REHABILITATION OF ABANDONED HOUSING PROJECT: EXPERIENCE OF AN ABANDONED HOUSING DEVELOPER THROUGH THE HELP OF A GOVERNMENT AGENCY

by

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Introduction

An housing project can be deemed to be abandoned when:

(a) Construction activities on site of the housing construction project have stopped for six months or more consecutively, after the expiry of the Sale and Purchase Agreement (S & P) executed by the developer and the purchaser or; the developer has been put under the control of the Official Receiver; and

(b) Housing Controller is of the opinion that such developer cannot duly proceed with the execution of its obligations as a developer1.

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1 Ministry of Housing and Local Government, Laporan Senarai Projek Perumahan Terbengkalai Dari Tahun 1990 - Jun 2005 (List of Abandoned Housing Projects From Year 1990 - June, 2005), 2006, p 1. This is the current definition of ‘abandoned housing projects’. However, before year 2006, the definition of abandoned housing projects was - “The construction and development works on site of the project that has been terminated for the preceding six months or more. Such termination has either occurred consecutively or occurred during the period within which the project must be completed or beyond the required completion period. 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 had been executed, whilst for flats the completion period is 36 months from the date after the execution of the sale and purchase agreement; or, within the said duration of six months, the developers concerned had been 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 fails to carry out their obligation as a developer”. See Ministry of Housing and Local Government, Senarai Projek Perumahan Terbengkalai (List of Abandoned Housing Projects) 1999, 2000, p 1.
The roles and obligations of the Ministry of Housing and Local Government (MOH) are to gather relevant information, search and initiate ways to rehabilitate the housing projects so abandoned and to identify suitable parties for the rehabilitation of the said projects either they are rehabilitated by the original developers themselves (the first defaulting developer) or by the financiers to the said projects or by the land owners of the projects or even through the initiatives of the purchasers. Actions Committees or through the government rehabilitating agency — Syarikat Perumahan Negara Bhd (SPNB).²

The abandoned housing projects occurring in Peninsular Malaysia can be categorized as follows:

(a) Projects with the potential for rehabilitation;
(b) Projects taken over by other new developers;
(c) Projects not suitable for rehabilitations; and
(d) Completed rehabilitated projects³.

Newly Identified Abandoned Housing Projects as of June 2005

As of June, 2005, there were 28 new projects which had been listed under the category of abandoned housing projects⁴. These projects involved 5,716 purchasers, 7,946 units of houses and projects’ sales value of RM 479.67 million⁵. From the overall newly identified abandoned housing projects, majority of the projects, as of June, 2005, occurred in Johor, Selangor and Penang which respectively have 5 projects (18%), followed by Kedah – 4 projects (14%), Perak – 3 projects (11%), and for Negeri Sembilan, Melaka and Terengganu, each of these states has 2 newly identified abandoned housing projects (7%).⁶ In other states (Perlis, Wilayah Persekutuan and Kelantan), there are no new abandoned housing projects which have been identified or reported. These information are illustrated in Table 1 below:

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2 Ibid.
3 Ibid.
4 Ibid.
5 Ibid.
6 Ibid, p. 2.
1) Project Having Potential For Rehabilitation;
2) Project Taken Over By Other Developer;
3) Project Which Is Not Suitable for Rehabilitation.

From year 1990 until June, 2005, a total of 141 projects are considered as projects which are still abandoned.\textsuperscript{8} Out of this number, 121 projects have the potential to be rehabilitated, 11 projects be taken over by other developers and 9 projects are projects which are not suitable for rehabilitation.\textsuperscript{9} 43 projects have been referred to Syarikat Perumahan Negara (SPN) for rehabilitation purposes.\textsuperscript{10}

Projects Which Have Potential For Rehabilitation

In Peninsular Malaysia, abandoned housing projects which fall under the category of having potential for rehabilitation can be divided into four types as follows:

i. Project which is newly identified;
ii. Project under probability study;
iii. Project readied for rehabilitation;
iv. Project under construction.\textsuperscript{11}

Projects which fall under the category of 'having potential for rehabilitations' are projects which are in dire need of special rehabilitation schemes, plans and strategies, because these projects involve a broad spectrum of parties such as the landlords, developers/other developers for taking over the projects, financial institutions, government technical agencies, local authorities and local planning authorities, purchasers committees and Insolvency Department.\textsuperscript{12}

The number of projects fall under this category increases from 99 projects in year 2003 to 121 projects as of June, 2005.\textsuperscript{13} The increase was due to the financial and management problems faced by developer companies, as well as the results from economic recession encountered by the nation.\textsuperscript{14}

Most of the types of houses which fall under the category of 'Project Which Are Still Abandoned' have the possibilities and potential for rehabilitation.\textsuperscript{15}

\textsuperscript{8} Ibid.
\textsuperscript{9} Ibid.
\textsuperscript{10} Ibid.
\textsuperscript{11} Ibid, p 5.
\textsuperscript{12} Ibid.
\textsuperscript{13} Ibid.
\textsuperscript{14} Ibid.
\textsuperscript{15} Ibid.
These houses consist of low-cost-houses - 4,247 units (8%), condominium/apartment – 13,766 units (25%) and medium-cost-flat – 13,579 units (24.4%).

All in all, the rehabilitations of 121 abandoned housing projects which are still abandoned but have the potential for rehabilitation, require an estimated special monetary allocation of RM 5.06 billion. This allocation is important as the ‘Abandoned Housing Projects Rehabilitation Fund’ (Tabung Pemulihan Projek Perumahan Terbengkalai – TPPT) under Bank Negara had been abolished since year 1992. If this special allocation can be obtained and afforded, this would certainly help the fates of the 36,815 purchasers of abandoned housing projects.

Rehabilitation of Abandoned Housing Projects

According to a research, currently there are six methods of rehabilitating the abandoned housing projects in Peninsular Malaysia. These rehabilitations are:

(a) Rehabilitation by the defaulting developer itself;
(b) Rehabilitation with the help of government agencies;
(c) Rehabilitation by a new developer company who takes over the project from the defaulting developer;
(d) Rehabilitation by the liquidator/provisional liquidator or receiver and manager;
(e) Rehabilitation by purchasers’ action committee; and
(f) Rehabilitation by Danaharta Nasional Bhd.

Objectives of the Paper

This paper will only highlight the rehabilitation carried out by a defaulting abandoned housing developer with the help of a government agency – Abandoned Housing Projects Rehabilitation Fund ‘Tabung Pemulihan Project Perumahan Terbengkalai’ of Bank Negara (TPPT) and will study the rehabilitation based on legal perspectives, its issues, problems, legal observations and challenges and finally certain legal suggestions will be forwarded at the conclusion of the

16 Ibid.
17 Ibid.
18 Ibid, p 3.
19 Ibid.
paper. In this respect, the authors would unveil the events, experience and lesson of one rehabilitated abandoned project, by way of case study through documentations and archival records\(^\text{21}\), as happened in Tingkat Nusantara, Lots 300 & 302, North East District, Georgetown, Penang, developed by Syarikat Nusantara Pulau Pinang Bhd.

**The Project: Tingkat Nusantara, Lots 300 & 302, Section 9W, North East District, Georgetown, Penang**

Before the author embarks on the elaboration of the rehabilitation carried out by the defaulting abandoned housing developer with the help of a government agency in this abandoned housing project, the authors would like to explain briefly about this project.

The developer of this abandoned housing project, was Syarikat Nusantara Pulau Pinang Bhd (T 12626 U) (SNPPB) addressed at No FG-5 and FG-6, Taman Nusantara, Jalan Makloom, Pulau Pinang and at No 249, Jalan Perak,
11600, Pulau Pinang ('the developer'). This project was located at Lots 300 and 302, Section 9W, NED, Jalan Perak, Penang.

The funding of this project was a loan of RM 1.5m from Bank Bumiputra Malaysia Bhd, Penang (BBMB). In consideration of this loan, BBMB had charged the site project's land. Further, the developer also was given an overdraft facility of RM 815,928.68 by BBMB. The developer also obtained overdraft facility from Ban Hin Lee Bank of RM45,000.

22 File No KPKT/BL/19/1171-1. The company was incorporated on 14 August 1972. The natures of business of the company were for housing development, construction, building projects, architectural services and investment in properties. The company was an unlisted public company. As at 30 December, 1990 it had 1196 Bumiputra shareholders with an issued and paid up capital of 1,020,800 shares of RM1 each. Among the shareholders with shareholding of more than RM3,000 shares were Perbadanan Pembangunan Pulau Pinang, Sharifah Bee Bee bte Syed Ibrahim, Zareena bte Datuk Zachariah, Tajuddin bin Datuk Zachariah, Datuk MSA Zachariah, Yayasan Bumiputra Pulau Pinang, Barkath Ali bin Haji Abu Bakar, Datuk Haji Mohd Yusoff bin Abdul Latiff, Datuk Ismail bin Hashim and Datuk Noor Ahmad Mokhtar bin Haniff. See the working paper for TPPT for SNPPB, Tingkat Nusantara, p AQ 30, presented by Arthur Andersen & Co in file No KPKT/BL/19/1171-1.

23 Ibid.

24 Ibid. See also letter from BBMB dated 2 October 1991

25 These charges were the BBMB Master Charge on Lot No 300, registered on 3 December 1984 Jil 311 Fol 27 for the bridging finance for Tingkat Nusantara and BBMB Master Charge on Lot No 302, registered on 3 December, 1984 Jil 311 Fol 27 for the bridging finance for Tingkat Nusantara. The latest valuation on market value/forced sale value was 'as it where is' basis and was figured by fair market value of RM4.3 million. While, if the value was 'completion' basis and was figured by fair market value, would be valued of RM5.1m. This valuation was as at 22 June 1990. The directors of the developer were also the joint and several guarantors for the facility. They were Datuk Mohd Yussof bin Abdul Latiff, Datuk MSA Zachariah, Datuk Ismail bin Hashim and Encik Shaik Alauddin bin Mohd Wahab Ismail. See in ibid, pp AQ 31, 32 and 56, in file No KPKT/BL/19/1171-1.

26 This overdraft was secured by first and second legal charge on Lots 1202-1211, Section 900 NED, Penang (Taman Nusantara Project). The directors of the developer were also the joint and several guarantors for the facility. They were Tan Sri Datuk Syed Hassan Aidin, Datuk Mohd Yussof bin Abdul Latiff, Datuk MSA Zachariah, Datuk Ismail bin Hashim and Encik Shaik Alauddin bin Mohd Wahab Ismail. See ibid, AQ 31 and 32 in file No KPKT/BL/19/1171-1.

