



By The
National
House Buyers
Association
of Malaysia

Investing in Serviced Apartments

What to look out for.

If you should type in the words 'serviced apartments' in an Internet search engine, you likely to see thousands of results. However, unlike the 'serviced apartments' offered for sale by developers here, these are apartments related to travellers seeking alternative long-term lodging as an alternative to hotels.

For as long as this writer has been around, serviced apartments have always been associated with longer term stays at a fully furnished apartment with hotel-like services, most likely located in the hub of cities. These are different from the many

serviced apartment projects on sale here, which may also go by the names Condotel, Service Suites or Service Condominium.

Is there a difference between 'serviced apartments' and 'housing accommodation' apartments?

Yes, and not without heartache for some buyers who discovered too late that 'service apartments' are not covered under the Housing Development (Control & Licensing) Act, 1966. The Act is actually a social legislation to protect buyers in their dealings with housing developers. Any proposed development that does not come under the definition of 'housing accommodation' in the Act is outside the legislative ambit. Therefore, no protection is accorded for buyers.

In most cases, if the development land was never converted to 'residential' status, the building can only be built as 'commercial'. Thus, if anything goes wrong, the only legal recourse against the vendor is the contractual agreement between both parties. However, since the sale and purchase of this type of property is not governed, the terms and conditions are not regulated either. Many buyers who have not done their initial homework later find, to their chagrin, that the terms and conditions favour the vendor.

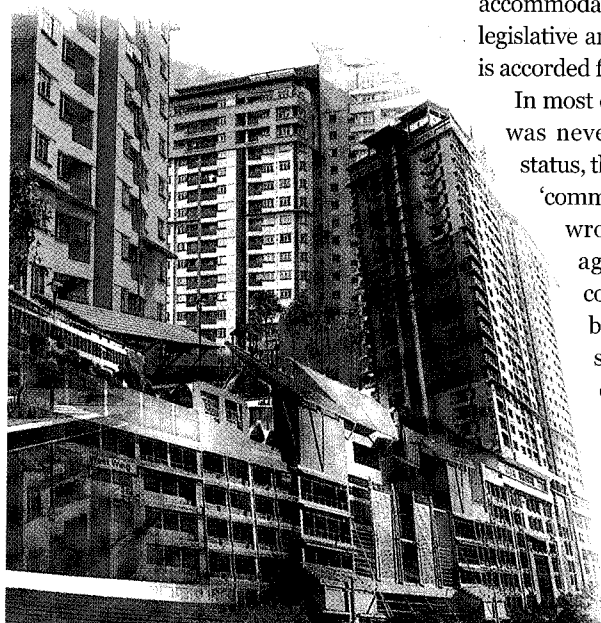
'I didn't know what "serviced apartment" means,' is the consistent cry. The Minister of Housing and Local Government, Datuk Seri Ong Ka Ting, has publicly declared that there is a loophole in the law and has repeatedly warned buyers to be aware that 'serviced apartments' are not covered under his Ministry. Announcements have also been made that laws would be changed or formulated to include 'serviced apartments'. We hope that it would happen soon.

This is not to suggest by any means that all 'serviced apartments' developers lack principles. However, there are a few in the industry whose sales tactics are questionable. We have even come across a case of a project that was sold as 'regular' apartments but the Certificate of Fitness for Occupation was issued for 'Pangsapuri Khidmat'.

How to protect yourself

Caveat emptor... buyer beware! It's that simple. Know what you are buying. If your plan is to buy a home for your family, a development that comes under the jurisdiction under the Housing Act is a better choice for you. For those still interested in serviced apartments, you would be wise to study all the documents — the sale and purchase agreement, deed of mutual covenant, lease agreement, termination terms, etc — before making any deposit.

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If you are buying an investment property to be managed by a third party, you should view the prospectus too. Seek legal advice before making any payment or signing any contractual agreements with the developer or their agents. Be wary of accepting advice from advisers closely associated with the vendor.

Rental Guarantee Schemes – What’s the risk?

The guarantor might fail.

A group of buyers who approached HBA for assistance was furious that the ‘guaranteed scheme’ was terminated by the vendor after a year. They were left high and dry as the apartments were located in a remote area and meant initially for university students.

This group of ‘amateur’ landlords told us that the reason for their purchase was the ‘rental guarantee’ and the vendor even had a buyer-get-buyer promotion. So at the very beginning, when they should have been studying their legal documents, they were kept busy introducing friends and relatives to the scheme. Doesn’t sound like such a good idea now that the same friends and relatives are blaming the ‘introducers’.

This is not to suggest that all ‘rental guarantee’ schemes would fail. However, there are some buildings sold in Malaysia with ‘guarantees’ that are at best questionable in its ability to deliver. Landlords know that rental returns are very subjective matters and conditions can change anytime. What good is a guarantee when the company is defunct?

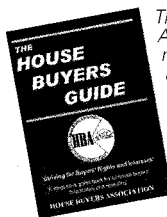
The Companies Commission of Malaysia (CCM) has policy guidelines on timesharing arrangements. One of the policies is as follows: ‘The scheme must be guaranteed by an insurance scheme of a reputable insurer that is approved by CCM or by a scheme of placement of deposits offered by the developer/operator that has to be kept by the trustee approved by CCM.’ We think that this would work for ‘guarantee rental schemes’, too.

Points to consider:

- a) If the guaranteed rental is 7% of your purchase price for the next three years, calculate the amount that the vendor would have to put aside for all the unit

owners. Sounds like a financial loss to the developer? Ask the developer where the trust fund/security is to guarantee such a scheme.

- b) On top of the possible pitfalls of buying a yet-to-be built property, wherever possible, you should evaluate the risks and returns of each property by an independent research report. Don’t forget to include the payments that you would have to make – monthly service charges, sinking fund, insurance, administration fees, legal fees etc – before you calculate the returns.
- c) Find out who bears the cost of furnishing the apartment. Most likely it’s the landlord, and that means you who would have to ‘reimburse’ the tenant-vendor for ‘expenses’ if it’s not stated clearly in the contract. In one case, the buyers naively covenanted with the developer that the developer is empowered to appoint its own renovator and such expense should not be less than RM30,000 before the ‘guarantee rental’ scheme can take effect. In this case, the buyer could not come up with the amount, and the guarantee was summarily terminated.
- d) When the lease period ends, you should be able to support your mortgage repayments if there is no income from the rentals.
- e) If you intend to live in the apartment yourself, consider that the utility rates, assessment tax and quit rent are based on commercial rates, which are higher than residential apartments.
- f) If you wish to sell your apartment, would you be able to find a buyer? We have seen one agreement where the car parks are not included as accessory parcels but would remain the property of the vendor. This would also be a potential problem for the management corporation once strata titles are issued unless the vendor sells those car park bays to buyers. **mb**



The National House Buyers Association (HBA) is a voluntary, non-political, non-governmental, non-profit organisation manned by volunteers. HBA has also published a ‘House Buyers Guide Book’ (RM5) that can help house buyers to ask the right question. For more information, check out www.hba.org.my.