Issues Concerning the Housing Development Account (‘HDA’) in Peninsular Malaysia: A Case Study of Abandoned Housing Projects

Keywords: Abandoned Housing Projects, Housing Development Account, Issues, Fraudulent Housing Developers, Purchasers’ Losses, Legal Remedies.

INTRODUCTION

Housing is a burgeoning industry in Malaysia. Initially housing was provided by the Malaysian Federal Government in the early days of its independence. Later, the private sector was invited by the government to participate in providing housing accommodation to meet the public upsurges in demand for housing. To govern the housing industry spearheaded by the private sector, the Malaysian Government introduced laws. One of the laws is the Housing Development (Control & Licensing) Act 1966 (Act 118). Nevertheless, despite there are many housing policies and legal means to ensure housing success, there are still issues plaguing housing industry in Malaysia. For an instance one of the big issues is the issue of abandoned housing projects. This issue has been existed since 1970s. Until now, this issue has not been fully addressed and resolved by the government. Many purchasers have become victims in abandoned housing projects, suffered irreparable damage and exorbitant losses.

OBJECTIVES

The objective of this paper is to discuss the issues arising from the enforcement of the requirement that the housing developers in Malaysia must open and maintain Housing Development Account pursuant section 7A of Act 118 and the Housing Development (Housing Development Account) Regulations 1991 (‘Regulations 1991’). The purpose of HDA is to ensure the housing development funds are used for legitimate purposes and not to be abused by the irresponsible parties to the detriment of the house purchasers. This writing is pertinent particularly in the event of abandonment of housing development projects, which hitherto have not been fully resolved by the Malaysian government. By identifying the issues, the author will suggest some proposal to overcome the issues and provide better protection to house purchasers.

SCOPE

This paper highlights and analyses legal issues pertaining to the law and enforcement of HDA provision in Act 118 in two abandoned housing projects in Peninsular Malaysia. The analysis is done by applying qualitative case study and legal research methodologies over these two abandoned housing projects happened in Malaysia. These two housing projects are:

1) Taman Harmoni, Lot 82, Mukim of Cheras, District of Hulu Langat, at the State of Selangor, Malaysia; and,
2) Taman Lingkaran Nur, KM 21, Jalan Cheras-Kajang, Selangor at P.T. 6443, H.S(D) 16848, Mukim of Cheras, District of Hulu Langat, also at the State of Selangor, Malaysia.

GENERAL ISSUES CONCERNING HDA

There are cases where housing developers have abused the requirements under section 7A of Act 118.
According to this provision, all licensed housing developers are required to open and maintain Housing Development Account (HDA). The claim for payment made by the housing developers to the purchasers' financiers (bank) must be supported by the certificates issued by architects and/or engineers proving that the progress development of the house has been duly carried out in accordance with the requirements of the law. However, despite architects or engineers have evidenced the completion of certain progress development, it is evident that, this duty may not have been done honestly. In other words, there are fraudulent practices by developers, architects, engineers and bank managers to withdraw the available money in the hands of the end-financiers at the expense of the purchasers (Soo Hong & Leong Kew Mooli & Ors v. United Malayan Banking Corporation Bhd & Anor [1997] 1 MLJ 690; [1997] 2 CLJ 548).

There is no provision in Act 118, or the statutory housing agreements (Schedules G, H, I and J) (the said agreement), or the Street, Drainage and Building Act 1974 (Act 113) (SDBA) or the Uniform Building By-Laws 1984 (G.N. 5178/84) (UBBL), which requires the construction works and the progressive claims made by the developers, to be mandatorily inspected and verified by Ministry of Urban Well-Being, Housing and Local Government ('MHLG') (the housing authority) and the local authority (the building authority). The amended section 7(f) of Act 118, which requires developers to provide a true periodic statement about the progress development of the housing project, it is opined, is still insufficient for ensuring that the stages of construction have been duly carried out in accordance with the law (Act 118, SDBA and UBBL). This is because, there is no provision requiring a cross-check, supervision and inspection of the construction works to be conducted by MHLG or the local authority. Further, even though there are penal provisions against the developer and the architect or the engineer or the Principal Submitting Person (PSP) pursuant to sections 22E (this section provides penal punishment against the stakeholder who releases dishonestly the purchasers' moneys), 22F of Act 118 (Progress Certification) and section 70(27) of the SDBA who may have dishonestly released the moneys or provided false progressive certificate for supporting claims, these provisions, it is opined, are still inadequate to prevent the problem. This is because penal action or civil action may take some time to succeed depending on the proofs available and is time-consuming process in court plus other procedural tussles. In the worst situation, the perpetrator housing developers may not have monetary provisions to meet the losses suffered by the purchasers. It is opined, there should be a preventive provision rather than remedial. Likewise, the existence of the new section 7C (Freezing of the HDA), may not provide much help as there is no legal requirement for a cross-check, supervision and inspection against the works done by the developers, MHLG and the local authority.

