

**ISSUES ON THE REMEDIES FOR AGGRIEVED PURCHASERS IN  
ABANDONED HOUSING PROJECTS IN MALAYSIA: TIME AND  
MANNER FOR DELIVERY OF VACANT POSSESSION**

**Abstract**

Abandoned housing projects is a formidable problem in the Malaysian housing industry. Although the Malaysian government has enacted laws and formulated policies to govern the housing industry since it achieved Independence in 1957, abandoned housing projects still remains a recurrent problem until today. The real victims are the purchasers themselves. Among the problems and grievances faced by the purchasers in abandoned housing projects in Malaysia, are--they are unable to obtain the duly completed houses as promised by the housing developers, they have to pay monthly installment payments on loan obtained from their lenders, they have to pay house rents and some of them are made bankrupt by their lender banks for failure to service the monthly installment payments. The purchasers also may face other non-pecuniary losses and sufferings, to their chagrin, such as dismissal from employment, divorces, troubles, anxiety, mental pressure, distress, personal problems leading to chaotic and miserable health and lives due to the abandonment. There are certain legal and equitable remedies provided by the Malaysian housing law particularly the Housing Development (Control and Licensing) Act 1966 and its regulations (Act 118), the terms and conditions in the statutory sale and purchase agreements and the case law. These legal and equitable remedies include specific performance, declaratory order, rescission of contract and damages. Nonetheless these remedies may not obtainable if the housing developers have no monetary at all or that they run away out of jurisdiction or that the abandoned housing projects are too complicated and troublesome. Further there are other grievances that cannot be compensated or dealt with by the Malaysian current laws such as pain, anxiety, distress and humiliation that have been befalling the aggrieved purchasers. This paper aims to highlight the rights of the purchasers in abandoned housing projects to obtain late delivery damages due to the delay of the vendor housing developers to complete the construction of the house buildings and deliver vacant possession within the prescribed period. The issue is: whether in abandoned housing projects, the purchasers can adequately also get late delivery damages due to the developer's delay to deliver vacant possession of the duly completed building within the prescribed time period? The research methodology that this paper will use is a mixture of legal research methodology and social research methodology. In other words, this paper is socio-legal writing. Further, this paper will suggest certain apt approaches, legal and non-legal in facing the issue to obtain late delivery damages by the purchasers from the abandoned housing vendor developer in abandoned housing projects. This paper finds that the available and applicable laws have inherent flaws and are inadequate to provide sufficient remedies and redresses to the aggrieved purchasers particularly in getting late delivery damages as the developers fail to deliver vacant possession and abandoned the project altogether. Thus, through this paper, some suggestions are warranting to cushion, reduce and eliminate the purchasers' losses, injuries and sufferings emanating from the abandonment of their housing projects.

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**Keywords:**

Abandoned Housing Projects in Malaysia: Purchasers' Grievances; Legal and Equitable Remedies.

**Subtopic:**

Ethics, Leadership and Corporate Social Responsibility (CSR).

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**INTRODUCTION**

It is well entrenched that the application of the statutory standard formatted sale and purchase agreements (Schedules G, H, I and J (hereinafter referred as 'the said agreements')) as provided in the Housing Development (Control and Licensing) Regulations 1989 ('Act 118'), is mandatory for all house purchases in Peninsular Malaysia pursuant to regulations 11(1) and 11(1A) of the Housing Development (Control and Licensing) Regulations 1989 and the principles decided in *Rasih Mumusamy v. Lim Tan & Sons Sdn. Bhd* [1985] 2 MLJ 291, *Sea Housing Corporation Sdn. Bhd v. Lee Poh Choo* [1982] 2 MLJ 31 (FC), *Kimlin Housing Development Sdn. Bhd. (Appointed Receiver and Manager) (In Liquidation) v. Bank Bumiputra (M) Bhd. & Ors* [1997] 2 MLJ 805 (FC) and *MK Retnam Holdings Sdn. Bhd v. Bhagat Singh* [1985] 2 MLJ 212.