27 This overdraft was secured by a charge on a land on Holding No 1160 (a house), Bandar Gelugor, NED, Penang. As at 30 November 1990, the principal sum had been fully settled. However, there was outstanding interest of RM46,144.64. The directors of the developer were also the joint and several guarantors for the facility. They were Datuk MSA Zachariah, Datuk Haji Ali Rouse, Encik Shaik Alauddin bin Mohd Wahab Ismail and Encik Ismail Mydin Shah. See ibid, in file No KPKT/BL/19/1171-1.
The project was situated along eastern side of Jalan Perak, between Jalan Makloom and Jalan Sungei Pinang, adjacent to Masjid Rawana, Jalan Perak, Penang and on the opposite side of Taman Abidin, Jalan Perak, Georgetown, Penang.

Housing Developer's Licence

On 6 April 1979, MOH approved their application for housing developer's licence. The licences' numbers were 639/8/79(8) and 640/8/79(8), valid from 2 August 1979 until 1 August 1981. Licences were further issued, namely as below:

(a) On 28 August 1981, MOH had approved a new licence number 1171/8-93/55 valid from 2 August 1981 until 1 August 1983;
(b) On 20 May 1984, MOH had approved the application of the developer to renew the licence. The number of the licence was 1171/5-89/307 valid from 31 May 1984 until 30 May 1986;
(c) Further, MOH had approved new licence with number 1171/5-89/285, valid from 15 May 1987 until 14 May 1989;
(d) On 11 June 1990, a new licence had been issued with number 1171/3-92/245 valid from 6 March 1990 until 5 March 1992;
(e) On 20 February 1995, MOH had again approved a licence to the developer; and
(f) On 27 November 1995, again MOH had approved the application by the developer for new licence with number 1171/3-92/982, valid from 6 March, 1992 until 5 March 1997.

28 File No KPKT/BL/19/1171-1. The conditions set out in the licence were:
(a) The developer should not make or issue any advertisement or any form of advertisement regarding the prescribed land's lots or any other lands which had not been prescribed, without obtaining prior written permission from the Housing Controller;
(b) The development of the project was only restricted to lots 1202-1211, TS 9, North East District, Georgetown, Penang; and
(c) The developer was required to submit a copy of additional agreement between the land proprietor and the developer in accordance with regs 11 and 12 of the Housing Developer (Control and Licensing) Regulations 1970.

29 File No KPKT/BL/19/1171-1. The licences' numbers 639/8/79(8) and 640/8/79(8), were valid from 2 August 1979 until 1 August 1981, which had been received, through MOH's letter dated 6 August 1979.

30 File No KPKT/BL/19/1171-1.
Advertisement and Sale Permit

MOH approved the application of the developer for advertisement and sale permit on 30 November 1979\textsuperscript{31}. The grant of the permit was subject to the Housing Developers (Control and Licensing) Regulations 1970\textsuperscript{32}. The advertisement and sale permit granted for this project involved lands of Lots Nos 1202–1211, PB, 9W, North East District, Penang\textsuperscript{33}. The advertisement permit number 488/79 was valid from 10 December 1979 until 7 December 1980\textsuperscript{34}. Further, on 28 May 1996, MOH again had approved an application of the developer for advertisement and sale permit\textsuperscript{35}. This permit was valid from 12 June 1996 until 11 June 1997\textsuperscript{36}. The new advertisement and sale permit was numbered 1171/656/97(6)\textsuperscript{37}.

Before the project abandoned, the construction of this project involved a cost of RM1.2m only\textsuperscript{38}. The remaining balance (RM0.3m) of the loan had not been released\textsuperscript{39}. The project involved construction of a flat of 11 storeys consisted of 70 units and 7 units of shophouses with the recommended selling prices of RM65,000 and RM68,500 respectively\textsuperscript{40}.

\textsuperscript{31} Ibid.
\textsuperscript{32} Ibid.
\textsuperscript{33} Ibid.
\textsuperscript{34} File No KPKT/BL/19/1171-1. The sale and advertisement permit had been sent to the developer by MOH through MOH's letter dated 10 December 1979. The developer had been reminded that, it was an offence if they used other forms/types of advertisement which had not been approved by the Housing Controller. In this respect, the developer had been reminded to comply with regs 4, 10, 12 and 17 of the Housing Developers (Control and Licensing) Regulations 1970, especially reg 4(4) which provided that every permit issued by the controller shall be applied for one housing development only, but any advertisement which later might be made in respect of the same housing development, being at variance with the earlier advertisement form, might only be used, provided, consent from the controller had been obtained.
\textsuperscript{35} See letter from MOH to the developer dated 25 June 1996 in file No KPKT/BL/19/1171-1. The grant of this permit was subject to following requirements:
(a) the developer had to issue advertisements as per samples approved;
(b) other advertisements had to be published in newspaper/magazines/brochures/notice board and others and shall need the prior approval from the Housing Controller before it could be distributed and published;
(c) the developer was required to provide the sale prices for each and every advertised type of housing unit and any variation in the prices shall only be permitted on the approval of the Housing Controller; and,
(d) the developer was required to submit a copy of sale agreement fully executed between the developer and the purchasers.
\textsuperscript{36} Ibid.
\textsuperscript{37} Ibid, thus, there was no permit for sale and advertisement for period between 8 December 1980 until 11 June 1996.
\textsuperscript{38} Ibid.
\textsuperscript{39} Ibid.
\textsuperscript{40} Ibid and ibid n 20 p AQ 37.
The construction of this project commenced in the middle of 1984. However, in consequence of the economic recession in 1986, the developer had faced cashflow problems and that the loan granted by BBMB was not sufficient to cover the construction costs. In the result, the project abandoned.

Reasons For Abandonment

The major reason leading to the abandonment of this project was that there was less purchasers buying the housing units so advertised (poor market demand). There were evidences that this catastrophe had been caused by the economic recession faced by the nation in the 1980s. Thus, banks and financial institutions were reluctant to approve housing loans to purchasers. In consequence of this problem, the construction works stopped in the late 1987, when the developer faced severe monetary cashflow's problems including problems to pay the construction costs to related parties, such as suppliers, consultants and contractors (financial difficulties).

Based on the scrutiny of the financial reports in particular on the balance sheets as at 31 December 1985, 31 December 1986, 31 December 1987, 30 November 1990, 31 December 1991, 31 December 1992, 31 December 1993, 31 December 1994 it was found that the developer had severe liquidity problems (current ratio and quick ratio) and a highly geared of its debt.

41 Ibid.
42 Ibid.
43 Ibid.
44 Ibid.
45 Ibid.
46 The project consultants were Ng Kum Tuck (Architect), Jurutera Pakatan (Civil & Structural Engineers) and Ranhill Bersekutu (PP) Sdn Bhd (Mechanical & Electrical Engineer). These existing consultants, were recommended by Arthur Andersen & Co (AA), be retained for carrying out the rehabilitation, due to their prior consent in writing to keep all legal actions against the developer during the course of rehabilitation. See ibid, pp Q 38 and 47, in file No KPKT/BL/19/1171-1.
47 The contractors were — Nusabina Pulau Pinang Sdn. Bhd (Contractor for Building & Sanitation), Jaya Sarana (Contractor for Fire Protection), Lincolite (Contractor for Electrical Works) and Royden (M) Sdn Bhd (Contractor for Lift Installations). These existing contractors, were also recommended by AA, be retained for the rehabilitation, due to their prior consent in writing to keep all legal actions against the developer during the course of rehabilitation. See ibid, pp AQ 39 and 47, in file No KPKT/BL/19/1171-1.
48 See also ibid, p AQ 34, in file No KPKT/BL/19/1171-1.
49 Current ratio measures a company's ability to meet its financial obligations as they become due. It is often said that the 'normal' current ratio should be around two. For the developer's current ratio, based on the balance sheet as at 30 November 1990, its current ratio was 0.029. Quick ratio, on the other hand, seeks to compare liquid current assets with short-term liabilities and a common rule of thumb is that it should be close to one. For the developer in this case, this simple rule of thumb was far from 1. See Denzil Watson and Antony Head, Corporate Finance, Principles & Practice, Second Edition, Prentice Hall, London, 2001, pp 39 and 40.
(1) As at the time of the development, the economy was in recession, purchasers having failed to obtain housing loans and in consequence of this, the developer could not pay fees to the contractors. Further, worsening the situation, an application by the developer for additional loan from BBMB was also rejected;

(2) Because of the above persisting problem and this had not been fully addressed and settled by the developer, the progress development of the project was retarded and further the interest payment burdens which had to be borne by the developer, further aggravating and exacerbating the catastrophe;

(3) The developer also had carried out several negotiations and discussions with a third party to complete the project and sell the housing units with competitive prices but of no avail.

(4) The developer failed to get BBMB’s reduction of certain rate of interests imposed on them;

(5) Other problems included complaints from certain purchasers alleging that they had to pay additional purchase price as there were certain damages and deviations occurred in the housing units, thus, the developer had to incur additional costs for restoring these defects.

Because of the termination of the construction, there were mounted complaints from purchasers. Among the complaints were the purchasers had to pay the monthly installment of the houses, by way of salary cut, yet they could not occupy the housing units, the reluctance of the developer to return the moneys paid on request of the purchasers and the failure on part of the

59 Ibid.

60 For example, Kalsom bte Basiron complained that her salary had been cut since March, 1988 viz of RM 469.49 for the continuous period of 300 months. The construction of the units was expected to be completed by April, 1986, however, unfortunately, until to that expected date, the project was still abandoned. See file No KPKT/BL/19/1171-1.

61 For example Sharifah bte AS Aboo Bertha whose address was at No E-3-4, Taman Nusantara, Jalan Perak, 10150 Penang. According to her complaint, vide letter to the Consumer Association of Penang (CAP) and to MOH dated 26 September 1990, she had paid a deposit payment of RM6,000 for the purchase of a unit of housing in the project, known as No T2-2, Jalan Perak, Pulau Pinang. The second payment was made with an amount of RM3,000 paid on 2 August 1985. Thus, the total amount which she had paid was RM9,000. The sale and purchase agreement was executed on 20 September 1985. As the result of the failure to obtain any housing loan from bank, she had been requested by the developer to rescind the agreement of sale and the developer in consequence of the recession, would return all the moneys paid. However, the developer only returned RM4,400 only on 1 December 1987. The balance of the moneys had yet been returned to her. See file No KPKT/BL/19/1171-1.
(bridging loan lender) and the treasury for financing the purchase of the units by purchasers. There were about 13 purchasers, as at 11 September 1990, bought the units, which the purchased money paid to the developer stood at RM204,631 had been collected from the purchasers. There was a balance of RM508,650 which was not yet received by the developer.

