Introduction

In Peninsular Malaysia, 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;

(b) The developer has been put under the control of the Official Receiver and the Housing Controller is of the opinion that such developer cannot duly proceed with the execution of its obligations as a developer1.

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 Berhad (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 December 2005

As of June 2005, there were 28 new projects which had been listed under the category of abandoned housing projects. These projects involved 5,716 purchasers, 7,946 units of houses and projects' sales value of RM 479.67 million. 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 five projects (18%), followed by Kedah — four projects (14%), Perak — three projects (11%), and for Negeri Sembilan, Melaka and Terengganu, each of these states has two newly identified abandoned housing projects (7%). In other states (Perlis, Wilayah Persekutuan and Kelantan), there are no new abandoned housing projects which have been identified or reported.

Project Which Are Still Abandoned Until June 2005

The projects which are still considered abandoned can be divided into three (3) categories, namely:

(a) Project Having Potential For Rehabilitation;

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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 have been terminated for the preceding six months or more. Such termination has either occurred consecutively or occurred during the period within which the project had to 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 Project in1999), 2000, p 1.

2 Ibid.

3 Ibid.

4 Ibid.

5 Ibid.

6 Ibid, p 2.

7 Ibid.
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 4 (four) types as follows:-

(i) Project which is newly identified;
(ii) Project under probability study;
(iii) Project readied for rehabilitation;
(v) Project under construction.

Projects which fall under the category of 'having potential for rehabilitation' 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.

The number of projects fall under this category increases from 99 projects in year 2003 to 121 projects as of June 2005. 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.

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

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11 Ibid, p 5.
12 Ibid.
13 Ibid.
14 Ibid.
15 Ibid.
16 Ibid.
17 Ibid.
18 Ibid, p 3.
19 Ibid.
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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 new developer company taking over the project from the defaulting abandoned developer;
(d) Rehabilitation by the Liquidator/Provisional Liquidator or Receiver and Manager;
(e) Rehabilitation by Purchasers' Action Committee; and,
(f) Rehabilitation by Danaharta Nasional Berhad.

Objectives of the Paper

This paper will only highlight the rehabilitation initiated by the purchasers' action committee of an abandoned housing project, themselves 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 paper. In this respect, the author would unveil the events, experience and lesson of one rehabilitated abandoned project, by way of case study through documentations and archival records.


21 What is meant by documentation is the obtaining of information from variety of documents such as letters, memoranda, agendas, announcement and minutes of meeting, written reports, administrative documents, formal studies, evaluation of the same 'site' under study and newspaper clippings and others. On the other hand, archival records include service records, organizational records, maps and charts, lists of names, survey data and personal records. See Robert K Yin, Case Study Research — Design and Methods, Second Edition, SAGE Publications, London, 1994, pp 78–101 (Chapter 4). This type of case study research and selection will allow more access to the detail, due to convenience, geographic proximity, getting more intensive analysis and in depth study about the legal phenomena of abandoned housing project that happened at an abandoned housing project (Taman Shoukat, Lot 2219, Mukim 13, NED, Penang). As this research is qualitative in nature, the data are often derived from one or two cases and it is unlikely that these cases will have been selected on a random basis. Very often a case will be chosen simply because it allows access. The reason why, in qualitative research, involves one or two samples under study, because, one of its philosophies is to avoid 'so large as to preclude the kind of intensive analysis'. The approach and sample selection of this research too is in line with the concept and belief under the qualitative research — where it employs purposive, and not random, sampling methods. The phenomena occurring in this project are not uncommon with the other abandoned housing projects as occurred elsewhere in Peninsular Malaysia. In order words, this study is designed to provide a close-up, detailed or meticulous view of particular abandoned housing projects occurred in Taman Shoukat, which is relevant to or appear within the wider similar phenomena as occurred throughout Peninsular Malaysia. See generally in Robert K Yin, Case Study Research, Design and Methods, Second Edition, SAGE Publication, London, 1994 and in David Silverman, Doing Qualitative Research, A Practical Handbook, SAGE Publications, London, 2000.
as happened at Taman Shoukat, Lot 2219, Mukim 13, North East District, Penang from files available in the Malaysian Ministry of Housing and Local Government (MOH). However, the names and identities of certain related persons and parties to the case study will only be anonymous, on the ground that this disclosure may be controversial, to protect the participants, and not to affect the subsequent actions, sub-judicial or otherwise, over the subjects being studied.

THE ABANDONED HOUSING PROJECT: TAMAN SHOUKAT, LOT 2219, MUKIM 13, NORTH EAST DISTRICT, PENANG

The developer of this abandoned housing project, was Syarikat Showkhat Industries & Realty Sdn Bhd addressed at ‘XX’ (‘the developer’). This project was located at Lot 2219, Mukim 13, NED, Penang, viz situated between Jalan Kampung Pisang and Jalan Teochew, near Kampung Melayu, Air Itam, Penang. The address of this project was Taman Shoukat, Jalan Zoo, Off Jalan Then Teik, Air Itam, Pulau Pinang.

The original name of this company was ‘Showkat Coconut Products Sdn Bhd’. It was incorporated on 13 October 1976. On 27 August 1977, the company changed its name to ‘Syarikat Showkhat Industries & Realty Sdn Bhd’. As at 8 September 1976, the company had seven shareholders. They were ‘A’ (who held RM 125,000 shares), ‘B’ (held RM 65,000 shares), ‘C’ (held RM 65,000 shares), ‘D’ (held RM 65,000 shares), ‘E’ (held RM 65,000 shares), ‘F’ (held RM 20,000 shares) and ‘G’ (held RM 5,000 shares). The directors for the company were ‘A’, ‘C’, ‘F’, ‘B’ and one ‘H’ (retired on 23 August 1977).

As at 22 February 1978, the directors’ composition had changed and the new line-up of the directors were — ‘A’, ‘F’, ‘B’ and ‘C’.

23 File number: KPKT/08/824/ /337.
24 Ibid. However, based on the *Data Asas Untuk Pengawasan Projek Perumahan, Borang E1* (Basic data for the Supervision of Housing Project, Form E1) p 3, the location of the project was formerly known as at Lot 6(V), Mukim 13, Bandar Air Itam, North East District (NED), Penang. Yet, according to the information about the developer company as at 18 August 1983, the name and location of the project was ‘Taman Shaukat, Lot 2219, Mukim 13, NED, Jalan Teochew Satu, Pulau Pinang’. See in File Number KPKT/08/824/ /337.
25 Report and information regarding Showkhat Industries & Realty Sdn Bhd in file number KPKT/08/824/ /337.

The funding of this project was a mortgage loan of RM500,000 (half million) from Messrs ‘A1’ (‘the Finance’). In consideration of this loan, the Finance had charged the site project’s land.

The consultants for the project were Messrs ‘A2’ (‘the Architect’), Messrs ‘A3’ (‘the Engineer’), Messrs ‘A4’ (‘the Quantity Surveyor’) and Messrs ‘A5’ and ‘A6’ for the Finance (‘the Advocates and Solicitors’).

The Project Land

The site of the project was part of Holding No 6(V), Mukim 13, North East District (NED), Penang, purchased from one ‘I’ at the price of RM182,380.278 pursuant to an agreement of sale dated 21 July 1977. This vendor was one of the proprietors for the said holding. The width area of such a purchased piece of land was 3 acres, 3 rod and 38 poles. The transfer of this part of the land was effected on 26 April 1978 to the developer. The other part of the holding was owned by one ‘J’. This second vendor had also sold his holding to the developer at price of RM 234,488.92. The transfer of this part of the holding was also made on 26 April 1978.

Before the purchase, the proprietors/vendors of the land, had vide a Power of Attorney (PA) dated 8 August 1977, effected between them and the director of the developer — ‘A’, appointed the latter (‘A’) to be their attorney for executing and signing all applications, subdivision and preparation of document of title and plans to the local authority for the purpose of developing the said land.
It should be noted that even after the sale of the purported housing units, had been taken place, as at 21 April 1983, the application for the conversion and subdivision of the land on which the building were to be erected had not yet been duly approved by the land authority.

