



Current Landscape of Property Development in Nigeria and Legal Considerations



Introduction

Property development in Nigeria has evolved from crude indigenous structures fabricated with local building materials like mud, wood, and thatch during the pre-colonial/early colonial era, to complex structures designed to either maximise limited plot sizes or cover large expanses of land, with multiple floors, and advanced technologies/materials in the present dispensation.¹

Real Estate, a critical factor of production, is one of the key sectors that could help re-energize the Nigerian economy. Renowned and relatively new developers are as active as ever, designing, commissioning, and completing massive projects. The pertinent issue is to evolve solutions to unclog real estate transactions and realise the sector's potential as a major contributor to the Nigerian economy.

History & Laws Governing Land Development In Nigeria

The Land Use Act of 1978 (the Act) abolished the existing land tenure systems and replaced them with a uniform Land Administration system across the country. Before the Act, there were three land tenure systems. They were the customary system, which was essentially based on the customs and traditions of the various communities with the Chief, community or family head holding the land in trust for family or community use; the non-customary system, based on the received English Law (operational largely in the former Lagos Colony) which vested the land on the British Crown but also allowed for either freehold or leasehold interests over land; and special native-favoured system of Northern Nigeria which put the land under the control of the Governor for the use and benefit of the Natives of the Region.²

A ten-man expert panel set up in 1985 by the Military Administration led to the establishment of the National Housing Policy 1991, with a proposal to provide access to decent housing at affordable cost under the "Housing for All by the Year 2000" in line with the United Nations (UN) advocacy and an estimated 8 million units unmet housing need in the Country.³ In its bid to create an enabling environment for increased housing supply, the Federal Government at various times in history (especially with the policy of increasing private sector engagement in direct construction of housing) developed various housing schemes.

¹ Ogbonna Chukwuemeka Godswill et al "Property Development and Land Use Planning Regulations in Nigeria" (2017)

² Dr. Yusuf Yahaya "The Land Use Act and the Nigerian Housing Sector" (2019)

³ Ibid



Among these were the Sites and Services Scheme, Mass Housing Scheme, Affordable Housing Scheme, Owner-Occupier Housing Scheme and in the case of the Federal Capital Territory - the Land Swap Programme. Most of these schemes are welcome developments, for instance, the Land Infrastructure Swap Initiative was designed to address the infrastructure deficit in the FCT as it entails engaging the private sector to provide infrastructure in exchange for land.

Apart from freeing government land for economic activities such as real estate and industrial development, the initiative also resolves one of the major problems of urban or city development which is the provision of a good network of roads and associated infrastructure.

Despite the new schemes and innovations, many postulate that the present land ownership system in Nigeria as enshrined in the Land Use Act of 1978 has socialist inclinations with excessive state control of land ownership, use and development; and such land system cannot effectively support private sector-driven enterprises and development initiatives.

Issues Faced with the Current Property Development and Land Ownership Dispensation In Nigeria

Problems with provisions of The Land Use Act 1978

As reflected in its major provisions, the Land Use Act of 1978 (the Act) was enacted to nationalize land ownership in Nigeria and also facilitate effective state control of the use and development of land. However, in the implementation of the Act over the past decades it is evident that the Act has increasingly become a hindrance to economic growth and development in the country.⁴ First of all, in Nigeria, many citizens cannot access capital or leverage their Real Estate assets because their ownership rights are not adequately recorded.

Section 1 of the Act provides:

"subject to the provisions of this Act, all land comprised in the territory of each State in the Federation is hereby vested in the Governor of that State, and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act."

Section 22 of the Act further states that:

"it shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sub-lease or otherwise howsoever without the consent of the Governor first had and obtained..."