There were also a number of caveats on the project lodged by the bridging and end-financiers. These caveats were expected to be removed on the rehabilitation of the project and hence, were not expected to impede any rehabilitation efforts thereof.

There were other series of meetings convened, to discuss and settle the problem of this abandoned housing project and to rehabilitate the same and for the purpose of streamlining the construction of the project. The meetings were held for example, on 5 March, 1991 between the representatives for MOH, Housing Treasury, the developer and the purchasers at Auditorium C, Level 5, KOMTAR, Pejabat Setiausaha Kerajaan Negeri Pulau Pinang.

In order to rehabilitate the project, MOH had called on related parties to the project to discuss for the settlement of the project so abandoned. Thus, to facilitate and fund the rehabilitation of this project, the developer had applied for the financial assistance from the TPPT of Bank Negara.

On 2 October 1991, TPPT agreed to inject into an additional fund of RM2.7m to fund and facilitate the rehabilitation of the project.

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67 The caveats on Lot No 300 of the property were: 1) Registrar's Caveat dated 11 June, 1986 Jil 18 Fol 100 PPHMT/PP/C/51/3 lodged by BBMB for the end financing, provided for the flat purchasers; 2) Registrar's Caveat dated 14 July 1986 Jil 18 Fol 118 lodged by Treasury for end financing provided for the flat purchasers; 3) Registrar's Caveat dated 24 July 1986, Jil 18 Fol 125 lodged by Treasury for end financing, provided for the flat purchasers. See ibid, pp AQ 42 and 56.

68 File Number: KPKT/BL/19/1171-1.

69 Ibid.

70 Ibid.

71 Ibid.

72 File No KPKT/BL/19/1171-1. TPPT was established on 18 June 1990 with an initial funding of RM300m. An additional funding of RM300m was allocated for the scheme on 20 February 1991. See information about TPPT in file No KPKT/BL/19/1171-1.

73 See letter from BBMB to the developer dated 2 October 1991 in file No KPKT/BL/19/1171-1. However, according to AA, the injection was RM3.2m. See ibid n 20 p AQ 40.
Further, TPPT appointed Messrs. Arthur Andersen & Co. ('AA') to study the viability and feasibility of the project. From the study, it was found that the project was feasible and viable for rehabilitation.

According to AA, the project was viable for rehabilitation, in that, the available funds added up to the funds injected by TPPT, through BBMB were sufficient to meet all the expenditures and expenses (cash outflows), the redemption sum and payment of late delivery damages.

The additional loan (additional funds) of RM2.7m, was channelled through BBMB to finance the cost of construction of the project subject to certain terms and conditions.

74 This abandoned housing project was revived on a going concerns basis for the following reasons:
(1) to enhance the marketability of the unsold units and
(2) to maintain co-operation from flat and shoplot buyers, project consultants, contractors, government authorities and creditors.

See in ibid n 20 p AQ 46. The full consultants' firm was Arthur Andersen & Co, Corporate Recovery Services Division, Level 1, Block C (South), Pusat Bandar Damansara, 50490 Kuala Lumpur.

75 File No KPKT/BL/19/1171-1. However, for rehabilitation purposes, according to AA, the project needed another RM3.2m to complete. According to AA, the cash inflows of RM4,894,281 would be generated from the sold units and the estimated proceeds from unsold units. This amount had to be deducted against the outflows costs amounting to RM3,362,658 (these being the building costs, infrastructure costs, M&E costs, professional fees, professional charges, administration costs, quit rent, assessment, legal fees, monitoring accounting, creditors, TPPT loan interests, deposit fund and contingencies). After the offsetting, there would be a balance of RM1.5m which RM86,940 would be utilized for paying the late delivery damages. The balance of RM1,444,683 would be for redemption sums. There was a shortfall of RM3.2m to meet the redemption and other miscellaneous expenses to complete the project. Thus, this RM3.2m was injected by TPPT. See ibid, p AQ 40, in file No KPKT/BL/19/1171-1. What is meant by viability, it is submitted, is the confirmed possibilities for the sales of the units, availability of purchasers, possible cooperation and assistances from related parties warranting the success of the rehabilitation and the sufficiency of the funds available and no parties would face any losses and damages, resulting from the rehabilitation of the project.

76 The cash outflows were the construction costs, professional fees, administrative costs, creditors, quit rent and assessment rates, management and miscellaneous, interest on TPPT's loans and contingency. All added up to arrive at RM3.362m. There were balances of RM1.531m which would be utilized for the settlement of all the redemption sums and late delivery damages. See ibid, p AQ 40, in file No KPKT/BL/19/1171-1.

77 See ibid.

78 This matter had also been stated in the letter of BBMB to the developer dated 6 August 1992. See file No KPKT/BL/19/1171-1. However, according to AA, there the injected amount was RM3.2m. See ibid.

AA too was entrusted to act as the monitoring accountant to oversee and monitor the rehabilitation of the project, in respect of the following matters:\(^{80}\)

1. to monitor funds to be released by TPPT;
2. to ensure smooth implementation of the development of the project;
3. to ascertain progress payments receivable from existing purchasers and to monitor expected future sales to ensure pricing is reasonable; and
4. to verify and to ensure disbursements to contractors and consultants were reasonable and in accordance with the cashflow forecast.

According to AA, they needed cooperation and assistance of the developer, the purchasers and other parties involved in the project to ensure the success of the rehabilitation plan\(^ {81}\). They also requested the purchasers not to claim for any compensation and damages for any late delivery of vacant possession and for any purchasers who had withdrawn from buying the purported units, they were allowed to do so and AA agreed to refund them any payment which they had made\(^ {82}\).

In consideration of these assistances and cooperations, TPPT would channel a fund of RM2.7m soft loan with interest of 2% per annum to the developer through BBMB, to finance the rehabilitation of the project\(^ {83}\). The security of this loan was second legal charge having priority over other charges on Lots 300 and 302, TS 9W, NED, Georgetown, Penang (the site project's land)\(^ {84}\).

Further TPPT had injected this loan through BBMB for their further onward transmission to the developer to meet all liabilities and expenditure incurred in resuming the rehabilitation of the project, under the supervision

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80 See ibid.
81 File No KPKT/BL/19/1171-1. See also in ibid. There were other related parties involved in this rehabilitation. These parties, primarily consisted of the professional builders and project managers such as monitoring accountant (AA itself), architect (Ng Kum Tuck), civil and electrical engineers (Jurutera Pakatan), Mechanical & Electrical Engineers (Ranhill Bersekutu (PP) Sdn Bhd), quantity surveyor, contractor for building and sanitation (Nusabina Pulau Pinang Sdn Bhd), contractor for fire protection (Jaya Sarana), contractor for M&E works (Lincolite), contractor for lift installation (Royden(M) Sdn. Bhd.) and project manager.
82 See ibid. Before the project abandoned, there were about 13 reported purchasers who had executed the sale and purchase agreements and had paid the deposit to the developer. These purchasers were, Aishah Bee, Zainab Osman, Salim Bibi, Sharifah SA Aboo Batcha, Aziz Kader Ali, Jafarullah Lehan, Sulaiman Majid, S. Shawal Hameed, Mohd Ali bin Ginnah, Kalsom Basiron, T. Reventura, Ali bin Maydin and Dr. Amanullah. See file No KPKT/BL/19/1171-1.
83 File No KPKT/BL/19/1171-1. According to AA, the loan was RM3.2m. See ibid.
84 See letter from BBMB to the developer dated 2 October 1991, in file No KPKT/BL/19/1171-1.
of AA\textsuperscript{85}. The rehabilitation of the project would take 19 months to complete\textsuperscript{86}. This soft loan would be released on the 14th month until the 19th\textsuperscript{87}. The costs incurred for the periods before the 14th month would be covered by the balance loan and fund available in the hands of the developer and BBMB\textsuperscript{88}.

In furtherance of the grant of soft loan, there were certain conditions which the developer and other parties had to observe throughout the course of rehabilitation of the project\textsuperscript{89}. Among these conditions were:

(1) the developer would not take any action for the alleged forgery committed by BBMB under an account of number 01-009-03841-74\textsuperscript{90};

(2) BBMB should be liable for any risks of the soft loan of RM2.7m granted, subject to certain terms and conditions, which would be repaid in progressive stages throughout the rehabilitation period;

(3) BBMB was agreeable to the TPPT loan of RM2.7m to the developer on the condition that a valid and registrable charge was created against lots 300 and 302, TS 9W, North East District, Penang;

(4) Restructuring of outstanding overdraft debts owed by the developer to BBMB amounting to RM1.5m under account number 01-009-09840-52. Among the consideration for this facility, were:

(a) legal action against the developer by BBMB would be withheld;

(b) BBMB were agreeable to accept all net surpluses from the sale revenues, after settling all debts to TPPT as the priority repayment, owed by the developer as full and final settlement sum of the outstanding overdraft under account 01-009-09840-52\textsuperscript{91};

\textsuperscript{85} Ibid.

\textsuperscript{86} However, earlier AA had forecasted that the rehabilitation would complete in 10 months from the commencement of construction. See ibid. AA also requested three months and two months periods, for undertaking assessment of viability study and getting the approval of TPPT soft loan; and, for consideration and confirmation required from the related parties to cooperate and restraint any impending problems to the rehabilitation, respectively.

\textsuperscript{87} See ibid.

\textsuperscript{88} File No KPKT/BL/19/1171-1.

\textsuperscript{89} See letter from BBMB to the developer dated 2 October 1991, in file No KPKT/BL/19/1171-1.

\textsuperscript{90} The amount outstanding as at 30 November 1990 was RM815,928.68 and the outstanding interest as at 30 November 1990 was RM1,149,223.26. The sum lent, was allegedly made through forged cheque. See ibid n 20, p AQ 30.

