

Deficiencies in the Legal Framework of Housing in Pakistan: A Critical Analysis

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Abstract: *Housing has been given a special priority by the present Government of Pakistan due to its huge financial impact. One of the basic necessities of life includes housing. Housing has been acknowledged as directory principle under the Constitution of Islamic Republic of Pakistan 1973. Under the scheme of the Constitution of Pakistan 1973, the provision of housing units is primarily the responsibility of the Local Governments in the provinces, but they have miserably failed to do so. This article points out some of the major reasons and obstacles due to which housing laws are unable to regulate the housing industry of Pakistan in an effective manner. At the end of this article, some suggestions and recommendations have been given, which are necessary to improve the legislative as well as the regulatory mechanism of the housing industry in Pakistan.*

Key Words: Constitutional Provisions, Housing Laws, Legal Deficiencies, Private Housing Schemes

Introduction

The right to housing or safe house is acknowledged in the Constitution of Islamic Republic of Pakistan 1973, as an essential right. The article 38(d) of the Constitution of Islamic Republic of Pakistan 1973 recognizes housing as an important social right. The state should take all possible measures for giving essential needs of life to the residents across the board, which includes including housing as well. Pakistan likewise embraces different international understandings, including UN-Habitat agenda to take measures in the provision of housing units to its citizens subject to availability of resources. Additionally, housing as a right is explicitly referenced in the United Nations Vancouver Declaration on Human Settlements.

There are different strategies that straightforwardly or in a roundabout way, address the housing issues. Housing as a right is not included in the Fundamental Rights provided under the Constitution of Islamic Republic of Pakistan 1973. As per the National Housing Policy 2001, the Government of Pakistan cannot perform the role of a developer to provide housing units directly to the homeless persons.

Importance of Housing vis-a-vis Legal Framework Relating to Housing Industry of Pakistan and Challenges Faced

By realizing the importance of housing as an important need of the human beings, the Constitution of the Islamic Republic of Pakistan, 1973 has included the right to proper housing in its Principles of Policy, so that, every new Government may formulate policies for the provision of housing (The Constitution of the Islamic Republic of Pakistan, 1973, Article 38 a/d).

The Constitution of Islamic Republic of Pakistan 1973 also acknowledges the acquisition of property, in accordance with the provisions of law as a fundamental right and no person shall be deprived of his property save in accordance with law (Constitution of Pakistan 1973, Article 23/24).

[Atta ur Rehman, 2013] claims that to achieve the goal of housing for all the department of housing in Pakistan has been transferred to the provinces for the proper provision of the right to housing to the

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citizens of Pakistan. Previously, before the 18th amendment in the constitution of the Islamic Republic of Pakistan 1973 housing was a federal subject but now it is in the purview jurisdiction of provincial Governments. After the 18th amendment to the Constitution of the Islamic Republic of Pakistan, 1973 has changed the scenario, and now the responsibility of provision of the right of housing rests on the provinces. It is also worth mentioning that the taxes on property and in matters of succession have been removed from Part I of the Federal Legislative List, therefore, allowing provinces to regulate the matters relating to housing (PILDAT, 2010).

However, it is witnessed that private housing companies were incorporated under the Companies Ordinance, 1984 and now under Companies Act 2017, under a Federal level law, with the Securities and Exchange Commission of Pakistan which needs to be changed (SECP Pakistan). The Companies Ordinance, as well as the Companies Act 2017 has explicitly excluded such institutions from its domain which are formed to carry out a non-trading activities and their activities, are confined to a single province will be the exclusive domain of the provinces [[Companies Ordinance, 2017](#)].

It is pertinent to mention here the activities of the cooperative societies are being regulated by the respective provinces in their territorial jurisdictions.

Housing for all is possible when along with other factors; institutions like the House Building Finance Corporation and other housing finance companies provide loans for the construction of housing units, but the situation of housing finance is not good because the house building finance corporation is of the view that financing the housing sector is itself risky and unpredictable due to the presence of discrepancies in the law and administration (State of Human Rights, 2014).

