

UNDERSTANDING ABANDONED HOUSING PROJECTS IN MALAYSIA AND THE PROTECTION FOR HOME BUYERS

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ABSTRACT

Abandoned housing projects is considered as one of the most common and serious issue afflicting the Malaysian housing industry given the numbers of housing projects involved. This situation is a nightmare as it affects the home buyers in particular. Among the initiatives put forward by the government to cater this issue is by the enforcement of provisions enacted through the Housing Development (Control and Licensing) Act in 1966. The Act provides control and licensing guidelines for the housing developers particularly on houses under construction in Peninsular Malaysia to protect the interests of the home buyers. In addition, the Act also introduced Tribunal for Homebuyers Claims under Section 16B as an avenue for the affected home buyers to claim for damages and compensation from the irresponsible housing developers. However, abandoned housing projects remains to be the subject of debate as the rights of the affected home buyers to own a house is seized and abandoned housing projects numbers are still recorded high in the statistic. This study aims to discuss the roots and impacts of abandoned housing projects towards the home buyers as well as the available protection for home buyers of houses under construction in Malaysia. Hence, this study adopts conceptual analysis of relevant literatures and a doctrinal legal research method. The authors also highlight certain lacunas in the existing protection and recommendation to strengthen the protection of home buyers in the event of abandoned housing projects in Malaysia.

Keywords: abandoned housing projects, home buyers, protection

INTRODUCTION

House is named as one of the basic needs for human. Imam Al-Ghazali mentioned; “Man, no doubt, is compelled by three things: nourishment (bread and water), home and clothes.” Similar proposition is also stated in a Hadith from Sunan al-Tirmidhi, Hadith No 2320 (Tahir, Khan, & Mahmood, 2016);

“The son of Adam A.S has no rights except for four things i.e. a house in which to live; clothes by which to cover his ‘satar’ (private parts); a piece of bread/roti and water.”

Housing affects health, culture, and civility of people in a country. According to Planning and Development Collaborative (PADCO) in the World Urban Forum III, economic, social and civic developments are depending on housing infrastructure. Various numbers of housing-related activities contribute directly to broaden the socio-economic development. In better times, good housing forms wealth by appreciating in value, providing a hedge against inflation, providing secure premises for income-generating activities, and opening the door to credit (Kissick et al., 2006).

The housing industry has a significant role in supplying the housing demand that keep rocketing from time to time due to the growing number of populations. According to the Department of Statistics (2019), it is estimated that the populations in Malaysia is 32.6 million for the year of 2019 from 32.4 million in 2018. Based on these facts and figures, it is reported by National Property Information Centre (NAPIC) (2019) that the existing residential stock inclusive of all types of housing in 2019 is 5,627,322 units with 27,281 units of houses are completed and another 472,957 units are the incoming supply houses to meet the housing demands. These figures show an increasing number from the year of 2018 whereby the existing residential stock is 5,577,922 units of houses with 467,091 units are the incoming supply houses for the respective year.

Table 1: Populations in Malaysia and Residential Stock Units for 2018 & 2019

| Year | Populations (million) | Residential Stock (units) |
|-------------|------------------------------|----------------------------------|
| 2018 | 32.4 | 5, 577, 922 |
| 2019 | 32.6 | 5, 627, 322 |

Source: Department of Statistics and NAPIC

Malaysia has engaged with great progress in meeting the demand of its citizen in relation to housing. Recently, the Ministry of Housing and Local Government (MHLG) has launched National Housing Policy (DRN) 2018-2025. This initiative is one of the government's efforts in providing a highly inclusive, sustainable and desirable housing market for Malaysians. The main foundation of DRN is to provide high quality homes which are affordable, easily accessible and close to public transport and thus improve the well-beings of Malaysians as a whole.

