



RESEARCH PAPER

Role of Private Housing Companies as Developer of Housing Industry to Achieve the Goal of Housing for All in Pakistan

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PAPER INFO ABSTRACT

Received:
June 28, 2020

Accepted:
September 05, 2020

Online:
September 30, 2020

Keywords:
Companies Act,
2017, Government
of Pakistan, Legal
Issues, Private
Housing Schemes

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Pakistan is a party to the UN Habitat agenda which envisaged the goal of housing for all. Housing is one of the basic necessities of every human being but due to financial constraints it is beyond the financial resources of the Government of Pakistan to provide housing units to each and every citizen of Pakistan. Due to very limited capacity of the Government of Pakistan the leading role to provide housing units has been assigned to the private sector to provide housing units. The present Legal Frame Work instead of encouraging the private sector is undermining the role of the private sector to provide housing units, so, there is a need to introduce a new self-contained law for the registration of private housing companies at provincial level along with suitable amendments in the existing Legal Framework.

Introduction

This sector comprises of the Private Housing Schemes launched by Private land owners, builders and developers. A very large number of general public rely on this sector for their accommodation needs. This sector is highly prone to fraud and corruption. In Punjab the Private Housing Schemes are regulated by the development authorities. All these development authorities are working under the Housing and Urban Development & Public Health Engineering Department. The Private Housing Schemes that are launched in the areas that do not fall within the jurisdiction of any of these development authorities are regulated by the Local Government and Community Development Department through Tehsil.

Private housing companies are formed by the private sector the primary task of private housing companies is to earn profit by providing housing units to the rich (elite class). Private housing companies are formed and registered under the Companies Act 1917, Companies Ordinance 1984 and Companies Rules 1985.

Private Housing Companies working under Companies Act 2017

Private housing companies are formed and registered under Companies Act 2017 and Companies Ordinance 1984. The private housing companies have not been able to provide housing units rather; there have been massive housing frauds and illegalities which have been committed by the private housing companies. The reason is that there is overlapping of jurisdiction and shifting of responsibilities by the various regulatory authorities of housing industry at Federal, Provincial and Local level.

According to Companies Act 2017, the mode of forming a company has been prescribed, three or more persons by subscribing their names to the memorandum of association can form a public limited company, two or more persons by subscribing their names to the memorandum of association can form a private limited company including a private housing company and a single member by signing memorandum of association can form a single member company including a housing company (The companies Act 2017).

A careful reading suggests that under the above mentioned provision of law which deals with the registration of all companies including housing companies, there is no precondition of ownership of land for the registration of housing companies and in the past this deficiency in the law has been exploited by the housing developers when without having an inch of piece of land the housing societies were registered and plots were sold out. When a proof was demanded from these housing companies the investors were shown registration certificate issued by the securities and exchange commission of Pakistan was shown to them and in this way the general public was deprived of the hard-earned income.

In order to bridge this gap in the law a special provision has been introduced in the Companies Act 2017 for housing companies which has been given an overriding effect. According to this section no company doing any housing or real estate company can advertise any project unless it has got all approvals and NOCs from the relevant authorities of the provincial and local Governments, no housing company can proceed to sale any plot in the housing scheme unless approval and NOC has been obtained under all the relevant general, special and local laws, the housing company cannot sale any plot unless it maintains proper accounts of all the transactions in the end of the section a penalty of level 3 has been provided for that person who does any housing activity and violates this section.

The insertion of this section is a welcome step but the problem is that housing is a subject which falls in the provincial legislative list so provinces enjoy complete authority with respect to this subject, so, this provision is in contradiction to the Constitution of Islamic Republic of Pakistan 1973 (The Constitution of Islamic Republic of Pakistan, 1973).

Before the introduction of Companies Act 2017 the regulatory law relating to housing companies was Companies Ordinance 1984. As most of the housing companies operating in the housing industry of Pakistan are registered under this Ordinance so it is important to discuss this law for complete understanding of the regulatory legal framework

Housing Companies Registered under Companies Ordinance, 1984

Most of the housing companies working in the housing industry are formed and registered under the Companies Ordinance 1984. The private companies in the field of housing sector are registered with the Securities and Exchange Commission of Pakistan under the Companies Ordinance 1984 and still doing housing activity in the housing industry of Pakistan. Housing companies were registered under section 30 of the companies Ordinance 1984 and under section 4 of the Companies (General provisions and forms) Rules 1985 and in these provisions, there was no pre condition of possession of land for registration of housing companies. The subject of housing falls in the provincial legislative list, of the Constitution of Islamic Republic of Pakistan, as per 4th Schedule of the Constitution of Islamic Republic of Pakistan 1973.

