

**RESCUING
DREAMS**
REFORMING LAWS
ENDING THE SCOURGE
OF **ABANDONED
HOUSING
PROJECTS**
IN MALAYSIA



For far too long, abandoned housing projects have shattered the dreams of thousands of Malaysian families. In this landmark professorial lecture work, Professor Dr. Nuarrual Hilal Md Dahlan exposes the legal, institutional, and ethical failures behind one of the country's most persistent urban crises. With intellectual precision and penetrating academic clarity, he dissects the complex framework of Malaysia's land, planning, housing, corporate insolvency, and Islamic home finance laws, revealing a system that evidently does not adequately protect housing purchasers. But this book is not merely a critique—it is a comprehensive blueprint for reform. Drawing on years of legal scholarship and policy engagement, he proposes bold, enforceable solutions grounded in both civil and Shariah law, guided by the universal principles of justice, legal and equitable principles, dignity, and maqasid al-shariah (the objectives of Islamic Law). His integration of comparative insights from Australia and New Zealand offers fresh directions for Malaysian law and policy.

A rare fusion of academic brilliance and public advocacy, this professorial lecture is essential reading for lawmakers, jurists, planners, financiers, and every Malaysian who believes that a house should be more than a contract—it should be a promise kept.

"This is not just a legal text—it is a call to conscience and a catalyst for change."

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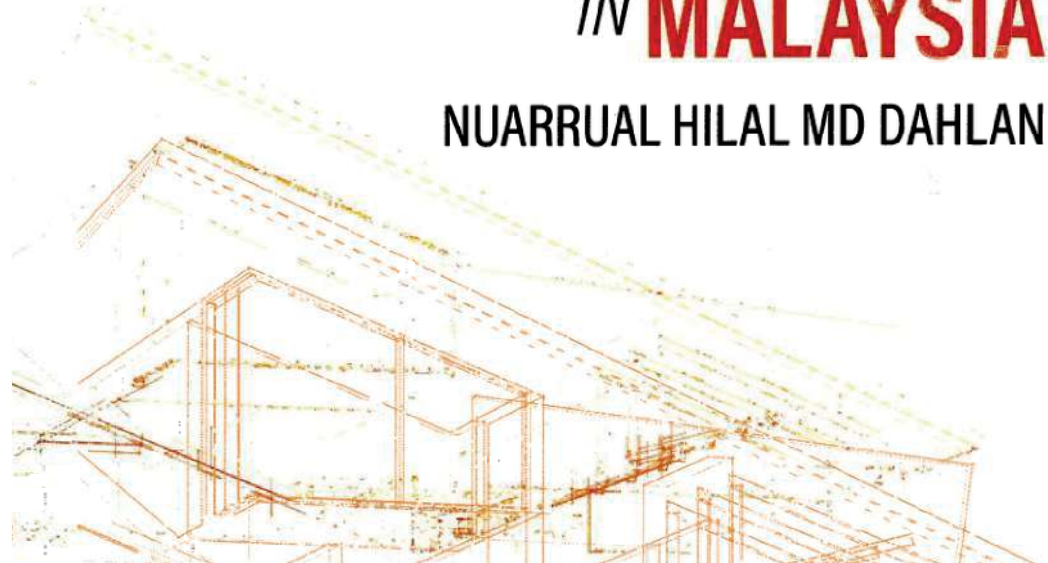


PROFESSORIAL INAUGURAL LECTURE SERIES

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NUARRUAL HILAL MD DAHLAN



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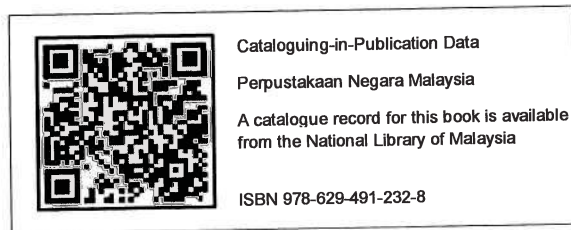


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PREFACE

Abandoned housing projects in Malaysia have become a chronic problem in the property development landscape since the 1970s, posing an uncontrollable issue in the housing industry that undermines public trust and leaves thousands of purchasers without remedies. Despite numerous legal, planning, and regulatory frameworks, these projects persist, highlighting systemic failures and legal inadequacies. The principal problem lies in the fragmented, weak and inconsistent enforcement of land, housing, planning, building, insolvency, and Islamic financial laws, which, instead of protecting purchasers, often leave them at the mercy of insolvent developers, irresponsible developers, indifferent financial institutions, and poorly supervised professionals. The legal architecture—though robust on paper—fails in execution due to loopholes, institutional weaknesses, and a skewed prioritisation of creditors over consumers.

The primary objective of this research is to critically examine the interrelated legal regimes governing abandoned housing projects in Malaysia, specifically land law, planning law, building law, housing development law, corporate insolvency law, and Islamic home finance contracts. It aims to evaluate the extent to which these laws contribute to or mitigate the abandonment crisis and to propose concrete, enforceable reforms that prioritise justice, public interest, and *Maqasid al-Shariah* (the objectives of Islamic Law). A further aim is to assess whether the principles embedded in Islamic finance are faithfully observed in protecting the interests of homebuyers in the event of project failure.

This study adopts a doctrinal legal research methodology supported by qualitative case analyses, statutory interpretation, and comparative legal reasoning. It evaluates primary legal instruments, including the “Housing Development (Control and Licensing) Act 1966 (Act 118)”, the “National Land Code (Act 828) (Revised – 2020)”, the “Town and Country Planning Act 1976 (Act 172)”, the “Street, Drainage and Building Act 1974 (Act 133)”, the “Companies Act 2016 (Act 777)”, the “Islamic Financial Services Act 2013 (Act 759)” and the “Central Bank of Malaysia Act 2009 (Act 701)”. The study also incorporates court cases, judicial decisions, Shariah principles, regulatory guidelines, and selected foreign legal practices, particularly from Australia and New Zealand, to suggest reform pathways.

Key findings reveal that current legal mechanisms inadequately prioritise homebuyers’ rights in insolvency proceedings. Under liquidation and receivership, purchasers are treated as unsecured creditors, receiving minimal protection or restitution. Regulatory bodies often fail to enforce planning and building standards strictly, while local authorities remain shielded by statutory immunity even in cases of negligence. Professionals such as architects and engineers seldom face consequences for poor supervision or false certifications. In Islamic finance, contracts such as *Bay’ Bithaman al-Ajil* and *Tawarruq* disproportionately benefit banks and expose consumers to risk, contravening the spirit of equitable risk-sharing espoused in Shariah.

This research is significant as it provides a unified, cross-disciplinary legal blueprint for rehabilitating the Malaysian housing industry. It proposes reforms, including

a dedicated legal regime under Act 118 for abandoned projects, mandatory housing development insurance or takaful, independent monitoring of project execution, and the restructuring of Islamic home finance products to reflect substantive justice and consumer protection. By doing so, the study seeks to restore public confidence, advance legal reform, and ensure housing dignity for all Malaysians.

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(CGP), CC.*

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In the name of Allah SWT, the Most Compassionate, the Most Gracious and the Most Merciful. All praise is due to Allah SWT, who has provided me with the strength, clarity, space, opportunity, understanding, and perseverance to complete this scholarly work on the pressing issue of abandoned housing projects in Malaysia for my inaugural professional lecture. This journey would not have been possible without the unwavering guidance, support, and encouragement of many individuals and institutions to whom I am deeply indebted.

First and foremost, I would like to extend my sincere appreciation to Universiti Utara Malaysia (UUM), particularly the School of Law, for providing the academic environment, facilities and resources necessary for this research. The impact of my esteemed colleagues and peers who offered constructive feedback, critical insights, and moral support for completing the writing of the chapters, which have spanned the last 20 years of my career at UUM through seminars, conferences, proposal defences, and casual discussions, cannot be overstated. Their intellectual generosity and collegial spirit have enriched this work immeasurably.

I wish to convey my thanks to Tuan Mohd Khamdan bin Mohd Torai and his wife, Puan Suryati binti Sarpi of the Messrs Khamdan & Co., Advocates and Solicitors, Shah Alam, Selangor. Their updated reports and data formed the basis for much of my legal analysis, and their role in this research is deeply appreciated. I also acknowledge the purchasers, scholars, technocrats, bureaucrats and legal practitioners who shared real-world experiences of injustice, reminding me that

this research must serve not only the cause of legal reform but also the cause of human dignity and rights.

Special thanks go to my beloved family—especially my beautiful wife, Noor Azah Che Ani—for her love, patience, and unwavering belief in my mission. Her support was the anchor of my resolve. To my children, Nur Aliya Sabrina, Nur Aliya Batrisyia, Nur Afa Khadijah and Muhammad Nur Iman, who have filled and decorated my life and our home with hope, joy, patience, passion, gratitude and aspirations. Their energetic lives, understanding and subtle encouragement have been a source of inspiration throughout this research.

Thanks also to my parents, Hajjah Mariah Abdullah and Haji Md Dahlan Rajuli, for their constant doa.

This work is dedicated to all Malaysians striving for justice in the realm of housing and to the countless victims of abandoned housing projects. Their voices must be heard, recognised, and protected by the law, and it is our shared commitment to this cause that drives this research.

CHAPTER 1

OVERVIEW



Source. <https://www.hba.org.my/news/2008/06/woes.htm> (National House Buyers Association (HBA), 2008)

INTRODUCTION

Abandoned housing projects in Peninsular Malaysia are an unresolved problem in the housing industry. The housing industry plays an important role in the country's economy. The British-led government first initiated a housing programme before Merdeka, establishing institutional quarters such as houses for the police force, the post office and district officials to

serve and support the government machinery. After Merdeka, this noble duty was on the Federal Government's shoulder to provide. However, due to the federal government's constraints on providing adequate housing to meet public demand, the government has invited the private sector to participate in the programme. With its resources and expertise, the private sector was seen as a potential solution to the housing shortage, thereby expanding the economy and providing opportunities for private parties to benefit from the growing Malaysian economy while also lessening the burden on the federal government. (N. H. M. Dahlan, 2009).

The issue of housing abandonment in Malaysia has persisted since the 1970s. The problem of abandoned housing projects has affected thousands of house purchasers and developers. The consequences of these projects are serious. Among them, victim purchasers face financial distress, developers face lawsuits, and banks deal with non-performing loans. For instance, families are left without a home, developers lose their investments, and banks struggle to recover their loans. This dire situation calls for immediate, meaningful and practical solutions. (Md Dahlan, 2021).

Many policies and laws have been made to facilitate, develop, spur and govern the housing industry. These include Malaysia Plans, "Housing Development (Control & Licensing) Act 1966 and its regulations", "National Land Code 2020", "Town and Country Planning Act 1976 (Act 172)", "Street, Drainage and Building Act 1974 (Act 133)", "Uniform Building By-Laws 1984 and Local Government Act 1972". In 2011, the government established the National Housing Policy, also known as Dasar Perumahan Negara

(2013-2017) ('DRN'), to address the issue of housing abandonment projects. The latest DRN, 2018-2025, continues this mission.

The legal landscape surrounding abandoned housing projects in Malaysia is complex, with multiple statutes governing different aspects of housing development. The primary laws involved include the "National Land Code 2020 (NLC)", "Town and Country Planning Act 1976 (Act 172) (TCPA)", "Housing Development (Control and Licensing) Act 1966 (Act 118)", "Street, Drainage and Building Act 1974 (Act 133)", "Uniform Building By-Laws 1984 (UBBL)", "Companies Act 2016", and Islamic home financing regulations. These laws are meant to regulate and control land development and land transactions.

Despite the enforcement of numerous legal frameworks governing housing development, abandoned housing projects remain a pressing issue in Malaysia. To protect the rights and interests of stakeholders, particularly purchasers, meaningful, practical, and effective measures must be formulated to address this issue. This writing aims to examine the effectiveness of the current legal provisions and propose practical solutions to eliminate the risks associated with abandoned housing projects.

DEFINITION OF ABANDONED HOUSING PROJECTS

To the author, various definitions of 'abandoned housing project' are provided by the Ministry of Housing and Local Government ('MHLG'), for example:

1. The definition in 2006 (N. H. Md Dahlan, 2008b; N. H. M. Md Dahlan, 2007; Ministry of Housing and Local Government, 2006)
 - a) "Construction activities on the housing construction project site have stopped for 6 (six) months or more consecutively after the end of the Sale and Purchase Agreement (S & P) entered into by the developer and the purchaser, or"
 - b) "The developer has been placed under the administration of the Official Receiver (under the Department of Insolvency), and the Housing Controller of the MHLG is of the view that such a developer cannot duly proceed with carrying out its obligations as a developer."

2. The Definition in 2000 (N. H. Md Dahlan, 2008b; N. H. M. Md Dahlan, 2007)
 - a) "Construction and development work on the project site that has been terminated for 6 months or more. Such termination has occurred consecutively or during the period the project must be completed, or beyond the required completion period. The completion period is when the developer has to duly complete the development of the housing units. For the landed housing property, the required construction and completion period is 24 months from the date of the sale and purchase agreement. While for flat buildings, the completion period is 36 months or"
 - b) "Within the said duration of 6 (six) months, the developers were wound up and put under the control of the Official Receiver. The housing

- controller of the MHLG thinks that such a housing developer fails to fulfil its obligations as a developer."
3. Definition before 2000 (N. H. Md Dahlan, 2008b; N. H. M. Md Dahlan, 2007; Ministry of Housing and Local Government, 2000; Rahmat, 1994).
 - a) "Construction and development works on the housing project site have been terminated for 6 (six) months or more continuously, regardless of whether the termination occurs during the period within which the project shall be completed by the developer or beyond such period as which has been prescribed in the sale and purchase agreement entered into by the developer and the purchasers; or"
 - b) "The developer admits that they are unable to proceed with the project or"
 - c) "The Housing Controller of the MLHG thinks that the developer cannot execute their obligations as a fit developer."

 4. While the definition before the 1990s (N. H. Md Dahlan, 2008b; N. H. M. Md Dahlan, 2007; Rodziah Idris, 1990)
 - a) "Housing scheme where its construction activities have been terminated for more than one (1) year after the period which the developer shall complete the construction of the housing project is over (the completion period of the housing project is stated in the Regulations of Housing

Developers (Control and Licensing) 1982 and 1989 viz, 24 months for ordinary houses and 36 months for flats); or”

- b) “If the construction works on the project site have not been commenced one (1) year after the execution of the sale and purchase agreement between the purchasers and the developer concerned, and the purchasers have paid the 10% deposit. Under these circumstances, the project is also deemed to be an abandoned project”.

5. The 1988 definition (N. H. Md Dahlan, 2008b; N. H. M. Md Dahlan, 2007; Mohd, 1992)

In 1988, there is another definition of the same (the 1988 definition), which states:

“A housing scheme where its activities on the housing project site were stopped for one year, passing beyond the required period within which the developer shall have to complete the project thereof, according to the sale and purchase agreement executed by the developer and the purchasers.”

6. The current Definition (Ministry of Housing and Local Government, 2025).

“An abandoned project remains incomplete within or beyond the timeframe stipulated in the Sale and Purchase Agreement (SPA) and where no significant construction activities have occurred on-site for six months. It may also be considered abandoned if construction progress has stopped for six consecutive

months or more. Additionally, a project is deemed abandoned if it remains incomplete beyond the SPA period and fails to meet the stipulated completion timeline. In all these situations, the Honourable Minister of Housing and Local Government officially must declare the problematic housing project under section 11(1) (ca) of Act 118 an abandoned housing project before the project can be considered as such.”

Based on this latest and current definition, a problematic housing project will not be considered abandoned unless the Minister of MHLG has declared it so.

With the current definition of abandoned housing projects, another category of problematic housing projects exists. These projects are complicated, not amounting to abandoned housing projects, but sick housing projects. According to the MHLG, a sick housing project is (Ministry of Housing and Local Government, 2025):

“A project that has been delayed by more than 30% compared to its expected progress or has exceeded the contractual period stipulated in the Sale and Purchase Agreement (SPA).”

In addition to the above, the MHLG has categorised certain problematic housing projects as sick housing projects. MHLG states a sick housing project (Ministry of Housing and Local Government, 2025):

“A project that has been delayed by more than 30% compared to its expected progress or has exceeded the contractual timeframe stipulated in the Sale and Purchase Agreement (SPA).”

The above elaboration reveals that the definition of an abandoned housing project has changed over time. This evolving definition is intended to help the MHLG categorise and administer problematic housing projects, whether abandoned or otherwise, based on necessity and challenges. Further, the categorisation of other problematic housing projects into sick housing projects and that before a problematic housing project can be considered to fall under the definition of abandoned housing project until the problematic housing project is declared by the Minister of HLG, in the opinion of the author, is to reduce the reported number of abandoned housing projects in Malaysia. It should be noted that the number of abandoned housing projects is obtained from the MHLG. Suppose the total number of problematic housing projects, sick housing projects, and abandoned housing projects in Peninsular Malaysia, as well as those in Sabah and Sarawak, are to be taken into account.

Additionally, abandoned housing projects of parties not under the purview of the MHLG, such as private developers and cooperative societies, should also be considered. In that case, the author believes that the actual number of abandoned housing projects in Malaysia will be more exorbitant. The number of these problematic housing projects is about 1,000 housing development projects, involving thousands of victim purchasers and billions of ringgits in value. (Astro Awani Network Sdn Bhd, 2025; BERNAMA, 2025).

RELEVANT STATISTICS ON ABANDONED AND SICK HOUSING PROJECTS IN PENINSULAR MALAYSIA

Below are some current statistics of abandoned and sick housing projects reported by the MHLG.

Table 1 Abandoned Housing Projects of Private Housing Developers Without Licence Until February 2025

No.	States	Category	Housing Units	In Planning for rehabilitation	No. of units sold (Purchasers)	No. of housing units (Purchasers)	In the process of rehabilitation	No. of housing units (Purchasers)	No. of housing units sold (Purchasers)	Static (remain stalled without rehabilitation)	No. of units sold (Purchasers)
1.	States in Peninsular Malaysia	Problematic	Completed without CCC/CF	38	2,107	1,053	1,053	1,577	1,571	8,698	3,119
2.	States in Peninsular Malaysia	135									
3.	States in Peninsular Malaysia	173		1,053	1,053		1,577			8,698	3,119

Source. Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (Jabatan Perumahan Negara, 2025a).

Table 2 List of Private Abandoned Housing Projects Under the Category of Still Under Rehabilitation, the Projects of Which Are Subject to Liquidation

No.	States	Number of Units Built	Number of Units Sold (Purchaser)
1.	States in Peninsular Malaysia	410,189	8,6402

Source. Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (Jabatan Perumahan Negara, 2025c).

Table 3 List of Private Abandoned Housing Projects Subject to Liquidation Administration Categorised as Static

No.	States	Number of Units Constructed	Number of Units Sold (Purchasers)
1.	States in Peninsular Malaysia	2,179	1,605

Source. Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (Jabatan Perumahan Negara, 2025d).

Table 4 List of Private Abandoned Housing Projects Categorised as Under Rehabilitation Planning

No.	States	Number of Units Constructed	Number of Units Sold (Purchaser)
1.	States in Peninsular Malaysia	11,559	6,028

Source. Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (Jabatan Perumahan Negara, 2025b).

Table 5 List of Private Abandoned Housing Projects That Have Been Rehabilitated (2009 until 2024)

No.	States	Constructed/ Completed		Status
		Constructed	Sold	
1.	2009			
	States in Peninsular Malaysia	2,716	1,913	Completed with Certificate of Fitness for Occupation ('CF') or changing from housing development to commercial development, or return of deposit to purchasers

(continued)

No.	States	Constructed/ Completed		Status
		Constructed	Sold	
2.	2010			
	States in Peninsular Malaysia	8,972	4,854	Completed with Certificate of Fitness for Occupation ('CF')/Certificate of Completion and Compliance ('CCC') or provisional CF/CCC or changing from housing development to commercial development or change of housing type or return of deposit to purchasers or construction terminated or termination of contract or no purchasers and no return of deposit
3.	2012			
	States in Peninsular Malaysia	8,852	5,265	Completed with Certificate of Fitness for Occupation ('CF'), change from housing development to commercial development, change of housing type, return of deposit to purchasers, or static situation, and has now been re-put into the list of abandoned housing projects for rehabilitation.
4.	2013			
	States in Peninsular Malaysia	10,712	8,328	Completed with Certificate of Fitness for Occupation ('CF') or changing from housing development to commercial development or change of housing type or return of the deposit to purchasers or no construction at all even though the bank has made payment to the developer or static situation and now has been re-put into the list of abandoned housing project for rehabilitation or unsuitable for rehabilitation and the unlucky fate of purchasers remain unresolved.

(continued)

No.	States	Constructed/ Completed		Status
		Constructed	Sold	
5.	2014 States in Peninsular Malaysia	10,546	8,213	Completed with Certificate of Fitness for Occupation ('CF') or Provisional CF, or changing from housing development to commercial development, or change of housing type.
6.	2015 States in Peninsular Malaysia	3,250	2,385	Completed with Certificate of Fitness for Occupation ('CF') or changing from housing development to commercial development, or change of housing type, or refund of deposits
7.	2016 States in Peninsular Malaysia	1,397	1,054	Completed with a Certificate of Fitness for Occupation ('CF') or projects taken over by a state government or rehabilitated with a private company.
8.	2017 States in Peninsular Malaysia	3,466	2,484	Completed with Certificate of Fitness for Occupation ('CF') or changing from housing development to commercial development, or a change of housing type taken over by a rehabilitating developer.
9.	2018 States in Peninsular Malaysia	391	242	Completed with Certificate of Completion and Compliance ('CCC') or changing from housing development to commercial development.
10.	2019 States in Peninsular Malaysia	2,325	2,061	Completed with Certificate of Fitness for Occupation ('CF')/Certificate of Completion and Compliance ('CCC') or changing from housing development

(continued)

No.	States	Constructed/ Completed		Status
		Constructed	Sold	
				to commercial development, or refund of deposits to purchasers, or settlement with purchasers, or termination of sale and purchase agreements.
11.	2020 States in Peninsular Malaysia	2,967	1,352	Completed with Certificate of Fitness for Occupation (CF)/Certificate of Completion and Compliance (CCC).
12.	2021 States in Peninsular Malaysia	723	638	Completed with Certificate of Completion and Compliance ('CCC') or changing from housing development to kampung tersusun or settlement with purchasers.
13.	2022 States in Peninsular Malaysia	1,049	677	Completed with Certificate of Completion and Compliance ('CCC') or settlement with purchasers.
14.	2023 States in Peninsular Malaysia	1,335	352	Completed with Certificate of Completion and Compliance ('CCC')/CF or settlement with purchasers or taken over by a new developer.
15.	2024 States in Peninsular Malaysia	651	533	Completed with Certificate of Completion and Compliance ('CCC')/CF or settlement with purchasers through land replacement or others.
16.	TOTAL	66,604	45,880	

Source. Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (Jabatan Perumahan Negara, 2025e).

Table 6 List of Updated Sick Housing Projects until 14 March 2025

No.	States	Number of Sick Housing Projects
1.	States in Peninsular Malaysia	449

Source. Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (Jabatan Perumahan Negara, 2025f).



Source. <https://www.thestar.com.my/metro/metro-news/2023/11/16/action-to-be-taken-over-abandoned-housing-units> (The Star, 2023).

REASONS AND CAUSES LEADING TO ABANDONMENT OF HOUSING PROJECTS

There are many reasons for abandoned housing projects, but the primary reasons are as follows: (El-Gamal, 2006; Hasan, 2014; Islamic Financial Services Board, 2013; N. H. Md Dahlan, 2011, 2014a, 2025a, 2025b).

- a) Shortage of funds on the part of the housing developers to complete the housing development projects.
- b) There is no mandatory requirement to provide housing through full build-and-sell.
- c) There is no mandatory requirement for the housing developer to possess housing development insurance.
- d) There is no rule governing the rehabilitation of abandoned housing projects.
- e) The problem of regulatory bodies enforcing laws on land, planning, building, housing, and banking authorities.
- f) Existing laws governing land, banking, housing development, insolvency, and Islamic finance have not adequately safeguarded homebuyers.
- g) An exorbitant focus on profit maximisation, unreasonable investor demands, international banking policy pressure mounted by Basel Accord over Bank Negara Malaysia and Islamic banks and finances in Malaysia from applying full Islamic law principles and a disregard for the Islamic duty to ensure justice have contributed to the problem. This relates to developer companies, Basel Accord, Bank Negara Malaysia, Malaysian Islamic banks and finances.