Due to this reason, the provision of housing is getting worse. Furthermore, housing is being carried out as purely a profit-making activity due to which the greedy property and land mafias are earning abnormal profits. Housing has turned out into a nasty trade as the fruits of the legislations are not reaching the people at large as the plots and houses are too expensive to be bought by an ordinary person. The aim of housing for all is a target which has not been achieved because of two reasons. Firstly, there is a weak legal framework which needs to be strengthened. Secondly, there are weaknesses on the part of the regulatory authorities of the housing industry due to overlapping of jurisdictions.

In the backdrop of these points, a subsequent portion of this article will deal with the identification of the problems in the legal framework and suggest suitable amendments in the legal framework to strengthen the legal framework of Pakistan relating to the housing industry. Finally, this article suggests the ways and means for the realization of the right to housing in Pakistan as envisaged by the UN-Habitat agenda.

United Nations HABITAT Agenda

UN-Habitat has been designed to enable member states to take responsibility for the people for the promotion and creation of sustainable human settlement ([UN-HABITAT Agenda](#)). Un Habitat agenda provides guidance to the states to take steps to turn the vision of housing for all into a reality. In order to promote international, regional, sub-regional, national and local cooperation and partnerships institutions like Commission on Human settlements and United Nations Centre for Human Settlements are playing a pivotal role to achieve the goal of housing for all.

First UN-HABITAT Conference

The first UN Habitat conference was held at Vancouver British Columbia, Canada in 1976. The purpose of it was to discuss the issue of housing shortfall due to rapid urbanization. Sixty-four recommendations were proposed for future action. In 1977 after this conference a general assembly resolution 36/162 was passed to create a United Nations Centre for Human Settlements UNCHS (HABITAT) a functional commission of Economic and Social Council was established as a governing body.

It starts with the preamble unacceptable human settlements is an increasing threat due to inequality in the economic conditions and uncontrolled urbanization unless and until some protective measures are taken at the national and international level. The first action suggested was to take a bold, meaningful and effective human settlement policy and human settlement should be considered as an instrument of development.

The adequate shelter was declared as a basic human right in the first conference, and local governments were encouraged to play an effective role in the provision of this basic right (Vancouver Action Plan).

Second UN-HABITAT Conference

The United Nations Conference on Human Settlements (Habitat II) was held in Istanbul, Turkey, in 1996. All nations present at the conference unanimously gave their assent to the “Habitat Agenda” which is a commendable effort for the right to housing. The agenda focuses on two basic perspectives of dwelling, i.e. “adequate shelter for all” and “sustainable human settlements development in an urbanizing world” ([The Habitat Agenda Goals and Principles](#)). It has been universally agreed in the conference that Governments will work on the provision of suitable dwellings to their citizens and the construction of houses will be in accordance with the standards of health and hygiene ([The Habitat Agenda, Istanbul Declaration on Human Settlements](#)).

The agenda has reminded the member countries that provision of healthy housing is a responsibility and it’s not that the population should be housed, but they must be provided with the best housing which would enable them in further endeavors of their lives.

All nations have affirmed that they shall commit to the cause of the provision of suitable housing. It has been recognized that Governments’ ability will be brought in use for the provision of other amenities of life in relation to housing and steps will also be undertaken to help tenants secure their right of tenure. The recognized standards of human rights will, at all times, be kept in mind. Other commitments were also made which include the following; Policies will be made to include adequate housing in national development programmes to ward off social inadequacies. Safety of tenure will be guaranteed by legislation. There will be no discrimination in the provision of proper housing to citizens.

Such modes of construction will be promoted, which will ensure the protection of the surrounding natural environment. Equitable housing will be supported, which shall cater to the needs of women, children, elderly and people with disabilities. Land management will also be upheld.

Third UN-HABITAT Conference

[\[Amann, 2017\]](#) states that the third UN Conference on housing was held as a result of a UN General assembly resolution number 66/207. The third conference is an important step towards a new urban agenda. This conference was held in Quito, Ecuador in 2016. It suggested various ways and means achieve the goal number 11 of the sustainable development goals, i.e. to make cities and human settlements inclusive, safe, resilient and sustainable. The conference discussed the implementation of a new urban agenda by emphasizing the role of the local Governments and non-Governmental organizations ([Initiative for Habitat, 2017](#)).