\textsuperscript{91} BBMB were to accord priority to TPPT for repayment of the soft loan and also undertook to discharge all the 77 strata titles on receipt of the expected surplus of RM1.5m. This would allow TPPT to have first right of recourse on financing provided for the rehabilitation of the project. Ibid., p AQ 44, in file No KPKT/BL/19/1171-1.
(c) All the revenue surpluses, if any, from the sale revenues of the units would be utilized for settling the first overdraft loan of RM1.5m to BBMB. In the event there was also some surplus after deducting against the overdraft loan, then this surplus, if any, would be used to settle the interests accruing from the loan to BBMB. However, in the event, there was no surplus, the interests accrued thereof, would be waived by BBMB;

(d) The guarantors would be released once all the revenue surpluses had been received by BBMB;

(e) Following from the above, all sales revenues or the balances thereof to be collected from the purchasers were to be assigned to BBMB for the settlement of, firstly, the TPPT loan and, secondly, the outstanding overdraft. Notwithstanding this BBMB reserved the right to apportion the sales revenues towards the repayment of the TPPT loan and the outstanding overdraft in such manner as it deemed fit at its absolute discretion;

(f) The developer and the land proprietor should provide a Power of Attorney (PA) to AA (the financial consultant) for allowing them to carry out and manage the rehabilitation of the project;

(g) The mode of payment under this facility should be made quarterly cash flow. Any payment to the contractors should be made based on the architect certificate approved by the financial consultant and all payments should be supported by documentary proof. BBMB had all the rights to reject any claim for payment according to their opinion fit and appropriate;

(h) The end financiers should terminate all legal actions against the purchasers, write off all the interests accrued on the housing loan of the purchasers, reduce the interests rate, release the housing loans and reschedule the repayment of the housing loan granted to the purchasers;

(i) The end financiers should consider the process for expediting the payment and endorsement of the housing loan;

(j) The financial consultant with the borrowers should submit the monthly status and progress in respect of the rehabilitation of the project to TPPT and to the Bank throughout the course of the facility being granted;

(k) The related government departments and technical agencies — for example the land office and Majlis Perbandaran Pulau Pinang, should consider to expedite the approval of plans, specifications,
completion of facilities and the issuance of the Certificate of Fitness for Occupation (CF) and other related matters, including for waiver and exemption from any quit rent and assessment.

(i) On the other hand, MOH should also consider endorsing the waiver of liquidated and ascertained damages for the late delivery of the houses purchased;

(m) Other creditors also had to refrain from taking legal proceedings pending the completion of the rehabilitation;

(n) The repayment of the soft loan amounting to RM2.7m should be by way of redemption of the titles of the housing units.

BBMB also emphasized the need to have at least 80% of the purchasers of the houses comprised in the project who were entitled to liquidated and ascertained damages for late delivery of the houses purchased should have agreed to waive their claims for the same and not to offset such claim against the balance of the purchase price payable.

Further, the building contractors for the project, namely Royden (M) Sdn Bhd and Lincolite, shall agree to postpone any legal actions against the developer pending the completion of the rehabilitation of the project. In failure of the contractor to stay all legal actions, AA (PA holder) would invoke Order 30 of the High Court Rules 1980 to appoint a receiver for the project. The appointment was necessary to prevent the contractors and other creditors from instituting fresh legal action or executing any judgment obtained thereof which may jeopardise the rehabilitation efforts and the funds of the TPPT.

After the above matters had been duly met and settled, AA (PA holder) informed MOH that BBMB was in the process of completing the loan documents for further execution of the documents between the developer

93 Ibid, p AQ 45.
94 Ibid.
95 Ibid, p AQ 44.
96 See BBMB’s letter to the developer dated 2 October 1991 in file No KPKT/BL/19/1171-1.
97 Royden had obtained a judgment against the developer for the recovery of outstanding amount of RM42,569. Although the developer had indicated that Royden would not proceed with any execution proceedings, the execution of such actions which include winding up and garnishee orders remained imminent. Thus, it was imperative, according to AA, that the developer obtained a written consent from Royden and other contractors to keep all legal matters in abeyance during the rehabilitation on the approval of the TPPT loan. Ibid p AQ 41, in file No KPKT/BL/19/1171-1.
98 According to O 30 r 1 of the High Court Rules 1980, a receiver may be appointed, by application to the court through summons or motion.
99 See ibid n 20, p. AQ 48.
and TPPT. It was expected that the rehabilitation of the project would be commenced by December 1993, if no further problems occurred, under the supervision of AA (PA holder)\textsuperscript{101}.

According to the supervision report of MOH as at 15 October 1993, on the site project where 70 units of houses had been approved for erection, only 58 units of them had been sold\textsuperscript{102}. All these 70 units were being erected reaching the 90\% stage of completion\textsuperscript{103}. Meanwhile there were 7 units of shophouses which had been approved for erection and 6 units had been sold, which reached 90\% completion\textsuperscript{104}. As at 15 October 1993, there was not yet any delivery of vacant possession of the units, no supply of water and electricity nor had CF been issued by the local authority\textsuperscript{105}.

In the course of rehabilitation, MOH did sent several notices to AA (PA holder) as the project consultant requesting latest information regarding the progress of development of the project\textsuperscript{106}. However, AA (PA holder) only replied the notices on 2 November 1995 saying that the project had only been completed at the stage of 95\% as at 29 September 1995\textsuperscript{107}. Further on 3 April 1996, again MOH sent another notice to AA (PA holder) requesting them to give the same\textsuperscript{108}. Vide this notice too, MOH had emphasized the duties of the developer in pursuance of s 7 of the previous Act 118\textsuperscript{109}. AA (PA holder) also, had been reminded of s 10 of the Act 118 that MOH had the power to gain access to the latest information about the project\textsuperscript{10}. Failure to comply with this direction, would render them to a fine not less than RM10,000 or imprisonment for not less than three years or both\textsuperscript{111}. According to AA (PA holder), in response of this latest notice from MOH, as at 11 April 1996, CF for the project, had not yet obtained\textsuperscript{112}. The same position was also the case, as at 2 December 1996\textsuperscript{113}.

\textsuperscript{100} File No KPKT/BL/19/1171-1.
\textsuperscript{101} Ibid.
\textsuperscript{102} Ibid.
\textsuperscript{103} Ibid.
\textsuperscript{104} Ibid.
\textsuperscript{105} Ibid.
\textsuperscript{106} The notices sent by MOH to AA to give development progress report were notices 12 April 1995, 16 June 1995, 24 July 1995 and 18 September 1995, respectively. See file No KPKT/BL/19/1171-1.
\textsuperscript{107} See AA's letter to MOH dated 2 November 1995, in file No KPKT/BL/19/1171-1.
\textsuperscript{108} See MOH's letter to AA dated, 3 April 1996, in file No KPKT/BL/19/1171-1.
\textsuperscript{109} Ibid.
\textsuperscript{110} Ibid.
\textsuperscript{111} Ibid.
\textsuperscript{112} See AA's letter to MOH dated 11 April 1996, in file No KPKT/BL/19/1171-1.
\textsuperscript{113} See AA's letter to MOH dated 2 December 1996 in file No KPKT/BL/19/1171-1.
agreements until the delivery of vacant possession and occupation of the units, it took about 17 years for the purchasers to wait. It should also be noted that, during this 17 years, the purchasers might have to pay monthly installment to the end-financiers and had to rent houses\(^{121}\). These were the costs and sufferings that the purchasers had to bear.

Finally, the rehabilitation of the project was complete and the CF had been obtained\(^{122}\), informed by the developer through their letter dated 4 July 1997 to MOH, warranting the occupation of the housing units by the purchasers\(^ {123}\).

The CF was number A 4878 issued by the Majlis Perbandaran Pulau Pinang (local planning authority/local authority) for building plan No 24199 and No 34096 viz the proposed 1 block of 11 storey of low cost flat (70 units) and shop houses (7 units) on Lots No 300 and 302, Section 9W, NED, Jalan Perak, Penang for SNPPB\(^ {124}\).

In the course of the construction of the project under the supervision and control of AA (PA holder), MOH had faced problems as AA (PA holder) or the developer always failed to submit the progress report of the development of the rehabilitation in accordance with s 7(f) at the prescribed periods as stipulated by MOH. This could be seen through the request notices issued by MOH to them dated 12 April 1995, 16 June 1995, 24 July 1995, 18 September 1995 and 3 April 1996\(^ {125}\). These failures had caused problem to MOH to effectively monitor the rehabilitation of the project\(^ {126}\). There was no reason given by AA (PA holder) or the developer to justify their failures. Thus, it is not surprising that the project took much longer time to complete. Fortunately, the rehabilitation of the project had been completed in July 1997, after being abandoned since the middle of 1980s.

Legal Observations and Suggestions

Based on the scrutiny of the above case study, the developer (SNPPB) for the above project, before the project was under rehabilitation, had failed to submit any progress development report to MOH pursuant to s 7(f)\(^ {127}\) (duty to submit prescribed report of the housing development progress), failed to

\(^{121}\) Or they might have died, became bankrupt or had moved out from Penang due to retirement etc, it is submitted.

\(^{122}\) See AA’s letter to MOH dated 4 July 1997, in file No KPKT/BL/19/1171-1.

\(^{123}\) Ibid.

\(^{124}\) Developer’s letter to MOH dated 4 July 1997 in file No KPKT/BL/19/1171-1.

\(^{125}\) Ibid.

\(^{126}\) Ibid.

\(^{127}\) Pursuant to s 7(f) of the Housing Developers (Control & Licensing) Act 1966 (Act 118), the licensed housing developer shall not later than the 21 day of January and 21 day of July of each year, send a statement in prescribed form to the Housing Controller.
comply with s 7(d)\textsuperscript{128} (duty to appoint auditor), (e)\textsuperscript{129} (duty to submit report of auditor) and (g)\textsuperscript{130} (duty to inform the Housing Controller if unable to meet obligations to purchasers) to the Housing Developers (Control and Licensing) Act 1966\textsuperscript{131}.

Similarly, the duties as stipulated in s 7 of the Housing Developers (Control and Licensing) Act 1966 (Act 118) were not fully been complied with by AA (PA holder) or the developer, during the course of rehabilitation\textsuperscript{132}.

Likewise, no obligation was imposed by MOH, on the developer or their consultant for the rehabilitation, for opening the Housing Development Account (HDA) as required by s 7\textsuperscript{7} to Act 118\textsuperscript{133}. This might because of the

\textsuperscript{128} Pursuant to s 7(d) of the Housing Developers (Control & Licensing) Act 1966 (Act 118), every year the licensed housing developer shall appoint an auditor in accordance with s 9.