Nonetheless, the housing sector is inundated with numerous challenges particularly the issue of abandoned housing projects. The issue of abandoned housing projects is not uncommon. It happened in every part of the globe for instance in United States, Europe, as well as in Asian countries (Mumin, Zainol, & Wan Daud, 2017). In Nigeria, abandoned housing projects are a threat to the Nigeria economy. It is also a burning topic in the Nigerian construction industry whereby the issue of abandonment is a great concern to the stakeholders who involved in the construction project delivery. It is also reported that The Chartered Institute of Project Management of Nigeria have spent twice of its 2016 budget on 56,000 abandoned public project across the country which is definitely a huge amount of money (Alao, Jagboro, & Opawole, 2018). Among the effects of the construction projects abandonment is it leads to a waste of resources, declining in property value, declining of community and neighbourhood aesthetics values, disappointment of the populace and over-stretch of existing facilities of the country (Akhanolu, Ikpefan, Ailemen, & Chibuzor, 2016; Alao et al., 2018).

Abandoned Housing Projects in Malaysia

In Malaysia, the issue of abandoned housing projects has been recorded ever since 1986 whereby the Ministry of Housing and Local Government (MHLG) reported that there were 126 incomplete housing schemes and totally being left and abandoned by private developers. The total number of housing units in concern during that time was 14,568 which involved 6,834 of home buyers. This worrying situation continues to happen until present. According to the Statistic Report by the National Housing Department (NHD) of Ministry of Housing and Local Government (MHLG), the numbers of abandoned projects were irregular for each year from 2013 until September 2019 since the numbers of houses unit being approved by NHD are different in each year.

Table 2: Statistics of abandoned housing projects in Peninsular Malaysia in 2013- September 2019

| | Houses approved NHD | unit by unit | Abandoned projects unit | Abandoned houses unit | Home buyers | Percentage |
|----------------------|---------------------------|--------------------|-------------------------------|-----------------------------|----------------|------------|
| 2013 | 177, 568 | | 87 | 32, 710 | 23, 572 | 18.42% |
| 2014 | 185, 021 | | 68 | 24, 726 | 17, 468 | 13.36% |
| 2015 | 138, 279 | | 63 | 16, 419 | 11, 465 | 11.87% |
| 2016 | 112, 850 | | 74 | 16, 036 | 11, 339 | 14.21% |
| 2017 | 172, 924 | | 254 | 64, 640 | 43, 686 | 37.38% |
| 2018 | 142, 697 | | 86 | 18, 105 | 11, 641 | 12.68% |
| Sept 2019 | 109, 049 | | 84 | 20, 261 | 12, 679 | 18.58% |

Source: Adapted from Statistic Report, National Housing Department

By referring to the latest statistic, 2017 recorded the highest number of projects being abandoned i.e. 254 units. This also equals to 37.38% from the total numbers 172, 924 units of houses being approved. Meanwhile, 2015 recorded the lowest units of abandoned projects i.e. 63 units. This represents 11.87% from the total number of houses units approved by NHD throughout the year.

LITERATURE REVIEW

Causes for Abandoned Housing Projects in Malaysia

This situation continues to be worsened with the alarming numbers of abandoned housing projects occurred and remains unsolved with the parties involved blaming each other. The home buyers are blaming the government for failing to enforce the law on the developers and also the banks for charging or imposing the payment of loan or financing regardless of the abandoned status of the house; the developers blame the local authorities and the banks being the financier for non-disbursement of the financing for them to confront with the housing construction. While the local authorities put the blame on the building engineers due to their omission to submit the work report progress on the ongoing projects which cause a delay to the whole process (Mumin & Zainol, 2016). Truth be told, the issue of abandoned housing projects in Malaysia is rooted from many factors namely nature of the housing system, poor

enforcement and monitoring from the government bodies, absence of mandatory rehabilitation scheme as well as mismanagement of the private developers.