The current system in Malaysia is inadequate to protect purchasers' rights in abandoned housing projects. In contrast, Singapore, the United Kingdom, and Australia have effectively implemented the full build-then-sell (BTS) housing delivery system, which has resolved issues related to housing project abandonment. Therefore, Malaysia should consider adopting the BTS approach in housing development to prevent any future abandonment of housing projects.

The prevailing sell-then-build (STB) system in Malaysia is vulnerable to abandonment. If this system remains in place, the problem of abandoned housing projects will likely persist. This has caused affected purchasers to have insufficient remedies and suffer irreparable damage. This situation indirectly violates the provisions of “Article 25 of the Universal Declaration of Human Rights and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights”.

Additionally, the issue of lack of protective policy through STB in the housing industry that leads to housing abandonment unequivocally goes against the fundamental rights enshrined in Article 5(1) (the right to life and personal liberty), Article 8(1) and (2) (equality before the law), and Article 13(1) (the right to property) of Malaysia’s Federal Constitution. In summary, the STB system contravenes fundamental human rights principles, the provisions of the aforementioned international laws, and the Federal Constitution of Malaysia. This means the STB policy is unconstitutional.

CONSEQUENCES OF ABANDONED HOUSING PROJECTS

The purchasers will indeed become the victims of abandoned housing projects. Other parties may also be affected by abandoned housing projects in Malaysia. The following are the negative phenomena and difficulties that will ensue from abandoned housing projects, particularly for the aggrieved purchasers. (Azuar, 2023; Bedi, 2025; N. H. Md Dahlan, 2014a, 2025a; Nagamany, 2016).

- a) They cannot take vacant possession of the units on time, as promised in the sale and purchase agreements.
- b) The abandoned housing projects will remain stalled forever if there is no effective rehabilitation, while the purchasers will surely not receive the duly completed houses.
- c) The purchasers have to pay a monthly instalment to the financiers, yet they cannot get the completed units.
- d) No compensation and damages were obtained.
- e) Commencing legal action against the defaulting developers may not be feasible. This is because the developers may have no assets and have been wound up or subject to insolvency administration, or they might have run out of jurisdiction.
- f) If the purchasers fail to settle the financiers’ debts, they might be subject to foreclosure, sale, or bankruptcy action.
- g) The victim purchasers might have to use their money or take out a new loan to rehabilitate the abandoned housing projects.
- h) The rehabilitation of abandoned housing projects may not be successful due to insufficient funds or other issues that could hinder their completion.
- i) The victim purchasers may face other pecuniary and non-pecuniary losses due to the abandonment, such as divorces, nervous shocks, mental breakdown, depression, family breakdowns, dismissal from employment and losses of future earnings.
- j) The stalled buildings in abandoned housing projects are also used for criminal activities, making urban areas appear ugly and unattractive.

- k) The stalled buildings in abandoned housing projects will remain stalled and dilapidated forever. They cannot be subject to demolition and redevelopment, as this would be subject to the interests of the chargees, the title proprietorship of the purchasers, more stringent banking and financing facilities and conditions, and other legal and equitable encumbrances.

Rehabilitation of Abandoned Housing Projects

If housing projects become abandoned, they require rehabilitation. This is to protect the rights and interests of purchasers. Nonetheless, getting rehabilitation is not easy. Many issues and challenges will await the aggrieved purchasers. Rehabilitation is carried out either by the original defaulting developers or government agencies, a new developer, or liquidator/provisional liquidator, receiver and managers or other insolvency administrator, for example, the scheme of arrangement manager and rehabilitation by the aggrieved purchasers themselves. (N. H. Md Dahlan, 2011).

The primary issue in rehabilitating abandoned housing projects is the inability to complete them. Usually, the funds come from the balance of the unreleased loan by the financiers to the defaulting developers. Sometimes, the rehabilitating developers requested that purchasers provide additional funds, as the available funds were insufficient to cover the rehabilitation costs. The purchasers may need to top up additional funds from their own pockets or obtain further loans from the financiers. If the purchasers fail to provide the extra funds, the rehabilitation may not proceed. Sometimes, rehabilitation is done with the help of the government. This

involves the rehabilitation of abandoned housing projects at Tingkat Nusantara Pulau Pinang and as reported in the case of "*Lim Chee Holding Sdn Bhd v RHB Bank Berhad (formerly known as Kwong Yik Bank Bhd)* [2005] 6 MLJ 497", "*Xavier Kang Yoon Mook v. Insun Development Sdn Bhd* [1995] MLJU 46; [1995] 2 MLJ 91", "*Kim Wah Theatre Sdn Bhd v Fahlum Development Sdn Bhd* [1990] 1 LNS 42; [1990] 2 MLJ 511", "*Aw Yong Wai Choo & Ors v Arief Trading Sdn. Bhd* [1992] 1 MLJ 166" and Taman Seri Kerayong, Kapar Kelang. However, the government funds are soft loans granted to rehabilitating developers, who must return the funds using their own money later. (N. H. M. Dahlan, 2011).

Challenges and issues in rehabilitating abandoned housing projects include the failure of the rehabilitating developers to complete the projects and hand over the duly completed houses to the purchasers. Notably, the incompleteness is also due to inadequate funding that the rehabilitating developers fail to obtain to complete the projects. (N. H. Md Dahlan, 2009, 2012a).

Furthermore, in rehabilitating abandoned housing projects, purchasers are required to waive any demand for compensation and damages from the rehabilitating parties as a condition precedent to the agreement of the rehabilitating parties to complete the projects. In some situations, the rehabilitating parties require the purchasers to accept modified and amended housing units that differ from the original specifications prescribed in the earlier sale and purchase agreements between the purchasers and the defaulting, abandoned housing developers. In certain situations, the rehabilitation may not proceed as planned. For example, the rehabilitation takes longer as new challenges and issues arise

that the rehabilitation parties face. The regulatory bodies, for example, the Insolvency Authority (Jabatan Insolvensi Malaysia), the Housing Authority (Ministry of Housing and Local Government – MHLG), and the Building Authority – the Majlis Perbandaran - are usually flexible to ensure that rehabilitation can be duly completed. The usual law is not made applicable, bearing the challenges that the rehabilitation faced. (N. H. Md Dahlan, 2008a, 2013, 2014b).

In short, the rights and interests of the purchasers are affected and significantly undermined. In other words, once a housing project becomes abandoned and the rehabilitating parties undertake the rehabilitation, the law is not enforceable to prevent disturbance and jeopardise the rehabilitation process. (N. H. Dahlan, 2012; N. H. M. Dahlan, 2019).

Why Are There Abandoned Housing Projects That Cannot Be Rehabilitated and Remain Stalled Forever, Even Until Today?

There is evidence, and we can see through our own eyes, that many abandoned housing projects remain abandoned today without any rehabilitation. The main reason is the lack of funds to revive the projects. There are no interested parties to revive the projects, and the issues plaguing them are too extensive. Even 30-40 years after abandonment, the housing projects remain stalled and become uninhabitable. The purchasers suffered because they could not get the promised, duly completed housing units from the defaulting housing developers. They, too, had to settle off the debts to their financiers, for the latter had released a particular portion of the loan to the developers. Otherwise, they will

be subject to legal action, including bankruptcy proceedings. There are occasions where purchasers have occupied abandoned housing projects after specific improvements and modifications have been made to the housing units. However, the building authority has not obtained a Certificate of Fitness for Occupation (CFO). Although they can occupy the units, future sales may be impossible if the required cash flow (CF) is not received, nor can the units be used as collateral for loans. The defaulting developer company may have been liquidated, and no assets or funds can be used to revive the company or pay compensation and damages to the aggrieved purchasers. Commencing legal actions against the developer, nor its directors and shareholders, may not be feasible, as evidence and several difficulties have hindered the successful flow of litigation in court, making it time-consuming to get the necessary legal and equitable remedies. (N. H. Md Dahlan, 2009).

Apart from the losses, sufferings and grievances of purchasers, stalled and abandoned housing projects, in a broader sense, can degrade and deteriorate the land. The unfinished construction sites deteriorate, becoming eyesores and environmental hazards that can lead to illegal dumping, vandalism, and potentially hazardous situations. Furthermore, this can affect public safety and security. The abandoned housing project sites become potential places for crime, pests, and health risks. These places can pose significant public safety hazards. Ultimately, this can lead to urban decay, where abandoned projects and buildings contribute to blight in development areas. This phenomenon can reduce surrounding property values and diminish the overall attractiveness of the neighbourhood. Furthermore, as the lands designated for

housing units are filled with abandoned housing buildings, this has led to delayed community infrastructure development. Incomplete projects disrupt infrastructure plans, including roads, drainage, and amenities, which in turn affect broader community development strategies.



Source. <https://www.hba.org.my/news/2008/06/woes.htm> (National House Buyers Association (HBA), 2008)

SUMMARY

Abandoned housing projects have long been a significant policy, legal and implementation problem and continue to plague the housing industry in Malaysia. This issue has led to significant social, legal, and economic consequences. This persistent issue dates back to the 1970s, resulting in financial losses, emotional trauma, and legal dilemmas for thousands

of house purchasers, developers, consultants, and financial institutions. Notwithstanding various government measures, initiatives, laws, and policies that have been implemented to deal with and resolve the issues of abandoned housing projects, such as the Housing Development (Control and Licensing) Act 1966 and its regulations (Act 118), the National Land Code (Revised 2020), the Town and Country Planning Act 1976 (Act 172), the Street, Drainage and Building Act 1974 (Act 113), the Uniform Building By-Laws 1984, and the National Housing Policies, abandoned projects remain unresolved, undermining public trust in the rule of law and governance.

Historically, the responsibility of providing public housing shifted from the British-led administration to the newly formed Federal Government. However, limited public resources prompted the government to invite private developers to participate in housing provision. Unfortunately, without strong policy and implementation oversight and legal safeguards, many private housing schemes eventually failed.

The Ministry of Housing and Local Government (MHLG) has issued various definitions of “abandoned housing projects” over the decades. The latest 2025 definition states that a project is only considered abandoned if officially declared as such by the Minister under section 11(1) (ca) of Act 118. This declaration-centric approach has unintentionally masked the true scale of the crisis by excluding many problematic or “sick” projects from the official tally.

Sick projects—those delayed by over 30% or exceeding contractual deadlines—add another layer of complexity. When combined with abandoned projects, estimates indicate that more than 1,000 housing projects nationwide are

problematic, affecting billions of ringgit in investments and thousands of house purchasers. Numerous statistics from the National Housing Department show the magnitude of stalled, rehabilitated, and static projects, highlighting the overwhelming burden on regulators and victims alike.

Root causes of abandonment include inadequate funding, a lack of mandatory housing development insurance and the "build-then-sell" policy, poor enforcement, weak legal remedies, pressure from investors, and an overemphasis on profit. The prevailing "sell-then-build" system is a key enabler of the problem. Unlike Malaysia, jurisdictions such as Singapore, the United Kingdom, and Australia implement a "build-then-sell" system, which evidently reduces the number of housing project failures. Thus, adopting such a model could be transformative for Malaysia's housing sector.

The consequences of abandonment are devastating. Victim purchasers who have to progressively repay housing loans to the financiers without receiving the promised homes may often face bankruptcy if they default. Legal actions against insolvent developers usually fail, leaving victims without compensation and remedies. Some suffer emotional distress, family breakdowns, and long-term economic hardship. Abandoned housing projects, which often become derelict buildings, also serve as hubs for criminal activity and urban decay, thereby decreasing property values and hindering community development.

Rehabilitation, although crucial, is often hindered by technical, legal and financial issues. Original or new developers, liquidators, or even the buyers themselves may undertake this task. However, insufficient funds, governance issues, and a lack of a rehabilitation legal framework often

prevent success. Purchasers are sometimes required to give up claims or accept inferior housing units. Government involvement, though helpful in limited cases, often provides only temporary relief.

In conclusion, the lack of holistic, enforceable, and rights-based solutions continues to cause problems for house purchasers in Malaysia. A meaningful change and improvement in housing policy, towards a mandatory "build-then-sell" housing delivery model, supported by comprehensive and reformulated regulatory reform, housing development insurance requirements, and stakeholder accountability, is urgently required. Without this, the cycle of housing abandonment in Malaysia will continue to prolong, affecting citizens' right to adequate housing as guaranteed under both the Federal Constitution and international human rights instruments.

**RESCUING DREAMS,
REFORMING LAWS:
ENDING THE SCOURGE
OF ABANDONED HOUSING
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Nuarrual Hilal Md Dahlan

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PREFACE

Abandoned housing projects in Malaysia have become a chronic problem in the property development landscape since the 1970s, posing an uncontrollable issue in the housing industry that undermines public trust and leaves thousands of purchasers without remedies. Despite numerous legal, planning, and regulatory frameworks, these projects persist, highlighting systemic failures and legal inadequacies. The principal problem lies in the fragmented, weak and inconsistent enforcement of land, housing, planning, building, insolvency, and Islamic financial laws, which, instead of protecting purchasers, often leave them at the mercy of insolvent developers, irresponsible developers, indifferent financial institutions, and poorly supervised professionals. The legal architecture—though robust on paper—fails in execution due to loopholes, institutional weaknesses, and a skewed prioritisation of creditors over consumers.

The primary objective of this research is to critically examine the interrelated legal regimes governing abandoned housing projects in Malaysia, specifically land law, planning law, building law, housing development law, corporate insolvency law, and Islamic home finance contracts. It aims to evaluate the extent to which these laws contribute to or mitigate the abandonment crisis and to propose concrete, enforceable reforms that prioritise justice, public interest, and *Maqasid al-Shariah* (the objectives of Islamic Law). A further aim is to assess whether the principles embedded in Islamic finance are faithfully observed in protecting the interests of homebuyers in the event of project failure.

This study adopts a doctrinal legal research methodology supported by qualitative case analyses, statutory interpretation, and comparative legal reasoning. It evaluates primary legal instruments, including the “Housing Development (Control and Licensing) Act 1966 (Act 118)”, the “National Land Code (Act 828) (Revised – 2020)”, the “Town and Country Planning Act 1976 (Act 172)”, the “Street, Drainage and Building Act 1974 (Act 133)”, the “Companies Act 2016 (Act 777)”, the “Islamic Financial Services Act 2013 (Act 759)” and the “Central Bank of Malaysia Act 2009 (Act 701)”. The study also incorporates court cases, judicial decisions, Shariah principles, regulatory guidelines, and selected foreign legal practices, particularly from Australia and New Zealand, to suggest reform pathways.

Key findings reveal that current legal mechanisms inadequately prioritise homebuyers’ rights in insolvency proceedings. Under liquidation and receivership, purchasers are treated as unsecured creditors, receiving minimal protection or restitution. Regulatory bodies often fail to enforce planning and building standards strictly, while local authorities remain shielded by statutory immunity even in cases of negligence. Professionals such as architects and engineers seldom face consequences for poor supervision or false certifications. In Islamic finance, contracts such as *Bay’ Bithaman al-Ajil* and *Tawarruq* disproportionately benefit banks and expose consumers to risk, contravening the spirit of equitable risk-sharing espoused in Shariah.

This research is significant as it provides a unified, cross-disciplinary legal blueprint for rehabilitating the Malaysian housing industry. It proposes reforms, including

a dedicated legal regime under Act 118 for abandoned projects, mandatory housing development insurance or takaful, independent monitoring of project execution, and the restructuring of Islamic home finance products to reflect substantive justice and consumer protection. By doing so, the study seeks to restore public confidence, advance legal reform, and ensure housing dignity for all Malaysians.



ACKNOWLEDGMENT

In the name of Allah SWT, the Most Compassionate, the Most Gracious and the Most Merciful. All praise is due to Allah SWT, who has provided me with the strength, clarity, space, opportunity, understanding, and perseverance to complete this scholarly work on the pressing issue of abandoned housing projects in Malaysia for my inaugural professional lecture. This journey would not have been possible without the unwavering guidance, support, and encouragement of many individuals and institutions to whom I am deeply indebted.

First and foremost, I would like to extend my sincere appreciation to Universiti Utara Malaysia (UUM), particularly the School of Law, for providing the academic environment, facilities and resources necessary for this research. The impact of my esteemed colleagues and peers who offered constructive feedback, critical insights, and moral support for completing the writing of the chapters, which have spanned the last 20 years of my career at UUM through seminars, conferences, proposal defences, and casual discussions, cannot be overstated. Their intellectual generosity and collegial spirit have enriched this work immeasurably.

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this research must serve not only the cause of legal reform but also the cause of human dignity and rights.

Special thanks go to my beloved family—especially my beautiful wife, Noor Azah Che Ani—for her love, patience, and unwavering belief in my mission. Her support was the anchor of my resolve. To my children, Nur Aliya Sabrina, Nur Aliya Batrisyia, Nur Aufa Khadijah and Muhammad Nur Iman, who have filled and decorated my life and our home with hope, joy, patience, passion, gratitude and aspirations. Their energetic lives, understanding and subtle encouragement have been a source of inspiration throughout this research.

Thanks also to my parents, Hajjah Mariah Abdullah and Haji Md Dahlan Rajuli, for their constant doa.

This work is dedicated to all Malaysians striving for justice in the realm of housing and to the countless victims of abandoned housing projects. Their voices must be heard, recognised, and protected by the law, and it is our shared commitment to this cause that drives this research.

Professor Dr. Nuarrual Hilal Md Dahlan ACIS, (CS), (CGP),
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CHAPTER 1

OVERVIEW



Source. <https://www.hba.org.my/news/2008/06/woes.htm> (National House Buyers Association (HBA), 2008)

INTRODUCTION

Abandoned housing projects in Peninsular Malaysia are an unresolved problem in the housing industry. The housing industry plays an important role in the country's economy. The British-led government first initiated a housing programme before Merdeka, establishing institutional quarters such as houses for the police force, the post office and district officials to

serve and support the government machinery. After Merdeka, this noble duty was on the Federal Government's shoulder to provide. However, due to the federal government's constraints on providing adequate housing to meet public demand, the government has invited the private sector to participate in the programme. With its resources and expertise, the private sector was seen as a potential solution to the housing shortage, thereby expanding the economy and providing opportunities for private parties to benefit from the growing Malaysian economy while also lessening the burden on the federal government. (N. H. M. Dahlan, 2009).

The issue of housing abandonment in Malaysia has persisted since the 1970s. The problem of abandoned housing projects has affected thousands of house purchasers and developers. The consequences of these projects are serious. Among them, victim purchasers face financial distress, developers face lawsuits, and banks deal with non-performing loans. For instance, families are left without a home, developers lose their investments, and banks struggle to recover their loans. This dire situation calls for immediate, meaningful and practical solutions. (Md Dahlan, 2021).

Many policies and laws have been made to facilitate, develop, spur and govern the housing industry. These include Malaysia Plans, "Housing Development (Control & Licensing) Act 1966 and its regulations", "National Land Code 2020", "Town and Country Planning Act 1976 (Act 172)", "Street, Drainage and Building Act 1974 (Act 133)", "Uniform Building By-Laws 1984 and Local Government Act 1972". In 2011, the government established the National Housing Policy, also known as Dasar Perumahan Negara

(2013-2017) ('DRN'), to address the issue of housing abandonment projects. The latest DRN, 2018-2025, continues this mission.

The legal landscape surrounding abandoned housing projects in Malaysia is complex, with multiple statutes governing different aspects of housing development. The primary laws involved include the "National Land Code 2020 (NLC)", "Town and Country Planning Act 1976 (Act 172) (TCPA)", "Housing Development (Control and Licensing) Act 1966 (Act 118)", "Street, Drainage and Building Act 1974 (Act 133)", "Uniform Building By-Laws 1984 (UBBL)", "Companies Act 2016", and Islamic home financing regulations. These laws are meant to regulate and control land development and land transactions.

Despite the enforcement of numerous legal frameworks governing housing development, abandoned housing projects remain a pressing issue in Malaysia. To protect the rights and interests of stakeholders, particularly purchasers, meaningful, practical, and effective measures must be formulated to address this issue. This writing aims to examine the effectiveness of the current legal provisions and propose practical solutions to eliminate the risks associated with abandoned housing projects.

DEFINITION OF ABANDONED HOUSING PROJECTS

To the author, various definitions of 'abandoned housing project' are provided by the Ministry of Housing and Local Government ('MHLG'), for example,

1. The definition in 2006 (N. H. Md Dahlan, 2008b; N. H. M. Md Dahlan, 2007; Ministry of Housing and Local Government, 2006)
 - a) “Construction activities on the housing construction project site have stopped for 6 (six) months or more consecutively after the end of the Sale and Purchase Agreement (S & P) entered into by the developer and the purchaser, or”
 - b) “The developer has been placed under the administration of the Official Receiver (under the Department of Insolvency), and the Housing Controller of the MHLG is of the view that such a developer cannot duly proceed with carrying out its obligations as a developer.”

2. The Definition in 2000 (N. H. Md Dahlan, 2008b; N. H. M. Md Dahlan, 2007)
 - a) “Construction and development work on the project site that has been terminated for 6 months or more. Such termination has occurred consecutively or during the period the project must be completed, or beyond the required completion period. The completion period is when the developer has to duly complete the development of the housing units. For the landed housing property, the required construction and completion period is 24 months from the date of the sale and purchase agreement. While for flat buildings, the completion period is 36 months or”
 - b) “Within the said duration of 6 (six) months, the developers were wound up and put under the control of the Official Receiver. The housing

controller of the MHLG thinks that such a housing developer fails to fulfil its obligations as a developer.”

3. Definition before 2000 (N. H. Md Dahlan, 2008b; N. H. M. Md Dahlan, 2007; Ministry of Housing and Local Government, 2000; Rahmat, 1994).
 - a) “Construction and development works on the housing project site have been terminated for 6 (six) months or more continuously, regardless of whether the termination occurs during the period within which the project shall be completed by the developer or beyond such period as which has been prescribed in the sale and purchase agreement entered into by the developer and the purchasers; or”
 - b) “The developer admits that they are unable to proceed with the project or”
 - c) “The Housing Controller of the MLHG thinks that the developer cannot execute their obligations as a fit developer.”

4. While the definition before the 1990s (N. H. Md Dahlan, 2008b; N. H. M. Md Dahlan, 2007; Rodziah Idris, 1990)
 - a) “Housing scheme where its construction activities have been terminated for more than one (1) year after the period which the developer shall complete the construction of the housing project is over (the completion period of the housing project is stated in the Regulations of Housing

Developers (Control and Licensing) 1982 and 1989 *viz*, 24 months for ordinary houses and 36 months for flats); or”

- b) “If the construction works on the project site have not been commenced one (1) year after the execution of the sale and purchase agreement between the purchasers and the developer concerned, and the purchasers have paid the 10% deposit. Under these circumstances, the project is also deemed to be an abandoned project”.
5. The 1988 definition (N. H. Md Dahlan, 2008b; N. H. M. Md Dahlan, 2007; Mohd, 1992)
In 1988, there is another definition of the same (the 1988 definition), which states:

“A housing scheme where its activities on the housing project site were stopped for one year, passing beyond the required period within which the developer shall have to complete the project thereof, according to the sale and purchase agreement executed by the developer and the purchasers.”

6. The current Definition (Ministry of Housing and Local Government, 2025).

“An abandoned project remains incomplete within or beyond the timeframe stipulated in the Sale and Purchase Agreement (SPA) and where no significant construction activities have occurred on-site for six months. It may also be considered abandoned if construction progress has stopped for six consecutive

months or more. Additionally, a project is deemed abandoned if it remains incomplete beyond the SPA period and fails to meet the stipulated completion timeline. In all these situations, the Honourable Minister of Housing and Local Government officially must declare the problematic housing project under section 11(1) (ca) of Act 118 an abandoned housing project before the project can be considered as such.”

Based on this latest and current definition, a problematic housing project will not be considered abandoned unless the Minister of MHLG has declared it so.