\textsuperscript{129} Pursuant to s 7(e) of the Housing Developers (Control & Licensing) Act 1966 (Act 118), ‘the licensed housing developer shall within six months after the close of the financial year of the licensed housing developer in question send to the controller and also publish in the gazette a copy of the report of the auditor ... with a copy of his balance-sheet and profit and loss account’.

\textsuperscript{130} Pursuant to s 7(g) of the Housing Developers (Control & Licensing) Act 1966 (Act 118), the licensed housing developer shall, where he considers that, he is likely to become unable to meet his obligations to the purchasers, forthwith inform the controller of such fact.

\textsuperscript{131} See ibid n 18 p 37.

The Housing Developers Act (Control and Licensing) Act 1966 (Act 118) (‘the previous Act’) is now known as the Housing Development (Control and Licensing) Act 1966 (‘the current Act’). The current act is the latest act which controls and regulates the housing industry in West Malaysia. In summary, currently the applicable legislations and rules on the housing industry in West Malaysia, controlling the housing industry are:

(a) Housing Development (Control and Licensing) Act 1966 — the parent Act;

(b) Housing Developers (Control and Licensing) (Housing Development Account) Regulations 1991 — the regulation on the application and maintenance of the developer’s accounts;

(c) Housing Development (Tribunal for Homebuyer Claims) Regulations 2002 — the regulations governing the tribunal to hear claims from buyers against the developers;

(d) Housing Development (Control and Licensing) Regulations 1989 — concerned with the application for licenses and sale and advertisement permits; and

(e) Housing Development (Compounding of Offences) Regulation 2002 — the regulations which give the power to the enforcement officers of the MOH to compound certain offences committed by the developers.

\textsuperscript{132} See ibid n 18 p 37.

\textsuperscript{133} Ibid, p 106. Section 7\textsuperscript{7A} requires all licensed housing developers to open and maintain HDA with a bank or finance company for every housing development carried out by the said licensed housing developer, subject to further provisions as stipulated in Housing Developers (Housing Development Account) 1991.
enforcement of this section was effectual from 26 August 1991, whereas the developer in this case had obtained licence and advertisement and sale permit before this date, thus warranting the exemption from this obligation. However, after the enforcement of this statutory obligation, the developer's licence had been renewed and reapproved with new licence by MOH, but none of the grant ever required the developers or the consultant to comply with the obligations as imposed by s 7A.

It is suggested that this should not be so. The purpose of s 7A is to protect the funds of the purchasers. The applications of the moneys in the HDA, pursuant to s 7A are further subject to the provisions in Housing Development (Housing Development Account) Regulations 1991. This would mean, even though there is agreement and purported consent judgment of all parties in the housing development such as the purchasers, contractors, creditors, suppliers etc, to the effect of circumventing the duty to open and maintain as well as to ensure that all moneys received from the purchasers are channelled into this account remains enforceable and cannot be absolved of. This statutory duty shall also be observed even though the developer's licence has expired. This is the law in Honour Properties Sdn Bhd & Anor v Duniaga Sdn Bhd [2002] 7 MLJ 203. Thus, any arrangement (such as in the above case study) or agreement or purported consent judgment which are in contravention of this statutory duty is regarded, it is submitted, as invalid, null and void, as well as contravening s 7A and punishable, on conviction, with a fine not exceeding RM5,000 or to imprisonment for a term not exceeding three years or to both, under reg 12C of the Housing Development (Housing Development Account) Regulations 1991.

In respect of s 9 (Appointment of Auditor), generally this section had been complied with by the developer. Nevertheless, there was no appointment

134 Ibid.
135 On 20 February 1995 and 27 November 1995, MOH had approved new licence to the developer. However, there was no condition requiring them to open the housing development account. See file No KPKT/BL/19/1171-1.
136 Ibid.
137 Section 9(1) specifically provides for the appointment of auditors. Accordingly, the appointment shall be made every year or as the needs arise and this appointment has to be approved by the minister. If the developer fails to appoint any auditor, the existing auditor resigns or the appointment has been terminated, the minister may appoint any person according to his opinion suitable and fit to act as the auditor to the developer and fix the remuneration of the auditor so appointed in which the remuneration shall be paid by the said defaulting developer (s 9(1)).
138 See also in ibid, n 18, p 111.
of auditor for year 1987, 1988, 1990 and 1991, failure to submit the audit reports, balance sheets and profit and loss accounts for year 1987, 1988, 1989, 1990 and 1991 and failed to publish in the Government Gazette in respect of the same. This might because of the developer had no licence from 15 May 1989 until 5 March, 1990 and they did not carry out and resume any housing construction of the site of the project during this period, because of the financial problems and economic recession. In the meanwhile, there was no information regarding the appointment of auditors and the publications of the above matters in the gazette for years before 1987 and after 1991. Sadly also, the consultant appointed by TPPT to carry out the rehabilitation — AA (PA holder), did not fully comply with this s 9.

As regards the duty to investigate the issues and problems occurring in this abandoned project in accordance with s 10 of Act 118, by the Housing Controller and the Housing Inspector, there was evident in the above abandoned housing project, they had requested the relevant documents be forwarded, either by the developer or the consultant (AA), pursuant to s 7 and helping out the purchasers and other related parties to rehabilitate the project. The requests included the appointment of auditor, submission of audited reports, balance sheets, profit and loss accounts, publication in the gazette of these particulars and the request for the submission of progress development report in pursuance of s 7(f). Nevertheless, despite the existence of this enabling provision, the power to investigate was not capable of avoiding the project becoming abandoned. In the result, the completion of the project was delayed, the project was in need of additional costs to complete, causing subtle circumvention of the legal and statutory provisions and other problems arose to the detriment of the purchasers and their legal and statutory rights.

139 Ibid.
140 Ibid.
141 Ibid, p 106.
142 See also in ibid, p 111.
143 To further confer more powers, and to ensure the adherence to Act 118 and full compliance by the licensed housing developers and comprehensive enforcement of Act 118, on the Controller or an Inspector either on his own volition or on being directed by the minister under s 10(2), may from time to time under conditions of secrecy, investigate the commission of any offence under Act 118 or investigate into the affairs of or into the accounting or other records of any housing developer (s 10(1)). On part of the minister, he may also direct the controller or an inspector to make investigation under s 10(1)(a) 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 liabilities or is contravening any of the provisions of Act 118; ... (s 10(2)(a)).
144 See in ibid, n 18, p 115.
145 Ibid.
Further, based on the case study, it is also found that the Minister of the Housing and Local Government (the Minister) failed to carry out his statutory obligations effectively in pursuance of s 11 (powers of the minister to give directions for the purpose of safeguarding the interests of purchasers) and 12 (Powers of the minister to give general directions) of Act 118. The effective and pro-active implementation of his powers and duties as provided in these sections is imperative to secure and protect the rights of the parties.

The Housing Controller also must strictly carry out the provision of Act 118 especially inflicting punishment on the defaulting developer. In the above case study, it was evident, none of the provided punishments had been meted out to the defaulting developer. These can be seen on the failures of the Housing Controller and the Minister to invoke and apply ss 10, 11, 12, 13 (revocation and suspension of licence), 19 (offences by licensed housing developer), 21 (penalty for offences not otherwise provided for) and 24 (powers to make regulations) of Act 118. In the result, the developer got off scot free — without any punishment being meted out to them and they need not pay any liquidated damages to purchasers, yet received benefits from the project. Thus, there are legal lacunae, when housing project abandoned and later was rehabilitated, as illustrated in the above case study.

There is an issue which the author would like to raise. It is about the rejection of BBMB to approve additional loans to finance the project. This was also one of the reasons why the developer had abandoned the project due to their financial incapability to meet the development costs and expenditures. However, through the same means, the project was finally rehabilitated, ie after the injection of soft loan by TPPT subject to the conditions as prescribed above. It was indeed the right of the bank to reject...
the application, as this fell under their absolute discretion, based on their own financial and business viewpoints. But what had become the issue, was the policy of the bank which was too strict, inequitable and unreasonable which not only to the detriment of the developer but also to the purchasers. The author wonders whether the financing of the construction and housing development should also be statutorily regulated to cover the problem as faced by the developer in this case study and to hinder any abuse and misuse of the banker’s power of bargaining. For example, when the bankers and financiers withhold the progress releases unilaterally and arbitrarily of the bridging loans provided for the funding of the construction of the housing projects undertaken by the developers, as illustrated in Bank Bumiputra Malaysia Bhd Kuala Trengganu v Mae Perkayuan Sdn Bhd & Anor [1993] MLJU 592. In this situation, the developers could be left in the lurch of no financial assistance to proceed with the subsequent development stage. This could also result in the abandonment of the housing projects. Normally, the financiers could have done this as the developers failed to satisfy their requirements for example, failure on part of the developers to ensure getting sufficient purchasers signing the sale and purchase agreements. In other situations, the lender may put condition that the release of the bridging loan would be in stages or there would be sub-limit for the release, ie the loan would not be fully released. Once there has been a sublimit release to the borrower developer, the borrower developer has to regularize the account, failing which, the balance loan would not be further released to the borrower developer. However, it is submitted that, the financiers should not be stringent in this situation, as it may take some time for the developers to get enough potential purchasers and to regularize the account, especially so in the current state of sluggish national economy. It is also suggested that in such situation, the aggrieved developers could also seek assistance from Bank Negara to settle this problem. However in Ladang Sri Dalima Sdn Bhd & Ors v Malaysian Banking Bhd [2002] MLJU 438, the court held that, the borrower was at fault for not regularizing the account before further utilization was in order and should not be considered as a suspension of the facilities. In this case, there was an agreement in the letter of offer that the loan approved to the plaintiff borrower was RM3 million. However, the loan would not be released fully but by stages or there were sublimits of the release subject to the regularization of the account by the plaintiff borrower. In this case, there had been a first release, approximately of 0.5 million. However, the plaintiff borrower failed to regularize the account causing the defendant lender to stop releasing the balance loan unreleased. The judge decided that the defendant lender had the right to stop the further releases as the plaintiff borrower failed to regularize the account. See also in the case of Lim Chee Holdings Sdn Bhd v RHB Bank Bhd (formerly known as Kwong Yik Bank Bhd) [2005] 6 MLJ 497. However compare with Bench Win Sdn Bhd v Eon Bank Bhd [2003] MLJU 472, where the bank was unreasonably and negligently and in breach of the contract (to facilitate the due development of the project of the plaintiff developer), delayed the issuance of the required...
consent for the surrender some portion of the charged land to the Local Authority (Majlis Perbandaran Pulau Pinang) resulting in the layout and building plan approval of the intended project lapsed and that the project could not be took off and thus no sales could be made. In consequence also, the plaintiff developer could not service and regularize the debts and loan repayment to the bank and other creditors, on which due to this default, the plaintiff developer had had also to face several legal actions and incurred legal costs to defend the same as well as to pay late deliveries' damages to the purchasers. It is submitted, the problem lies on the fact that there is no effective body or rule of law which could govern and control the process and procedure involving financing housing development project by the banks. In fact all the terms and bargain involving the loan are totally dependent on the freedom of contract and business motives and objectives. Query: Should we have statutory laws and regulations governing this aspect of property development financing and loan documentations as well, to avoid this catastrophe?

