

The JOP Law conundrum

THE JOP LAW CAME INTO EFFECT IN DUBAI IN 2008, BUT STAKEHOLDERS SAY ITS CURRENT STATUS LEAVES A LOT TO BE DESIRED. *ABY THOMAS* FINDS OUT WHY



It's been five years since the Jointly Owned Property (JOP) law came into force in Dubai, but just a cursory look at its status in the emirate today is enough to understand that its implementation still leaves a lot to be desired.

To recap: jointly owned property is the term used to describe a building or land that has been divided into units, with a part of the development designated as

common areas. While the units have their respective owners, the common areas are collectively owned by all of the owners.

Real estate developers were originally responsible for the awarding of maintenance and management contracts for the common areas. But the JOP law was intended to transfer this power to the unit owners themselves, who would then govern the common areas by setting up an owners association.

“ AS THE JOP LAW HAD BEEN INSPIRED BY AN AUSTRALIAN PRECEDENT, IT DID NOT FORESEE CERTAIN REGIONAL NUANCES. ”

SHAHRAM SAFAI

An owners association would thus become responsible for the maintenance of the common areas, and would therefore need to collect service fee charges from all of the home owners in the development to pay for the same.

Now, for the JOP law to be fully functional, owners associations would need to be registered with the Dubai Real Estate Regulatory Agency (RERA).

Unfortunately—for reasons that are still rather unclear—there has been a delay, and this process hasn't yet happened. In the meantime, RERA has encouraged developers and unit owners to create “interim” owners associations instead.

This is where things get messy. While the intention behind interim owners associations may have been to facilitate a smooth transition of ownership from developers to unit owners, this scenario doesn't seem to have come to fruition.

The problem starts with the fact that these interim associations are not actually recognised by the JOP law.

As a result, these bodies don't have any legal powers—and therein lies the source of most people's complaints about the JOP law.

Owners, for instance, say that developers on an interim owners association's board hijack its processes for their own vested interests. Since the JOP law hasn't been fully implemented, owners complain that there is no system in place to keep such situations in check.

“My view is that, even today, a lot of developers are still holding on to the



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Shahram Safai,
partner, Afridi & Angell

maintenance of the property with a view to make some money out of the service fee collections,” says Gautam Patel, a home owner who's an active member of a number of interim owners associations in Dubai.

“Unfortunately, the lack of judicial controls is not helping the cause of owners,” he says.

Patel, a chartered accountant and lawyer who runs his own business in the UAE, is emphatic in his criticism of the current implementation of the JOP law.

“It is surprising how owners are expected to accept and pay for so many

charges, which are just not open to verification and rationalization,” Patel says. “Lack of transparency is the single most factor for all issues [with the JOP law] as of date.”

And it's not just home owners who are struggling with the implementation of the JOP law. When the law came into effect, a number of owners association management companies came into being in Dubai, with an aim to guide owners with their new roles and duties on the board of an owner's association, which includes the collection of service fee charges.

Owners association managers were

therefore meant to take the workload off the back of the actual owners, but the lack of enforcement of the JOP law has affected their functions as well.

Saeed Al Fahim, partner and director-government relations at Stratum Owners Association Management, frankly admits that the implementation of the JOP law has been a disappointment to date.

“The law requires developers to register owners associations,” Al Fahim explains. “But the deadline for registration has long since passed, and while there are penalties for failure to do so, there is no evidence of any will on the part of the authorities to expedite the registration of owners associations, or to enforce the law to ensure developers take the appropriate steps to register owners associations.”

“This lack of enforcement has left owners in developments with no legal say on how the development is being managed and no control over the disbursement of funds,” Al Fahim continues. “This has resulted in owners in a substantial proportion of unregistered developments holding service levy payments as a protest at the delays that they have encountered.”

Dr. Sameer Shaikh, an orthodontist who owns property in Dubai, is an example of an owner who has stopped paying service charges in protest of the way things are currently being run in his development. Dr. Shaikh, who has been living in Dubai for more than a decade, knows fully well that these charges are vital for the smooth running of a development—yet he has his reasons for not contributing to the same.

“Whilst it is very easy to point fingers at unit owners who have been errant in paying the service charge, some attention will have to be paid to the reason for which this service charge is not being paid,” Dr. Shaikh says. “I need to know where my money is being utilized!”

Dr. Shaikh explains that the interim owners association he was a part of had more than one representative of the de-

veloper in it, which in itself is a violation of the JOP law, as it states that a developer can have only one of its members on the board. Having been appointed by the developer, the owners association manager was on the side of the developer as well, he says.

“Since the majority vote was in the developer’s favour, all lucrative [maintenance] contracts were awarded to agencies of their choice,” Dr. Shaikh remembers. “As bonafide investors and board members, our building had decisions taken by members who were not bonafide investors. We remained mute spectators!”

Dr. Shaikh says that though he has repeatedly asked for forensic audits

of the the budget and financials presented by the developer, there has been nothing forthcoming so far.

