

Apartment Ownership Law in Sri Lanka

Senaka Rohan De Saram

LL.B, LL.M, ACMA(UK), Attorney –at – law



Introduction.

High-rise buildings are not concepts and structures of the recent past. Although different from its modern counterpart, the ancient empires of Egypt, Greece and Rome, cities in United Kingdom, Europe, Russia and China, and to a limited extent, certain ancient structures in Sri Lanka, have examples of small medium and large buildings and living accommodation, ranging from 2 to 8 floors. As time went on, the construction of these tall buildings were extended to religious and civic buildings as well.

When considering high-rise buildings in ancient times, there existed recognized legal regimes to regulate them. In most cases however, these legal regimes did not deal with complicated ownership rights, but were mainly for regulating possession and possessory rights. In this regard Robert G Natelson in his article “*Comments on the historiography of Condominiums: The Myth of Roman Origin*” goes on to state as follows.

“Yet there can be little doubt that, although space occupancy occurred by apartments and floors, condominium-style space ownership was



*unrecognized in ancient Rome.*¹

The passage of time saw the primitive high-rise structures in the past and its legal concepts becoming subjected to development and change. The developments in materials such as steel, concrete glass, and the pre-requisite of any high-rise building the elevator, assisted in setting the stage for high rise buildings to finally live up to its name, commonly called the “skyscraper”. As such, the idea of owning and living in an apartment started becoming a reality in most cities, with new legal principles relating to high-rise building gradually evolving. Sri Lanka was no exception to the same. When one looks at the Colombo skyline today this is a proven fact. This development is now spreading to the suburbs of Colombo and outstation cities, such as Kandy, Galle, Kurunegala, Jaffna, Trincomalee etc.

Although laws such as the Condominium Property Act No. 12 of 1970 were introduced to Sri Lanka in the 1970s, it is only in the recent past that the apartment related industry has boomed in Sri Lanka. As such, it is increasingly necessary that members of our profession and stake-holders of the industry become familiar with the legal frame-work that governs the building, completing, selling, transferring living and maintaining of apartments in Sri Lanka.

Why a separate statutory framework was needed to own and regulate apartments and its structures

Prior to understanding which laws are applicable to apartments or

1 Robert G Natelson “Comments on the historiography of Condominiums: The Myth of Roman Origin” Oklahoma City University Law Review Vol 12 Spring 1987 Number 1 at page 23

condominiums, it is fundamental to understand why a separate statutory frame-work was necessary to own and regulate condominiums and its construction.

The legal frame-work of condominium structures originates from land law. The basic premise of land law relating to buildings is usually that the person who owns the land will own the building standing thereon. This has been recognized in our legal system from time immemorial in accordance with the Latin maxims; ‘*Omne quod inaedificatur solo solo cedit*’ (All that is built on the soil belongs thereto), ‘*Superficies solo cedit*’ (Things attached to the earth go with the immovable property) and *Cujus est solum ejus est usque ad caelum* (He who possesses land possesses also that which is above it). The said principles have been recognized many a time by our own courts from as far back 7th May 1895 when Justice Lawrie delivered his judgment in the case of DE SILVA v. HARMANIS 03-NLR-160². Some of the said cases state as follows.

DE SILVA v. HARMANIS 03-NLR-160³

The parties seem to be agreed that by the law of Ceylon the builder of a house on another man's land at once acquires a saleable right to that house.

That, however, is not the law. A house becomes the property of the owners of the soil on which it is built. Between the owners and the builders there may exist equities, such as a right to compensation, &c, but the ownership of a building cannot (in the ordinary case) be in another.

2 De Silva v. Harmanis 03 New Law Reports page 160

3 03 New Law Reports page 160

If such a division of property can be created by contract, it certainly was not created and did not exist here.

KANAGARATNAM v. SUPPIAH
61-NLR-282⁴

At page 284

I think the learned Judge was in error when he said that "the ownership of a building apart from the site on which it stands is well known to our law. It is called the right of superficies". It is clear beyond doubt that our law does not recognize the ownership of a building apart from the land on which it stands. In Samaranayake v. Mendoris¹ Drieberg J. so held, and, if I may adopt some words in his judgment, if at the time this theatre building was erected the plaintiff had no interest in the land, he cannot possibly be owner of the building in any sense, for it became the property of the soil-owner.

S. A. SUPPIAH v. J. J.
KANAGARATNAM (DECEASED) AND
OTHERS 61-NLR-553 Privy Council
Appeal No. 19 of 1959⁵

At page 557

Sansoni, J. (with whose judgment de Silva, A. J. agreed) said that the learned Judge was in error in saying "the ownership of a building apart" from the site on which it stands is well known to our law. It is called "the right of Superficies". He said "It is clear beyond doubt that our" law does not recognise the ownership of a building apart from the land "on which it stands" and referred to the case of Samaranayake v. Mendoris¹. He then referred to the submission of counsel for the plaintiff that his claim could be supported on the ground of the

4 61 New Law Reports 282

5 61 New Law Reports 553

jus superficarium. He said there were several objections to this contention, the chief being that the plaintiff's claim was to be declared entitled not to a jus superficarium but to an undivided ¼ share of the building and added that he could not at that late stage be allowed to make out a new case quite different from the one to be found in his plaint.

With all these observations their Lordships are in complete agreement

S. A. KANAGASABAI v. M. K.
MYLWAGANAM S. A. Kanagasabai v.
M. K. Mylwaganam 78-NLR-280 at
page 288

Our law does not recognise ownership of a house or building apart from the land on which it stands. The building loses its independent existence and becomes part of the land on which it is constructed. The principle of accessio in the case of buildings is embodied in the maxims, 'Omne quod inaedificatur solo solo cedit' (All that is built on the soil belongs thereto) and 'Superficies solo cedit' (Things attached to the earth go with the immovable property). Thus, land, in its signification, means not only the surface of the ground, but also everything built on it. Cujus est solum ejus est usque ad caelum (He who possesses land possesses also that which is above it). On a Conveyance of land, all buildings erected thereon pass with the land, even though there is no specific mention of such buildings in the deed of transfer. Thus, 'land', in our law, includes houses and buildings, and when the legislature employs the term 'land' in any statute, the word is presumed to include 'houses and buildings', unless there are words to exclude houses and buildings⁶

6 S. A. Kanagasabai v. M. K. Mylwaganam 78-NLR-280 at page 288



The said Common law principle created a legal obstacle when it comes to vertical buildings. The said law virtually prevented separate ownership of properties in a single high rise building, digressed from the ownership of the original land on which the same building was built on. In other words, separate ownership of properties in a building was not recognized in law. As such said Common law principles were not sufficient to meet the present day requirements and concepts of owning and regulating condominiums and vertical structures in Sri Lanka.

Legal framework of apartments and its structures

Due to the limitations of the Common law principles, requirements of vertical living and issues which sprang from the same, there arose a need to formulate a mechanism to facilitate the building, owning, maintaining and transfer of apartments and apartment structures. The answer to the same was statute law, which will preside over the Common law principles that existed, in relation to vertical structures and the condominiums therein. Thus the apartment industry in Sri Lanka became governed by statutory regimes. The main applicable statutes in this regard are as follows:

- a) Apartment Ownership Law, Act No 11 of 1973 as amended
- b) Condominium Management Authority Law, Act No 10 of 1973 as amended
- c) Land (Restrictions on Alienation) Act No 38 of 2014 as amended.

d) Registration of title act No 21 of 1988.

e) The Municipal law applicable to the municipality where the condominium structure was built

Apartment Ownership Law

At the very inception, the Condominium Property Act No. 12 of 1970 was enacted. The Condominium Property Act No. 12 of 1970 was thereafter repealed and replaced by the Apartment Ownership Law No. 11 of 1973, which was subsequently amended by the Apartment Ownership (Amendment) Act No. 45 of 1982, Apartment Ownership (Special Provisions) Act No. 4 of 1999, Apartment Ownership (Amendment) Act No. 39 of 2003 and Apartment Ownership (Special Provisions) Act No. 23 of 2018 (collectively the “Apartment Law”). The said laws now govern the building, owning, maintaining and transfer of vertical structures and the condominiums therein.