Thus, it is submitted, based on the above case study, the abandonment had caused the ordinary machinery and enforcement of the housing and development laws as enshrined in Act 118, in particular, became defunct, frustrated and jammed. This situation occurred because of the requests from the consultant (AA) that the purchasers should not claim any late delivery of vacant possession, the contractors to withhold any legal actions or to nullify them, setting aside any interest and penalty charges imposed by the banker and financiers, exemption from any obligations imposed by the local authority and land authority in respect of obligations under the Town and Country Planning Act 1976, Street, Drainage and Building Act 1974, Uniform Building By-Laws 1984 etc, blatant disregard by the consultant towards the obligations imposed by Act 118 and no sanction imposed or punishment meted out to the defaulting parties (including the developer and AA) by MOH etc as mentioned above. The relevant sections in Act 118, which MOH did not invoke, in this respect, are ss 13 (revocation and suspension of licence), 18 (punishments for the failure to obtain housing development licence), 19 (punishments for contravening ss 7, 8, 10, 11 and 12), 20 (punishments for contravening s 15), 21 (punishments for other offences not specifically provided), 22 (strict liability punishment meted out to directors, managers or other officers) and s 24 (powers of the Minister to make regulations for the purpose of implementing the provision in Act 118) of Act 118.

153 Query: Whether the obligations imposed by these statutes could be absolved from?
154 This might be due to the silent or implied support by MOH itself, it is submitted. See file No KPKT/BL/19/1171-1.
155 Pursuant to the above case study, the housing licence of the developer had not been suspended or invalidated by the controller which, it is submitted, should have been made, due to their default.
These requests made by AA for the above parties not to accordingly act, were for the purpose of facilitating the due and smooth execution of the rehabilitation scheme. Query: do we need certain regulations to govern, control and monitor the rehabilitation, to protect the rights of all related parties or leaving it to the absolute discretion of the rehabilitating parties? What is of paramount importance, it is submitted, in abandoned housing project, the housing units are fully completed with the CF, the purchasers could occupy the units and the financiers and bankers as well as the consultants and the contractors obtain their part of the bargain. The law and regulations governing it, if it were to be provided and imposed, could frustrate these objectives and complicate the scheme, it is submitted.

Logically, in the opinion of the author, we must have such a regulation, for otherwise irreparable damages, injuries and losses could have occasioned by or suffered by the related parties. There must be a special legal mechanism to control and govern this, protecting the rights of all parties.

From the case study also, it revealed that the reason which had contributed to the abandonment of the project was the financial problems faced by the developer. In particular, these financial problems was due to the economic recession encountered by the nation, resulting in the poor market demands and strict banking control over the housing loans’ applications. Due to this, the developer had faced severe liquidity problems leading to the failure to pay the contractors’ fees and other creditors. Following this, it is suggested that the developer must have financial sufficient means and sound management and valuation before commencing any housing development project. On part of the Housing Controller, he has to check, verify and be satisfied with the financial positions and records of the applicant developer in considering the application for licence.

On part of the Housing Controller, he must exercise utmost care before approving the licence. He may have to seek advices from various experts for example the economists, property experts, legal experts and banking experts before approving any application. The issuance of the number of licences must be made only upon consideration of these experts’ reports and studies. In other words, there must be specific development plans and policies taking into account of the conditions of the national economy, property market demands, demography and socio-geography of the nation. In undertaking this task, MOH have to cooperate with the local authoritites, Economics Planning Unit, Bank Negara, Ministry of Land and Cooperative Development,

156 It is evident, if any applicant developers do have three bad financial signs – losses, negative profitability ratios and high gearing ratios in their business, before they applied for licences, the housing development they would carry out would certainly abandoned. See Nuarrual Hilal Md. Dahlan, *Sections 5 and 6 of the Housing Development (Control and Licensing) Act 1966: An Over View*, Unpublished Research Report, School of Management, Universiti Utara Malaysia, 2003, pp 57, 58.
Land Authorities, Property Authorities, National Physical Council, State Planning Committee and Regional Planning Committee, it is submitted.

Further, the approval of licences must be made in quota, commensurates with the economic and property conditions, issued and recommended by these experts, to avoid any impending and possible abandoned housing projects problems which are prejudicial and detrimental to the purchasers, the stakeholders and the nation.

In respect of the rehabilitation, before any abandoned project is to rehabilitated, it is submitted, as evidenced in the above case study, certain viability and feasibility study needs to be carried out for the purpose of disclosing the problems and providing their solutions and for calculating the costs and expenditures needed for the restoration. Other relevant matters

157 There are cases where after viability and feasibility studies had been undertaken, the projects were found not to be viable for rehabilitation. The projects which fell under this category are Taman Desa Surada, Kajang, Selangor (file No KPKT/08/824/3579), Kondominium Esplanade, Klebang, Melaka (file No KPKT/08/824/5976-1), Taman Perdana Muar, Mukim Serong, Muar, Johor (file No KPKT/08/824/6698-1), Taman Perwira Jerantut, Fasa II, Jerantut, Pahang (file No KPKT/08/824/3947-5), Taman Pinggir Rishah Hijau, Ipoh, Perak (file No KPKT/08/824/5737-1), Taman Desa Ria, Senawang, Negeri Sembilan (file No KPKT/08/824/3040/E) and Taman Desa Aman Bukit Mengkabang, Kelantan (file No KPKT/08/825/3229-1). These projects are later categorised 'not suitable for rehabilitation' by MOH. Thus, the purchasers are the aggrieved and injured parties. The housing projects which are labelled as this status, are due to the following factors:

(i) There are no or less purchasers interested to buy the houses;

(ii) Works on the sites of the projects have not been commenced or are still at the stage of soil works because of the hard rocks, granites and soils' problems;

(iii) The original developers have been wound up and the project financiers have auctioned off the projects or sold off the projects to other parties. If the projects have been taken over by other new developers and the construction of the projects are resumed by them, then the projects so undertaken are considered to be new projects and no more under the previous defaulting developers' control and will not be considered abandoned housing projects. This also means, new Sale and Purchase agreements will have to be executed between the purchasers and the new developers;

(iv) The application to TPPT of Bank Negara has been rejected as the project is not viable for rehabilitation. This is because, according to the TPPT, if the purported rehabilitation were still to be proceeded with, it would, otherwise, cause substantial losses and adverse financial effects on the rehabilitating parties.

(v) The developer has run away and absconded and the existing purchasers are not interested and unwilling to rehabilitate the projects so abandoned.

(vi) Interested parties such as the landlords, developers, bridging loan bankers and purchasers are unwilling to compromise. They prefer to resort to legal action to settle the problems faced.

justice. However in Yong Yit Swee & Ors v Sri Inai (Pulan Pinang) Sdn Bhd & Anor [2003] 1 MLJ 290, in the Session Court, Ho Mooi Ching J opined that, this s 95(2) of the Street, Drainage and Building Act 1974, is in relation to ‘works carried out in accordance with the provisions of the Street, Drainage and Building Act 1974 or any by-laws made thereunder’. In this case, as no works were carried out in respect of this case nor any plans submitted, the section is not applicable. In other words, the local authority should be liable for any breach of duty or omission or negligence in failure to carry out and implement the provisions as required by this act. See also Sri Inai (Pulan Pinang) Sdn Bhd & Anor v Yong Yit Swee & Ors [2003] 1 MLT 293.

It is submitted that, in abandoned housing project, the aggrieved and injured parties may invoke the above cases to sue the local authority and local planning authority in the event there is proof and evidence showing that the catastrophe of the abandonment was due to the negligence and breach of the statutory duty on part of the local authority and local planning authority to comply with the UBBL 1984 (Act 133), Street, Drainage and Building Act 1974 (Act 133), Local Government Act 1976 (Act 171) and the Town, and Country Planning Act 1976 (Act 172). Similarly, it is submitted, this contention would be applicable in respect of the negligence and breach of statutory duties on part of MOH and the technical agencies (Public Works Department (JKR), Department of Sewerage Services, Department of Health, Department of Canal and Irrigation (JPS), TNB, TM Bhd etc).

It is in the opinion of the author that, MOH and the local authorities should commence prosecutions against the defaulting developer or consultant on their failure to comply with the housing, planning and development laws (Housing Development (Control and Licensing) Act 1966 (Act 118), Street, Drainage and Building Act 1974 (Act 133), Uniform Building By-Laws 1984 (Act 133), Town and Country Planning Act 1976 (Act 172) and Local Government Act 1976 (Act 171)).

It is further suggested that MOH should utilize the deposit amounts payable by the developers. These deposits could be used for paying the damages and losses suffered by the purchasers and serving as top-up-fund for rehabilitation purposes. The amount of deposits which are payable, shall also be commensurate with the number of units to be erected158.