Housing Developer's Licence

On 13 October 1978, MOH approved the developer’s application for housing developer’s licence. This licence was for the erection and development of the proposed housing project consisting of 34 units of single-storey-terrace-houses at the price of RM44,500 for each unit and two units of double-storey-terrace-houses at the price of RM75,000 each. The licences’ numbers were 986/10/78(10) and 987/10/78(10), valid from 18 October 1978 until 17 October, 1980. This licence was further renewed on 25 July 1981, with number 1337/10-82/330 valid from 18 October 1980 until 17 October 1982. After this, there was no renewal or new licence approved and issued by MOH.

The local authority/planning authority (Majlis Perbandaran Pulau Pinang) had on 15 August 1978 approved the application for the layout plan of the above housing project’s erection and development on the said land. This was also the case for the plans of the building, roads, drainage and sewerage system. One of the conditions of the approved layout plan was

45 Ibid.
46 The condition of this grant of licence was that the purported development had to be carried out only on Holding No. 2219, Mukim 13, North East District, Penang. The developer too, had to comply with ss 7, 8 and 9 of the Housing Developers (Control and Licensing) Act 1966, in particular s 7(d)(e) and (f) and the Housing Developers (Control and Licensing) Regulations 1970. See in file number KPKT/08/824/ /337.
47 Ibid.
48 The submission of this licence was made through MOH’s letter dated 21 October 1978 to the developer. See in file number KPKT/08/824/ /337.
49 Ibid.
50 It was evident that the licence had later been suspended, when the developer failed to settle the renewal fees. See also information about the developer company as at 18 August 1983 in file number KPKT/08/824/ /337.
51 The layout plan was No 2449(LB) for the erection of the above housing units on Lot 2219, Mukim 13, North East District (NED), Jalan Then Teik, Air Itam, Pulau Pinang. See in file number KPKT/08/824/ /337.
52 The building plan was numbered 19571(LB) approved on 18 October 1979, the road plan — No Ruj 18 dlm JPT.PP.112/7/1/A.146, approved on 16 September 1981, the drainage plan — No Ruj 18 dlm JPT.PP. 112/7/1/A.146, approved on 16 September 1981 and the sewerage plan was approved on 12 January 1980. See in Data Asas Untuk Pengawasan Projek Perumahan, Borang E1, (Basic Data for Supervision of Housing Project, Form E1), p 3, in file number KPKT/08/824/ /337.
that the developer had to pay certain satisfactory amount of compensation to
the resident squatters and the site tenants occupying on the site of the project
before carrying out any development on the site project land.

Advertisement and Sale Permit

MOH had approved the application of the developer for the advertisement
and sale permits with number 54/79 valid from 17 February 1979 until
16 February 1980. After this permit, there was no renewal or new permit
approved and granted by MOH. The grant of the permit was subject to the
Housing Developers (Control and Licensing) Regulations 1970. The advertisement
and sale permits were granted for the sale of the purported housing
accommodation to be erected on Lot 2219, Mukim 13, North East District
(NED), Penang.

The Development of the Project

The construction works were commenced in August 1979. As at 21 April
1983, all the purported units of the houses had been sold out to 34 purchasers
and they had entered into the agreements of sale and purchase with the
developer, the earliest was in October 1978.

However, the construction and development works stopped after April,
1983, only at 75% completion. There was evident that the works for the
roads, drainage, sewerage system, fences, street lights and supplies of water and electricity had not been commenced. Neither had delivery of vacant possession and the certificate of fitness for occupation ('CF') been given and obtained by purchasers. Nevertheless the construction of the building units had been completed as at 18 August 1983. According to the report made by the developer through its manager ('K') on 14 May 1983, the uncompleted works (the roads, drainage, sewerage system, fences, street lights, supplies of water and electricity works) would be duly carried out and would be completed by December 1983, together with the delivery of vacant possession of the purported units, complete with the issuance of CF from the local authority (Majlis Perbandaran Pulau Pinang — Penang Municipal Council).

Reasons Leading to the Abandonment

On the scrutiny of this housing developer's activities and progresses, it is found that there were several major reasons leading to the abandonment of this project. These reasons were:

(1) the developer had no sufficient experience and expertise in the development of housing projects. This could be shown from the corporate information about the developer, that the developer prior to their venture on housing development, they had not been involved in any similar business. Previously, they were only as coconut traders. This problem also had led to the inability to ascertain the appropriate and reasonable costing of the development and prices of the purported units resulting in the insufficiency of generating the required revenues from the sales to meet all expenses and expenditure in the course of the development of the project. Due to this problem also, the

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59 See in _Kedudukan Peringkat Kerja-Kerja Pembinaan dan Pembangunan Dalam Sesuatu Projek/Fasa Project, Borang E2_, (Status of the Works’ Stages in the Erection and Development of Project/Phase of Project, Form E2), at p 2, in file number: KPKT/08/824/ /337.

60 Ibid.

61 Ibid.

62 See the report of the developer company and its project as at 18 August 1983 in file number: KPKT/08/824/ /337. According to ‘K’ (manager of the developer), the road works of the project, would be carried out after an agreement with the contractor had been entered into with the developer. For the drainage works, their constructions were still in its course. In respect of the supplies of electricity and water, these were only awaiting the complete installation of the meters and these basic supplies would be operative once the installation works completed.

63 Ibid.

64 Ibid.

65 Ibid.
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The developer had to severally amend the road plan and drainage plan for the project, in the course of the development of the project, on the request of the JKR (Department of Public Works) as well as to reduce the overall costs.

(2) The developer had no financial strength nor was its resources. This was evident in the balance sheets and profit and loss accounts of the developer for years 1976, 1977 and 1978, where the developer company had incurred losses. Based on the reports of their directors, they hoped that the sales generated from the other housing projects undertaken at Taman Bayan and Taman Cahaya could bring profits and positive cash-flows to the company in year 1982 to offset against all the debts and their financial obligations. Nevertheless, the profits received from the projects in 1982, were not sufficient to cater for all the losses suffered by the developer company for years before 1982.

(3) The developer also were facing other financial burdens in that, at the same time of erecting Taman Shoukat, they too were constructing two other projects — Taman Cahaya and Taman Bayan, both were also facing problems and left abandoned.

66 See the letter of the developer to MOH dated 12 February 1981 in file number KPKT/08/824/ /337.
67 Ibid.
68 Ibid.
69 For example the accumulated losses for the developer company for year ended 31 December 1978 was RM538,804.11. It is submitted that and if this figure were to be added to the expenditures and losses suffered for years ended at 31 December 1979, 1980, 1981 and 1982 (this was because the developer company did not submit to MOH the audited reports, profit and loss accounts and balance sheets for years 1979, 1980, 1981 and 1982), the expenditure and losses would be far more substantial. Nevertheless, the projected profits which the developer company forecasted to get in year 1982 (in the event the housing projects carried out were successfully and sold out), was RM1,350,000. These profits could not cover the substantial accumulated losses and expenditures. In addition thereto, according to the scrutiny of the author, based on the balance sheet and profit and loss accounts for years 1977 and 1978, the developer company only hoped from the sales revenue of coconuts and other sales of grains to meet the incurring costs, expenses and expenditures. In the above housing project, the developer was only dependent on the bank loan to erect the project and there was no other financial means to meet the construction costs and expenditures. See in file number: KPKT/08/824/ /337.
70 This was evident in the admission of the developer made through the progress of development stages' reports in pursuance of section 7(f) of Act 118 submitted to MOH for the development of Taman Cahaya on Lot 1219, Telok Kumbar, Mukim 9, Daerah Barat Daya, Penang and Taman Bayan on Lot 846, Bayan Lepas, Mukim 12, Daerah Barat Daya, Penang. See in file number: KPKT/08/824/ /337.
The developer faced financial troubles and increasing construction costs and expenditures which had caused the developer's failure to carry on the due development of the project.  