Numerous previous studies mentioned that the nature of housing delivery system in Malaysia i.e. the 'sell then build' (STB) system has contributed towards the housing projects abandonment. According to Sufian and Sopian (2009) the STB system has caused unbearable damages to the home buyers whenever the developers abandoned the housing projects. This is also supported by Khalid (2010) and Mikail (2018), whereby the authors mentioned that the STB system is accounted for abandoned housing projects occurrence in Malaysia. Md. Dahlan (2011b) also asserted that the current STB system has many weaknesses as it positioned the home buyers at stake by having to pay 10% of deposit of the full purchase price with the balance, 90% is paid progressively by the financing applied and approved for the home buyers. STB system by referring to the name applies, is intended to enable more houses to be built at a quick rate and lower price (Hoe, 2013; Mikail et al., 2018). However, this system is a threat to the home buyers as they are exposed to the risk of the housing projects being left abandoned accompanied with debt owed to the financier. Unfortunately, this system is beneficial to the developers as they received a huge amount of money through the deposits paid even before the houses are delivered. Besides, the developers are free from any financial obligation to the bank unless bridging finance has been obtained by them.

Secondly, poor enforcement and monitoring from the government agencies on the housing project is also cited as the root of problem. This is initially mentioned by Ibrahim (2006) as the author stated that the absence of a system to detect abandonment of housing projects revealed the poor monitoring from the government. This opinion is also favored by Khalid (2010) who stressed that it is the duty of the government to enforce all the regulations related to housing development and monitoring the housing construction progress. Weak enforcement from the government has contributed to abandoned housing projects.

Hoe (2013) and Haron, Abdul Razak and Babatunde (2016) stated that lack of enforcement of housing law and policy add on issues on the abandoned housing projects which resulted to the inadequate protection of the home buyers. In other words, the current legislations for housing development should be enforced stricter to overcome the mischievous developers. However, it is interesting to note that, strict rules and regulations coming from the central government are not welcomed and may also contribute to the abandonment of housing projects particularly in China and Singapore (Mumin et al., 2017; Norhayate, Anwar, & Hasyim, 2017). Nevertheless, Sibly et. al., (2017) opined that the imposition and enforcement of strict laws and regulations alone cannot solve almost of all the issues related to abandoned housing projects.

Another root or cause of abandoned housing projects in Malaysia is the absence of mandatory rehabilitation scheme. Md. Dahlan (2011b) observed that there is no condition stipulated in Housing Development (Control and Licensing) Act 1966 and its regulations for special rehabilitation schemes for abandoned housing projects. The author is of the opinion that by having such kind of regulation, the problem concerning abandoned housing projects could be avoided. The author (Md. Dahlan, 2017 and 2019) further stressed on the absence of the rehabilitation scheme that has caused the affected home buyers to incur additional costs to rehabilitate their respective abandoned housing projects. Nonetheless, the idea of having a mandatory rehabilitation scheme may not be the best option to solve the problem of abandoned housing projects in Malaysia. This is stated in Nur Farhayu Ariffin et. al., (2018b) as the author propounded that rehabilitation program for abandoned housing project still cannot prevent future occurrence of abandoned housing projects in Malaysia. Furthermore, managing and rehabilitating an abandoned project is a complex matter as it involves many parties including developers, purchasers, bridging financier, landowner and it consumes longer time for the parties to reach an agreement (Tan, 2011).

Finally, the most popular and seemingly perennial genesis of abandoned housing projects in Malaysia is the private developers (Abdul Razak, Abu Samah, & Abdul Wahab, 2016; Ariffin et al., 2018a; Dahlan, 2006; Doraisamy, Akasah, & Yunus, 2014; Hoe, 2013; Khalid, 2010; Mumin & Zainol, 2016; Norhayate et al., 2017; Yusoff, Oseni, & Hasan, 2016). According to Khalid (2010), the developers in the first place are striving to maximize their gains and profits from selling the house. Even though there is a moral obligation raised through the Sale and Purchase Agreement (SPA) to complete the housing projects, however this is not being put to the attention of the developers.