Further, according to a building lawyer - SY Kok, there are several loose and creative yet cunning devices which the developer can apply to circumvent the above provision, much to the chagrin and the detriment of the purchasers. For an example, the developer can deposit the proceeds of the current project into the former housing development project's account, and uses it for other unpermitted purpose. There are two further issues in this respect. Firstly, whether the moneys obtained through loan for the purpose of initial works on construction and development sites and for other matters related thereto, prior to the obtaining of the development licence, have to be channelled into the HDA, as well? Secondly, in regard to any administrative expenses (including marketing and advertising expenses) incurred on the housing development, which could be manipulated to the advantage of the developer under the guise of highly inflated or exorbitant marketing and advertising bills or via generous salaries and bonuses for officers and directors of the developers (Kok, 1998, at 160, 161 & 162).

Further there is evident that, in the course of rehabilitation, the rehabilitating parties and the rehabilitation funder stipulate that the funds for the running of the rehabilitation must be monitored by an appointed accountant or a stakeholder. This accountant or stakeholder will control the cash-flow of the funds. This is made through agreement and consent judgment of all parties in the housing development such as the purchasers, contractors, creditors, suppliers etc., to circumvent this statutory duty (i.e. not to open nor to channel the moneys received from the purchasers into the HDA, but to open an alternative trust account.
for facilitating the distribution of various monetary obligations owed by the developer to various third parties). This happened in the rehabilitation of Tingkat Nusantara Lots 300 & 302, Section 9W, NED, Georgetown, Penang (MHLG File Number: KPPT/BL/19/1171-1). Thus, these means are applied for contracting out of section 7A of Act 118 and the Housing Development (Housing Development Account) Regulations 1991 (‘Regulations 1991’). It is opined, the obligation of the developer or the rehabilitating parties to open and maintain as well as to ensure that all moneys received from the purchasers are channelled into this HDA remains enforceable and cannot be absolved. This statutory duty shall also be observed even though the developer’s licence has expired. This is the law laid in Honour Properties Sdn Bhd & Anor v. Duniaga Sdn Bhd [2002] 7 MLJ 203 (High Court). Thus, the agreement or the purported consent judgement which contravenes this statutory duty is regarded as void.

The moneys held in the housing development account (HDA) and held by the stakeholder in the situations as spelt out by section 7A(5)(a)(b) of Act 118 shall be subject to the provisions of, for example--the Companies Act 1965 (‘CA’) and the Income Tax Act 1967. By the insertion of this provision, subject to section 7A(6)(a)(b) of Act 118, if the housing projects are abandoned, the moneys available in this account shall not be withdrawn and used by the defaulting developer for his personal purposes for example, to settle his debts owed to the creditors. However, it appears that, if there were a plan for rehabilitation, the caretaker for the rehabilitation of the project, shall have to apply to the court for the withdrawal of these moneys. Nevertheless, the provision contained in section 7A does not mention the monetary provision to fund rehabilitation and the liability of the defaulting housing developer or MHLG to rehabilitate the abandoned housing project. Further, there is nothing, in the provisions of the said agreements, purchasers’ housing loan agreements and the bridging loan agreements providing these matters either. Section 7A(6)(a) of Act 118 only specifies that, the moneys in the hands of the stakeholder (usually lawyer), official receiver, trustee in bankruptcy or liquidator shall be used in accordance with the provisions of the Regulations under Act 118. Meanwhile section 7A(6)(b) of Act 118 provides that if there is any remaining balance of the moneys after deducting against the obligations and liabilities, the balances shall be given to the developer back. But there is nothing whatsoever, being provided in Act 118 and its regulations nor in the said agreements, that the moneys or the balances, if any, be used for the purpose of the rehabilitation scheme. Likewise, there is no provision serving as legal protection and remedies for the purchasers and the stakeholders, for ensuring the completion of the project through rehabilitation scheme, in the said agreements, Act 118 and its regulations, or even in the housing loan agreements and the bridging loan agreements, in the event, the purported housing project carried is later inevitably, abandoned. It appears, these matters, should be made clear, at least in Act 118 and its Regulations.

