Share units in strata properties: Time bombs, one after another

- **What** confuses everyone - law makers, enforcement authorities, consultants and buyers - is how share units are allocated
- **Until** the issues are resolved, developers and management bodies have to allocate huge sums for lawyers, because everyone is suing everyone for every reason

by **YL Lum**

People nowadays are better aware of the term 'share unit,' which is a very fundamental unit of measurement in stratified properties.

For the public, if it is not because they are billed monthly based on 'share unit,' many may still not be familiar with this term and still think service charges are being measured or billed on the basis of ringgit per square foot (RM/sq ft).

Probably a large majority of strata property owners, too, have no clue what a 'share unit' is or how it is being associated with their assets because many building managements, when compelled by the authorities to comply with the law, move to bill owners on the basis of 'RM per share unit' - and that is when the problems start.

For very complex mixed developments, the time bomb which had lain dormant for many years finally erupted when the Strata Management Act (SMA) came into force.

What is 'lawful' does not seem to tally with what is "practical," and before the public, property stakeholders/consultants and even lawyers/judges are able to catch up with the shock wave, everyone started suing everyone else and judgements with all sorts of interpretations are written and rebutted from court to court.

So, what is so wrong with the "share unit" in our country that does not seem to be even an issue in other countries like Hong Kong or Singapore which have a much longer history of strata properties?

The truth is, there is no clear definition of share unit in the SMA, nor in the Strata Title Act (STA) or the Building and Common Property Act (BCPA) which are now obsolete.

There is only "implied" use and implications of share unit; it may be that policy and law makers assumed that the term is so trivial and that "everyone knows it well."

Unfortunately, strata stakeholders have been driven up the wall for various reasons just because of issues related to share unit.

What is it?

Basically, share unit is a numerical representation of the benefits and liabilities relating to a strata owner's parcel. In other words, the more the share units, the more the service charges that need to be paid, and the more the voting rights - there is absolutely no rocket science about this.

What confuses everyone, from law makers, enforcement authorities and consultants to purchasers, is how share units are allocated.

Once we get that right, the rest will follow through. It's like, if you know how much "share" you have been allocated in a company, you will have no headache administering the company shareholder's activities.

Shareholders of a company get their shares by a purchase price or other means, and they enjoy the benefits and liabilities proportionally, except that in the case of strata living, the "share unit" owner has to continuously and perpetually contribute a fixed amount of money proportionately.

This is where people feel the pinch every month, hence there is greater demand for clarity in share unit allocation in a strata development.

So, the key issue here is not whether it's fair or not but whether it is equitable or not. Fair is subjective, equitable is measurable.

For example, is it fair that the service charges for condominiums are the same as for retail space? Is it fair if a car park is given a lower weightage in share unit allocation? Is it fair that one party owns all the car parks? Is it fair if one owner buys/owns half of the condominium units in the same block? Is it fair if all the big lots in the strata malls belong to one owner? Is it fair that one penthouse owner is being allocated 10 parking bays?

The answer to the above is simple: it will be "fair" if everyone is charged "equitably."

Because the only piece of puzzle missing in all these questions is "acquisition price," i.e. if you want more voting rights, you pay for it, and you must be really sure that you can afford to pay service charges perpetually.

So fundamentally, it is not wrong that share units are linked to the purchase price; in fact, that is one of the best models compared with the rest.

It's great to own a home in the sky or an office with grand, commanding views but be educated on what exactly the costs are besides the purchase price

Disputes arise when policy makers and law enforcers allow developers/consultants to apply an "inequitable" share unit calculation with incomplete consideration of an asset's purchase price versus its yield and its consumption.

This results in people paying very little money to buy very premium assets yet do not contribute an equitable share of the service charges. That's the root of the evil here.

What could have been done is to tighten the process of share units allocation and fix it to asset value (not purchase price) against yield and against the costs of maintaining the premises.

But before condemning the so-called "malpractices" in share unit allocations, we must recognise that there are valid reasons for some of these practices regarding the basis of share unit allocations.

For example, one reason why car parks are downrated in the share unit allocation by lower car park prices as the basis is that this will contribute to the long-term sustainability and equitability for the parcel owners.

Car parks are low-yielding - say with a cost of RM30,000 per car park bay at 3.5% net yield, this implies a minimum income of RM3/bay/day.

If these car park bays are to be imposed a rate of RM0.5/sq ft x 120 sq ft, that's RM2 a day service charge. Therefore, unless a car park can enjoy a turnover of more than two or three times, the gross profit for the car park bay remains RM1/bay/day only.

Therefore, the service charge of a car park cannot be expensive. Our forefathers, who assigned car park share units by purchase price, seemed to have done it in an equitable, fair and reasonable way.

Similarly, 80,000 sq ft for an anchor tenant space can fetch RM2/sq ft rent, compared to RM10/sq ft for a 2,000 sq ft space. There is a disparity in rent of 1:5 and the only way to balance this disparity legally is to adjust the selling price/sq ft or share unit weightage so that either such disparity is addressed on the basis of "lower buying price" or "paying less long-term service charges" - this is totally equitable, fair and reasonable, too, isn't it?

But sadly, instead of fixing the root of the evil, we made two mistakes, one after another, when drafting the laws.

In SMA, we allowed the management corporation (MC) to apply "different rates" on "significantly different" components in the development, which is a typical "diplomatic" Malaysian way to solve problems - "apa-apa pun boleh bincanglah" - and we totally forgot that the share unit assigned already (supposedly) takes into serious consideration the different weightage of significantly different components in a development.

Hence, allowing "different rates" on a post-strata register is like allowing an annual general meeting of a public listed company to apply a different multiplicand on top of the shares equitably allocated to every shareholder - this time bomb is principally and mathematically wrong.

Adding salt to the wound

And to add salt to the wound, SMA has introduced a new weightage factor into the share unit allocation that has totally no association with the asset's value, and assumes that every strata development's operational cost fits into this pre-determined table.

This immediately triggered another time bomb (totally unnecessarily), causing the following problem: a unit owner who paid a premium price for an asset suddenly had to be allocated a share unit which does not tally with his perpetual service charges and which impairs his yield expectation.

Then, mixed development had to be forced into accommodating their collection by this share unit formula against the actual costs of operation.

In the Act, the term "different rate," although principally wrong, provides an avenue to do some realignment in service charge rates.

Hence, it is not necessary to introduce a whole new scheme of share unit calculation. This is making a mistake on top of another mistake.

Recently, another SMA self-implanted time bomb caused a fiasco in the industry, where different judgements were made in two different courts on the issue of whether the joint management body (JMB) can apply different rates as allowed for by the MC.

This problem should not even have occurred in the first place; if strata title is issued on vacant possession, we could have first gone to the MC instead of the JMB. Then we don't need two sets of laws.

In fact, there are trickier issues that require very close attention: Is it fair that early bird retail lot buyers are given a discount - when buying the same-sized unit and allocated the same share units – over those who buy later at full unit prices? What about condominiums? Let's not get into this for time being.

But if we consider this issue positively, we should be grateful that everyone is making an effort to improve the situation.

We are trying to address the issues as they arise, and as long as we are converging and not diverging, eventually we will figure out something workable for most strata stakeholders.

But until then, without knowing when, for all the developers, JMBs and MCs out there, you have to allocate large amounts of money for lawyers, because everyone is suing everyone for every reason. FocusM

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