With the current definition of abandoned housing projects, another category of problematic housing projects exists. These projects are complicated, not amounting to abandoned housing projects, but sick housing projects. According to the MHLG, a sick housing project is (Ministry of Housing and Local Government, 2025):

“A project that has been delayed by more than 30% compared to its expected progress or has exceeded the contractual period stipulated in the Sale and Purchase Agreement (SPA).”

In addition to the above, the MHLG has categorised certain problematic housing projects as sick housing projects. MHLG states a sick housing project (Ministry of Housing and Local Government, 2025):

“A project that has been delayed by more than 30% compared to its expected progress or has exceeded the contractual timeframe stipulated in the Sale and Purchase Agreement (SPA).”

The above elaboration reveals that the definition of an abandoned housing project has changed over time. This evolving definition is intended to help the MHLG categorise and administer problematic housing projects, whether abandoned or otherwise, based on necessity and challenges. Further, the categorisation of other problematic housing projects into sick housing projects and that before a problematic housing project can be considered to fall under the definition of abandoned housing project until the problematic housing project is declared by the Minister of HLG, in the opinion of the author, is to reduce the reported number of abandoned housing projects in Malaysia. It should be noted that the number of abandoned housing projects is obtained from the MHLG. Suppose the total number of problematic housing projects, sick housing projects, and abandoned housing projects in Peninsular Malaysia, as well as those in Sabah and Sarawak, are to be taken into account.

Additionally, abandoned housing projects of parties not under the purview of the MHLG, such as private developers and cooperative societies, should also be considered. In that case, the author believes that the actual number of abandoned housing projects in Malaysia will be more exorbitant. The number of these problematic housing projects is about 1,000 housing development projects, involving thousands of victim purchasers and billions of ringgits in value. (Astro Awani Network Sdn Bhd, 2025; BERNAMA, 2025).

RELEVANT STATISTICS ON ABANDONED AND SICK HOUSING PROJECTS IN PENINSULAR MALAYSIA

Below are some current statistics of abandoned and sick housing projects reported by the MHLG.

Table 1 Abandoned Housing Projects of Private Housing Developers Without Licence Until February 2025

No.	States	Category	Completed without CCC/CF	Housing Units	No. of units sold (Purchasers)	No of housing units (Purchasers)	In the process of rehabilitation	No. of units sold (Purchasers)	No of housing units (Purchasers)	Static (remain stalled without rehabilitation)
1.	States in Peninsular Malaysia	Problematic	38	2,107	1,053	1,577	1,571	8,698	3,119	
2.	States in Peninsular Malaysia									
3.	States in Peninsular Malaysia		173	1,053	1,053	1,577	1,577	8,698	3,119	

Source. Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (Jabatan Perumahan Negara, 2025a).

Table 2 List of Private Abandoned Housing Projects Under the Category of Still Under Rehabilitation, the Projects of Which Are Subject to Liquidation

No.	States	Number of Units Built	Number of Units Sold (Purchaser)
1.	States in Peninsular Malaysia	410,189	8,6402

Source. Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (Jabatan Perumahan Negara, 2025c).

Table 3 List of Private Abandoned Housing Projects Subject to Liquidation Administration Categorised as Static

No.	States	Number of Units Constructed	Number of Units Sold (Purchasers)
1.	States in Peninsular Malaysia	2,179	1,605

Source. Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (Jabatan Perumahan Negara, 2025d).

Table 4 List of Private Abandoned Housing Projects Categorised as Under Rehabilitation Planning

No.	States	Number of Units Constructed	Number of Units Sold (Purchaser)
1.	States in Peninsular Malaysia	11,559	6,028

Source. Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (Jabatan Perumahan Negara, 2025b).

Table 5 List of Private Abandoned Housing Projects That Have Been Rehabilitated (2009 until 2024)

No.	States	Constructed/ Completed		Status
		Constructed	Sold	
1.	2009 States in Peninsular Malaysia	2,716	1,913	Completed with Certificate of Fitness for Occupation ('CF') or changing from housing development to commercial development, or return of deposit to purchasers

(continued)

No.	States	Constructed/ Completed		Status
		Constructed	Sold	
2.	2010 States in Peninsular Malaysia	8,972	4,854	Completed with Certificate of Fitness for Occupation ('CF')/Certificate of Completion and Compliance ('CCC') or provisional CF/CCC or changing from housing development to commercial development or change of housing type or return of deposit to purchasers or construction terminated or termination of contract or no purchasers and no return of deposit
3.	2012 States in Peninsular Malaysia	8,852	5,265	Completed with Certificate of Fitness for Occupation ('CF'), change from housing development to commercial development, change of housing type, return of deposit to purchasers, or static situation, and has now been re-put into the list of abandoned housing projects for rehabilitation.
4.	2013 States in Peninsular Malaysia	10,712	8,328	Completed with Certificate of Fitness for Occupation ('CF') or changing from housing development to commercial development or change of housing type or return of the deposit to purchasers or no construction at all even though the bank has made payment to the developer or static situation and now has been re-put into the list of abandoned housing project for rehabilitation or unsuitable for rehabilitation and the unlucky fate of purchasers remain unresolved.

(continued)

No.	States	Constructed/ Completed		Status
		Constructed	Sold	
5.	2014 States in Peninsular Malaysia	10,546	8,213	Completed with Certificate of Fitness for Occupation ('CF') or Provisional CF, or changing from housing development to commercial development, or change of housing type.
6.	2015 States in Peninsular Malaysia	3,250	2,385	Completed with Certificate of Fitness for Occupation ('CF') or changing from housing development to commercial development, or change of housing type, or refund of deposits
7.	2016 States in Peninsular Malaysia	1,397	1,054	Completed with a Certificate of Fitness for Occupation ('CF') or projects taken over by a state government or rehabilitated with a private company.
8.	2017 States in Peninsular Malaysia	3,466	2,484	Completed with Certificate of Fitness for Occupation ('CF') or changing from housing development to commercial development, or a change of housing type taken over by a rehabilitating developer.
9.	2018 States in Peninsular Malaysia	391	242	Completed with Certificate of Completion and Compliance ('CCC') or changing from housing development to commercial development.
10.	2019 States in Peninsular Malaysia	2,325	2,061	Completed with Certificate of Fitness for Occupation ('CF')/Certificate of Completion and Compliance ('CCC') or changing from housing development

(continued)

No.	States	Constructed/ Completed		Status
		Constructed	Sold	
				to commercial development, or refund of deposits to purchasers, or settlement with purchasers, or termination of sale and purchase agreements.
11.	2020 States in Peninsular Malaysia	2,967	1,352	Completed with Certificate of Fitness for Occupation (CF)/Certificate of Completion and Compliance (CCC).
12.	2021 States in Peninsular Malaysia	723	638	Completed with Certificate of Completion and Compliance ('CCC') or changing from housing development to kampung tersusun or settlement with purchasers.
13.	2022 States in Peninsular Malaysia	1,049	677	Completed with Certificate of Completion and Compliance ('CCC') or settlement with purchasers.
14.	2023 States in Peninsular Malaysia	1,335	352	Completed with Certificate of Completion and Compliance ('CCC')/CF or settlement with purchasers or taken over by a new developer.
15.	2024 States in Peninsular Malaysia	651	533	Completed with Certificate of Completion and Compliance ('CCC')/CF or settlement with purchasers through land replacement or others.
16.	TOTAL	66,604	45,880	

Source. Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (Jabatan Perumahan Negara, 2025e).

Table 6 List of Updated Sick Housing Projects until 14 March 2025

No.	States	Number of Sick Housing Projects
1.	States in Peninsular Malaysia	449

Source. Jabatan Perumahan Negara, Kementerian Perumahan dan Kerajaan Tempatan (Jabatan Perumahan Negara, 2025f).



Source. <https://www.thestar.com.my/metro/metro-news/2023/11/16/action-to-be-taken-over-abandoned-housing-units> (The Star, 2023).

REASONS AND CAUSES LEADING TO ABANDONMENT OF HOUSING PROJECTS

There are many reasons for abandoned housing projects, but the primary reasons are as follows: (El-Gamal, 2006; Hasan, 2014; Islamic Financial Services Board, 2013; N. H. Md Dahlan, 2011, 2014a, 2025a, 2025b).

- a) Shortage of funds on the part of the housing developers to complete the housing development projects.
- b) There is no mandatory requirement to provide housing through full build-and-sell.
- c) There is no mandatory requirement for the housing developer to possess housing development insurance.
- d) There is no rule governing the rehabilitation of abandoned housing projects.
- e) The problem of regulatory bodies enforcing laws on land, planning, building, housing, and banking authorities.
- f) Existing laws governing land, banking, housing development, insolvency, and Islamic finance have not adequately safeguarded homebuyers.
- g) An exorbitant focus on profit maximisation, unreasonable investor demands, international banking policy pressure mounted by Basel Accord over Bank Negara Malaysia and Islamic banks and finances in Malaysia from applying full Islamic law principles and a disregard for the Islamic duty to ensure justice have contributed to the problem. This relates to developer companies, Basel Accord, Bank Negara Malaysia, Malaysian Islamic banks and finances.

The current system in Malaysia is inadequate to protect purchasers' rights in abandoned housing projects. In contrast, Singapore, the United Kingdom, and Australia have effectively implemented the full build-then-sell (BTS) housing delivery system, which has resolved issues related to housing project abandonment. Therefore, Malaysia should consider adopting the BTS approach in housing development to prevent any future abandonment of housing projects.

The prevailing sell-then-build (STB) system in Malaysia is vulnerable to abandonment. If this system remains in place, the problem of abandoned housing projects will likely persist. This has caused affected purchasers to have insufficient remedies and suffer irreparable damage. This situation indirectly violates the provisions of “Article 25 of the Universal Declaration of Human Rights and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights”.

Additionally, the issue of lack of protective policy through STB in the housing industry that leads to housing abandonment unequivocally goes against the fundamental rights enshrined in Article 5(1) (the right to life and personal liberty), Article 8(1) and (2) (equality before the law), and Article 13(1) (the right to property) of Malaysia’s Federal Constitution. In summary, the STB system contravenes fundamental human rights principles, the provisions of the aforementioned international laws, and the Federal Constitution of Malaysia. This means the STB policy is unconstitutional.

CONSEQUENCES OF ABANDONED HOUSING PROJECTS

The purchasers will indeed become the victims of abandoned housing projects. Other parties may also be affected by abandoned housing projects in Malaysia. The following are the negative phenomena and difficulties that will ensue from abandoned housing projects, particularly for the aggrieved purchasers.(Azuar, 2023; Bedi, 2025; N. H. Md Dahlan, 2014a, 2025a; Nagamany, 2016).

- a) They cannot take vacant possession of the units on time, as promised in the sale and purchase agreements.
- b) The abandoned housing projects will remain stalled forever if there is no effective rehabilitation, while the purchasers will surely not receive the duly completed houses.
- c) The purchasers have to pay a monthly instalment to the financiers, yet they cannot get the completed units.
- d) No compensation and damages were obtained.
- e) Commencing legal action against the defaulting developers may not be feasible. This is because the developers may have no assets and have been wound up or subject to insolvency administration, or they might have run out of jurisdiction.
- f) If the purchasers fail to settle the financiers' debts, they might be subject to foreclosure, sale, or bankruptcy action.
- g) The victim purchasers might have to use their money or take out a new loan to rehabilitate the abandoned housing projects.
- h) The rehabilitation of abandoned housing projects may not be successful due to insufficient funds or other issues that could hinder their completion.
- i) The victim purchasers may face other pecuniary and non-pecuniary losses due to the abandonment, such as divorces, nervous shocks, mental breakdown, depression, family breakdowns, dismissal from employment and losses of future earnings.
- j) The stalled buildings in abandoned housing projects are also used for criminal activities, making urban areas appear ugly and unattractive.

- k) The stalled buildings in abandoned housing projects will remain stalled and dilapidated forever. They cannot be subject to demolition and redevelopment, as this would be subject to the interests of the chargees, the title proprietorship of the purchasers, more stringent banking and financing facilities and conditions, and other legal and equitable encumbrances.

Rehabilitation of Abandoned Housing Projects

If housing projects become abandoned, they require rehabilitation. This is to protect the rights and interests of purchasers. Nonetheless, getting rehabilitation is not easy. Many issues and challenges will await the aggrieved purchasers. Rehabilitation is carried out either by the original defaulting developers or government agencies, a new developer, or liquidator/provisional liquidator, receiver and managers or other insolvency administrator, for example, the scheme of arrangement manager and rehabilitation by the aggrieved purchasers themselves. (N. H. Md Dahlan, 2011).

The primary issue in rehabilitating abandoned housing projects is the inability to complete them. Usually, the funds come from the balance of the unreleased loan by the financiers to the defaulting developers. Sometimes, the rehabilitating developers requested that purchasers provide additional funds, as the available funds were insufficient to cover the rehabilitation costs. The purchasers may need to top up additional funds from their own pockets or obtain further loans from the financiers. If the purchasers fail to provide the extra funds, the rehabilitation may not proceed. Sometimes, rehabilitation is done with the help of the government. This

involves the rehabilitation of abandoned housing projects at Tingkat Nusantara Pulau Pinang and as reported in the case of *“Lim Chee Holding Sdn Bhd v RHB Bank Berhad (formerly known as Kwong Yik Bank Bhd) [2005] 6 MLJ 497”*, *“Xavier Kang Yoon Mook v. Insun Development Sdn Bhd [1995] MLJU 46; [1995] 2 MLJ 91”*, *“Kim Wah Theatre Sdn Bhd v Fahlum Development Sdn Bhd [1990] 1 LNS 42; [1990] 2 MLJ 511”*, *“Aw Yong Wai Choo & Ors v Arief Trading Sdn. Bhd [1992] 1 MLJ 166”* and Taman Seri Kerayong, Kapar Kelang. However, the government funds are soft loans granted to rehabilitating developers, who must return the funds using their own money later. (N. H. M. Dahlan, 2011).

Challenges and issues in rehabilitating abandoned housing projects include the failure of the rehabilitating developers to complete the projects and hand over the duly completed houses to the purchasers. Notably, the incompleteness is also due to inadequate funding that the rehabilitating developers fail to obtain to complete the projects. (N. H. Md Dahlan, 2009, 2012a).

Furthermore, in rehabilitating abandoned housing projects, purchasers are required to waive any demand for compensation and damages from the rehabilitating parties as a condition precedent to the agreement of the rehabilitating parties to complete the projects. In some situations, the rehabilitating parties require the purchasers to accept modified and amended housing units that differ from the original specifications prescribed in the earlier sale and purchase agreements between the purchasers and the defaulting, abandoned housing developers. In certain situations, the rehabilitation may not proceed as planned. For example, the rehabilitation takes longer as new challenges and issues arise

that the rehabilitation parties face. The regulatory bodies, for example, the Insolvency Authority (Jabatan Insolvency Malaysia), the Housing Authority (Ministry of Housing and Local Government – MHLG), and the Building Authority – the Majlis Perbandaran - are usually flexible to ensure that rehabilitation can be duly completed. The usual law is not made applicable, bearing the challenges that the rehabilitation faced. (N. H. Md Dahlan, 2008a, 2013, 2014b).

In short, the rights and interests of the purchasers are affected and significantly undermined. In other words, once a housing project becomes abandoned and the rehabilitating parties undertake the rehabilitation, the law is not enforceable to prevent disturbance and jeopardise the rehabilitation process. (N. H. Dahlan, 2012; N. H. M. Dahlan, 2019).

Why Are There Abandoned Housing Projects That Cannot Be Rehabilitated and Remain Stalled Forever, Even Until Today?

There is evidence, and we can see through our own eyes, that many abandoned housing projects remain abandoned today without any rehabilitation. The main reason is the lack of funds to revive the projects. There are no interested parties to revive the projects, and the issues plaguing them are too extensive. Even 30-40 years after abandonment, the housing projects remain stalled and become uninhabitable. The purchasers suffered because they could not get the promised, duly completed housing units from the defaulting housing developers. They, too, had to settle off the debts to their financiers, for the latter had released a particular portion of the loan to the developers. Otherwise, they will

be subject to legal action, including bankruptcy proceedings. There are occasions where purchasers have occupied abandoned housing projects after specific improvements and modifications have been made to the housing units. However, the building authority has not obtained a Certificate of Fitness for Occupation (CFO). Although they can occupy the units, future sales may be impossible if the required cash flow (CF) is not received, nor can the units be used as collateral for loans. The defaulting developer company may have been liquidated, and no assets or funds can be used to revive the company or pay compensation and damages to the aggrieved purchasers. Commencing legal actions against the developer, nor its directors and shareholders, may not be feasible, as evidence and several difficulties have hindered the successful flow of litigation in court, making it time-consuming to get the necessary legal and equitable remedies. (N. H. Md Dahlan, 2009).

Apart from the losses, sufferings and grievances of purchasers, stalled and abandoned housing projects, in a broader sense, can degrade and deteriorate the land. The unfinished construction sites deteriorate, becoming eyesores and environmental hazards that can lead to illegal dumping, vandalism, and potentially hazardous situations. Furthermore, this can affect public safety and security. The abandoned housing project sites become potential places for crime, pests, and health risks. These places can pose significant public safety hazards. Ultimately, this can lead to urban decay, where abandoned projects and buildings contribute to blight in development areas. This phenomenon can reduce surrounding property values and diminish the overall attractiveness of the neighbourhood. Furthermore, as the lands designated for

housing units are filled with abandoned housing buildings, this has led to delayed community infrastructure development. Incomplete projects disrupt infrastructure plans, including roads, drainage, and amenities, which in turn affect broader community development strategies.



Source. <https://www.hba.org.my/news/2008/06/woes.htm> (National House Buyers Association (HBA), 2008)

SUMMARY

Abandoned housing projects have long been a significant policy, legal and implementation problem and continue to plague the housing industry in Malaysia. This issue has led to significant social, legal, and economic consequences. This persistent issue dates back to the 1970s, resulting in financial losses, emotional trauma, and legal dilemmas for thousands

of house purchasers, developers, consultants, and financial institutions. Notwithstanding various government measures, initiatives, laws, and policies that have been implemented to deal with and resolve the issues of abandoned housing projects, such as the Housing Development (Control and Licensing) Act 1966 and its regulations (Act 118), the National Land Code (Revised 2020), the Town and Country Planning Act 1976 (Act 172), the Street, Drainage and Building Act 1974 (Act 113), the Uniform Building By-Laws 1984, and the National Housing Policies, abandoned projects remain unresolved, undermining public trust in the rule of law and governance.

Historically, the responsibility of providing public housing shifted from the British-led administration to the newly formed Federal Government. However, limited public resources prompted the government to invite private developers to participate in housing provision. Unfortunately, without strong policy and implementation oversight and legal safeguards, many private housing schemes eventually failed.

The Ministry of Housing and Local Government (MHLG) has issued various definitions of “abandoned housing projects” over the decades. The latest 2025 definition states that a project is only considered abandoned if officially declared as such by the Minister under section 11(1) (ca) of Act 118. This declaration-centric approach has unintentionally masked the true scale of the crisis by excluding many problematic or “sick” projects from the official tally.

Sick projects—those delayed by over 30% or exceeding contractual deadlines—add another layer of complexity. When combined with abandoned projects, estimates indicate that more than 1,000 housing projects nationwide are

problematic, affecting billions of ringgit in investments and thousands of house purchasers. Numerous statistics from the National Housing Department show the magnitude of stalled, rehabilitated, and static projects, highlighting the overwhelming burden on regulators and victims alike.

Root causes of abandonment include inadequate funding, a lack of mandatory housing development insurance and the “build-then-sell” policy, poor enforcement, weak legal remedies, pressure from investors, and an overemphasis on profit. The prevailing “sell-then-build” system is a key enabler of the problem. Unlike Malaysia, jurisdictions such as Singapore, the United Kingdom, and Australia implement a “build-then-sell” system, which evidently reduces the number of housing project failures. Thus, adopting such a model could be transformative for Malaysia’s housing sector.

The consequences of abandonment are devastating. Victim purchasers who have to progressively repay housing loans to the financiers without receiving the promised homes may often face bankruptcy if they default. Legal actions against insolvent developers usually fail, leaving victims without compensation and remedies. Some suffer emotional distress, family breakdowns, and long-term economic hardship. Abandoned housing projects, which often become derelict buildings, also serve as hubs for criminal activity and urban decay, thereby decreasing property values and hindering community development.

Rehabilitation, although crucial, is often hindered by technical, legal and financial issues. Original or new developers, liquidators, or even the buyers themselves may undertake this task. However, insufficient funds, governance issues, and a lack of a rehabilitation legal framework often

prevent success. Purchasers are sometimes required to give up claims or accept inferior housing units. Government involvement, though helpful in limited cases, often provides only temporary relief.

In conclusion, the lack of holistic, enforceable, and rights-based solutions continues to cause problems for house purchasers in Malaysia. A meaningful change and improvement in housing policy, towards a mandatory “build-then-sell” housing delivery model, supported by comprehensive and reformulated regulatory reform, housing development insurance requirements, and stakeholder accountability, is urgently required. Without this, the cycle of housing abandonment in Malaysia will continue to prolong, affecting citizens’ right to adequate housing as guaranteed under both the Federal Constitution and international human rights instruments.

CHAPTER 2

ABANDONED HOUSING PROJECTS – ISSUES AND REFORMS IN THE LAND AND PLANNING LAWS



Source. BH Online (Ahmad, 2023).

INTRODUCTION

In a housing development project, the first matter that a developer has to consider is the land location where they are to erect the housing development projects. They may get the

land through purchase, joint venture, or their own land or have to apply for land alienation from the state authority (Sections 76, 120 and 124 of the National Land Code 2020 (Act 828) ('NLC')). (Md Dahlan, 2012).

State Authority (SA) means, in the practical sense, is the members of the State Executive Council (Majlis Mesyuarat Negeri or EXCO). It is headed by the Chief Minister or Ketua Menteri/Menteri Besar. The power of authority of the SA is derived by the Federal Constitution and the State Constitution. One of the powers of the SA is on land matters. This power is absolute, not even the Federal Authority and the Prime Minister can interfere.

ISSUES IN LAND LAW

Legal issues may arise in the alienation of lands for housing development. This may happen when the state authority alienates unsuitable lands and unqualified housing developers for undertaking housing development. Examples of unsuitable lands are land that contains slime soils, hard granite, and other unsuitable land locations and soil. Thus, even though the developers might have undertaken certain soil investigations (SI) but were inadequate or might not have undertaken SI, this deficiency has proven to cause problems for the developers during their development. As a result, they might have to use additional funds to repair and replace the land. In the worst scenario, they must terminate and abandon the development if the problems are so grave and the available funds are unavailable. (Md Dahlan, 2012).

Alienating lands to unqualified and incompetent housing developers is also a major problem that can lead to

the abandonment of housing projects. In this respect, the state authority does not consult the Ministry of Housing and Local Government (MHLG) regarding the status and capability of the applicant housing developers in alienating lands. (Md Dahlan, 2012)

The reason for this issue is that the state authority is not duty-bound by law to ensure that the land that is to be alienated to the developers is suitable and fit for housing development. Under the National Land Code 2020, no requirement requires the state authority to refer to professional bodies, appropriate authorities and technical agencies to ensure that the purported land is suitable and fit for housing development. Further, even if the planning authority, professional bodies, appropriate authority and technical agencies have provided some advice on the suitability or non-suitability of the land for housing development, the state authority is not bound to comply. This is enshrined in section 108 of the NLC, which confers superiority of the state authority over these agencies. This is also due to the jurisdictional conflict between the state authority and the federal authority whereby land is under the exclusive domain of the state authority and the federal authority does not have any power to bind the state authority to follow any policy of the federal authority. Likewise, this is also the position in regard to the change of categories of land, restrictions in interest and express conditions, where in approving these matters, the SA does not require approval from the planning authority and the development plan (sections Change of categories of land, restrictions in interest and express conditions – does not require approval from the planning authority and the development plan (Section 52(3) and section 120(1) NLC). (Md Dahlan, 2012).

In certain situations, the advice provided by technical agencies is inadequate, and there is no legal requirement to provide updated insights from big data, artificial intelligence (AI), and data analytics to assist them in dispensing advice and comments to the state authority. (Md Dahlan, 2023b)

The technical agencies are the Public Works Department (JKR), Department of Irrigation and Drainage (JPS), Department of Environment, Plan Malaysia (Department of Town and Country Planning), Health Department, water authority (for example SADA, SAINS, and SYABAS), TNB (electric authority). (Md Dahlan, 2012).