Overlapping of Jurisdiction and Shifting of Responsibilities by the Various Departments of Governments

A well planned and organized city ensures the wellbeing and good health of its inhabitants. It (well-planned city) equally has a direct positive impact on the motivation, attitudes, habits and professionalism of the people, which equally reflects in the character of the nation as a whole.

According to UN-Habitat estimates, at the end of this century, fifty percent of the world’s population would reside in big cities. The problems of homelessness and squatter settlements can increase many folds. All these problems would be a big challenge to the rulers of these poor countries.

[\[Syed, 2016\]](#) argues that if the legacy of the past is taken as an example, Pakistan should have been excellent in the field of town planning. One of the earliest cities in the world to display conscious design in its layout and functioning is our own Harappa Civilization. Similarly, the cities of Indus valley in Pakistan are the earliest examples. Adequate housing has a correlation with the social and economic development of human beings.

When we talk about deliberately planned and managed cities in history: At the same time, Muslims are accepted as true fathers of rational planning of cities and empires. Muslims are also credited to have originated the idea of formal zoning.

The function of physical planning and town planning is a provincial matter as per the fourth schedule of the Constitution of the Islamic Republic of Pakistan 1973, so the provinces enjoyed complete autonomy for performing these functions. This delegation of functions took place when the Local Government Ordinance came to force in 2001 which is now part of the Constitution of Islamic Republic of Pakistan 1973, due to seventeenth amendment in the Constitution of Islamic Republic of Pakistan 1973 ([Constitution of Islamic Republic of Pakistan 1973, Sixth Schedule](#)).

After coming into force of local Government enactments of 2001 and 2009, the main responsibility to look after the affairs of the housing and town planning is of Local Governments with a limited role of provincial Governments.

On the promulgation of Local Government Ordinance 2001, the functional responsibility for the preparation of spatial plans was of the Local Governments. The responsibility for the preparation of plans for land use, including classification and reclassification of land transferred to district Governments.

Development authorities which have an important role in the development of the housing industry were also shifted to the Local Governments ([Local Government Ordinance 2001](#)).

Preparation of master plans, structural and outline development Plans were required to be prepared within one year by Town and Union councils, within two years by the district Government and within three years by the City District Governments ([National Housing Policy 2001](#)). Spatial plans were not completed by the Local Governments within the time frame given by the Local Government Ordinance 2001.

(Syed, 2008) states that the reason for the failure was lack of capacity and lack of any expertise in the fields of urban planning on the part of local Governments. In addition to the necessary qualifications, town planning needs a vision for the future. There are hardly very few people in our planning departments who have this attribute.

Another reason for this neglect was no action on the part of the provincial Governments to provide technical assistance to local Governments. Punjab Government had issued Punjab Private Site Regulations in 2005 which was a measure not in time because the subject of housing was devolved to the local Governments in 2001 and these rules were required to be issued in 2001. The Punjab Private Site Regulations have done classification and reclassification of land.

The level of seriousness given by the Government of Punjab to the subject of housing and town planning can be judged from this fact that Government of Punjab has issued Punjab land use, classification, reclassification and redevelopment, rules 2008 on 12, March 2008. Under these rules, the land has been classified into six classes. These six classes include residential, commercial, industrial, urban agriculture and notified areas and each one of these has been further classified into permitted use, permissible use and prohibited use (The Punjab Land Use Rules, 2008).

The local Governments are supposed to prepare a classification map about the usage of the land of the sanctioned housing societies according to law.

Local Government is also required to prepare a land-use classification map using satellite images of the area. After the Rules of 2005, the Punjab Land Use (Classification, Reclassification and Redevelopment) Rules 2010 have been issued. These rules provide guidance to all the stakeholders of the housing industry. Development agencies issue approval to the housing developers to perform housing activity on the basis of these Rules.

From the start of Local Governments to date the needful has not been done, and only a few Governments have prepared master plans and classification and reclassification of land has been done; similarly, only a few Local Governments have done zoning of lands within their territorial jurisdictions. As a contrast to Pakistan in many countries, Local Governments have performed these tasks in a very good manner to provide adequate housing to people in a sustainable development process.

The spatial plans were not completed by the Local Governments within the time frame. As a result of it, two sets of regulatory frameworks, one of the development agencies and other of Tehsil Municipal Administration was operating in the country.

