



The Role of State and Non-State Actors in Resolving Problems in the Real Estate Sector in Bangladesh: A Legal Study

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ABSTRACT

The real estate sector of Bangladesh is a primary economic growth driver, job creator and the planner of urbanization. However, it is afflicted with a number of ills like land shortages, complex regulatory regimes, opaque transactions, and a dispute culture. This research paper undertakes a detailed legal analysis to explore the different roles of state and non-state actors in addressing the above issues. It investigates the existing legal and policy environment, establishing the strengths and weaknesses of interventions present. The study explores the regulatory, developmental, and dispute resolution mechanisms applied by state institutions, as well as the essential roles of non-governmental organizations (NGOs), professional associations like REHAB, community-based organizations, and private sector organizations. Through a critical analysis of their interactions, collaboration, and conflicts, this article aims to provide a balanced perspective of the dynamics at play and suggest legal and policy reforms for the creation of a more transparent, efficient, and fair real estate market in Bangladesh.

Keyword: Real Estate, Bangladesh, State Actors, Non-State Actors, Legal Study, Land Management, Housing Policy, Dispute Resolution, REHAB, Urbanization.

I. Introduction

Bangladesh, which has one of the largest populations counts and a rapidly increasing urbanization situation, is under enormous strain on its land holdings. The realty sector is now one of the key drivers of the economy, contributing immensely to national GDP and creating millions of jobs. However, this growth has taken its toll. Issues such as complex land ownership records, clear property transactions, inefficient urban planning, and ongoing legal problems have marred the complete potential of the industry and, most of the time, led to injustices. Ensuring access to affordable and secure shelter is a fundamental right enshrined in the country's constitution, but a goal that escapes a majority of citizens most of the time. The purpose of this research paper is to provide an in-depth legal exploration of the roles of various stakeholders-state and non-state actors-responding to the numerous issues in Bangladesh's real estate sector. The paper maintains that it is imperative to develop an overall understanding of their respective capabilities, interdependencies, and reciprocal influence to construct effective solutions and achieve sustainable development in the important sector. The study will analyze the existing legal regime, review the efficacy of existing policies, and map areas where legal reforms and greater coordination can produce more efficient and equitable outcomes.

2. Objectives of the Study

This study deals with the legal dimensions of real estate business problems and discusses the roles of state and non-state actors within the perspective of the legal framework. The objectives are to:

- Analyze the existing legal environment governing real estate in Bangladesh.
- Identify the role and effectiveness of state actors in legal regulation and enforcement.
- Assess the contributions of non-state actors in promoting legal compliance, transparency, and conflict resolution.
- Propose legal and institutional reforms to address sector problems.

3. Methodology

The study adopts a qualitative legal research design including examination of legislation, policy documents, court rulings, and secondary literature. It also draws on case studies and reports from government agencies, NGOs, and the private sector.

4. Understanding the Real Estate Sector in Bangladesh: A Brief Overview

Real estate business in Bangladesh has also seen exponential expansion, particularly in urban centers like Dhaka and Chittagong, driven by rural-urban migration, population growth, and expanding middle class. The sector involves land development, residential and commercial building construction, and associated finance and legal services. While it has been a huge source of employment generation and income creation, it also possesses distinguishing characteristics and challenges:

- **Expensive and Limited Land:** Excessive population in Bangladesh makes land an expensive and scarce resource, leading to high prices, especially in urban areas.
- **Off-Formal Market:** Most of the property market still persists in the off-formal market, often without proper documentation and legal cover.
- **Complex Land Records:** Land records in the past are incomplete, poorly documented, and subject to change, leading to common disputes over ownership.
- **Financing Disincentives:** Low-cost home financing and availability are a strong disincentive for most, particularly first-time buyers and slum dwellers.
- **Infrastructure Shortfalls:** Infrastructural development is underway but the absence of adequate transportation, facilities, and basic amenities in most locations affects quality of life and property value.
- **Regulatory Hold-Ups and Corruption:** Retardation by the administration, opacity, and instances of corruption within regulatory bodies can significantly delay project approvals and legal clearances.