“There are serious issues with regards to the way in which we have been charged, and there have been glaring

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SAEED AL FAHIM

FAST FACT
2008
 YEAR JOP LAW CAME INTO FORCE IN DUBAI



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Saeed Al Fahim,
 partner and director-government relations, Stratum Owners Association



Gautam Patel, a member of an owners' association in Dubai

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GAUTAM PATEL

and blatant financial indiscretions committed by the developer,” he declares. “In such circumstances, unit owners are within their rights not to pay the services charge until their concerns have been addressed.”

But while Dr. Shaikh may have a valid reason to withhold his payment of service charges, this is not true for all those unit owners who refuse to pay on time. In some cases, this has happened in part due to the culture of the region—jointly owned property

was, after all, a relatively new concept in the UAE.

“As the JOP law had been inspired by an Australian precedent, it did not foresee certain regional nuances,” explains Shahram Safai, a partner at the law firm, Afridi & Angell. “Some of these nuances included the familiarity and training required by developers, investors and end-users in a transient hub and culture to be able to understand and comply with the law.”

“Another nuance included certain regional habits and attributes,” Safai adds. “Service charges had not been common in the Middle East. Middle Easterners had owned their own property, and had lived in it or rented it fully without the need to pay a third party any money, such as service charges.”

Al Fahim agrees with Safai, and says that Stratum has addressed these difficulties by engaging dedicated staff to communicate with owners on why these funds are needed, and give them regular updates on finances and proposed maintenance projects.

The purpose of all this is, Al Fahim says, is to “to maintain and enhance the owners’ sense of community, educate owners about the administration of the interim owners association, and heighten their awareness of the necessity of making regular and timely service charge payments.”

Given the regions’ unfamiliarity with the concept, Safai suggests that the collection of service charges could be enforced by issuing adequate penalties on owners who fail to do the same. For instance, the JOP law could allow owners associations to restrict services to a unit that hasn’t paid its dues.

However, for even this to happen, the owners association needs to have some kind of legal power to demand payment. But once again, thanks to its interim status, this is something that an owner’s association doesn’t enjoy today, and hence, the organisation’s hands remain tied.

Home owners like Patel and Dr. Shaikh blame this deadlocked situation

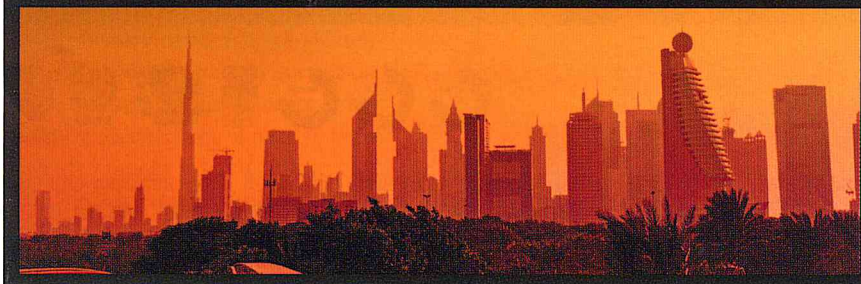
FAST FACT
2002
YEAR FOREIGNERS WERE ALLOWED TO BUY DUBAI REAL ESTATE

UNDERSTANDING THE JOP LAW

The JOP Law requires that the developer of each development must file a jointly owned property declaration (JOPD) at the Dubai Land Department. The JOPD sets out all the property information relating to the development, including:

- A site plan of the common areas
- A description of each of the units
- A list of the community rules which will apply in the development

The application to file the JOPD must be accompanied by an application for the formation of the owners’ association. The owners’ associations are constituted in accordance with the prescribed constitution that applies to all owners’ associations. When the owners’ association has been formed, the developer must hand over management of the common areas to the association. (Source: Afridi & Angell)



on the refusal of developers to relinquish control of their developments to the owners themselves.

“Developers still want to behave as landlords,” Dr. Shaikh says. “They want unilateral control over the maintenance and fiscal matters involved in the running of the building, as this has now proved to be a source of income.”

Patel agrees with that sentiment, saying, “I believe it is high time that owners are actually treated as owners, and developers—at least some of them—stop behaving as owners, and treat actual owners as owners, and also be accountable to them.”

As expatriates, both Patel and Dr. Shaikh had seized the chance to own property in Dubai when the opportunity presented itself to them a few years ago. But they admit that they weren’t expecting the issues that followed.

“While the decision to allow the expatriate population to own their own home in the United Arab Emirates was path-

// IN ORDER TO FULLY IMPLEMENT THE JOP LAW, AN ACTIVE INVOLVEMENT OF THE REGULATORY AUTHORITY IS URGENTLY NEEDED. //

DR. SAMEER SHAIKH

breaking, a more comprehensive and all-encompassing approach will have to be derived to regulate the management of the post-handover problems faced by bonafide investors,” Dr. Shaikh says.

“The rights of the investors will have to take precedence over the greed of the developer,” he adds.

“The regulatory authority will have to take a stern view into the actions of both parties, the developer and the investor. In order to fully implement the various fundamentals of the JOP Law, an active involvement of the relevant regulatory authority is needed urgently.” ■



Dr. Sameer Shaikh, a member of an owners' association in Dubai

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