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(Courtesy)

Before



After

Tama 38: Standing tall – and firm

» By Doron Afik and Ohad Gavish

Israel has a building standard that is to be implemented to resist earthquakes. However, this building standard (Standard 413) came into force only in 1980. Consequently, all buildings constructed prior to that date are susceptible to seismic disturbances, and an earthquake can cause serious damage.

Israel is situated on the African-Asian fault line and is therefore prone to earthquakes. Small earthquakes have been felt in Israel frequently, but experts believe it is just a matter of time before a big one strikes.

So what can one do to ensure that these older buildings can withstand an earthquake?

The way to do this is to reinforce the buildings and strengthen them to withstand the tremors of a quake and bring them as close as possible to the 413 building standard. This is the technical response to the fact that hundreds of thousands of buildings in Israel would not be able to withstand an earthquake.

This sounds simple enough, but it is easier said than done.

Reinforcing an existing building is a very

expensive proposition. And within the property ownership system in Israel, this is mission impossible. The majority of apartments in Israel are owned by individuals. Each person or family owns one apartment in a building, and together they own the communal areas.

This is not a good set-up for executing communal tasks. Even raising the money necessary for the cleaning and maintenance of a property is not an easy task. So when other more expensive tasks must be performed, collecting money from the owners of the apartments is nearly impossible.

And when it comes to raising the necessary sums from the apartment owners to reinforce a building, it is not only nearly impossible, it is totally impossible. Consequently, despite the importance of reinforcing a building against an earthquake, under the present circumstances it is impossible.

Nevertheless, the government, which is well aware of the gravity of the situation, has stepped in. It is very much aware that if an earthquake strikes, innumerable apartment buildings will

collapse, creating a crisis of epic proportions.

Therefore, the government has enacted the National Master Plan 38 (also known as Tama 38), which is slated to solve the problem of weak structures vis a vis earthquakes. Tama 38 solves the problem by ensuring that the apartment owners in these buildings do not have to spend a single penny to reinforce their building.

Strengthening such buildings will be undertaken by real estate developers or contractors, who will be reimbursed by tax incentives. In addition, they will be granted permission to add floors to the existing building. They will build new apartment units on these added floors and then sell them. The proceeds will finance the costs of strengthening the building and adding the floors and will net the developers a tidy profit.

However, this policy has not been a total success because it is a complex operation. The contractors have to obtain permission from the apartment owners, which is no easy matter.

Because of the complexity of the process, it would make things go more smoothly if



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the apartment owners contracted the services of an attorney who specializes in such matters. An attorney can explain the details of the process to the apartment owners and look after their interests.

Tama 38 encourages apartment owners to strengthen their building. It achieves this by granting construction rights within the building to enable the construction of additional apartments and enlarging the existing apartments, as well as providing tax benefits and the shortening of statutory processes.

In practice, the apartment owners contract a developer to perform the construction work. This usually includes reinforcing the building to withstand earthquakes, adding security rooms, enlarging the existing apartments, installing an elevator, refurbishing the lobby and staircases of the building, refurbishing the exterior of the building, replacing old infrastructures with new ones, landscaping the surrounding grounds and public areas, and adding balconies and parking spaces. (Note: Such actions are dependent upon compliance with zoning, engineering and financial issues and negotiation with the developer.)

In return for the construction work, the developer receives the right to build and sell new apartment units.

Theoretically, apartment owners can finance the strengthening of their building

by themselves, but most prefer to contract a developer to do it for them. It is customary that in a Tama 38 project, the apartment owners are not required to bear any of the costs. All costs of the project are borne by the developer, including the attorney fees of the apartment owners (chosen by the owners), who is entrusted with protecting the rights and interests of the owners (and not of the developer, who is represented by a different attorney).

In some cases, subject to economic viability, rather than strengthening the existing building, the owners may prefer to demolish it and build a new one with a larger number of apartments. This is most often the case with buildings with a small number of apartments but a large unused plot and in areas with high real estate prices.

The National Master Plan provides that the Local Committee for Planning and Construction is empowered, but not obligated, to approve requests submitted to it. But it states that the committee must base any refusal on special reasons arising out of planning, architectural or landscape consideration or issues related to the weight-bearing capacity of the structure.

In a recent case, the committee refused to approve all the requests it received, and the court held that the law allows economic incentives to developers as a means to promote the objectives

of Tama 38 but does not derogate from the powers of the committee to apply planning considerations and does not give preference to providing incentives on other considerations, even if it means that the strengthening of the building will not take place due to lack of economic viability.

This article does not purport to address all the many issues that arise within Tama 38 projects, which vary from project to project. Thus it is crucial that before entering into any negotiation with a developer, the apartment owners secure the services of an attorney who is experienced in this area. Only a knowledgeable lawyer can acquire the optimal commercial and legal terms for the owners, while receiving the appropriate bank guarantees required to ensure the developer's compliance with all the terms.

Doron Afik is a notary public and an attorney and managing partner of Afik & Co., Attorneys and Notaries (www.afiklaw.com). He practices law in Israel and New York and is a licensed notary public in Israel. His practice focuses on international transactions, including mergers and acquisitions, dispute resolution and issues of public law.

Ohad Gavish is an attorney at the office of Afik & Co. He specializes in real estate and commercial law and has extensive experience in representing tenants in Tama 38 projects. ■