These challenges call for a collaborative effort between state and non-state actors to make the real estate sector stronger, more transparent, and more equitable.

5. Role of State Actors: Legal Framework and Governance

State agencies like ministries, departments, and regulating agencies are endowed with the core responsibility of formulating and enforcing the law, making policy, and developing the

required infrastructure for the real estate industry. Their tasks are multifaceted and seminal in guaranteeing stability and progress of the industry.

6.1 Legislative and Policy Framework

Bangladesh has a system of legislation and policies for property ownership, transmission, development, and resolution of disputes. Key legislation consists of:

- **The State Acquisition and Tenancy Act, 1950:** This ground breaking legislation deals with the title to land, distinguishing agricultural and non-agricultural land, stipulating rights of ownership, laws of inheritance, and land ceilings. Extensive in its time, its implementation is often defeated by outdated records and bureaucratic practices.
- **Transfer of Property Act, 1882:** The act lays down how the property can be transferred by sale, mortgage, lease, exchange, gift, or will, with legal conditions in each instance, e.g., that it requires written papers and registration.
- **The Registration Act, 1908:** The act offers the registration of various documents, like sale deeds, to make them legally valid and provide public record of transactions in property. Land registration involves verification of ownership documents, preparation of sale deeds, payment of tax and fees that are payable (stamp duty, registration fees, VAT, capital gain tax), and the act of registration at the sub-registry office of the area. Despite being essential, the process is seen to be laborious, time-consuming, and corrupt. Attempts towards digitalization are underway to streamline the process and render it transparent.
- **The Building Construction Act, 1952, and Building Construction Rules, 1996:** These regulate the building construction process to keep pace with zoning laws, building codes, and safety standards. They play a crucial role in preventing unauthorized constructions and ensuring structural stability.
- **Town Improvement Act, 1953:** It established Rajdhani UnnayanKartripakkha (RAJUK) and similar bodies in other metropolitan cities (e.g., Chittagong Development Authority - CDA, Khulna Development Authority - KDA). These bodies are responsible for urban planning, development, and growth, including acquisition of land, infrastructure development, and congestion management. They draft Detailed Area Plans (DAPs) which determine land use, transport, and infrastructure plans.
- **The Real Estate Development and Management Act, 2010:** This is a template law specifically passed to govern real estate developer and agent operations. It ensures developers' registration, establishes standards for marketing and sale of real estate, prohibits unauthorized modifications of plans, and provides for default penalties. It aims to protect buyers from fraud and ensure quality standards. Section 8(2) prohibits developers from modifying specific plot or flat layouts without authorization of the purchasers, and Section 8(3) prohibits acceptance of additional money over that agreed upon. Section 9 mandates handover of possession and registration of deed within three months from payment. Section 6(3) requires developers to approach concerned government departments for project sanction before entering into sale agreements. Offences can attract imprisonment and hefty penalties.

- **The Premises Rent Control Act, 1991:** This act regulates the relationship between landlords and tenants, covering aspects like rent control, eviction procedures, and the rights and obligations of both parties. It aims to provide protection against arbitrary eviction and ensure fair rent practices.
- **National Housing Policy:** Successive national housing policies (e.g., 2000, 2008, 2016) aim to provide accessible, sustainable, and quality housing for all citizens. These policies emphasize the government's role as a facilitator, focusing on increasing access to land, infrastructure, services, and credit, especially for low- and middle-income groups. They also encourage the use of local building materials and promote decentralized housing development.

