BY THE NATIONAL HOUSE BUYERS ASSOCIATION OF MALAYSIA

Power of the Minister

The authorities are urged to flex their muscles to protect house buyers

WHEN housing developments fail, everyone in Malaysia suffers. Individual buyers are left with broken dreams and wasted time, as well as nothing to show for all the fees paid, loan taken and EPF money withdrawn. The ordinary taxpayers pay their dues without knowing, through public funds spent to revive these projects and fees waived by local authorities that could have been put to better use. Ironically, those who cannot afford to purchase a house are paying for the revival of

abandoned housing schemes through taxes.

It is not uncommon to hear of development failures blamed on 'economic downturn'. However, Parliament was told recently by the Parliamentary Secretary to the Housing and Local Government Ministry, Datuk Dr K. Subramaniam, that abandoned housing projects are due to:

- poor location
- inability of developers to obtain bridging loans
- fraud by contractors
- disputes between landowners and developers
- internal problems

It does not take much to realise that the above-mentioned factors are beyond the control of the man in the street who desires to own a home. How can one aspire to own a home without the fear of the development failing and, thus, becoming poorer in the process?

Under Section 10 of the Housing Development (Control & Licensing) Act, 1966, revamped 2002, it is stipulated that the Minister may direct the controller or an inspector to make an investigation if he 'has reason to believe' that the housing developer in question is carrying on his business 'in a manner detrimental to his purchaser' or 'has assets insufficient to meet his liability'. Five buyers or more can also support the application for an investigation.

Section 11 of the Act empowers the Minister to give various directions to safeguard the interests of the purchasers if the controller is informed or is of the opinion that a licensed housing developer is unable to meet his obligations to his purchasers, is about to suspend his building operations or is carrying on his business in a manner detrimental to the interests of his purchasers.

Once the Minister has certified that the licensed housing developer has abandoned the housing development, the housing developer may then avail itself to the various schemes introduced by the Government for the revival or completion of abandoned projects.

These are the directions the Minister is empowered to give:

- direct the licensed housing developer in question to take steps considered necessary to rectify any matter or circumstance;
- appoint or direct that a person be appointed to advise the licensed housing developer in the conduct of his business;
- with the concurrence of the Minister of Finance, direct a company to assume control and carry on the business of the housing developer upon such terms and conditions as the Minister may determine;
- certify that the licensed housing developer has abandoned the housing development;
- direct that the licensed housing developer present a petition to the High Court for winding up of his business; or
- any other action the Minister may consider necessary in the circumstances of the case for carrying into effect the provisions of this Act.

As to the cost of implementing the directives, the Minister may specify that any cost and expense reasonably incurred in carrying out such direction shall be paid from the Hosing Development Account of the housing development or from the moneys due to the account.

In addition, under Section 11(3), the new company can assume control of the said defaulting developer and carry on the business of the housing developer until such direction from the Minister.

Besides abandoned projects, there are other situations where the powers of the Minister can be enforced. This includes situations where the project is completed but the developer is unable to honour the defects-liability assurance, complete the infrastructure, apply for titles to individual lots or parcels, or fulfil the terms to receive a permanent certificate of fitness for the project.

In view of the provisions in law made available some 30 years ago under this existing Act, we can safely conclude that there is in fact a mechanism legislated by the Parliament to deal with situations where developers are incapable of continuing their contractual obligation to buyers.

The power of the Minister was tested in the case of the Majestic Heights Apartment in Penang, the country's largest abandoned housing project. The entire scheme, launched in 1995, comprised 2,955 housing units, 55 shop lots and 22 light industrial units.

Problems began to surface in 1997 when buyers of the first phase were given vacant possession although the manner of delivery was not in accordance to the agreements. In 1999, creditors of the developer had filed a winding up petition on the developer.

In 2001, a landmark action by the Housing Minister to invoke Section 11 (1)(d) of the Act was directed to the developer to voluntarily wind up or risk prosecution. Phase one was revived in 2002 and finally obtained the Certificate of Fitness in January 2004, after a six-year wait.

Our question is: shouldn't Section 11 have been invoked at the earliest sign of trouble? The longer the buyers wait, the higher the cost of reviving the project. In the case above, buyers had to make additional contributions of about RM7,500 each for the revival scheme.

With delays in invoking the protection mechanism, the buyers, thus, become the unwitting and sorrowful victims of yet another fault in the system. If indeed such pro-active measures are taken earlier, we believe problems such as abandoned projects would be minimised. **mb**

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