Parliament enacted the Housing Developers (Control and Licensing) Act 1966 (Act 118) for the purpose of protecting the rights of the purchasers. In *Khau Daw Yau v. Kin Nam Realty Development Sdn. Bhd.* [1983] 1 MLJ 335, HC, VC George J, at page 341, said:

*'The scheme of the Housing Developers (Control and Licensing) Act 1966, and the Rules of 1970 is to provide a measure of protection to purchasers of housing accommodation in a housing development against unscrupulous developers'.*

In *Gan Hoe @ Gan Buan & Anor v. Golden Century Development Sdn. Bhd & Anor* [1981] CLJ 89 at 90, Mohd Yusoff bin Mohamed J, said that:

*'The Housing Developers (Control and Licensing) Rules 1970 is designed to control developers and to protect bona fide purchasers of housing accommodation...'*

In *SEA Housing Sdn. Bhd. v. Lee Poh Choo* [1982] 2 MLJ 31, Suffian LP, at page 34, observed:

*'...that to protect powerful developers, Parliament found it necessary to regulate the sale of houses and protect buyers by enacting the Act'*

While the freelance legal enthusiast Salleh Buang said:

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*'Although the Act does not contain a Preamble which sets out in clear terms Parliament's intention in enacting the law, such legislative intent of protecting purchasers' interests is evident from a close reading of some provisions of the Act' (Salleh Buang, 2006: 9).*

In addition to the above, the current aims of Act 118, as enshrined in the preamble and the long title of Act 118, reads as follows: 'An Act to provide for the control and licensing of the business of housing development in Peninsular Malaysia, the protection of the interest of purchasers and for matters connected therewith'.

### **Schedules G, H, I And J of The Said Agreements**

Pursuant to regulation 11(1) and (1A) of the Housing Development (Control and Licensing) Regulations 1989 ('Regulations 1989'), the statutory standard sale and purchase agreements (Schedules G, H, I and J) shall govern all agreements relating to the purchase of houses in Peninsular Malaysia from the licensed housing developers who are subject to Act 118 and the control of Ministry of Housing and Local Government ('MHLG'). The particulars and information about these schedules are as follows:

- 1) Schedule G: This schedule is introduced by regulation 11(1) of Regulations 1989 (PU(A) 58/1989). Schedule G is for sale and purchase of landed house (land and building) by way of 'full sell then build' concept;
- 2) Schedule H: This schedule is introduced by regulation 11(1) of Regulations 1989 (PU(A) 58/1989). Schedule H is for the sale and purchase of flat houses (building and land intended for subdivision into parcels) by way of 'full sell then build' concept;
- 3) Schedule I: This schedule is introduced by sub-regulation 11(1A) of the Regulations 1989, inserted by regulations 15 and 8(b) of the Housing Development (Control and Licensing) (Amendment) Regulations 2007 (PU(A) 395/2007). Schedule I is for sale and purchase of landed house (land and building) by way of 'build then sell' ('BTS') concept; and,
- 4) Schedule J: This schedule is introduced by sub-regulation 11(1A) of the Regulations 1989, inserted by regulations 15 and 8(b) of the Housing Development (Control and Licensing) (Amendment) Regulations 2007 (PU(A) 395/2007). Schedule J is for sale and purchase of flat house (building and land intended for subdivision into parcels) by way of BTS concept.

Schedules I and J came into being after the amendments made to the Regulations 1989 in 2007 effected via the Housing Development (Control and Licensing) (Amendment) Regulations 2007 (PU(A) 395/2007) ('Regulations 2007'). Pursuant to these Regulations 2007, the Government of Malaysia introduced a 'quasi build then sell' housing delivery concept or currently known as BTS concept through the promulgation of the statutory standard sale and purchase agreement—Schedules I and J. By this concept, purchasers are only required to pay 10% of the purchase price on the date of signing of the sale and purchase agreement with the vendor developer. The balance 90% of the purchase price shall be paid, to the vendor developer, on completion of the

house and the Certificate of Completion and Compliance ('CCC') has been obtained as well as the vacant possession of the completed house is ready for delivery to the purchaser on full settlement.