6.2. Regulatory Bodies and Their Functions

Several state institutions play direct roles in regulating and facilitating the real estate sector:

- **Ministry of Land:** Responsible for overall land administration, including land records, surveys, mutation (transfer of ownership in government records), and land revenue collection. Digitalization initiatives are crucial for improving efficiency and reducing disputes related to land ownership.
- **Ministry of Housing and Public Works:** Formulates and implements national housing policies, oversees the National Housing Authority (NHA), and manages government housing projects.
- **RAJUK and other Development Authorities (CDA, KDA etc.):** As mentioned, these bodies are critical for urban planning, land use zoning, approving building plans, and developing urban infrastructure. They are often at the forefront of implementing DAPs.
- **Sub-Registry Offices:** These offices, under the Ministry of Law, Justice and Parliamentary Affairs, are responsible for the registration of all property-related deeds, ensuring legal validity of transactions.
- **Bangladesh Bank (Central Bank):** Regulates and supervises financial institutions, including those providing home loans and real estate financing. It influences interest rates and credit availability.
- **National Board of Revenue (NBR):** Collects various taxes related to real estate transactions, including stamp duty, registration fees, VAT, and capital gains tax.
- **Civil Courts:** Are the primary forum for litigating real estate cases, such as title cases, boundary cases, breach of contract, and eviction suits. Court processes are governed by the Civil Procedure Code, 1908.

6.3 Challenges for State Actors

Despite the extensive legal framework and institutional setup, state actors face severe challenges in the efficient regulation of the real estate industry:

- **Corruption and Bureaucratic Inefficiency:** Delayed approval processes, complex procedures, and corruption incidents have a tendency to lead to delays, cost overruns, and a climate of uncertainty among buyers and developers.

- **Outdated Land Records:** The dominance of manual and often conflicting land records is a major source of disputes, making title verification difficult and prone to fraud. While digitalization is underway, its full implementation and integration have yet to be realized.
- **Weak Enforcement of Legislation:** Despite good legislation, its enforcement could be weak due to a lack of capacity, resources, and sometimes political interference. This leads to illegal development, non-compliance with building codes, and disregard for environmental law.
- **Gaps in Coordination:** Lack of coordination among the numerous government agencies in charge of land administration, urban planning, and infrastructure development could lead to fragmented intervention and conflicting policies.
- **Resource Constraints:** Insufficient financial and human resources often limit the ability of state institutions to embark on large-scale housing projects, conduct rigorous inspection, or effectively regulate the sector.
- **Political Influence:** Political considerations can sometimes override technical expertise and transparent decision-making in land allocation, zoning, and project approvals.

7. Role of Non-State Actors: Complementary and Corrective Forces

NSAs play a basic complementary and at times corrective, role in addressing the problems of the real estate sector. These include private sector institutions, professional associations, non-governmental organizations (NGOs), community-based organizations (CBOs), and civil society organizations.

7.1 Private Sector Real Estate Developers

Private developers are the key drivers of real estate development, carrying out land acquisition, project design, construction, and marketing. Their functions are tremendous:

- **Meeting Housing Demand:** They significantly contribute to meeting the ever-growing demand for housing and commercial spaces, especially in urban areas where government capacity is limited.
- **Investment and Employment:** They attract substantial investment and generate millions of direct and indirect employment opportunities across various industries (construction, materials, finance, etc.).
- **Innovation and Modernization:** Private developers often introduce new construction technologies, design concepts, and modern amenities, enhancing urban living standards.
- **Revenue Generation:** Through taxes, registration fees, and utility charges, they are significant contributors to the national exchequer.

Challenges and Issues towards Private Developers:

- **Profit Motives:** Even though they are necessary, their profit-driven nature at times tend to drive them into activities that may not be in the best interest of broader public, such as unauthorized developments, compromises on quality at a low cost, or focus towards high-end housing.
- **Lack of Transparency:** Some developers may adopt secretive methods, misleading advertisements, or delayed project deliveries, leading to customer discontent and disputes.
- **Adherence to Rules:** Non-adherence to building codes, environmental laws, and sanctioned plans is no novelty, necessitating stricter regulatory oversight.

7.2 Real Estate and Housing Association of Bangladesh (REHAB)

REHAB is Bangladesh's leading professional organization for real estate developers, playing a significant role as an advocate for its members and a facilitator of the development of the industry.