Concepts of Property recognized in the Apartment Ownership Law as amended

Originally, the Apartment Law only recognized completed condominium properties and accordingly only made provision for the registration of plans relating to fully completed condominium properties. Subsequently the Apartment Ownership (Amendment) Act No. 39 of 2003 made provision to recognize and extend the applicability of the Apartment Law to three types of condominium properties⁷. As such, presently the Apartment Law recognizes

⁷ Section 3 of the Apartment Ownership (Amendment) Act No. 39 of 2003 repeals Section 2 of the Apartment Ownership Law No. 11 of 1973

three types of condominium properties where the Apartment Law is applicable.

Condominium Property

- a) Provisional Condominium Property
- b) Semi Condominium Property

In addition to the above the Apartment Law also recognizes the concepts of Common Elements, Accessory Parcels and Share parcel associated with the aforesaid condominium properties.

Condominium Property

Section 2 (a) of the Apartment Law states that the said law is applicable to a Condominium Property, which is a building erected on an alienated land parcel and capable of being subdivided into parcels.⁸ To put it in simple terms, a Condominium Property is a fully completed condominium within a condominium structure which can be separated for segregated living. A Condominium Property is more fully described in a Condominium Plan set out in section 5(1) of the Apartment Law.⁹

Provisional Condominium Property

Section 2 (b) of the Apartment Law states, that the said law is applicable to a Provisional Condominium Property, as a building proposed to be erected on alienated land held as one land parcel and capable of being subdivided into parcels.¹⁰ To put it in simple terms, a Provisional Condominium Property is a condominium which does not physically exist, but is one that is to be built in

the future. Such structures are usually set out in drawings. It is basically a condominium that only exists on paper. A Provisional Condominium Property is more fully described in a Provisional Condominium Plan set out in section 5(A) of the Apartment Law.¹¹

The recognition of Provisional Condominium Properties by law was a very important development in the law, as the law recognized proposed apartments which are depicted in plans. With this recognition, the concept of pre-sales was introduced to Sri Lanka, whereby a developer was able to sell a condominium which had not been built at the time of sale, but legally recognized on a plan. It is the said concept that created a boom in this industry in Sri Lanka, where even prior to a single apartment being built the developers were able to sell condominiums in a proposed condominium complex.

Semi Condominium Property

Section 2 (c) of the Apartment Law states that the said law is applicable to a Semi Condominium Property building as partly erected on alienated land held as one land parcel on which there are more than one completed condominium parcels fit for human habitation.¹² To explain simply, this is basically a partly completed condominium within a condominium complex where you will find more than one completed condominium unit fit for human habitation. A Semi Condominium Property is more fully described in a Semi Condominium Plan set out in section 5(B) of the Apartment Law.¹³

8 Section 2 (a) of the Apartment Ownership Law

9 Section 5 (1) of the Apartment Ownership Law

10 Section 2 (b) of the Apartment Ownership Law

11 Section 5 (A) of the Apartment Ownership Law

12 Section 2 (c) of the Apartment Ownership Law

13 Section 5 (B) of the Apartment Ownership Law



Thus when dealing with the Apartment Law, one needs to bear in mind that the said law deals with the above three types of Condominium Properties, each of which is recognized separately. Knowing the said segregation also helps to understand the structure of the Apartment Ownership Act as amended, which is based on the said three concepts.

Registration of Condominium Plan, Provisional Condominium Plan and Semi Condominium Plan

As stated above, due to the fact that the Apartment Law recognizes three types of Condominium Properties, the said law also sets out mechanisms on how to recognize the said properties and the manner in which they require to be registered. The Apartment Law presently makes provision for the registration of plans relating to Condominium Property, Provisional Condominium Property, Semi Condominium Property separately¹⁴.

Section 26 of the Apartment Law defines what a Condominium Plan, Provisional Condominium Plan and Semi Condominium Plan are.¹⁵ The said section inter alia states that a,

a) Condominium plan should contain particulars in section 5,¹⁶

b) Provisional Condominium plan should contain particulars in section 5A,¹⁷

c) Semi Condominium Plan should contain particulars in

section 5B,¹⁸

of the Apartment Law.

Section 5(1), 5B and 5C of the Apartment Law specifies that the Condominium Plan, Provisional Condominium Plan and Semi Condominium Plan require to be drawn by a licensed surveyor or under the authority of the Surveyor General.¹⁹ The said sections also set out the requirements that the Condominium Plan, Provisional Condominium Plan or a Semi Condominium Plans require to be possessed, in order that it be registered. The said plans basically give a description of the condominium property which will ultimately be recognized as the separate property in law. The said plans also set out the common elements and accessory parcels of the said condominium complex.

In addition to the above statutory provisions stated in brief, the Minister of Housing and Constructions under Section 24 read with Section 6(e) of the Condominium Management Authority Law, No. 10 of 1973 by Gazette Extraordinary bearing No 2026/25 dated 5th July 2017 made further regulations in relation to the preparation of Condominium Plans, Provisional Condominium Plans or Semi Condominium Plans. Part I, Clause 6 and 7 of the said Gazette Extraordinary stipulates further requirements in relation to Condominium Plans, Provisional Condominium Plans or Semi Condominium Plans which require to be adhered to.

Section 3A, 3B and 3C of the Apartment Ownership Law set out the manner in which an application must be lodged for the registration of a Condominium Plan,

18 Section 5 (B) of the Apartment Ownership Law
19 Section 5(1), 5B and 5C of the Apartment Ownership Law

14 Section 3 (1) of the Apartment Ownership Law

15 Section 26 of the Apartment Ownership Law

16 Section 5 of the Apartment Ownership Law

17 Section 5 (A) of the Apartment Ownership Law

Provisional Condominium Plan and Semi Condominium Plan, respectively. It also sets out the documents and information that must be lodged with the relevant application.²⁰

Where the application for the registration of a Condominium Plan, Provisional Condominium Plan and Semi Condominium Plan is made respectively –

a) one needs to file the duplicate of the Condominium Plan, Provisional Condominium Plan or Semi Condominium Plan in the Condominium Provisional Condominium or Semi Condominium Parcels file,²¹ and,

b) open a new title file register in respect of each Condominium Parcel shown in the Condominium Plan, Provisional Condominium Plan or Semi Condominium Plan and make suitable cross-references to such register.²²

The statutory requirements for the registration of Condominium plans, Provisional Condominium plans and to a Semi Condominium plans, also requires a certification of common amenities and common elements, issued by the General Manager of the Condominium Management Authority. In order to obtain such certification, the Condominium Management Authority

has stipulated certain requirements in applying for the same. As such any person who requires to register a Condominium plan, Provisional Condominium plan or a Semi Condominium plan with the Registrar of Title would first need to fulfill the requirement of the said Condominium Management Authority. These requirements of the said authority are set out in the Gazette Extraordinary bearing No 2026/25 date 5th July 2017.

The procedure commences with an application made to the Condominium Management Authority in the forms set out in Schedule 1 to 3 of the said Gazette.²³ Applications for a Condominium Property, Provisional Condominium Property and Semi Condominium Property requires to be made in terms of the format given in Schedule 1, 2 and 3 of the said Gazette, respectively.²⁴ It is a further requirement that the said application requires to be signed by the owner of the condominium property.²⁵

Although each type of condominium property has similar documentation required for registration; close scrutiny of the separate sections show that the requirements differ from a Condominium plan to a Provisional Condominium plan and to a Semi Condominium plan. In the event one is to register such a plan, it is important to know the said differences and requirements, considering the fact that the requirements for registration differs from a Condominium plan to a Provisional Condominium plan and to a Semi Condominium plan.

