

Abandoned Housing Projects In Peninsular Malaysia: Problems And Suggestions

by:

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Abstract

Housing industry is one of the important agendas in Malaysia since Independence day. It is also one of basic needs and rights of mankind. Since then, it has been placed in the list of the top government's priorities in the Malaysia's Plans. After Independence, one of the most important objectives of the government is to restructure the society and eradicate poverty, through the means of the various Malaysia Plans, the pre-emptive New Economic Policy (NEP) and the National Development Policy (NDP) adopted by the government. One of the approaches contained in these programmes and means, is to provide sufficient and suitable housing accommodation to its citizens. Initially, after Independence, the duty to provide housing for the citizens of Malaya (the then Peninsular Malaysia) was resumed by the Malaysian government itself, following the step of the British-led government before it. However, due to the insufficient funds on part of the government and there were upsurge in demand for housing democracy and ownership, this noble task had also been given to private developers, for them to provide and construct housing accommodation, subject to the rules and regulations imposed by the government. Be that as it may, although housing industry has served as the development, economic and social catalyst and has brought many benefits to the nation, one of the spill-over problems which it carries is the problem of abandoned housing projects. This problem has become a nightmare to the government and especially to the purchasers involved. Based on initial researches there are various kinds of reasons leading to such a catastrophe. It is thought that, legally speaking, this problem might have been and it is evident, due to certain legal problems. Thus, on this footing, this paper, will look into the legal provisions available that concern the abandoned housing projects and will identify the related legal problems. Following this, the author will suggest certain legal approaches to overcome and avoid these problems from recurring in the future as well as the legal approaches to ensure the success of any rehabilitation.

Keywords: abandoned housing projects, Peninsular Malaysia, housing law, problems, suggestions.

Introduction

In Malaysia, there are two (2) types of housing projects. Firstly, projects that are constructed by the government towards providing residential or office premises to its servants and administrators. Secondly, are the private housing projects spearheaded by four types of parties, namely:

solutions be forwarded to give appropriate and sufficient protections and remedies to the parties involved?

This paper is to unveil the above matters relating to the phenomena of abandoned housing projects. Once the causes as well as the legal problems, which might occasion the abandonment, are identified, the solution can then be readily identified so that the risk of housing projects getting abandoned, can be eradicated or at least can be minimized, to an acceptable level.

Abandoned Housing Projects - The Problem

Hitherto, ironically there is yet, any official, legal or judicial definition on the meaning of 'abandoned housing project' (Nuarrual Hilal Md. Dahlan, 2001, p. 15). Neither is there any legal literature and researches, except by the author, as far as the situations in Peninsular Malaysia is concerned, have been seriously undertaken to study the problem (Nuarrual Hilal Md. Dahlan, 2003, p. 4). Be that as it may, the practical definition, for the purpose of facilitation and administration, has been given by the Division of Supervision and Enforcement, MOH and is defined as follows (Bahagian Pengawasan dan Penguatkuasaan, Kementerian Perumahan dan Kerajaan Tempatan, n.d, p. 1):

- 1) Construction activities on site of the housing construction project have stopped for 6 (six) months or more consecutively, after the expiry of the Sale and Purchase Agreement (S & P), which was executed by the developer and the purchaser or;
- 2) The developer has been put under the control of the Official Receiver; and,
- 3) The Housing Controller is of the opinion that such developer cannot duly proceed with the execution of its obligations as a developer.

As of June, 2005 (this is the latest available report obtained), there were 28 new projects which had been listed under the category of abandoned housing projects (Bahagian Pengawasan dan Penguatkuasa, Kementerian Perumahan dan Kerajaan Tempatan, n.d, p. 2). These projects involved 5,716 purchasers, 7,946 units of houses and projects' sales value of RM 479.67 million. From the overall newly identified abandoned housing projects, majority of the projects, as of June, 2005, occurred in Johor, Selangor and Penang which respectively had 5 projects (18%), followed by Kedah with 4 projects (14%), Perak with 3 projects (11%), and for Negeri Sembilan, Melaka and Terengganu, each of these states had 2 newly identified abandoned housing projects (7%). In other states (Perlis, Federal Territory and Kelantan), there were no new abandoned housing projects which had been identified or reported. The abandoned housing projects occurring in Peninsular Malaysia can be categorized as follows:-

- 1) Projects with potential for rehabilitation;
- 2) Projects taken over by other new developers;
- 3) Projects not suitable for rehabilitation; and
- 4) Completed rehabilitated projects. (Bahagian Pengawasan dan Penguatkuasa, Kementerian Perumahan dan Kerajaan Tempatan, n.d, p. 2)

This substantial figure is a cause of concern to the general public who may lose confidence in housing developers, in particular those who were or are already be the victims. There is also the 'formidable problems' of what to do with the abandoned projects: Can these abandoned projects expediently be revived? If so, how soon and how much will they additionally cost?