Rehabilitation

In order to rehabilitate the project, the purchasers had formed a Purchasers' Action Committee ('the committee') to manage, supervise, monitor and assist the developer for rehabilitating the project. The committee also had appointed Messrs 'A' ('the purchasers' lawyer) as their lawyer to manage the project on their behalf apart from advising them in rehabilitating the same and to liaise with related parties in the rehabilitation scheme as well as serving as their stakeholder — retaining and holding in trust of whatever moneys paid by the developer to the Finance/the contractors/the consultants or moneys released by the Finance to the developer (including the bridging loan unreleased), as the case may be.

Following the above venture, there were numerous meetings carried out and that certain feasibility and viability study had been undertaken, particularly, in respect of the technical and financial matters affecting the rehabilitation scheme. Accordingly, it was agreeable by the purchasers, that the said project could only be revived provided the 33 purchasers had to top-up some additional funds of more than RM14,500 each in order to meet all the rehabilitation's expenditures and costs. For this reason, supplementary agreements had to be entered into between the purchasers and the developer. In consequence of this agreement also, a number of purchasers had intimated to their lawyer to request from the Finance for additional loans in order to meet the additional monetary terms as per the supplementary agreements so executed.

72 Based on the speech by Datuk S Subramaniam, the Deputy Ministry of MOH, dated 18 January 1988, in file number KPKT/08/824/ /337.
73 See also letter from the lawyer dated 25 July 1984 to the Finance with reference — OLH/05/83-244(ASH(PG)), in file number KPKT/08/824/ /337.
74 File number KPKT/08/824/ /337.
75 Ibid.
76 Ibid.
77 See the letter from the purchasers' lawyer dated 25 July 1984 to the manager of the Finance with reference — OLH/05/83-244(ASH(PG)), in file number KPKT/08/824/ /337. There were about 23 purchasers requesting for the additional loans from the Finance. They were — 'Z2'; 'Z3'; 'Z4'; 'Z5'; 'Z6' (joint purchasers), 'Z7'; 'Z8'; 'Z9'; 'Z10'; 'Z11'; 'Z12'; 'Z13'; 'Z14'; 'Z15'; 'Z16'; 'Z17'; 'Z18' and 'Z20' (joint purchasers); 'Z21'; 'Z22'; 'Z23'; 'Z24'; 'Z25' and 'Z26' (joint purchasers); 'Z27'; 'Z28'; and 'Z29'. See in File number KPKT/08/824/ /337.
In order to streamline the management of the rehabilitation scheme and to resolve any problems relating to it, there were numerous meetings conducted, on the initiative of MOH and the purchasers. The parties who had attended in the meetings were the purchasers (especially the Purchasers' Action Committee, the developer, the Finance, MOH (including the former Deputy Minister for MOH — Datuk S Subramaniam), Penang State's Secretary office, Messrs 'A6', and the consultants (such as the architect and the engineers). There were many problems relating the rehabilitation of the project. The problems were identified and the resolutions were passed in the said meetings. The dates of the meetings were on 22 May 1983, 7 August 1983, 20 March 1984, 11 July 1984, 1 November 1984, 6 December 1986, 1 March 1987, 6 March 1987, 10 May 1987, 9 April 1987, 16 August 1987, 1 September 1987, 18 January 1988, 27 July 1988, 27 March 1989, 20 March 1990, 19 June 1990, 28 March 1992 and 25 June 1992.78

Among the problems identified and highlighted in the said meetings were:

1. The developer's proposal for an increase in the housing prices, in order to complete the project (meeting dated 22 May 1983);

2. The monetary shortage faced by the developer and the inability of the developer to resume the construction of the units due to increasing costs and severe financial problems faced (meeting dated 7 August 1983, 20 March 1984, 11 July 1984, 18 January 1988);


4. Problems of the issuance of Certificate of Fitness for Occupation (CF) (meeting dated 20 March 1984);

5. Release of the bridging loan by the Finance to contractors and consultants (meeting dated 20 March 1984);

6. Termination of the service of contractors for the rehabilitation due to the failure of the developer to pay them the contractual payment. (meeting dated 1 November 1984).

7. Failure of the developer to regularize and settle the outstanding debts as re-scheduled by the Finance and to complete the required stages of construction. As a result the Finance refused any additional credit facility to the developer and refused to release any subsequent end-financing funds. (meeting dated 1 November 2004).

8. Insufficient funds in the hand of the stakeholder (Messrs 'A6' — the purchasers' lawyer) to settle the fees of the contractors, for sub-division of the land, for the issuance of the separate documents of title to the

78 File number KPKT/08/824/ /337.
individual lots' owners and for the water deposits payable to the water authority. (meeting dated 6 December 1986).

(9) Failure of the purchasers to pay additional payment as requested and agreeable earlier to top-up the insufficient funds for generating the rehabilitation of the project. (meeting dated 6 December 1986).

(10) Problems with the workmanship and quality of works done by the contractors. (meeting dated 6 March 1987).

(11) The electrical and wiring facilities had been subject to vandalism, damaged and theft. (meeting dated 10 May 1987).

(12) Refusal of the architect to certify the completion of the project on the ground that there was no direction from the developer and that there was still outstanding debts unsettled by the developer to the architect. (meeting dated 16 August 1987).

79 According to the Finance the redemption sum for the discharge of the bridging loan and the security, as at 30 June 1988 including interests was RM650,117.26. This figure was calculated at 10% rate of interest chargeable for the whole year where the loan was given without any additional interest penalty. This redemption sum had to take into account of the fund still held by the stakeholder (the purchasers' lawyer), the end financiers' sums still not disbursed and the four lots which were held as security for the loan given to the developer, which if accumulated would amount to RM295,520.11. In addition thereto, there was another suggestion that, for the purpose of fully settle the redemption sums, the purchasers had, inevitably to pay RM6,148.03 each to the Finance. However, this was objected by the purchasers' lawyer on the ground that the said redemption was too high and requested for a reduction thereof as the purchasers had already paid additional sum of RM14,000 each. But, this objection was refused by the Finance for otherwise, they had no other alternative but to foreclose the land together with the property on it, which finally would cause irreparable damages and losses to the purchasers altogether. Nevertheless, the meeting ended with certain resolutions. Among the resolutions were that the purchasers agreed for the sale of the four lots for redemption purposes and that the developer was agreeable to sell off the four lots of land through court's order and further, the balance unpaid, if any, would be recovered through legal action against the developer. On part of the purchasers, they had to furnished details of the total amounts paid and unpaid in respect of the housing project and the list of those who had not yet obtained additional housing loans in order to redeem the property and to rehabilitate the abandoned project. See report of the meeting dated 28th March, 1989 in file number KPKT/08/824/ /337.
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(13) Inability to effect the transfer of name and issuance of the document of title unto the individual purchasers’ names. (meetings dated 28 March 1992, and 25 June 1992).

Among the resolutions passed for the above problems were:

(1) The agreement of the purchasers to consider the developer’s proposal for an increase in the housing prices, in order to complete the project provided that the developer gave to the purchasers’ lawyer — Messrs ‘A6’ (purchasers’ lawyer) the estimated costs for the completion of the project. (meeting dated 22 May 1983).

(2) The purchasers agreed to the proposal of the developer to increase the price of the housing units in order to redeem the titles of the project land from the finance and that the finance agreed to grant additional loans to eligible purchasers. (meetings dated 7 August 1983, and 27 July 1988).

(3) Supplementary agreements had to be entered into between the purchasers and the developer, to effect the increase in the units’ prices and for ensuring the legality and validity of the rehabilitation. (meetings dated 7 August 1983, and 20 March 1984).