On the other hand, Md. Dahlan and Aljunid (2011) stated that it is unlikely for a private developer to purposely abandons a housing project. More often than not the private developers are facing with few problems that eventually abstaining them from completing the project. The failed developers are facing financial problems which is resulted by their inappropriate management of funds which later jeopardized the project cashflow. The needs for the developers to meet the construction costs and to repay creditors also stirred their unstable financial background. The cash flow problem has resulted the developers to utilize the initial down payment as the main source of cash and heavily relying on the progressive payments to fund the construction cost (Haron et al., 2016; Mikail et al., 2018). Hoe (2013) explained that the cash flow problem is basically due to the lack of knowledge and experience of the developers. This is further emphasized by Nur Farhayu Ariffin et. al., (2018b) which agreed that the lack of knowledge and experience of the developers can contribute to breach of housing development contract and cause abandonment to take place.

Impacts of Abandoned Housing Projects on the Affected Home Buyers

Due to the issue of abandoned housing projects, the interest of home buyers to have adequate and proper residence is susceptible. Most of the literatures on abandoned housing projects have indeed shown that the most affected stakeholders are the home buyers (Abdul Razak et al., 2016). In abandoned housing projects, the affected home buyers are forced to pay for an uncertain subject matter that they may not be able to own. This situation has become the worst nightmare for home buyers (Abdul Razak, Omar Mohammed, & Md. Tarique, 2015). It is also a regrettable fact that, this unsettle condition is associated with the Islamic banks. It is a common practice in Malaysia that those who wish to purchase house under construction to apply for home financing from the Islamic banks. Normally the purchasers will enter into housing contracts with the housing developers to purchase the respective house pending completion. Once the relevant documents are signed, the purchasers will then apply to Islamic banks to finance the balance purchase price through any Islamic home financing products offered (N. H. Md. Dahlan, Mohd Noor, & Shuib, 2017). However, the banks will pursue after purchasers for the monthly payment in accordance with the contract agreed between the parties regardless of the abandoned housing projects issue (Yusoff et al., 2016).

Hussin and Omran (2011) elaborated that the one who suffers the most in the issue of abandoned housing projects are the end-users who signed the SPA to buy the houses under construction. Similarly, according to Mustaffa and Maznah (2012), abandoned houses units imposed a serious burden on low and middle-income groups. This is because this group still needs to bear the monthly payment debt even though the houses that they have purchased are nowhere near completion (Hamzah et.al, 2013). To make it worse, the purchasers may face the possibility of being declared bankrupt for defaulting the monthly payment to the bank (Yusoff et al., 2016). Consequently, it is the home buyers who suffered the consequences of the housing projects being abandoned by the developers. Abandoned housing projects are indeed the worst interruption for purchasers who intend to possess their own house.

According to Mikail et., al (2018), the fundamental error contributing to the abandoned housing projects puzzle is the absence of any formal or legal relationship in the present arrangement that engage the three main transacting parties namely the home buyers, banks and housing developers. The lack of any engaging agreement between the three transacting parties has caused the end-financier or the banks to go after the home buyers for the amount of money that was disbursed when a housing developer abandons a housing project (N. H. Md. Dahlan & Aljunid, 2011). This is because, the present house financing agreement as offered by the Islamic banks through Bai` Bithaman Ajil (BBA), Musharakah Mutanaqisah (MM), or even Commodity Murabahah (CM) are only executed between the Islamic banks as the end-financier and the home buyers as the borrower. The housing developers are nowhere to be seen in the picture. Previously, novation agreement was once used as complimentary agreement under the Bai Bithaman Ajil (BBA) based home financing arrangement. However, the existence of such arrangement has met with cold feedback and rejection from the housing developers.