- **Advocacy and Lobbying:** REHAB acts as a group voice of developers, advocating to the government for useful policies, tax incentives, and regulation amendments. For example, REHAB has requested the government to modify the Detailed Area Plan (DAP) and pointed out possible detrimental implications on the industry. They were also involved in the government's initiatives to reduce property registration costs and introduce home loans for government officials.
- **Professionalism and Standardization:** REHAB aims at standardizing business procedures, promoting ethical conduct, and increasing professionalism among its members. It promotes conformity with the Real Estate Development and Management Act, 2010.
- **Resolution of Disputes:** REHAB provides a platform for extrajudicial conflict resolution between its members and customers, as an alternative dispute settlement process.
- **Promotion and Awareness of the Market:** REHAB organizes real estate and housing exhibitions, domestic and international, to sell members' products and services and raise public awareness about the industry.
- **Research and Education:** It is also an avenue for research, study, and debate on matters related to the industry with a view to disseminating information and raising awareness among the stakeholders.

Challenges facing REHAB

- **Balancing Interests of Members and Public Interest:** The challenge for REHAB is one of balancing members' business interests with public interest in general, and particularly with regards to affordability and also environmental protection.
- **Enforcement among Members:** It can be challenging to get all its members to adhere to standards of ethics and legal compliance because other members' violations can undermine the reputation of the whole industry.

7.3 Non-Governmental Organizations (NGOs) and Community-Based Organizations (CBOs)

NGOs and CBOs, although indirectly not involved in mass real estate development, play a crucial role in advocacy, community empowerment, and housing provision for vulnerable members.

- **Housing Rights Advocacy:** NGOs are involved in advocating the housing rights of marginalized and poor communities, including slum dwellers, climate-displaced individuals, and the low-income class. NGOs such as Young Power in Social Action (YPSA) are involved in advocating housing, land, and property rights for climate-displaced individuals.
- **Micro-Finance and Housing Facilities:** NGOs provide micro-finance facilities or technical assistance for building low-cost housing, mainly in rural settings or in informal urban settlements.
- **Community Mobilization and Capacity Building:** CBOs usually mobilize the community in advocating for better housing conditions, infrastructure, and secure land tenure. They also provide training and support in self-help housing activities.
- **Disaster Rehabilitation:** NGOs play a central role as providers of emergency shelter and organizers of rehabilitation programs for communities affected by natural disasters, often in the form of rebuilding homes.
- **Research and Policy Input:** NGOs contribute research on housing issues, gather data, and provide meaningful input to policy-making, often highlighting the socio-economic character of housing issues.

Challenges for NGOs and CBOs:

- **Limited Resources:** Most NGOs and CBOs face limited financial and human resources, which restricts their range of intervention.
- **Scaling Up Impact:** Even though their localized effect can be high, scaling up their interventions to help solve the national housing shortage poses a major challenge.
- **Engagement with Government:** Though some have strong cooperative relations, others find it difficult to effectively engage government institutions in order to influence policy and secure support.

7.4. Financial Institutions (Private Banks and Non-Bank Financial Institutions)

Private Banks and the non-bank financial institutions (NBFIs) both have the key roles as non-state actors in the property market, providing the finance developers and purchasers require.

- **Home Loans and Mortgages:** They offer various home loan products, including mortgages, construction loans, and land purchase loans, enabling individuals to acquire property.
- **Project Financing:** They provide crucial financing to real estate developers for large-scale projects, facilitating the supply of new housing units.

Challenges for Financial Institutions:

- **High Interest Rates and Strict Criteria:** High interest rates and strict eligibility criteria have a tendency to limit access to finance, especially to the middle and lower-income groups.
- **Risk Assessment:** Financial institutions might find it challenging to evaluate the risks associated with real estate projects, especially in light of land title problems and regulatory complexities.
- **Non-Performing Loans (NPLs):** The sector is susceptible to NPLs that can compromise the stability of financial institutions.

7.5 Legal Professionals and Consultants

Lawyers, notaries public, land surveyors, and real estate consultants play a fundamental role in facilitating legal and transparent transactions.

- **Due Diligence and Title Verification:** Legal professionals conduct essential due diligence, land title verification, ensuring there are no encumbrances, and determining the legality of transactions.
- **Drafting Legal Documents:** They draft sale deeds, agreements, and other legal documents, ensuring compliance with relevant laws.
- **Dispute Resolution:** Lawyers represent clients in property disputes, pursuing remedies before civil courts or alternative dispute resolution fora.
- **Consultancy and Advisory Services:** Real estate consultants provide market research, valuation services, and guidance to buyers and sellers.

