



MINI-APARTMENT SHOULD BE REMOVED?

In recent years, the form of multi-unit housing (referred to as the “**mini-apartment**”¹) has emerged and became increasingly popular in large cities like Hanoi or Ho Chi Minh City. From a positive perspective, it cannot be denied that mini-apartments are a reasonable choice that helps the dream of families and individuals settling in major cities come true. However, the rapid development and increasing demand over the years have led to numerous consequences that fail to guarantee the rights of home buyers and negatively impact the surrounding area's economic and social life. Especially the recent distressing incidents have heightened the anxiety of home buyers and residents in mini-apartment complexes as they face potential risks every day.

Faced with this situation, many people (including legal experts) believe that mini-apartments have been a longstanding mistake and need to be restricted or even banned from further development. Furthermore, in the future, the draft of the Law on Housing should not recognize or implicitly classify this type as housing but should categorize them all as apartments, regulated by the legal framework of apartment buildings. However, this recommendation does not truly address the practical needs of the historical issues associated with this type of housing. Moreover, this suggestion has caused of apprehension and worry for families and individuals who own these 'mini-apartment' complexes or units, regarding their legality and the assurance of their ownership rights to the properties they have invested time and effort in establishing.

Through the article “**MINI-APARTMENTS SHOULD BE REMOVED?**” as presented below, we aim to clarify the legal basis for the formation and establishment of mini-apartments at this time, to some extent providing peace of mind for people owning these units. At the same time, through the article, ATA also puts forth some proposals for amending and supplementing legal provisions to better manage and supervise the construction and administration of micro-apartment complexes.

¹ In this article, we will use the phrase “mini apartment” when referring to the type of “house with many apartments” for readers to easily imagine, it does not mean to affirm that the current Vietnamese law has recognized the type of housing called “mini apartment”. In the current laws and decrees guiding the Law on Housing, this phrase has not been recorded and only allows individual houses but there are many self-contained apartments (Clause 2, Article 46 of the Law on Housing 2014; Clause 2, Article 6 of Decree 99/2015/ND-CP guiding the Law on Housing 2014).

1. Why is "mini-apartments" referred to as housing but in the form of a "variant of an condominium"?

Firstly, it must be emphasized that “mini-apartments” are not a new type of housing but is still categorized as housing with multiple apartments. However, in the current laws, the design and construction of a “mini-apartments” must comply with the standards and regulations applicable to regular condominiums. Additionally, when it comes to operation and management, issues arising in a “mini-apartments” have all the characteristics of condominiums, such as the number of apartments and residents/households buying and residing in a building, which could be quite high (often from 10 apartments/households onwards). During the residency, these residents/households will have common living needs (e.g., sanitation, education, transportation infrastructure, etc.). Quality and safety issues of a “mini-apartments” are also likely to affect the rights and safety of many residents/households living there and in the surrounding area.

However, in practice, the licensing, construction, and operation of multi-storey, multi-apartment housing – “mini-apartments” – are much simpler compared to regular condominiums. A condominium project requires thorough evaluation and assessment in various aspects for approval. After approval, it is subject to close supervision and checks by the relevant authorities. On the other hand, similarly to other individual housing, a “mini-apartments” is typically self-funded and managed by households or individuals. The

investment, construction, operation, and maintenance of a “mini-apartment” are much simpler compared to condominiums and primarily depend on agreements/commitments between the property owners of “mini-apartment” and the households/individuals buying houses there.

Based on the legal and practical characteristics mentioned above, considering "mini apartment" ed as a "variant of an condominium" is appropriate.

2. Is "mini apartment" recognized by laws?

In terms of definition, most legal documents in Vietnam do not specifically recognize the term of “mini-apartment” as the name of a housing type².

In essence, since the issuance of Decree 71/2010/ND-CP (“*Decree 71*”) guiding the 2005 Law on Housing, the “mini-apartment” type – multi-storey, multi-apartment urban housing – has been legally acknowledged. Specifically, Articles 43.3 and 43.5 of Decree 71 stipulate as follows:

"3. In case a household or an individual builds a house in an urban area with 2 or more stories, each storey having 2 or more self-contained apartments (with separate living rooms, kitchens and toilets), each apartment must have a minimum floor area of 30 m² and comply with Article 70 of the Housing Law regarding condominiums.