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80 See letter from the Purchasers’ Action Committee of Taman Shoukat dated 24 April 1992 to MOH, in file number KPKT/08/824/ /337. According to the Finance, they had requested the developer to issue a consent letter for the discharged of the individual lots before the same could be transferred to the individual purchasers’ names, but the developer still refused to do so, on the reason that their debts were not fully settled and redeemed. In consequence, the Finance could not register the transfer of the individual lots to the purchasers. There was also a suggestion by the Finance that the purchasers should apply for a court’s order to effect a due transfer of the said lots, since all practical efforts had come to naught. But this was not agreeable to the purchasers on the ground that they would otherwise incur additional costs and expenses. Further, this suggested application to court was not necessary in that there had been a winding up order issued by the Penang High Court against the developer, instituted by the Finance and the fact that the said developer was wound up by the order of the Penang High Court of Malaya on 19 March 1992. See the report of the meeting dated 28 March 1992 in file number KPKT/08/824/ /337.

81 Similarly, the purpose of the above meeting was to try to settle the problems relating to the redemption of the title for onward transfer to the individual purchasers, over the lands being charged to the Finance. The underlying problems included the failure and refusal on part of the developer and the Finance to execute consent letter allowing the title be transferred to the purchasers. See in file number KPKT/08/824/ /337.

82 Ibid.

83 See also letter from the purchasers’ lawyer to the developer dated 19 March 1986, in file number KPKT/08/824/ /337.

84 Ibid.
(4) The contractors and developer had to repair any defective works and materials. (meeting dated 6 March 1987).

(5) The quit rent for the land would be paid by the purchasers and the purchasers had the right for the reimbursement over the same from the developer later. (meeting dated 6 March 1987).

(6) Employing security guard and watchmen for the housing project during the course of and under rehabilitation, to maintain security and safety of the partially completed building and construction materials and supplies from being stolen by and to avoid any vandalism by irresponsible parties. (meeting dated 9 April 1987).

(7) The purchasers' lawyer was instructed to prepare a re-appointment letter of the architect (Messrs 'A2') for certifying the completion of the project and further to apply from the local authority (Majlis Perbandaran Pulau Pinang — Penang Municipal Council) the certificate of fitness for occupation (CF). The fees's payment as claimed by the architect had to be settled immediately. (meeting dated 16 August 1987).

(8) The actual rate of interest in the agreement between the developer and the Finance was 10% per annum but the developer was continuously charged with 14-14.5% interests. Thus, to lessen the financial burden, the developer had to apply to the Finance to waive these excessive rates of interest. (meetings dated 1 September 1987, and 18 January 1988).

(9) According to a report of the quantity surveyor from MOH, the project was viable for rehabilitation in that the moneys in the hand of the purchasers (housing loans still unreleased by the end-finance) together with the purchasers' agreement to inject additional funds, was more than enough (RM2.16m) than the costs to rehabilitate the project (RM1.7m). (meeting dated 1 September 1987).

(10) The architect had lodged an application for the CF with the local authority (MPPP) on 18 August 1987. The architect requested MOH to assist them to support their application for the CF so applied. 

85 In the meeting dated 18 January 1988, one of the resolutions was that the Finance had to re-consider and review over the interest rates chargeable at the rate of 15% per annum to the developer, by reducing it to become 10% per annum. See file number KPKT/08/824/ /337.

86 See for example letter from the Purchasers' Action Committee dated 15 October 1987 to MOH applying for help in getting the necessary approvals from the technical agencies to support the application for the CF and the problem relating to the application of faeces tanks which had not been approved by the Sewerage Services Department (Jabatan Perkhidmatan Pembetungan – JPP) on the reason that the drains' level was lower that the faeces tank's ducts. See in file number KPKT/08/824/ /337.
(meeting dated 1 September 1987).

(11) MOH undertook to help the purchasers for the due progress of the intended rehabilitation of the project in regard to the getting of comments and approvals from the related technical agencies (such as water authority, electrical authority and sewerage authority), the state authority\(^87\) and from the local authority\(^88\). It was agreed that once the CF had been obtained, then would the issues relating to the financial matters, including the redemption of the title over lands which were charged to the Finance be settled\(^89\). (meeting dated 1 September 1987).

(12) Any dealing with the money in the trust account (under the supervision of the Messrs ‘A6’ as the stakeholder) where all moneys and funds for the rehabilitation of the project were channelled into, had to be signed by three (3) parties ie the purchasers’ lawyer, certain government institutions (such as MOH) and the Purchasers’ Action Committee. It was agreed that the balance funds available in the trust account be deposited in the Finance’s account pending the decision of the court over the legal suit commenced by the Finance against the developer on the latter’s failure to settle the debts still owed. (meetings dated 18 January 1988 and 27 July 1988).

(13) The Finance announced the redemption sum for the purpose of releasing the title from being charged to the Finance and would

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87 For example pursuant to MOH’s letter dated 12 November 1987, MOH requested the Office of the State Secretary, of Penang (‘SUK’) to exempt the requirement of having to sell the housing units in the said project to, at least, 30% of bumiputra’s purchasers. SUK approved the application on the condition that the developer had to prove that all the units had been sold out on the date of the application of CF and that if there were still outstanding unsold units, these units had to be sold to bumiputra purchasers. This application was also approved by Bahagian Penyelarasan Penyertaan Bumiputra, Unit Penyelarasan Pelaksanaan, Jabatan Perdana Menteri, (Coordination of Bumiputra Participation Division, Coordinating Implementation Unit, Prime Minister Department), Bangunan Yayasan Bumiputra, No 70, Jalan Sri Bahari, Pulau Pinang, vide their letter dated 30 November 1987 to the developer. See in file number KPKT/08/824/ /337.

88 Ibid.

89 Ibid.
transfer it to the individual purchasers' names subject to certain terms and conditions\(^9\). (meetings dated 20 March 1990 and 19 June 1990).

(14) The Finance was required to sell off the four vacant lots by way of foreclosure through court's order and to suggest ways for the redemption of title and the transfer of the respective lots to purchasers. (meeting dated 25 June 1992).

Vacant Possession and Grant of CF

The rehabilitation of the abandoned housing project was fully completed on 20 October 1987 and the Certificate of Fitness for Occupation ("CF") was obtained from the local authority (Majlis Perbandaran Pulau Pinang) on

\(^9\) According to the Finance the amount required to be paid for full redemption of the title was RM650,117.26. However, the board of directors agreed to reduce to RM555,008, but payment had to be made to the Finance by the developer by 30 June 1990. After this date, in the event no such payment had been made, the Finance was at liberty to revise and vary the redemption amount, including to charge new rate of interest against the outstanding redemption sum amount. See report of the meeting dated 20 March 1990 in file number KPKT/08/824/337. Further on a meeting dated 19 June 1990, according to the Finance, the redemption amount was RM504,553 and that each and every 34 purchasers had to pay RM 4,989.51 to the Finance, as the full and final settlement and redemption of their individual lots titles. In respect of the four lots, the Finance would sell them off to realize the profit in order to offset against the debts of the developer. The meeting also passed a resolution that the Finance had to form a 'suspense account'. This account served as a pool account for accumulating moneys from the purchasers towards settling the redemption sum, pending the completion of the duly transfer of all the lots from the Finance to the purchasers. The purchasers also applied to the Finance to let them pay the redemption sum in installment. See report of the meeting dated 19 March 1990 in file number KPKT/08/824/337. The Finance also stipulated in a letter addressed to the Purchasers' Action Committee that apart from the redemption sums payable by the purchasers and the four vacant lots on the site of the project, be transferred to the Finance, the Finance was also entitled to the stakeholder's hand in the hand of the purchasers' lawyer (the amount was RM62,622.61). Further, a sum of RM301,130.84 being the amount payable by the 34 purchasers had also be paid to the Finance before 30 June 1990 — this amount was inclusive of the balance of the end-financing, additional end-financing (if any) and the sum of RM4,989.51 (for completing the rehabilitation works). The chargor/developer and the purchasers had to consent to this arrangement provided always that in the event the consent could not be obtained from one or two purchasers, the Finance was still at their absolute discretion accept payments from the others and thus claimed from the actual defaulters in any manner the Finance might deem fit. Finally, this kind of arrangement however, still, as stipulated by the Finance, would not absolve the purchasers from all other sums owing under their respective housing loans or other additional loans with the Finance. See in file number KPKT/08/824/337.
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16 December 1987. This project had been rehabilitated on the initiatives of the Purchasers' Action Committee, with the help of Messrs 'A6' and received cooperation and support from MOH. The committee had appointed contractors and consultants to resume the construction of the project and settle all problems relating thereto. On part of MOH, they sought many assistances from the local authority, TNB, Indah Water Konsortium Sdn Bhd (Sewerage Services Contractor), Fire Department (Bomba) and other technical agencies for the release of the CF.