METHODOLOGY

This study adopts conceptual analysis of relevant literatures on abandoned housing projects to understand the roots and impacts of the issue towards the home buyers particularly in Malaysia as discussed in the previous section. This study also employs a doctrinal legal research method. For the purpose of this study, the main legislation analyse is the Housing Development (Control and Licensing) Act in 1966. Doctrinal legal research method concerns more on “what is the law in particular case”. It is a theoretical research that comprises of either simple research to seek a specific statement of the law or complex legal analysis with depth and logic (Ali, Yusoff, & Ayub, 2017). Briefly, doctrinal legal research method is a library-based research to find answer for certain legal issues or questions. Hence, this study analyses provisions affiliated with the current protection existing contained in the said Act to discover the protection existing for the home buyers of houses under construction in Malaysia.

ABANDONED HOUSING PROJECTS IN HOUSING DEVELOPMENT (CONTROL AND LICENSING) ACT 1966

Inconsistent Definition of Abandoned Housing Projects

Generally, there is no unanimous definition to describe abandoned housing project in Malaysia due to the frequent changes of the legal definition consist in the relevant Act. There is an attempt by Md. Dahlan (2008) to define the abandoned housing project based on his understanding and perspectives of the study. The author mentioned that the term ‘abandoned housing project’ should have a legal and statutory definition to guard against any exploitation of duty and power by the developer concerned. The author further asserted that the definition laid down by the Ministry of Housing and Local Government (MHLG) was inadequate to cater the issue of abandoned housing project at that particular time. Nevertheless, the MHLG had made several efforts to define and redefine abandoned housing project (Yusoff et al., 2016). The initial definition of abandoned housing project by MHLG can be traced back in 1988. The abandoned housing project is defined as “a housing scheme where its activities on the site of the housing project had stopped for a duration of 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” at that particular time.

Later, in 1990 the MHLG redefined the previous definition of abandoned housing project as “any housing scheme where activities at the construction site have been stopped for more than 1 year after the expiration of the scheduled completion period (24 months – according to the Sales and Purchase Agreement signed by the developer and buyer) or when the developer has collected 10% payment from the buyer, and the Sales and Purchase Agreement has been signed, but the developer has not carried out any activity at the construction site after a lapse of 1 year from the date of signing of [the] Sales and Purchase Agreement (SPA).” Subsequently, in 2002, MHLG came out with a newer version of definition which stated that abandoned housing project happen when “the construction and development work on site of [a] project has been terminated for the preceding 6 months or more. Such termination has either occurred consecutively or occurred during the period within which the project [should have been] completed or beyond the required completion period. The completion period means the period within which the developer has to complete the construction of the housing units. For the landed property, the completion period is 24 months calculated from the date of the sale and purchase agreement was executed, whilst for flats, the completion period is 36 months from the date of the execution of the sale and purchase agreement, or, within the said duration of 6 months, the developers concerned had wound up and has been put under the control of the Official Receiver, and the housing controller is of the opinion that a particular housing developer [has failed] to carry out [his] obligation as a developer.”

Further, in 2006, MHLG provided another definition which referred abandoned housing project as the construction activities on the site that have stopped for 6 months or more consecutively after the expiry of the executed SPA or the developer has been placed under the control of the Official Receiver and the Housing Controller opined that the developer is not able to proceed his obligation as a developer. This definition is also mentioned by Md. Dahlan (2011a) as he explained that a housing project is said to be abandoned as per the three conditions of the Act. However, Hoe (2013) is of the opinion that, the definition by MHLG only confine to housing project and does not apply to other types of construction projects. On the other hand, Abdul, Omar and Tarique (2015) have further proclaimed that such definition is more detail and comprehensive in explaining the meaning of abandoned housing project in Malaysia.