Challenges for Legal Professionals:

- **Fragmented Information:** The challenges of fragmented and often manipulated land records make effective due diligence difficult even for experienced professionals.
- **Ethical Practices:** Unethical behavior on the part of some practitioners can erode public trust in the legal system.

8. Interaction and Dynamics between State and Non-State Actors

The relationship between state and non-state actors in the Bangladesh real estate market is a complex one of collaboration, interdependence, and occasional tensions.

8.1. Areas of Collaboration:

- **Policy Dialogue:** Government agents often communicate with non-governmental agents, particularly REHAB and professional associations, during policy formulation and revision. This allows for more realistic and industry-oriented policies to be formulated.
- **Public-Private Partnerships (PPPs):** There is increasing recognition of the need for PPPs in infrastructure and housing development, leveraging the financial capacity of the private sector and the regulatory framework of the state.

- **Disaster Response:** In times of natural disasters, there is often close collaboration between government agencies (e.g., disaster management ministry) and NGOs in providing emergency shelter and rehabilitation support.
- **Digitalization Efforts:** Non-state actors, especially real estate technology firms and financial institutions, often support and benefit from government initiatives to digitalize land records and streamline registration processes.

8.2. Areas of Conflict and Challenges in Interplay

- **Regulatory Friction:** Non-state actors, particularly developers, often express concerns about complex, inconsistent, or overly stringent regulations imposed by state agencies (e.g., regarding DAP revisions, building height restrictions).
- **Corruption Allegations:** The real estate sector is often perceived as susceptible to corruption, involving both state officials and some non-state actors, which undermines trust and fair practices.
- **Lack of Accountability:** While laws exist, enforcing accountability for non-compliance can be challenging, leading to a perception of impunity for certain actors.
- **Unequal Bargaining Power:** In certain instances, particularly between large developers and individual buyers or landowners, there can be an imbalance in bargaining power, leading to exploitative practices.
- **Informal Settlements:** The state often struggles with managing and legalizing informal settlements, while NGOs and CBOs work directly with these communities to advocate for their rights and improve living conditions, sometimes leading to policy disagreements.

9. Legal and Policy Recommendations for Enhanced Problem Resolution

To effectively resolve the persistent problems in Bangladesh's real estate sector, a multi-pronged approach involving significant legal and policy reforms, coupled with enhanced collaboration between state and non-state actors, is imperative.

9.1. Strengthening the Legal and Regulatory Framework:

- **Expedited Land Digitalization and Record Modernization:** Prioritize and accelerate the complete digitalization and integration of all land records (CS, SA, RS, BS Khatians) and mutation processes. This is the single most critical step to reducing land disputes, forgery, and streamlining transactions. Legislation should mandate timely updates and secure digital storage.
- **Simplification of Land Registration Process:** While digitalization will help, further simplification of the land registration process is needed, including reducing the number of required documents and steps, and enhancing transparency in fee structures.
- **Effective Implementation of Real Estate Development and Management Act, 2010:** Strict enforcement of the provisions of the 2010 Act is crucial to protect buyers from fraudulent practices, ensure quality construction, and prevent unauthorized deviations from approved plans. Increased oversight and harsher penalties for violations are necessary.

- **Review and Harmonization of Land Laws:** There should be a holistic review of the current land laws, some of which trace their origin to colonial days, so that inconsistencies, duplication, and loopholes could be determined and addressed. These laws must be harmonized with contemporary real estate practices and urban development requirements.
- **More transparent Zoning and Urban Planning Laws:** Make Detailed Area Plans (DAPs) through participatory processes, be realistic, and be strictly enforced. Make provisions for open and effective revision of DAPs to reflect shifting urban realities.
- **Compliance with the Environment and Safety:** Implementing stronger environmental impact assessments (EIAs) and building safety codes, particularly for high-rise buildings, is necessary to ensure sustainable and secure development.
- **Special Courts/Tribunals for Real Estate:** Recommend establishing special real estate courts or tribunals with technical expertise to dispose of complex real estate cases expeditiously and de-congest traditional civil courts. It might include mandatory mediation or conciliation stages before litigation.