RESEARCH METHODOLOGY

The author used qualitative case study and legal research methodologies to analyze the data generated from the data sources.

The reason as to why, the author has chosen qualitative case study method is because, the author wished to do an in-depth and detailed case studies of certain abandoned housing projects. In addition, as the nature of the research is of a case study, it warrants the qualitative approach be employed. Qualitative methodology concerns exploring people’s life, histories or everyday behaviour that quantitative research is unable to grasp. Quantitative methodology, on the other hand, limits the information that certain sources could offer. The weakness of the quantitative methodology is that, it is subject to limited variables set out at the outset of the research (Silverman, 2000; Yin, 1994; Yin, 2003).

There may be other social and cultural variables and cultures that have not been contemplated and measured by previous researches or the knowledge of the researchers. The implications of this defect are that, the results produced may not be confident enough and may not represent the true state of the
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situation under research. It could be misleading and spurious. Much of quantitative research leads to the use of a set of ad hoc procedures to define, count and analyze its variable. On this basis, qualitative researchers have preferred to describe how, in everyday life, we actually go about defining, counting and analyzing (Silverman, 2000).

By using the qualitative method, information gathered will be more and enriching as it involves an in-depth and deeper understanding and study of a particular matter. For example, quantitative research could not answer questions and matters which have not been planned or thought about (Silverman, 2000). In abandoned housing projects, it is evident that there are many information that are un-explorable by simply answering the specific set of sample questions affordable by using quantitative research methodology. These matters include the idea of individual context, experience, feelings and intuitions. Thus, it is suggested that it is more prudent to use qualitative research methodology than quantitative research so that the findings and information would be meaningful and enriching. By using qualitative methodology, many new aspects of problems can be identified and thus, once they are identified, suggestions would then follow, resulting in the research results and findings being more beneficial and practical.

Further, due to the nature of this writing, which is humanistic and subjective, this writing utilized the qualitative research approach.

The sources of data for analysis of the above two case studies are the accessible files of the Ministry of Urban Well-Being, Housing and Local Government (‘MHLG’), Insolvency Department and District and Land offices. Apart from this, the author also carried out interviews with relevant people. The author also carried out observation in the course of eliciting data and information from the sources. The purpose of observation is to collect information that may not be obtained through ordinary methods such as file review and interviews. The information include subtle and hidden information, reactions, demeanour, culture, policies and worldviews.

The second type of methodology that the author used is the legal research methodology. This methodology is used to analyse the legal data and information contained the legal data source such as legislations and statutory provisions, case law and the accessible documents that recorded legal events and issues. According to Anwarul Yaqin, legal research means a systematic study of legal rules, principles, concepts, theories, doctrines, decided cases, legal institutions, legal problems, issues or questions or a combination of some or all of them (Yaqin, 2007). The law that involved in this legal research is the housing law concerning HDA as contained in Act 118 and Regulations 1991. The author wishes to know and highlight the issues and grievances that the purchasers faced in abandoned housing projects that are due to the flaws in the HDA provisions. Once the legal issues and problems are identified, the author will suggest certain legal reforms that should be made to render the HDA provisions more legally protective to purchasers.