### **PROBLEM STATEMENT**

Pursuant to clause 22(1) of Schedule G and Schedule I and clause 25(1) of Schedule H and Schedule J, the vendor housing developer ('the vendor') is obligated to deliver vacant possession of the duly completed houses to purchasers within 2 or 3 years, as the case may be. If the vendor fails to deliver vacant possession within these periods, he is obliged to pay to the purchaser liquidated damages (or late delivery damages) to be calculated from day to day at the rate of 10% per annum of the purchase price from the expiry date of the delivery of vacant possession until the purchaser takes vacant possession of the said building. Such liquidated damages shall be paid by the vendor to the purchaser immediately on the date the purchaser takes vacant possession of the said building (clause 22(2) of Schedules G and I and clause 25(2) of Schedules H and J).

The word 'manner of delivery of vacant possession' is defined by clause 23 of Schedule G and I and clause 26 of Schedules H and J. Accordingly, it means upon the issuance of a certificate of completion and compliance ('CCC') against the duly completed building, water and electricity supply are ready for connection to the said building and that the purchaser having paid all monies due to the vendor in accordance with the prescribed terms (clause 23(1)(a)(b) of Schedules G and I and clause 26(1)(a)(b) of Schedules H and J)

A problem may happen when the vendor faces difficulties and could not complete the construction of the housing project? In other words, the project undertaken is abandoned and could not be completed nor rehabilitated. In this issue, can the purchasers request the vendor to pay damages for late delivery of vacant possession? Will the vendor be penalized under Act 118 for failing to delivery vacant possession to the purchaser within the prescribed time period?

It is the contention of the author that the purchasers may not get anything from the vendor if the latter is not capable of rehabilitating the project or he is not able to pay the damages.

### **OBJECTIVES**

This paper aims to highlight the problem faced by the purchasers in abandoned housing projects whose vendor has failed to rehabilitate the project and not able to pay compensation to purchasers. Secondly, this paper intends to provide certain suggestions to public purchasers in Malaysia in the face of the problems emanating from abandoned housing projects.

### **RESEARCH METHOD**

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The research method employed in this paper is a composite of legal research methodology and social research. The sources of the legal research are the statutory provisions, case law and legal literature relating to abandoned housing projects. While the sources for social research are data generated from interviews and files from the Ministry of Housing and Local Government (MHLG).

### **FINDINGS**

The followings are the findings of this paper:

- 1) When housing projects are abandoned in Peninsular Malaysia, the rights and interests of the purchasers will be greatly affected.
- 2) The purchasers cannot get any remedies, be it legal or equitable, from the defaulting vendors, if the latter have no sufficient monetary provisions.
- 3) The law and the case law show that the law is inadequate to protect the rights and interests of the purchasers in the event of abandonment of housing projects.
- 4) There is no adequate curative measures in dealing with the problems of obtaining damages and other equitable relief from the defaulting vendors if the latter are proven not be able to provide damages and unable to protect the rights of the purchasers, for example to carry out rehabilitation.
- 5) Equally so far there is no effectual preventive measures that can prevent the occurrences of problems emanating from the abandonment of housing projects.
- 6) Public purchasers, before buying housing units, must do some cross-check as to the capability of the vendors.
- 7) It is suggested that public purchasers should buy houses developed by government developers or Government Linked Companies (GLC) or buy duly completed houses, not houses pending completion, in order to avoid any unseen problems in the purchase of housing units for instance if the pending completed house buildings are later abandoned for good.