9.2. Increasing Capacity and Accountability of State Actors:

- **Capacity Building:** Invest in training and capacity building of land office, sub-registry office, and development authority staff to make them more efficient, professional, and reduce sources of corruption. It includes technical capacity building in land survey, urban planning, and legal processes.
- **Facilitating Transparency and E-governance:** Implement full-fledged e-governance solutions for every land and realty associated service, ranging from queries pertaining to land records to building plan approvals to property registration. This will reduce human intervention significantly, reduce the risk of corruption, and increase transparency.
- **Facilitating Anti-Corruption Practices:** Implement robust anti-corruption practices like rigorous monitoring, guarding whistleblowers, and prompt legal action against corrupt officials in land and real estate organizations.
- **Inter-Agency Coordination:** Institutionalize and efficient mechanisms for coordination among the Ministry of Land, RAJUK/development authorities, NBR, and financial institutions to facilitate consistent policy implementation and reduce bureaucratic bottle-necks.
- **Public Awareness Campaigns:** The government should launch awareness campaigns to educate citizens about their property rights, the legal procedure of property transactions, and redressed channels.

9.3. Facilitating Greater Responsibility and Cooperation among Non-State Actors

- **Enhancing REHAB's Function:** Enlist REHAB in an enhanced self-regulation function, encouraging stricter adherence to a code of conduct by its members. REHAB also enhances its mechanism for addressing disputes and making it more accessible and effective for consumers.
- **Encouraging Ethical Practice:** Developers and other private actors need to adopt and follow rigorous ethical standards, including transparency, quality, and timely project delivery. These are accurate marketing, contract honesty, and price declaration honesty.
- **Increased Corporate Social Responsibility (CSR):** There needs to be a motive for private developers to engage in CSR activities, like constructing affordable housing projects for the lower income group, contributing to urban infrastructure, and adopting environment-friendly initiatives.
- **Empowering NGOs and CBOs:** Provide greater support and incentive to the efforts of NGOs and CBOs in advocacy for housing rights, benefiting vulnerable sections of society, and facilitating access to basic necessities. This can encompass funds, policy guidance, and channels of co-operation on government-led initiatives.
- **Financial Innovation:** Encourage financial institutions to develop more affordable and accessible home loan schemes, particularly for middle- and low-income groups, perhaps on lower interest rates or government-supported schemes.
- **Professionalization of Legal and Consulting Services:** Encourage professional bodies of lawyers, surveyors, and consultants to enhance standards, organize practices, and provide ongoing professional education to provide good quality and ethical services in the real estate sector.

10. Conclusion

The Bangladeshi real estate sector is at a turning point. Its historically unmatched economic development and job creation potential is categorical, but no less plagued by systemic challenges arising from complex legal frameworks, governance deficits, and in formalization. These challenges require a collective and collaborative response by state and non-state institutions. State governments, through their legislative, regulatory, and infrastructure role, must take the initiative by strengthening the legal framework, making its enforcement effective, and ensuring a transparent and responsive bureaucracy. Bringing speed to digitizing land records, simplifying the property registration process, and enforcing the Real Estate Development and Management Act, 2010, in a no-nonsense way are matters of highest priority. Concurrently, non-state actors from private developers to professional institutions like REHAB, NGOs, and financial institutions must become more responsible, promote good practices, and work pro-actively with state agencies. Their imagination, lobbying, and grassroots interface are essential to fill gaps in service delivery and ensure a more equitable spread of housing opportunities. Finally, a robust and resilient real estate sector in Bangladesh is built upon the balanced interaction of state and non-state actors, supported by an evident vision, responsible governance, and compliance with the upholding of rule of law and right to housing for all individuals. This legal examination emphasizes that the path ahead entails sustained legal reform, reinforcing institution capacity, and instilling a culture of accountability and cooperation among all parties.

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