Federal Government cannot deal with this subject directly because it is the exclusive domain of the provincial Governments and Local Governments. So, the Federal Government can play an indirect role by providing technical assistance to the Local Governments. Federal Government can play a vital role by helping local Governments in preparing spatial planning and capacity building.

Pakistan is a signatory to UN-Habitat Agenda, and in recognition of the role of the local Governments, UN-Habitat declared local authorities as their closest partners in implementing this agenda. UN-Habitat emphasized the member countries to strengthen the financial and institutional capacities of the Local Governments. There is a need to establish as soon as possible the proposed Urban Policy Research Centre to work under the vision 2030 to prepare a spatial development plan for the provinces, to prepare structural plans at a district and master plans for areas under their control at the tehsil level (Planning Commission of Pakistan, 2010).

Role of the Federal Government as a Facilitator to Provide Housing Units

As per the Constitution of Pakistan 1973, the Federal Government cannot deal with this subject. So, it is suggested that the Federal Government should not leave the local Governments as helpless. Federal Government should provide assistance to local governments in terms of capacity building, financial as well as technical support.

Federal Government should hire experts in housing and town planning to assist local Governments from all over the world to prepare new master plans both at national and city levels. Due to limitation imposed by the Constitution of the Islamic Republic of Pakistan Federal Government cannot perform this function itself.

Federal Government should not leave this important subject to the sweet will of the Local Governments as it lacks capacity, and it should perform the role of facilitation to complete the task.

Recommendations and Suitable Amendments in the Legal Framework Relating to Housing Industry of Pakistan

Following are the recommendations to improve and strengthen the legal framework relating to the housing industry of Pakistan.

Application of the Legal Framework on Uniform Basis

The goal of housing for all as envisaged by the UN-Habitat can be achieved in Pakistan if the present legal framework relating to the housing industry is applied after incorporating suitable amendments in it. Provided, it is applied across the board without any discrimination on the basis of political, religious, ethnic or any other nature by all the provinces of Pakistan. All the Provincial and Local Governments must ensure their strict application in all districts through the prescribed regulatory mechanism. Housing is a provincial legislative subject, so it is the main responsibility of the provinces to apply the relevant laws in coordination with local Governments.

Identification and Biannual Report about Illegal Housing Schemes

Federal Government cannot deal with the issues faced by the housing industry of Pakistan directly due to the Constitutional embargo, so, all the districts must give a confirmation report that no unauthorized housing scheme exists in its area and the prescribed rules are being implemented. This report after every six months should be submitted to the provincial housing ministry of each province, and each provincial housing ministry should coordinate with the Federal Government to achieve the goal of housing for all in Pakistan.

Last Opportunity to the Outlaw Housing Schemes

In order to stop the malpractices and for fair dealings in the housing industry, identification of delinquent housing schemes in all the provinces should be made by all the provincial Governments in their territories. In order to bring all such housing schemes in the mainstream, such housing schemes should not be stopped at once, but an opportunity should be provided as a last resort to bring such housing schemes in the mainstream. All such housing schemes should be given a one-year time period to fulfil the requirements laid down in the relevant laws else legal proceedings be initiated against delinquents.

Standardization of all the Instruments of Housing Societies

In order to protect the investors from the clutches of the housing developers, the relevant legal framework should regulate standardization of application forms, formats, allotment letters, title documents, sale deeds, sale of lease and holding rights and where necessary the housing developers should be ordered to modify and amend their instruments to promote fairness in the housing industry.

Introduction of Financial Consultant in the Regulatory Committee

Most of the housing societies fail due to non-availability of funds or mismanagement of funds so in order to prevent this situation and to assist the housing developers the housing industry regulatory and monitoring mechanism should have a financial consultant in the scrutiny committee as envisaged by Punjab Private Site Regulation 2005. The other provinces should follow this good step taken by the Government of Punjab. The aim of this amendment should be to explore the feasibility of a business model by exploiting all finance generating avenues.