The consequences of abandoned housing projects are many. Some of them are, first, on part of the purchasers, they surely are unable to occupy the houses on time as promised by the developers in

Reasons Leading to the Abandonment

Based on available researches and readings, it is found that relatively, some of the grounds that have led to such a catastrophe in the housing industry are due to the mismanagement (reckless or calculated) of the developer's affairs (especially financial), extravagant dissipation of purchasers' funds and projects that had been undertaken by unqualified developers. Notwithstanding that most of the researches made are not based on legal views and perspectives (as there is a very few as far as the library of law and legal literature on abandoned housing projects in Malaysia is concerned), it is submitted and opined that the finding of these researches (other than law and legal researches) would to a certain extent help us to understand better and give some constructive and enriching insights on abandoned housing projects, particularly as to their causes. According to researches made (Rodziah Idris, 1990, p. 19, Che Ani Muhamad, 1991, p.21, Abdul Halim Sallehuddin, 1991, p. 33, Nik Maisarah Nik Omar, 1993, p. 15, Noor Azhar Mohd Asha'ari, 1993, p. 12, Suhaimi Mohd, 1992, p. 11, Zulfakar Rahmat, 1994, p. 8, Nuarrual Hilal Md. Dahlan, 2001, p. 15 and Mohd Hamizan Nasir, 1991, p. 23) amongst the causes are:

- 1) Legal problems and lacunae, which warrant abandonment of the projects;
- 2) Financial problems faced by the developers. The cause of this problem is due to the developer's own financial mismanagement, lacking in experience and skills in handling projects, showing irresponsibility and some have even absconded after realizing that they could not complete the projects;
- 3) Loose approval of the applications for housing developer's licences by MOH. MOH have failed to obtain requisite advices from economists, legal experts, property experts and other experts in approving the applications;
- 4) The embedding and permeating illegal squatters' problems faced by the developers and this include the formidable challenges and problems caused to the detriment of the developers concerned in getting rid them of from the site of projects; and,
- 5) Ongoing conflicts, feuds and squabbles caused between and among the developers, land proprietors, purchasers, contractors, consultants and financiers ensuing further difficulty to coordinate and streamline the development and construction activities.

On the other hand, based on the regular observations by the Ministry of Housing and Local Government ('MOH'), there are about seven (7) identified causes of abandonment of the projects. These factors are the weakness of and problems faced by the developers in respect of:

- a) Finance;
- b) Administration and management of the developers;
- c) Insufficient technical expertise on part of the developers, warranting the abandonment of the projects;
- d) Contractors;
- e) Land owners;
- f) Illegal squatters; and,
- g) Marketing and sales (Ministry of Housing and Local Government, n.d, p. 4).

The Legal Problems

Some of the legal problems and events that thought to have and may have caused housing projects abandoned, can be divided into these stages:

However, there is nothing whatsoever in the NLC's provisions (National Land Code 1965) relating to the duty of the State Authority to refer to and be bound by the above technical agencies and the planning authority, in the exercise of alienation of lands, subdivision of land and imposition of conditions and restrictions in interest. This can be seen in sections 136(1)(c), 72(2)(h), 120(2) and 124(1) of the NLC. This may lead the State Authority to approve application, on an *ad hoc* basis or on politically motivated grounds, for exercising alienation, sub-division, and land use control, without referring to the views of the planning authority and the technical agencies.

Stage Two (2): During the course of construction and development of the projects

Under this stage it is evident that MOH easily approved applications for housing developer's license even to the inexperienced and incapable applicant developers. For instance, the developer for an abandoned housing project at Taman Harmoni (K&T Development Sdn. Bhd) had no housing development experience prior to the application for housing developer's licence and advertisement and sale permit. Based on the financial reports, prior to the approval of the licence and the permit, there was no business activity, no housing development project or other construction experience undertaken by the developer or the directors. Nevertheless, the application for licence was still approved by the Housing Controller (MOH).

The problem is that, there is no provision in the Housing Development (Control and Licensing Act) 1966 ('Act 118'), which specifically requires the applicant developer to show to the satisfaction of the Housing Controller their financial position particularly the assets, the liabilities and the liquidity of their business prior to the application for housing developer's licence. Similarly, there is no provision emphasising the need of the applicant developer to have a certain degree of experience before their application for licence.