Housing being a provincial subject the provinces should exercise complete authority on all housing developers without any interference by the Federal Government. Provincial Governments should regulate this subject of housing through provincial laws and rules. After the promulgation of the Local Government Ordinance 2001 the old structures and systems were supplanted by new structures and systems with simultaneous devolution of functions from the provinces to Local Governments.

The devolved functions include housing, urban and physical planning shall stand entrusted to local Governments (Local Government Ordinance 2001, Section 15). However, contrary to this law private housing companies continued to be registered under the Companies Ordinance 1984 with the Securities and Exchange Commission of Pakistan. After incorporation of a private housing company all the affairs ranging from grant of sanction, launching a housing scheme, monitoring of the housing companies are handled by the development authority or by the Tehsil Municipal administration of the area concerned (Local Government Ordinance 2001, Section 8).

As per Companies Ordinance 1984, nothing in this Ordinance shall apply to a trading corporation owned or controlled by a province and carrying on business only within that province. As Companies Ordinance 1984 does not apply to a cooperative society, a university, on the same pattern Companies Ordinance does not apply to provincial housing companies operating to the extent of territorial jurisdiction of one province (Companies Ordinance 1984, Section 4).

The powers conferred by this ordinance on the Federal Government, or commission (SECP) shall in relation to those companies which are not trading

corporations and the objects of which are confined to a single province be the powers of the provincial Government (Companies Ordinance 1984, Section 5).

After combine study of these three provisions i.e., fourth schedule of the Constitution and Section 4 and Section 5 of the Companies Ordinance 1984, there is a question mark on the registration of housing companies with Securities and Exchange Commission of Pakistan (SECP). Whether the registration of private housing companies with Securities and Exchange Commission of Pakistan (SECP) is valid or it is against the 4th Schedule of the Constitution of Islamic Republic of Pakistan?

A closer examination of the above three provisions reveals that one point is common i.e. companies with objects confined to a single province is the exclusive jurisdiction of the provincial Government. After promulgation of the local Government Ordinance 2001, housing industry and related areas are these exclusive jurisdictions of local Governments.

It is beyond any doubt that private housing companies with housing activities confined and situated to a single province comes under the exclusive jurisdiction of the concerned local Government. Due to registration of the private housing companies with the Securities and Exchange Commission of Pakistan the local Governments leave the regulatory affairs of the housing companies to the discretion of the Federal Government. The Federal Government (the relevant department of federal Government SECP) after registration of the housing companies does not regulate the affairs of the housing companies and leave it to be regulated by the respective local Governments and provincial Governments.

The point which needs little clarification is whether private housing scheme is a trading activities or non-trading activity. Housing and construction industry has been notified as a priority industry in "C" Category by the Federal Government (Planning Commission of Pakistan). By treating housing activity confined to a single Province/District the case falls under section 4 of the companies' Ordinance 1984. The registration of the private housing companies with SECP is not valid under this section. Looking at the ground realities of Pakistan in the housing industry it is evident that there is back log of 2, 70,000 housing units each year which is accumulating year by year. Housing is the basic and fundamental human need. The details of allocation of funds for physical planning and housing in the public sectors development program (PSDP) in the previous years is as under

Years	Amount Allocated (Million)
2004-05	9
2005-06	7.5
2006-07	7.9
2007-08	8.5
2008-09	9.7
2009-10	10.5

Total	44.1
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(Source: www.planningcommission.gov.pk)

If the total amount allocated for all sectors is used only for housing activity by leaving no money for any other development work at all even than it is not possible for the Government of Pakistan to achieve the goal of housing for all as envisaged by the UN Habitat agenda without support and help of private sector.

It is beyond the financial resources of the Government to cater the housing back log and to provide the basic necessity of house to all homeless people in Pakistan. Meeting the housing back log is beyond the financial resources of the Government (National Housing Policy 2001). The Government should encourage the private sector to play an active role and the role of Government should be of a facilitator instead of a developer.

It is an item of the manifesto of the present Government to provide houses units to homeless so the present Government by declaring housing activity as a non-trading activity must encourage private housing companies. It is need of the hour to declare housing as a poverty alleviation measure and a non-trading activity done for public purpose. The legislature of Land Acquisition Act 1894, in order to encourage the private sector has included the land acquisition by the companies for the public purpose in the preamble.