### **ANALYSIS**

There are certain questions that can be raised if abandoned housing project occurs in Peninsular Malaysia. These questions are:

- 1) Can the aggrieved purchasers claim liquidated damages due to the delay of the vendor to deliver vacant possession?
- 2) How can the purchasers calculate the damages in abandoned housing projects and who will be liable for paying the damages?
- 3) If the defaulting vendor admitted that they are unable to pay the damages, from whom can the purchasers claim the same?

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Theoretically, the calculation of the damages must start from the date on which the date of the purported completion and delivery of vacant possession falls, either after 24 or 36 months after the date of the agreement until the date of the delivery of vacant possession ('VP') (*Faber Union Sdn Bhd v. Chew Nyat Shong & Anor* [1995] 3 AMR 2094; [1995] 3 CLJ 797; *Hoo See Sen and Anor v. Public Bank Berhad* [1988] 2 MLJ 170). However, if the actual completion and the delivery of VP took a very long time to materialize, this will mean, the liquidated damages may outweigh the balance purchase price still unpaid. In such a situation, can purchasers use this exorbitant late delivery damages to offset against the actual purchase price payment and claim the balance of damages? In theory, yes, the purchasers can do so, following the principle in *Keng Soon Finance Berhad v MK Retnam Holdings Sdn. Bhd.* [1996] 2 MLJ 431; [1996] 3 AMR 3021, *Neoh Khoon Lye v. Trans-Intan Sdn. Bhd* [2002] 6 MLJ 8, *Sea Housing Corporation Sdn Bhd v. Lee Poh Choo* [1982] 2 MLJ 31 and *Lee Poh Choo v Sea Housing Corporation Sdn Bhd* [1982] 1 MLJ 324.

Nevertheless, what will the solution be:

- 1) if the vendor or the rehabilitating parties have no monetary provision at all to meet these costs?
- 2) Will this not, if the damages were paid by these parties, affect the whole budget for rehabilitating the project?
- 3) A further question--if there can be no practical rehabilitation, what are the remedies affordable to purchasers then, as against the defaulting vendor or the rehabilitating parties?

It is evident that, in practice, the rehabilitating parties will prescribe exemption from any payment of liquidated damages, as a condition precedent for them to proceed with the required rehabilitation. This can be seen in the rehabilitation of Tingkat Nusantara Lot 300 & 302, NED, Pulau Pinang developed by Syarikat Nusantara Pulau Pinang Berhad, and Taman Shoukat, Lot 2219, Mukim 13, NED, Pulau Pinang, developed by Showkat Industry & Realty Sdn. Bhd (file numbers: KPKT/08/824/ /337; KPKT/BL/19/1171-1.). Is this not a mockery and a nugatory of the provisions in the said agreements? Thus, in this situation, it is opined that, there is a legal lacuna in the right of purchasers to claim damages, if abandonment occurs.

In certain cases, where rehabilitation for abandoned housing project seems impossible, it may be appropriate for the purchasers to apply to the Minister of the Housing and Local Government (MOH) for approval to terminate all the sale and purchase agreements and claim the refund of all moneys paid to the vendor, provided the application is made within six months after the execution of the first sale and purchase agreement in respect of that housing development or phase of housing development (section 8A(1)(a) of Act 118). Secondly, the application to terminate the agreements shall be supported, in writing, by at least 75% of all the purchasers involved. (section 8A(1)(b) of Act 118). Further, the consents of the purchasers to terminate the agreement shall be witnessed by their solicitors or a Commissioner for Oaths not earlier than one month before the date of the application (section 8A(2A)(a) of Act 118). In addition, other documents or evidence shall also be submitted to the Minister of Housing and Local Government ('the Minister') as the Minister may require in determining the application to terminate the

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agreement and for refund of the moneys paid to the vendor, for instance in respect of the financial capability of the vendor to refund all the moneys paid to the vendor to the purchasers and their financiers (section 8A(2A)(b) of Act 118).