MOH or the government also should establish an Housing Trust or Rehabilitating Agency (in the above case study, there was TPPT, but now it had been abolished) where the developers have to pay certain fee into it, every year. With the establishment of this trust or rehabilitating agency, there would

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158 See the new s 6(a)(b) of Act 118, which provides — ‘If the applicant developer is a company, it shall have a capital issued and paid up in cash of not less than RM250,000 and makes a deposit with the controller of not less than RM200,000 cash or in such other form as the minister may determine’ (s 6(a)). Further, ‘If the applicant developer is a person or a body of persons, he/it shall make a deposit with the controller of not less than RM 200,000 in cash or in such other form as the minister may determine’(s 6(b))
where, the developers had delayed the construction. This phenomenon, may be due to their mismanagement, siphoning of funds and other *mala fide* hidden agendas to the detriment of the purchasers’ interests. However, as there is no legal definition of abandoned housing projects, (although the MOF, inter alia, states that, if there is no construction activity within six or more months, the project would be considered abandoned) yet, the developers concerned, may rebut that, as the time period for them to complete the houses is still available and outstanding, ie the period of 24 or 36 months are still remaining, MOH shall not have any legal standing or *locus* to take any action or interfere with their business. Let alone to declare the projects abandoned. Further more, they may emphasize that, even if they could not complete the construction within the statutory period, MOH has no legal right to take action against them, as they have agreed and undertook to pay the statutory damages for late deliveries of vacant possession to the purchasers^{162}. This is the legal predicament. The associating effects arising from this legal problem is that, it would cause difficulties for MOH or rehabilitating agencies to take over or go into the project for revival soonest possible to avoid further problems, unless this problem has been admitted by the developers concerned and they surrendered the projects to MOH to resume the construction^{163}. The problem may also postulate further ‘headache’ in that, dispute and tussle may ensue between purchasers, local authorities, end financiers and the developers concerned^{164}. This dispute could to a certain extent, lead to litigation^{165}. If this were to happen, this would certainly prolong the plan for rehabilitation to an indefinite period of time. Yet the rehabilitation of the project remains stalled. Due to the long delay, to rehabilitate, the materials and physical states of the uncompleted building could have been damaged, becomes unsuitable for human habitation/occupation and the increasing costs and expenses needed to repair and replace them will increase^{166}.

Further, by having this official, statutory and legal definition, the rehabilitation of the abandoned projects could be expedited and this would facilitate the due completion of the project without more ado. It follows that once certain project is officially, statutorily and legally defined as an ‘abandoned project’,

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162 Interview with Mr. Tomadan Johari, Deputy Secretary General (Development), MOH, Pusat Bandar Damansara, on 22 December 2005. See also ibid n 18 pp 20–22.
163 See for example Taman Han Chieng, Lot 2343, PB6, NED, Penang (Lam Chew Development Sdn. Bhd), file No 340/D/(547)/E and KPKT/BL/19/547-2.
164 For example Taman Showkat, Lot 2219, Mukim 13, NED, Penang (Showkat Industry & Realty Sdn. Bhd). See file No KPKT/08/824/337 Jil II.
165 Ibid.
166 See for example Taman Yew Lean, Lot Number 664, Section 2, NED, Penang (Yew Lean Development Sdn Bhd). File No KPKT/08/824/365.
the official receiver, it means that the company has been wound up. The official receiver shall then onward, take over the management of the company and settle the debts owed to the creditors. It should be noted that, the process of winding up can take considerable times to be fruitful. It involves a lot of substantive and procedural laws. These range from the moment the company receives the petition for winding up until the order of winding up be issued by the Court. In between there are lots of applications involving diverse legal issues. So, from the moment the company receives the petition until the order of winding up can be issued, the final outcome may take years. The duration may be much longer, in case there are a lot of applications to set aside the orders issued and applications made by the defaulting developers, solely for the purpose of 'biding times' and the possibilities of tampering with and hiding evidences. In the meanwhile, the purchasers are suffering a lot of troubles including, they cannot occupy the houses so purchased and have to pay monthly installment to their respective financiers with the possibilities of being made bankrupt by their financiers, plus with the 'headaches' caused by the cunning and sneaky defaulting developers who intentionally do so with the purpose of misleading and confusing the purchasers. It is more prudent, in this problematic situation, it is submitted, once the developer companies have received the petition, MOH and the purchasers shall have the pre-emptive power to take over the projects for rehabilitating them as soon as possible.

In furtherance thereof, the provisions in Schedule G and H being the standard formatted statutory contract of sale and purchase, the bridging/construction loan agreements and the end financing agreements should be added with supplementary clauses. The suggested clauses includes the provision of the powers to MOH and the purchasers to take over the project for the purpose of safeguarding the interests of the purchasers, once an housing project falls under the category of abandoned housing project, and hand over the project so abandoned to the rehabilitating parties. With this approach, the agreements would be more comprehensive and giving rights to purchasers and MOH to act expeditiously for saving the project from being stalled indefinitely.

It is submitted that, in the management of the rehabilitation of abandoned housing projects, there are certain outset important matters which the rehabilitating parties have to observe and carried out. Among these matters, which the above case study revealed, were:

1. to call on the purchasers, the defaulting developer, MOH, local authorities and the bankers and financiers for a meeting informing the problem faced in the project and for the discussion to rehabilitate the project including the appointment of the project manager or caretaker to streamline the process of rehabilitation;

2. To initiate for the carrying out of certain viability and feasibility study over the project to facilitate the management of its rehabilitation. This study would involve the services of accountants, quantity surveyors and
architect. Through this study, the rehabilitation costs, construction planning, information from banks, financiers, purchasers, local authorities, technical agencies and MOH could be gathered, mobilized and streamlined for the due and smooth execution of the

168 The rehabilitating parties must contact all the lenders, bankers and creditors of the defaulting developer, the collateral and securities provided and the updated debts owed. These matters must be fully disclosed for the purpose of settling the defaulting developer's debts and problems, as far as it is equitable and fair, for the smooth running of the rehabilitation.

169 The rehabilitating parties must liaise with the end-financiers of the purchasers. This is to ascertain the balance loan unreleased, any legal action taken or still pending, debts owed and other relevant matters.

170 Such as their addresses for further communications, their consensus for the rehabilitation, the collection of copies of sale and purchase agreements and other relevant documents received by the purchasers, and cooperation. Certain difficulties may be encountered by the rehabilitating parties such as the recalcitrant purchasers, the unknown whereabouts of the purchasers, the deceased purchasers (in this situation, the rehabilitating parties have to appoint the personal representatives of the deceased) and the bankrupt purchasers (who refused to pay the loan to the financiers, on the ground that they could not get the houses). Among the solutions would be, to get their cooperation, to revoke their Sale and Purchase Agreements in case they refused to resume the purchase, appointing their personal representatives for the deceased purchasers and liaising with the Insolvency Department to sell the houses for the bankrupt purchasers. It should be borne in mind that to settle these problems, the rehabilitating parties would take certain duration of times and incur costs.

171 Among the matters relating to local authorities are about the planning permission, building plan approval, permits to execute erection works, the issuance of CF, earthwork and other conditions which are requested by the local authority for the purpose of rehabilitating the project. Similarly, the rehabilitating parties would take certain duration of times and incur costs in getting the requisite endorsement and permission from the local authority.

172 The rehabilitating parties must liaise with the technical agencies such as TNB, TM Bhd, Department of Sewerage Service, Department of Public Works etc, for the purpose of getting their certifications and supports for the issuance of CF etc. Similarly, if there are problems, and to settle them, the rehabilitating parties would take certain duration of times and incur costs.

173 In respect of MOH, the rehabilitating parties have to ascertain and inquire into the development licence and permit to sell and advertise, the conditions imposed on the previous defaulting developers and the complaints received by MOH in respect of the problems to the abandoned housing. The rehabilitating parties must also enquire whether there are any pending legal actions commenced by the aggrieved purchasers or other stakeholders. This information can be obtained by conducting inquiry to legal firms, banks, courts and Tribunal of Home Buyers. This would also take some time to complete, if there exist any. Similarly, to settle any problems arising from inquiry made, if any, the rehabilitating parties may incur costs.
rehabilitation. Further, inherent and potential problems could be at the earliest stage be identified and settled. Thus, this would help the rehabilitating parties to carry out the rehabilitation successfully.

(3) Thirdly, based on the above viability and feasibility study undertaken, certain problems and suggestions could be identified. For example, if the available fund in the end-financiers and in the hand of the defaulting developer, are not enough, the next step is to confirm from which source could the rehabilitation be funded. The sources may be from the purchasers themselves agreeable to top-up the existing fund by their own moneys or from other funders or from their end-financier to increase the loans and for additional fundings or from other sources such as TPPT soft loan. Other problems and matters relating to land authorities, technical agencies, local authorities, MOH, bankers, financiers etc must too be settled and finalized.

(4) Only if all the above matters have been fully complied with, could then the rehabilitation be carried out, by appointing consultants (engineer, architect, quantity surveyor, property manager etc) and contractors to carry on the development until completion and CF could be obtained.

In the case study, it was clear that, there was no agreement executed between the rehabilitating parties and the purchasers. This might because of the same developer was still resuming the construction but the only diffence, under the rehabilitation scheme, the activities and development of the project was under the supervision of AA. Thus, the original provisions in the sale and purchase agreements were still applicable. It is suggested special supplementary agreement and statutory provisions meant for rehabilitation of abandoned housing project should be statutorily provided in Act 118, and executed after it has been approved by the Housing Controller. It is submitted, the agreement should define the rights and liabilities of the parties involved. This is also to avoid any misuse and abuse of power by certain parties to the detriment of the stakeholders in the rehabilitation scheme.

It is also suggested that the suggested special supplementary agreement and statutory provisions meant for rehabilitation of abandoned housing project, there must be terms, conditions and rules governing the rehabilitating parties, the stakeholders and the purchasers before they venture into the

174 See for example in Bayshore Apartment, Lot 3979, Tanjong Bungah, NED, Penang. See file No KPKT/(05)/1910-1 and KPKT/(05)/1910-2.
175 Such as happened in Taman Padang Tembak, Lot 688, TS 2, Mukim 16, NED, Penang. See file No KPKT/08/824/2605.
176 In this situation, new supplemental loan agreements have to be executed between the end-financier and the purchasers.
177 Such as happened in the case study of this writing.
rehabilitation, during and after its course. The terms and conditions should be to protect the interests of the parties. The provisions must include the above four matters and the execution of special supplementary agreement meant for rehabilitation. Other provisions should include the duty to observe the defect liability period, damages for late delivery of vacant possession, duties to procure CFs and property free from encumbrances before the purchaser takes vacant possession of the building, time for delivery of vacant possession, the manner of delivery of vacant possession, materials and workmanship to conform to description, right of the purchaser to take legal action and other terms as that commonly stipulated in Schedule G and H as far as they are expedient, reasonable and necessary in the rehabilitation scheme. For instance, the Controller could prescribe two years duration of time for the rehabilitation of the project. This is because there is evident that certain rehabilitations had taken much longer time than expected to complete, as in the above case study revealed, which took three and a half years to complete. However, it could be argued that, prescribing the time limit to complete the rehabilitation may not be practical and expedient, as there might be other unforeseen problems and complexities which could affect the smooth running of the rehabilitation, such as the poor market demands and genuine interested purchasers, problems of getting housing loans from banks, new conditions imposed by the local authorities and the technical agencies, problems with the Insolvency Department and with the end-financiers etc. In this situation, let the time limit be flexible, allowing the rehabilitation be carried out smoothly. What is important the rehabilitation is fully succeeded. In the opinion of the author however, there must be time limit, conditions, legal and statutory control, protection and remedies, over the rehabilitation undertaken, to avoid any misuse and abuse of power and to protect the right of the stakeholders.