20 Section 3A, 3B and 3C of the Apartment Ownership Law

21 Section 6(3) (a) (i), 6(3) (b) (i) and 6(3) (c) (i) of the Apartment Ownership Law

22 Section 6(3) (a) (ii), 6(3) (b) (ii) and 6(3) (c) (ii) of the Apartment Ownership Law

23 Gazette Extraordinary bearing No 2026/25 dated 5th July 2017 Part I Issuance of Certificates clause 2 at page 5A

24 Gazette Extraordinary bearing No 2026/25 dated 5th July 2017 Appendix 1, 2, and 3

25 Gazette Extraordinary bearing No 2026/25 dated 5th July 2017 Part I Issuance of Certificates clause 3 at page 5A



The Registrar of lands can refuse to register a Condominium plan to a Provisional Condominium plan and to a Semi Condominium plan. The said refusal however has to be with reasons and has to be communicated to the applicant without payment or delay.²⁶ An appeal can be made to the Registrar General within 30 days of such communication to vary or reverse the said decision made by the Registrar of Lands.²⁷

Section 3 (2) of the Apartment Law requires one to register a Condominium Plan;

a) within 18 months from the date of the sale or agreement to sell, or 3 months from the date of completion of the building whichever is earlier, or,

b) within 6 months from the date of completion of the building if the sale or the agreement to sell of any condominium took place after the date of completion of the building.²⁸

Section 3(2) a) of the Apartment Law deals with a situation where the condominium building is not completed and section 3(2) b) of the Apartment Law deals with the situation where the condominium building is completed. The Apartment Law provides for an extension of the applicable time period, with the permission of the Condominium Management Authority, acting in consultation with the Registrar of lands²⁹.

²⁶ Section 6(5) of the Apartment Ownership Law

²⁷ Section 6(6) of the Apartment Ownership Law

Section 38 of the Registration of Documents Ordinance

²⁸ Section 3 (2) of the Apartment Ownership Law

²⁹ Section 3 (3) of the Apartment Ownership Law

Any person who contravenes the aforesaid provisions relating to the registration of a Condominium Plan, will be liable for conviction after summary trial before a Magistrate to a fine not exceeding Sri Lankan Rupees Fifty Thousand and to a further fine of Sri Lankan Rupees One Thousand for each day the offence continues to be committed, after such conviction³⁰.

In any construction of the Condominium complex, the developer will initially draw up the Provisional Condominium Plan. With this the Developer as stated above, can offer for sale the proposed condominium units. Eventually, the Condominium complex will be completed and the need for a Provisional Condominium Plan or Semi Condominium Plan will not arise, due to the fact that both these plans deal with proposed or incomplete condominiums property complexes. As such after the completion of the condominium building, one will only be dealing with the Condominium Plan. This together with the Condominium Deed of Declaration described below will be the final documents one will deal with when it comes to condominiums in a building. The rights of all parties in a condominium complex will be based on the final Condominium Plan.

The distinction of registration of a Condominium Plan, Semi Condominium Plan and Provisional Condominium Plan

The effects of registering a Condominium Plan, Semi Condominium Plan and Provisional Condominium Plan is a very important process due to the fact that, certain legal outcomes flow from such registration. The Apartment Law however distinguishes between

³⁰ Section 3 (4) of the Apartment Ownership Law

the registration of the Condominium Plan and Semi Condominium Plan as against a registration of a Provisional Condominium Plan.

In relation to the above, Section 7A(2) of the Apartment Law states that upon the registration of a Condominium Plan, the Provisional Condominium Plan or the Semi Condominium Plan the owner of the Condominium, Provisional Condominium or Semi Condominium will be deemed to be the owner of such condominium parcel.³¹ However section 9 of the said act states that only upon the registration of the Condominium Plan or the Semi Condominium Plan that the building depicted in the said plan is divided into the units indentified therein.³² As such it is only the registration of a Condominium Plan or the Semi Condominium Plan which puts an end to the traditional legal concept, explained above, that things on the land belong to the person who owns the said land described above. The registration of a Condominium Plan or the Semi Condominium Plan as such brings about separate ownership, to each condominium parcel which is built on a land.

With the operation of law, the registration of the Condominium Plan and Semi Condominium Plan also creates the Management Corporation for the said condominium complex, in addition to the separation of ownership to each condominium parcel³³. However in the event of a registration of a Provisional Condominium Plan, said Management Corporation is not created by the operation of law. The mere reason for this is that the Provisional Condominium Plan only deals with

a futuristic condominium complex, which is not occupied. As such there is no necessity for the creating of a Management Corporation which will be discussed below.

Considering the above one should be mindful of the fact that the registration of Condominium Plan, Semi Condominium Plan is not the same as a registration of a Provisional Condominium Plan.

Effect of registration of a Condominium or Semi Condominium Plan

In the case of a Condominium Plan or Semi Condominium Plan, section 9 (1) of the Apartment Law provides that upon its registration each building or partly completed building depicted in the Condominium Plan or Semi Condominium Plan is deemed to be divided into units and identified therein.³⁴ Further the common elements are held by the owners of the condominium parcels as tenants in common, proportional to their respective share parcels, for the same term and tenure as the respective condominium parcels are held by them.

Upon registration of a Condominium Plan or Semi Condominium Plan, as the case may be, any condominium parcel depicted in such Plan and the common elements appurtenant thereto can be held and dealt with in the same manner and form as any land³⁵. In terms of the said act, each individual Condominium Parcel depicted in a registered Condominium Plan or Semi Condominium Plan and the common elements appurtenant thereto are deemed to be absolutely owned by the person or persons described in the

31 Section 7 A (2) of the Apartment Ownership Law

32 Section 9 of the Apartment Ownership Law

33 Section 20B of the Apartment Ownership Law

34 Section 9(1) of the Apartment Ownership Law

35 Section 9 (4), of the Apartment Ownership Law



relevant plan as the owner or owners of the Condominium Property or Semi Condominium Property.³⁶ This exercise of ownership rights is however, subject to any right a mortgagee had in the Condominium Property or in the Semi Condominium Property, prior to such registration.³⁷

Weerasuriya J. in the case of **WICKRAMSINGHE v. CORRINE DE ZOYSA** explained the same in the following manner.

The Apartment Ownership Law came into effect so on 20. 03. 1973. This explains why the donor resorted to by means of deed No. 1876 (P3) to donate the same premises to the plaintiff-appellant, 1 st and 2nd defendant-respondents in undivided shares, (vide page 3 - 2nd paragraph of P3). The deed No. 2078 (P4) and condominium plan (P5) terminated undivided ownership of the flats bearing Nos. 14/1, 14/2, 14/3 and 14/4 and apportioned premises bearing Nos. 14/1 and 14/3 to the 1st defendant-respondent, 14/2 to the plaintiff-appellant and 14/4 to the 2nd defendant-respondent in terms of the Apartment Ownership Law.³⁸

The 2nd consequence of the registration of the Condominium Plan or Semi Condominium Plan is the creation of the Management Corporation discussed below. Section 20B (1) of the Apartment only creates Management Corporation, with perpetual succession with the registration of the Condominium Plan and Semi Condominium Plan.³⁹

The 3rd consequence of the registration of the Condominium Plan or Semi Condominium Plan is in relation to the by-laws set forth in the 2nd schedule to the Apartment Law discussed below. In terms of the Apartment Law the applicability of the said by laws to the Condominium Property is recognized with the registration of the Condominium Plan or Semi Condominium Plan.⁴⁰ Prior to such registration the said by-laws will not be applicable as there exist no legally recognized Condominium Plan or Semi Condominium Plan. The drawback of this legal provision is that today, one finds many occupied properties where the registration of the Condominium Plan or Semi Condominium Plan has not taken place. In such a situation the said by-laws will not be applicable.

Effect of registration of a Provisional Condominium Plan

Upon registration of a Provisional Condominium Plan, each Provisional Condominium Parcel depicted in such Plan together with the Provisional Common Elements appurtenant thereto are deemed to be absolutely owned by the person described in the relevant plan as the owner of the Provisional Condominium Property⁴¹. Such ownership is however qualified to by the following;

- (a) Mortgages executed prior to the registration of the Provisional Condominium Plan, or after the registration of the Provisional Condominium Plan securing the land parcel, where the proposed building is to be erected. Such Mortgages are stated to extend to each

36 Section 9 (5), of the Apartment Ownership Law

37 Section 9 (5), of the Apartment Ownership Law

38 Wickramasinghe v. Corrine De Zoysa 2002 1 SLR 33 at page 37.

39 Section 20B (1) of the Apartment Ownership Law

40 Section 20 G (3), of the Apartment Ownership Law

41 Section 9 A, of the Apartment Ownership Law

provisional condominium parcel, and the provisional condominium owner is precluded from executing any instrument in respect of any provisional condominium parcel or land parcel, in favour of any other party without the consent of the mortgagee or mortgagees⁴².