⁴ Namnso Bassey Udoekanem et al " Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectations." (2014)

⁵ Namnso Bassey Udoekanem et al (2014)

⁶ S.1, Land Use Act 1978



According to the Journal of Environment and Earth Science Vol.4,
No.21, 2014:

“land ownership system which restricts the citizens’ right to occupy land, buy, let or sell their land without obtaining the consent and approval of their Governors as provided in sections 21 and 22 of Nigeria’s Land Use Act is anti-people and oppressive and cannot enhance sustainable development in any egalitarian society.”⁵

The inevitable outcome of this situation is that buyers purchase the residue of a term instead of being conferred with outright ownership. In spite of the relationship of trust envisaged by the Act in Section 1, the Act is silent on holding the Governor accountable for his actions or inactions. By way of amendment of the Act, adequate accountability measures need to be put in place to hold a Governor accountable in the application of this section.

Additionally, the Act lacks capacity for conflict resolution with respect to disputes arising from unjust and unfair revocation of statutory rights of occupancy. This is evident in Section 47 of the Act which states as follows:

“1. This Act shall have effect notwithstanding anything to the contrary in any law or rule of law including the Constitution of the Federal Republic of Nigeria and, without prejudice to the generality of the foregoing, no court shall have jurisdiction to inquire into:

(a) Any question concerning or pertaining to the vesting of all land in the Governor in accordance with the provisions of this Act; or

(b) Any question concerning or pertaining to the right of the Governor to grant a statutory right of occupancy in accordance with the provisions of this Act; or

(c) Any question concerning or pertaining to the right of a Local government to grant a customary right of occupancy under this Act.

2. No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act.”

The implication of the above provision is that the court and even the Constitution of the Federal Republic of Nigeria are excluded from inquiring into any question pertaining to the granting of land rights by the Governor and payment of compensation in cases of compulsory land acquisition in any part of the country. This section which ousts the jurisdiction of the court into any question concerning the amount or adequacy of any compensation paid or to be paid under the Act should be amended as anyone dissatisfied with the Act of the Governor should be able to resort to the Courts.

Ease of Registration

Anybody who has undertaken application for Governor’s Consent (for example at the Lagos State Lands Registry, Ikeja), is aware of its long-drawn out nature. A prospective buyer or investor has to jump through several bureaucratic hoops to get Governor’s Consent. Sometimes, due to the fees involved, some landowners neglect or prefer not to perfect their title, which creates a chain of incomplete documentation of title in respect of that particular land.⁷

⁷ Franklin Okeke “Nigeria: Unlocking Real Estate Value In Nigeria: Legal And Regulatory Issues” (2020)



The reality is that our present operating model is unsustainable in terms of logistics involved in perfecting a title. Most developed countries have streamlined their registration processes for perfecting title which increases the ease of doing business. For instance, in South Africa, they have adopted a linear process which eases the time and money spent in perfecting title. In a typical South African transaction, upon execution of the transaction documents by the parties, the conveyancer takes the documents to the Deeds Registry where the Registrar confirms the validity of the transaction.⁸ Thereafter, the deed is prepared for registration and execution. The Registrar and the conveyancer execute the deed at the Deeds Registry which is subsequently updated to include the current transaction. This whole process is a singular module which cannot be separated, thereby creating a certainty of procedure and ownership amongst purchasers of Real Estate.⁹ Accordingly, a major improvement required in the current dispensation is that the procedure for obtaining consent at the various land Registries should be simplified and timeous.

Revocation of Right of Occupancy and compensation.

Sections 28 & 29 of the Act deal with the power of the Governor to revoke rights of Occupancy, and compensation; respectively. The revocation done on the grounds of overriding public interest which is subjected to the payment of compensation is notable. The provision relating to revocation of rights of occupancy on grounds of overriding public interest needs to be made more transparent. Information and research on the scope of development for which the land is required should be available for public scrutiny.

Reliability of Certificate of Occupancy

Section 9 of the Act provides that the governor when granting a statutory right of occupancy shall issue a Certificate of Occupancy as evidence of a right of occupancy. Nonetheless, despite provisions like S.9(1), S.34(3) S.34(9) and S.36(3) which require the Governor to be satisfied that the applicant is entitled to a right of occupancy in the land before issuing a Certificate of Occupancy, there is no provision for a thorough investigation of an applicant's claim. These provisions should be amended to allow an effective and timeous way of scrutinizing and verifying an applicant's claim; this could be in form of a digital data base.

