

Common property: Who owns what?

By SAMANTHA WONG
samantha.wong@thestar.com.my

PURCHASING a strata property is all about the math. It's all about the numbers with property agents whipping out their calculators to give you the unit price according to the floor, view and orientation.

While these figures get buyers excited, what about the nitty-gritty calculations that tend to get ignored or not explained thoroughly?

Down payments, monthly instalments and maintenance charges are some of the more serious numbers.

Buyers would also compare layouts and check whether they have one or two parking spots before considering whether the facilities justify the price.

Interestingly, the least attention goes to the other spaces within the development.

Who actually owns the parking bays? Can residents decide how they want their allotted bays to be used?

Residents face an uncomfortable reality when they realise that space they thought belonged to everyone is actually privately owned.

That is exactly what happened in a recent High Court ruling involving a condominium in Kepong.

According to sources, the court ruled that a utility room and 115 parking bays were not actually common property. Furthermore, the report stated that they had never even been designated as such in the certified strata plans.

This then becomes an issue of understanding. Apart from the apartment and the allocated parking spot, are they paying for anything else?

Is that particular common property, which is privately owned, benefitting in any way from the maintenance charges the residents are paying for?

Certain Acts apply

A development's physical boundaries can create a sense of collective ownership.

- 115 parking bays in a Kepong condominium were ruled not to be common property
- Section 69 prohibits dealing with an accessory parcel independently of its main parcel
- Section 6 requires developers to display the schedule of parcels at sales premises

Residents pass through the same entrance, use the same lifts and contribute towards shared services. It is easy to view everything within the gates as part of the same communal environment.

Section 4 of the Strata Titles Act 1985 distinguishes common property from individual parcels and accessory parcels.

An accessory parcel is identified in a strata plan for use in conjunction with a main parcel. Common property excludes these parcels and any provisional blocks.

For buyers, the useful question is therefore more specific than whether parking is provided.

Which bays come with the unit, how are they recorded and what is the status of the remaining spaces?

There is a further distinction between owning a space and being free to deal with it independently.

Section 69 of the Strata Titles Act prohibits an accessory parcel from being dealt with separately from the main parcel to which it is attached. So any commercial arrangements that are proposed must therefore be considered against its legal status and the applicable restrictions.

As a result, the Kepong ruling is better off not being read as a blanket answer for every condominium parking dispute. Since it is a multi-layered issue with too many intersecting variables, each development's documents and its distinct allocations should be examined independently.

Ownership, earnings and costs

The business significance becomes clearer when a space can generate income year after year. Additional parking, a vending machine location or an advertising space may each prompt a similar set of questions.

Who has authority to offer the space? Who receives the payment? What expenses accompany the arrangement?

These examples do not necessarily share the same ownership status. They are starting points for examining how a development earns and accounts for money beyond residents' monthly contributions.

Under Section 60(2), read with Section 50(2) of the Strata Management Act 2013, the management corporation's maintenance account includes proceeds from dealings with property vested in or acquired by it, alongside other lawful receipts. This does not mean all income generated within a condominium belongs to the management corporation.

Residents should be able to distinguish between revenue belonging to the communal account and earnings belonging to a separate owner. Without that distinction, discussions about the building's finances can begin with very different assumptions.

Also deserving of equal attention are costs. A privately owned space does have shared access, security and cleaning services.

So the relevant question is how those costs ultimately get accounted for. But its presence alone does not establish that residents are in any way unfairly subsidising it.

To check, Sections 59(1)(a) and 59(1)(g) require the management corporation to maintain the common property and also provide audited financial statements to all members.

Before signing any documents

For anyone who is about to purchase a home or thinking about it, reading the fine print is good advice only if they know what to look for in the first place. Fortunately, Section 6 of the Strata Management Act gives a concrete starting point because it requires a schedule of parcels to be filed before sale, showing common property and accessory-parcel links and displayed at the sales premises.

Under Section 5, this framework applies to developer sales after the Act's commencement.

So buyers can ask their solicitor to explain how the sale agreement, plans and titles actually describe the unit, its parking and the surrounding spaces. Because any uncertainty about, for example, parking spots, should be raised before a purchase becomes a long-term commitment.

Additionally, developers also have an obligation to make these distinctions easier to understand for their projects' buyers. A direct and transparent explanation during the sales process could prevent confusion further down the road, helping buyers separate the facilities they use from the spaces they own.

But what about existing owners? Their questions about income should start with official documents like ownership records and accounts.

Establishing just what belongs to whom gives a solid foundation to discuss, rather than assuming every space within the gates serves the same purposes.

Since an apartment's value does rely on living a comfortable daily life, knowing who controls those spaces residents walk in, along with what terms, deserves a place right there with the price, layout and view.