However, vide a letter dated 4th January, 1988, the Finance informed the purchasers’ lawyer that, they were unable to release the final payment on the instruction of the purchasers, for the works done, until and unless all complaints of the purchasers had been duly addressed thereto by the developer.

However, even though vacant possession and CF had been obtained, the problem still plaguing the purchasers was the redemption of the sub-divided titles and transfer of the same to their respective names. This problem was finally settled, when all the purchasers completed paying their parts of obligations towards settling the problem, discharged the title including paying off the redemption sum and effected the due transfer of the title to their respective names.

Legal Observations and Suggestions

Based on the scrutiny of the above case study, the developer (Showkat Industry & Realty Sdn. Bhd.) for the above project, (among the transgressions of the developer against the housing law) before the project was under rehabilitation, had failed to submit a progress development report to MOH pursuant to section 7(f) (duty to submit prescribed report of the housing development progress), s 7(g) (duty to inform the Housing Controller if unable to meet obligations to purchasers) to the Housing Developers (Control and Licensing) Act 1966,

91 See the speech by Datuk S Subramaniam, the then Deputy Ministry of MOH, dated 18 January 1988. See in file number KPKT/08/824/ /337.
92 See letter from the Finance dated 25 December 1987 to the purchasers’ lawyer. See in file number KPKT/08/824/ /337.
93 Pursuant to s 7(f) of the Housing Developers (Control & Licensing) Act 1966 (Act 118), the licensed housing developer shall not later than 21 January and 21 July of each year, send a statement in prescribed form to the Housing Controller. In the above case study, the developer failed to submit the progress development report after 15th April, 1983.
94 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.
s 7(e) failure to send to the Housing Controller and to publish in the government gazette copies of the audited report together with copies of the balance-sheet and profit and loss accounts for years 1980, 1981 and 1982, and s 9 (appointment of auditor), failure to appoint auditor for year 1982.

Further, there was no renewal of the developer's licence and sale and advertisement permits, pursuant to s 5 of Act 118 and the sales and advertisement rules.

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 the developer during the course of rehabilitation under the supervision and monitoring of Messrs ‘A6’ and the Purchasers’ Action Committee.

Likewise, no obligation was imposed by MOH, on the developer and the Purchasers’ Action Committee, during the course the rehabilitation, for opening the Housing Development Account (‘HDA’) as required by s 7~ to Act 118. This might because of the enforcement of this section was only effectual from 26 August 1991, whereas the developer in this case obtained licence and advertisement and sale permit and renewal before this date, thus warranting the exemption from this obligation.

Further, CF was granted by the local authority to the housing project on 16 December 1987.

Nevertheless, the problem of the project was still not over, since the individual sub-titles to the project land could not be redeemed and be transferred to the individual purchasers. This problem was finally settled by 9 March 1995, where the Finance had discharged all the titles to the purchasers and duly transferred the titles to the respective purchasers upon full settlement made by the purchasers against the redemption sums still owed by the developer to the Finance. Thus, it can be said that the developer had contravened the provisions that they had to deliver the vacant possession of and execute a registrable transfer of the individual purchased units to the purchasers free from encumbrances, unless exempted by the Minister in the Gazette (which had not been granted).

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96 Ibid.
97 Based on the observation and scrutiny over the file number KPKT/08/824/ /337.
98 Ibid, p 106. Section 7~ requires all licensed housing developers to open and maintain Housing Development Account 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.
99 Ibid.
100 See the report of the meeting dated 18 January 1988 in file number KPKT/08/ 824/ /337.
101 See letter from the Finance to MOH dated 9 December 1992 in file number KPKT/08/824/ /337.
In respect of s 9\textsuperscript{102} (Appointment of Auditor), generally this section had been complied with by the developer\textsuperscript{103}. Nevertheless, there was no appointment of auditor for year 1982, failure to submit the audited reports, balance sheets and profit and loss accounts and failed to publish in the Government Gazette in respect of the same for years 1980, 1981, and 1982\textsuperscript{104}. In the meanwhile, there was no appointment of auditors, the submissions of the auditor’s reports to MOH and the publications of the same in the Gazette for years after 1982 and during the course of rehabilitation\textsuperscript{105}.

As regards the duty to investigate the issues and problems occurring in this abandoned project in accordance with s 10\textsuperscript{106} 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 purchasers’ lawyer, pursuant to s 7

\textsuperscript{102} 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)).


\textsuperscript{104} Ibid.

\textsuperscript{105} Ibid, p 106.

\textsuperscript{106} 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):

\textbf{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; or

\textbf{b)} if an application for such an investigation is made to him, and every such application shall be supported by not less than five purchasers and accompanied with such evidence and such security as the Minister may require for the purpose of satisfying himself that the application is made in good faith, and of paying the costs of such an investigation (s 10(2)(a)(b)).
and helping out the purchasers and other related parties to rehabilitate the project\textsuperscript{107}. 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)\textsuperscript{108}. Nevertheless, despite the existence of these enabling provisions, 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\textsuperscript{109}.

Further, based on the case study, it is also found that the Minister of the Housing and Local Government (\textquotedblleft the Minister\textquotedblright) 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)\textsuperscript{110} and s 12 (Powers of the Minister to give general directions)\textsuperscript{111} of Act 118 to avoid losses and damages on part of the purchasers. 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 related parties especially of the purchasers\textsuperscript{112}.

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)\textsuperscript{113}, s 19 (offences by licensed housing


\textsuperscript{108} Ibid.

\textsuperscript{109} Ibid, p 115.

\textsuperscript{110} This power includes taking such action as the Minister may consider necessary in the circumstances of the case for carrying into effect the provisions of s 11 (s 11(1)(e)).

\textsuperscript{111} This includes the power to give directions as he considers fit and proper for the purpose, of ensuring compliance with Act 118.

\textsuperscript{112} This would include, it is submitted, to declare forthwith that the project was abandoned, take over and appoint new rehabilitating developer to resume the project soonest possible.

\textsuperscript{113} For the failure of the developer to carry on the business, in the opinion of the Controller, in a manner detrimental to the interest of the purchasers or to any member of the public. (s 13(a)).
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developer) — on offences for claiming progress claims based on false architect’s certification, claiming additional moneys from purchasers in collusion with the figure stipulated in the sale and purchase agreements and selling the purported housing units despite the application for subdivision and conversion of the land had not fully been approved\textsuperscript{114}, 21 (penalty for offences not otherwise provided for) and 24 (powers to make regulations)\textsuperscript{115} of Act 118\textsuperscript{116}. In the result, the developer got off scot free — without any punishment being meted out to them and they need not have paid any liquidated damages to purchasers for late deliveries of vacant possession and other losses and sufferings, any contribution fees to the technical agencies (such as the LLN (former ‘TNB’), IWK and water authority) local planning authority (MPPP), and MOH and any outstanding debts owed to the lender bank (the Finance) in order to redeem the property, yet received benefits from the project (even though finally, the developer company was wound up by the Finance)\textsuperscript{117}. On the other hand, most of these financial obligations were settled by the purchasers themselves. Thus, it is submitted, 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, it is submitted, the rejection of the Finance to approve additional loans to fund the project. This was also one of the reasons why the developer had abandoned the project due to their financial incapability to meet the


\textsuperscript{115} For example failure to do certain acts as far as it is necessary or expedient for the benefits of the parties in the above case, as enshrined in s 24(2)(j).

\textsuperscript{116} It is also suggested, the deposits paid by the developer be confiscated every time the developer fails to comply with the required provisions. This would cause them to be more vigilant and careful and more responsible to follow all the existing laws. The deposit so confiscated can also be used to finance the rehabilitation.