Elimination of Qabza Mafia (Illegal Occupant) from Housing Societies

It is a major problem faced by most of the housing societies that file of the plot is in the name of one person, and the possession of the plot is with another person, and the illegal occupants are not ready to hand over the possession of the plots to the allottees (rightful claimants) of the plots. Regulatory and monitoring laws must ensure that the plots of the members are not distributed due to adverse possession and delivery of the plots is handed over to the rightful claimants.

Tax Incentive to the Housing Developers

The ease of doing housing activity demands that an investor-friendly legal framework relating to the housing industry is introduced. Income tax laws should be helpful to encourage the housing developers in preference to other industry because of its value-added activity and increasing employment opportunity for the general public (housing activity provides jobs to more than forty industries).

Discouragement of Greedy Property Dealers

Housing is a basic necessity, and one of the fundamental needs of every person. Housing should not be treated as a nasty business; rather, it should be treated as a poverty alleviation measure so land Tax laws should be friendly towards genuine buyers and harsh towards investors/speculators. A welcome step in this regard has been taken by the Government by imposing a tax on the sale of the plot before the holding period of three years. This step would be helpful to eliminate the speculation in the housing industry of Pakistan. Housing should not be treated as a commodity.

Elimination of File System

The file system has increased the prices of the plots in many folds. A buyer, instead of constructing a house sells it again and again to earn more and more profit, and similarly, the new buyer further sells it and so on artificial inflation is created in the housing industry. All transactions of land/property should be entered in the deeds of the transaction on the basis of certified copies of "Fard" issued by District Government, Copying to Agency and not by Patwari.

No Increase in the Prices of the Land (Plots) But Increase in the Development Charges Only

In order to discourage the dealers' mafia in the housing industry, the artificial increase in the prices of the plots should be discouraged. The housing schemes should be bound to keep prices of the land intact as advertised/approved originally. However, development charges should be enhanced, but through resolutions passed by general body meeting in case of Cooperative Housing Societies and by the concerned regulatory authority in case of private developers.

Documentation of Land (Plots) Transactions

The elimination of the file system should be followed by the registration of each and every transaction with the registrar. All Transactions in connection with sale and purchase of land/ property /plots by the society or by individual members should be made through cheques/pay orders/bank draft only. The system of registration of land transactions has already been linked to the Federal Board of Revenue (FBR). This development would help in the documentation of economy and transparency in the housing industry.

Compulsory Condition of National Tax Number (NTN) To Purchase A Plot

Without a national tax number, nobody should be allowed to purchase any piece of land. The relaxation that a person without having an NTN can purchase any plot by paying a double rate of tax is not good to step. This condition has opened a gateway for those who have black money, by taking undue advantage of this condition such people can dump money in the housing industry. Such people can perform money laundering by paying a double rate of tax. Each party to a transaction must have a national tax number (NTN). Nobody should be allowed to purchase any plot without having a valid NTN number. This step would stop the people having speculative aims to enter the housing industry.

Allotment of Plot After Physical Demarcation on Ground

Selling of plots by way of selling files only has not only increases the prices of the plots many folds, but it has also opened a flood gate of corruption when more plots than the available plots on land are sold, or in some other cases, files are sold without having any plot at all. The plot should be allotted to the

members, only after on-ground demarcation as approved by the Board of Directors. Each and every sale/purchase of land/plot must be approved by a decision in the meeting of the Board of Directors.

Term of Office and Introduction of Rotation Policy

The management of the housing societies forms a monopoly, and due to continuous tenures, the management of the housing societies commits embezzlement. In order to put a check and balance on the working of the management of the housing societies, there should be a rotation policy and all the members of the housing societies should be given an opportunity to run the affairs of the housing societies. This rotation policy would help to put a check and balance on the working of the regime of the housing societies. The period for each term should not be more than one year.

Cancellation of Plot After an Opportunity of Hearing

No member of any housing society should be deprived of his or her plot for non-payment of any instalment or non-payment of development charges. If the cancellation of the plot is required in any case, the opportunity of hearing should be given to the member concerned. The housing society should not cancel the allotment of the plot of any member except by stating the reason and with the approval of the Board of Directors. Any such action should be intimated to the allottee (member) through a registered post acknowledgement due.