Bearing on the issue, certain amendments should be made to the NLC involving the duty of the SA to be bound by the decision of the planning authority, technical agencies and the appropriate authorities in the alienation of land and other land approval (such as change of conditions, restrictions in interest and express conditions of land). These will involve the relevant sections *viz* sections 136(1)(c), 79(2), 120(2), proviso to section 124(1) and Section 5(D) digital data electronic land administration system NLC). (Md Dahlan, 2012).

LIABILITY AND RESPONSIBILITY OF THE STATE AUTHORITY

The duty and responsibility of the SA in the alienation of land is also governed by law and not above the law. In executing its duty and responsibility to the people and *rakyat*, the SA is duty-bound to ensure the public interest and public welfare of the people. In other words, the duty and responsibility must be carried out professionally, responsibly and in full duty

of care. Any negligent, reckless, or irresponsible acts of the SA in carrying out its public duties can be tantamount to a breach of fiduciary duty and the procedural and substantive legitimate expectation to act fairly and reasonably towards the public, including in alienating lands for housing development projects. The breach entitled the aggrieved and beneficiary parties to have remedies in law and at equity. (Md Dahlan, 2014b, 2023a).

The failure of the SA is for alienating lands for housing development to unqualified and inexperienced developers and that the alienated lands were not suitable and were unfit for housing development. Because of these, the developers faced troubles and difficulties that led to the abandonment of the projects. The SA also evidently did not refer to adequate technical agencies for advice regarding the suitability of land and the qualified developers. In the alternative, the SA did not follow the professional advice given on the premise that the SA is not bound by them pursuant to section 108 of the NLC. (Md Dahlan, 2014b).

Examples of problematic land are those with slime soil issues, land prone to soil settlement, soil erosion, landslides, hilly or flat lands containing hard rocks, rugged rocks and granites, and geotechnical problems. (Md Dahlan, 2014b, 2023a, 2023b).

In addition, as the state authority and land authority are under the jurisdiction and power of the state under the Federal Constitution and the States' Constitutions, any policy and guidelines from the federal government for example the MHLG and the Director General of Lands and Mines Putrajaya will not bind the state authority in respect of the above issues. (Md Dahlan, 2014b).

The EXCO may abuse its power in the decision-making process involving the alienation of lands. Similarly, the delegated power under section 8 of the Delegation of Powers Act 1956 (Revised 1988) given to the Menteri Besar or Ketua Menteri i.e. the Chief Minister, who may also be abused, in that the chief minister is not bound by any professional consideration and advice in dispensing his power relating to land matters. (Md Dahlan, 2014b).

The state and land authorities also experience well-trained staff and inadequate human resources, further exacerbating the problems. This, too, explains the delay in the land development process, which may also involve corruption. (Md Dahlan, 2014b)

Is the SA liable for all acts disregarding the law and the principles of justice/equity?

In the opinion of the author, the SA will be liable if proven they have acted against the principles of law and equity. This is premised on the concept of fiduciary duty, legitimate expectation and the duty to act fairly and in a just manner. The contention is supported by cases of *Kerajaan Negeri Selangor & Ors v Sagong bin Tasi & Ors* [2005] 6 MLJ 289, *Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135, *Savrimuthu v Public Prosecutor* [1987] 2 MLJ 173, *Darahman bin Ibrahim & Ors v Majlis Mesyuarat Kerajaan Negeri Perlis & Ors* [2008] 4 MLJ 309, *Dr Michael Jeyakumar Devaraj v Ketua Pengarah Unit Penyelaras Pelaksanaan di Jabatan Perdana Menteri & Ors* [2011] 6 MLJ 824, *Sipadan Dive Sdn Bhd & Ors v The State Government of the State of Sabah* [2011] 3 MLJ 357, *Lim Poh Chuen & Anor v Pendaftar Hakmilik Negeri Perak* [2024] 11 MLJ 258, *Maria Chin Abdullah v Ketua*

Pengaruh Imigresen & Anor [2021] MLJU 13; [2021] 1 MLJ 750; [2021] MLJU 12; [2021] MLJU 15 and *Toh Huat Khay v Lim A Chang (in his capacity as the executor of the estate of Toh Hoy Khay, deceased)* [2010] 4 MLJ 312. (Md Dahlan, 2014b, 2023a).

Pursuant to s 22 of the NLC, no civil suit shall be commenced against land officers (Director General of Lands and Mines, the State Director of Lands and Mines, Registrar of Land Title, Land Administrators and all their duly appointed officers) if they have carried out all the powers prescribed under the NLC in good faith. It follows that if these land officers do not bona fide carry out the powers, for example, they have committed negligence, breach of duties, and wilful misconduct affronting the expressed provisions of the NLC, the affordable immunity covered by s 22 will be lost. The state authority and the state government, as the employer principal, will also be liable for their land officers' mala fide acts in the execution of the powers prescribed under the NLC on the grounds of vicarious liability. (Md Dahlan, 2016).

In addition, pursuant to s 5 of the Government Proceedings Act 1956 (Act 359) ('GPA'), the government of Malaysia and the state government are vicariously liable for the tort committed by any public officer in the same manner and to the same extent as any employer or principal is liable for the tort of his servant or agent. (Md Dahlan, 2016).

The aggrieved parties to land alienation, for example, the aggrieved purchasers, can commence a civil action against the State Government and the state authority for the wrong decision in alienating land for housing development. The aggrieved parties may invoke s 4 (Claims enforceable by proceedings against the Government) of the GPA to commence the civil action. (Md Dahlan, 2016).

There may be an argument that the State Government and the public officer are absolved from any liability for any omission, commission and refusal to carry out any of its public duties pursuant to s 7 of the GPA as a defence to any wrong or negligent acts in the exercise of alienation of land for housing development. In the opinion of the writer, this provision (s 7 of the GPA) is a general provision conferring immunity on the government and its officers. This provision is qualified and overridden by s 22 of the NLC. It is specific legislation governing land administration, case law, and other common law doctrines that state that the government and its officers shall be liable for wrongdoing, default, negligence, or unfair administration. Further, pursuant to a method of interpreting statutes — presumption against ousting the jurisdiction of courts, the ouster clause in s 7 of the GPA should not be construed to absolve the government and its servants from any liability for misconduct, negligence, dishonesty, mala fide and unfair administration. (Md Dahlan, 2016).

To sue the state authority and the land authority, the aggrieved parties must comply with s 2 of the Public Authority Protection Act 1948 (Act 198), which requires that the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within 36 months after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within 36 months after the ceasing thereof. (Md Dahlan, 2016).

SUGGESTIONS FOR REFORMS IN LAND LAW

The decision-making process of the state authority in land matters should be subject to the professional advice of the

planning authority and the technical agencies. This is to avoid wrong decisions involving land development for housing projects, for example, the alienation of unsuitable lands for housing development. For this matter to be effected, certain amendments to the NLC should be made, particularly in respect of section 108 NLC and the power to alienate lands by the State Authority.

In addition to the above, it is proposed that the law and practice in New South Wales, Australia ('NSW'), on alienation of lands should be adopted and followed to face the issues and problems mentioned above. It is suggested that additional supplementary provisions and amendments should be made to s 79(2) of the NLC. The author believes NSW's practice and law should be adopted to allow public participation before specific proposals to alienate land can be approved. This public participation is in the form of exhibiting the proposed alienation of land for housing development projects to the people within the vicinity or area of the land being subject to the alienation. This participation aims to allow views and suggestions from the stakeholders who reside in and/or are interested in the land. The views and suggestions from these stakeholders are crucial to the development of the land through alienation so that the intended development of the land will be in accordance with the wishes, needs and necessities of these stakeholders, thus indirectly benefiting them. For instance, if the location of the housing development is not suitable for development, the interested person within the vicinity of the project can provide views or object to the purported alienation. This will avoid any possibility of problematic housing development projects, including abandoned housing projects. Thus, it is submitted that apart from internal data collected

by the land authority and obtaining views from the technical agencies and appropriate authority, the land authority (land office) is required to call for public participation by way of exhibiting the purported proposal for alienation of land for housing development projects to the stakeholders and other interested parties living or having any legitimate interests in the land in question.

ISSUES IN PLANNING LAW



Source. My Metro. (BERNAMA, 2023).

The planning law in Malaysia is spelt out in several legislations. The legislation for Peninsular Malaysia is the Town and Country Planning Act 1976 (Act 176), for the Federal Territories the planning law contained in the Federal Territory (Planning) Act 1982 (Act 267), for Sabah, it is the Town and Country Ordinance (Sabah Cap 141) and for

Sarawak, the Sarawak Land Code (Cap 81) governs its town and country.

Land development must be in accordance with the provisions of the planning law. The purpose of planning law is to ensure that the land development is carried out in accordance with the sustainability principles and justice to human and environment. It serves to maximise land development and at the same time ensuring safety, security, health and sustainability of mankind and the environment. This makes the earth, and its land development is a safe, secured and healthy place to live for human and its environment.

The power and jurisdiction on town and country planning falls under both the federal authority and the state authority pursuant to the provisions of the Federal Constitution ('FC'). This is spelt out in List III of the concurrent list of the Ninth Schedule of the FC. This means that any law and policy on town and country planning matters must be approved by both authorities. If only one approves, and the other one does not that law or policy will not be enforceable. This is mentioned in section 1(2) and (3) of the Town and Country Planning Act 1976 (Act 1972). (Md Dahlan, 2023b).

The writer submits that there are issues under the planning law that have contributed to the occurrences of housing abandonment in Malaysia. The issues are (Md Dahlan, 2009, 2011, 2014a, 2021):

- a) Inadequate Development Plan.
- b) The superiority of the planning authority over the technical agencies.
- c) Insufficient advice and comment from the technical agencies.
- d) Unfair conditions of the planning permission.

- e) The superiority of the state and land authorities over the planning and technical authorities.
- f) The development plans are not mandatory.
- g) Developers are not compliant with the planning permission conditions.

The Development Plan is one of the matters that the LPA will consider when assessing the application for planning permission. The Development Plan is divided into two parts. The local plan and the structure plan. The LPA will appoint consultants to prepare the Development Plan. However, based on their experiences, the LPA found that the contents of the Development Plan are still inadequate in addressing the issues and dynamics of housing industry and abandoned housing projects. For example, in the alienation of certain geographical locations, there is no obligation on the State Authority to ensure the suitability and fitness of geographical locations for housing development. Further public participation requirement is also neglected or not done adequately and meaningfully. Thus, the LPA should tackle this issue so that every cent paid to the consultants is worthwhile. (Lim, 2025a, 2025b; Md Dahlan, 2023b; Yatim, 2025).

Many technical agencies failed to provide adequate comments and advice for the planning permission, or the technical agencies might not have been consulted, or their advice might not have been followed by the Local Planning Authority (LPA) before developers were allowed to carry out housing development projects. Examples of technical agencies include the JMGS, JAS, JPS, JKR, and TNB, the national electric authority. For instance, JMGS's advice and comments might not have been given in respect of the suitability of the

geographical location for housing development, or the LPA might not have followed their advice and comment, or JMGS may not have been consulted before planning permission was granted to the housing developers. This is because the provisions under the TCPA specifically state that only the LPA has the authority and power to issue planning permission or development plans. The advice and feedback from the technical agencies do not bind the LPA. Thus, despite the technical agencies providing the required comments, advice and feedback, the LPA may not follow their advice. (Md Dahlan, 2023b).

There are reasons for the issue mentioned above. Firstly, from the technical agencies' perspective, the information and data relied upon might have been outdated. The primary reference source is their guidelines, which may not have been updated to reflect current issues and challenges. Secondly, technical agencies have no requirement or responsibility to provide updated information on big data, artificial intelligence (AI) insights, and data analytics related to their respective jurisdictions within their job scopes. For example, JMGS lacks comprehensive information on the suitability of locations for housing development projects in Malaysia. This big data includes information on rock, sediment, soil fitness, soil suitability, soil issues, soil strengths, soil weaknesses, and other geologic specimens useful for sustainable housing development. The big data should contain information on the risk locations and factors that can cause development risks. This may also involve a Geographical Information System (GIS). However, to ensure that big data is significant and functional, it requires the support of a modern apparatus system and a suitable data storage platform. (Md Dahlan, 2023b).

Thus, the information and data that they used to advise the LPA are not accurate, rendering the advice impractical in face of the dynamic and contemporary challenges involving housing development, such as slime soil, soil settlement, soil erosion, landslides, geotechnical problems with the land, and rugged and hard granites in the land for housing development projects. This issue may lead to problems that could result in the abandonment of housing projects. (Md Dahlan, 2023b).

Additionally, land development may encounter difficulties and challenges if the land is unsuitable for housing development. For instance, the site locations contain geological issues like slime soil, rugged rock, and hard granites. This will require developers to allocate funding to ensure the site is suitable, including removing unwanted soil and rocks, replacing these with new soil, and the necessary soil treatment. If the developers' funds are insufficient, abandonment may occur. State authorities may alienate unsuitable lands for housing development without consulting the technical agencies and the planning authorities for their feedback. Alternatively, there may be advice or comments from these agencies; nonetheless, the state authority is not obligated to comply with their comments, as it is given a prerogative power under the National Land Code pursuant to Section 108. (Md Dahlan, 2006).

Occasionally, the local planning authority issues planning permission with unfair conditions. For instance, a developer received a planning permission that did not require the developer to provide a TNB sub-power station. However, when the developer completed the housing project and requested the Certificate of Fitness for Occupation (CF), the local planning authority and TNB, being a technical agency,

prescribed additional requirements and conditions for the said developer to provide land for the TNB sub-power station by buying the adjacent land to accommodate the sub-power station. This, of course, had cost the developer additional money that the developer had not anticipated earlier. As the cost to provide this additional infrastructure was exorbitant, and the developer did not have a new source of funding to meet this requirement, the project was not given the required CF and was abandoned. Further, even after the said sub-power station was provided with additional cost, this was rejected by the LPA and had to be aborted. This is an example of unfair conditions regarding the planning permission imposed on the developer. (Md Dahlan, 2009, 2023b); (*Tang Kam Thai & Ors v Langkah Cergas Sdn Bhd & Ors* [2005] 7 MLJ 605; [2005] MLJU 248; *Majlis Perbandaran Seberang Perai v Tropiland Sdn Bhd* [1996] 3 MLJ 94; *Tropiland Sdn Bhd v Majlis Perbandaran Seberang Perai* [1996] 4 MLJ 16; *Beacon Development Sdn Bhd v Majlis Perbandaran Pulau Pingang & Ors* [1999] 2 MLJ 385; [1999] MLJU 91; [1999] 8 CLJ 37; [1999] 2 AMR 1440).

As explained earlier, the state authority has absolute power over land matters. This power is dominant over the restrictions and conditions of the planning authority. This power is stated in section 108 NLC. Thus, if there is a conflict between these powers, the state authority will take precedence over the planning authority. This includes the power to alienate land and land use and prescribe conditions and restrictions in the interests of land and other powers as specified by the NLC, the FC, and the states' constitutions. Thus, if the planning authority opines that a certain land location or geographic location is unsuitable for housing

development, the state authority has no obligation to comply with the planning authority's opinion. It follows that if the planning authority's conditions and restrictions are not obligatory on the states, what more is the position of the technical agencies'. (Md Dahlan, 2023a).

Nonetheless, in the recent cases—*Perbadaman Pengurusan Sunrise Garden Kondominium V Sunway City (Penang) Sdn Bhd & Ors And Another Appeal* [2023] 2 MLJ 621, *Majlis Perbandaran Subang Jaya V Visamaya Sdn Bhd & Anor* [2015] 5 MLJ 554, when there is a conflict between the conditions under the NLC and the TCPA, the decisions of the TCPA will prevail. This decision was made on the grounds of the later legislation, and that being a later legislation, TCPA will prevail over the NLC.

However, the writer reserves the above decisions in that they contravene the provisions of sections 108 NLC, which expressly provide the superiority of state and land authority over land matters.

Although the Development Plan is one of the sources and references the LPA will refer to before issuing planning permission, as prescribed by the TCPA, its application is not mandatory. In other words, when determining an application for planning permission, the LPA may depart from the policy and obligation under the Development Plan. This means the physical development may not comply with the prepared Development Plan. This is the legal principle in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 MLJ 1 and *Chong Co Sdn Bhd v Majlis Perbandaran Pulau Pinang* [2000] 5 MLJ 130 (*Planning Appeal Board (Pulau Pinang)*).

However, the latest cases provide otherwise, in that the policy contained in the Development Plan is mandatory. This is the decision in *Perbadanan Pengurusan Sunrise Garden Condominium v Sunway City (Penang) Sdn Bhd & Ors and another appeal* [2023] 2 MLJ 621 (*Federal Court at Putrajaya*), *Majlis Perbandaran Subang Jaya v Visamaya Sdn Bhd & Anor* [2015] 5 MLJ 554 and *Perbadanan Pengurusan Trellises & Ors v Datuk Bandar Kuala Lumpur & Ors* [2021] 3 MLJ 1.

Be that as it may, the above latest decisions by the Federal Court and the Court of Appeal are clearly against the expressed provisions of section 108 of the NLC, which provides superiority of the state and land authority over LPA. In this respect, the writer opines that until section 108 NLC is repealed or amended, the apex courts' decisions have ultra vires the constitution and contravened the NLC. Thus, the decisions should be void.

The developers' actions may also have caused problems with the housing projects they carried out, and CF or CCC cannot be issued. This is because the conditions prescribed with the planning permission have not been duly fulfilled. The reasons for non-compliance are inadvertent, or in some situations, advertent, on the part of the developers. This results in the abandonment of their housing development projects (Md Dahlan, 2009).

LIABILITY OF THE PLANNING AUTHORITY

There is no immunity for planning authority if they have been negligent, failure to carry out duty of care and disregard the

law, justice and equity in governing land development under the TCPA and the planning statutes. For example, failure of the LPA in complying with the recommendations and advice of the technical agencies. There is no provision under the TCPA and other planning statutes that provide immunity of the LPA in the event of failure to comply with the statutory, equitable and legal duties. (Md Dahlan, 2022, 2023b; Md Dahlan et al., 2019).

SUGGESTIONS FOR REFORM IN PLANNING LAW

There is a constitutional barrier that hinder the coordination between the Federal authority and agencies with the state authority and agencies due to the constitutional legal provision that may lead to the abandonment of housing development projects. Thus, policies and laws should be formulated to create better and adequate coordination between and among these agencies, federal and states' agencies in regulating housing development.

In respect of the land law, if the state authority and the land authority neglect and fail to carry out their legal duty, statutory or equitable, without reasonable grounds, in blatant disregard for the law, they will be held liable by the court. This principle emanates from the duty to act according to the law and public duty.

There is also no requirement on the part of technical agencies and state authorities, as well as their agencies, to provide big data, AI insights, and data analytics regarding the

suitability of land, land development issues, and measures to address them. The result is the development plan as prepared by the Local Planning Authority, and the feedback and comments given by the technical agencies for planning permission do not unravel the reality of the land for development. In other words, the information received by the LPA from technical agencies and state authorities, as well as their agencies, is inadequate, which may cause future problems for housing development projects. To further exacerbate the issue, the LPA doesn't need to comply with the development plan and the feedback from the technical agencies. Hopefully, with the recent decisions in the Court of Appeal and the Federal Court regarding the application of the Development Plan and the conditions and restrictions imposed by the planning authority, it will become the standard practice. However, in the opinion of the writer, the statutory legal provisions should be amended to this effect as in the writer's opinion, the decisions of the apex courts are made *ultra vires* the constitution.

In the opinion of the writer, the preparation of the development plan is evidently inadequate. For instance, on the issue of insufficient and not meaningful public participation and comprehensive information in formulating planning policy in the Development Plans by the consultants. Thus, the laws in the TCPA should provide the SOP for the preparation of adequate development plans to meet the current challenges and to ensure sustainability in the land development including housing sector.

The writer suggest certain legal reform should be made to address the above planning law issues that contribute to the occurrences of abandoned housing projects. This involves

amendment to the Town and Country Planning Act 1976 and the National Land Code (Revised 2020) are necessary to make technical agencies' recommendations legally binding.

Second, the government should amend the current laws governing technical agencies, including the Environmental Quality Act 1974 and the Drainage and Irrigation Act 1953, to require regular maintenance of big data, AI insights, data analytics, and geospatial data.

Third, the One Stop Centre (OSC) must be restructured as a multi-agency decision-making body that cannot override technical evaluations unilaterally. Finally, the government should offer financial incentives and subsidies to developers who adopt best practices, such as adhering to the Manual Saliran Mesra Alam (MSMA) and conducting thorough Environmental Impact Assessments (EIAs).

Fourthly, the application of the Development Plans should be obligatory by the LPA to ensure its meaning and to ensure uniformity and sustainability of land development for housing development. Thus, amendment should be made to the TCPA.

Finally, to strengthen current practices and laws, some new amendments should be made to the relevant laws in the NLC, TCPA, and other planning statutes to ensure coordination between state and federal authorities in land development for housing purposes.



Source. *Majalah Forex Malaysia*. (Mem Team, 2022).

SUMMARY

The abandonment of housing projects in Malaysia is a persistent issue stemming from significant weaknesses in land and planning laws. This chapter argues that many of these failures originate from the alienation of unsuitable land and the approval of incompetent developers by State Authorities (SA), who wield unchecked discretion under the National Land Code (Revised 2020) (NLC). The SA's authority, derived from both federal and state constitutions, remains legally superior, even over planning bodies and technical agencies. This legal supremacy under Section 108 NLC has led to poor land choices—such as soils with slime, granite-laden terrains, and erosion-prone hills—sometimes without adequate soil investigation or expert advice. Such poor decisions cause increased development costs, delays, or outright project abandonment.

Moreover, State Authorities can alienate land without consulting or complying with professional input from agencies such as the Department of Environment, the Public Works Department, and the Town and Country Planning Department. Despite some of these agencies offering advice and feedback, there is no legal obligation to act upon it. In some cases, the SA disregards or bypasses these recommendations. This failure to institutionalise cross-agency coordination results in developments being launched on land that is technically unfit or economically unviable.

The chapter highlights a critical need for statutory reform to mandate that SAs comply with the recommendations of planning and technical bodies. The law should require public participation in land alienation decisions, emulating the New South Wales (NSW), Australia model, where land alienation proposals are publicly exhibited before approval. This approach, in the author's opinion, would ensure that stakeholder interests, particularly the purchasers', are taken into consideration, which can prevent housing developments that are socially, economically or environmentally unsuitable.

In the context of planning law, the analysis reveals a mismatch between legal theory and real-world realities. While Malaysia's Town and Country Planning Act 1976 (TCPA) sets a framework for sustainable development, enforcement remains fragmented due to jurisdictional overlaps between federal and state authorities. Local Planning Authorities (LPA) often issue planning permissions without up-to-date technical input or with unfair conditions, such as last-minute infrastructure demands that developers cannot meet. In turn, projects are delayed or abandoned.

The development plans meant to guide planning approvals are not mandatory and are often outdated or ill-informed. Furthermore, the LPA's failure to comply with advice, feedback, or engage in meaningful public participation exacerbates these issues. Although recent Federal Court rulings have emphasised the binding nature of development plans, the writer criticises these decisions as *ultra vires*, given Section 108 NLC, which privileges state authority over planning decisions.

In terms of accountability, both SAs and LPAs can be held liable if they act negligently or in bad faith. While some immunity exists under statutes like the Government Proceedings Act 1956, this is limited. The author proposes specific legal reforms, including making technical recommendations binding, mandating the use of updated big data and AI insights and reforming data analytics to limit unilateral decisions at the One-Stop Centre. Additionally, the author suggests providing financial incentives for developers who meet best practices.

In conclusion, unless land and planning laws are urgently reformed—with legal clarity, technical accuracy, and democratic oversight—abandoned housing projects will continue to burden the *rakyat*, waste public resources, and erode trust in Malaysia's housing sector governance.

CHAPTER 3

ABANDONED HOUSING PROJECTS – ISSUES AND REFORMS IN THE BUILDING AND HOUSING DEVELOPMENT LAWS



Source: Utusan Malaysia (Asrol & Ali, 2024).