(b) Agreements of Sale for individual provisional condominium parcels registered at the relevant land registry⁴³.

(c) the original owner of the property on which the said Provisional Condominium Plan is prepared, is precluded from selling, leasing, renting or disposing in any manner, the said land until the building is partly completed and registered at the relevant land registry as a Semi Condominium Property⁴⁴. This restriction does not however apply to a mortgagee's right to sell the said land based on the rights derived by the mortgagee in terms of a mortgage bond.⁴⁵

When does a Condominium Plan, the Provisional Condominium Plan or the Semi Condominium Plan get registered?

Considering the aforesaid legal implications, it is important to know when a Condominium Plan, the Provisional Condominium Plan or the Semi Condominium Plan becomes registered.

The said date is important due to the fact that in terms of the aforesaid

42 Section 9 A (a), of the Apartment Ownership Law

43 Section 9 A (b), of the Apartment Ownership Law

44 Section 9 A (c), of the Apartment Ownership Law

45 Proviso to Section 9 A (c), of the Apartment Ownership Law

law, the land on which the said condominium complex is built is no longer recognized in law and it is the Condominium, Provisional Condominium or Semi Condominium parcel that will be recognized from thereon. Further when it comes to the registration of a Condominium Plan or a Semi Condominium Plan the Management Corporation is also created. The Management Corporation is a separate legal entity and as such the date of its creation is essential for its internal functions and accounting purposes.

In terms of the Apartment Law, the Condominium Plan, the Provisional Condominium Plan or the Semi Condominium Plan as the case may be, is deemed to be registered, when the application of the owner of the Condominium Property, the Provisional Condominium Property or the Semi Condominium Property tendered for registration, has been signed and sealed by the Registrar and cross-reference has been duly made in all relevant title registers⁴⁶.

In the absence of the need to sell condominiums, the Apartment Law does not make it mandatory for an owner of a condominium property to register a Condominium Plan, Provisional Condominium Plan or a Semi Condominium Plan. In this regard section 3 (1) of the Apartment Law reads as follows.

3 (1) The owner of any Condominium Property any Provisional Condominium property or any semi Condominium Property as the case may be, may make application in the prescribed form to the Registrar with the prescribed fee for the registration of a Condominium Plan, or a

46 Section 7A (1), Apartment Ownership Law



*Provisional plan ' Condominium Plan or a semi Condominium Plan as the case may be.*⁴⁷

This position has also been recognized in the case of MALLIKA FERNANDO V NAGESH FERNANDO decided on the 15th of May 2001 prior to the amendment of the Apartment law made in the year 2003. In the said case Justice Jayawickrama, J goes on to state as follows.

*The registration of condominium property is not imperative under the Apartment Ownership law. Section 3(1) clearly states that any person claiming to be an owner of any condominium property “may” make application for the registration of a plan of the condominium property. Thus registration is at the discretion of the owner of any condominium property. If a owner does not register a condominium property under the provisions of the Apartment Ownership Law, he may become guilty of an offence under section 21 of the law but it will not affect the owner’s rights in respect of the property.*⁴⁸

Common Elements

There exists much confusion for laymen as to what amounts to common elements in a condominium complex. The same has led to many disputes in the recent past when it comes to certain condominium complexes. In the given context, it is important to ascertain what amounts to common elements, as it is these properties that are held and enjoyed by all condominium owners in common.

The origination of the Common Elements in a Condominium Property

47 Section 3(1) of the Apartment Ownership Law

48 MALLIKA FERNANDO V NAGESH FERNANDO 2001
1 SLR 403 at page 406

commences at the planning stage of the Condominium Property. The initial building plan will depict the first draft of the Common Elements in a Condominium Property. The building plan however is not a document recognized by the Apartment Law to ascertain or describe the Common Elements in a Condominium Property. It is only a plan which will be considered at the initial stages by the Local Authorities. Nevertheless, the building plan will be a good starting point to ascertain what the Common Elements are in a Condominium Property. Unfortunately this plan in practice does not reach the ultimate owner of the Condominium Unit, and requires effort in some cases to obtain a copy thereof.

With the approval of the building plan, the registration of the Condominium Plan, Provisional Condominium Plan and Semi Condominium Plan will take place as set out above. It is a requirement in terms of the Apartment Law that the Common Elements be defined in such Condominium Plan, Provisional Condominium Plan and Semi Condominium Plan.⁴⁹ For the registration of such plans, a certification is required from the General Manager of the Condominium Management Authority in relation to the said Common Elements.⁵⁰ Further a declaration by the relevant Notary giving a description of the Common Elements in a Condominium Property.⁵¹ As such with

49 Section 5(1) (j) of the Apartment Ownership Law
Section 5(A) (j) of the Apartment Ownership Law
Section 5(B) (j) of the Apartment Ownership Law

50 Section 3(A) (2) (i) of the Apartment Ownership Law

Section 3(B) (2) (f) of the Apartment Ownership Law

Section 3(C) (2) (f) of the Apartment Ownership Law

51 Section 3(A) (2) (j) (vii) of the Apartment Ownership Law

the registration of the Condominium Plan, Provisional Condominium Plan and Semi Condominium Plan, one can come to a relatively clear understanding what constitutes the Common Elements of the Condominium Building, by simply going through the same.

All of the above plans are generally in most cases decided upon by the person who decides to erect condominium building. As such it is such person's decision which defines what the Common Elements of a condominium building would be. In the light of the above, one should next consider the definition of Common Elements in terms of the Apartment Law. Whatever the plan of the creator the said plan will need compliance with the definition as well.

In terms of the definition set out in the Apartment law, common elements are so much of the land parcel for the time being not comprised in any condominium parcel shown in a Condominium Plan or Semi Condominium or Provisional Condominium Plan, approved by the authority for the time being responsible for the approval of such plans.⁵²

The Apartment Law goes on to identify certain common elements by stating that unless otherwise described specifically as comprised in any condominium parcel in a Condominium Plan, Semi Condominium Plan or Provisional Condominium Plan and shown as capable of being comprised in such condominium parcel, common elements include the following :

1. foundations, columns,

Section 3(B) (2) (j) of the Apartment Ownership Law

Section 3(C) (2) (k) of the Apartment Ownership Law

52 Section 26, Apartment Ownership Law

gardens and external beams, supports, main walls, roofs, walls, lobbies, corridors, stairs, stairways, fire escapes, entrances, exits of the building or buildings;

2. car parks, recreational, or community facilities, gardens, parking areas, roofs and storage spaces;

3. central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, refrigeration and air-conditioning, telephone, radio re-diffusion, garbage disposal and incinerators;

4. escalators, lifts, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus;

5. premises for use by security guards, caretakers and watchmen;

6. all facilities described as common elements in any plan for a condominium development approved by the authority for the time being responsible for such approval and all facilities which may be shown in a legend of a Condominium Plan or Semi Condominium Plan or Provisional Condominium Plan as common elements; and

7. all other parts of the land parcel and comprised in any condominium parcel necessary or convenient to the existence and maintenance and for the reasonable common use and safety of the common elements



including the roads and access drains and ditches, lanes, parks playgrounds and other open spaces appurtenant to the Condominium Property and Semi Condominium Property.⁵³

In Part I, Clause 7 (ii) of the Gazette Extraordinary bearing No 2026/25 date 5th July 2017 set outs the following in relation of Common Elements.