\textsuperscript{117} In certain circumstances, they also received certain allowance and exemption to absolve from paying contributions to the technical agencies (TNB, IWK, etc) and the local planning authority, in order to facilitate the rehabilitation. See for example in case of the rehabilitation of Majestic Heights (Taman Terubong Indah) Penang. This information was gained from Mr. Chang Kim Loong — Honourable Secretary General for the National House Buyer Association on 4 November 2006.
development costs and expenditures. However, through the same means, the project was finally rehabilitated, ie the Finance agreed to grant additional facilities to purchasers in order to complete the rehabilitation and the redemption of the outstanding debts of the developer for due transfer of the land titles. It was indeed the right of the Finance to reject the application, as this fell under their absolute discretion, based on their own financial and business viewpoints. But what had become an issue, was the policy of the Finance 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 Finance’s power of bargaining.

Further point could also be raised in that, the current standardized and formatted agreements of sale and purchase (Schedules G and H) as well as the bridging/construction loan, the loan agreement to finance the purchase of the purported housing units, it appears that these agreements do not provide sufficient protection to the borrowers/purchasers in the event the purported project is abandoned, warranting possible allowance and opportunity to purchasers/borrowers and MOH to step into the shoe of the defaulting developer in order to carry out any rehabilitation over the same as soon as reasonably possible, thus safeguarding their interests. It follows that once the borrower developer had defaulted and unable to carry on the development of the project, the fate of the purchasers is at the mercy of the chargee bank or the liquidator or the receiver and manager or the like (such as the landlord and the new company which took over the project), as the case may be. These parties have the absolute right either to sell off the project land or to carry out the rehabilitation of the project so abandoned. The biggest consideration involved in rehabilitation is always on the matter of the financial resources to fund the rehabilitation apart from the duration of time and cooperation rendered by the technical agencies, the local planning authority and MOH needed to complete the same. It has become a common practice that certain rules and regulations be relaxed in order to ensure the smooth running of the rehabilitation process and be gone off without a hitch.

118 See for example in Bank Bumiputra Malaysia Bhd Kuala Trengganu v Mae Perkayuan Sdn Bhd & Anor [1993] MLJU 592.

until its full completion, much to the facility of the defaulting developer or the rehabilitating parties but at the expense of the aggrieved purchasers.

Likewise in the above case study, revealed that neither the developer nor the Purchasers’ Action Committee being the parties responsible to revive the project had been granted or been renewed the housing development licence by MOH\textsuperscript{120}. The question is — whether in the rehabilitation of abandoned housing project the rehabilitating parties must as well applied for the licence to validate the housing development being carried out? Furthermore, in the above case study, what was clear, the purchasers (through the Purchasers’ Action Committee) themselves were planning, managing, supervising, developing and rehabilitating the uncompleted project and thus, they were not in need of having any licence. What was important they could complete the project and occupy the purported units. Thus, MOH must consider about this situation in that no provision in Act 118 ever specifically deals with this legal gap and lacuna. It is submitted there must be statutory and legal protections and remedies for the related parties in the rehabilitation of abandoned housing project to avoid any pecuniary and non-pecuniary losses which may be suffered by the stakeholders, especially the purchasers.

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 developer that the purchasers should not claim any late delivery of vacant possession, the contractors to withhold any legal actions or to nullify them, obligations on part of the purchasers to top-up from their own fund or through additional bank loan to finance the rehabilitation, payment to technical agencies and to redeem the land title, exemption from certain obligations (for example in the course of getting the CF and to carrying on the development/rehabilitation works) imposed by the local authority in respect of provision under the Town and Country Planning Act 1976, the Street, Drainage and Building Act 1974, and the Uniform Building By-Laws 1984 etc\textsuperscript{121}, heedless of the rehabilitating parties towards the obligations imposed by Act 118 and no sanction imposed or punishment meted out to the defaulting parties (including the defaulting developer and the rehabilitating parties)\textsuperscript{122} by MOH etc as mentioned above. The relevant sections in Act 118, which MOH did not invoke, in this respect, are s 13

121 Query: Whether the obligations imposed by these statutes could be absolved from?
122 This might be due to the silent or implied support by MOH itself, it is submitted. See File Number: KPKT/BL/19/1171-1.
(revocation and suspension of licence), s 18 (punishments for the failure to obtain housing development licence), s 19 (punishments for contravening ss 7, 8, 10, 11 and 12), s 20 (punishments for contravening s 15), 21 (punishments for other offences not specifically provided), s 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.

The above requests (of circumventing certain rules and regulations) were made, it is submitted, were for the purpose of facilitating the due and smooth execution of the rehabilitation scheme. In other words, what were important considerations – the purchasers finally could get their purported completed housing units, the bank lender would get back all the loan repayments and interests, and the consultants would receive their part of the bargain. Nevertheless, in the end, the purchasers had to incur exorbitant expenses—by parting with their own moneys to run the rehabilitation, settle off the redemption sum, give into effect the due transfer of the titles and could not receive any compensations/damages from the developer, the bank lender (the Finance) was unable to get all the loan repayment from the developer and that the developer company had been wound up and no asset could be utilized to settle the outstanding debts. Further, there is no evident, the directors/the shareholders of the developer company were made liable and be sued by the purchasers, the developer nor the consultants for the debts owed by the developer company. Thus, the directors/the shareholders to the developer company were the ones who received complete benefits and who ultimately took a free ride at the expense of the purchasers, it is submitted.

Logically, in the opinion of the author, we must have such regulation to prevent housing abandonment and to cater for its rehabilitation, if abandonment is inevitable, for otherwise irreparable damages, injuries and losses could have occurred 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. Special provisions and legal principles are also needed to trace and make the directors or the shareholders or the responsible employee to the defaulting developer company (being the persons responsible in the management of the housing developer company which finally led to the abandonment of the project), on strict liability and fiduciary basis, to make good all the losses and damages suffered by the above parties in the abandoned housing project.

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 were due to the

123 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.
mismanagement, miscalculation, lack of sufficient experience and expertise by the developer over the management of the housing projects undertaken, including the inability to set and ascertain suitable selling prices for the purported units and other development costings. 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 sufficient financial means, experience and expertise, sound management, costing 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 and throughout the course of the development of the purported project until full completion.

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 plan, housing plans and policies taking into account of the conditions of the national economy, property market demands, demography and socio-geography of the project location. In undertaking this task, MOH have to cooperate with the local authorities, Economics Planning Unit, Bank Negara, Ministry of Land and Cooperative Development, Land Authorities, Property Authorities, National Physical Council, State Planning Committee and Regional Planning Committee, and other government and non governmental agencies, it is submitted.

Further, the approval of licences must be made in quota and subject to control, commensurates with the economic and property conditions, issued

124 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 and 58.

125 For example one of the factors, which had led to the abandonment of Phase II to Taman Harmoni, Lot 82, Balakong, Mukim Cheras, Daerah Hulu Langat, was the problem of slime soils. The defaulting developer — Messrs K&T Development Sdn Bhd failed to carried out any soil test before commencing the development of the project. Due to this failure, considerable costs were in need to extract the slime and replaced it with appropriate soils. In the result, the developer had to incur high and considerable cost and unable to proceed with the construction of the Phase II to the project. The phase II was abandoned for almost 10 years before being revived by Permodalan Negeri Selangor Berhad (PNSB). See file number KPKT/08/824/60378 – 1.
and recommended by the above 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, certain viability and feasibility studies are in need of being carried out for the purpose of disclosing the problems and providing their solutions and for calculating the costs and expenditures needed for the restoration\textsuperscript{126}. This study too has to examine and observe the relevant legal and statutory obligations, rights and liabilities, and the appointment of consultants (such as the architects, contractors, engineers etc, cooperation from the purchasers, banks, end-financiers, local authorities, technical agencies and land authorities). From the above case study, there was indeed viability and feasibility study had been carried out but however, it is submitted, the study had not been thoroughly done, in that, the purchasers still had to pay additional moneys for the redemption of the title in order to discharge the same for onward transfer to their respective names, apart from having to use their own moneys to complete the rehabilitation and for the getting of CF before they were entitled to occupy the units.

