining portion (ten percent) of land, they have to pay very high prices of the lands.

Conclusion

In the light of the above said circumstances, it may be concluded that the relevant provisions of law regulating the process of remigration need to be changed on an urgent basis. As housing is purely a provincial subject but private housing companies are being registered under the Companies Act 2017 with Securities and Exchange Commission of Pakistan (SECP) which is federal level legislation. Constitution of Pakistan 1973 is a supreme law of the land and any enactment, or any provision of enactment which is in conflict with any Article or Schedule of the Constitution of Pakistan 1973 is null and void to the extent of conflict/repugnancy. From the above-said discussion, it has been proved that the registration of private housing companies is unconstitutional, so a new self-contained law for the registration of private housing companies and cooperative housing societies is the need of the hour. Furthermore, the present provisions of registration of private housing companies are causing shifting of responsibilities among the three layers of Governments. New self-contained law for the registration of housing developers at the provincial level would help each province to prescribe a condition of land as per the social, economic and geographical circumstances.

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