Some new issues and problems may arise from the above provision, it is opined, namely:

- If the abandonment of the housing project occurs beyond 6 months after the execution of the sale and purchase agreement and it seems that the rehabilitation of the project is impossible. In this situation, the purchaser could not apply to the Minister for the termination of the agreement and claim refund of the moneys paid;
- The problem in getting seventy-five per cent (75%) of all the purchasers agreeing to terminate the sale and purchase agreements, may be due to circumstances beyond the purchasers' control. In this situation also, majority of the aggrieved purchasers could not apply for the termination and claim refund from the Minister; and,
- If the abandonment occurs, and on the application of the purchasers to the Minister to terminate the agreement and claim the refund of all the moneys paid to the vendor, yet the Minister finds that the vendor is incapable of meeting the costs of the refund (for example a wound up vendor or insolvent vendor) and thus this could result in the Minister not approving the application. In this situation, the application of the purchasers to terminate the agreement and claim refund would be futile.

Thus, it is opined, there are lacunae in the law, when abandonment occurs to the detriment of the purchasers or at least the above section 8A of Act 118 does not fully cover the situation when abandonment occurs and the rehabilitation is too difficult and impossible, in the protection of the purchasers' interests.

However, alternatively, it is opined, the aggrieved purchasers in abandoned housing projects can apply to the court for rescission of the sale and purchase agreements, claim refund of all the moneys paid to the vendor and claim damages on the default of the vendor to complete the project, deliver vacant possession of the unit and abandoning altogether the project where the rehabilitation is impossible or too difficult. This application can be made pursuant to section 56(1) and (2) and section 76 of the Contracts Act 1950. This can be illustrated in *Tan Yang Long & Anor v. Newacres Sdn. Bhd.* [1992] 3 CLJ 666(Rep) 1 CLJ 211 (High Court), and *Xavier Kang Koon Mook v. Insun Development Sdn. Bhd* [1995] MLJU 46; [1995] 2 MLJ 91; [1995] 2 CLJ 471; [1995] 1 AMR 667(High Court).

In *Tan Yang Long*, the High Court held that the purchaser was entitled to a rescission of the sale and purchase agreement and to a refund of the moneys paid, on the failure of the vendor to complete the project and deliver the vacant possession of the unit on time. In the result, the purchaser had to wait indefinitely for the completion of the project. In fact the project was totally abandoned without any rehabilitation. The court held that by the failure to complete the project on time and there was no guarantee the project would be completed as well as no credible assurances about their (the vendor) ability to execute the delivery of vacant possession of the unit, the vendor had evinced an intention not to be bound by the sale and purchase agreement,

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thus the purchaser was entitled to rescind the agreement and claim the refund of all the moneys paid to the vendor (RM 44,700.00) as well as the fees and disbursements incurred (RM 2,616.00).

However, in *Araprop Development Sdn Bhd v Leong Chee Kong & Anor* [2008] 1 MLJ 883 (Court of Appeal), the Court of Appeal (in majority) decided that the aggrieved purchaser is only allowed, either to terminate the sale and purchase agreement and claim the refund of all the moneys paid to the vendor including the payments made by the financier on the default of the vendor to deliver vacant possession of the unit purchased on time as promised or claim damages for late delivery of vacant possession. Nevertheless, in *LSSC Development Sdn. Bhd v Thomas a/l Iruthayam and Anor.*[2007] 4 MLJ 1 (Court of Appeal), the Court of Appeal held that a mere delay to deliver vacant possession was not considered a fundamental breach of the contract and thus could not grant a right to rescind the contract to the aggrieved purchasers.