In the application for licence, based on the observation and file review, there were no copies of the land title, the approval for the conversion of lands for building purposes and for the subdivision as required by the previous Schedule A. Further, in the duly filled in application form for advertisement and sale permit, there was no copy of the approved building plan submitted, as required by Schedule D.

In respect of the previous Schedule A, there was no requirement for submitting a copy of the planning permission and the approved building plan, together with the application for licence. It is opined that, these matters have to be submitted to MOH to ensure the legality of the housing development activities and construction to be undertaken by the developer as being in accordance with the provisions in the Town and Country Planning Act 1976 (TCPA), Street, Drainage and Building Act 1974 (SDBA) and the Uniform Building By-Laws 1984 (UBBL). Similarly, for the previous Schedule D, the planning permission should also be submitted, not only the copy of the approved building plan. It is opined, by submitting these documents, this would avoid any problem to the progress of the purported housing development. This can happen, where after licence and permit had been issued, the developer could not proceed with the development or the development is rendered illegal because the application for planning permission and application for approval of building/other plans may have yet been approved or might be rejected by the local planning authority and the local authority. Otherwise, to carry out the purported development and building works without the planning permission and the approved plans, would contravene the Town and Country Planning Act 1976 (TCPA), Uniform Building By-Laws 1984 (UBBL) and the Street, Drainage and Building Act 1974 (SDBA).

provide new funds from their own pockets, the project remains stalled, since abandoned in 1987. However, this project had been finally rehabilitated in the early 2000s by Syarikat Perumahan Negara Berhad (SPN) - being a government rehabilitating agency. Thus, it is submitted, it is necessary and timely to have a new legal and statutory definition and legal and statutory rehabilitation regime to avoid these legal problems.

Stage Four (4): After purchasers obtained vacant possession and entitled to occupy the housing units

There are also cases, after rehabilitation had been successfully undertaken, the purchasers echoed dissatisfactory remarks about the shoddiness end result of the new developers' work and their workmanship. For example, in Taman Julita, Bukit Air Itam, an abandoned housing project situated at P.T Lots 4910-1916, Mukim 13, NED, Penang (Malaysian Resources Corporation Sdn. Bhd.), where it was found that the developer responsible to revive the project failed to comply with the original layout plan and specifications of the building as contained in the sale and purchase agreement and the planning permission. Thus a special rehabilitation law is needed to curb this malpractice of the rehabilitating developers.

Further example is the problem in an abandoned housing project at Phase 1A, Taman Lingkaran Nur, KM 21, Jalan Cheras-Kajang, Selangor at P.T 6443, H.S.(D) 16848, Mukim of Cheras, Hulu Langar, Selangor. On the delivery of vacant possession of the rehabilitate units to purchasers, there were purchasers who grumbled that certain standards of workmanship of the housing units were not satisfactory, the wiring and electrical lining system were not fully connected and not fixed causing the purchasers to engage their own contractors to do the needful. Further, there were complaints that certain fittings (such as the leaking roofs, electric meter and water meter) had been damaged, stolen and lost, and the water ducts were dirty, full of mud and sands, the window's frames and doors were damaged, rusted and eaten by termites and the plastering walls were undulated. After the housing units had obtained Certificate of Fitness for Occupations (CFs), but before the purchasers moved into the houses, there were many vandals, drug addicts and irresponsible parties who had stolen the essential water and electrical fittings and wiring and other steel made materials fixed to the units. Despite these defects had been reported to SPNB, SPNB failed to repair the same. Thus, the purchasers used their own moneys to repair and replace the facilities.

Suggestions

Based on the above illustrations, it is suggested that the following legal suggestions be adopted by the government to settle the above legal problems:

Stage One (1): Before the developers obtained housing developer's licence from MOH, viz during the alienation of land for housing development, application to subdivide land and the application for obtaining planning permission

It is that the State Authority and planning authority become one body or at least the policies on land uses, alienation, subdivision of land etc, be coordinated and are in uniformity (Kamalruddin Shamsudin, in ed. Hunud Abia Kadouf & Sharifah Zubaidah Aljunid, 2006, p. 313 & Sharifah Zubaidah Aljunid, 2001, pp. 224 & 225). Insofar as the situation in Peninsular Malaysia is concerned, these authorities exist separately and thus there may be situations where their decisions and policies might be in conflict with each other.