INTRODUCTION

Housing development involves buildings. Building law in Peninsular Malaysia is governed by the “Street, Drainage and Building Act 1974 (Act 133) (“SDBA”) and “Uniform

Building By-Laws 1984 (“UBBL”). In Sabah and Sarawak, buildings are governed, respectively, by the “Sabah Buildings Ordinance 1951 (Cap. 123)”, “Sabah Uniform Building By-laws 2022 (UBBL 2022)”, “Sarawak Buildings Ordinance 1994 (Cap. 8)”, and “Sarawak Building By-Laws”.

The important aspect of building law is that the completed building is fit for human habitation. Thus, SDBA and UBBL provide the relevant laws and procedures for building construction. It involves applying for approved building plans and other relevant plans supporting the building. Importantly, the developer must obtain a Certificate of Completion and Compliance (“CCC”) upon completion of the building construction. CCC is a certificate issued by a qualified person (“QP”) certifying that the constructed building is fit for human habitation.

Apart from getting CCC, housing developers in Malaysia are required to obtain a housing development licence from the Ministry of Housing and Local Government (“KPKT”). A licence is required if the developer undertakes housing development. The “Housing Development (Control and Licensing) Act 1966 (Act 118)” and its regulations govern housing development in Peninsular Malaysia.

The objectives of building and housing laws and statutes are to ensure sustainable land development, including housing development, to provide justice to the parties involved in land development, and to protect the rights and interests of stakeholders, particularly purchasers.

ISSUES IN BUILDING LAW

The following are issues under building law that involve abandoned housing projects:

- a) The issue of uncertainty and variations of the conditions and requirements before the local authority (“LA”)/QP issues the Certificate of Fitness for Occupation (“CF”) or the CCC, either in the middle of the housing construction or after it, has burdened the developers. The variations can cause the developers to amend the plan and incur additional costs. This will indirectly lead to the abandonment of the project if the developers do not have adequate funds.
- b) The developers, the rehabilitating parties, and the consultants failed to comply with certain provisions in the SBDA and UBBL.
- c) Inadequate enforcement of the SDBA and UBBL by the LA.
- d) The problem arising from Section 95(2) of the SDBA is that it absolves the State Authority and the LA of liability even in cases of negligence and failure to comply with statutory duties, such as the failure to conduct the requisite inspection and supervision.
- e) No mandatory legal provision requires the LA or the technical agencies to conduct reasonable supervision, verification, and inspection throughout the developers’ construction works to ensure the quality of the construction work.
- f) The lack of staff and professional human resources, insufficient training and technical knowledge among staff, and a shortage of administrative logistics in the LA office have led to inefficient administration and enforcement of the law.

Issue 1: The problem of uncertainty and variations of the conditions and requirements for issuing CF and CCC in the approved relevant plans made by the LA (building authority).

The LA is given the power under the SDBA and UBBL to provide approved building plans, subject to certain conditions that the applicant developers must comply with. Compliance with the conditions is pertinent to ensure that the CF or CCC can be issued and that the completed building can be considered fit for human habitation. However, during the middle or near completion of the development, the LA changes the conditions. Changes may be made to the requirements of the technical agencies, such as the Department of Sewerage Service (JPP), the Department of Water Supply (JBA), and the electric provider (TNB). This will affect the developers' project costs. If the developers do not have sufficient funds, they may be unable to complete the project, which could result in its abandonment. (Md Dahlan, 2021b).

Issue 2: Failure of the developers, the rehabilitating parties and the consultants to comply with certain provisions in the SBDA and UBBL.

The developers must comply with the conditions and requirements imposed in the approved plans, including the building plans. Otherwise, CF or CCC may not be issued by the LA or the QP. Some developers have failed to comply with the conditions. This has resulted in the failure to obtain the necessary CF or CCC. For instance, the developers fail to serve the required 4(four) days' notice of their intentions to

resume the purported rehabilitation works to the LA pursuant to section 70(9)(a)(b) of the SDBA. The developer and the rehabilitating parties also failed to serve the three (3) months' progress reports to the local planning authority. (Md Dahlan, 2021b).

The QPs during the early part of development, too, failed to report the remedial action for the abandonment and failure of the buildings to the LA. This is required under By-law 258(1)(2) of the UBBL. By-law 258(1)(2)(3) of the UBBL provides that if the QP fails to report the failure of the building, he shall be guilty of an offence. This is stated under by-law 258(4) (read together with section 71 of the SDBA). In abandoned housing projects, the QP shall have to report to the LA and state the remedial action for the abandoned and failed building.

The QPs of the projects (during initial development and rehabilitation) also failed to report the remedial action for the abandonment to the LA, even though this is required under By-law 258(1) and (2) of the UBBL. Similarly, the LA also fails to comply with the requirements of By-law 258(3) UBBL and Section 70B (2) of the SDBA.

Issue 3: Insufficient enforcement and implementation of the UBBL by the LA

In some situations, the LA has failed to carry out the requirements of the SDBA. For example, the failure of the LA to comply with the requirements under sections 70D (1) and 70B (2) SDBA. These provisions require the LA to inspect the building site to detect defects and deformations in the

building structure. This duty will be triggered by the LA when it reasonably suspects a defect in the structure of a building under erection that may lead to the building failing. The LA may then issue an order to the building owner to review the building's safety, foundation, and surroundings. The LA has also, in some situations, failed to implement the requirements under Section 70B (1) and (2) SDBA, i.e., failing to conduct a visual inspection on the building site (including changes to the topography of the project site land as a result of the construction).

In addition, the LA also fails to have reasonably suspected any defect in the building structure which might lead to the building's failure, which they might have suspected, as a result of a long abandonment of the project. There is also evidence that despite developers' blatant contraventions of the UBBL and SDBA, the LA has taken no legal action or enforcement against the perpetrators. Similarly, there is proof that, notwithstanding the failure of the QP to adhere to By-law 258(1)(2), the LA also failed to enforce By-law 258(3) (4) UBBL and section 71 SDBA against the QP. (Md Dahlan, 2021b).

The author submits that Section 70(20) SDBA and By-law 25(1) UBBL impose a duty on the Principal Submitting Person ("PSP") to issue a CCC without reasonable verification of the LA and the technical agencies, which can worsen the situation. This can happen if the developer carries out sub-standard works and the PSP dishonestly issues false or inadequate CCCs and progressive claims to release the purchasers' money from the end-financiers. (Md Dahlan, 2009).

Issue 4: Problem of section 95(2) SDBA, which absolves the liabilities of the SA and LA in the event of negligence and nonfulfillment of certain legal duties, such as failure to conduct requisite supervision.

With this provision, the SA, LA, and LA's employees are immune from any liability for negligence and nonfulfillment of the statutory duties under SDBA and UBBL. Thus, even though they have been found to have acted so, their acts are still immune from any legal actions by any parties. This can be supported in the case of "*Steven Phoa Cheng Loon & Ors v Highland Properties Sdn Bhd & Ors* [2000] 4 MLJ 255"; "[2000] 3 AMR 3567 (High Court of Malaya at Kuala Lumpur)"; "*Arab Malaysian Finance Bhd V Steven Phoa Cheng Loon & Ors* [2003] 1 MLJ 567"; "[2003] 2 AMR 6; [2003] 1 CLJ 585 (Court of Appeal at Kuala Lumpur)" and "*Majlis Perbandaran Ampang Jaya v. Steven Phoa Cheng Loon & Ors* [2006] 2 CLJ 1; [2006] 2 MLJ 289 (Federal Court)".(Md Dahlan, 2009, 2021a, 2021b).

Issue 5: No mandatory legal provision requires local authorities or technical agencies to supervise, verify, and inspect construction and rehabilitation throughout the building and other works to ensure good construction quality.

No mandatory legal provision requires the LA or the technical agencies to implement reasonable supervision throughout construction work. Sections 70D and 70(22) SDBA and by-law 25(4) UBBL prescribe a non-mandatory duty to inspect the construction works on the LA. Due to this, the developer may have carried out the works without complying with the SDBA, Act 118 and UBBL to the detriment of the rights of the purchaser.(Md Dahlan, 2009, 2021a).

Further, during the rehabilitation of abandoned housing projects, there are no legal conditions requiring the LA, KPKT and the technical agencies to cross-check and verify that all the construction works done are aligned with the requirements of the SDBA, UBBL, and Housing Development (Control and Licensing) Act 1966 (Act 118). The author finds that the LA and the technical agencies only do two (2) cross-checks and site visits, firstly, after the applicant developer submits their construction plans for approval. Secondly, after the application for CF was submitted. Thus, a gap exists during housing construction and rehabilitation for implementing the necessary cross-checks and verification by the LA and technical agencies on all building works and materials. This failure may lead to certification abuse by the QP and render the completed building non-compliant with the law's requirements. This is because there is no legal provision in Act 118, UBBL, or SDBA that requires them to conduct supervision or at least inspection during development and rehabilitation. (Md Dahlan, 2021a, 2021b).

The author also contends that no cross-checks, inspections, site visits, or verifications were made by the LA and the technical agencies on all the progressive construction works during the development and rehabilitation. It is submitted that this failure could lead to false certifications made by the QP, which may result in the completed building being unfit, not following the requirements of the UBBL, Housing Development (Control & Licensing) Act 1966 (Act 118) and SDBA. This is because no mandatory legal provision requires the LA and the technical agencies to conduct cross-checking, supervision, and inspection of the progressive construction works. (Md Dahlan, 2009, 2021a).

Issue 6: The lack of staff and professional human resources, inadequate staff technical knowledge, and insufficient administrative logistics in the LA office. These have led to the ineffective administration of the law.

The author opines that these situations occur because the LA office lacks a sufficient number of permanent staff. The employer's inadequate welfare provision to the staff is also an issue. Most of the staff are contract employees. As a result, there is a significant possibility that they may have demonstrated a lack of responsibility for the work done, a lackadaisical attitude, and inadequate legal and technical knowledge. Based on the author's observation, this is because the staff conducting the verification work on the projects are mostly not degree holders, or their knowledge may not be current in the industry. Additionally, the author notes that there are insufficient office facilities. Nevertheless, even though there is breach of statutory duty on part of the LA, they are still protected under section 95(2) SDBA ("*Steven Phoa Cheng Loon & Ors v Highland Properties Sdn Bhd & Ors* [2000] 4 MLJ 200"; "[2000] 3 AMR 3567 (High Court of Malaya at Kuala Lumpur)"; "*Majlis Perbandaran Ampang Jaya v. Steven Phoa Cheng Loon & Ors* [2006] 2 CLJ 1"; "[2006] 2 MLJ 389 (Federal Court)"). This immunity section could encourage the LA and SA to breach their statutory duties, as the penal provisions in the SDBA and UBBL may not be enforceable. (Md Dahlan, 2021b).

SUGGESTIONS FOR REFORMS IN BUILDING LAW

The author suggests that every development and construction stage for housing development, which is inspected, supervised, and verified by the QP/PSP, must also be checked and verified by the Housing Controller of KPKT and the LA. This is to prevent fraudulent claims by developers who use the verification, inspection, and supervision of the QP/PSP. In other words, the certificate of inspection, supervision and verification for completion of each stage in housing development must be supported by the verification, supervision and verification of the Housing Controller and the LA to prevent any fraudulent verification, supervision, inspection and false claim from the financiers to release funds/finance amount to developers. Certain amendments should be made to the SDBA, UBBL, and Regulations 1991 of the Housing Development (Control and Licensing) Act 1966 (Act 118).

The author proposes abolishing the immunity provision under section 95(2) SDBA. This would make the LA, its employees, and the state authority liable if they breach statutory, equitable, or legal duty, such as negligence and mala fide acts.

ISSUES IN HOUSING DEVELOPMENT LAW

The Housing Development (Control and Licensing) Act 1966 (Act 118) and its regulations provide housing development law in Peninsular Malaysia. This act, pursuant to its long title, provides a law governing housing development, including

licensing, and protects the rights and interests of purchasers. Thus, this law is relevant in preventing the occurrence of abandoned housing projects and providing curative measures. Nonetheless, despite this governing act on housing development, abandoned housing projects in Peninsular Malaysia have persisted since the 1970s. The following are the issues under this law.



Source. Majoriti. (Majoriti, 2021).

- a) Blatant disregard of the law by housing developers and no enforcement, and ineffective enforcement by the regulatory body, KPKT.
- b) Lack of mandatory requirement for housing development insurance by developers.
- c) No mandatory build, then sell (“BTS”) system for housing delivery.

- d) There are no specific legal provisions governing the rehabilitation of abandoned housing projects.

Issue 1: Blatant disregard of the law by housing developers and no enforcement and ineffective enforcement by the regulatory body, KPKT.

Proofs show that many housing developers have not complied with statutory obligations under Act 118. The obligations include failure to obtain a housing developer's licence; advertisement and sale permit; changes to the terms in the sale and purchase agreement without the approval of the Housing Controller, particularly by the rehabilitating housing developers during the rehabilitation process; fraudulent acts of the architect, engineer and bank managers for release of the progressive development payment and the Housing Development Account; failure of developers to comply with the prescribed duties under Act 118, for instance, failure to submit the periodic report of the development progress; no appointment of auditors; no submission of auditor's report and financial accounts; failure of the developers to report to the Housing Controller any arrangement, reorganisation or agreement affecting the housing developers' business; and no revocation and suspension of licence of the abandoned housing developers. (Md Dahlan, 2009, 2015a, 2019).

The KPKT fails to effectively carry out supervision and enforcement due to insufficient staff, inadequate professional staff, ineffective administrative machinery, and a lack of technical and legal knowledge. The KPKT minister also failed to effectively and meaningfully protect the rights and interests of victim purchasers in abandoned housing projects,

affronting his statutory duty under Act 118.(Md Dahlan, 2009, 2015a, 2019).

Issue 2: Lack of mandatory requirement for housing development insurance by the developer

The author contends that the lack of housing development insurance contributes to the occurrence of abandoned housing projects in Malaysia. One main reason for housing abandonment is the shortage of funds for housing developers to complete housing development projects. This may be due to insolvency and the inability of the housing developers. Therefore, implementing housing development insurance is crucial to prevent this issue. If the developers face financial difficulties and are unable to complete the projects, the housing development insurance can serve as a backup to ensure the projects' completion. This is the practice in many parts of the world, including Australia, New Zealand, the UK and Canada.(Md Dahlan, 2009, 2011d, 2011a, 2011c, 2011b).

Issue 3: No mandatory build, then sell (“BTS”) system for housing delivery

The housing delivery system in Peninsular Malaysia is based on two types. The first is the build-then-sell housing delivery system (BTS). The second is to sell and then build a system (STB). The STB means that the housing developer will sell the incomplete housing units to purchasers by entering into a sale and purchase agreement in Schedules G (for landed property) and H (for strata property). The purchasers must pay a deposit upon signing the sale and purchase agreement.

The subsequent payments will be made upon completion of the development stages, supported by a certificate from an architect or engineer. If the developers abandon the stages of development and leave the balance incomplete, this will cause hardship, grievances, and losses to purchasers. (Md Dahlan, 2011d, 2011c).

In the BTS, the developers will complete the construction of the houses, obtain a Certificate of Fitness for Occupation (CFO) or a Certificate of Completion and Compliance (CCC), and then sell the duly completed units to purchasers. In this situation, if the developers abandoned the development of the houses, no purchasers would become the victims, as the completed houses have not been sold to any purchasers. This type of housing delivery system is incorporated in Schedules I (land property) and J (strata property). However, this type of housing delivery system is not popular. It is not well-received by housing developers and investors in Malaysian housing properties, as it requires developers and investors to use their own money and face risks, unlike the STB, where public purchasers fund the development stage. (Md Dahlan, 2025).

As in Malaysia, the mandatory BTS for housing delivery is not implemented, abandoned housing projects will recur, and public purchasers will suffer losses. This is because the housing players and investors do not want it. Additionally, there is a lack of political will to implement BTS in Malaysia. (Md Dahlan, 2025).

The reason for not adopting this insurance, in the author's opinion, is the lack of political will on the part of the government, stemming from pressure from industrial players and investors. (Md Dahlan, 2025).

Issue 4: No specific legal provisions govern the rehabilitation of abandoned housing projects

The author observes that no specific legal provisions in Malaysia can govern the rehabilitation of abandoned housing projects that can protect purchaser victims. The rehabilitation of abandoned housing projects depends on the capabilities and wishes of the rehabilitation parties, particularly the availability of funds. Typically, the rehabilitation of abandoned housing projects is supported by the Ministry of Housing and Local Government (KPKT), local authorities, technical agencies, and planning authorities. Stringent laws have been relaxed, and some penal provisions are not enforceable. Sometimes, the interests and rights of purchasers may be affected. For example, the rehabilitating parties require the purchasers to add more money to complete the projects, and some housing specifications need to be amended. There is also evidence of blatant disregard for the law and abuses by the rehabilitation parties, which the regulatory bodies do not address. These situations are unfair to purchasers. Sometimes, rehabilitation takes too long to complete, and in the worst-case scenario, the rehabilitation developers abandon the project. (Md Dahlan, 2011c, 2011b, 2014, 2015b).

SUGGESTIONS FOR REFORMS IN HOUSING DEVELOPMENT LAW

The author opines that to facilitate the enforcement of the provisions under Act 118, the government should provide adequate infrastructure. This includes increasing the number

of enforcement officers, providing them with training, and establishing branches of KPKT throughout Peninsular Malaysia in every district where housing development projects are actively carried out. Thus, the implementation and enforcement of the law can be done more effectively.

Applicant housing developers should consider subscribing to housing development insurance. The purpose of this insurance is to provide support if the developer fails to complete the houses. Thus, the issue of funding will no longer be a concern if this insurance is introduced.

The author also suggests that to ensure the safety of purchasers' money in the Housing Development Account and its use only for the completion of housing units, the Housing Controller, relevant technical agencies and the local authority should supervise and inspect, reasonably, the housing and building works of the developers. A supporting letter from the Housing Controller, relevant technical agencies, and the local authority is also required for the release of development stage funds from the Housing Development Account. This is to ensure that the developers make no fraudulent claims.

To ensure that rehabilitation of abandoned housing projects is duly completed, effective, and protective of the purchasers' rights and interests, as well as no unfair and injustice practices by the rehabilitation parties, the author proposes that special rehabilitation legal provisions be incorporated into Act 118. The essential features of this law are as follows (Md Dahlan, 2011c, 2011b):

- a) The Housing Controller will take over the project left abandoned by the developer upon the failure of the developer to complete the project.

- b) The Housing Controller may appoint a rehabilitating party to complete the rehabilitation of the abandoned housing project.
- c) The rehabilitating party will use the housing development account. If the funds in the account are not enough, the rehabilitating party will use the housing development insurance to complete the project.
- d) The Housing Controller will monitor the cash flow of the funds.
- e) No person can take any legal action during the subsistence of the rehabilitation by the rehabilitating party.
- f) The Housing Controller to govern and monitor the rehabilitation process to ensure justice, fairness and governance of the rehabilitation and protect the rights and interests of the victim purchasers.

Finally, the author again suggests that the government adopt a full build-to-sell model in housing delivery in Malaysia to prevent any occurrences of abandoned housing projects, even though there may be objections from the investors, foreign or domestic, to ensure the constitutional and human rights of the public purchasers are protected, pursuant to Articles 5(1), 8(1), (2), (3) of the Federal Constitution and article Article 25 (1) of the Universal Declaration of Human Rights (1948) and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.

Article 25(1) of the Universal Declaration of Human Rights (1948) states:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including ...housing...”

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 spells out:

“The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate... housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising, to this effect, the essential importance of international co-operation based on free consent.”

Article 5(1) of the Federal Constitution says:

“No person shall be deprived of his life or personal liberty save in accordance with law.”

Article 8(1), (2), (3) of the Federal Constitution provides:

“All persons are equal before the law and entitled to the equal protection of the law.”

“Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent,

place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.”

“There shall be no discrimination in favour of any person on the ground that he is a subject of the Ruler of any State.”



Source. Rokatkini.com (Rokatkini, 2013).

SUMMARY

Malaysia’s never-ending crisis of abandoned housing projects stems partly from weaknesses in its building and housing

development laws. This chapter identifies six significant legal and regulatory shortcomings that contribute to construction failures, abandonment, and injustice toward house purchasers.

First, under the Street, Drainage and Building Act 1974 (SDBA) and Uniform Building By-Laws (UBBL), local authorities (LAs) and qualified persons (QPs) are empowered to issue Certificates of Fitness for Occupation (CF) and Certificates of Completion and Compliance (CCC), as the case may be. However, developers often face shifting conditions or late-stage changes imposed by local authorities (LAs) or technical agencies (e.g., TNB or Department of Public Works), which can cause financial strain. Without sufficient funding, these projects risk abandonment.

Second, developers, consultants, and even QPs frequently fail to comply with statutory obligations. Many fail to provide mandatory reports, such as notices under section 70(9) of the SDBA or progress reports to local planning authorities. QPs often neglect to report project failures or recommend remedial action, breaching By-law 258 UBBL. Worse still, these lapses rarely face enforcement.

Third, LAs inadequately enforce existing building laws. They frequently fail to conduct site inspections or detect structural defects as required under sections 70B and 70D of the SDBA. Even when developers or QPs blatantly disregard their legal duties, enforcement is often weak or non-existent. This regulatory vacuum enables false CCC certifications and premature fund disbursements, jeopardising purchaser protection.

Fourth, section 95(2) of the SDBA grants immunity to state and local authorities, even in cases of proven negligence, default or omission. Landmark cases such as

Majlis Perbandaran Ampang Jaya v. Steven Phoa Cheng Loon (the Highland Towers case) illustrate how this legal shield discourages accountability and fosters administrative complacency.

Fifth, no law requires the LAs or technical agencies to supervise construction throughout its duration. Site checks are typically limited to two stages: at plan approval and upon submission of the CF or CCC application. This legal gap permits unchecked misconduct during active construction and rehabilitation, increasing the risk of defective or unsafe buildings.

Sixth, the LA's weak enforcement is caused by insufficient staffing, low technical proficiency, poor technical training, and a lack of resources and infrastructure. Many enforcement personnel are underqualified or contract-based, which affects the credibility and effectiveness of statutory supervision. Nevertheless, due to section 95(2), LAs are immune even when they fail their legal duties.

Regarding housing development law, the Housing Development (Control and Licensing) Act 1966 (Act 118) is marred by enforcement failures and limited regulatory reach. Developers often disregard licensing rules, falsify progress reports, and misuse housing development accounts. The Ministry of Housing and Local Government (KPKT), meant to regulate these activities, suffers from understaffing and limited technical expertise.

The absence of housing development insurance requirements for housing developers, the absence of a rehabilitation legal regime, and a mandatory "Build-Then-Sell" (BTS) system exacerbate the situation. Most developers follow the risky "Sell-Then-Build" model, putting

purchasers at high financial risk when projects fail. There is also no dedicated and specialised legal framework for the rehabilitation of abandoned projects, leaving purchasers unprotected and vulnerable to exploitation.

To resolve these systemic failures, this chapter proposes bold reforms: make QP certifications subject to government verification, abolish section 95(2) SDBA immunity, enforce housing development insurance, institutionalise BTS, and embed strong rehabilitation laws into Act 118. These reforms are crucial for upholding justice, public trust, and Malaysia's commitment to providing adequate housing as a constitutional and human right.

CHAPTER 4

ABANDONED HOUSING PROJECTS – ISSUES AND REFORMS IN THE CORPORATE INSOLVENCY AND ISLAMIC HOME FINANCE LAWS



Source. (Sabihah, 2022).

INTRODUCTION

The purpose of corporate insolvency law is to help creditors recover their money owed by debtors and to ensure that the company can continue operating, thereby providing

employment and contributing to the nation's economy. The governing law - the Companies Act 2016 (Act 777) ('CA'), ensures that the process of insolvency administration is conducted fairly and reasonably, balancing the rights and interests of creditors, debtors, and stakeholders, such as purchasers, where possible. Thus, in abandoned housing projects, typically, the housing developer companies become insolvent and have inadequate funds to finance the completion of the housing development. The effect is that they will be unable to complete and finally abandon the housing development, which is detrimental to the interests and rights of purchasers. The ideal is to ensure that the rights and interests of creditors, debtors, and other stakeholders, such as purchasers, are also protected. In other words, the insolvency law is fair to all related parties and all their rights and interests are protected.