Other Recommendations

There are some other workable solutions to the issues pertaining to the Act. One of such solution includes narrowing down the categories of Real Estate transactions that require Governor's Consent which would in turn help to fast-track those transactions. Then a simple notification of the transaction to the Lands Registry should suffice.¹⁰ It is glaring that there is an urgent need to amend the 1978 Act as it is expedient that the law, governing land transactions, be in line with current economic realities.



⁸ S.33(12) of Deeds Registries Act, No 47 of 1937, South Africa

⁹ Franklin Okeke (2020)

¹⁰ Franklin Okeke (2020)



It should be amended to facilitate access to land and to make clearer provisions for the indigenous land tenure system so as not to leave everything to mere implication, as is presently the case under the transitional provisions of sections 34 and 36. This may include setting a deadline for the conversion of pre-existing indigenous titles into rights of occupancy with the holders obtaining certificates of occupancy. The alternative suggestion is an amendment of the Act to exclude the Indigenous land tenure system from the operation of the Act. This would enable the latter to co-exist with the rights of occupancy system without the present problems of interpretation.¹¹

Rapid Urbanisation & the Need for Town Planning

Most developing countries like Nigeria are currently faced with a relatively large housing deficit, a very high occupancy ratio in most cities, lack of basic infrastructure facilities like pipe-borne water, water closet, electricity, and good road network.¹² There are millions of urban families in the third world cities who live in homes that lack adequate sanitation and security, have an irregular electricity supply and are built of flimsy materials. Property development in some cities of the developing countries has given rise to increased environmental challenges as exemplified by traffic congestion, flooding, overcrowding, and waste pollution.¹³ The guidance of town planning and its instruments of land use regulation is the belief that allowing uncontrolled property development results in haphazard, and socially undesirable outcomes. State intervention is required to curtail and shape market and human impulses, especially in land development, and many argue that this is the justification for land use regulations and development control by town planning authorities.¹⁴ Typically, Land use regulations serve the purpose of restricting development in order to give effect to urban plans. Nonetheless, despite the existence of planning laws & regulations and the establishment of the planning authorities, there is a common perception that property development is still being done in ways that constitute environmental challenges in cities.¹⁵

The Adverse Effects

Nigerian property development has been deemed a speculative scheme directing people towards making concessions to whatever is readily available. The increasing land prices, mounting professional fees and cost of building materials have brought about indirect effects such as sub-standard quality of housing detrimental to its occupiers, as has been the case in the wave of collapsed buildings in the country over the past few years.¹⁶ In March 2006, the top nine floors of a 21-storey building belonging to the Bank of Industry, which was located on the popular Broad Street, Lagos Island, caved in wherein one person was killed while 24 people were reported injured. Similarly, in September 2014, one of the worst building collapses in the country occurred in the Synagogue Church of All Nations in Ikotun area of Lagos claiming 115 lives. Even more recently, on 12 April 2023, A 7-storey building on First Avenue, Banana Island in Ikoyi, Lagos State, collapsed with several persons injured and one confirmed fatality. Some of these devastating events can be traced back to improper regulation and hasty development in pursuit of quick financial returns.



¹¹ Nnamdi Madichie & Okechukwu A. Madichie “Property development and unresolved housing issue in northern Nigeria” (2016)

¹² Abraham Taiwo & Albert Adeboye “Sustainable Housing Supply in Nigeria Through the Use of

¹³ Indigenous and Composite Building Materials” (2013)

¹⁴ Ogbonna Chukwuemeka Godswill et al (2017)

¹⁵ Ibid

¹⁶ Ola Aluko “Development Control in Lagos State: an Assessment of Public Compliance to Space Standards for Urban Development” (2011)

Nnamdi O. Madichie & Okechukwu A. Madichie “A theoretical review of the property development challenges in Nigeria” (2009)