(ii) *where a Condominium Property is to be erected and the relevant Condominium Plan shall indicate, in addition to the delineation which indicates the surface boundary of the building, all the common elements such as common drains, soakage pits and septic tanks found in the boundaries of the lands situated outside the building. There shall be indications to distinguish a proposed building from an existing building;*⁵⁴

As seen above the definition of Common Elements set out in the Apartment Law enumerates certain parameters as to what Common Elements should be in a Condominium Property. The Gazette Extraordinary bearing No 2026/25 date 5th July 2017 also sets outs certain other requirements in relation to Common Elements.

The definition of common elements as such, is totally dependent on the Condominium Plan or Semi Condominium Plan or Provisional Condominium Plan. As such, what amounts to a common element will vary from one condominium complex to

⁵³ Section 26 of the Apartment Ownership Law

⁵⁴ Part I, Clause 7 (ii) of the Gazette Extraordinary bearing No 2026/25 dated 5th July 2017

another. One must not blindly assume that the common elements are the same in all condominium complexes. In order to ascertain what the common elements are, one must physically go through the Condominium Plan or Semi Condominium Plan or Provisional Condominium Plan. The common elements set out in the said Condominium Plan or Semi Condominium Plan or Provisional Condominium Plan, will be the common elements of the particular condominium complex.

Accessory Parcels in a Condominium Property.

The Apartment Law defines an Accessory Parcel in the following manner.

" accessory parcel " means a unit intended for separate ownership and was with any other specified unit or units for any purpose

In a Condominium Property an Accessory Parcel can be a basement, part of the garden, car parks, servants rooms or store rooms. An Accessory Parcel is property parcel in a Condominium Property, which is generally attached to one or more Condominium Parcels. Some jurisdictions refer to these areas as exclusive use areas. It grants more extensive rights of use to one or more Condominium Unit owners excluding the others.

An Accessory Parcel does not form part of the Common Elements of a Condominium Property. It is mostly a clearly demarcated area, in favour of one or more Condominium Unit owners. If not for the demarcation, the said areas would have been part of the Common Elements in a Condominium Property. As such other than the owners

of the Condominium Units to which the Accessory Parcel is appurtenant to, the other Condominium Unit holders will not be legally entitled to use the said Accessory Parcel of a Condominium Property.

An Accessory Parcel or any share of it, cannot be dealt with independently from that of the Condominium Parcel to which such accessory parcel has been made appurtenant to.⁵⁵ While dealing with an Accessory Parcel independently from that of its Condominium Parcels is an offence, any assurance made in contravention of the same also does not oblige registration under the Apartment Law.⁵⁶ Such registration is further considered null and void and shall not pass any estate or interest in the accessory parcel. Where Accessory Parcel has been dealt with independently from that of its Condominium Parcels, the Registrar of Titles is entitled to cancel the same on its discovery. Any person affected by such cancellation is not entitled to any compensation.⁵⁷ As to which Condominium Parcel the Accessory Parcel is appurtenant to has to be identified by going through the relevant a Plan.

Share Parcel of the Condominium Property

The Share Parcel in a condominium property, identifies the percentage of co- ownership share of the Common Elements in a Condominium Property, a particular condominium owner is entitled to. The method of calculating the Share Parcel is most important for the success or failure of its acceptances and upkeep of the Condominium Property.

55 Section 11A (1) of the Apartment Ownership Law

56 Section 11A (2) (3) of the Apartment Ownership Law

57 Section 11A (4) of the Apartment Ownership Law

The said calculation procedure differs from jurisdiction to jurisdiction. There are two common methods adopted in calculating the Share Parcel.

a) To divide the respective unit holders square foot area by the square foot area of the Condominium Property excluding the Common Elements.

b) To divide the respective unit holders unit value by the value of the Condominium Property excluding the Common Elements.

In most jurisdictions there is freedom granted to the developer to come up with the values in relation to Share Parcel. As such most developers will either use one of the above techniques, or will use one of the above with suitable justifiable improvisations to suit the design of the building. Thus in most cases the Share Parcel of a Condominium Property is decided by the developer.

In Sri Lanka, the Apartment Law does not set out a mechanism to ascertain the Share Parcels in a Condominium Property. The Gazette Extraordinary bearing No 2026/25 date 5th July 2017 however introduced a requirement that when calculating Share Values the areas of the Accessory Parcel required to be added to the main Condominium Parcel.⁵⁸ By including such a requirement, it can now be said that after the introduction of the said Gazette, one will need to follow the first method stated above based on size when calculating the Share Value.

The importance of the Share Parcel is that it will determine the contribution for maintenance in relation to the

58 Part I, Clause 7 (v) of the Gazette Extraordinary bearing No 2026/25 dated 5th July 2017



Common Elements in a Condominium Property.⁵⁹The Share parcel will also determine the weight of the vote a unit holder will possess when voting at the Meetings of the Management Corporation, and a poll is demanded.⁶⁰In the event the Condominium Property concept is terminated the Share Parcel further determines the percentage of co ownership of the property which has lost its condominium status.⁶¹

The manner in which condominium properties are transferred

Ownership of apartments require to be transferred by way of a notarially executed document. The reason being is that the above definition considers a condominium unit as land which can be separately owned.⁶² As such the Prevention of Frauds Ordinance mandates that the said transfer requires to be performed by way of a notarially executed document.

Considering the above categories of condominiums, there will be Condominiums, Provisional Condominiums or Semi Condominiums for transfer, depending on the stage of development of the condominium complex. The method of transfer depends on the documentation, which has been registered in relation to the condominium property.

As stated above, due to the fact that the mere registration of a Provisional Condominium does not legally sub-

⁵⁹ Section 20C (2) (bb) of the Apartment Ownership Law

Part IV, Clause 11 (g) of the Gazette Extraordinary bearing No 2026/25 dated 5th July 2017

⁶⁰ Rule 14 of the 1st schedule to the Apartment Ownership Law

⁶¹ Section 20Q (4) (a) of the Apartment Ownership Law

⁶² Section 26 of the Apartment Ownership Law
Section 2 of the Prevention of Frauds Ordinance.

divide the building' Provisional Condominiums are not recognized as a separate property in law. It is only a futuristic design of a property, that only exists on the Provisional Condominium plan. As such, since it is not a property recognized in law, it cannot be transferred by a deed. It is due to this legal obstacle that Developers enter into sales agreements with their clients, to sell such units which are shown in a plan in an unconstructed condominium complex.

On the contrary, with the registration of the Condominium Plan or the Semi Condominium Plan, a legally recognized property is created. As such the same can be transferred by a deed of transfer.

Considering the above, when it comes to the transfer of a condominium, you will have two types.

- a) Transferring of an uncompleted condominium which is being built.
- b) Transferring of a fully completed condominium after the registration of the Condominium Plan or the Semi Condominium Plan.

In relation to transferring of an uncompleted condominium which is being built, one will first enter into a sale agreement. With the subsequent registration of the Condominium Plan, one will execute a deed of transfer in favour of the purchaser. With regard to the transferring of a fully completed condominium after the registration of the Condominium Plan, one needs only to execute the deed of transfer.

In a practical sense, a developer will design the condominium complex. The

Developer may or may not register a Provisional Condominium Plan or a Semi Condominium Plan. The Developer will enter into agreements to sell for the incomplete condominium units. Thereafter the Developer will complete the project and execute the Condominium Plan, which will describe the units in the developer's original design shown to their customers. With the registration of the Condominium Plan, the Developer will, by deed of transfer, transfer the completed Condominiums to its customers.

The Management Corporation of a condominium property

With the registration of the Condominium Plan or the Semi Condominium Plan, a legal entity known as the Management Corporation is created by law, for every condominium complex. The Management Corporation is a body corporate with perpetual succession and a common seal.⁶³ The owners of the condominium units are the members of the Management Corporation⁶⁴. The Management Corporation functions through a council.⁶⁵ The Management Corporation can;

- (a) sue and be sued on any contract made by it;
- (b) sue and be sued in respect of any matter affecting the common elements;
- (c) be sued in respect of any matter connected to the Condominium Property or Semi Condominium Property for

⁶³ Section 20B (1), Apartment Ownership Law

⁶⁴ Section 20B (1), Apartment Ownership Law

⁶⁵ Section 20B (3), 20C (3), Apartment Ownership Law read together with the first schedule of the Apartment Ownership Law

which all condominium parcels are jointly liable⁶⁶.