There are provisions and terms in regard to the progress of development stages and progressive stages payment will follow after completion of certain stage or portion of the development. To augment and strengthen the law, it is suggested that, this procedure should also be improvised in respect of the agreement for rehabilitation, for example, the new rehabilitating developer could only get progressive stages payment equivalent to 10% progress of development only if they managed to complete the 30% progress of development, payment for 30% progress of development after they had completed the 50% progress of development and so on. These stages of the development completion shall also be verified by architects and engineers of the purchasers, bankers and Housing Controller, not just that sanctioned by the architects and engineers of the rehabilitating developers. This is to ensure credibility, reliability, validity and veracity of the claims, from being manipulated dishonestly or

178 This might be due, it is submitted, to the poor market demand and during that three and a half years the developer and the consultant had to find purchasers.
defrauded by the rehabilitating developers and their professional aides and consultants at the expense of the purchasers, and above all to ensure that the interests (their physical houses and loan funds) of the purchasers are fully protected all the time. This ‘lien’ based method of progressive stages payment, is thought can be introduced, to avoid and hinder the new rehabilitating developer from abandoning again the project and run away. Alternatively, in case, this new rehabilitating developer, calculated or otherwise, terminated the construction of the project, at least duly completed portions of the intended progress of development, as stipulated in the standard format of the sale and purchase agreement, have been achieved and yet the outstanding purchasers’ funds available in the hands of end-financiers are still preserved.

The rehabilitating parties shall also, it is submitted, be subjected to the ordinary development and planning laws (Town and Country Planning Act 1976 (Act 172) (TCPA 1976), Uniform Building By-Laws 1984 (Act 133)(UBBL 1984) and the respective States’ Rules of Planning Control) as ordinary developers do. These laws include:

1. to confirm that the previous planning permission is still applicable and enforceable as there may be circumstances where the local authority could have revoked or modified the previous permission in the interest of the public, pursuant to s 25(1) of the TCPA 1976. If the permission is revoked or modified, then the rehabilitating parties have to apply afresh and they have to observe, inter alia, ss 18 (use of land and buildings), 19 (prohibition of development without planning permission), 20 (prohibition of development contrary to planning permission), 21 (application for planning permission) and 22 (treatment of application) of the TCPA 1976.

2. Similarly, the above may be applicable in respect of the approval of building plan previously been given. Among the provisions in this respect include, ss 70 (notice of new buildings), 70A (earthwork), 70B (order to review safety and stability in the course of erection of building), 70D (right of the local authority to inspect the erection of building at any stage and taking into sample for analysis), 72 (right of the local authority to demolish or remove of unauthorized building), 75 (land to be set apart for back-lane), 83 (hoardings to be set up during the building operations), 84 (power of the local authority to shut up and secure deserted buildings) and s 89 (power of the local authority to order for demolition of house unfit for habitation), of the Street, Drainage and Building Act 1974 (Act 133) (‘SDBA’). In respect of the provisions in the UBBL 1984, certain by-laws have to be complied with and observed by the rehabilitating party, namely — by-laws 3 (submission of plans for approval), 13 (special permission to commence building operations), 18(1) (permits for erection of any fence), 19 (temporary permits for erection of hoarding, shed, depositing of building materials, erection of scaffolding,
staging, framework, platform or superstructure), 20 (permit to erect advertisement boarding), 21 (materials not to be deposited in a street without permission), 22 (notice of commencement or resumption of building operations), 23 (notice of completion of setting out) 24 (notice of completion of excavation for foundation), 25 (Certificate of Fitness for Occupation), 26 (temporary CF), and by-law 27 (partial CF).

(3) The rehabilitating parties must also comply with the provisions provided in the respective States’ Rules of Planning Control, which prescribes the details procedure for the application of planning permission, forms and fees. For example in the Kedah Rules of Planning Control (General) 1995, the relevant provisions are r 3 (application for planning permission) read together with the Second Schedule, 4 (application to extend planning permission) read together with the First Schedule, 5 (prescribed fees) read together with the Third Schedule, 8 (notice to the adjoining land owners) read together with the Fourth Schedule and r 10 (application form for planning permission), etc.

Similarly, they too may have to apply for renewal or fresh licenses and permits for advertisement and sale from MOH subject to the provision of the Housing Development (Control and Licensing) Act 1966 and the regulations made thereunder.

It is submitted that, the above legal suggestions would able to achieve at least the following objectives:

(1) To avoid any problems and disputes which may arise from and caused by the recalcitrant purchasers, contractors, end-financiers, banks, local authorities, local planning authorities, state authorities, etc;

(2) to ensure the legality of the rehabilitation projects and protect the rights and interests of parties involved. Failure to comply with the above statutory provisions would subject the perpetrators with prosecution and civil actions by the local authorities and any aggrieved stakeholders.

(3) Will expedite the rehabilitation of the projects within a specified and definite time period. Otherwise, without a systematic and concrete rehabilitation plans and law which can control it, the rehabilitation will be delayed and in worst situations, the rehabilitation could not be commenced;

(4) The purchasers will be able to get the houses and their rights will be protected as these are provided and guaranteed by the rehabilitation statutory regime provisions. Further, the rehabilitating developers and its rehabilitation developments are subject to the close scrutiny of

179 In Kedah Darul Aman, this is known as Kedah Rules of Planning Control (General) 1995 and in Selangor, the Planning Control (General) (Selangor) Rules 2001.
MOH. It should be borne in mind that, the failure to have such a pre-
emptive and pro-active rehabilitation statutory regime, various troubles
could occur;

(5) To avoid any abuse and misuse of duty, power, and authority, when the
project is undergoing the process of rehabilitation, caused by consultants,
contractors, receiver, managers and liquidators. The rampant abuse and
misuse of duty, power and authority by these irresponsible parties, has
become the current typical phenomena in the rehabilitation of abandoned
housing projects in Peninsular Malaysia, much to the dismay and detriment
of the purchasers;

(6) To avoid any unwarranted and unnecessary disturbing actions such as
legal actions commenced by dissatisfied parties. Without any such
disturbing actions, it would certainly help the new rehabilitating developers
or the previous defaulting developers in case they are agreeable and fit
to resume the project, to smoothly carry out the rehabilitation; and,

(7) To avoid any abandoned housing projects from being stalled for indefinite
period of time, without any positive and prospective rehabilitation
plans and development.

Conclusion

The rescue scheme offered by TPPT with minimum interests and flexible
conditions, cooperation between the developer, the contractors, the bankers,
the consultants, the local government and other technical agencies as well as
MOH had brought the success of the rehabilitation. The cooperations were
the agreement of BBMB to accept a compromised redemption sum for the
loan, waiver and reduction of outstanding interests, agreement to defer the
claim for redemption sum\(^\text{180}\), waiver by the purchasers\(^\text{181}\) and consultants and
contractors\(^\text{182}\) for the late delivery damages, withdrew all legal actions, deferment
of all outstanding amounts and to participate pro-actively during the course
of rehabilitation. The beneficiaries and stakeholders for this project namely

\(^{180}\) See ibid n 20 p AQ 44, in file No KPKT/08/824/2605.

\(^{181}\) For example five flat purchasers had instituted legal proceedings against the
developer claiming recovery of deposits paid totaling RM66,000. These purchasers
were Aishah Bee d/o NN Othman for the recovery of RM15,000 deposit paid,
Jafarullah Khan a/l Ahmad Nydin for the recovery of RM25,000 deposit paid,
Sulaimah bt Abdul Majid for the recovery of RM10,000 deposit paid andSharifah
bte AS Aboo Batcha Salim Bibi bt Mohd Abii Baida for the recovery of RM1,000
and RM15,000 deposit respectively. See ibid pp AQ 36, 45 and 55, in file No
KPKT/08/824/2605.

\(^{182}\) Two of the developer’s contractors had instituted legal proceedings against the
developer, namely Royden (M) Sdn Bhd, the contractor for lift installation and
Lincolite, the contractor for electrical works.
were the purchasers, the land office, Majlis Perbandaran Pulau Pinang, the end-financiers and the bridging financiers all had gained their part of the bargains. These gains were the obtaining of the vacant possession and occupying the completed units, the ability to collect quit rent and assessment rates, regularisation of loans outstanding and the obtaining of the redemption sum.

However, it is submitted, as at today, there has not yet any law and statutory provisions governing the rehabilitation of abandoned housing project. It seems that once housing project abandoned, ordinary laws and regulations governing the housing development, have become frustrated, defunct and jammed, as illustrated in the above case study. Thus, it is submitted, it is timely to have such a special law to cater rehabilitations and to avoid problems as highlighted above.

The above case study reveals only one abandoned housing project rehabilitated by the original developer with the help of TPPT. There are other projects which had obtained similar help but the phenomena, situations, problems, complications and complexities may be different from what have been revealed through the above case study. Thus, research must be continued to unveil these projects and their problems and experiences. Similarly, other types of rehabilitations of abandoned housing projects such as stated in the foregoing paragraphs\(^{183}\) must also be examined, investigated and researched into. The purpose of this undertaking is to accumulate as much as possible the lessons, problems and catastrophes faced and from this, certain counter measures can be adopted to facilitate the management of abandoned housing projects in Malaysia.

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183 These are the rehabilitation by the defaulting abandoned housing developer itself, rehabilitation by a new developer company who takes over the project from the defaulting abandoned housing developer, rehabilitation by the liquidator/provisional liquidator or receiver and manager, rehabilitation by purchasers’ action committee and rehabilitation by Danaharta Nasional Bhd.