During a case the court declared that acquisition of land by a private company the primary object of which is to earn profit for the company but the effect of which will be on the national economy in a positive manner would be an acquisition of land for a public purpose (Ram Narain Singh and others Vs State of Bihar). Furthermore, the land Acquisition Act 1894, has empowered the Government to determine the question whether land is needed for public purpose or not. So, the Provincial Government of each province is the sole judge to determine the need of a land for a public purpose or for a company (Sardar Mohammad Iqbal Khan Mokal, The Land Acquisition Act 1894). In 2015 the members of UN adopted Transforming Our World: The 2030 Agenda for Sustainable Development, with 17 global sustainable Development Goals and 169 corresponding targets (Transforming Our World: The 2030 Agenda for Sustainable Development). Sustainable Development Goal number 11 relates to making cities and human settlements inclusive, safe, resilient and sustainable including slums up gradation (United Nations (2015), Transforming Our World). So, the Government must encourage housing companies to share the burden of the Government by declaring housing activity as non-trading activity. Cooperative housing societies are already doing the same practice on no profit no loss basis because it is also mandated by Millennium Development Goals.

Indicators (Million)	2001-02	2002-03	2005-06	2011	2015
Population of Kachi Abadi to be regularized in percentage	50%	55%	60%	75%	95%

(Source: www.planningcommission.gov.pk)

The Government of Pakistan has not succeeded to bring improvement in the lives of hundred million slum dwellers in 2020. As meeting the back log in housing industry is beyond the financial resources of the Government (National Housing Policy, 2001). But unfortunately the above mentioned have not been achieved to a satisfactory level till 2020 so a lot of work is yet to be done by the Government of Pakistan to achieve the goals set by UN Habitat agenda. This necessitates the declaration of housing activity performed by housing companies as a non-trading activity.

So, if we assume the housing activity as a poverty alleviation measure and a non-trading activity (keeping in view the ground realities of Pakistan it is not a wrong assumption) that for registration purposes the case falls under section 5 of the Companies Ordinance 1984 which clearly says, the incorporation, regulation and winding up affairs of the housing companies should be dealt by the respective Provinces/Local Governments. As housing is a devolved function of the Local Government and whenever there is a conflict in any other law and the local Government ordinance 2001, the later shall always has an overriding effect over the former law.

The problem on the regulatory side is, once the private housing company is registered with the SECP there is no regulatory mechanism in the Companies Ordinance 1984, to monitor and regulate the activities of the private housing company. Housing is a devolved subject of local Government so the local Government of the respective area in whose territorial jurisdiction the housing scheme is situated can deal its affairs in a better manner.

If the housing activities conducted by the private housing companies is treated as trading activity or non-trading activity the case of registration falls either under section 4 or section 5, of the Companies Ordinance 1984. In both of the probabilities one point is common the companies the objects of which are confined single province is an exclusive jurisdiction of the relevant province. Constitution of Islamic Republic of Pakistan 1973, being the supreme Law of the land, it is also the scheme of the constitution that the subject of the housing should be handled exclusively by the provinces being an exclusive subject or domain of the provinces.

It is better to encourage public limited housing companies to conduct housing activities. As contrast to private companies public limited companies are required to conduct audit of accounts, publish profit and loss account, balance sheet and more disclosure requirements so, the Government has more check and balance

on its activities. This development will help a lot to stop embezzlement of public funds committed by the private housing companies.

Registration of housing companies must be done by the respective provinces on the pattern of registration of Cooperative housing societies. Separate company law of each province will enable each Provincial Government to enact the registration law according to its own development's priority. Each province has its own development priority due to its economic, geographic, and social differences as compared to other provinces. Separate law for housing companies at provincial level would result in a better check and balance system by each Provincial Government as the subject of housing is the exclusive domain of the provinces.

The present law of registration is not going to work; there is a need for a new self-contained law for regulating the affairs of the housing companies. An amendment has been introduced in the Companies Act 2017 and a new section 456 has been introduced to maintain the control of the Federal Government through SECP on the affairs of the housing companies. This new section is against the letter and spirit of the Constitution of Islamic Republic of Pakistan 1973. Durable solution is to follow the Constitution of Islamic Republic of Pakistan 1973 and let this subject of housing to be dealt by the Provincial Governments. So, the ideal solution lies in the enactment of new registration law for housing companies at provincial level as it is also in line with the intention of the constitution makers.