A Management Corporation which was established upon the registration of a semi condominium property shall continue to function immediately after the conversion of the said semi condominium property to a condominium property.⁶⁷

The first meeting of the Management Corporation requires to be summoned with the assistance of the Condominium Management Authority, within 3 months from its incorporation. The Management Corporation requires functioning in accordance with the rules set out in terms of the first schedule of the Apartment Law.⁶⁸

The rules set out in the first schedule of the Apartment Law, are like the articles of association of a company or a constitution of a society. The rules bind the Management Corporation and the owners of the condominium parcels who are its members.⁶⁹

The said rules contain provisions *inter alia* relating to the appointment of members to the council, convening meetings and quorum for meetings, appointment of chairman, voting mechanism at meetings, powers and duties of the council, use of common seal. The Council is free to adopt and implement new rules which are not in contravention with the provisions of the first schedule and regulate its own procedure at meetings⁷⁰.

The Management Corporation is

⁶⁶ Section 20B (2), Apartment Ownership Law

⁶⁷ Section 20B (8), Apartment Ownership Law

⁶⁸ Section 20B (4), Apartment Ownership Law

⁶⁹ Section 20G (5), Apartment Ownership Law

⁷⁰ Paragraph 5 (4)- First Schedule, Apartment Ownership Law



basically incorporated by the Apartment Law for the maintenance of the common elements of the condominium complex. For this purpose, a set of duties and powers specified in section 20C of the Apartment Act is cast upon the Management Corporation. The Management Corporation however does not own the common elements of a condominium complex. The ownership of the common elements is vested with the owners of the condominium parcels in accordance with the percentage set out in the Share Parcel described above depicted in the condominium plan.

In order to function, the Management Corporation requires to establish the Management Fund and Sinking Fund. The said funds are created through the collection of management corporation fees and sinking fund fees from the owners of the condominium parcels.

Funds of the Management Corporation

The Apartment Law provides for a Management Corporation to set up two funds. The said funds are namely,

- a) The Management Fund⁷¹
- b) The Sinking Fund⁷²

The Management Fund

In order to carry out the management, maintenance and administration of common elements, the Apartment Law provides for the establishment of a management fund. The following are permitted to be credited to the said fund:

- (a.) the contributions levied

by the Management Corporation and paid by the owners of the condominium units, for payment into the fund;

(b.) fines, interests, penal charges, premiums reconnection charges, and deposits levied by the Management Corporation, and paid by the owners for payment in to the fund ;

(c.) the proceeds of the disposal of any personal property of the corporation;

(d.) all such sums of money as may be received by the Management Corporation in the exercise, discharge and performance of its powers, functions and duties;

(e.) all such sums of money as may be received by the corporation by way of loans, donations, gifts or grants from any sources whatsoever, whether in or outside in Sri Lanka⁷³.

The Apartment Law permits the Management Corporation to determine from time to time the amounts to be raised as contributions, from the owners of all the condominium parcels in proportion to the Share Parcels of their respective condominium parcels. It also can determine the amount of interest payable by the owner of condominium parcels in respect of late contributions and determine the amount of deposit or penal charges or reconnection charges, in the event of disconnection of services such as water, electricity or other utilities provided to the respective condominium parcels and payable by the owner of such condominium parcels⁷⁴.

71 Section 20H (1), Apartment Ownership Law

72 Section 20H (3A), Apartment Ownership Law

73 Section 20H (1), Apartment Ownership Law

74 Section 20H (3), Apartment Ownership Law

The Management Corporation is also empowered by the Apartment Ownership Law, by unanimous resolution or by general resolution, and with the concurrence of the Condominium Management Authority, to invest any monies of the management fund as it thinks fit. However, such resolution and concurrence is not required in order for the Management Corporation to invest money from the management fund in a licensed commercial bank, Treasury Bills, State Mortgage and Investments Bank or the Housing Development and Finance Corporation⁷⁵

The Sinking Fund

The Apartment Ownership Law imposes an obligation on the Management Corporation to establish a sinking fund as a part of the management fund, for emergency expenses of any major repair to the common elements or discharge of any other similar obligation of the Management Corporation⁷⁶. The sinking fund is in essence a reserve fund, established and maintained for the purpose of financing major repairs and renovations to common elements, replacement of capital items and emergency expenses.

The Management Corporation is required from time to time, at any general meeting, to determine the amounts to be set aside to the sinking fund⁷⁷, and the Management Corporation is prohibited from incurring any expenditure out of the sinking fund without a special resolution or a general resolution with the concurrence of the Condominium Management Authority⁷⁸.

75 Section 20H (3), Apartment Ownership Law
76 Section 20H (3A), Apartment Ownership Law
77 Section 20H (3A) (a), Apartment Ownership Law
78 Section 20H (3B), Apartment Ownership Law

Rules and regulations governing the owners of the condominium parcels

Condominium Properties and Semi Condominium Properties are regulated by a set of by-laws set out in the 2nd schedule to the Apartment Act. The said by-laws come into effect from the time of registration of the Condominium Plan or Semi Condominium Plan⁷⁹. The said rules provide for the control, management, administration, use and enjoyment of the condominium parcels and common elements⁸⁰. In addition to the said rules, the Management Corporation is entitled to make additional by-laws which are not inconsistent with the by-laws set out in the 2nd Schedule of the Apartment Law⁸¹. Management Corporation is not entitled in law to amend or replace the said rules⁸².

In addition to the 2nd Schedule of the Apartment Law, the Gazette Extraordinary bearing No 2026/25 date 5th July 2017 also sets out certain rules and regulations which require to be adhered to by the Management Corporation and the owners of the Condominium Property.⁸³ In terms of the said Gazette the burden of assuring compliance of the same, is vested with the relevant Management Corporation.

The said by-laws stipulate certain powers and duties of the Management Corporation and rights and obligations of condominium owners. The said rules are mostly applicable to the common areas and are created for good living within the condominium complex. Security measures, unauthorized

79 Section 20 (G) (3), Apartment Ownership Law
80 Section 20 (G) (1), Apartment Ownership Law
81 Section 20 (G) (4), Apartment Ownership Law
82 Section 20 (G) (2), Apartment Ownership Law
83 Part IV, Clause 11 of the Gazette Extraordinary bearing No 2026/25 dated 5th July 2017



changes to the complex, details of any common property of which the use is restricted, the keeping of pets, garbage disposal, are some of the guidelines set out for compliance of the condominium owners in the said rules.

The Condominium Management Authority, Management Corporation or any owner of a condominium parcel is entitled to apply to court to enforce the performance of or restrain the breach of any by-law or to recover damages for any loss or injury to any person or property arising out of the breach of any by-law⁸⁴. Every owner or occupier of a condominium unit, who commits a breach of any by-law set out in the second schedule of the Apartment Law or makes default in complying with the provisions of the said by-laws and every owner of a condominium parcel who is knowingly a party to the breach or default is deemed to be guilty of an offence under the Apartment Law⁸⁵

Considering the above, it is important to apprise yourself of the rules of a condominium complex, when dealing with a condominium property. As seen above, the basic rules set out in schedule 2 of the Apartment Law cannot be changed, even if all owners and the Management Corporation agree to the same. Further any person in the said complex can seek enforcement of the said rules. As such, in the event one wishes to live in any condominium property in Sri Lanka, he or she will be required to live in accordance with the said mandatory rules set out in the 2nd schedule of the Apartment Law.

Condominium Management Authority Law

A government entity known as the Common Amenities Board, which is now known as the Condominium Management Authority, was created for the regulation of vertical structures and the condominiums in Sri Lanka. For this purpose the Common Amenities Board Act No. 10 of 1973 was enacted which created the Common Amenities Board. The Common Amenities Board Act No. 10 of 1973 was subsequently amended by the Common Amenities Board (Amendment) Act No. 46 of 1982 and Common Amenities Board (Amendment) Act No. 24 of 2003 (Collectively the “Condominium Management Authority Law”). The Common Amenities Board (Amendment) Act No. 24 of 2003 changed the name of the Common Amenities Board to “Condominium Management Authority” and the name of the Act to “Condominium Management Authority Law” No. 24 of 2003.