It has been argued that property developers flagrantly contravene planning regulations in the course of development after having secured planning approval, some also do not build according to the approval plan and some do not actually obtain approval before construction.¹⁷

It is notable that despite the adverse effects and numerous past incidents, there are measures in place and legal implications when a building collapses in Nigeria. For example, in Lagos, in the event of the collapse of any property or structure due to negligence on the part of the owner, or the developer, such property shall be forfeited to the State Government after due investigation and or publication in the State Official Gazette . Regulation 13(5) of the Lagos State Building Control Regulation, 2019 also states that:

“In the event of structural defect or failure of the building due to negligence leading to collapse, all the under listed professionals including the developer, to wit;

(a) Civil Engineer/Structural/Mechanical;

(b) Builder; and

(c) Architect;

who participated in the development of the structure shall be held liable.”

Then Regulation 43 of the Lagos State Building Control Regulation, 2019 sets out different offences and penalties, ranging from a fine of N250,000 to N500,000 against violation of the provisions of the Regulations by any person or company.

Through an oral interview survey to ascertain reasons why numerous developers submit their plan to town planning authorities and yet fail to follow it up to obtain approval, five (5) majors factors were distilled, mainly: high cost of fees charged for plan approval; bureaucratic bottleneck and unnecessary delays in obtaining approval; poverty and low income capacity of average developers in the country; short-comings of planning staff, generally high level of ignorance of residents to planning requirements etc.

¹⁷Ogbonna Chukwuemeka Godswill et al (2017)



Recommendations

Some possible solutions and recommendations to these issues are that Government should embark on the preparation of an up-to-date land use plan, and strategic plans for various towns and villages, including its utilities and facilities which will in turn effectively guide growth and development in a more sustainable manner, and provide the basic framework for a more realistic development control; the necessary logistics for the efficient functioning of the planning authorities (utility vehicles, tractors, and professional manpower) should be provided; the Government should cause there to be enforced the regulation requiring developers to carryout post construction assessment of their building, and prepare certificate of fitness for habitation and As-Built Drawings for submission to the planning authorities, as prerequisite for occupancy which will in turn greatly reduce the tendency of developers to deviate from their approved plans during implementation; and the Government could also create the enabling environment for developers to be sensitized about the need to protect the environment by ensuring that their plans are approved prior to commencement of development, particularly, placing primacy on achieving a sustainable environment over revenue derived from plan approval.

Additionally, there is an urgent and immediate need by all participants in property development and management in the country to begin to pursue means of being innovative in their relevant fields along the patterns of product innovation, process innovation and material innovation. Furthermore, it is imperative that innovations in building materials should take the semblance of international standards.

Conclusion

Real estate is a basic amenity of life, and housing and development problems are not issues specific to Nigeria, as they are universal. Although Nigeria has professionals transcending all sectors of the industry including higher education, a wealth of experience in property research, development, and management; what has become apparent in the industry is the unwillingness by professionals to be innovative, even when innovation in the industry is glaringly begging to be explored and applied by all professionals in the property sector. To a considerable extent, higher education is pertinent in this regard, as there is a need for the refining of the curricula of studies on Estate Management in polytechnics and universities to incorporate contemporary studies on environmental sustainability and preservation whilst providing manageable infrastructural facilities. This should be supplemented with continuous professional development training for all property professionals keeping them up-to-date with contemporary practice. The Government could also support this initiative through enabling legislation and a call for more proactive engagement of the professional bodies in the property development and management process.

The ultimate goal should be availing Nigerians with the ownership or rental access to decent, safe, healthy, and affordable housing accommodation. It is apparent that the cumbersome nature of land title documentation; the inadequate and faulty registry system with many cases of insecurity of title, double and multiple allocations; and the resultant delay in the building approval process are inadvertent effects of the Land Use Act. To this end, the need for amendment of the 1978 Act cannot be overemphasised. Furthermore, the encouragement of the use of local materials, supply of infrastructural facilities, slum modernisation, proper financing of housing policies & programme and many more are advisable; and are all canons for sustainable property development and housing.

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