The duty to cooperate and grant concession also were made applicable to MOH, the local authorities and the technical agencies, based on the above case study. On part of MOH, for example, they should not prosecute the developer and give certain extension for the completion of the units. For the local authorities and technical agencies, they had to give some leeways and concessions or loose approval for the grant of planning permission, building plan approval and the CF. The question is, are these government departments under obligations to give these concessions and loose approval? Should they withhold legal actions, where there are blatant disregard of the law, simply to ensure the success of rehabilitation? Could they exercise selected treatment and prosecutions? Is this allowable in law? Is it fair and just?

In the opinion of the author, these regulatory bodies must exercise their duty according to the law and regulations provided. For example, in respect of the grant of the permit and consent to the developer to commence construction and erection works, the earthworks, the housing development licence, the advertisement and sale permits, the building plan approval, the planning permission and the CF, all these must be made in accordance with

\textsuperscript{126} 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 Number: KPKT/08/824/3579), Kondominium Esplanade, Klebang, Melaka (File Number KPKT/08/824/5976-1), Taman Perdana Muar, Mukim Serong, Muar, Johor (File Number: KPKT/08/824/6698-1), and Taman Perwira Jerantut, Fasa II, Jerantut, Pahang (File Number: KPKT/08/824/3947-5).
the law. What is meant by 'according to the law', it is submitted, the benchmark, requirements, standard and quality required from the developers/rehabilitating parties and must be fulfilled by them, must be reasonable, fair and commensurate with the ordinary professional practices and acceptable practices thus ensuring the security, safety, health, and sustainability of the housing units, their occupants, environment and their developments. Thus, these benchmark, requirements, standard and quality shall not be compromised, at the expense of these considerations.

It is in the opinion of the author that, MOH and the local authorities should institute prosecutions and carry out enforcements against the defaulting developer or the consultants or the rehabilitating parties on their failure to comply with the housing, planning and development laws (the Housing Development (Control and Licensing) Act 1966 (Act 118), the Street, Drainage and Building Act 1974 (Act 133), the Uniform Building By-Laws 1984 (Act 133), the Town and Country Planning Act 1976 (Act 172) and the Local Government Act 1976 (Act 171))\(^{127}\).

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 erected\(^{128}\).

MOH or government also should establish an Housing Trust Fund to finance the rehabilitation of the housing project with flexible and easy terms in order to guarantee the success of any rehabilitation attempt. In this respect, the purchasers too have to be aware that they too may have to bare additional expenses, such as to apply for additional loans from their respective end-financiers, in order to meet the new unit prices and costs arising to rehabilitate the housing units so abandoned. Alternatively, in the event, this is not agreeable to them, then they have full freedom to terminate the sale or sell the purported unit to the rehabilitating parties, who later may sell such a purported unit purchased to other new interested purchasers.

MOH and the local authorities too, have to emphasize on the importance of supervision over all the rehabilitation schemes and activities and mete out

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127 See for example an article written by Brig-Gen (R) Datuk Goh Seng Toh, Vice-President, National House Buyers Association, entitled 'Enforcement Remains the Key', Letters' Section in NST, Wednesday, 3 January 2007, p 27.

128 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 RM200,000 in cash or in such other form as the Minister may determine’(s 6(b)).
punishments to the defaulting rehabilitating developers and consultants who
had committed any wrong doings and misuse of their power, in, during and
after the course of rehabilitation.

The definition of abandoned housing project must also be legally
provided for and statutorily be interpreted. It is suggested, the administrative
definitions given in the first page of this writing, be used as the statutory and
legal definition of abandoned housing projects. In addition thereto, the new law,
if it were to be passed, must define when does actually abandonment occur?.
For example, abandonment may occur if certain stages and progress of the
housing development and construction being carried out by the developer
has been terminated or the developer fails to comply with the statutory duty
to submit the progress reports to MOH for certain durations of month.

The purpose of formulating this legal and statutory definition of
abandoned housing is to prevent any abuse of duty and power by the
developer concerned. This can be illustrated as follows — the developer is
obligated to complete the construction of the projects within the statutory
period of 24\textsuperscript{129} or 36\textsuperscript{130} months. Based on this obligation, they shall not delay
construction activities beyond this period. Otherwise, they have to pay
damages\textsuperscript{131}. However, there are cases where, the developers had delayed the
construction. This phenomenon, may be due to their mismanagement,
siphoning of funds and other mala fide or otherwise hidden agendas to the
detriment of the purchasers’ interests. However, as there is no legal definition
of abandoned housing projects, (although the MOF, \textit{inter alia}, states that,
if there is no construction activity within 6 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 \textit{locus} to take any action or interfere with their

\textsuperscript{129} Provided in clause 23(1) of Schedule G, Housing Development (Control and Licensing) Regulation 1989 — Sale and Purchase Agreement (Land and Building).
\textsuperscript{130} Provided in clause 26(1) of Schedule H, Housing Development (Control and Licensing) Regulation 1989 — Sale and Purchase Agreement (Building Intended For Sub-division).
\textsuperscript{131} If the developer (vendor) fails to deliver vacant possession of the said parcel
within this stipulated period, they shall be liable to pay the purchaser liquidated
damages calculated from day to day at the rate of ten per centum (10\%) per annum of
the purchase price from the expiry date of delivery of vacant possession until
the date of the purchaser takes vacant possession of the said parcel. See clause 26(2)
of Schedule H, Housing Development (Control and Licensing) Regulation 1989 — Sale and Purchase Agreement (Building Intended For Sub-division and
case 23(2) of Schedule G, Housing Development (Control and Licensing)
Regulation 1989 — Sale and Purchase Agreement (Land and Building).
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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. This is the legal predicament. The associating effects arising from this legal problem is that, it would cause difficulties for MOH or the purchasers or the 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 and the purchasers to resume the construction. The problem may also postulate further ‘headache’ in that, dispute and tussle may ensue between purchasers, consultants, local authorities, technical agencies, states government (such as the State Secretary, Land Offices and Water Authorities), end financiers and the developers concerned. This dispute could to a certain extent, lead to litigation. If this were to happen, this would certainly prolong the plan for rehabilitation to an indefinite period of time and inability of the purchasers to occupy the purported units. 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, become unsuitable for human habitation/occupation, as well as become susceptibly subject to new conditions imposed by the planning authorities and that the increasing costs and expenses needed to repair and replace them will increase.

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


133 See for example Taman Han Chiang, Lot 2343, PB6, NED, Penang (Lam Chew Development Sdn. Bhd), File Number: 340/D/(547)/E and KPKT/BL/19/547-2.

134 For example Taman Showkat, Lot 2219, Mukim 13, NED, Penang (Showkat Industry & Realty Sdn. Bhd). See File Number: KPKT/08/824/337 Jilid II.

135 Ibid.

'abandoned project', MOH and the purchasers can forthwith, make official declaration and publish it in the gazette\textsuperscript{137}. Thus, the project so abandoned can immediately be vested in MOH and the purchasers' control through the above suggested pre-emptive action. The defaulting developer, then, has no more power and right to develop the project. Following this, a new supplementary rehabilitation legal regime is required to guide and control the process of rehabilitation. The laws and statutory provisions granting necessary powers to MOH and the purchasers to take over the abandoned housing projects and to exercise necessary actions (including the transfer, getting the CF and redemption of the title) in order to rehabilitate them, will serve MOH and the purchasers with formidable statutory vesting and moratorium mechanisms against any interfering and unduly actions, either legal or non-legal, from recalcitrant parties who can jeopardize the whole rehabilitation processes.

