Stakeholders in mixed developments like Starling Mall and its attached hotel, office and residential components have to understand share units

Rethinking 'share unit' in strata management

- **The** meaning of 'share unit' has never been very well defined
- **For** larger mixed developments, the common practice has been commercial and retail owners pay higher psf rates of service charge

by **YL Lum**

One of the milestones in the strata building legislation is the rolling out of the Strata Management Act (SMA) 757.

This Act has patched up many loopholes of the earlier Strata Title Act (STA) 318 and Building & Common Property Act (BCPA) 663. Perhaps one of the most significant paradigm shifts here is the emphasis and indivisible right on "share unit".

To the surprise of many, share unit has never been very well defined; it appeared in STA 318 for 80 over times but it's more about its implication and role.

SMA 757 introduces share units with the meaning assigned to it in section 4 of the Strata Titles Act 1985 which says "(share units) in respect of a parcel, means the share units determined for that parcel as shown in the schedule of share units" – as good as not defining it.

BCPA 663 had it appearing five times and one of it was not so much as definition, but more of explaining its birth place as "(allocated share units) means the share units to be assigned to each parcel by a developer's licensed land surveyor".

In other words, after the mouthful interpretation, we only know what a share unit does and probably from there, we pray hard enough and hope that we know what actually is a share unit.

It has never been much of an issue so far for a few obvious reasons. Firstly, most of us were too used to paying service charge based on the space we bought – the larger the space we stay in means the more we pay.

As for car park space, most of the time we adopt the "tidak apa" attitude, where no one pays for them, so it doesn't matter if any rich owner may have three or even 10 car park bays, we are alright as long as he doesn't try to muscle through the annual general meeting (AGM) suggesting he has more say because he has more parking bays.

Our community living culture can accept up to this stage, anything which is beyond common sense, becomes "unacceptable".

As for larger mixed developments, for decades, the common practice has been commercial and retail owners pay higher per square feet (psf) rate of service charge than the residential unit owners, something like RM1.20 psf against 20 sen psf and so forth, until the development necessitated a Management Corporation (MC), then share unit takes over.

Rule of law applies

But common practice doesn't hold water in the eyes of the law – when it comes to legal disputes, the rule of law proceeds.

Since SMA 757, share unit is enforced from the onset, so the story of per square foot doesn't carry weight anymore, unless one has to argue very hard in court.

Then, suddenly, every strata stakeholder from grandmothers to young lads, layman to law enforcers, policymakers to ministers, had to unlearn and relearn this new-old vocabulary – share unit.

And we may think professionals should have a clearer understanding of share unit, but unfortunately, this is not the case, and even amongst professionals, they have split opinions about share unit and yet they are playing such important roles in crafting policies that implicate millions of strata owners.

Since BCPA, and further to the piles of legal cases surrounding issues of unfair allocated share units, as well as along with the strata stakeholder's accessibility to strata knowledge, there has been a strong tide against the decades-old share unit calculation basis, that is by "asset value/purchased price, or rather not so much about that method, people are just totally against the idea of having share unit being calculated and determined by developers, their so-called professional surveyors and authorities (which perfectly complies with BCPA Part 1).

The sentiment basically reflects the public's distrust over the rule of law, deep rooted amongst the newer generation (not by age or by strata awareness) of strata stakeholders, not many would even think of the rationale and history of such an old method of share unit calculation, where everyone wishes to pursue whole new ways to calculate share unit, which shall be indisputably cast in stone, inside the Act, hence First Schedule, Section 8 of SMA 757.

Radical moves

Of late, there have been many high-level debates and deliberations intended to make some radical moves on matters relating to share units, including to rectify problems arising from the young chapter First Schedule, Section 8 of SMA 757 which has just come into force for less than half a decade.

One of the issues is that the share units derived from this reference were unable to address complex share unit calculations for mixed developments, resulting in unfairness (or rather inequitable) representation of parcel owners' voting rights and service charge contribution.

Some reckon, instead of revisiting this new calculation, a way out could be to allow revision of service charges during post Sijil Formula Unit Syer (SiFUS) stage, probably via AGM or extraordinary general meeting (EGM).

On the other hand, there are even radical thoughts of removing share units altogether from the strata titles, suggesting they are worthless because recently government compensation is to be given out on the basis of apportionment by asset value instead of share unit.

To policymakers, professionals, practitioners and fellow members of the strata community, we seriously need to hold our horses and carefully think through things before we make further radical changes to the Acts, again.

We need to remember share unit is a unit measurement in any stratified asset representing both the parcel owners' rights and liabilities. That's one simple explanation. It is definitely not new, it has always been that way.

Rights, as in decision-making rights (voting); liabilities as in the burden to contribute equitable monies to the community for the equitable right one holds in their decision making. The situation becomes more complex in non-homogeneous developments, such as large billion-ringgit gross development value (GDV) of mixed development having retail, office and residential units.

We must recognise that the different components of this development yield differently, while it costs differently to manage – offices collect lower rent than the retail but in general, retail collects higher rent hence paying higher service charges for their higher operating costs.

But the problem arises if rent is poorer than the service charge, and more so due to the mis-proportioned share unit allocation, making one unyielding asset to pay unreasonable service charges.

Measuring the yield-ability

So how has this been addressed in the past half a century? The answer is simple: besides operational costs (consumption), yield is also a factor of purchase price.

In the past, commercial assets were sold based on their premium as in "yield-ability", people are willing to pay a higher price for assets where they felt they are able to harness good yield, hence they wouldn't mind paying the proportionate service charge.

So it has always been the game rule of "let the buyer beware". If you have the money, you buy good assets, if you don't have that much, then you buy lesser premium assets and take the associated risks.

But now, as most of us went all out disagreeing that asset value should be one of the major considerations in share unit allocation, and we highly exalted the yardstick that share unit calculation shall be based on a non-market rate driven universal formula, that immediately will cause impairment to the existing unit owners' expectation on their original return on investment (particularly commercial strata owners).

Let the buyer beware

New projects are less of a problem as the SiFUS has to be declared, and developers could price the strata properties factoring in share unit allocation as per First Schedule, Section 8 of SMA 757, then the yield stacks up as the buyer is now in full awareness of what he is buying into. The problem is how do we deal with the existing ones, and whether developers can develop good products having been stuck with the First Schedule.

Unfortunately, yield is a business financial consideration, there is not as much attention paid to the rest of humanitarian issues. Even a half-a-billion-ringgit shopping mall may only have a few hundred strata owners, so their commercial issues may be less politically sexy to be paid attention to by policymakers. Until the experts sort things out, the golden rule applies: let the buyer beware. FocusM

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