4. Ownership certificates shall not be granted by the authorities for houses specified in Clause 2 of this Article that have no force-

² In fact, this phrase was recorded in Appendix A Classification of civil, industrial and urban technical infrastructure works according to National Technical Regulation QCVN 03:2012/BXD compiled by the Institute of Architecture, Urban and Rural Planning, Department of Science, Technology and Environment for approval, the Ministry of Science and Technology shall appraise and the Ministry of Construction

enclose to Circular No. 12/2012/TT-BXD dated December 28, 2012 of the Minister of Construction. However, at that time, “mini-apartment” was classified as one of the types of condominiums, not individual houses, so it was not essentially a multi-unit individual dwelling as mentioned. The current Circular No. 12/2012/TT-BXD has been replaced by Circular No. 05/2022/TT-BXD effective June 1, 2023.

bearing safety certificates granted by functional bodies; houses with many apartments that fail to satisfy the conditions specified in Clause 3 of this Article; or houses that have no construction licenses as required.

5. Households and individuals that have houses which fully satisfy the conditions specified in Clause 3 of this Article may, upon their request, obtain ownership certificates granted by competent state agencies for each apartment within the houses. Only after obtaining ownership certificates can they sell or lease these apartments. Upon selling such apartments, households and individuals shall carry out procedures to transfer land use rights to purchasers in the form of common use land."

Thus, Decree 71 provided the first legal basis that "emerges" to the housing type of multi-apartment housing owned by households or individuals. Accordingly, apartments in individual housing areas of households or individuals that meet minimum technical standards applicable to apartment buildings and comply with the regulations on construction permits will be granted a Certificate of Ownership for the entire housing area or for each apartment within that area.

The 2014 Law on Housing inherited the spirit and "legalized" the content of Decree 71. Accordingly, Article 46.2 of the 2014 Housing Law allows that *"in case the household or individual is permitted to build a multi-storey house whose each storey has two self-contained apartments or above satisfying minimum floor area standards, private areas and common areas in the apartment building as prescribed in this Law, each apartment shall be recognized the homeownership."*

In this way, in accordance to the spirit of the law, "mini-apartments", although essentially being housings, must comply with the construction standards of condominiums (Decree 99/2015/ND-CP; Circular 12/2019/TT-BXD (replaced by Circular 05/2022/TT-BXD from June 1, 2023); Circular 21/2019/TT-BXD (replaced by Circular 03/2021/TT-BXD from July 5, 2021)).

Regarding the ownership rights to "mini-apartment", Article 46.2 of the 2014 Law on Housing not only allows the existence of "mini-apartment" but also officially recognizes the ownership rights and the issuance of Ownership Certificates for people purchasing "mini-apartment". The establishment of ownership rights for "mini-apartment" must comply with the conditions, dossiers, and procedures for granting Ownership Certificates for housing as stipulated in related laws.

Therefore, it could be seen that the current laws have established a legal basis for households or individuals to invest in the construction and carry out transactions for "mini-apartment". Thus, households or individuals who own a project of "mini-apartment" or a "mini-apartment" and satisfy all the prescribed standards, criteria, and legal requirements, shall still have their ownership rights fully protected by the law.

3. Should the mini-apartment be eliminated or, in other words, what are the consequences of removing mini-apartment and can it be resolved?

Before delving into the analysis of whether to eliminate mini-apartment or not, we need to understand why mini-apartment can be so appealing to buyers. Compared to regular apartments, the price of mini-apartment is quite affordable while still providing many basic amenities, making

them convenient for daily living and suitable for various target groups. This is the major advantage of mini-apartment, helping people with moderate to low incomes, students, and workers to own or rent homes in central areas of cities. Mini-apartment complexes are typically built in inner-city areas, convenient for transportation, close to the city center, schools, markets, and shopping centers, to meet the daily living and commuting needs, studying, and working of the users. The construction of mini-apartment is relatively fast and they are often put up for sale when completed, allowing for swift transactions. Buyers can move in immediately without waiting for design, construction, or extensive renovation like in regular apartments. Mini-apartment come in various sizes, typically ranging from 25-50m², allowing buyers or renters to be flexible in considering their finances and the number of residents to find the most suitable apartment.

With the outstanding advantages mentioned above, mini-apartment is indeed a suitable choice for many people, meeting the demand for home ownership and settling down in big cities for the majority of Vietnamese people for generations. Therefore, if the question of eliminating mini-apartment is raised, according to ATA's assessment, it will be an extremely challenging issue to solve thoroughly and effectively due to the following factors:

Firstly, it is necessary to ensure that affordable housing and land funds can replace micro-apartments

One of the solutions implemented recently is the construction of social housing; however, the construction of social housing has faced many obstacles in the past such as: incomplete and stringent incentives for social housing investors leading to a lack of enthusiasm in constructing social housing;

increasingly limited land funds, resulting in a shrinking area for social housing construction, not to mention that the areas allocated for social housing construction are often inconvenient due to inadequate transportation infrastructure for the majority; moreover, the limited and restrictive regulations for individuals or families to buy or own social housing have hindered the role and benefits of social housing.

In addition to social housing solutions, many administrators and experts have been researching and exploring alternative solutions for many years, but they have not been able to be resolved in the near future.