On the other hand, the Islamic Home Finance ('IHF') law concerns the financing facility for borrowers, particularly public purchasers who obtain the Islamic Home Finance facility to purchase houses provided by housing developers. The principles underlying the IHF are the Islamic law principles which prohibit *riba*' (usury), *gharar* (uncertainty, ambiguity, risk, or hazard that can lead to injustice, dispute, or deception in a contract), unfairness, injustices, unconscionability and other elements prohibited by Islamic Law following the teachings of the Quran and al-Sunnah of the Prophet Muhammad (PBUH). Islamic law emphasises justice and fair dealings in transactions. Thus, the act of fraud, dishonesty, and inequitable and unconscionable acts are prohibited.

CORPORATE INSOLVENCY LAW

The dominant purpose of Insolvency law is to protect the rights of creditors. By protecting the rights and interests of creditors, numerous benefits can be achieved. For example, creditors can help debtors resume business operations, ensure employment, and stimulate the nation's economy. In other words, insolvency administration can recover creditors' money from debtors and provide methods for resolving disputes between them, ensuring justice and fairness. Insolvency law jurists still differ on whether insolvency law and administration should also protect the rights and interests of third parties involved in transactions between creditors and debtors, such as consumers and purchasers.

It is trite fact that, in abandoned housing projects whose housing developers are insolvent, the purchasers' rights are also affected. Nonetheless, the prevailing law is that creditors have priority over the rights and interests of purchasers. If there is a conflict between creditors and purchasers, the creditors' rights and interests will prevail. Similarly, in abandoned housing projects, creditors are usually banks that finance the land development carried out by the developers. If the developers fail to regularise the account and do not settle the loan with the banks, the banks will initiate action to recover the loan from the developer debtor. Suppose the project development is in the middle of development and the units have been sold to purchasers, who have made payments to the developer and incurred costs, would the insolvency law also protect the rights of the purchaser customers? The dominant point in insolvency law in Malaysia is the

superiority of creditors over third-party consumer purchasers. This is spelt out under the CA. Thus, the third-party consumer purchaser has no legal protection or redress. This is a severe issue. (Md Dahlan, 2011, 2012a, 2014b).

The author will discuss the following corporate insolvency administrations and their respective issues involving abandoned housing projects in Malaysia, *viz*:

- a) Liquidation/Winding Up.
- b) Receivership.
- c) Scheme of Arrangements (SoA).
- d) Judicial Management.
- e) Corporate Voluntary Arrangements (CVA).

Liquidation/Winding Up

The author will only discuss compulsory liquidation or winding up, as this is one of the most crucial aspects in abandoned housing projects. Typically, under compulsory liquidation, the creditor applies to liquidate or wind up the insolvent company, appointing a liquidator who will subsequently accumulate all assets and monies of the insolvent company and settle the creditors' debts. Examples of creditors include suppliers, banks, employees, landlords, and utility companies (such as TNB, SADA, and IWK). (Md Dahlan, 2013b).

Creditors can consist of secured creditors, unsecured creditors and preferential creditors. Secured creditors include fixed chargee creditors and floating chargee creditors. Fixed chargee creditor tied to specific assets (e.g., machinery and property involving banks and finance companies). In contrast, floating chargee creditor claims are secured by general assets, such as inventory or receivables.

Unsecured creditors can be the suppliers, landlords, or service providers. **Preferential creditors** include employees for unpaid wages, EPF, SOCSO, EIS (Employment Insurance System) and certain tax obligations (IRB and Royal Customs Department).

After all payments have been made to the rightful persons to settle all the debts, the company will be wound up, cease to be a going concern, and be struck off from the register of companies. (Section 549 CA).(Md Dahlan, 2011).

The exercise of liquidation will be subject to the supervision of the court, the committee of inspection, the contributories (shareholders and members), and the creditors. The supervision and oversight by these parties are essential to ensure the rights of the contributories and creditors are always protected. (sections 486 and 487 CA).(Md Dahlan & Aljunid, 2012).

Once the liquidator has accumulated the assets and monies of the insolvent companies, he will distribute these to the following persons and matters: (section 527 CA).(Md Dahlan, 2012a).

- a) the costs and expenses of winding up;
- b) all wages under any contract of employment, award, or agreement;
- c) all amounts due concerning the workers' compensation fund;
- d) all remuneration to any employee relating to vacation leave, etc.
- e) all amounts due concerning contributions to the employees' superannuation, provident funds, or retirement benefits. These are approved schemes under the federal law relating to income tax; and,
- f) The amount of all federal taxes.

Where all the above debts have been fully paid, the unsecured debts due to the wound-up company will then rank in *pari passu*.(section 527(2) CA).(Md Dahlan, 2014a).

A question can be raised: Can the liquidator use the money from the liquidation administration to finance the costs of rehabilitating abandoned housing projects?

It is opined that, yes, the liquidator can do so, provided there is an adequate balance of proceeds after deducting against the above priority of payment, and that these balance proceeds should settle all unsecured debts (including those to finance rehabilitation costs) in *pari passu*. The principle of *pari passu* means that creditors' claims will be shared fairly among them, using the balance of the company's assets and funds after deducting the claims and debts of the parties or matters listed above. This may also mean that, if there are inadequate balance funds, the liquidator may not be able to run the rehabilitation.

Alternatively, suppose the liquidator can utilise the money under the Housing Development Account (HDA). This money is protected by section 7A(6)(a)(b) of Act 118. This money shall not be subject to the priority of payment under the receivership and winding up under sections 392 and 527 CA. In this situation, it is possible to revive the abandoned project, provided the funds (from the HDA and the proceeds from the liquidation balance) are sufficient to cover all the rehabilitation expenses and the proposed rehabilitation is feasible.

Issues for purchasers in the abandoned housing project in liquidation/winding up

When purchasers of units in abandoned housing projects seek justice and completion of their homes through the

liquidation or winding-up process under the CA, they often find themselves in a legal quagmire. Unlike other corporate rescue mechanisms, liquidation is not intended to revive troubled companies; rather, it is intended to dissolve them. Its primary aim is to realise assets and distribute proceeds among creditors, not to continue or complete unfinished housing projects. For affected purchasers, this legal route presents more dead ends than solutions.

One of the most glaring issues is the creditor priority structure (creditor-centric) under the CA. Purchasers, despite being the most financially and emotionally invested parties, are classified as unsecured creditors if they have obtained judgment debts or awards from the Tribunal for Homebuyer Claims ('TTPR'), and filed proof of debts. Their ranking is below secured and preferential creditors. This means that in most liquidations, they receive either nothing or only minimal compensation. Their Sale and Purchase Agreements (SPAs) lose force unless a liquidator voluntarily adopts them. Thus, the legal bond between the purchaser and the developer may vanish in the liquidation process.

The TTPR, which was designed to offer accessible justice to house purchasers, also loses jurisdiction once the developer enters liquidation. Sections 16M(1) and 16N(2) of Act 118 remove the Tribunal's power in such a situation. This will leave buyers with no platform for remedies. Furthermore, liquidation is often a slow and bureaucratic process that involves multiple actors, including receivers, liquidators, creditors, courts, and a committee of inspection. This multiplicity leads to delay and conflict, especially when a receiver and a liquidator are appointed simultaneously.

Even more troubling is the lack of coordination between insolvency law and housing law. Act 118 does not give special recognition to purchasers during liquidation, nor does it provide a dedicated legal regime to guide rehabilitation. While creditors, contributories, and the court may approve a rehabilitation plan under sections 486 and 487 of the CA, this is rarely done in favour of purchasers due to funding limitations.

Nevertheless, the Malaysian judiciary retains the discretion and inherent power to intervene in matters of equity and the public interest. Courts can elevate purchasers to a special class of claimants, appoint white knight developers to take over and complete projects, or instruct liquidators to prioritise project completion. Through the Courts of Judicature Act 1964, Act 118, the Rules of Court 2012, and the CA courts may act to prevent injustice, especially in cases where housing is a matter of national importance and is based on public interest. This can be seen in *Ting Yuk Kiong v. Mawar Biru Sdn Bhd* [1995] 2 MLJ 700 (High Court of Malaya at Johor Bahru).

A further issue in Malaysia is that the lands on which the houses are to be built shall not be subject to any sale once they have been sold to purchasers. However, there are cases where these lands have been sold to the public to settle the debts of the insolvent developer during the liquidation process. The third-party buyer who bought the land may claim as a *bona fide* purchaser for value without notice if the purchasers of the incomplete houses object to their proprietorship over the houses.

Nonetheless, the law in New Zealand on the rights of purchasers in abandoned housing projects may provide

specific lessons that Malaysia should follow. In *Maginness v Tiny Town Projects Ltd* [2023] 2 NZLR 826, the court held that house buyers who had paid fully or partially for incomplete houses were entitled to equitable liens over the uncompleted homes after the developer's liquidation, thereby protecting buyers' interests over unsecured creditors' claims to the incomplete houses. Under section 23(b) of the "NZ Personal Property Securities Act 1999" ('PPSA'), the vendor developer is prevented from claiming full proprietorship over the lien. (Md Dahlan, 2024)

As a result, fully or partially completed houses can only be sold by the liquidator to settle the vendor developer's debts, subject to any equitable lien. This case states that even after the vendor developer company entered liquidation, the house titles have still not been transferred into the purchasers' names. Thus, the proprietorship of the houses is still with the vendor developer company. This is because the "Code Compliance Certificate" (CCC), required under section 53 of the PPSA, has not been obtained. Nonetheless, the court decided that the vendor developer company's proprietorship is subject to the purchasers' equitable lien over the houses. (Md Dahlan, 2024).

The author submits that if the completed or partially completed houses have been sold to a third party, the profits from the sales are subject to the equitable lien. The profits received must be paid to the purchasers, together with any other damages. (Md Dahlan, 2024).

The legal principles in the *Maginness* case above are also applicable in the cases of *Francis (as liquidators of Podular Housing Systems Ltd (In Liq) v Gross* [2023] 2 NZLR 762 (High Court of Auckland), *Gross v Lumen*

Business Solutions Limited [2023] NZHC 1107 (High Court of Auckland), and *Hewett v Court* [1983] 149 CLR 639 (High Court of Australia).

To prevent injustices to purchasers in abandoned housing projects, the author suggests that the Malaysian government impose mandatory housing development insurance on the applicant housing developers before granting them licences. This is to ensure a funding buffer for project rehabilitation. Additionally, a specific rehabilitation regime should be introduced under Act 118 to safeguard the purchaser's rights in liquidation legally and to ensure their abandoned units can be rehabilitated successfully.

In essence, while liquidation as a legal tool does not favour the revival of abandoned housing projects, the Malaysian courts possess moral and legal discretion to forge paths of justice for purchasers. However, legislative reform and institutional restructuring are urgently needed to harmonise insolvency law with the lived realities of vulnerable house purchasers.

Receivership

For this sub-topic, the author will only discuss receivership initiated by creditors (debenture holders). Under this type of receivership, an insolvent company is subject to the administration of the receiver and manager until all creditors' debts have been fully settled. The deed of debenture creates a receivership. A deed of debenture is a loan agreement in which the creditor, as the debenture holder, lends money to the debtor, a housing developer company, to facilitate housing development. If the developer borrower is not able

to comply with the Deed of Debenture, for example, fails to pay the required instalment payment or commits other acts considered an act of insolvency, for example, the management and directors of the company act to the detriment of the debenture holder's rights and interests, the debenture holder will appoint a R&M to manage the affairs of the developer company. The management of the developer will no longer be able to manage the company's affairs unless approved by the receiver and manager. The purpose of the appointment of a receiver and manager is to allow the creditor, being the debenture holder, to accumulate all assets and monies of the insolvent developer to settle off the debts of the creditor. If all debts have been fully settled, management of the company will then be returned to its previous management. (sections 374, 375, 376, 383, 392 and 393 of the CA). (Md Dahlan, 2008, 2012b).

Question: What are the rights of the purchasers in abandoned housing projects under the receivership of the housing developer company?

The purchasers can apply to the receiver and manager to rehabilitate the abandoned housing projects left by the housing developer. This can be done by an application to the receiver and manager to implement rehabilitation on a locus of 'interested parties' in the receivership. However, if the receiver and manager refuses, the purchasers may apply to the court for a court order compelling the receiver and manager ('R&M') to carry out rehabilitation, provided there is a fund to finance the rehabilitation, the rights and interests of the creditor debenture holder are protected, the proposed rehabilitation is viable and justice is served for the purchasers. Rehabilitation is possible pursuant to the legal and statutory

provisions available under the Rules of Court 2012, the Court of Judicature Act 1964 (Act 91), Act 118, and the CA (Md Dahlan, 2008, 2012b, 2014a).

Rehabilitation by the R&M can be seen in the rehabilitation of Taman Desa Anggerik, Senawang, Negeri Sembilan, supported by a soft loan from Tabung Pemulihan Projek Terbengkalai (“TTPT”) Bank Negara Malaysia, Bayshore Apartment, Lot 3989 and Tanjong Bungah, NED, Pulau Pinang, also supported by TTPT Bank Negara, “*Muhammad bin Bae v Pembangunan Farlim Sdn Bhd* [1988] 3 MLJ 211”. Examples of reported cases involving rehabilitation of abandoned housing projects by the receiver and manager can be seen in “*Emar Sdn Bhd (Under Receivership) v Aidigi Sdn Bhd and Another Appeal* [1992] 2 MLJ 734 (Supreme Court at Kuala Lumpur)” and “*Pilecon Engineering Bhd v Remaja Jaya Sdn Bhd* [1997] 1 MLJ 808”. (Md Dahlan, 2014a).

Issues for purchasers in the abandoned housing project in receivership

In Malaysia’s housing landscape, the use of receivership as a method to revive abandoned housing projects has emerged as a legally flawed and practically unjust path for homebuyers. While intended as a means for secured creditors—typically banks—to recover loans, this mechanism largely excludes purchasers, rendering them generally invisible and unprotected within the legal process.

Receivership arises when a debenture holder appoints a receiver and manager (‘R&M’) to take control of a distressed borrower developer’s assets. The R&M’s primary obligation

is to serve the interests of the secured creditor (the debenture holder). There is no statutory or fiduciary duty to purchasers under Act 118, nor is there an obligation to complete the housing units or honour sale and purchase agreements (SPAs). The goal is to recover debt, not to revive abandoned housing projects.

Purchasers are further disempowered by their lack of legal standing. They have no role in the appointment of the R&M, no voice in project decisions, and no ability to challenge asset sales. The R&M may liquidate the project land—selling it off to third parties—without ensuring that the houses are completed or that purchasers’ interests are preserved. Worse still, a new developer who acquires the land is not legally bound to honour the original SPAs. Purchasers risk being asked to pay more, renegotiate contracts, or be entirely excluded.

The lack of coordination between receivership law, housing law, and land law deepens this structural exclusion. R&M often lacks the technical knowledge required to navigate planning permissions, engage with local and planning authorities, as well as technical agencies, and manage construction logistics. As a result, projects are frequently delayed, mishandled, or outright abandoned—even under the guise of recovery.

Purchasers who attempt to enforce their rights via the TTPR may find their awards unenforceable during receivership. Their legal remedies are blocked, delayed, or rendered meaningless. If the funds are insufficient or the creditors object, courts will not order rehabilitation under receivership, as seen in “*Bunga Nominees v Abdul Jabbar Majid* [1995] 3 CLJ 224; [1995] MLJU 79”.

However, the courts hold equitable and inherent powers that can protect purchasers. Through Rules of Court 2012, the Courts of Judicature Act 1964 (Act 91), Act 118, and the CA, judges can impose constructive trusts and apply equitable principles to project land, binding R&M to treat purchaser payments as having a beneficial interest. Courts can stay land sales, require buyer consultation, and even direct the appointment of a “white knight” developer to complete the project in line with the original SPAs.

Where purchasers have lodged land caveats, courts may recognise their equitable rights, which supersede or coexist with the bank’s interests. Courts may also allow buyers to bring class actions under the Rules of Court 2012 and the CA, ensuring their voices are not drowned in the noise of corporate finance.

The author submits that while receivership, as designed, serves creditors, it fails to serve the public and purchasers in abandoned housing projects. Only through robust judicial intervention—grounded in equity, fairness, and constitutional rights—can this process be transformed into a path toward justice and a final resolution. The future of housing rehabilitation depends not only on financial recovery but also on the moral obligation to restore shelter, security, and dignity to those who trust the system.

The author suggests that Act 118 should require housing developers to obtain housing development insurance, which is crucial in the event of abandonment, as insurance coverage can finance rehabilitation and protect the rights and interests of purchasers, such as the right to compensation.

Furthermore, it is suggested that the rights and interests of purchasers in abandoned housing projects could be

protected through their rehabilitation, governed by a special legal regime for the rehabilitation of abandoned housing projects, which should be incorporated into Act 118.

Scheme of Arrangements (SoA)

Sometimes, the creditors of an abandoned housing developer may use an SoA to take over the management, affairs, and business of the developer. SoA is made by arrangement or compromise between the creditors of the developer and the developer, who is the defaulting party. For this purpose, seventy-five per cent or such a percentage as the court thinks just, of the total value of creditors or the class of creditors must agree on the creation of an SoA through a court's order (section 366(2)(4) CA). The SoA order is binding on all creditors or classes of creditors, members or classes of members, the company, the liquidator, and contributories, if the company is being wound up (section 366(3) CA). An SoA director will need to be appointed. The duty and responsibility of the SoA director is to obtain all accounting records and relevant information, accumulate all assets and monies of the developer, and settle all debts of the creditors mentioned in the SoA order. After all these have been duly completed, the SoA manager will hand over the management, affairs and business to the developer. Purchasers may also be the creditors of the developers, provided that they have obtained judgment debts or obtained TTPR awards against the developers. Among the considerations that the purchaser creditors need to ascertain are the available funds for the rehabilitation, whether the project is viable and feasible for rehabilitation, and whether all the requirements, legal and administrative, for successful

rehabilitation, can be fulfilled before the arrangement and compromise (the SoA) can be reached (sections 366 CA). (Md Dahlan, 2012d, 2013a, 2014a, 2015a).

The SoA period is not more than three months or such extended period as the court may, for good reason, allow. This period is referred to as a moratorium period, during which the administration and management of the SoA director and the SoA will be exempt and immune from any interference. This is to ensure the SoA proceeds smoothly. The court may also grant a restraining order against any proceedings initiated by any other parties on the application of the creditors for the SoA. This is to ensure the SoA can be implemented efficiently (section 368(1)(2)(3) CA). (Md Dahlan, 2012d, 2013a, 2014a, 2015a).

Examples of reported cases involving SoA for the rehabilitation of abandoned housing projects are “*Capital Dynasty Sdn Bhd (in liquidation) v Chiang Bing & Ors* [2009] 8 MLJ 841 (High Court of Malaya at Kuala Lumpur)” and “*Francis a/l Augustine Pereira v Dataran Mantin Sdn Bhd and Ors and other appeals* (2014) 6 MLJ 56 (FC)”.

Issues for purchasers in the abandoned housing project in SoA

In Malaysia’s housing sector, thousands of purchasers remain trapped in abandoned housing projects—projects that were never completed, leaving aggrieved purchasers without shelter and remedy. Some have turned to a legal mechanism known as the SoA under the CA in hopes of reviving these stalled developments. However, as this analysis reveals, the SoA is deeply flawed when applied to consumer housing crises.

At its core, generally, the SoA is designed for corporate debt restructuring, not for delivering homes. It primarily benefits banks, secured lenders, and corporate stakeholders. Purchasers, despite having signed sale and purchase agreements (SPAs) and paid large sums, are not automatically recognised as “creditors” under the CA. Unless a court formally acknowledges their claims as debts, for example, by obtaining a court judgment or TTPR award, these innocent purchasers are effectively barred from the process.

Even if recognised, the voting rules in the SoA heavily favour financial creditors. A scheme must be approved by seventy-five per cent or such a percentage approved by court. Purchasers—numerous but of low financial value—can be outvoted by banks or grouped in ways that diminish their influence. As a result, developers can push through arrangements that delay or ignore the actual completion of homes.

Further compounding the injustice is the moratorium that accompanies the SoA. Once granted, it halts all legal actions, including claims under the TTPR, suits for breach of SPA, or demands for specific performance. In effect, the legal rights of buyers are frozen indefinitely, giving the developer space to restructure while the buyer suffers in silence.

Most troubling is that the SoA can be manipulated. Developers may use it as a legal shield to avoid enforcement of housing obligations, delay proceedings, and escape their responsibilities. With no requirement to complete homes, no obligation to consult purchasers, and no built-in mechanisms to protect their interests, the SoA becomes a tool of legal rehabilitation for the company rather than a means of justice for the people.

Nevertheless, the courts are not powerless. The judiciary holds broad statutory, legal, inherent and equitable powers to impose safeguards and correct these injustices. Judges can classify purchasers as a special creditor group, giving them the right to vote and influence the outcome. Courts can also approve an application for a scheme conditional upon project rehabilitation, insist that “white knight” developers be brought in, or even require the inclusion of a detailed completion plan.

Moreover, courts can modify the moratorium, allowing specific legal claims to proceed or ensuring that the original SPAs remain binding for new developers. The equitable doctrine, as outlined in the “Courts of Judicature Act 1964” and the “Rules of Court 2012”, under the inherent power of the court, empowers judges to prevent abuse, any injustices, and protect the constitutional rights of the purchasers.

To the author, while the SoA may seem promising, it still poses grave dangers if left unchecked. Through assertive judicial intervention and law reform—including the imposition of housing development insurance on housing developers and the establishment of a special rehabilitation regime for abandoned housing projects under Act 118—Malaysia can transform the SoA from a corporate escape route into a vehicle for justice and the restoration of homes.

Judicial Management (JM)

Under JM, on the application of the creditors of abandoned housing project developer, the creditors may apply to the court for the appointment of a judicial manager to carry out all the affairs of the ailing company and settle the creditors’ debts. A judicial manager is a qualified insolvency practitioner who

oversees the judicial restructuring of an insolvent company to facilitate its rehabilitation. To carry out this duty smoothly, the judicial manager is empowered with moratorium powers against any acts that can jeopardise the success of the JM, for example, court proceedings, enforcement of charges, legal actions, winding-up applications, or any threat that can frustrate the JM. The JM is aimed at ensuring that the company can survive and achieve a more advantageous realisation of its assets than applying for winding up (sections 404, 405(1), 407(1), (2), 410(1), 411, 414, and 415 CA). (Md Dahlan, 2012c, 2015b).

The judicial manager is given six months to complete the JM, and if necessary, the period can be extended up to a maximum of one year (section 406(1) CA). JM binds all types of creditors, including secured, unsecured, and preferential creditors. Nonetheless, any unreasonable manner of the Judicial Manager in managing the JM can be challenged by the creditors (Section 426 CA). (Md Dahlan, 2012c, 2015b).

JM can be dissolved when the responsibilities have been duly executed; if the proposal for JM is disagreed by the majority of the creditors; if the court orders the JM to be discharged; if the purpose of JM is unachievable; and if the judicial manager is discharged, removed or no longer qualified (sections 417, 424 and 425 CA). (Md Dahlan, 2012c, 2015b).

In the author's opinion, purchasers in abandoned housing projects can utilise JM to rehabilitate the project, provided that the rehabilitation is feasible, the funds to finance the rehabilitation are adequate, and the majority of creditors approve the proposal for JM. Otherwise, the purchasers cannot use JM to rehabilitate the project (section 421 CA). (Md Dahlan, 2012c, 2015b).

Issues for purchasers in the abandoned housing project in JM

In Malaysia, JM under the CA was introduced as a corporate rescue mechanism. Still, its application to abandoned housing projects reveals significant flaws, mainly when used by aggrieved purchasers. Purchasers, often victims of abandoned housing projects, face substantial legal obstacles when attempting to utilise JM to revive these stalled projects.

A core issue lies in the position of purchasers. Under sections 404 and 405 of the CA, only those formally acknowledged as creditors may participate in JM proceedings. However, purchasers—despite having paid for their homes—are generally excluded unless they have obtained a court judgment, obtained a TTPR award or a contractual admission of debt from the developer. This exclusion means they cannot vote in creditor meetings or propose rescue plans. Thus, this can effectively silence their voices during the restructuring process.