The grant of licence shall also be subject to the degree of experience, financial resources and capability of the applicant developer. Thus, for novices or new applicants or small-scale applicant developers (in term of assets, liquidity and liabilities), they shall only be allowed to carry out lesser units of housing accommodation for example 10 units. Thus, in the event they fail to complete the project or inevitably abandon it, it would lessen the burden of rehabilitating the project.

The practice in New South Wales, Australia (NSW) and in Australia generally too, is suitable to be adopted in Peninsular Malaysia, in respect of the obligation on part of the owner-builder to only enter into contract with licensed and qualified contractors and consultants. This requirement is imperative as only qualified and experienced persons recognized by the relevant professional bodies are eligible to be members of the team of the applicant developer.

It is suggested that contractors and construction workers including site supervisors, in Peninsular Malaysia, must be those who are qualified and licensed by the Construction Industry and Development Board (CIDB). Similarly this would be applicable to the consultants being the architects, engineers, quantity surveyors, land surveyors and project managers. Likewise, the building materials and supplies to be used in the construction of any purported housing project, should be those which are acceptable and approved by the approved accredited bodies such as SIRIM Berhad. This is to ensure the works done and the materials to be used would conform to the standard and quality required.

In considering applications for licences, it is pertinent for the Housing Controller, to refer to certain consultative authorities for the purpose of arriving at any decision either to approve or reject the application. It is suggested consultative authorities such as the Economics Planning Unit in the Prime Minister Department, The National Property Information Centre (NAPIC), the Central Bank (Bank Negara), the local authority, the planning authority, Real Estate and Housing Developers Association (REHDA) etc be consulted for advice when issuing the intended number of licences every year. This is because, grant of licences for housing development projects must commensurate with the economy and property market and demand to avoid any surplus or property glut that may lead to abandonment (Nuarrual Hilal Md. Dahlan, 2007).

Following the practice in New South Wales, Australia (NSW), whereby the owner-builder/developer are required to obtain the development consent or the complying development certificate before applying the owner-builder permit, it is proposed the same requirement likewise be applied in Peninsular Malaysia. This is in respect of the obligation on part of the applicant developer to first obtain the planning permission and approved building plan and other plans from the local planning authority and local authority before applying for housing developer's licence and advertisement and sale permit. It is perceived that, these matters are incumbent bearing on the fact that the intended housing development must have the necessary planning permission and approved plans before permitted to proceed. Otherwise, without the permission and approval, any irresponsible developer can easily sell the purported units by fraudulent means, collecting deposit from purchasers, whereof there might have not been any application made for planning permission nor plans' approval or alternatively, if there were applications, these applications might have been rejected. Thus, in these situations, licence and advertisement and sale permit though having been granted, and issued remain otiose, unless the planning permission and the plans have been approved.

For this purpose, Schedule A (Application For A Housing Developer's Licence)-- Regulation 3(1) to Regulations 1989, must insert these two (2) matters--copies of planning permission and approved building plan and other plans, if any, as the additional required particulars to be

If the 'full build then sell' system, were to be applied, then most of the provisions of Act 118 and its regulations may have to be repealed, only leaving certain provisions such as the defect liability period, the liability of the vendor developer to repair defective works found during the liability period and other purchasers' rights after duly completion (Certificate of Completion and Compliance ('CCC') obtained and titles are ready for transfer to purchasers on full settlement of the required purchase price) of the projects such as the workmanship must conform to the approved specifications, planning permission, approved plans, government guidelines, the UBBL and the SDBA.

It should be noted that pursuant to the new regulation 11(1B) of the Housing Development (Control and Licensing) Regulations 1989, for housing development project which has been completed and that CCCs for the units have been issued, the developer need not be required to apply Schedules G, H, I and J to sell the completed units to public. In other words, in a 'full build then sell' system, developer is absolved from using statutory standard sale and purchase agreements (Schedule G, H, I and J) to sell the completed units to public. In this respect, the researcher is not agreeable to this provision (regulation 11(1B) of Housing Development (Control and Licensing) Regulations 1989), as this may open to possible abuses on part of the developers and may be detrimental to the purchasers' interests. For example, the sale and purchase agreements executed may not provide sufficient protection to purchasers in the event of certain defective works found in the house buildings during the defect liability period or there may not be a provision for defect liability period in the sale and purchase agreements or the workmanship may have not conformed to the approved specifications, planning permission, approved plans, government guidelines, the UBBL and the SDBA, in the protection of the purchasers' interests. Thus, this provision, i.e Regulation 11(1B), should be repealed (Nuarrual Hilal Md. Dahlan, 2003, pp. xxvi-xxviii).