RESULTS AND DISCUSSION

Case Study 1 - Taman Harmoni, Lot 82, Mukim of Cheras, District of Hulu Langat, at the State of Selangor, Malaysia

Pursuant to a resolution passed in the Selangor State Executive Council (EXCO) dated 2 October 1991 on the application of the State Secretary of Selangor Incorporated (SUK (Incorporated)) to alienate a piece of land formerly known as Lot 82, Mukim of Cheras, District of Hulu Langat, Selangor (the said land) and based on the layout plan as approved by the Selangor State Department of Town and Country Planning, the Council had agreed on the proposal of alienating the said land to SUK (Incorporated). Prior to the application for such alienation, the EXCO had once approved an application for the said land to be developed into a Low-Cost-Housing-Special-Programme on 21 September 1988. This housing project

The project—Taman Harmoni at Lot 82, Mukim of Cheras, District of Hulu Langat was divided into two (2) phases—Phase I consists of single-storey-medium-cost-terraced houses, while Phase II involved the development and erection of the low-cost flats. The development for Phase I was fully completed, albeit delayed, by the defaulting developer (K&T Development Sdn. Bhd. ('K&T'))), whilst Phase II had not been commenced at all, except for the preliminary, piling, and levelling works done by the defaulting developer. Thus Phase II was considered an abandoned housing project. This project was a joint venture between K&T, Perbadanan Setiausaha Kerajaan Negeri Selangor (State Secretary of Selangor Incorporated (SUK (Incorporated)), being the land proprietor and Permodalan Negeri Selangor Berhad (PNSB). The major reason leading to the abandonment of the project was the financial difficulties faced by K&T. These difficulties arose due to the lack of skills, experience, and expertise of the defaulting housing developer company (K&T), and the inappropriate selling prices for the units compared to the costs of construction and unforeseen costs (earth works and piling works) faced by K&T (MHLG File Number: KPKT/08/824/6037-1).

This project (Taman Harmoni) was also a joint venture (JV) between K&T, SUK (Incorporated) being the land proprietor, and PNSB. This JV was made effective by a Management Agreement and Power of Attorney (PA) dated 24 June 1992, a JV agreement dated 9 November 1992, a PA dated 9 November 1992, and a Supplementary Agreement dated 4 November, 1993 (MHLG File Number: KPKT/08/824/6037-1).

Fortunately, the project had been revived by the land proprietor—SUK (Incorporated) through their project manager, PNSB—until full completion and Certificate of Fitness for Occupation ('CF') were obtained on 1 July 2005. However, the rehabilitation was a loss making venture for PNSB and SUK (Incorporated). Nevertheless, the rehabilitation had proceeded, bearing on the reason that this project was for the social welfare of the low-income group in Selangor. Furthermore, the rehabilitation undertaken was not without difficulties. Among the problems were the civil suit initiated by K&T against the rehabilitating parties, and the problem of getting the required consent from Syarikat Bekalan Air Selangor Sdn. Bhd. (SYABAS), which is the water authority in the state for connecting the temporary water supply while pending on the completion of the final water supply that could take about one (1) year to complete, after which this would enable the purchasers, who had been awaiting for the delivery of vacant possession and occupation of the units for the last 10 (ten) years since the signing of the sales and purchase agreements to obtain vacant possession, to move into the completed units (MHLG File Number: KPKT/08/824/6037-1).

On the part of the purchasers, the difficulties that they had to bear were the inability to occupy the purported units on time, having to incur other costs such as rents, and inability to get any late delivery compensation from K&T.

Analysis and Findings
There was no evidence that the developer for Taman Harmoni (K&T Development Sdn. Bhd) had swindled out or siphoned off or had used the moneys received unreasonably in the course of construction to their advantage to the detriment of the purchasers. Even if there had been such a case, the law on the withdrawal of the money from the end-financiers' hands and from the Housing Development Account (HDA) may be abused by the developer in that they might unscrupulously act in concert with the architect, engineer (being qualified persons) and the bank manager for withdrawing the same (Md. Dahlan, 2001 at 157 & 158).
Nonetheless, there is no provision in Act 118, that allows MHLG or the purchasers to verify each and every claim and withdrawal made from the Housing Development Account. There is also no provision imposing MHLG to carry out visual and technical supervision and inspection and verifying each and every stage of construction of the houses and the project during the course of development and cross-checking each and every certificate of completion issued by the architect or engineer (the qualified persons) for supporting the claims in withdrawing the end-finance moneys from the HDA. Further, there is no provision, requiring MHLG to get verification from the local authority concerning the quality and standard of the works done for each and every stage of development so as to comply with the UBBL and the SDBA. Although the developer was obligated to comply with these laws (UBBL, SDBA, NLC and Act 118) according to section 7(j) of Act 118, this obligation can still, arguably, be abused by the developer as MHLG and the local authority do not monitor these laws effectively.