A built-in moratorium worsens the situation. Once JM proceedings begin, all legal actions against the developer are halted, including claims before the TTPR and efforts to enforce sales and purchase agreements. Purchasers are left in limbo—unable to obtain refunds or compel the developer to complete their homes. While banks and secured creditors can recover debts or force asset sales, buyers seek only what they rightfully paid for: a home. Unfortunately, the current JM framework prioritises financial rehabilitation, not consumer protection.

Further complicating matters, Act 118 is not synchronised with JM provisions. Judicial managers are not legally bound to respect housing-related obligations, such as

completing units in accordance with Schedules G, H, I and J or liaising with housing authorities. Additionally, judicial managers—typically accountants—may lack expertise in land development, construction or planning, which can lead to mismanagement or further delays.

Some developers exploit JM to evade legal accountability. By triggering JM, they benefit from the moratorium, avoid regulatory enforcement, and potentially escape prosecution under housing laws. In its current form, JM can function as a legal loophole rather than a remedy for homebuyers.

Despite these challenges, the courts have tools to correct the imbalance. Judges may interpret the law purposively and recognise purchasers as unsecured creditors based on principles of equity. Courts can also modify the moratorium to permit housing-related claims or allow the Tribunal to proceed. They can direct judicial managers to comply with housing laws, appoint co-managers with technical expertise, or require engagement with “white knight” developers willing to revive the projects.

Ultimately, the solution lies in integrating housing law into insolvency frameworks and enacting specialised legislation to regulate the rehabilitation of abandoned housing projects. The author proposes compulsory housing development insurance, imposed on housing developers as a condition for their licence. Further amendments to Act 118 are required to institutionalise protection for purchasers. This includes the enactment of a special rehabilitation regime for abandoned housing projects to protect the rights of purchasers. Without such measures, JM risks perpetuating injustice rather than resolving it.

The author views that JM may offer a path to financial rescue. Still, it must be recalibrated to ensure that justice is served for the true stakeholders—the innocent purchasers of abandoned housing projects—whose dreams and dignity are at stake.

Corporate Voluntary Arrangements (CVA)

CVA is a form of company rescue which can be used to revive an insolvent company with the agreement of the creditors. CVA can be used to revive the company if it is viable and feasible and can protect the rights of the creditors. Seventy-five per cent of the creditors must agree to the proposed arrangement. Only then can the arrangement be made, and an insolvency practitioner (IP), nominee or supervisor will be appointed to manage the CVA until its completion. To ensure that the CVA can run smoothly, i.e., it can implement all the agreed-upon arrangements without interference that could jeopardise its success, a twenty-eight-day moratorium period will be given to the IP implementing the CVA. An extension of not more than sixty days may be granted, subject to the consent of the IP, the company's member, and seventy-five per cent of the creditors. The CVA requires court sanctions to make it enforceable. The court only intervenes when there is a material irregularity, an unreasonable or prejudicial act on the part of the CVA and IP that affects the rights and interests of the company's creditors (sections 394, 396(2), 397, 398, 401, 402 and the Eighth Schedule of the CA). (Md Dahlan & Masum, 2014).

However, CVA does not apply to public companies, companies that are involved in the financial services and capital markets, and companies that have created a charge

over their property or any of their undertakings. CVA is only applicable to private companies (Section 395 and the Eighth Schedule of the CA).

The Official Receiver, company director, judicial manager, or liquidator can apply for a CVA (sections 396(1) (3) and 397(1) of the CA).

In the author's opinion, purchasers of abandoned housing projects can utilise CVA to rehabilitate these projects and protect their rights, for example, by obtaining compensation and damages. However, this is subject to the approval of the creditors, the arrangement in the CVA, the availability of funds to finance the rehabilitation and the viability and feasibility of the rehabilitation. Purchasers can apply to the court to have this incorporated into the CVA arrangement. In this respect, the court will invoke its inherent power to assist purchasers premised on statutory provisions, such as the Courts of Judicature Act 1964, the CA, Act 118, and the Rules of the High Court 2012. (Md Dahlan & Masum, 2014).

Issues for purchasers in the abandoned housing project in CVA

The CVA under the CA (Part III, Division 8) was designed as a quick, debtor-initiated restructuring tool to rescue distressed companies. However, its application to the rehabilitation of abandoned housing projects is generally deeply problematic when viewed through the lens of purchasers' rights and justice. This writing insightfully dissects the legal structure, limitations, and judicial gaps inherent in the CVA scheme when applied to the Malaysian housing crisis.

First, purchasers are structurally excluded from initiating the CVA process. Only the Official Receiver, a company director, a judicial manager, or a liquidator is allowed to propose a CVA under sections 396 and 397 of the CA. Purchasers, who are often numerous and financially harmed, are not statutorily empowered to begin or substantially influence the process unless they are formally recognised as “creditors.” This legal categorisation is challenging to obtain, as most sale and purchase agreements (SPAs) do not automatically confer debt status unless there is a breach and a lapse in delivery, supported by a court judgment, TTPR award, or a filed Proof of Debt, as applicable.

Second, the very eligibility of developers to use CVA is in question. Under section 395 CA, public companies and companies that have created a charge over their property or any of their undertakings are excluded from using the CVA mechanism. Thus, if the developers fall under these two categories of company, the developers cannot be subject to a CVA. Most developers of abandoned housing projects fall into these very categories, making CVA legally inapplicable in the vast majority of cases.

Third, even when CVA is technically accessible, a 28-day automatic moratorium—extendable to 60 days—blocks all court proceedings and enforcement of TTPR decisions. This delay can cause injustice to purchasers. The delay also allows irresponsible developers to shield themselves from accountability without providing any assurances of completion or compensation. Furthermore, CVA proposals focus solely on debt restructuring, not on completing the housing units or fulfilling the obligations under SPAs.

Fourth, there is also a glaring absence of integration between CVA and the Act 118 legal regime. No obligation exists to consult the KPKT (Ministry of Housing and Local Government), comply with Schedules G, H, I and J of SPAs, or involve stakeholder agencies like Syarikat Perumahan Negara Berhad (SPNB) or any “white knight” rescue entity. Purchasers are often sidelined, and insolvency practitioners have little mandate to prioritise purchasers’ welfare and address their suffering, losses, injustices and grievances.

As a fifth issue, the author argues that CVA does not adequately protect the rights of purchasers in abandoned housing projects. It is a vehicle used by creditors to settle debts owed to them by the debtor company. However, purchasers in abandoned housing projects can be considered creditors if they obtain a judgment debt or TTPR award against the developer company. However, achieving a 75% turnout of creditors may pose certain challenges and difficulties. Thus, if the purchasers are unable to obtain the required percentage, then CVA cannot be formulated, nor can an arrangement be made. (Md Dahlan & Masum, 2014).

Sixth, issues such as a shortage of funds to finance rehabilitation and the feasibility and viability of the rehabilitation, for example, the existence of encumbrances on the land, may hinder purchasers from having their rights protected. (Md Dahlan & Masum, 2014).

Seventh, the author finds that the appointed IP may not be concerned with the fate of the aggrieved purchasers. He is only subject to the creditors and the mandate provided in the CVA arrangements. (Md Dahlan & Masum, 2014).

Despite these structural weaknesses, courts can and should intervene to restore justice. Under Section 402 of the

CA and the inherent power of the court under the Rules of Court 2012 and the Courts of Judicature Act 1964, courts may set aside or restrain CVAs that prejudice a class of creditors, such as purchasers. Courts may also broaden the definition of “creditors” to include buyers who have paid deposits or obtained awards, thereby restoring their voice in the process.

Furthermore, the courts can impose conditions for CVA approval—such as requiring project rehabilitation and buyers’ engagement—and invoke their inherent power to ensure justice under the Courts of Judicature Act 1964, Act 118, the CA and the Rules of Court 2012 to issue injunctions, interim relief and other legal and equitable remedies protecting purchasers’ rights.

To resolve the above issues that may affect the rights of purchasers, the author proposes that all housing developers should have housing development insurance. This is to ensure that in the event of a shortage of funds to finance the rehabilitation, the insurance coverage can be used to support the rehabilitation. Furthermore, a special rehabilitation of abandoned housing project legal regime should be incorporated into Act 118 to support and enforce rehabilitation and to protect the rights of purchasers against any unconscionable conduct and acts of irresponsible parties.

The author concludes that, although the CVA was never intended to resolve Malaysia’s housing abandonment crisis, courts can still serve as custodians of justice. They must reinterpret CVA provisions through the lens of equity, public interest, and housing justice, ensuring that the law protects not only corporate survival but also human dignity, constitutional and human rights to housing.

SUGGESTIONS FOR REFORMS IN CORPORATE INSOLVENCY LAW

The above insolvency methods demonstrate that the rights and interests of purchasers in abandoned housing projects will be compromised and not adequately protected. Following this, the author suggests that Act 118 should be amended to include a special legal regime for the rehabilitation of abandoned housing projects, thereby protecting the rights of purchasers. This can lead to the rehabilitation of abandoned housing, paying compensation and damages to purchasers, and protecting them against any misuse or abuse by third parties, such as insolvency administrators, rehabilitating developers, consultants, investors and other parties. To address the issue of insufficient funds for rehabilitation financing, the author proposes that housing development insurance be imposed on housing developers prior to granting their licence.



Source. Unit Komunikasi Korporat & Unit Komunikasi Korporat, 2025.

Islamic Home Finance (IHF)

IHF refers to the products offered by Islamic banks in Malaysia to finance the purchase of homes. Its purpose is to comply with the requirements of Islamic Law. For example, the IHF products should not contain elements of *riba'* (usury), *gharar* (uncertainty, ambiguity, risk, or hazard that can lead to injustice, dispute, or deception in a contract), fraud, gambling (*maysir*) and other elements contradictory to Islamic Law. Islamic Law prohibits interest (*riba*), encourages legitimate trade (*al-bay'*), demands justice and transparency and mandates proper documentation and fulfilment of contracts. In other words, IHF products are those that comply with the injunctions of the Quran, the Sunnah of the Prophet (SAW), and other approved Islamic legal sources, such as *qiyas*, *masalih al-mursalah*, and *uruf*.

The following authorities from the Quran are relevant to IHF.

- a) "O ye who believe! when ye deal with each other in transactions involving future obligations in a fixed period of time reduce them to writing. Let a scribe write down faithfully as between the parties: let not the scribe refuse to write as God has taught him so let him write. Let him who incurs the liability dictate but let him fear his Lord God and not diminish aught of what he owes. If the party liable is mentally deficient or weak or unable himself to dictate let his guardian dictate faithfully. And get two witnesses out of your own men and if there are not two men then a man and two women such as ye choose for witnesses so that if one of them errs the other can remind her. The witnesses should not refuse when they are called on

(for evidence). Disdain not to reduce to writing (your contract) for a future period whether it be small or big: it is juster in the sight of God more suitable as evidence and more convenient to prevent doubts among yourselves; but if it be a transaction which ye carry out on the spot among yourselves there is no blame on you if ye reduce it not to writing. But take witnesses whenever ye make a commercial contract; and let neither scribe nor witness suffer harm. If ye do (such harm), it would be wickedness in you. So fear God; for it is God that teaches you. And God is well acquainted with all things.” (al-Baqarah, verse 282)(Ali, n.d.).

- b) “Those who devour usury will not stand except as stands one whom the Evil One by his touch hath driven to madness. That is because they say: “Trade is like usury but God hath permitted trade and forbidden usury. Those who after receiving direction from their Lord desist shall be pardoned for the past; their case is for God (to judge); but those who repeat (the offence) are companions of the fire: they will abide therein (for ever). God will deprive usury of all blessing but will give increase for deeds of charity: for He loveth not creatures ungrateful and wicked. Those who believe and do deeds of righteousness and establish regular prayers and regular charity will have their reward with their Lord: on them shall be no fear nor shall they grieve. O ye who believe! fear God and give up what remains of your demand for usury if ye are indeed believers. If ye do it not take notice of war from God and his Apostle: but if ye turn back ye shall have your capital sums; deal not unjustly and ye shall not be dealt with unjustly.” (al-Baqarah, verses 275-279)(Ali, n.d.).

- c) “O ye who believe! eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual good-will: nor kill (or destroy) yourselves: for verily God hath been to you Most Merciful.” (al-Nisāa, verse 29).(Ali, n.d.).

These Qur’anic verses command believers to ensure justice, transparency, and ethical conduct in financial dealings, businesses and transactions. Chapter 2 (al-Baqarah) verse 282 mandates written contracts and witnesses in deferred transactions to prevent disputes, ensuring fairness and accountability. Chapter 2 (al-Baqarah), verses 275–279, strongly prohibit *riba* (usury), equating its consumption with moral and spiritual madness, and warns of divine punishment while urging repentance and fairness in reclaiming capital. Chapter 4 (al-Nisaa’) verse 29 forbids consuming wealth through falsehood or exploitation, permitting only mutual, consensual trade. Together, these verses establish the foundation for Islamic commercial law, rooted in justice, integrity, and social responsibility, which promotes welfare over greed.

The following authorities from the Sunnah that are relevant to IHF.

- a) “Narrated Samura bin Jundab: The Prophet (ﷺ) said, “This night I dreamt that two men came and took me to a Holy land whence we proceeded on till we reached a river of blood, where a man was standing, and on its bank was standing another man with stones in his hands. The man in the middle of the river tried to come out, but the other threw a stone in his mouth and forced him to go back to his original place. So, whenever he

tried to come out, the other man would throw a stone in his mouth and force him to go back to his former place. I asked, ‘Who is this?’ I was told, ‘The person in the river was a Riba-eater.’(Sahih al-Bukhari, Book 34, Hadith 38).(M. Muhsin Khan, n.d.).

- b) “Narrated Hakim bin Hizam: The Prophet (ﷺ) said, “The buyer and the seller have the option of cancelling or confirming the bargain unless they separate, and if they spoke the truth and made clear the defects of the goods, then they would be blessed in their bargain, and if they told lies and hid some facts, their bargain would be deprived of Allah’s blessings.” (Sahih al-Bukhari, Book 34, Hadith 63). (M. Muhsin Khan, n.d.).
- c) “Narrated Anas bin Malik: The Prophet (ﷺ) forbade the sale of fruits till their benefit is evident; and the sale of date palms till the dates are almost ripe. He was asked what ‘are almost ripe’ meant. He replied, “Got red and yellow.”(Sahih al-Bukhari, Book 34, Hadith 144).(M. Muhsin Khan, n.d.).
- d) “Narrated Abu Salama: That there was a dispute between him and some people (about a piece of land). When he told `Aisha about it, she said, “O Abu Salama! Avoid taking the land unjustly, for the Prophet (ﷺ) said, ‘Whoever usurps even one span of the land of somebody, his neck will be encircled with it down the seven earths.’” (Sahih al-Bukhari, Book 46, Hadith 14). (M. Muhsin Khan, n.d.).

The above Hadiths emphasise key ethical and legal principles in Islamic finance. *Riba* is gravely condemned, illustrated by a dream where a *riba*-eater is punished in a river of blood, symbolising divine wrath. Fair trade is promoted,

where both the buyer and seller must be truthful for the benefit of the transaction. The Prophet ﷺ forbade selling fruits before they ripen to prevent uncertainty (*gharar*), aligning with Islamic contract integrity. Finally, the usurpation of land is condemned, with severe punishment promised to those who seize land unjustly. These Hadiths underpin the moral, contractual, and transactional foundations of Islamic home financing.

IHF Products in Malaysia

It is a common practice in Malaysia that IHF products have been well-received when purchasing housing units. One of the reasons is that the products are endorsed and approved to comply with the requirements of Islamic law, particularly on the issue of *riba'* (interest). Among the IHF products are *Bay' Bithaman al-Ajil* ('BBA'), *Musharakah Mutanaqisah* ('MM'), *Commodity Murabahah* ('CM'), *Tawarruq Murabahah* ('TM') and *Ijarah Mausufah Bi Zimmah* ('IMBZ').

The Governing Law of IHF

IHF products are regulated by the "Islamic Financial Services Act 2013 (Act 759)" ('IFSA') and the "Central Bank of Malaysia Act 2009 (Act 701)" ('CBMA'). The regulatory body is the Bank Negara Malaysia ('BNM'). IHF falls under the definition of Islamic banking and financial businesses as outlined in the IFSA.

The operations of Islamic banking and financial business are subject to the Islamic governance of the *Shariah* Advisory Committee ('SAC') under the BNM. This is stated under the

provisions of the IFSA and CBMA. To strengthen Islamic governance, all Islamic banking and financial business operators are required to establish their respective Shariah Committees ('SC') to advise them on their respective operations. This is provided under IFSA.

The SAC and SC are duty-bound to follow the *shariah* (Islamic Law) in implementing their duties (section 32 IFSA; sections 51(1), 57, and 58 CBMA).

The obligation to adhere to the *shariah* (Islamic Law) in all activities of institutions carrying out Islamic banking business is outlined in Section 28 of the IFSA.

SAC is a council established by the BNM pursuant to section 51 of the CBMA. Section 51(1) of the CBMA provides that the BNM may establish a SAC on Islamic Finance, which shall be the authority for ascertaining Islamic law in relation to Islamic financial business.

The SAC shall be the authority for determining Islamic law in Islamic banking and financial business (Section 51 CBMA).

The BNM and Islamic Financial Institutions ('IFIs') must consult the SAC under sections 55(1) and 55(2) of the CBMA regarding Islamic banking and financial business, as well as in conducting their affairs. The purpose of referring to the SAC is to ensure that the Islamic banking and financial affairs are implemented in accordance with the *shariah* (section 55(2) CBMA). Apart from sections 51 and 55, sections 56(1), 57, and 58, CBMA also provide that the rulings of the SAC are binding on the IFIs, the BNM, the SC, the court of law, and the arbitrators on matters of Islamic finance.

Thus, according to the above provisions, the rulings of the SAC shall be binding on the IFIs, the court of law, the arbitrator and the SC. In other words, the provision inserted

in the CBMA concerning the SAC serves as an ouster clause, excluding any jurisdiction and power of the court of law, as well as any action by the SC or other persons, to challenge the rulings of the SAC on matters pertaining to Islamic financial business. (Md Dahlan, Abdul Jalil, et al., 2016).

Issues of IHF Products in Malaysia in Abandoned Housing Projects

The author found that, generally, the IHF products do not protect the rights and interests of purchasers in abandoned housing projects. The terms and conditions in the products lack protection for victim purchasers.

For example, in the BBA, the bank is considered the owner of the property after purchasing it from the purchaser and reselling it to the purchaser; the bank is not responsible to the purchasers. It does not protect their rights and interests if the housing units are abandoned.

The author also found that, generally, the *Bay' Bithaman al-Ajil* ('BBA'), *Musharakah Mutanaqisah* ('MM'), *Commodity Murabahah* ('CM'), *Tawarruq Murabahah* ('TM') and *Ijarah Mausufah Bi Zimmah* ('IMBZ') also do not have terms that can fairly protect the rights of the purchaser customers if the developers abandon the housing projects.

Further, by being involved in the purchase of housing projects that are prone to abandonment, the Islamic banks are, it is submitted, involved in *gharar* transactions. *Gharar* refers to excessive uncertainty, ambiguity, or risk that can lead to unfair losses for the contracting parties. An element that is prohibited according to the primary Islamic legal sources – the Quran and the Sunnah. (Md Dahlan, Shuib, et al., 2017).

The terms and conditions of the IHF products also do not comply with the requirement of the Islamic principle of *al-Ghunmu bi al-Ghurmi*. It means profits must be commensurate with risks. Gain (*al-ghunmu*) comes with liability or risk (*al-ghurmu*). Gain is justified only by risk. (Md Dahlan, Mohd Noor, et al., 2016).

In the author's opinion, in transactions involving abandoned housing projects, the bank emphasises profit without being responsible for the risks and sufferings that the purchasers face. There is no responsibility on the part of the bank to protect the purchasers' rights and interests once the housing units they have purchased are abandoned. (Md Dahlan, Shuib, et al., 2017).

In other words, the terms and conditions in the IHF products are imbalanced between the rights and interests of the bank and the purchasers in abandoned housing projects. The terms and conditions are unfair to purchasers and are one-sided (unfair contract terms). (Md Dahlan, Shuib, et al., 2017).

The BBA is also controversial, as it involves *Bay' Inah*, which is prohibited by the majority of Islamic jurists and considered void or impermissible under Islamic Law. (Md Dahlan, Shuib, et al., 2017).

The following elaborates on the nature and features of IHF products as practised by Islamic banks in Malaysia, along with their respective issues in addressing the problems of abandoned housing projects.

The author will discuss the following IHF products that may involve abandoned housing projects in Malaysia.

- a) *Bay' Bithaman al-Ajil* (BBA)
- b) *Commodity Murabahah* ('CM')/*Tawarruq Murahabah* ('TM')

- c) *Musharakah Mutanaqisah* ('MM')
- d) *Ijarah Mausufah Bi Zimmah* ('IMBZ')

***Bay' Bithaman al-Ajil* ('BBA')**

In BBA, the purchaser will enter into a contract of sale and purchase with the housing developer. Later, the purchaser sells the house (still under construction, incomplete, or completed) to the Islamic Bank at a price similar to the one the purchaser should have paid to the developer. Now, the bank has become the owner of the uncompleted/completed housing unit. The bank later sells back the incomplete, under-construction, or completed unit to the purchaser at a mark-up price (*murabahah*). The mark-up price is the profit that the bank gets. (Md Dahlan, 2019; Md Dahlan & Aljunid, 2011).

However, there are no terms and conditions that protect the purchaser when the developer abandons the project, if the house is under construction or still incomplete. The purchaser is still required to pay a monthly instalment to the bank until full settlement (the purchase price) in accordance with the BBA agreement. It is submitted that it is against Islamic principles for the bank to be the owner of a unit (whether incomplete or under construction) and not be responsible for the abandoned subject matter (the housing unit). There is no term regarding the bank's responsibility in the event of abandonment, nor is there any liability to pay compensation, make a refund to the purchaser upon abandonment of the housing unit, or undertake to rehabilitate the abandoned unit to protect the purchaser's rights and interests. However, the bank requires the purchaser-borrower to ensure the monthly instalment of the product until settlement. This is, in the opinion of the author,

an absurd, unfair and imbalanced contract term, contrary to the Islamic principle and the objectives of Islamic law that enjoins justice and doing good, preventing evil, injustice and harm. (Md Dahlan, 2019; Md Dahlan & Aljunid, 2011).

If the purchaser fails to settle the monthly instalment, he will be subject to legal action including the bankruptcy proceedings and the security land will be subject to foreclosure. The author wonders, whether the abandoned housing units still incomplete can trigger public to bid the property and can be sold in the foreclosure?

Additionally, there is no term in the Property Sale Agreement ('PSA') and Property Purchase Agreement ('PPA'), which states that the developer vendor is responsible for subscribing to housing development insurance/takaful before being allowed to carry out any housing development project. It is submitted that this insurance/takaful is to protect the developer, vendor, and purchaser when the property under development is abandoned by way of financing the rehabilitation scheme and/or paying damages to the aggrieved purchaser. (Md Dahlan, 2019; Md Dahlan & Aljunid, 2011).

The author submits there is no provision under the BBA that can protect the rights and interests of purchasers in an abandoned housing project. (Md Dahlan, 2019; Md Dahlan & Aljunid, 2011).

However, according to the then-practice of CIMB Islamic Bank Berhad, if there is a default on the part of the developer vendor or a third party, CIMB has the authority to stop making any payments to the developer vendor. CIMB is also not responsible for conducting site visits to the construction site to ensure that the progressive construction development corresponds with the progressive payment

stage. In this respect, CIMB is only required to rely on the architect's certificates as proof of the completed progressive construction development, serving as supporting evidence for issuing progressive payments to the developer/vendor. (Md Dahlan, 2019; Md Dahlan & Aljunid, 2011).

Currently, BBA is applied by the Public Sector Housing Financing Board (Lembaga Pembiayaan Perumahan Sektor Awam (LPPSA)).

In the author's opinion, a BBA involving an incomplete housing unit is not a *shariah*-compliant product and is void on the following grounds. (Foo, 2015; Kamaruddin & Md Dahlan, 2012; Md Dahlan, Abdul Jalil, et al., 2016; Md Dahlan, Noor, et al., 2017; Md Dahlan, Shuib, et al., 2017; Md Dahlan & Aljunid, 2010a, 2010b, 2011).