With the coming into force of the latest amendment made to the Housing and Development (Control and Licensing) Act 1966 in 2015, the term ‘abandoned housing project’ has been given a new statutory definition. This is evident in Section 18A (2) whereby the Act states that ‘abandons’ means the developer refuses to carry out or delays or suspends or ceases work continuously for a period of completion as agreed under the SPA executed between both developer and the home buyer. The developer shall be held liable of an offence and upon conviction shall be fined not less than two hundred and fifty thousand ringgit or imprisonment for a term not exceeding three years or both in any case the developer abandons the project within the completion period. This is clearly stated in Section 18A (1) of the Act (as amended in 2015). This statutory definition has shown that the regulator went stricter towards the failed developers as a preventive measure in order to protect the home buyers of the houses under construction against the aftermath of housing project abandonment.

Existing Protection for Home Buyers of Houses under Construction in the Act

Measures to protect the home buyers are evident in the Housing and Development (Control and Licensing) Act 1966. The Act has been in operation since 29 August 1969 with the latest amendments gazette in 2012. The Act is enacted to provide for the control and licensing of the

business of housing developers in the industry, the protection of the interest of purchasers and matters related therewith. The Act is endorsed with provisions related to licensing of housing developers, duties of a licensed housing developer, investigation and enforcement, powers of minister as well as tribunal for home buyer claims. The provisions were enacted in particular with the housing developers to enable the Ministry to take action against irresponsible developers and to protect the home buyers from being the victims of abandoned housing projects. The provisions stipulated in the Act can be interpreted to have two different purposes i.e. as preventive measures in protecting the home buyers from abandoned housing projects and to provide redress mechanism for the affected home buyers or also known as victims of abandoned housing projects in upholding their rights and claiming damages out of the losses incurred to the latter event.

Among the provisions enacted as preventive measures are as in Section 5 of the Act whereby it is mentioned that, only licensed housing developers are allowed to be engaged with housing development. Having said that, Section 5(4) has provided that the application for a license by a housing developer must be accompanied with a prescribed fee and paid to the Controller of Housing who is appointed by the Minister. The amount of such prescribed fee is further discussed in Section 6 of which it differs depending on the applicant of the license. In the situation that such license is applied by a company, the company is required to have a capital issued and paid up in cash of not less than RM250,000 and makes a sum equivalent to 3% of the estimated cost of construction as certified by an architect in charge of the housing development. On the other hand, if the application is made by a person or body of persons, a sum of 3% of the estimated cost of construction as certified by an architect in charge of the housing development needs to be made to the Controller in cash or in such other form as the Minister may determine.

As it is mandatory for the housing developers to pay such amount as deposits to the Controller of Housing, the conditions seek to ensure that only housing developers with a good and strong financial background and committed involve in the housing development industry and the deposits made payable serve to be some sort of financial resources for the Ministry in the event that the housing development is certified as an abandoned project. These measures are confirmed with the Regulation 11A of the Housing Development (Housing Development Account) Regulations 1991 whereby the moneys paid by the licensed housing developers may be used by the Controller to assist in the completion of problematic housing projects until the issuance of the Certificate of Completion and Compliance (CCC) or to comply with an award made by the Tribunal for Home Buyers Claims.

Section 6A of the Act also discussed on the deposit's payable by the housing developers to the Controller whereby it is mentioned that the moneys shall be kept by the latter until the expiry of the defect liability period of the housing development project which has been clearly stipulated in the Sale and Purchase Agreement. This arrangement also shown that a licensed housing developer can only retrieve the deposits once the housing development project engaged is completed. Nevertheless, by virtue of Section 6B the deposits shall be forfeited by the Controller if in his opinion, the housing developer is carrying his business in a manner that is detrimental to the interest of the home buyers or member of public, own insufficient assets to cover his liabilities, contravening any provisions of the Act or has ceased to carry on housing development.

Another relatable provision of the Act which fall under the preventive measures is Section 7A whereby it is mandatory for a licensed housing developer to open and maintain Housing Development Account with a bank or finance company for each housing development project. The licensed housing developer is required to pay into the Housing Development Account the purchase moneys received from the sale of housing accommodation in the housing

development project and other sum of money which are required by the regulation. The said purchase moneys are basically constituted of the 10% out of the total purchase price paid by the home buyers known as deposit. By having this practice, the deposits of the home buyers are ring-fenced and protected from any activities that might expose the moneys towards unauthorized employment.