Thus based on the above cases there are several conclusions as regards abandoned housing projects, viz:

- 1) The aggrieved purchaser can rescind the contract of sale and claim the refund of all moneys paid to the vendor and the incidental costs due to the delay to the deliver vacant possession and abandonment (see *Tan Yang Long* and *LSSC Development* (High Court));
- 2) The aggrieved purchaser can rescind the contract of sale, claim the refund of all moneys paid and the liquidated damages (for example 10% of the purchase price from the promised date of the vacant possession until the date of termination) (see *Chye Fook* and *Xavier Kang Koon Mook*);
- 3) The aggrieved purchaser can either rescind the contract of sale and claim the refund of all the moneys paid and costs incurred or claim liquidated damages in case there is a delay to deliver vacant possession (see *Araprop Development*); and,
- 4) The aggrieved purchaser cannot repudiate the contract of sale if the breach and default of the vendor do not go to the root of the contract, i.e not fundamental. The delay to deliver vacant possession is not a fundamental breach of the contract of sale and thus will not grant a right to repudiate the contract (see *LSSC Development*). In the late delivery of vacant possession, the aggrieved purchaser is only entitled to liquidated damages.

As the decisions in *LSSC Development* and *Araprop Development* were made by the Court of Appeal and the other remaining cases were decided by the High Court, it is opined, the decisions in the Court of Appeal are binding on the lower courts including the High Courts' in the future and should be given more weight. Nonetheless, the Court of Appeal is divided whether to treat the delay to deliver vacant possession as entitling the aggrieved purchaser to damages or to a recession of the contract of sale and claim the refund of all moneys paid and costs. However, it is in the opinion of the author that, when a housing project is abandoned and there is no delivery of vacant possession and the rehabilitation is too difficult or might be impossible added with other difficulties faced by purchasers, there is a fundamental breach of the contract of sale which



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entitles the aggrieved purchasers to a rescission of the contract of sale and claim all the moneys paid to the vendor including the return of all moneys paid by the financiers and other incidental costs.

Further it seems that in the rehabilitation of abandoned housing projects, the rehabilitating parties may neglect the duty as stipulated in the previous clause 23(1)(2) of Schedule G and clause 26(1)(2) of Schedule H (the said agreements). This duty concerns the liability of the vendor to complete the project and deliver the vacant possession of the units to purchasers within 24 or 36 months, as the case may be. If the vendor fails to comply with this duty, he will be liable for paying late delivery damages until complete vacant possession has been handed over to purchasers. There are evidences that the rehabilitation of abandoned housing projects had taken quite a considerable period of time to complete, leaving the purchasers awaiting and that the purchasers during the course of awaiting the completion may suffer pecuniary and non-pecuniary losses and expenses, including inability to obtain any damages and compensation from the defaulting vendors for the late delivery of vacant possession. This problem is illustrated in the rehabilitation of Tingkat Nusantara, Lots 300 and 302, Section 9W, NED, Pulau Pinang, the rehabilitation took about three and a half years to complete, Taman Shoukat, Lot 2219, Mukim 13, NED, Pulau Pinang, took about 4 (four) years to complete (if the date on which the CF was obtained is to be taken into account) or about 12 (twelve) years (if on account of the full redemption and due transfer of the subdivided units to the individual purchasers' names). This was also the case as in Taman Bistari Kamunting, Taiping, Perak developed by Sri Ringgit Properties Sdn. Bhd, where this project had been abandoned since the middle of the 1980s. There were several attempts made by certain interested parties to rehabilitate the project but the attempts were futile. However, fortunately, with the injection of welfare funds and rehabilitation carried out by Syarikat Perumahan Negara Berhad (SPNB) in early 2000s, the project has now fully been rehabilitated and ready for occupation, after it had been abandoned for almost 20 years (File numbers: KPKT/BL/19/1171-1; KPKT/08/824/ /337; KPKT/08/824/3957/E).