- a) The BBA involving an incomplete housing unit is engaged in a *gharar* transaction.
- b) The BBA involving incomplete housing units can only become *shariah* compliant if the terms in the BBA provide the responsibility of the Islamic bank as the owner of the houses during the construction phase and when the project is abandoned. The responsibility includes ensuring that rehabilitation can be implemented. If rehabilitation of the houses is impossible, the Islamic bank must return all the money paid by the purchaser and pay compensation. Similarly, as the owner of the property, the Islamic bank in the BBA transaction must also observe the duty to deliver the house on time. If they fail, late delivery damages can be charged to them. Further, the responsibilities of the Islamic bank are to observe the defect liability period and fulfil all the requirements for getting the

CCC or Certificate of Fitness for Occupation ('CF'), and ensure that the housing unit can be registered in the purchaser's name. Suppose the Islamic bank defaults on these responsibilities, then the purchasers shall have the right to take action against the bank for specific performance, claim damages and other equitable relief if it is just and expedient.

- a) Alternatively, for BBA involving incomplete housing units, the BBA requires the developer to have housing development takaful (Islamic Insurance).
- b) The terms and conditions of the BBA are unfair to the purchaser customer. In other words, the BBA contains unjust contract terms and is inequitable to the purchaser customer. To be a *shariah*-compliant product, the terms must be fair and balanced. Above all, the terms and conditions must balance the rights of the Islamic bank (profit) with those of the purchaser customers, for instance, to obtain the duly completed house according to justice and law.

Commodity Murabahah (CM)/Tawarruq Murahabah (TM)

Under this type of IHF product, the purchaser customer requests the Islamic Bank to purchase a commodity from a commodity trader. The commodity trader then sells the commodity to the Islamic Bank at a price similar to the price the purchaser intended to pay for the housing unit. A transfer certificate evidences the ownership of the commodity. Later, the Islamic Bank will sell the commodity to the purchaser with a mark-up price (*murabahah*). The customer is required to repay the price (including the mark-up) to the Islamic bank

in instalments until full settlement is made. As security for this undertaking, the customer must charge the housing unit to the Islamic bank as security. Upon the purchaser's request, the purchaser will appoint the Islamic Bank as the representative or agent of the customer (*wakil-wakalah*) to sell the commodity to the commodity trader at a price specified by the house. The bank and the customer will use the money received from the commodity trader to pay the purchase price of the house to the developer. The charge allows the bank to sell the charged housing unit through foreclosure if the customer fails to settle the repayment obligation to the Islamic bank. (Md Dahlan, 2018a, 2019).

The author observes that if the housing unit is abandoned during construction, no term in the CM and TM can provide protection to the customer and prevent the occurrence of *gharar* and losses to them. For example, it is essential to have terms that prescribe the developer's responsibility to refund all monies received from the Islamic bank and the customers, as well as terms on the obligation to rehabilitate. Likewise, no term in the CM and TM obligates the developer/vendor to obtain any insurance or *takaful* as financial support to finance the cost of rehabilitation or to be responsible for paying damages to the aggrieved parties. Furthermore, no term in the CM and TM requires the construction of the purported houses to be used in a "full build and sell" manner and that CF or CCC, as the case may be, has been obtained before the parties enter into the CM and TM agreement. (Md Dahlan, 2019).

The above contention is based on the limitation that there is no information from the author regarding whether the CM and TM, as used by the Islamic Bank, are involved in abandoned housing projects. Nonetheless, certain hypotheses

can be made based on the scrutiny of the terms of the CM and TM samples, suggesting that no term provides purchasers with protection against any losses or *gharar* due to the abandonment of housing development projects. (Md Dahlan, 2019).

Another issue with CM and TM is that the funding cost is too high. This has led to a high-profit rate for CM and TM. Hence, the profit margin rate is higher, burdening the customers.(Md Dahlan, 2019).

Examples of Islamic banks that apply CM and TM are “Maybank Islamic Berhad”, “CIMB Islamic Bank Berhad”, “Bank Islam Malaysia Berhad”, “Bank Muamalat Malaysia Berhad”, “Bank Simpanan Nasional”, “Bank Kerjasama Rakyat Malaysia Berhad”, “Koop Bank Pertama Malaysia Berhad (formerly known as Bank Persatuan)”, “Bank Pertanian Malaysia Berhad (trading as Agrobank)”, and “RHB Bank Berhad”.

The author views that this product (CM and TM) is intended to absolve the Islamic bank of any liability if the housing unit is abandoned. The subject matter in this product is the commodity, not the housing unit. Thus, if the housing unit is abandoned, the bank will not be liable in law, at equity, or under Islamic law, because the subject matter of the transaction is the commodity, not the housing unit. Nonetheless, the author observes that the *modus operandi* and intention of this product are to circumvent the principles of Islamic law, specifically the *gharar* issue and the bank’s liability in abandoned housing projects, under the guise of commodity transactions. Additionally, we are unsure whether elements such as *gharar*, gambling, fraud, dishonesty and other prohibited elements exist in commodity transactions

involving CM and TM. In other words, the specification, nature, features, rights, and liabilities of the contractual parties, as well as the detailed aspects of the commodity transactions, are unclear and not specified in the CM and TM documents.

Musharakah Mutanaqisah (MM)

Under MM, the customer and the Islamic bank, in partnership, purchase the housing unit from the developer. The customer will pay a deposit to the housing developer for the purchase of the housing unit. Later, the Islamic bank will pay the balance of the purchase price, unpaid by the purchaser customer, to the developer. In MM, at the initial stage of purchase, the customer and the Islamic bank will become co-owners of the housing unit (sharing ownership). The Islamic bank will later lease (*ijarah*) its ownership portion of the house to the customer purchaser. The customer must pay the lease, including the Islamic bank's profit margin, in instalments until the ownership price for the Islamic bank's part has been fully paid through deferred instalment payments. Over that period, the purchaser's shareholding ownership will increase, while the Islamic bank's shareholding will decrease. Once fully settled and paid, the part that formerly belonged to the Islamic bank will become the ownership of the purchaser customer. The purchaser, over time until the end of the lease period, will gradually become the full owner of the entire house. (Md Dahlan, 2018b, 2019).

During the subsistence of the MM, the Islamic bank will appoint the purchaser customer as the bank's agent. The duties of the agent of the Islamic bank include, the duty to

carry out maintenance and repairing work on the property, to pay all monthly bills, quit rents, assessment bill, relevant monthly bills of the authority, to take out insurance to protect the property against fire, and others and the customer shall also take out mortgage insurance. (Md Dahlan, 2018b, 2019).

To secure the payment for the purchase of the bank's shareholding in the house, the customer must create a charge over the house as security. (Md Dahlan, 2018b, 2019).

The issue in MM that involves incomplete houses arises is when the housing developer abandons the project. In this situation, what are the liabilities and rights of the bank and the purchaser customer?

What is clear is that the customers being the agent of the bank will have to be responsible to ensure payment of compensation to bank if there are any liabilities, claims, damage, losses, proceedings, costs and expenses and have caused the bank liable as the result of approving the MM facility to the customer, pay any damage to the property, pay all bills and pay insurance bill. (Md Dahlan, 2018b, 2019).

Furthermore, the MM prescribes that if there is any illegality in the MM agreement due to any law, official government directive, or any other recognised authority, then the agreement shall be terminated and void, and the customer is required to pay an amount as endorsed by the bank. The question is whether this clause is also applicable if the housing project becomes abandoned?

It is noteworthy that, as the MM provides, if the housing development is abandoned and this has prevented the customer from obtaining and occupying the house, the bank will refund all lease payments made to the purchaser. (Md Dahlan, 2018b, 2019).

However, there is no provision regarding the bank's responsibility to rehabilitate and pay compensation to the aggrieved purchaser customer. Likewise, in the MM, there is no legal liability on the developer to rehabilitate and pay compensation to the bank and the purchaser customer. (Md Dahlan, 2018b, 2019)

Thus, from the above elaboration, it is submitted that MM is more equitable and just to the customer compared to the BBA, CM, and TM in the event of housing development abandonment.

"Maybank Islamic Berhad", "HSBC Amanah", "Standard Chartered Saadiq", "Affin Islamic Bank Berhad", "Public Islamic Bank Berhad" and "RHB Islamic Bank Berhad" use MM. However, based on the author's source of information, RHB uses MM, which involves completed houses with CCC or sub-sale houses.

In the author's opinion, MM should be applied only to completed houses with CCC or sub-sale houses. This is to avoid *gharar* and injustices to purchasers and to prevent any troubles for the bank and the customers.

Ijarah Mausufah Bi Zimmah (IMBZ)

Under IMBZ, the customer purchaser will buy the housing unit from the housing developer. This will make the customer the beneficial owner of the unit. To finance the full purchase price, the customer applies for an Islamic housing finance (IHF) to the Islamic bank. To effect this IHF transaction, the customer, being the beneficial owner, has to sell the unit to the Islamic bank. The money received from this sale will be used to settle the balance of the purchase price that the customer

has not yet paid to the housing developer. Now, the bank becomes the new beneficial owner of the property, no longer the customer. (Md Dahlan, 2019; Md Dahlan et al., 2018).

Later, the bank will sell the unit back to the customer at a mark-up price through a lease method. The customer must pay the lease by way of instalments until the full sale mark-up price has been fully settled. The period within which the customer must settle the full sale mark-up price is called the lease period. The mark-up price is the profit that the bank will receive. (Md Dahlan, 2019; Md Dahlan et al., 2018).

During the lease period, the bank will be responsible for repairing any damage, providing replacements, and carrying out maintenance of the said property. The bank will also be responsible for obtaining insurance or takaful for the housing unit against fire, damage due to malicious intent, and other specified risks, but not housing abandonment. This responsibility aligns with the obligations of the house owner whose house is subject to lease. (Md Dahlan, 2019; Md Dahlan et al., 2018).

The customers, on behalf of the bank, are responsible for carrying out repairs, replacements, and maintenance of the housing unit during the occupancy and lease period. This generally includes ordinary maintenance and repair. During the lease period, the customer shall also be responsible for any loss or damage to the property in question. (Md Dahlan, 2019; Md Dahlan et al., 2018).

One salient point in this IMFZ is that the bank shall reimburse any payment made by the customer if, by the end of the construction period, the developer is unable to provide a Certificate of Completion (CCC) for the building. The author views that this is a responsible term and fair to the customer. In

the event the developer abandons the project, the customer's rights and interests are protected by the bank's undertaking to reimburse any monies received from the customer. (Md Dahlan, 2019; Md Dahlan et al., 2018). Hopefully, this position applies in cases of abandoned housing projects, where customers will be refunded by the bank if CCC is still not obtained by the end of the construction period.

Nonetheless, in cases of housing abandonment, it is clear that both the customer and the bank will suffer losses and grievances. On the customer's part, they will lose the deposit paid to the developer without any guarantee of a refund. On the part of the bank, they have released some progressive payments to the developer without receiving the duly completed houses that the developer was supposed to have completed. The progressive payment releases made to the developer are in vain.

There is also no term for the rehabilitation of abandoned housing units in the IMFZ. For example, who will be responsible for rehabilitation, and what are the terms to ensure rehabilitation can be duly carried out, protecting the rights of the bank and the customer?

Thus, in the author's opinion, to prevent any fraud, losses, damage, suffering, risks, injustice and *gharar* elements in house transactions involving IMFZ, the Islamic bank should only be engaged in a duly completed house building or sub-sale. However, suppose the IHF transaction involves incomplete house building; in the author's opinion, the bank should require the housing developers to provide evidence of housing development insurance and outline plans and clear terms for rehabilitating the abandoned housing projects, thereby protecting the rights and interests of both the bank and its customers.

The Islamic bank that applies this IMFZ is the “Kuwait Finance House”. At the same time, “Maybank Islamic Berhad” names IMFZ *Ijarah Muntahiyah bi-Tamlik* (‘IMBT’).

It is noteworthy that the members of the SAC shall comprise individuals who are qualified in the *shariah* or possess knowledge or experience in *shariah*, banking, finance, law, or other related disciplines, as specified by the members of the SAC. (Section 53 (1) CBM).

The conditions to become a SC for Islamic banks are as follows: having a degree in *Shariah*, *Fiqh Mu’amalat*, *Usul al-Fiqh*, or Islamic Law; having practical experience in *Shariah* advisory, Islamic finance, or Islamic law; proficiency in Arabic, Malay, or English, fit and proper test (integrity, character, financial standing); and obtain BNM mandatory prior approval for appointment (Sections 30 IFSA, *Shariah Governance Framework* (‘SGF’) 2019 paras para 13.1, 13.2 and Bank Negara Malaysia’s Fit and Proper Criteria (FAP 2021)).

Thus, none of the members of the SAC and SC are from the consumer representatives. The author opines that this issue may affect the quality and validity of IHF products in Malaysia, which are intended to be fair, balanced, and equitable to the consumer public. (Md Dahlan, Shuib, et al., 2017).

SUGGESTIONS FOR REFORMS IN ISLAMIC HOME FINANCE PRODUCTS

To prevent any possibility of issues, *gharar*, injustice, suffering, grievance, and losses that abandoned housing projects might bring about, the author suggests that one

complies with the requirements of Islamic law, justice, and equity by the following suggestions.

- a) Islamic banks must only use the IHF product for a duly completed housing building with a CCC, and the title is ready for registration in the customer's name upon full payment by the bank. This is to avoid *gharar* and the issues brought about by abandoned housing projects that contravene the principles of Islamic law.
- b) If Islamic banks were to use IHF products for incomplete housing building or pending completion house building using the sell-then-build system of housing delivery, the Islamic bank must impose on the developer to get Housing Development Insurance/Takaful and provide terms in the agreement for rehabilitation of the abandoned housing projects and protect the rights of the bank and the customers.
- c) The membership of the SAC and SC should also consist of representatives from the consumer associations (for instance, "Persatuan Pengguna Islam (PPIM)", "Homebuyer Association (HBA)", "Federation of Malaysian Consumers Associations (FOMCA)" and "Consumers Association of Penang (CAP)"). This is to ensure that the decision-making process in the SAC and SC involving IHF products are 'customer friendly', equitable, practical, and fair to the consumer public, rather than being one-sided and banker-centric.

SUMMARY

This chapter examines the legal complexities and challenges associated with abandoned housing projects in Malaysia.

It focuses on the intersection of corporate insolvency and Islamic home finance laws, which do not protect the innocent purchasers. The author meticulously dissects five corporate insolvency mechanisms—Liquidation, Receivership, Scheme of Arrangement (SoA), Judicial Management (JM), and Corporate Voluntary Arrangements (CVA)—highlighting their structural prioritisation of creditors’ rights over those of purchasers. Purchasers, although financially and emotionally invested, are often deemed unsecured creditors, ranking below creditors, banks, tax authorities, and employees. In the process of liquidation, for instance, purchasers typically receive minimal or no compensation, and their sale and purchase agreements (SPAs) are legally nullified unless they are accepted voluntarily by the liquidator. The TTPR also loses jurisdiction once developers enter liquidation, further disenfranchising buyers.



Source. Rokatkini.com. (Ahmad, 2023).

Receivership exacerbates these injustices, as R&Ms appointed by debenture holders prioritise recovering debts over completing housing units. Purchasers have no legal voice in the appointment or actions of the receivers, and there is no legal obligation on the R&M to complete the housing development. The SoA, while offering a platform for restructuring, often excludes purchasers unless they have obtained court judgments or TTPR awards. Even if included, their voices are diluted by voting thresholds heavily favouring financial institutions. Judicial Management and CVA, although designed to facilitate corporate rescue, similarly marginalise purchasers due to statutory limitations, moratoriums, and bank-centric frameworks. The courts, however, retain inherent equitable powers and may act to uphold public interest and justice by addressing purchasers' claims, ordering project rehabilitation compensation and equitable remedies and even appointing “white knight” developers.

The chapter further explores Islamic Home Finance (IHF) products—such as *Bay' Bithaman al-Ajil* (BBA), *Musharakah Mutanaqisah* (MM), *Commodity Murabahah* (CM), and *Ijarah Mausufah Bi Zimmah* (IMBZ)—and exposes their shortcomings in protecting purchasers of abandoned projects. While compliant with Islamic principles in form, many of these products fall short in substance, particularly in addressing elements such as *gharar*, asymmetrical risks, and justice. For instance, under BBA and CM/TM arrangements, banks, although becoming de jure owners, are not held liable when projects are abandoned. Purchasers are still required to repay financing, even when no housing unit is delivered by the housing developer. MM and IMBZ are deemed fairer due to specific clauses that allow for reimbursement or acknowledge

the bank's obligations during the lease period but still lack adequate terms for project rehabilitation or insurance-backed protection.

To remedy these injustices, the author proposes robust legal reforms. These include enacting a special legal regime governing the rehabilitation of abandoned housing projects under Act 118 for reviving abandoned housing projects, mandating housing development insurance and takaful to ensure funding continuity to finance rehabilitation and requiring Islamic banks to finance only completed projects or to impose insurance or takaful safeguards for projects under construction. Furthermore, Shariah Advisory Committees (SACs) and Shariah Committees (SCs) should include consumer representatives to ensure a more equitable, transparent, and Shariah-aligned approach. The chapter concludes with a firm call for legislative, institutional, and judicial reforms to protect homebuyers, restore public trust, and uphold the moral and legal obligations of all parties under both secular and Islamic law.

CHAPTER 5

CONCLUSION



Source. (Wahab, n.d.).

Abandoned housing projects in Malaysia represent a persistent and ongoing challenge and formidable issue in the nation's housing and property development landscape, where dreams and realities collide. These projects, which have left thousands of house purchasers with legal, financial, human and constitutional rights issues and emotional distress, trace their origins back to the 1970s. The problem has intensified

over the decades, affecting not only buyers but also developers, financiers, land development professionals and the broader economy. To address these issues, Malaysia has enacted a comprehensive array of laws, policies, measures, and institutional reforms aimed at governing land and housing development and protecting public interests. However, systemic shortcomings persist, and many legal mechanisms have failed to adequately address the plight of affected purchasers and end the scourge of abandoned housing projects.

Historically, housing provision in Malaysia began with the colonial administration, which constructed institutional quarters for civil servants. Following independence, the federal government assumed the responsibility, but due to rising demand and resource constraints, the private sector was invited to take a leading role in housing development. This shift promised economic benefits but also transferred significant control of housing delivery to private developers, leading to increased risks when projects faltered.

The legal definition of an abandoned housing project under Malaysian law includes various scenarios: if a project halts for six months after the Sale and Purchase Agreement (SPA) is executed; if the developer is placed under the control of the Official Receiver; or if the developer fails to commence construction a year after the SPA despite receiving deposits. A project is formally declared abandoned only when the Minister of Housing and Local Government makes such a declaration under section 11(1)(ca) of the Housing Development (Control and Licensing) Act 1966 (Act 118).

Chapter Two outlines the legal frameworks governing land and planning that influence housing development and abandonment. The “National Land Code (Act 828) (‘NLC’)

(Revised – 2020)”, “Town and Country Planning Act 1976 (Act 172)”, and “Environmental Quality Act 1974 (Act 127)” establish the rules for land use, planning permissions, and environmental considerations. Weaknesses in planning law—particularly concerning site suitability, soil stability, and flood risk—can contribute to the failure of housing projects. Developers have, at times, obtained planning approval for projects on unsuitable land without adequate scrutiny. When such developments encounter structural or environmental issues, abandonment becomes a likely outcome. The problems with the Development Plan, including the conflicting powers between federal and state authorities, the superiority of land authorities and local authorities, and the lack of big data and data analytics have been proven to contribute to instances of housing development abandonment.

Chapter Three focuses on the Street, Drainage and Building Act 1974 (SDBA) (Act 133) and the Uniform Building By-Laws (UBBL) 1984. These laws regulate building safety and construction standards, requiring developers to obtain building plan approvals and a Certificate of Completion and Compliance (CCC). However, problems continue to arise due to uncertainty and changing conditions and requirements imposed by local authorities (LAs), often midway through the construction process. Developers may lack the financial resilience to meet these new conditions, which can result in project suspension. Furthermore, inadequate enforcement by local authorities—due to insufficient technical expertise, poor staffing, or legal immunity under Section 95(2) of the SDBA—permits substandard construction and project failure. The lack of mandatory supervision during construction phases

allows unscrupulous developers and consultants to bypass essential quality controls.

There are also serious lapses in professional accountability. Qualified Persons (QPs) and Principal Submitting Persons (PSPs) responsible for verifying and supervising building works often fail to comply with the requirements under the UBBL and SDBA. This failure leads to false certifications, dishonest practices, unfit buildings, and subsequent abandonment. Enforcement against such professionals is rare due in part to limited institutional will, logistics, human resources, and infrastructure, as well as the broad immunity granted to LAs.

To remedy these issues, it is proposed that inspection, supervision, and certification by QPs and PSPs be cross-verified by the Housing Controller and LA to prevent fraud and abuse. Furthermore, section 95(2) SDBA should be repealed to allow for legal accountability when state authorities or their officers breach statutory and legal duties through negligence, omission, or bad faith.

Chapter Four delves into corporate insolvency laws and their impact on abandoned housing projects. When developers face financial collapse, they may undergo liquidation, receivership, schemes of arrangement (SoA), judicial management (JM), or corporate voluntary arrangements (CVA). Unfortunately, these legal frameworks generally prioritise creditors—especially financial institutions—over innocent purchasers. Purchasers are treated as unsecured creditors, a marginalised party, and have little power to protect their rights once a developer becomes insolvent. In liquidation, sale and purchase agreements are often set aside, and courts do not require liquidators to complete the housing projects.

Receivership, another common mechanism, permits banks to appoint receivers who work solely to recover bank debentures rather than to complete the development. Purchasers have no say in the appointment of these receivers and no statutory guarantee that their homes will ever be delivered. SoA, JM, and CVA also fail to adequately protect purchasers unless they have secured legal judgments against the housing developer companies, entitling them to become creditors. Voting thresholds under SoA heavily favour financial creditors, sidelining the interests of homebuyers.

Islamic Home Finance (IHF) products—such as *Bay' Bithaman al-Ajil* (BBA), *Commodity Tawarruq*, *Tawarruq Murabahah*, *Ijarah Muntahiyah bi Tamlik*, *Ijarah Mausufah bi Zimmah* (IMBZ), and *Musharakah Mutanaqisah*—are similarly scrutinised. Though these products claim to comply with Shariah principles, in practice, they often mimic conventional banking structures. The best IHF products that protect to a certain extent the rights of purchasers in abandoned housing projects are *Ijarah Muntahiyah bi Tamlik*, *Ijarah Mausufah bi Zimmah* (IMBZ), and *Musharakah Mutanaqisah*. When housing projects are abandoned, Islamic banks tend to enforce repayment obligations strictly despite the lack of delivery of the housing unit. This is especially problematic under BBA and *Tawarruq* contracts, where banks are legally considered owners but refuse liability for project failure.

The imbalance in IHF products is rooted in asymmetrical risk and a lack of genuine asset transfer. While *Shariah* encourages justice and risk-sharing, many contracts protect financiers while leaving consumers exposed. Some Islamic financial products do contain more equitable

provisions—such as clauses for reimbursement—but these are inconsistently applied. The lack of insurance or *takaful* coverage, or contingency financing further exacerbates the risk for purchasers.

To align Islamic finance more closely with *Maqasid al-Shariah* (the objectives of *Shariah*), the chapter proposes several reforms. These include requiring banks to finance only completed housing projects or to impose mandatory insurance or *takaful* coverage for ongoing developments. Furthermore, consumer representatives should be included on the Shariah Advisory Councils (SACs) and Shariah Committees (SCs) to ensure that products align with justice, public aspirations and social welfare, not just the formality of compliance.

The author concludes that the four chapters collectively argue and call for urgent, multi-layered legal and statutory reforms. This includes legislative amendments, stricter supervision, equitable financial products, and a legal environment that truly protects purchasers. Only through integrated efforts—spanning land, planning, building, housing development, corporate insolvency, and Islamic finance—can Malaysia resolve the long-standing crisis of abandoned housing projects and restore public confidence in the property sector.



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