An Opportunity to Pay the Development Charges

In order to promote the housing for all a pro members approach should be followed. Against cancellation order, each allottee (member) must be given a right of representation to the Board of Directors and right of approval to the regulatory and monitoring authorities. In case the cancellation of allotment is due to non-payment of the price of land then at least one opportunity must be given to the allottee, and in case of non-payment of development charges, one opportunity must be given to the allottee (member) for making payments. However, in case of some outstanding administrative dues, the revival of the membership should be automatic on payment of such outstanding dues.

The penalty in Case of Failure to Pay Development Charges

Most of the housing societies fail due to non-payment of development charges, and due to this reason, the utility services are not provided, and the non-development of the housing society results in a failure. Every housing society must chalk out a well thought out development programme in which the payment of amount along with time period should be mentioned very clearly, and each housing society should abide by it. Predetermined penalty (surcharge) must be imposed keeping in view the severity in delay and gravity of delayed development aspect.

Check and Balance System in The Shape of Audit of Accounts

Most of the greedy people focus on the housing industry due to massive amounts involved in this industry. In order to keep such people away from the housing industry and to protect the rights of the members of the housing society, there should be a strong system of an audit by an independent firm of auditors. This audit report must be compulsorily required to be published and distributed to all the members of the housing society, and this task should be done by the regulatory bodies. The present law must specify an annual internal/external audit system enforceable by the regulatory authority.

Protection of Environment of The Housing Society

Development in the housing industry has been done at the cost of the environment. Special provisions should be added in the bylaws of each housing society to take care of the environment. Environment factors such as waste disposal, tree plantation, and water purification, road cleaning and anti-malaria measures must be made as an integral part of each housing society. For this purpose, explicit provisions should be added in the Legal Framework relating to housing industry of Pakistan.

Pending of Amount of Taxes on Housing Schemes

Taxes are collected by the Government as a result of a social contract between the state and people of the state. A major portion of civic taxes collected by the Government on account of property tax/transfer fees should be reverted to the Housing Societies for spending on maintenance services as long as they manage housing schemes. As an alternative of collecting taxes Government can relax the housing

industry from taxes and in consideration of its Government can take some portion of housing units in consideration of waived off taxes.

Consolidated Legislation to Regulate the Housing Industry

Shifting of responsibility by the three layers of Governments, i.e., Federal Government, Provincial Governments and Local Governments can be avoided when unidirectional legal framework in accordance with the fourth schedule (housing a pure provincial legislative subject) is done. Local and provincial Governments should play a vital role, and the Federal Government should facilitate these two Governments. The relevant portion of law on housing industry should be consolidated into a single/effective enactment. It is better to have a separate Legal Framework for each province to deal with the housing industry of each province.

Provision of Utility Services in Time to Housing Societies

It is a major reason for the failure of most of the housing societies that utility services are not provided in time to housing societies. Due to non-provision of utility services, many genuine housings schemes which have been formed after fulfilment of all cordial formalities results into failure, and it gives a very negative (discouraging) message to housing developers. Special clauses should be inserted to integrate the function of utility provision agencies such as WAPDA, Sui Gas, PTCL, and WASA & TEPA for providing trunk point services simultaneously with the development work. To give a binding force to the new developers, laws over-riding clauses be inserted in the relevant statutes. Letters of censure are issued to a subordinate staff of regulatory and monitoring authorities for any laxity, delaying tactics, blackmailing and internal corruption in the development of schemes/projects launched by the authorized housing developers.

Special Attention of the Government to Genuine Housing Societies

Many housing societies which are law-abiding and have not committed a violation under any law are suffering due to non-availability of utility services, Utility services to these housing societies should be provided on an emergency basis. Maintenance of utility services, i.e. electricity, Sui gas, water supply, telephone service and road repairing should be done by concerned Government departments since all the related bills/taxes are collected by them. In this regard, the pattern of Defence Housing Authority should be followed.

Transfer of Ownership to New Buyer by the Housing Society

Allotment of plots on the basis of file system should be discouraged as it is the practice being followed in the case of Defence Housing Society projects because it results in loss of revenue to the Government. Transfer of ownership of plots should be by the registry as prescribe by the Registration Act 1908. The management of housing societies should coordinate the buyers and sellers of the plots to strictly follow the procedure of law. This must be done under the close watch of the regulatory authority.