The Condominium Management Authority Law establishes the Condominium Management Authority which is a body corporate, which generally functions under the Ministry of Housing. It is the apex national body for the Condominium Industry, and has many broad-based objectives⁸⁶. Other than its national role for the industry, it has authority to regulate and control condominium properties in Sri Lanka.

The Condominium Management Authority statutorily has *inter alia*, the following authority.

- a) Determining as to whether a building is sub-divided in a manner fit for occupation and

84 Section 20 (G) (9), Apartment Ownership Law

85 Section 20G (10), Apartment Ownership Law

86 Section 3 of the Condominium Management Authority Law

use.⁸⁷

b) Monitor the progress of the construction of the building depicted in a registered provisional condominium plan⁸⁸ and granting extensions of time for registration of the relevant plans⁸⁹.

c) Inquire into disputes referred to the Authority.⁹⁰

d) Inquire into the activities of the Management Corporation⁹¹.

e) To accept complaints in relation to common amenities provided in condominium properties and after due inquiry, make order directing the registered owner to provide the required common amenities in the manner acceptable to the Authority⁹².

f) Take appropriate measures to demolish unauthorized constructions in condominium properties⁹³.

g) Authority to take over the control, of the common amenities and common elements of condominium properties⁹⁴.

h) Acquire any condominium property for the construction of

87 Section 3(2), 3A(1) (i) , 3B(1) (f) , 3C(1) (f) Apartment Ownership Law

88 Section 9C, Condominium Management Authority Law

89 Section 3(3), Apartment Ownership Law

90 Section 16, Condominium Management Authority Law

91 Section 9 Condominium Management Authority Law

92 Section 9B, Condominium Management Authority Law

93 Section 9 (A), Condominium Management Authority Law

94 Section 7 Condominium Management Authority Law

the condominium development project⁹⁵

When observing the Condominium Management Authority's objective and powers, it can be seen that while the Condominium Management Authority is created to deal with national issues of the industry, it also can deal with any sort of issues that may come about in relation to condominium structures and properties. The Condominium Management Authority was instrumental in the issuance of the Gazette Extraordinary bearing No 2026/25 date 5th July 2017, which is applicable for condominium properties.

Land (Restrictions on Alienation) Act.

The Land (Restrictions on Alienation) Act No 38 of 2014 sets out certain restrictions with regard to alienation and lease of Condominium properties in Sri Lanka. The law was subsequently amended to remove the limitations place on foreign entities and persons owning Condominiums in Sri Lanka and removing the Land Lease Tax which was applicable to Condominiums.

Land (Restrictions on Alienation) Act No 38 of 2014

Sale of Apartments

Land (Restrictions on Alienation) Act No 38 of 2014 casts restrictions on transferring of title of any land situated in Sri Lanka,

a) to a foreigner, or

b) to a company incorporated in Sri Lanka under the Companies Act where any foreign

95 Section 10B, Condominium Management Authority Law



shareholding in such company, either directly or indirectly, is fifty percent or above, or

c) to a foreign company.⁹⁶

The said act defined a foreigner as a person who is not a citizen of Sri Lanka in terms of the Citizenships Act.⁹⁷ A foreign company is a company or body of persons incorporated under the laws of any country other than Sri Lanka.⁹⁸ In relation to local companies, in order that the said transfer is to remain valid, such companies shareholding of less than 50% to foreign shareholding has to remain for a period of 20 years from the date of such transfer.⁹⁹

Due to the definition of land, the Land (Restrictions on Alienation) Act No 38 of 2014 also encapsulated apartments. As such the sale of apartments to foreigners was also restricted subject to the exception set out in section 3(b) of the said act as it was then.¹⁰⁰

Section 3 (b) of the said act exempted the aforesaid restriction on foreign ownership of condominium parcels or apartments, to apartments situated above the 4th floor of a building specified under the Apartment Ownership Law.¹⁰¹ The said act however required that the consideration for the same, to be paid on or prior to the date of execution of the deed, through inward remittance of

foreign currency.¹⁰²

As such foreign ownership of apartments were only permitted above the 4th floor of an apartment complex, by the Land (Restrictions on Alienation) Act No 38 of 2014. The Land (Restrictions on Alienation) Act No 38 of 2014, prevented the Registrar of Lands from registering any instrument in contravention to the aforesaid.¹⁰³

Lease of apartments

Land (Restrictions on Alienation) Act No 38 of 2014 as it was then, did not impose any prohibition on the leasing of an apartment to a foreign entity or persons. The period of a lease in relation to foreign entities and persons however cannot exceed 99 years.¹⁰⁴

The said act however imposed a Land Lease Tax in relation to lease of apartments to foreign entities and persons. In relation to leases, the Land Lease Tax was 7.5 percent on the total rental payable for the duration of the lease,

a) for an apartment lease above the 4th floor for a period less than 35 years, and¹⁰⁵

b) for an apartment below the 4th floor where the period of lease is not more than 99 years.¹⁰⁶

The Land Lease Tax was however not imposed on apartments on or above the

96 Section 2 of the Land (Restrictions and Alienation) Act No 8 of 2014

97 Section 25 of the Land (Restrictions and Alienation) Act No 8 of 2014

98 Section 25 of the Land (Restrictions and Alienation) Act No 8 of 2014

99 Section 2(2) of the Land (Restrictions and Alienation) Act No 8 of 2014

100 Section 3(b) of the Land (Restrictions and Alienation) Act No 8 of 2014

101 Section 3(b) of the Land (Restrictions and Alienation) Act No 8 of 2014

102 Proviso to Section 3(b) of the Land (Restrictions and Alienation) Act No 8 of 2014

103 Section 4(1) of the Land (Restrictions and Alienation) Act No 8 of 2014

104 Section 5(1) of the Land (Restrictions and Alienation) Act No 8 of 2014

105 Section 6(3) (c) of the Land (Restrictions and Alienation) Act No 8 of 2014

106 Section 6(3) (d) of the Land (Restrictions and Alienation) Act No 8 of 2014

4th floor of the of a building specified under the Apartment Ownership Law for periods of leases of 35 years or more, where the rental for the full period is paid through inward remittance of foreign currency on or prior to the date of execution of the lease.¹⁰⁷ The Land (Restrictions on Alienation) Act No 38 of 2014 prevented the Registrar of Lands from registering any instrument of lease in contrary to the aforesaid.¹⁰⁸

Land (Restrictions on Alienation) (Amendment Act) No 3 of 2017

Within 2½ years of the original enactment of Land (Restrictions on Alienation) Act No 38 of 2014, the Land (Restrictions on Alienation) (Amendment Act) No 3 of 2017 was brought into force. The said act abolished the Land Lease Tax in relation to foreign persons and entities for leases executed on or after the 8th January 2017.¹⁰⁹ As such the Land Lease Tax which was imposed on foreign persons and entities in relation to apartments, became a thing of the past in Sri Lanka and is not applicable any longer.

Land (Restrictions on Alienation) (Amendment Act) No 21 of 2018

Land (Restrictions on Alienation) Act No 38 of 2014 was once again amended by Parliament with the Land (Restrictions on Alienation) (Amendment Act) No 21 of 2018. The said act brought about a further well come change to the restrictions placed in the Land (Restrictions on Alienation) Act No 38 of 2014, with regard to the sale of apartments to foreign persons

¹⁰⁷ Section 7(b) of the Land (Restrictions and Alienation) Act No 8 of 2014

¹⁰⁸ Section 8(1) of the Land (Restrictions and Alienation) Act No 8 of 2014

¹⁰⁹ Section 2 of the Land (Restrictions and Alienation) (Amendment) Act No 03 of 2017.

and entities.

The said amendment removed the restriction placed on foreign persons and entities owning apartments in condominium buildings below the 4th floor of an apartment complex. However this was only permitted when the entire value of the apartment is paid upfront through an inward foreign remittance done prior to the execution of the relevant deed of transfer.¹¹⁰

The law as it stands today in relation to the Land (Restrictions on Alienation) Act No 38 of 2014 as amended.