Challenges and Grey Areas of Private Housing Sector

Following are the areas which need to be improved

Overlapping Jurisdictions of Regulators of the Housing Societies

There are more than one regulatory authorities looking over the affairs of the Private Housing Societies in Punjab. In certain areas these authorities have overlapping functions. Overlapping jurisdictions of Regulatory Bodies create numerous problems in the smooth disposal of the responsibilities of any of these Regulators. It also makes it difficult to fix the responsibility on a specific Regulator in case of any criminal negligence. These challenges indicate that there is a need for the establishment of a single Regulatory Authority for the effective regulation of the housing sector in general and Private Housing Schemes in particular.

Monitoring of Property Dealers to control Frauds in Housing Industry

There are certain examples where a person sets up a marketing office and starts luring the general public into investing their hard-earned money into housing projects which do not exist on ground. These agents and dealers go unchecked as they do not approach any Regulatory Authority for any approvals. The Regulators need to develop a mechanism to identify such cases and take appropriate and timely action against them. There is a strong need for proper registration and scrutiny of the

conduct and affairs of property dealers and estate agents to minimize the chances of fraud in the housing industry.

Delay in Timely Development of the Private Housing Schemes

The reasons and conditions which cause delay in the timely development of housing schemes include lapse on the part of the members to pay dues on time. Apart from the default by the developer or sponsor of a private housing scheme which remains the main reason of such delay there are some other factors which can be responsible for the failure of a private housing scheme to complete the development work on time. Departments responsible for providing these services i.e. LESCO, FESCO, GEPCO, SNGPL, PTCL are also responsible for not completing the housing scheme within time.

Limited Capacity of Tehsil Municipal Administrations to regulate the Housing Schemes

In the areas where the Private Housing Schemes are being regulated by Tehsil Municipal Administrations (TMAs) there is a need for training and hiring of technical experts and surveyors. It is difficult for the TMAs to perform the regulatory functions efficiently with the existing technical and human resource. A lot of problems arise due to the delegation of approving authority to the Town Committees as there are increased chances of maneuverability at the Town Committee's level. Although it will be beneficial to build the capacity of TMAs but the approvals should be kept centralized at the district or division level. Composition of the committee and the authority competent for granting approvals needs to be defined clearly for all kind of approvals. Tehsil Municipal Administrations are now defunct and are currently working under the office of deputy director.

Administration of Private Housing Schemes

Once the sponsor or developer has sold the plots the disposal of ongoing administrative function of the Private Housing Schemes becomes an issue. Once the sponsor disposes off the land the concept of management committees may be introduced in the private housing scheme for its complete operation and maintenance. The concept of management committees already prevails in the Cooperative Housing Sector but this concept does not exist in the private housing schemes.

Recommendations

Control of Housing Societies Introduced by the Private Sector

This sector comprises of the Private Housing Schemes launched by Private land owners, builders and developers. A very large number of our citizens

rely on this sector for their accommodation needs. Most of the malpractices have been observed from this area of housing industry. This sector is highly prone to fraud and corruption. In Punjab the private housing schemes are regulated by the development authorities i.e. Lahore Development Authority (LDA), Gujranwala Development Authority (GDA), Faisalabad Development Authority (FDA), Multan Development Authority (MDA) and Rawalpindi Development Authority (RDA). All these development authorities are working under the Housing and Urban Development & Public Health Engineering Department. The Private Housing Schemes that are launched in the areas that do not fall within the jurisdiction of any of these development authorities are regulated by the Local Government and Community Development Department through Tehsil Municipal Administrations. The study of the private housing industry has revealed that according to the nature of violations and frauds, the private housing schemes can be grouped into following categories.

Housing Societies Formed Without Getting Necessary Approval

This category comprises of the housing schemes or the extensions of already approved housing schemes which start advertisement, sale / purchase of plots or execution of development works at site without seeking necessary approval from the concerned regulator. This category is further sub divided into following two kinds.

Housing Societies Which Are Illegal from Ab Initio

There are many housing societies which are collecting money to offer plots to the general public. These housing societies are void and illegal from very start as these housing societies have not obtained any permission from the relevant housing authorities.

Housing Societies Which Are Formed in A Legal Manner but Which Extends Further Phases Without Getting Legal Permission

Many housing societies are formed after following the legal formalities and issue plots as per law problem arises when these housing societies after successful completion of first phase start second and third phase of housing societies without getting approval from the relevant housing regulatory authorities. General public become prey to these kinds of housing societies due to trust built up after the successful completion of first phase of the housing societies, people invest money under the impression that second and third phase of the housing society is also approved from the regulatory authority concerned.