The judicial decision in Public Prosecutor v Annamaly a/l Naravan [1989] 1 MLJ 45 (High Court), too could hamper the speedy administrative action undertaken by the Minister or his Deputy for the purpose of safeguarding the interests of purchasers involved in abandoned housing projects. In this case, the High Court negated the right of the Deputy Minister of MHLG in issuing directives to the unlicensed housing developer to refund all the deposit paid by the purchasers. The court held that any such a directive should be sanctioned by court order before becoming enforceable. Thus, this decision has undermined the administrative functions of MHLG for a speedy action and remedy in the protection of the purchasers' interests, without having to go to court. Further, it is opined, this decision has negated the purpose of sections 11 and 12 of Act 118.

Case Study 2 – Taman Lingkaran Nur, KM 21, Jalan Cheras-Kajang, Selangor at P.T. 6443, H.S(D) 16848, Mukim of Cheras, District of Hulu Langat, also at the State of Selangor, Malaysia

Taman Lingkaran Nur, Kajang, Selangor above was a result of a privatization project between Saktimuna Sdn. Bhd. (the defaulting developer) (Saktimuna) and the Selangor State Government. The latter was the proprietor of the project land, who later alienated the land to Saktimuna for it to develop into a housing project subject to certain terms and conditions. However, in the course of the development of the project, the project failed and was abandoned as Saktimuna faced serious financial problems due to insufficient sales and revenues generated through sales, and their inability to meet the development and construction costs, which persisted from 1992 to early 2000 (MHLG File Number: KPKTl08182414275).

Later the project was taken over by one Syarikat Lingkaran Nur Sdn. Bhd. (SLN)—the first rehabilitating party with the consent of the Selangor State Government and the defaulting developer. Unfortunately, SLN also suffered the same fate, i.e. it was also unable to complete the project due to financial constraints (MHLG File Number: KPKT/08/824/4275).

On the instruction of MHLG and numerous appeals from the aggrieved purchasers, Syarikat Perumahan Negara Berhad (SPNB) had taken over part of the project, i.e. Phase 1A from SLN, with the consent of the Selangor State Government and Saktimuna. Being a government linked company (GLC), SPNB obtained funds from the Ministry of Finance (MOF) to revive the project. The rehabilitation succeeded. However, this rescue was a welfare service, in that the available moneys in the hands of the end-financers were insufficient to meet the rehabilitation costs. MOF had to top-up funds to ensure the completion of the rehabilitation. During the course of the rehabilitation, there were several problems faced by SPNB, and one of them was the refusal and failure of certain purchasers to give consent to SPNB to carry out the purported rehabilitation works. Thus, not all the units in Phase 1A had been fully rehabilitated and obtained CFs. The remaining phases (Phase 1B and 2), except for Phase 3 which SLN had a joint-venture with Tamming Sdn. Bhd. and it was developed into a completed housing project now known as Taman Cheras Idaman, have as yet been revived. These phases (Phases 1B and 2) are still in the course of negotiation and study for rehabilitation, both by Saktimuna, the OR (being the Kuala
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Saktimuna was wound up on 11 March 2005 upon application of the Inland Revenue Board (Lembaga Hasil Dalam Negeri—LHDN) for failure of the developer company (Saktimuna) to settle corporate tax to LHDN. On 11 March 2005, the Official Receiver (OR) being KL JIM, was appointed as the provisional liquidator for the developer company. Later OR was also appointed as the liquidator for the developer company on 12 May 2009 (MHLG File Number: KPKT/08/824/4275; Kuala Lumpur Department of Insolvency file number: JIM(WP)14/2005/A).