On the contrary, Section 8A of the Act can be interpreted to be one of the redress mechanisms as it entitled home buyer to terminate the sale and purchase agreement executed earlier in the event that; the housing developer refuses to carry out or delays or suspends or ceases work for a continuous period of 6 months or more; the home buyer has obtained the written consent from the bank, and the Controller has certified that the licensed housing developer has refused to carry out or delayed or ceased work for a continuous period of 6 months or more. This particular provision is basically a good move in awarding an affected home buyer or victim to abstain more harm arising from a housing project abandonment which includes the financial aspect with the end-financier of the home buyer. By terminating the sale and purchase agreement, it conveys a clear signal to the end-financier to cease from releasing progressive payments to the irresponsible housing developer.

It is also mentioned in the Act that according to Section 8A (3), the licensed housing developer shall within 30 days to refund all monies to the home buyer whenever the latter exercises his right to terminate the sale and purchase agreement. The licensed housing developer also shall bear all the cost and expenses incurred by the home buyer in removing all the encumbrances on the said land. By virtue of Section 8A (5) too, any person who fails to comply shall be guilty of an offence and upon conviction shall be fined of not less than RM50,000 and not exceeding RM500,000.

Another worthy provision is in Section 18A of the Act which has enabled the home buyers to initiate criminal proceedings against any licensed housing developers who abandon or cause to be abandoned any housing development project. Irresponsible developers who abandoned or caused any housing development project to be abandoned may be liable to a fine which shall be more than RM250,000 or to imprisonment for a term not exceeding 3 years or to both. This particular section is definitely a highlight of all in the Act as indirectly it indicates that housing project abandonment is a crime.

Tribunal for Home Buyers Claim

The Housing and Development (Control and Licensing) Act 1966 has provided a remedy for the home buyers. Part 6 of the Act has stipulated provisions related with a Tribunal for Homebuyers Claim. The Tribunal for Homebuyers Claims was established under Section 16B via the amendments of the Housing Development (Control and Licensing) Act in 2002. The main focus of the Tribunal is to provide an avenue that is efficient, cheap and informal redress mechanism for homebuyers (Amin, Kassim, & Sufian, 2013). The Minister by virtue of Section 16AI of the Act has made regulations pertaining to how the Tribunal works, organisation of the Tribunal, the prescription as to the responsibilities of members of the Tribunal, procedures of the Tribunal, forms to be used in proceedings of the Tribunal, fees and manners for collecting and disbursing such fees and other relevant procedures (Sufian, 2011). All these regulations were contained in the Housing Development (Tribunal for Homebuyers` Claims) Regulations 2002.

As the Tribunal is established by virtue of the Act, the jurisdiction of the Tribunal is to hear disputes between a house buyer and the developer including matters related to defects of the house under the Sale and Purchase agreement executed between the two parties. This is mentioned in Section 16N (2) of the Act. In other words, the jurisdiction of the tribunal does

not cover claims made against other parties that might be connected to the housing development project for instances, in the case of defective workmanship and materials of the house, a house buyer may have cause of actions against the architect, the engineer or the contractor. Thus, the house buyers still have to resort to bring civil action before the ordinary court.

The home buyer may represent themselves in the Tribunal without any lawyer as compared to the court proceedings. In its early period of establishment, the limit for claiming award for a dispute was only less than RM25,000. In the event the dispute is amounting more than RM25,000 the home buyer would need to proceed with legal actions in court which may cause more hardships towards the affected home buyer. Later, in 2007 the jurisdiction of the Tribunal is increased from RM25,000 to RM50,000 through amendment made in the Housing Development (Control and Licensing) Act.