The Legal Framework Should Encourage House Building Finance Corporation and Financial Banks for Loan

Due to job creation at the massive level and economic impact of the housing industry, the Government should encourage house building finance corporation (HBFC) and other financial banks to provide loans to housing industry on lower mark-up rates. The rule should provide the manner of financing by banks and financial corporations in development projects of housing societies.

Protection Against Acquisition by the Government of Housing Societies

In order to give the safety of investment, assurance should be provided under the Legal Framework to all the investors of housing industry against acquisition by the Government. There should be adequate protection towards the investment of developers, and that of a third party against future acquisitions by the Government provided these housing societies are following the rules and regulations in letter and spirit.

The penalty of Acquisition Against Corrupt Housing Developers

Housing is a basic necessity, and sometimes people invest the saving of their whole lives in it. Under some situations, it becomes inevitable to intervene in the larger interest of the general public at large as

a last resort to take over the charge of the housing society. With an aim to protect the public interests, the rule should provide an eventuality of taking over the scheme by regulatory and monitoring authorities if developers do not develop the scheme within the committed time frame or deviate from original scheme or commit misconduct or try to commit fraud to deprive the general public of their hard-earned income. But this extraordinary step should be taken in extraordinary circumstances in the larger interest of the masses.

Encouragement of Joint Venture and Private Sector

The Government is unable to provide housing necessity itself even if the whole budget of public sector development program (PSDP) is spent on housing by leaving no budget for any other field even then the Government alone cannot achieve the goal of housing for all without the help of private sector. Under this situation, the importance of the private sector has increased. The legal framework relating to housing should cater to a joint venture of private to private, public to private or foreign investors to private developers. Also, the legal framework should facilitate mergers of the schemes by inserting a mandatory provision for the banks to use the land as equity against their finance/advances.

Encouragement of Foreign Direct Investment (FDI)

The legal framework should be changed and modified in such a manner that ease of doing business is possible. The barriers of doing housing activity should be removed by providing lands under the Land Acquisition Act 1894 and sometimes free of cost land with a share of the Government in the housing schemes launched by the foreign companies. A friendly tax regime should be introduced, which can encourage the private sector to do housing activity in Pakistan. The legal framework should explicitly encourage the foreign investors/companies to invest in private Housing Schemes in all the provinces as is the case of the preamble of Land Acquisition Act 1894 which explicitly recognizes the land needed for public purposes and land needed for companies.

Acquisition of Land for Housing Developers at Market Rate

The exploitation of the housing developers at the hands of landowners on the one hand and blackmailing at the hands of revenue officials, on the other hand, should be avoided. Generally, when the housing developers purchase a major portion of land from their own pockets and after getting approval of the housing schemes from the relevant authorities when they proceed to purchase the minor chunk of land 10 per cent to 20 per cent land the prices of this minor chunk of land are dictated by the owners of this piece of land in collision with revenue officials. This exploitation needed to be avoided by the Government. The Government should rescue these housing developers, and it should ensure the delivery of this remaining piece of land at market rate.

Imposition of Penalty on The Housing Developers for Lapse on Their Part

If there is a penalty (surcharge) on the members of the housing society, the developers of the housing societies should be equally responsible for paying the penalty if there is a lapse on their part and if the developers have failed to proceed with the development work in spite of the payment of development charges by the members in due date. Penalty clause is inserted against the developers for not ensuring continues services/ maintenance of the scheme as outlined in the advertisement such as instituting security measure, sanitation service, neat/tidy outlook of the surroundings, maintenance of the roads, the flow of stable electric supply, repair of leaking water/Sui gas lines, repair of telephone lines and ensuring a reliable / running sewerage system.

Supervision of The Development of Utility Areas

The developers of the housing schemes do not take an interest in the development of public utility areas and give it less importance. In order to combat this situation, the development of public utility areas, i.e. schools, hospital, graveyard, mosque, the market should be the topmost priority of the regulatory bodies of the housing industries.