Phases 1B and 2 at Taman Lingkaran Nur were vested in Singesinga Sdn. Bhd. (Singesinga) by the chargee lender—Messrs CIMB Bank Berhad (CIMB) in settlement of the outstanding unpaid loan of Saktimuna to CIMB (the chargee lender), through a court’s vesting order (MHLG File Number: KPKT/08/824/4275; Kuala Lumpur Department of Insolvency file number: JIM(WP)14/2005/A).

As at 31 December 2010, there is no rehabilitation or resumption of the housing development project for Phases 1B and 2 at Taman Lingkaran Nur. Nonetheless, recent news is that there is an interested party to buy the whole housing development area at Phase 2 and settle all the damage of the Phase 2’s purchasers. The interested party is Messrs Idaman Wajib Sdn. Bhd. (IW SB), the developer responsible for erecting a housing development project adjacent to Taman Lingkaran Nur (MHLG File Number: KPKT/08/824/4275).

As at 15 April 2008, Phase 1B which consisted of 52 units had been fully sold to public purchasers. The completion stage for Phase 1B is between 0% and 35%, while Phase 2 consists of 108 units where 98 units had been sold to the public. However these 98 units have not been constructed at all (i.e. the project has as yet to commence, abandoned, and the land on which the project is to be erected is still barren and vacant land filled with bushes and scrubs) (MHLG File Number: KPKT/08/824/4275).

As of today, there is no plan to rehabilitate Phase 1B. However, with respect to Phase 2, there is an interested buyer, namely IWSB, to purchase the land in settlement of the redemption sum as prescribed by Sinesinga (the chargee). In this project (Phases 1A, 1B, and 2) the OR, as the liquidator to the wound up housing developer company (Saktimuna Sdn. Bhd), does not rehabilitate the project (Kuala Lumpur Department of Insolvency file number: JIM(WP)14/2005/A; PPT(WP)141/2005/A).

Analysis and Findings

Saktimuna Sdn. Bhd (‘Saktimuna’) was proven to have claimed and withdrawn the purchasers’ moneys in the housing development account dishonestly in conflict with section 7A and the Housing Developers (Housing Development Account) Regulations 1991. In receipt of the complaints lodged by purchasers, MHLG requested Saktimuna to return all the payments dishonestly received but not all purchasers got the purported refund (MHLG File Number: KPKT/08/824/4275). Further, Saktimuna also executed supplementary agreements with some purchasers in Phase 2, purportedly to upgrade the works and materials for the to-be-built-units and required the purchasers to execute the same, costing each of them an additional sum of RM 12,300.00. Thus, the act of the developer had clearly circumvented the law in the statutory sale and purchase agreements and Act 118, in order to get additional funds. In addition, there was no right given to the purchasers to request a stop of the release of the moneys in the housing development account on any breach committed by the developer, considered detrimental to the purchasers’ interests (MH AG File Number: KPKT/08/824/4275).

Further, the author repeats the contentions and elaborations as provided under the first case study above – Taman Harmoni on matters pertaining to:
1) the absence of provision in Act 118 requiring MHLG or the purchasers to verify each and every claim and withdrawal of moneys made from the Housing Development Account;
2) no provision requiring MHLG to carry out inspection, verification and inspection over each and every stage of construction and cross-check over each and every certificate of completion issued by the architect or engineer of the developer;
3) no provision requiring MHLG to obtain verification from the local authority over the quality and standards of works done for each and every stage of construction; and,
4) the judicial problem emanating from Public Prosecutor v Annamaly a/l Naravan [1989] 1 MLJ 45 (High Court).

CONCLUSION AND RECOMMENDATIONS

The case-studies reveal the failure of the developers to comply with regulation 8 of the Housing Developers (Housing Development Account) Regulations 1991 and section 7A of Act 118 to the detriment of the purchasers. In order to protect the funds of purchasers still in the hands of the end-financiers from being released dishonestly by the developer working in concert with the qualified persons/PSP or other parties, it is proposed that the claims, the construction stages and the works as prescribed in the statutory standard contract of sale (Schedules G, H, I and J) done shall also be verified, supervised and inspected by the Housing Controller. This is to ensure that each and every stage of construction and the works are duly completed in accordance with the law, and that the approved specifications and plans and that the developer’s claim is a true claim. The claim made by the developer for release of the money in the Housing Development Account, shall also be accompanied by the certificate from the local authority or the technical agencies, as the case may be, certifying that the erection of the building is in accordance with the requirements of the law (such as the SDBA and UBBL).