However, according to Sibly et al. (2017) it is a disbelieving fact that most of the claims brought to the Tribunal will be less than RM50,000 due to the rising of housing price these days particularly in the cities. The housing price in Malaysia has experienced a significant expansion in the past few years (Hashim, 2010; Mariadas, Selvanathan, & Hong, 2016). In other words, the present Tribunal is less effective to offer protection and remedy towards the home buyers against the irresponsible developers as most of the houses offered are priced more than RM50,000. An effective tribunal for home buyers is vital in order to penalize the errant developers as it could serve as an impediment to others. This is supported by Ariffin and Abdul Razak (2019), Abdullah, Ramly and Ikhsan (2017), Abdul Razak, Samah and Wahab (2016) and Abdul Razak (2016). However, with the current situation, it shows that the home buyers are having a limited option to resolve disputes which involved the mischievous developers in the event of abandoned housing project. Hence, with the limited solution offered by the Tribunal, a helpful option besides the current Tribunal for Home Buyers is needed to assist the affected home buyers of abandoned housing projects.

RECOMMENDATIONS

The above discussion deliberated on various measures taken by the Government in resolving the issues on abandoned housing projects. This includes the enactment and enforcement of specific laws and regulations related to the housing developers. Nevertheless, the issue of abandoned housing projects remains unsolved and seriously affecting the rights of the home buyers. Hence, this study proposes recommendations that may be relevant in mitigating the issue. Specifically, these recommendations are to enhance the protections to the home buyers as per the provisions of Housing Development (Control and Licensing) Act:

- a) to increase the percentage of 3% of the Construction Costs as requisite deposits payable by the housing developers to the Controller of Housing due to the higher risks associated with the housing development project and exposure to the home buyers. Further research may be made to determine the reasonable amount of deposits percentage and shall be viable to revive the housing project in the event of abandonment to protect the interests of the home buyers.
- b) to increase the limitation of the amount of claims from RM50,000 to a higher amount that can be brought by the victims before the Tribunal for Homebuyers' Claims in enhancing the effectiveness of the avenue.
- c) to introduce an independent supervision body or agency to monitor particularly on the progress of the projects to encounter abandoned housing projects problem at early notice. The independent supervision body or agency may involve a commission consist of experts in housing development projects.

In additions, the Ministry may also prioritize to revive existing abandoned housing projects instead of developing more new housing projects as the latter were already bought by home buyers from dissimilar financial capabilities. In other words, the funds allocated for new housing projects can be injected into the revival and rehabilitation of abandoned housing projects. This is due to the fact that, there were numerous victims of abandoned housing projects that are severely affected especially in financial aspect. Another point is that the housing industry may also consider to introduce housing development insurance which is being exercised in other jurisdictions for instances, Australia and United Kingdom whereby it is a practice for housing developers to take up housing development insurance before they can finally engage with any housing development projects.

CONCLUSION

The issue of abandoned housing projects in Malaysia is not uncommon and created a major hiccup in the housing industry. Numerous previous studies have dealt with the issue of abandoned housing projects with different roots and impacts towards the home buyers. In fact, Malaysian government has also strengthened the relevant law through stricter amendments to prevent the occurrences of abandoned housing projects, but statistics revealed the other side of the situation. The current protection for home buyers in the existing law seemed to be not adequate and necessitate an effective revision from the Ministry. Besides, it is also timely to look for other possible options in mitigating the issue of abandoned housing projects in Malaysia. Nevertheless, the authors believed that, the issue will not be able to be subsided with efforts from the Ministry as the regulator per se, but it is a collective responsibility by the housing industry. It is possible to see zero abandonment in Malaysia provided that all stakeholders including the Ministry, the developers, the bridging and end-financiers as well as the home buyers work hand in hand to curb the problem. Efforts to mitigate the abandoned housing projects issue should be done continuously by all related parties. A good co-operation among the stakeholders pertaining to the abandoned housing projects issue will eventually create a healthy and stable housing industry in order to achieve the objectives of National Housing Policy.

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