Need to Strike a Balance in The Regulatory Mechanism

There is a need to strike a balance in the regulatory mechanism in such a manner that neither the housing developers should be allowed to do housing activity in an unbridled manner and according to their sweet will nor the regulatory mechanism should be so strict that there is undue interference on the

part of regulatory authorities that nobody is willing to perform housing activity. So, there is a need to strike down a balance in these two extremes. The legal framework must dispel the impression of over-regulating by the Government functionaries /departments in regulating the housing activities, and it must emit a flavor of the international cooperative principle.

Role of Regulatory Bodies to Ensure Implementation of The Legal Framework in Letter and Spirit Instead of Dictation

The regulatory authorities should work within their jurisdictions and should not dictate the housing developers to do housing activity as per their notion as developers are well versed in their field the role of the regulatory authorities should be to ensure that housing activity is done by following all the laws, rules, regulations and policies of the land relating to housing and no violation of any type is committed by the developers. The regulatory and monitoring authority should not dictate the business for the society; rather, it should ensure that the decisions of the general body meeting of the Cooperative Housing Societies are implemented in letter and spirit.

Joint Task Force in The Composition of Regulatory Authorities

There is a need for complete coordination among all the three layers of the Governments. Primarily it is the responsibility of the provincial Governments and respective local Governments concerned to regulate the activities of the housing societies but in order to achieve the goal of housing for all the Federal Government should also be taken on board as Federal Government is the principal interacting entity in UN-Habitat agenda so there should be a coordinated effort of all the three Governments (Federal Government, Provincial Governments and Local Governments).

Penalty for Illegal Extension of Housing Scheme

In many a case, a housing scheme is formed completely in a legal manner, and the allotment process is also done on merit basis and without any illegality. The problem starts when after the successful completion of the first phase of the housing scheme, the second phase of the scheme is started without getting approval from the relevant authorities for the start of the second or third phase. Penalty clause must be inserted/ invoked against a housing society, which announces the sale of next phase without the purchase of sufficient land and specific permission from the regulatory authority after necessary amendment in the site plan/master development plan. It is necessary because, after the successful completion of the first phase of the housing society, people blindly trust such housing scheme without doing verification about the next phase of the housing scheme.

Check on The Activities of Property Dealers and Land Mafia

When the plots are sold in a housing society in lieu of registration, the file of the plots is sold many times by the property dealers to earn abnormal profits. In order to avoid this kind of situation, transfer of plots should strictly be done on the basis of registration of plot as per the law of the land (Registration Act 1908). Copy of allotment/transfer document of a plot must be submitted to the regulatory and monitoring authorities. This step would not only be helpful to generate revenue for the Government, but it would also put a check on double transfers of the same plot.

Establishment of a Separate single office at the Provincial level.

Establishment of a single office at each provincial level is the ideal solution to coordinate with the Local Governments of the whole province. Punjab Government has already taken a step, and it has established an organization under the name and style of Punjab Housing and Town Planning Agency (PHATA) to bring orderliness in the housing industry of Punjab and to implement the main points of National Housing Policy 2001. It is an institution which is playing the role of a bridge between the Federal Government and Provincial Government.

Need to introduce national spatial Act to encourage the housing industry of Pakistan.

There is a dire need to enact a National Spatial Act which should provide for a monitoring role of the housing industry at Federal, Provincial and Local levels. Under its, provincial spatial development plans and district structure plans and tehsil master plans should be prepared.

Conclusion

The present Legal Framework, i.e. regulatory mechanism, has not been able to effectively regulate the working of the housing industry to control malpractice. However, a large number of illegal housing societies, are operating which are not proving helpful to achieve the goal of housing for all rather these housing societies have made the goal of housing for all more difficult. These housing societies have defrauded the innocent public by depriving it of billions of rupees. This does show that perhaps all is not well in the regulatory mechanism. The regulatory bodies are to be made responsible for transparent approval & effective monitoring of schemes to safeguard the public interest by strengthening the present regulatory Legal Framework in the light of above-mentioned recommendations.

Government of Pakistan is appearing to be fully committed to giving a boost to the housing industry of Pakistan. The present regime in power in Pakistan is giving priority to the housing industry to achieve the goal of housing for all by mobilizing the investment in the housing industry. Hopefully, soon, the goal of housing for all can be achieved by eliminating all the deficiencies in the Legal Framework and after an effective application of the amended Legal Framework.

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