Further, there were certain conditions which may be imposed by the rehabilitating parties on purchasers to execute waiver letters for not claiming any late delivery damages of the previous defaulting vendor or them or undertake not to commence any legal action against the rehabilitating parties, before they would agree to proceed with the purported rehabilitation or the purchasers are subject to new conditions which are inequitable for instance the defect liability period for the rehabilitated units is 6 months from the date of the delivery of vacant possession of the units, no right to claim damages for any delay to deliver the vacant possession as promised by the rehabilitating parties, purchasers are subject to penalty for any failure to comply with the terms of the rehabilitation agreement, purchasers are not entitled to rescind the rehabilitation agreement or to make any claim for compensation or reduction to the purchase price or claim for damages in respect of the state, nature and condition of the rehabilitated property, purchasers cannot claim for repair or compensation from the rehabilitating parties for defects in the building works found after 6 months of the date the purchasers take vacant possession of the rehabilitated units, purchasers are liable for all outgoings including quit rents, rates, taxes, outgoings, expenditures, assessments and other charges of the rehabilitated property from the date of the rehabilitation agreement etc. In other words, once a housing project is abandoned, the ordinary

housing development laws as enshrined in Act 118, especially as provided in the said agreements would also be dysfunctional, for the purpose of facilitating the due progress of the rehabilitation. This is evident in the above rehabilitation of abandoned housing projects (*Aw Yong Wai Choo & Ors v. Arief Trading Sdn. Bhd. & Anor* [1992] 1 MLJ 166). Thus, there are lacunae in the laws and regulations once a housing project is abandoned and rehabilitation of the same were to be carried out.

Notwithstanding the above principles of law, in the opinion of the author when a housing project is abandoned and there is no delivery of vacant possession and the rehabilitation is too difficult or might be impossible added with other difficulties faced by purchasers, there is a fundamental breach of the contract of sale which entitles the aggrieved purchasers to a rescission of the contract of sale and claim all the moneys paid to the vendor including the return of all moneys paid by the financiers and other incidental costs. This can be illustrated by the recent decided case law—*Diong Tieow Hong & Anor v Amalan Tepat Sdn Bhd* [2008] 3 MLJ 411 (High Court at Kuala Lumpur), whereby in this case the aggrieved purchasers to an abandoned housing project is entitled to a recession of the sale and purchase agreement with the defaulting abandoned vendor as the latter had abandoned the project. Secondly, the purchasers also are entitled to get late delivery damages calculated from the promised date of delivery of vacant possession until the date of the recession of the agreement. The purchasers also succeeded in obtaining the return of all payment they made to the vendor. However, according to *Zulkepli bin Mohamad Zain & Ors v BCM Development Sdn. Bhd.* [2010] MLJU 1165 (High Court of Malaya at Johor Bahru), purchaser must serve notice of termination of the agreement on the vendor and the proprietor of the land (if there was a joint venture). If any of these parties (vendor and the proprietor) is not served with the notice of termination, the purported termination will not be recognized under the law. This is because serving of notice on one party alone renders the notice defective and incompetent pursuant to sections 6(a), 67 and 77 of the Contracts Act 1960. Following this failure, the purchaser is not entitled to any compensation and damages from the defaulting abandoned vendor, even though the vendor had breached the terms and conditions of the agreements, by abandoning the project.

## CONCLUSION AND RECOMMENDATIONS

It is proven that in abandoned housing projects, the aggrieved purchasers may not get damages for late delivery damages as there is no delivery of vacant possession by the vendor. Thus, there is a lacuna in the law, particularly in the terms and conditions in the statutory standard sale and purchase agreements (Schedules G, H, I and J). To avoid this difficulty, it is submitted that:

- 1) The purchaser should rescind the sale and purchase agreement, claim for the return of all the payment they made to the vendor and they can also claim damages for the late delivery of vacant possession calculated from the date of the promised date for the delivery of vacant possession until the date of the recession of the agreement, following *Diong Tieow Hong's* case;
- 2) To avoid any possibility of facing any housing abandonment and its problems altogether, the purchaser is advised to buy houses pending completion from strongly funded vendor who has sufficient fund to complete the project or from the government developer or

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Government Linked Companies (GLCs) developers who have sufficient means to carry out housing development projects successfully; and,

- 3) If the above is not possible i.e if there no capable housing developers available within the purchasers' vicinity or area, the purchaser is advised to only buy houses duly completed with the CF or CCC. Thus, the possibility of occurrences of housing abandonment will not become an issue anymore.

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