

ABSTRACT

The application of the statutory standard sale and purchase agreements as prescribed under Schedules G, H, I and J of the Housing Development (Control and Licensing) Regulations 1989 ('the said agreements') is mandatory for all house purchases from licensed housing developers in Peninsular Malaysia. However, according to the researcher's Ph.D in law thesis, the said agreements are void under Islamic Law due to the existence of *gharar al-fahish*. The reason for this *gharar* is because of the lack of terms and conditions in the said agreements which can protect the rights and interests of purchasers especially when the housing projects are abandoned. Due to the invalidity of the said agreements, this may also affect the subsequent dealings and transactions for instance in the housing loan transactions with Islamic banks. Furthermore due to its invalidity the said agreements may become 'insufficient and void instruments incapable of registration' which cannot guarantee indefeasibility of the subsequent titles and interests in land to the interested parties under section 340 of the National Land Code 1965 (NLC). This research has identified certain terms and conditions in the said agreements which purportedly have not complied with the Islamic Law. This research has proposed certain *shariah* compliant model agreements for the said agreements. These *shariah* compliant model agreements would provide adequate protection to purchasers including when the housing projects are abandoned by the housing developers. The research methods used are purely *shariah* legal research and comparative research methodologies, *viz* comparative between the *shariah* principles and the conventional law (common law and Malaysian law) principles. These two methods were blended with social research method. Thus, this research is a hybrid of pure *shariah* legal, comparative legal and socio-legal research methodologies. This research has found that the said agreements are void according to the *Quran*, *Sunnah* and *Qiyas* as the said agreements contain *gharar al-fahish* elements as against the government and the vendor developers. However, despite inherently the said agreements are void under Islamic Law, they are still good and valid, at least, as against the purchasers due to hardship (*mashaqqah*) through the principles of *maqasid al-shariah*, *maslahah al-mursalah*, *uruf* and *istihsan*. This research has recommended *shariah* compliant model agreements purporting to replace the said agreements. The authorities, especially the housing authority (Ministry of Housing and Local Government), Islamic Banks and the public purchasers at large may benefit from the findings and recommendations of this research, especially in dealing with the problems of abandoned housing projects in Peninsular Malaysia.