In consequence, a new provision has to be added to section 7 of Act 118 and Regulation 8(1) of Regulations 1991, imposing a duty on the Controller to undertake reasonable periodic inspection and supervision over the progressive development/construction stages and the works as prescribed in the statutory standard contract of sale and purchase (Schedules G, H, I and J). The provision shall also provide the right of purchasers to independently supervise and inspect the construction stages and the works done and grant power to request the end-financiers to stop any release of money to the vendor developer, if the works done are not according to the law.

To grease the implementation of the above suggestions, it is proposed that, MHLG should also open up branches in each and every district in Peninsular Malaysia, where housing development projects are carried out. The statutory duties as prescribed by Act 118 and its Regulations, can be effectively carried out by the branches’ officers. These duties include, for example, the processing of the applications for housing developer’s licences, applications for advertisement and sale permit, implementing full enforcement of the provisions in Act 118 and carrying out supervisions and inspections of each and every stage of construction in the housing development projects erected within that particular district, without having to call on the MHLG head-quarter’s officers in Putrajaya to carry out the same, which may not be practical and expedient. Only urgent and classified matters are to be handled by the MHLG headquarters. Most of the statutory duties provided in Act 118 would be executed by the branches’ officers. Thus, by having this administrative reform, it can make the above proposed duties to be efficiently and effectively undertaken.

The local authority shall also have to undertake supervision and inspection to cross-check the quality and standard of works during and after the course of construction of the building units and infrastructures. It is suggested, section 70D (1)(a) of the SDBA be amended and a new sub-section shall be added.
Following the above amendment, for the purpose of issuing the Certificate of Completion and Compliance (CCC) pursuant to section 70(20) of the SDBA, and the new by-law 25(1) and (2) of the Selangor UBBL, the PSP, must also get the certification from the local authority or the technical agencies.

In conjunction with the above proposal, section 95(2) of the SDBA needs to be repealed. This is to ensure the works executed by the local authority are done in accordance with the law and reasonable practice. The repeal is to ensure the works done by the local authority are made in a professional way. Further the development of the law in New Zealand, Australia and the United Kingdom has shown that the local authority no longer enjoys this immunity (Invercargill City Council v Hamlin [1996] 1 All ER 756, [1996] AC 624; Sutherland Shire Council v Heyman & Anor [1985] 157 CLR 424; 60 ALR 1; Sutherland Shire Council v Becker 40370/05, 2006 NSWCA 344 BC200610573; Winnipeg Condominium Corp No 36 v Bird Construction Co Ltd & Ors [1995] 121 DLR (4th Ed) 193)).

For the above purpose the schedule of works, stages of construction, flowcharts and plans for the whole development of the intended building and project shall also be submitted to the local authority for approval. It is suggested that this additional requirement be put into practice or a new by-law 3(3) for the UBBL be enacted.

Thus, by having the above provisions, the quality of building works and materials used for the construction of the building and project under the housing development would be in accordance with the requirements of the UBBL, SDBA, the building standard practices/guidelines and Act 118 (especially in accordance with the terms and conditions stipulated in the statutory standard sale and purchase contract). Further, the progress claim and release of the end-finance money are made after duly reasonable supervision, inspection and certification by the local authority and the technical agencies. Thus, this practice and legal requirement could preserve the money from being manipulated dishonestly by unscrupulous developers, engineers, architects and the bankers as that happened in Taman Lingkaran Nur.

Finally, the judicial decision in Annamaly et al Naravan, is much regretted as this would hamper the speedy administrative action initiated by the Minister or his Deputy for the purpose of safeguarding the interests of purchasers, involved in abandoned housing project, invoked vide sections 11 and 12 of Act 118. Thus, this decision has marginalized the meaning of these provisions.

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