Private Housing Societies Which Commit Violations after Being Validly Formed

This category comprises of the approved housing schemes which have been launched with prior approval of the regulator but later on these schemes violate the terms and conditions of the approval, fail to complete development work in

stipulated time frame, violate the approved layout plan or default in delivering the plots to the rightful owners on time. One or more of the following issues exist in the approved housing schemes grouped under this category. Non fulfillment of terms and conditions of the approval of scheme by the developer comprising:

These Housing Societies Do Not Mortgage and Transfer Land in the Name of Regulatory Authority

In order to put a check on the development of housing societies, the housing societies are required to mortgage a certain portion of the land of the housing societies in the name of regulatory authorities till a certain extent of development level is obtained.

Most of the Housing Societies Do Not Get Approval for the Designs of the Services

Many housing societies commit malpractice by not getting the approvals for the design of the services to be supplied in the housing societies. The general public lose their hard-earned income due to the negligence of the developers of the private housing societies.

Housing Societies Do Not Complete Development Work Within the Time Frame and Delay It

Most of the housing societies do not provide the necessary basic necessities to the housing societies. Due to this reason most of the housing societies which are formed after fulfillment of legal formalities but these results into failure due to non-provision of electricity, gas and water facilities.

Sale of Land Reserved for Common Use

As general public is unaware of the scheme of the allotment of plots, so, the developers of the housing schemes take undue advantage of this ignorance and commit these illegalities and malpractices. Illegal sale of areas including public utility areas like land for parks, public buildings, roads, graveyards, illegal sale of mortgage plots and illegal constructions/ encroachments on these sites / mortgage plots.

Non-Provision of Plots to the Owners on Time

Most of the housing societies do not handover the possession of the plots to the members of the housing society and delay it due to these reasons which includes entitlement Issues which includes Failure of handing over possession of plots and constructed houses to the members (plot holders), disputes about development charges and increase in prices and cancellation of plots without following the legal provisions.

Housing Societies Which Exist Only on Papers

There are many housing schemes which do not exist on the ground. The plots being offered to the general public are not in the ownership of the developer. These developers operate through the marketing office while there is no land and no development work on site. The public is cheated upon by colorful brochures and luring advertisements and looted of their hard-earned money. This category can be sub-divided into these kinds.

Housing Societies Which Exist Only on Papers Only

There are many housing societies which exist only on papers. Most of the housing societies were able to do it due to absence of a clear-cut jurisdiction among the three tiers of the Governments. As housing is purely a provincial subject so only Provincial Governments should deal it but Contrary to the theory the practice is that still housing companies are registered under Section 456 of the Companies Act 2017 with Securities and Exchange Commission of Pakistan (SECP) which is a federal institution. After the registration of housing companies SECP has no mechanism to check the malpractices being done in the housing company. Most of such housing companies deceive the general public, when these housing companies are asked to show any proof of their genuineness. These housing companies deceived the general public by showing these registration certificates, as the general public do not know the difference between permission to start a company and permission to do housing activity. It is recommended that all the affairs of the developers of the housing societies should be dealt with by the Provincial and Local Governments and the Federal Government should play the role of a facilitator only.

Sale of Plots in Excess of Available Plots

Numerous housing societies did the fraud in the housing industry by committing a fraud at another level. These housing societies are formed in a legal manner after fulfillment of all legal formalities. These housing societies proceed to make allotment of plots these housing societies' sale plots in excess of land available with these housing societies. This is done because the plots are sold in the shape of selling files. Excess and Illegal allotment above the available plots in the approved scheme by the development authorities is a common practice the solution is to put a check on this practice and sale of plots on the ground instead of file system.

Conclusion

Housing is one of the basic necessity and it is priority if the present Government of Pakistan to provide this housing necessity. Under the present Legal Frame Work this aim does not seem to be fulfilled. It is need of the hour to introduce a self-contained law relating to registration of housing companies which is in line with the Constitution of Islamic Republic of Pakistan 1973, which is the supreme law of the land. With a new self-contained law relating to registration of private housing

societies along with the coordinated efforts of all the three layers of the Governments i.e. Federal, Provincial and Local Governments, the goal of housing for all as envisaged by the UN Habitat agenda can be achieved in Pakistan.

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