Secondly, we need to address the consequences of existing apartment buildings or “mini-apartments”

After a long period of development, the number of “mini-apartment” is rapidly increasing. According to information from Nhan Dan newspaper, Hanoi has about 2,000 “micro-apartment”. The removal of “micro-apartments” raises the question of how to ensure the legal rights and interests (as analyzed above) for those who own or live in these “mini-apartment” or apartment complexes. Addressing the resulting consequences is certainly not an easy task and cannot be accomplished in a short period.

4. The legal framework should be aimed at to manage “mini-apartment”, ensuring the rights and benefits of buyers and owners of this type of housing

In the world, even in developed countries, in large cities, there are still “mini-apartment” designed and built for middle-low income people whose jobs or lives are forced to be associated with urban areas. Therefore, it is undeniable that, in terms of policy, the recognition of houses with many apartments

in legal documents is suitable for living conditions, meeting the development needs of the socio-economy in provinces and large cities with large population concentrations.

Currently, the draft Law on Housing (amended) has “named” these apartments as “multi-storey houses, multi-households of households and individuals”. Accordingly, in essence, the draft Law still recognizes that this is a type of housing but must meet the standards and regulations of condominiums and allow households and individuals building houses to choose the form of issuing a General Certificate for the whole house or issuing a separate Certificate for each apartment in the housing area this (in the certificate issued to each apartment, it must clearly state that the land use right is under the common use of the owners).

Related to this issue, many experts are of the opinion that this type of housing should be completely abandoned because if the Law allows the investment, construction and sale and transaction of these apartments so simply, it will encourage the rampant construction of “mini-apartment”. This will lead to a series of consequences such as lack of connection, synchronization of technical infrastructure, social infrastructure, difficulties in management, ensuring safety and security...

However, as analyzed above, in our opinion, the elimination and prohibition of this type will also lead to many consequences that are difficult to solve or solve immediately. And we want to emphasize that **the problems of “mini-apartment” today do not come from policy but from management – from the licensing process**

to the post-licensing stage for these types of housing estates. Therefore, we believe that, instead of eliminating and prohibiting this type, lawmakers and management agencies should develop and perfect legal provisions to ensure strictness in construction investment, management and post-construction operation, and strengthen the accountability of the developer as well as strengthen the accountability of the authorities. As conditions become more difficult, licensing and inspection and supervision become stricter, sanctions for violations are increased, and so on. All of this is also a measure to help curb the massive, uncontrolled development of “mini-apartment” and at the same time can overcome the limitations and solve the deterioration of the “mini-apartment” that have been built and exist, protect people's legitimate rights and interests, avoid tragic risks and consequences like the recent incident.

With the identification of mini-apartment as a variant of the condominium, in our opinion, the regulations on licensing and management of mini-apartment should also be completed in the direction of strengthening and stricting as for conventional condominiums but adjusted to suit the scale, the nature of this type of housing. Within the scope of this article, ATA proposes a number of issues and contents in the legal policy on this type of housing that need to be focused on perfecting as follows:

4.1. In the work of construction licensing:

Currently, the latest draft Law on Housing (amended)³, there have been stricter

³ The draft Law on Housing posted on the website of the Ministry of Construction for comments on July 10, 2023.

regulations on construction permits for "multi-storey houses, multi-households of household members and individuals". Accordingly, in addition to continuing to require houses of this type to meet standards and technical regulations for condominiums; meet fire prevention and fighting requirements; To apply for a construction permit, the draft requires "houses with a scale of 20 apartments or more" to be eligible to be investors of housing construction projects (must be enterprises, economic organizations) and must set up projects to make investment in housing construction according to regulations.

However, the new draft Law only focuses on new apartments and places restrictions on large apartment complexes that have not solved the shortcomings of old apartments and small-scale apartments (from less than 20 apartments). Here, we propose to add additional provisions in the draft Law and documents guiding the implementation of the Law related to licensing issues as follows:

- (i) Proposing the draft Law to add necessary and sufficient conditions for households and individuals when applying for permits to build "mini-apartment" such as conditions related to financial capacity; capacity and experience in managing and implementing the construction and operation of condominiums. For individuals who do not meet the conditions, they must hire qualified units or individuals and must provide evidence proving the satisfaction of that unit or individual;
- (ii) The proposed draft Law adds conditions related to determining the synchronization of technical and social infrastructure in the locality in the short and long term as a basis for licensing. For example, not permitting the construction of "mini-apartment" in alleys (ensuring that the lane is sufficient for fire engines to operate

normally); on an area that only allows the construction of a certain number of "mini-apartment" and each area has no more than a number of apartments, etc.;

- (iii) Proposing the addition of regulations guiding the Law in the licensing of "mini-apartment", which requires the participation of specialized units in appraisal activities before licensing, especially the appraisal of fire protection works designs ("fire protection");

- (iv) For apartments that have been built and exist, if they do not meet the regulations, it will give time for apartment owners to plan to reduce the number of apartments, focus on apartments with substandard area, apartments that have not been granted certificates and proceed to compensate affected home buyers, policies should be added to encourage cases where home buyers who have been issued a Certificate of Legality agree to move.