In furtherance thereof, the provisions in Schedule G and H being the standard formatted statutory agreement of sale and purchase and the unstandardized bridging/construction loan and end-financing loan agreements should be added with supplementary clauses. This 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 to hand over the project so abandoned to the purchasers and the rehabilitating parties. Further, for the issuance of CF, not only the local authority and the technical agencies are to give consent for the same but MOH and the purchasers too have no objection against the issuance of the same. This means that, MOH and the purchasers shall have equal right of inspection and examination over the final completed units to their satisfactions for the issuance of the intended CF. With this approach, the contract would be more comprehensive and giving rights to purchasers and MOH to act expeditiously for saving the project from being stalled indefinitely and ensuring that the completed units are fit for human habitation which would otherwise detrimental to the interests and rights of the purchasers.

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

\textsuperscript{137} See also s 11(l)(d) of Act 118, where the Minister could invoke this provision in order to certify that a particular housing developer has abandoned the project. See also s 7(g) of Act 118, where the housing developer is imposed, a statutory duty, by this section to inform immediately the Housing Controller that he is unable to meet his obligations to the purchasers at any stage of the housing development before the issuance of the certificate of fitness (CF). It is submitted that, this 'inability' also would include when the project is abandoned.
(1) to call on all the purchasers, the defaulting developer, MOH, local authorities, technical agencies 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 care taker 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\(^{138}\) and financiers\(^{139}\), purchasers\(^{140}\), local authorities\(^{141}\), technical agencies\(^{142}\) and

138 The rehabilitating parties had to contact all the lenders, bankers and creditors of the defaulting developer, the collateral and securities provided and the updated debts owed. These matters had to 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.

139 The rehabilitating parties had to 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.

140 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.

141 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.

142 The rehabilitating parties had to liaise with the technical agencies such as TNB, TM Berhad, 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.
MOH\textsuperscript{143} could be gathered, mobilized and streamlined for the due and smooth execution of the 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 hands of end-financiers and 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\textsuperscript{144} or from other funders\textsuperscript{145} or from their end-financier to increase the loans and for additional fundings\textsuperscript{146} or from other sources such as TPPT soft loan\textsuperscript{147}. Other problems and matters relating to land authorities, technical agencies, local authorities, MOH, bankers, financiers etc must be settled and finalized\textsuperscript{148}. Similar consideration must also be had for the redemption of the project land and discharged of the charged land, in the event the land was charged to any lender to secure any construction/bridging loans granted to the developer and for onward transfer of the titles to the respective purchasers’ names.

\textsuperscript{143} 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 also had to inquire 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. Equally, to settle any problems arising from such inquiry made, if any, the rehabilitating parties could incur costs.

\textsuperscript{144} Such as the case study as revealed in this writing. Further example is Bayshore Apartment, Lot 3979, Tanjong Bungah, NED, Penang. See File Number KPKT/(05)/1910-1 and KPKT/(05)/1910-2.

\textsuperscript{145} Such as happened in Taman Padang Tembak, Lot 688, TS 2, Mukim 16, NED, Penang. See File Number KPKT/08/824/2605.

\textsuperscript{146} In this situation, new supplemental loan agreements have to be executed between the end-financier and the purchasers.

\textsuperscript{147} Such as happened in Tingkat Nusantara, Lots 300 & 302, Section 9W, North East District, Georgetown, Penang in file number: KPKT/BL/19/1171-1.

In the case study, it was clear that, there was no agreement executed by the parties in the rehabilitation of the project. This might because of the purchasers themselves were the ones who took responsibilities of resuming the construction and rehabilitation subject to the supervision and monitoring of Messrs 'A6' (the purchasers' lawyer) and MOH. It is questionable whether the original sale and purchase agreements with the defaulting developer were still applicable and enforceable, including the rights of the purchasers to claim damages and compensation from the developer. 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 also 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 proposed 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 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 purchasers to take legal action and other terms as that commonly stipulated in Schedules 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 about four years to complete (if the date of the CF obtained is to be taken into account) or about 12 years (if on account of the full redemption and due transfer of the subdivided units to the individual purchasers’ names). 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 problems of getting additional 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.

The provisions and terms in regard to the progress of development stages and progressive stages payment and claim, in the rehabilitation process, too are in need of certain augmentation. It is suggested that, the normal procedure for claiming progressive claims by the rehabilitating parties should be improvised 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 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 be subjected to the ordinary development and planning laws (Town and Country Planning Act 1976 (Act 172) ("TCPA"), Uniform Building By-Laws 1984 (Act 133)("UBBL") and the respective States' Rules of Planning Control) as ordinary developers do, in respect of the planning permission, the approval of building plan and for the issuance of CF.
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 in so far as they are necessary and legally warranted.

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, MOH 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 MOH, local authority and the purchasers. 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 the rehabilitating parties (such as the rehabilitating developer, consultants, contractors, receiver, managers and liquidators etc). The rampant abuse and misuse of duty, power and authority by these 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 undertaken by the Purchasers’ Action Committee under the supervision of the purchasers’ lawyer and cooperation rendered by the bankers/finances, the consultants, the local government and other technical agencies as well as MOH in the above case study had brought the success of the rehabilitation but without a complete one. This was because, this case study revealed that, the purchasers were still left as the aggrieved parties and had to face all the music in consequence of the default of the developer, as illustrated above. Thus, their miserable plight must be taken into account by the government for formulating ways to avoid similar problems from recurring in the future. It is suggested that the complete ‘build and sell’ system be employed to avoid any possible abandonment of housing projects in the future. By this meaning, only completed houses with CF, ready for delivery of vacant possession and for occupation are sold to public. Thus, there would totally be no issue of abandonment of housing project at all, it is submitted. There may be argument that by applying this system, the national economy, the financial sector, the professional sector and the property market would be considerably affected as only the ‘big guns’ in the property sector would able to apply such a system. Further, this suggestion may be in collusion with the political and economic interest of certain parties. However, in the opinion of the author, this system is the best system so far, for facing the problem of abandonment. It should be applied, following the practice in Singapore, whereby the government itself, through the Housing Development Board, becomes the developer, armed with sufficient funds or there may be one centralized National Housing Consortium of developers (with the government being the substantial and controlling shareholder) and no more independent scattered private developers (as currently operating in Peninsular Malaysia), for the whole country erecting housing accommodation in every part of the nation, by applying the only one concept — the ‘build and sell’ system.

The recent advocated optional concept of ‘quasi build and sell’, where purchasers are only to pay 10% of the purchase price and pay the balance 90% after CF and vacant possession are given, it is submitted, would still capable of resulting similar problem (abandonment). This is because, there is no guarantee that during the course of the construction of the houses, the developer would be fully succeeded. Thus, if this were to happen, the purchasers would still be deprived of their rights over their purported houses and the 10% money paid earlier and all expenses incurred incidental to the purchase of the units. This also means, rehabilitation scheme and special laws
and regulations catering for rehabilitation are in need to be provided and adopted to monitor and regulate the rehabilitation of the project so abandoned in order to protect the rights and interests of the related parties and provide remedies to the aggrieved parties.

Thus, the best system for the housing development in Malaysia, should be the complete build and sell’ system as this system is believed can avoid any catastrophe of abandoned housing project. If this system could not be applied, then, it is submitted the housing development and planning law and their regulations have to be rigorously and strictly regulated from time to time, until leaving no possible loophole leading to the recurrences of housing abandonment. Further, if abandonment were still to recur, then new systems and regulations of rehabilitation have to be adopted and regularly improvised to protect all the interests and rights of the stakeholders.

However, it is submitted, as at today, there has not as 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 purchasers under the supervision of the purchasers’ lawyer and MOH. There are other projects having similar fate and similar rescue 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 experience. Similarly, other types of rehabilitations of abandoned housing projects such as stated in the foregoing paragraphs 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

149 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 Berhad. see also articles relating to abandoned housing project written by the author — Abandoned Housing Projects in Malaysia: A Legal Perspective, [2006] 6 MLJ 1 and [2006] 6 MLJA 1, and in Rehabilitation of Abandoned Housing Project: Experience of An Abandoned Housing Developer Through the Help of A Government Agency.
counter measures can be adopted to facilitate the management of abandoned housing projects in Malaysia.