There may be argument that by applying the 'full build then sell' system, the national economy, the financial sector, the professional sector and the property market would be considerably affected as only the 'big guns' in the property sector would able to apply such a system. Further, this suggestion may be in conflict with the political and economic interest of certain parties (Nuarrual Hilal Md. Dahlan, 2001, p. 153). However, it is opined, this system is the best system so far, for facing the problem of abandonment. It should be applied, following the practice in Singapore, whereby the government itself, through the HDB, becomes the developer, armed with sufficient funds or there may be one centralized National Housing Consortium of Developers (with the government being the substantial and controlling shareholder) and no more independent mushrooming private developers (as currently operating in Peninsular Malaysia), for the whole country erecting housing accommodation in every part of the nation, by applying only one concept--the 'full build then sell' system.

If the 'full build then sell' system as proposed above cannot be applied, it is proposed that the housing industry in Peninsular Malaysia should apply 'the buying off the plan' or 'quasi build then sell' system, as practiced in NSW, Australia. This means, purchasers are only required to pay 10% of the purchase price. The balance of 90% of the purchase price shall be paid after the construction of the unit has been fully completed with CCC, the vacant possession of the purported completed unit has been delivered to purchaser, the title to the unit is duly transferred to the purchaser's name after the required settlement of the purchase price. This system is currently applicable in Peninsular Malaysia by the new Schedules I and J introduced in December, 2007. However, its application is only optional, not mandatory. Nevertheless, it is opined, this system is still capable of resulting in abandonment. This is because, there is no guarantee that the purported housing development project will not be abandoned in the course of its development. If abandonment occurs, the purchasers will still become the aggrieved parties, viz they cannot get the completed unit on time, the abandoned project may not be rehabilitated at all and they may suffer

properly supervised and monitored, the rehabilitation of it had been prolonged, much longer period than what it had been initially projected for, with various kinds of problems and difficulties faced by the rehabilitating developer, including the problem of recalcitrant contractors, purchasers, bankers and authorities. Fortunately, however, the revival of this project had, finally, been completed on 12th June, 1998, after becoming abandoned since 1992.

- 4) To avoid any abuse and misuse of duty, power, and authority, when the project is undergoing the process of rehabilitation, caused by consultants, contractors, receiver, managers and liquidators etc. The rampant abuse and misuse of duty, power and authority by these irresponsible parties, has become the current typical phenomena in the rehabilitation of abandoned housing projects in Peninsular Malaysia, much to the dismay and detriment of the purchasers. Taman Bistari Kamunting, Taiping, Perak developed by Sri Ringgit Properties Sdn. Bhd is the perfect example of this phenomenon. The problem with this project is that, the so-called rehabilitating contractors - Setia Laris Sdn. Bhd and Super City Triumph Sdn. Bhd failed to properly plan and had transgressed certain rules and regulations, which all in all, subtle or obvious, this failure, had retarded the due progress of its rehabilitation. This project had been abandoned since the middle of 1980s but fortunately, however, with the injection of welfare funds and rehabilitation carried out by Syarikat Perumahan Negara (SPN) in 2001, the project is now fully rehabilitated and ready for occupation, after it had been abandoned for almost 20 years.
- 5) To avoid any unwarranted and unnecessary disturbing actions such as legal actions commenced by dissatisfied parties. Without any such disturbing actions, it would certainly help the new rehabilitating developers or the previous defaulting developers in case they are agreeable and fit to resume the project, to smoothly carry out the rehabilitation. This problem can be illustrated in Taman Perpaduan Permai, Bercham Ipoh developed by Trinity Home Builders Sdn. Bhd, where in this case, the project should have been completed by 1999, however until now no rehabilitation has been undertaken. To worsen the matter, 18 purchasers have filed writ of summons against the defaulting developer praying for specific performance, damages and other equitable remedies against the defaulting developer.
- 6) To avoid any abandoned housing projects from being stalled for an indefinite period of time, without any positive and prospective rehabilitation plans and development. This problem can be illustrated in Taman Sri Intan, Besut, Terengganu, developed by Tenaga Wan Bersaudara Sdn. Bhd. This project should have been occupied and completed by 1999. However, it was later abandoned and until now there is no plan for rehabilitation. Furthermore, the developer fails to inform MOH the latest development and plan for the rehabilitation of its project.

Stage Four (4): The purchasers obtained vacant possession and entitled to occupy the housing units

It is proposed that, the suggestions as put forward under the above stage three (3) be adopted in Peninsular Malaysia, for facing the problems of abandoned housing projects and their consequential losses and grievances.

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