As seen above today in Sri Lanka there is no restriction for a foreign entity or person to purchase a Condominium. The restrictions placed by the original act, the Land (Restrictions and Alienation) Act No 8 of 2014 has been repealed. As such a foreign entity or person can purchase an apartment in any floor of an apartment complex in Sri Lanka

In relation to leasing as well, there exists no restriction for a foreign entity or person to lease an apartment in Sri Lanka. The Land Lease Tax of 7.5 percent of the total rental which was imposed was abolished. As such the lease can be executed under the normal laws applicable without any Land Lease Tax.

In terms of the said act as amended, when foreign entities and persons purchase apartments the same has to be done through an inward foreign remittance, done prior to the execution of the relevant deed of transfer.

Dispute resolution forums, in condominium related issues

¹¹⁰ Section 2(a) of the Land (Restrictions and Alienation) (Amendment) Act No 21 of 2018.



The following bodies have jurisdiction to hear and determine condominium issues.

- a) The relevant Management Corporation.
- b) The Condominium Management Authority.
- c) The District Court having provincial geographic jurisdiction.
- d) The Magistrate's Court.
- e) The Court of Appeal
- f) Supreme Court to challenge the decision of the Condominium Management Authority.¹¹¹

a) The relevant Management Corporation

In resolving a dispute within a condominium complex it may be prudent to initially deal with the relevant Management Corporation in order to obtain a solution. This method will permit a solution to be reached amicably, without having to venture out to third parties to resolve a private dispute among the owners of the condominium complex.

Sections 20(c) (e), 20J, 20K, Apartment Law empowers and grants wide discretion to the relevant Management Corporation to deal with most internal issues that will come about in an apartment complex.

b) The Condominium Management Authority

As stated above although the Condominium Management Authority is created to deal with national issues of the industry, sections 20F, 20P, 20Q, of the Apartment Law and Sections 6, 7, 9, 9A, 9B, 9C, 9D, 10, 10A, 10B, 16 the Condominium Management Authority Law grants the Condominium Management Authority power and authority to deal with any sort of issues that may come about in relation to the Condominium complex. Some of the above powers have been explained above under the heading Condominium Management Authority.

Section 16 of the Condominium Management Authority Law permits the Condominium Management Authority to inquire into disputes of any sort and make an order which is just and equitable.¹¹² As such said order does not per se have a legal rationale. The law only provides that the order should be one that appears to the Condominium Management Authority as a just and equitable order.

The Condominium Management Authority has also the authority to hold an inquiry in relation to the Management Corporations, summon any person for the same, require the production of any documentation or even take into custody documentation relevant to the dispute.¹¹³

As such when considering the aforesaid and in particular the ability of the Condominium Management Authority to make just and equitable orders, it can be said that the Condominium Management Authority has wide powers in dispute resolution with regard to

¹¹¹ Article 126 and 140 of the Constitution of Sri Lanka, Law, Section 20A Condominium Management Authority Law

¹¹² Section 16(1) Condominium Management Authority Law

¹¹³ Section 9(2) of the Condominium Management Authority Law

Condominium buildings.

c) The District Court having provincial geographic jurisdiction

The Apartment Law, and Condominium Management Authority Law, grants jurisdiction to the District Court to here and determine the following issues in relation to Condominium buildings.

- i) To alienate, accept or amalgamate common elements.¹¹⁴
- ii) To amalgamate Management Corporations.¹¹⁵
- iii) Appointment of an administrator for a Management Corporation.¹¹⁶
- iv) Enforce the rights and obligations of the by-laws set out in schedule 2 of the Apartment Law.¹¹⁷
- v) Recovery of dues from a member of a Management Corporation.¹¹⁸
- vi) Appointment of the Public Trustee, where no person exists to vote on behalf of a condominium parcel.¹¹⁹
- vii) Recovery of monies due to the Condominium Management Authority.¹²⁰

114 Section 19 (1) (a) (b) and (c) of the Apartment Ownership Law
 115 Section 19 (1) (c) of the Apartment Ownership Law
 116 Section 20E of the Apartment Ownership Law,
 Law
 117 Section 20G (9) of the Apartment Ownership Law
 118 Section 20K of the Apartment Ownership Law
 119 Section 20M of the Apartment Ownership Law
 120 Section 15A of the Condominium Management

In addition to the above, the District Court shall have to jurisdiction to deal with the general civil disputes between stake-holders in any Condominium complex.¹²¹When filing action however one will need to mindful of the fact that depending on the cause of action pleaded, it will be only the relevant geographic District Court that will have jurisdiction to hear and determine the action.¹²²

d) The Magistrate’s Court

The Apartment Law, and Condominium Management Authority Law grants jurisdiction to the Magistrates Court to here and determine the following issues in relation to condominium buildings.

- i) Failing to comply with any provisions of the Apartment Law, regulations made thereunder or any order or direction given in terms of the Apartment Law.¹²³
- ii) Breach of the second schedule to the Apartment Law which mostly deals with the regulation of condominium unit owners within the condominium complex.¹²⁴
- iii) Failing to comply with any provisions of the Condominium Management Authority Law, regulations made thereunder or any order or direction given in terms of the Apartment Law.¹²⁵

Authority Law
 121 The definition of cause of action in section 5 of the Civil Procedure Code.
 122 Section 9 of the Civil Procedure Code.
 123 Section 21 of the Apartment Ownership Law
 124 Section 20G (10) of the Apartment Ownership Law
 125 Section 25 of the Condominium Management Authority Law



In addition to the above the Magistrate's Court shall have the jurisdiction to deal with the general offences in the Criminal Procedure Code to deal with any criminal offences between stakeholders in any condominium complex.

e) The Court of Appeal of Sri Lanka

The jurisdiction of the Court of Appeal is mostly used to challenge the decisions of the Condominium Management Authority. Condominium Management Authority mostly enforces their directions and orders through the Magistrates Court. As the Magistrates Court is only a court of enforcement of the Condominium Management Authority's direction or order, one cannot challenge the decision of the Condominium Management Authority before the Magistrates Court. As such a decision made by the Condominium Management Authority, generally requires to be challenged in the Court of Appeal, by way of writ application. The jurisdiction of the Court of Appeal to hear and determine such a dispute is conferred by Article 140 of the Constitution.

f) The Supreme Court of Sri Lanka

Article 126 of the Constitution, confers jurisdiction on the Supreme Court to hear and determine any question relating to the infringement or imminent infringement by the executive or administrative action of any fundamental rights enshrined in chapter III or IV of the Constitution. As such the decisions of the Condominium Management Authority can also be challenged before the Supreme Court if required.

In the event however one is to take specific action against any member, officer, servant, or agent of the Condominium Management Authority, section 20A of the Condominium Management Authority Law, only permits the same by way of a fundamental rights application to the Supreme Court.

When considering the totality of the above dispute resolution mechanisms that exist to resolve a condominium dispute, one can see that there exists much overlap between the bodies that have jurisdiction to hear such a dispute. From a practitioners point of view while this is welcome, the law does not provide a procedure to avoid duplicity of the same dispute. In some occasions, the same dispute has been referred to different forums and conflicting orders being obtained. The end result of such actions have only resulted in condominium disputes taking a long period of time to be resolved. This in turn is not favorable to the industry as a whole.

Conclusion

Presently, Sri Lanka is going through a boom in the condominium industry. This is particularly prevalent in cities in the recent past. The same has brought about several legal issues as well, which need to be dealt with considering its social factors as well.

Given the above, it is clear that lawyers can and need to play a significant role in this industry, when compared to other professions. The lawyer is basically a much needed individual, at every stage of the project, from the stage of designing the condominium complex, until it is completed and handed over to its potential owners. Legal advice is also

needed thereafter on a continuing basis for its maintenance.

Considering the aforesaid, this area of law is one that needs to be ascertained by any person who will deal with such properties in whatever capacity. In this light, I hope that I have managed to give some insight and piqued your interest in this area of law.

Author can be contacted at email:
senakadesaram@gmail.com