4.2. In the management after construction permit:

One of the reasons why the construction quality of "mini-apartment" is always in a low condition and does not ensure safety is that the management agencies completely relax the inspection, supervision and acceptance after construction permits. This has led to a lot of mistakes in construction work. Typically, households and individuals who have built individual houses, many floors, many apartments or built houses to prevent rooms for rent for living do not comply with the provisions of the law on construction and fire protection, leading to the number of apartments and people living in the apartment area increasing too high, causing great pressure on technical infrastructure, social-infrastructure in the area, the buildings do not meet the quality of construction, so they are quickly degraded, the non-compliance with the design and fire

protection conditions leads to a high risk of fire and explosion, causing unsafety not only for people in the apartment complex but also for the surrounding areas.

Accordingly, in order to ensure the compliance with technical regulations, standards and regulations in the construction of “mini-apartment”, in our opinion, legal documents need to add more contents to strengthen the inspection and supervision after construction permit for this type of housing, concrete:

- (i) Stipulate the inspection and supervision of competent authorities for construction work to ensure the registered design;
- (ii) Additional obligations of households and individuals in the acceptance of works before sale. The results of acceptance of the building must be provided to the home buyer and attached to the contract of sale of the house;
- (iii) Add strict regulations for violations of construction work such as: revocation of permits, increase of penalty value, not allowing the continuation of construction without demolishing the wrong works, etc.;

4.3. In the management of project quality:

Currently, there are many mini-apartments that have been built and operated for a long time, so there have been many deterioration phenomena; or there are many mini-apartments renovated from ordinary individual houses, so they do not ensure the quality as well as the minimum technical infrastructure criteria such as: the fire protection system is not available or has but cannot work; the apartment appears subsidence, cracks...

From the above-mentioned situation, an urgent issue for the competent agencies is the strengthening of the inspection and quality management of mini apartments;

review all works to assess and classify cases of eligibility/disqualification for construction, fire prevention and fighting in order to promptly have remedy plans, and at the same time, strictly handle violations of relevant organizations and individuals in accordance with the provisions of law.

In addition, the law and guiding documents should supplement the responsibilities of home builders and sellers in the construction warranty, and provide a mechanism to bind their responsibilities at the time of sale. For example, it is necessary to add regulations requiring house builders and sellers to set up an account to pay the purchase and sale value, to deposit a sum of money at the bank to ensure the construction warranty obligation and to record all contents and grounds related to the account, deposit amount and certified by the bank for relevant contents in the house purchase contract. Accordingly, when an event related to the quality of the construction occurs, home buyers can request the bank to disburse the deposit amount for warranty, repair and remediation work at the project without the consent or opinion of the apartment owner.

In addition, currently there are only regulations on quality inspection and demolition of unqualified condominiums, these regulations in our opinion should also be applied to "mini apartments" to ensure the safety of people living here and the surrounding area.

4.4. In the management and operation of the “mini-apartment”:

The current draft Law on Housing (amended) stipulates that the management and operation of multi-storey and multi-apartment houses shall comply with the Regulation on management of the use of condominiums promulgated by the Ministry

of Construction. However, the Law does not provide a mechanism for implementing and monitoring this area.

In our opinion, in order for this regulation to really come to life, it is important to have a mechanism to bind the responsibilities of the owner of the “mini-apartment”. The requirement of payment through a bank account and the involvement of the bank in the management of the account should also apply to the maintenance fund for “mini-apartment”. This maintenance fund will be deducted from the purchase and sale of the apartment and will be maintained on the account of the owner of the “mini-apartment” but the right to use and designate the bank to spend the money will belong to the community living in the “mini-apartment”. The method of management and purpose of spending for this account will be applied similarly to that for ordinary condominiums. In case this fund runs out,

households owning/living in these properties will be obliged to establish and maintain their own fund accounts according to the regulations in the community.

Conclusion

Finding suitable housing within financial capabilities to stabilize one's life is something every citizen desires. Therefore, developing and refining appropriate legal policies, supplementing specific mechanisms and policies for multi-storey, multi-apartment housing is essential to maximize opportunities for households and individuals to have their own homes. Concurrently, enhancing management efforts and increasing the responsibilities of households and individuals as the owners of these housing projects, as well as the responsibilities of the relevant authorities in enforcing laws related to this type of housing, are crucial steps towards addressing the “mini-apartments” issue in the current phase.

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